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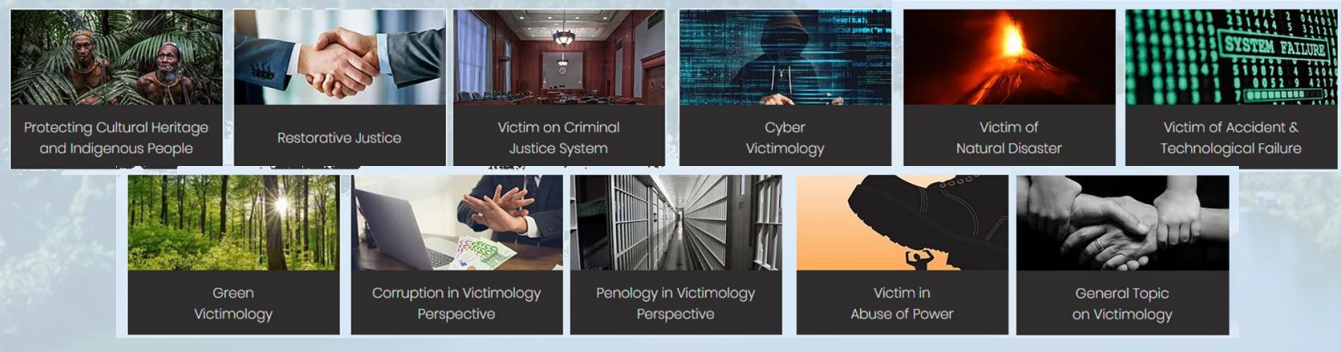
PROCEEDING

4th INTERNATIONAL CONFERENCE ON VICTIMOLOGY

"The Role of Victimology in Protecting Cultural Heritage, Indigenous People and Diversity"



Faculty of Law Khairun University, Ternate

November 13th – 15th 2021

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4th International Conference on Victimology

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4th INTERNATIONAL CONFERENCE ON VICTIMOLOGY &
5th ASSOCIATION OF LECTURERS OF VICTIMOLOGY IN INDONESIA ANNUAL MEETING

4th International Conference on Victimology &
5th Association of Lecturers of Victimology in Indonesia Annual Meeting
"The Role Of Victimology In Protecting Cultural Heritage,
Indigenous People And Diversity"

Faculty of Law Khairun University, Ternate, Maluku Utara
November 13th – 15th 2021

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Faculty of Law Khairun University, Ternate

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Greetings from Chairperson of Association of Lecturers of Victimology in Indonesia

Assalamualaikum warahmatullahi wabarakatuh

I thank God for his presence due to his blessings and grace. The Proceedings as an outcome of scientific activities in the form of the 4th International Conference on Victimology with the theme "The Role of Victimology in Protecting Cultural Heritage, Indigenous People and Diversity" and scheduled for November 15th, 2021. This activity correlated with the 5th Association of Lectures of Victimology In Indonesia Annual Meeting Victimology which took place in Ternate hosted by Faculty of Law, University of Khairun Ternate was held on November 13th – 15th 2021.

Therefore, as the Chairperson of the Association of Lecturers of Victimology in Indonesia would like to thank all those who have contributed in writing this article, which is of course made with full of thought and energy and always upholds the academic values and principles. Hopefully the thoughts of the comrade contained in this proceeding can be further developed by the readers.

I also thank to all the reviewers, namely Mr. Heru Susetyo, S.H., LL.M., M.Si., Ph.D, from the Faculty of Law, University of Indonesia, Mrs. Dr. Nur Rochaeti, S.H., M.Hum., from Diponegoro University, Mrs. Dr. Rena Yulia, S.H., M.H., from the Faculty of Law, Sultan Ageng Tirtayasa University, and Dr. Edita Elda, S.H., M.H. from the Faculty of Law, Andalas University. We hope that our collaboration will bring lots of benefit to writers and readers, especially of academic value and to develop an academic atmosphere. Don't forget to thank Mr. Bayu Wicaksono, S.H. and Mr. Anang Riyan Ramadianto, S.H. as the proceeding editor team.

This proceeding as an outcome is expected not only as an output that meets the formal provisions for the ongoing scientific activity in the form of an International Conference, but it is hoped that this activity can be useful for the development of law in Indonesia, especially related to legal protection for victims of criminal acts, victims of natural disasters as well as legal protection of conservation areas and culture.

Furthermore, I would like to express my deepest gratitude and appreciation to Mr. Dr. Ridha Ajam, M.Hum. Rector of the University of Khairun Ternate and Mr. Jamal Hi. Arsad, S.H, M.H. Dean of the Faculty of Law, Khairun University for the well-established cooperation with APVI, and Mr. Faisal, S.H., M.H. as Chair of the organizer and the entire Committee of the 4th International Conference on Victimology and 5th Association of Lectures of Victimology In Indonesia Annual Meeting Victimology from the University Khairun for his extraordinary dedication, selfless and full of sacrifice, only based on one goal, namely the successful implementation of activities.

In the end, I apologize if in my remarks there are mistakes and/or shortcomings. Finally I close with the sentence Alhamdulillah hirobil Alamin,

Wassalamu alaikum warahmatulahi wabarakatuh

Ternate 2021
Dr. Angkasa, S.H., M.Hum.

Greetings from Dean of
The Faculty of Law Khairun University

Assalamualaikum warahmatullahi wabarakatuh

Talking about laws that are in accordance with Indonesian culture, it will not be separated from customary law in Indonesia. Indigenous peoples remain obedient and obey various principles and concepts of customary law in resolving conflicts between indigenous peoples. The resolution of criminal conflicts in indigenous peoples becomes interesting to study if it is associated with the application of the concept of victimology. Victimology is present as a science that studies victims, in this case it includes the causes of victims and the consequences of victims.

Based on these conditions, Khairun Ternate University (Unkhair) in collaboration with the Association of Lectures of Victimology In Indonesia (APVI) 2021 International Seminar with the theme "The Role of Victimology in Protecting Cultural Heritage, Indigenous Peoples and Diversity".

The seminar discussed various papers on Cultural Heritage, Indigenous Peoples and Diversity, which will be presented by resource persons who come from abroad and within the country. Among others, the President of the World Victimological Society (Mr. Robert Peacock), the President and Founder of Victims Supporting Asia (Mr. Yong Woo Lee), Secretary General of the World Victimological Society (Mr. Michael O'Connell), Chair of the Witness and Victim Protection Institute (Mr. Hasto Atmojo Suroyo), Commissioner of the Indonesian Human Rights Committee (Mrs. Sandra Moniaga), and a lecturer and researcher at the University of Khairun Ternate (Mr. Syawal Abdulajid).

At this seminar, which is held once a year, we expect many valuable findings and information from the results of research that has been carried out by researchers from various institutions who are present today. Exchanging information among researchers, so that in the future close collaboration can be realized to advance research, provide benefits for scientific changes in victimology to a better direction, and for changes in legal justice rules and policies in the eyes of the public.

On this occasion, we would like to thank the speakers, participants from all over Indonesia, from various campuses in Indonesia. There are Semarang University, Balikpapan University, Bandung University, Bangka Belitung University, Brawijaya University, Manonmaniam University Surandanar India, Syiah Kuala University, Panca Bhakti University, University of Indonesia, Tarumanegara University, Dirgantara Marshal Suryadarma University, Trunojoyo University Madura, Sebelas Maret University, University of PGRI Kanjuruhan Malang, Suryakancana University, Jenderal Sudirman University, Batanghari Jambi University, Jakarta Muhammadiyah University, Purwokerto Muhammadiyah University, Andalas University, Jakarta State Polytechnic, Riau Islamic University and Indonesian Islamic University.

We apologize if in the organization of this seminar something is lacking and is not pleasing. That's all I can say, thank you so much.

Wassalamualaikum Warahmatullahi Wabaraktuh.

Ternate 2021
Jamal Hi. Arsad, S.H., M.H.

Greetings from Chairman of The Committee

Assalamualaikum warahmatullahi wabarakatuh

Praise be to Allah SWT who has given blessings and health so that we can hold the International Conference on Victimology in 2021 in collaboration with the Association of Lecturers of Victimology in Indonesia and the Faculty of Law, Khairun University. Don't forget to send shalawat and greetings to the greatest Prophet Muhammad SAW.

Our urge to host this year's international seminar was finally realized. We got a breath of fresh air because it was supported by Dr. Angkasa, S.H., M.Hum. as Chairperson of the Association of Lecturers of Victimology in Indonesia. This international seminar has the theme: “The Role of Victimology in Protecting Cultural Heritage, Indigenous People and Diversity”. Through this International Seminar, we expect many valuable findings and information from the results of research that has been carried out by researchers from various institutions. Exchanging information among researchers, so that in the future close collaboration can be realized to advance research, provide benefits for scientific changes in victimology to a better direction, and for changes in legal justice rules and policies in the eyes of the public.

This seminar targets various parties who care about the field of victimization. They consist of victimology lecturers, researchers and victims of victimology observers. We hope that this international seminar will provide benefits for the development of legal science, especially criminal law.

Billahi taufiq wa hua waliyyul hidayah wa maghfirah.

Wassalamualaikum warahmatullahi wabarakatuh

Ternate 2021

Faisal, S.H., M.H.

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SUPPORTING THE RIGHTS OF CHILDREN OF VICTIM IN THE CRIMINAL JUSTICE SYSTEM AS IMPLEMENTATION OF THE BEST INTERESTS FOR CHILDREN

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Abstract

The rights of children of victim in the criminal justice system should have an exclusive point. Generally, children of victim's role in the criminal justice process are accommodated as witnesses and the fulfillment of restitution depends on the ability of the perpetrator. The condition of the children as victim will be getting worse if the restitution is not fulfilled, while the losses include both physical and psychological. The problem is focused on how to support the rights of children of victim in the criminal justice system as the implementation of the best interests for children. The state has obligation providing access for children of victim to participate in the criminal justice system. They deserve the rights for recovering and protection from any stigmatization for their survival and future. The judge should have known precisely from the children as victim about the physical and psychological suffering before imposing the verdict towards perpetrator. Supporting the rights of children of victim in the criminal justice system can be finished by giving them opportunity to give opinion about the impact of the crime that they experienced and the sanctions imposed apart from their testimony as victim. Fulfilling the rights of children of victim in the criminal justice system is part of the implementation of the best interests for the children.

Keywords: supporting; the rights of children of victim; criminal justice system.

A. BACKGROUND

The judicial system is essentially identical to the law enforcement system as the judicial process is basically the process of enforcing the law. Also, it primarily identical with "judicial power system" because "judicial power" is fundamentally " the power/authority to enforce the law".[1] With regard to operational, the regulation has strategic position in the criminal justice system by providing the definition about what kinds of action are defined as criminal acts, controls the government's efforts to eradicate crime and convict the perpetrators, giving limits on the punishment applied to each crime.[2]The strategic position of the regulation (criminal law, author), makes the law have an important role in material criminal law, formal criminal law and the implementation on court decisions. The role of the law is also unarguably important in accommodating the rights of victims of criminal acts (including the children), including the right to obtain physical and psychological recovery and the right of having role in the criminal justice process.

The rights of victims in the Criminal Procedure Code (KUHP)[3] covering the compensation for losses arising from criminal acts (see Article 98 of the Criminal Procedure Code),

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[1] Barda Nawawi Arief, *Reformasi Sistem Peradilan (Sistem Penegakan Hukum) Di Indonesia*, Edisi Revisi (Semarang: Badan Penerbit Universitas Diponegoro Semarang, 2012), hlm. 2-3.

[2] Muladi, *Kapita Selekta Sistem Peradilan Pidana* (Semarang: BAdan Penerbit Universitas Diponegor, 2002), hlm. 23.

[3] "Undang-Undang Republik Indonesia Nomor 8 Tahun 1981 Tentang Hukum Acara Pidana" (n.d.).

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everyone who becomes the victim of criminal act has the right to propose the report or complaint towards the investigators through spoken and written (see Article 108 of the Criminal Procedure Code). Furthermore, in the judicial process, the victim is the first person who gives first testimony as the witness (see Article 160 paragraph (1) letter b of the Criminal Procedure Code). The provisions on the rights of victims in the KUHP are essentially intended for the protection of victims (recovery, compensation) and the interests of examination in the judicial process. In the criminal justice process, the role of the victim is limited only as the witness of victim who provides information about the crime that had been experienced, so that the rights of victims (including children of victim) procedurally in criminal justice have not been maximized.

The SPPA Law[4] as part of the criminal justice system provides the "new" perspective in handling cases of children conflicting with the law by the existence of explicit regulations regarding restorative justice and diversion in the stages of investigation, prosecution and inspection in court. Children dealing with the law in the SPPA Law comprise of children conflicting with the law, children of victim, and children of witnesses. Restorative justice is the settlement of criminal cases involving the perpetrators, victims, families of the perpetrators/victims, and other related parties to jointly search the fair solution by emphasizing the restoration to its original state, and not retaliation (see Article 1 point 6 of the Law). SPPA Law), while diversion is a transfer of settlement of children's cases from the criminal justice process (see Article 1 point 6 of the SPPA Law). The rolling of children's cases in criminal justice, based on the SPPA Law, still giving the opportunities for settlement outside the criminal justice process to prevent children from the crime being deprived of liberty. Diversion with a restorative justice approach is carried out in deliberations that unite all parties (perpetrators, victims, affected communities) to obtain fairer solution rather than retaliation. The diversion deliberation process is performed by identifying the losses suffered by the victim, efforts to recover the victim, apology from the perpetrator and forgiveness from the victim as the main point in the diversion agreement.

Diversion with restorative justice approach in addition to preventing children from deprivation of liberty, is basically also aimed to fulfil the needs of victims (children of victim) of criminal acts who suffer both economically, physically and psychologically. Children of victim necessarily need the recovery as the situation before the crime occurred. Although it seems difficult returning to their previous state, but at least there is a maximum recovery effort for the victim. Children of victim can be victims of criminal acts committed by adults or children, or crimes committed by adults and children.

Data from the PPPA Ministry of Indonesia, from January to July 31, 2020 there were 4,116 cases of violence against children in Indonesia. The details of child victims comprise of 2,556 victims of sexual violence, 1,111 victims of physical violence, 979 victims of psychological violence. Then, there are 346 victims of neglect, 73 victims of human trafficking (TPPO) and 68 victims of exploitation. The number of of 3,296 victims were girls and 1,319 boys.[5] Furthermore, the Indonesian Child Protection Commission (KPAI) noted that 234 children were victims of 35 criminal cases of human trafficking (TPPO) and exploitation in January-April 2021. The number of 217 children or 93% among them were victims of 29 prostitution cases[6].

Based on the data on the number and details of child victims of criminal acts from the Ministry of PPPA and KPAI in 2020 and 2021, it is necessary to become special attention towards the state so that children of victims obtain their rights as guaranteed by the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). As a matter of course, the rights of child victims are not only limited to medical assistance, psychosocial, psychological recovery, restitution or compensation, but also children of victim must play a role in criminal

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[4] "Undang-Undang Republik Indonesia Nomor 11 Tahun 2012 Tentang Sistem Peradilan Pidana Anak" (n.d.).

[5] Sania Mashabi, "Kementerian PPPA: Sejak Januari Hingga Juli 2020 Ada 2.556 Anak Korban Kekerasan Seksual," 2020, https://nasional.kompas.com/read/2020/08/24/11125231/kementerian-pppa-sejak-januari-hingga-juli-2020-ada-2556-anak-korban.

[6] Dwi Hadya Jayani, "KPAI: 217 Anak Jadi Korban Prostitusi Hingga April 2021," 2021, https://databoks.katadata.co.id/datapublish/2021/06/03/kpai-217-anak-jadi-korban-prostitusi-hingga-april-2021.

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justice by providing opinions regarding criminal acts, punishments imposed or peace that should be made.

The law has accommodated the rights of child victims, however, there is a necessity for further regulations or policies relating to the rights of children of victim in a procedural manner other than as witness victims in the criminal justice system. Children of victim in the criminal justice process are not only limited to being victims' witnesses who provide information about what was experienced, seen and heard, but also have the right giving an opinion regarding the punishment for the perpetrator. The state is obliged to fulfil the rights of children of victim, including in the criminal justice process, to provide opinions regarding the crimes they have experienced, including in terms of sentencing the perpetrators. In this case, the problem is focused on how to support the procedural rights of children of victim in the criminal justice system as the implementation of the best interests for children.

B. DISCUSSION

A. The right of Children in Criminal Justice Process

"Victim is person who has suffered physical, mental, and/or economic loss caused by criminal act" (see Article 1 point 1 of the Law on the Protection of Witnesses and Victims)[7]. In the SPPA Law, "Children of victim are children who are under 18 (eighteen) years old who experience physical, mental, and/or economic losses caused by criminal acts" (see Article 1 point 4). Victims of crime (including children of victim) suffer physical, mental or economic losses with the burden of suffering in casuistic manner. Victims of criminal acts have the rights to obtain compensation, recovery with medical and social rehabilitation, as well as mental or psychological recovery which can be implemented by taking part in the judicial process.

The rights of child victims in the Human Rights Law[8], comprise of "Every child has the right to get legal protection from all forms of physical or mental violence, neglect, ill-treatment, and sexual harassment while in the nurturing of their parents or guardians, or any other party who is responsible for nurturing matters" (see Article 58 paragraph (1)). Furthermore, Article 64 stipulates "Every child has the right to obtain protection from economic exploitation activities and any work that endangers them, so that it can interfere their education, physical health, morals, social life, and mental and spiritual." Children also "have the right to obtain protection from sexual exploitation and abuse, kidnapping, child trafficking, and from various forms of abusing narcotics, psychotropic substances and other addictive substances" (see Article 65).

Children who are conflicting with the law receive special protection as forms of state responsibility to their citizens. Children of victim deserve special protection in the Child Protection Act[9], including in Article 59 paragraph (2) which stipulates "Special protection for children is given to children in emergency situations; children in conflict with the law; children from minority and isolated groups; children who economically and/or sexually exploited; children who are victims of abusing narcotics, alcohol, psychotropic substances, and other addictive substances; children who are victims of pornography; children suffered HIV/AIDS; child victims of abduction, sale, and/or human trafficking; child victims of physical and/or psychological violence; child victims of sexual crimes; child victims of terrorist network; children with disabilities; child victims of abusing and neglecting; children with diverge social behaviour; and children who are victims of stigmatization from labelling related to their parent's condition."

In the Law on the Protection of Witnesses and Victims, "witnesses and victims deserve obtaining protection for the safety of their personal, family and property, and freely save from threats related to the testimony that they will, are currently, or have

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[7] "Undang-Undang Republik Indonesia Nomor 13 Tahun 2006 Tentang Perlindungan Saksi Dan Korban, Yang Telah Diubah Dengan Undang-Undang Nomor 31 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 13 Tahun 2006 Tentan Perlindungan Saksi Dan Korban" (n.d.).

[8] "Undang-Undang Republik Indonesia Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia" (n.d.).

[9] "Undang-Undang Republik Indonesia Nomor 23 Tahun 2002 Tentang Perlindungan Anak Sebagaimana Telah Diubah Dengan Undang-Undang Republik Indonesia Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang Republik Indonesia No.23 Tahun 2002 Tentang Perlindung" (n.d.).

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given; participate in the process of selecting and determining the form of security protection and support; provide information without pressure; getting translator; free from entangled questions; obtain information regarding the development of the case; obtain information regarding court decisions; obtain information in the case when the convict is released; identity is secretly save; obtain a new identity; obtain temporary residence; obtain new place of residence; obtain reimbursement of transportation costs as needed; obtain legal advice; obtain temporary living expenses assistance until the protection period ends; and/or receive assistance" (see Article 5 paragraph (1)). With regard to "victims of serious human rights violations, victims of criminal acts of terrorism, victims of criminal acts of human trafficking, victims of criminal acts of torture, victims of criminal acts of sexual violence, and victims of severe persecution, apart from being deserved as referred to in Article 5, they are also having rights to receive medical assistance; and psychosocial and psychological rehabilitation assistance" (see Article 6 paragraph (1)). Furthermore, it is stipulated in the Law on the Protection of Witnesses and Victims, "Every victim of serious human rights violations and victims of criminal acts of terrorism in addition to getting the rights as referred to in Article 5 and Article 6, they are also deserved the compensation" (see Article 7 paragraph (1). Regulations regarding compensation, restitution and rehabilitation in the Law on the Protection of Witnesses and Victims have not been implemented properly to protect victims[10], therefore the rearrangement of the role of children of victim in criminal justice is needed as part of fulfilling the rights of victims of criminal acts.

The rights of children of victim in the criminal justice process stipulate in the Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) and the SPPA Law. Criminal procedural law accommodates more arrangements regarding the criminal offender or children in conflict with the law, while children as victims of criminal acts (children of victim) "have less attention" in criminal justice. In the KUHAP, it is determined that the first person to be heard as a witness is the victim (see Article 160 paragraph (1) letter b of the Criminal Procedure Code). Furthermore, it is allowed that the children (as victim) may be examined to provide information without asseveration, such the children who is under fifteen years old and has never been married (see Article 171 letter a of the Criminal Procedure Code). At each stage of the examination, the victim's child has limitation in his role, exactly as witness of the victim who provides information about what was experienced and the losses that were suffered. This information can have deficient impact on the children of victim as they have to remember what had happened to them. The role as a witness does not accommodate the rights of the victim's child. As a victim, a child also has the right to give an opinion regarding the suffering caused by such crime and the appropriate punishment for the perpetrator. Children of victim need special protection including the fulfilment of the rights to be heard and have their opinions considered in criminal justice.

In the SPPA Law, special protections for children of victims include:

A. The best interests for children of victim, and/or children of witnesses, it is compulsory to keep them secretly in the news in print or electronic media (see Article 19). This is intended to protect children from being stigmatized and traumatized by criminal acts
B. In the process of examination at the investigation, prosecution and examination in court, the children of the victim or child of the witness must be accompanied by the parents and/or person trusted by the children of the victim and/or child of the witness, or a social worker (See Article 23 paragraph (2)).
C. When examining the victim's child and/or witness' child, the judge might order that the children could be taken out of the courtroom and the parents/guardian, advocate or other legal aid provider, and the Community Counsellor remain staying on. In the event that the victim's child and/or child witness is unable to attend to give testimony before a court session, the judge may order the victim's child and/or

[10] Indriastuti Yustiningsih, "Perlindungan Hukum Anak Korban Kekerasan Seksual Dari Reviktimisasi Dalam Sistem Peradilan Pidana," *LEX Renaissance* NO. 2 VOL. (2020), hlm. 292.

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child witness to be heard outside the court session through electronic recording conducted by the Community Counsellor in the local legal area in the presence of investigators or public prosecutors and advocates or other legal aid providers; or through direct remote examination using audio-visual communication tools accompanied by parents/guardians, Community Counsellor or other companions (see Article 58).

D. In certain cases, the children of victim is given opportunity by the judge to express their opinion regarding their current case. (See Article 60 paragraph (2)).
E. Child victims have the rights pertaining medical rehabilitation and social rehabilitation, both inside and outside the institution; guarantee of safety which comprise of physical, mental, or social; and easy access to information regarding the progress of the case. (Article 90 paragraph (1))
F. Referring children of victim to agencies or institutions that handle child protection or child social welfare institutions; to the hospital or institution that handles child protection in accordance with the condition of the child of victim; providing medical rehabilitation, social rehabilitation, and social reintegration from institutions or agencies that handle child protection; protection from institutions which handling witness and victim protection or social protection houses in accordance with the provisions of laws and regulations (see Article 91)).

The rights of child victims, including the right of playing role in the criminal justice process, have been stipulated out in the law. Children of victim in the criminal justice process are given special protection such as hindered to meet the perpetrator, being allowed to give information outside the trial through electronic recording or direct remote examination using audio-visual communication tools and assistance at each stage of the examination. However, there is necessity for arrangements, especially with regard to the rights of child victims to play role in the criminal justice system, mainly related to to decisions that will be handed down by judges.

B. Supporting the Rights of Children of Victim in the Criminal Justice System as an Implementation of the Best Interest for the Children.

The rights of children, including the rights of children of victim in the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) have been described in legislation as form of state responsibility because of the social contract between the state and its citizens. The argument towards legal protection for victims of crime based on social contract arguments (the state monopolizes all social reactions to crime and prohibits private actions) and social solidarity (when citizens experience difficulties, through cooperation in a society based on or using facilities provided by the state). [11] The argument for social contract and social solidarity is the granting of authority to the state in law enforcement and protection of victims of crime through services and regulation of rights.

The 1945 Constitution of the Republic of Indonesia guarantees the rights of children, especially in Article 28 B paragraph (2) which stipulates "Every child has the right to survive, grow and develop and has the right of protection from any violence and discrimination." Children who are victims of criminal acts have the same rights as children in general as stated in the constitution. The fulfilment of the rights of child victims includes compensation, rehabilitation (medical, psychological, social) and other recovery efforts as well as protection regulated by law. The regulation of victims' rights in criminal procedural law giving less protection for victims. The study of the position of victims in the Criminal Procedure Code (KUHAP) shows that it is also more perpetrator-oriented than victim-oriented[12], as well as in the SPPA Law. The position of the victim has been placed in a lower role (subordinate role) in the criminal procedural law

[11] Muladi dan Barda Nawawi Arief, *Bunga Rampai Hukum Pidana* (Bandung: P.T. Alumni, 2010), hlm. 83.

[12] Angkasa, *Viktimologi* (Depok: PT Raja Grafindo Persada, 2020), hlm. 180.

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system. Their role have weakened as the consequence of the increasing role of the Public Prosecutor who represents the state.[13]

One of the ways in which the juvenile criminal justice system is implemented is based on the principle of the best interests for children The principle of the best interests of children in the Elucidation of the SPPA Law is determined "all decision-making must always consider the survival and development of children", in this case including the children of victim. The handling over children requires more attention and special protection, so that in all decisions concerning children, they must pay attention regarding their survival and growth. Law enforcement officers and related institutions must providing attention of the best interests of children and attempt to maintain the family atmosphere (see Article 18 of the SPPA Law). Elucidation of Article 18 stipulates that the family atmosphere is, as example, an atmosphere that makes children comfortable, child friendly, and does not cause fear and pressure. This family atmosphere is necessary so that in the criminal justice process, children of victim can provide information freely without pressure according to the events they have experienced.

Children of victim have the right to playing role in the criminal justice process. Currently, in the criminal justice process, the role of the child victim is as a witness who provides information about the crime that happened to him, regarding what was experienced, seen and heard. The suffering experienced by the victim of crime is only relevant to be used as an instrument of proof and punishment for the offender and the suffering experienced by the offender because that punishment has no relevance to the suffering of the victim of a crime[14]. Children of victim in the criminal justice process are limited as witnesses to victims and have not yet obtained the right of giving opinion about the punishment that should have been imposed on the perpetrator. Article 60 paragraph (2) of the SPPA Law stipulates "In certain cases the children of the victim is given the opportunity by the judge to express their opinion on the case occurred." There was no further explanation regarding the phrase "certain matters" and the phrase "expressing opinion" regarding the case at the present. It should be explained what the "certain matters" is and under what circumstances it is. Furthermore, regarding "expressing opinions" regarding the case at the present it is also necessary to explain further opinions relating to the criminal sentence imposed on the perpetrator or opinions regarding the form of recovery requested or other matters relating to the case.

The role as victim witness has less justice value as it does not provide opportunity for the children of victim to express their opinion about the punishment that should be given to the perpetrator or in other words giving the children of victim the right to criminal prosecution because of the suffering that must be suffered as a result of the crime. The judge has the authority in terms of imposing a sentence, however, the opinion of the victim's child can be taken into consideration in making the decision considering that they have the burden of suffering both physically and psychologically and has the right to live like children in general.

In the context of regulating criminal law against victim of crime, the first matter needed to pay attention to is the essence of the victim's suffering, either material or physical suffering as well as psychological suffering (trauma), loss of trust in society and public order, anxiety, suspicion, cynicism and other various avoidance behaviours.[15] In reforming criminal law, especially for victims of criminal acts, there are basically two models, namely The Procedural Rights Model and The Service Model.[16] In the procedural model, the role of the victim as witness of victim, including to give

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[13] Supriyadi Widodo Eddyono, Ajeng Gandini Kamilah, and Syahrial Martanto Wiryawan, *Penanganan Anak Korban, Pemetaan Layanan Anak Korban Di Beberapa Lembaga* (Jakarta: Institute for Criminal Justice Reform, 2016), hlm 20.

[14] Mudzakkir, "Kedudukan Korban Tindak Pidana Dalam Sistem Peradilan Pidana Indonesia Berdasrakan KUHP Dan RUU KUHP," *Jurnal Ilmu Hukum* Vol. 14, N (2011), hlm. 32.

[15] Muladi, hlm 122.

[16] Muladi dan Barda Nawawi Arief, *Bunga Rampai Hukum Pidana* (Bandung: P.T. Alumni, 2010), hlm. 85.

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consideration in determining the crime (victim opinion statement), when the convict is given conditional release to peace condition.[17] The victim is given the right to conduct criminal complaint or to assist the prosecutor or the right to be presented or heard at any trial whose interests are related to it including the right to be asked for consultation by the correctional institution before being granted of parole and finally the right to hold peace or civil justice.[18] In this case, because the victim is children, assistance from parents/guardians, advocates and related institutions is needed. The role of the victim to give consideration in determining the crime needs to be further regulated as part of fulfilling the rights of the children of victim.

In the SPPA Law, the recovery of children of victim can be carried out with the restorative justice approach. Diversion with restorative justice approach as a settlement effort by bringing together the parties involved in the crime in order to obtain the fairest settlement. Settlement can be achieved by agreement without or with compensation as part of the victim's recovery. Diversion with restorative justice approach is aimed at fulfilling the recovery needs of children of victim, however, they probably receive less protection, among others, because there is no compensation agreement or the agreement is not implemented. Restorative justice is expected to minimize the impact of the judicial process on children because it emphasizes conflict resolution involving parties related and repairing losses caused by perpetrators.[19]

In the service model, the emphasis is placed on the need to create gold standards for the development of crime victims that can be used by the police, for example in the form of guidelines for notification to victims and/or prosecutors in handling their cases[20], providing compensation or restitution from perpetrators. This service model is essentially the recovery of victims by the state through related institutions and law enforcement officers.

Criminal law reformation essentially implies an effort to reorient and reform criminal law in accordance with the central socio-political, socio-philosophical and socio-cultural values of Indonesian society that underlying social policies, criminal policies and law enforcement policies in Indonesia.[21] The criminal law reform contains the values of Pancasila as the basis of the state, as the source of all sources of law. According to Satjipto Rahardjo, we use the notion of the Pancasila legal system to accommodate various characteristic values that our legal system wishes to be accommodated, such as kinship, fatherhood, harmony, balance and deliberation. These values are the roots of our legal culture[22] and become the content of legal reform. Criminal law reform can be carried out by changes in legislation, making new laws or repealing laws. In reforming the criminal justice system, especially regarding the rights of children of victim, it can be done by making changes or additions to existing laws, especially regarding the procedural rights of child victims in criminal justice.

The best interest of the child is the principle in the juvenile criminal justice system as all decision-making must consider the survival and development of children. The opinion of the children of victim is becoming the input and should be considered by the judge in making decision, because of their suffering as a result of the crime. The impact of criminal acts and judge's decisions will affect the survival, growth and development of children. Supporting the rights of children of victim in criminal justice as the implementation for the best interests of children, is carried out by reforming criminal law, especially formal criminal law. The fulfilment of rights of child victims in the criminal justice process can be implemented by providing the opportunity to express opinions

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[17] Muladi, *Kompleksitas Perkembangan Tindak Pidana Dan Kebijakan Kriminal* (Bandung: P.T. Alumni, 2016), hlm. 125.

[18] Muladi dan Barda Nawawi Arief, *Bunga Rampai Hukum Pidana*, hlm. 85.

[19] Nur Rochaeti, "Partisipasi Masyarakat Dan Keadilan Restoratif Dalam Sistem Peradilan Pidana Anak," in *Konstruksi Hukum Dalam Perspektif Spiritual Pluralistik* (Yogyakarta, 2021), hlm.770.

[20] Muladi dan Barda Nawawi Arief, *Bunga Rampai Hukum Pidana* hlm. 85.

[21] Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana: Perkembangan Penyusunan Konsep KUHP Baru* (Jakarta: Kencana Prenada Media, 2014), hlm. 29.

[22] Satjipto Rahardjo, *, Sisi Lain Dari Hukum Di Indonesia* (Jakarta: Kompas, 2006), hlm. 10.

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regarding the sentence for the perpetrators and the desired recovery efforts or peace efforts in resolving cases. children of victim need more recovery due to criminal acts and have their opinions considered in the criminal justice process.

C. CONCLUSION

The rights of child victims, including the right of playing role in the criminal justice process, have been explained in the laws. children of victim in the criminal justice process are given special protection as the form of state responsibility because of the social contract between the state and their citizens. Supporting the procedural rights of child victims in the criminal justice system as an implementation of the best interests of children, namely by providing an opportunity to express opinions regarding the sentence for the perpetrators and the desired recovery efforts or peace efforts in resolving cases. The judge has the authority in terms of imposing the sentence, however, the opinion of children of victim is an input and should be considered by the judge in making a decision, because of their suffering as a result of the crime. The impact of criminal acts and judge's decisions will affect the survival, growth and development of children.

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EARLY DETECTION OF ADDICTION LEVEL OF VICTIMS OF NARCOTIC ABUSE IN CIANJUR'S PRISON

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ABSTRACT

Drug abuse cases are steadily increasing. In 2020, there is an excess of the community service around 131%. Among 250,000 community-guided people, 136,000 of them are linked to narcotics cases. While in West Java alone there are 7,000 drug crime distribution and 4,000 drug abuse cases. In Cianjur Regency, there are 300 drug-related cases with 54 people tied to the abuse cases. If all narcotics abuse cases are always given a detention verdict, there will be an alarming rise of narcotics distribution cases as the demand towards the narcotics for the abusers will increase in accordance with the impact of drug abuse, that is tolerance impact. Tolerance is a condition where an abuser raises the dose of the drug to obtain similar effects. At Cianjur's prison, none of the doctors or medical staff is trained to perform rehabilitation, causing it to cooperate with the Regency National Narcotics Agency of Cianjur (BNNK) to assess the community-guided people towards the related drug abuse case. Medical rehabilitation will hopefully decrease the demand against the drug substances; thus, it descends along with the drug crime distribution.

The goal of this research is to promptly detect the addiction level of the community-guided people (CGP) against the drug-using Alcohol, Smoking, and Substances Involvement Screening Test (ASSIST) instruments.

The methodology of this research is to quickly detect the addiction level of the CGP using ASSIST instruments on 54 CGPs linked to the drug cases by gathering the CGPs in a hall and screening by Clanjur's BNNK. The time to screen is between 10 to 15 minutes. The screening was performed from 8:00 AM to 14:00 PM.

The results of the screening using ASSIST instruments are 15 CGPs are lightly addicted, 29 CGPs are moderately addicted, and 10 CGPs are heavily addicted. The results were then sent to the warden and then immediately responded to by the medical rehabilitation team by inviting the rehabilitation team from the West Java provincial team.

Keywords: Narcotics; Abuser; Medical Rehabilitation Rights

A. INTRODUCTION

The paradigm shift in preventing drug abuses in Indonesia by relating the drug abuses to the act of a criminal is a dehumanizing process against the drug abusers. This stereotype affects either the negative opinion formation or paradigm among the society. The abusers are mostly considered as burdens, criminals, and any other worse stigmas which are discriminative, thus the prevalence of drug abusers is not decreasing significantly. (Rehabilitation 2017)

Drug abuse is a global issue that involves the bio-psycho-social aspect and causes many other risk factors that even lead to death. Drug abuse in Indonesia has now become widespread. Not only does it occur in major cities, but also in many minor cities and even in any social status. The strategic geographical location of Indonesia is one of positive contribution to this case and also many other impacts. This also enables an easier way for illegal drug distribution to enter Indonesia. The control against a lot of varieties of narcotics in Indonesia becomes more challenging. The social and cultural

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shifts are also much more difficult to be prevented considering that foreigners can easily enter from many countries.

In Indonesia, the issues of drug abuse have never ceased to exist, albeit the used substances show differences as time goes. The abuses grow as the trend is affected by many factors as well, among them are the substances availability, needs, and law enforcement factors. Besides that, it is also affected by the local customs in a society that oftentimes unconsciously gives bad impacts on health. (P. Sandy Noveria 2017)

The emergence of drug abuse recurring cases has to be observed specifically. That the imprisonment verdict for the abusers will render them becoming more addictive, leading to a greater cost for the community institutions to handle such problems. The famous examples of recurring drug abuse cases are Rio Refan, arrested 4 times in a span of 6 years; Tio Pakusadewo, consuming methamphetamine, arrested twice in 2017 and 2020; Roy Marten, arrested twice where in his first case, he was imprisoned for 9 months; Iyut Bing Slamet; Polo; Ridho Roma; Jennifer Dunn; and Fariz RM. (Simanjuntak 2021)

Criminal sentencing has always been considered as a justice barometer and the criminal law enforcement in the society along with the convicts' placement in undergoing the punishment given by the court verdict are based on a correctional concept. The correctional concept that is based on treatment, and rehabilitation and correction, aims to restore the convicts to their normal life once they return to society. (Rizaldi 2020)

According to the data of the General Directorate of Correction (Direktorat Jenderal Pemasyarkatan), as of May 6th 2021, the correctional institutes in Indonesia exceed capacity up to 131% with 136,397 convicts related to drug abuse cases filling in the institutes. The Ministry of Law and Human Rights has planned to construct 3 more correctional institutes in Nusakambangan and to add the new blocks inside the institutes that have exceeded their capacity. The other endeavours are optimizing the conditioned releases, in-house assimilation for the prison inmates that meet the administrative as well as substantive terms. (Satrio 2021)

B. PURPOSE

To understand the severity level of drug addiction of the victims of drug abuse who are involved in a drug case at Cianjur Regency correctional institute using alcohol, smoking and substances involvement screening test (ASSIST) instrument.

C. METHODE

The used methods are descriptive analysis by performing data retrieval to 54 prison inmates involved in a drug case. The data is then analyzed by using the ASSIST standard to obtain the severity level of those inmates.

D. ANALYSIS AND DISCUSSION

Narcotics are the subsidiary product of psychopharmaceutical products, derived from the opium poppy which shows effects on the nervous system and probably results in drowsiness, lessened physical activity, sleeplessness, and significant respiratory depression. While on the other side narcotics plays a crucial role in medical care. Natural or synthetic narcotics are prescribed for pain control, coughing and acute diarrhoea, narcotics produce a general sense of well-being known as euphoria by reducing tension, anxiety, and aggression. Excessive drug intake increases the risk of infection, diseases and overdose. Narcotics are classified into 3 sections based on their origin. They are natural forms of opium, semi-synthetic drugs derived from morphine and synthetic drugs which show the same chemical structure as morphine. morphine which is an active compound of opium and its wide range of synthetic derivatives are the most powerful pain-killing drugs. Data indicate that the number of drug overdose deaths attributed to narcotic pain medicines is more than overdose deaths from heroin and cocaine combined. Narcotics show adverse effects on the nervous system but also when combined with chemicals or drugs Scientists developed different ways of pain-killing action without any addictive function. This class of drug is identified as a high risk of abuse. Narcotic daily usage may lead to a tendency of

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developing medication tolerance, which then finally requires higher dosages. Narcotic interaction with some herbal preparations may lead to central nervous system depression. People addicted to narcotics for pain relief should avoid having herbal preparations which include compositions like kava (*Piper methysticum*), valerian (*Valeriana officinalis*), chamomile (*Matricaria recutita*), lemon balm (*Melissa officinalis*). These herbal compounds intensify the tendency of opioids to cause drowsiness and slow down breathing. Ginseng (Panax ginseng) should also be avoided because it may interfere with the pain-relieving qualities of narcotic medications.

The criminal sentencing alternatives have been long introduced on the law system in Indonesia, either on Criminal Law Book, Narcotics Law, along with Law about the Child Criminal Justice System. In reality, the implementation of those alternatives is far from being optimal and a plethora of cases are most likely to be given imprisonment verdicts. The other alternatives of imprisonment are social work, criminal monitoring, and criminal fine in the way of instalment. These alternatives are solutions to the correctional institutes' overcapacity issue. The restorative justice principle should be fundamental to the criminal system in Indonesia, yet the implementation is almost non-existent. The decision to give imprisonment leads to stigmatization effect for the inmates, moreover if the inmate is a child. The humanization system concept must be implemented in preventing the formation of bad stigmas against these inmates at the time they are released. (Darwin 2019)

Indonesia Law Number 35 the Year 2009 regarding Narcotics approved at October 12th 2009 that amends Indonesia Law Number 22 the Year 1997 regarding Narcotics, fundamentally aims to:

D. Guarantee the availability of drugs for medical service needs and/or the advancement of research and technology;
E. Prevent, defend, and save Indonesia from drug abuses;
F. Eradicate the illicit drugs and drugs precursor distribution;
G. Guarantee the control of medical and social rehabilitation efforts for drug addicts and abusers.

Rehabilitation is a form of punishment in which the purpose is to recover or to treat. If the involved person is proved guilty as a drug abuse victim, he/she has to undergo medical and social rehabilitation (Purwani, Darmadi, & Putra, 2016). Rehabilitation is a half-closed facility where only special people that have particular motivations can enter (Soeparman,2000). The convict's rehabilitation is a place where skill and knowledge training is provided to avoid drugs. Rehabilitation declared on Indonesia Law of Narcotics, has also been included in rehabilitation conditions which can be observed in Article 54, Indonesia Law Number 35 the Year 2009 regarding Narcotics (Putra, 2016). In Article 54, it is mentioned that the addict and drug abuse victims are obligated to undergo rehabilitation (Franti, 2016). Going through therapy and rehabilitation is necessary for drug addicts considering the significant increase of the victim number, thus a breakthrough is required to perform effective steps. The Penitentiary system that emphasizes the elements of prevention and the use of custody as an individual is not aligned with the character of Indonesia based on Pancasila and UUD 1945 (Sujatno,2008). There are many forms or methods of performing drug abuser rehabilitation, in this case, the convicts, such as medical rehabilitation, social rehabilitation, and so on yet the realization says otherwise where those many rehabilitation forms are mashed into a single method, therefore during this step, the ideal four-step recovery process for the drug abusers is only performed one step, that is only medical check. A doctor and a nurse hold an important role in a brief check whether a convict/patient is healthy, how the past illnesses are, and all physical health characteristics that are then written on the convict's medical record. Detoxification step, medicine-free therapy, and physical therapy aim to decrease and erase the toxins from the body, to decrease the effect of drug withdrawal, and to cure the patient's mental complications. There are several ways like cold turkey, blatantly holding a conversation regarding unpleasant matters and resource change.

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The stage of mental and emotional stability of the patient, so that mental disorders that cause drug abuse can be overcome. At this stage, it is carried out by involving a number of expertise, such as supervisors and supervisors and psychologists, namely through social work methods, social counselling in the form of individual therapy is carried out to reveal or solve basic problems experienced by prisoners. So they can help in the next rehabilitation process. In addition, alternative solutions to problems faced by patients/detainees are being sought. This method is carried out face-to-face between the main officer and the detainee. (I Made Subantara 2020)

In the World Drug Report, United Nations Office on Drugs and Crime (UNODC) in 2020 it was recorded that around 269 (two hundred sixty-nine) million people abused drugs worldwide in 2018, which is 30 (thirty) per cent more than in 2018. 2009, while more than 35.6 (thirty-five point six) million people suffer from drug abuse disorders (*The Third Booklet of The World Drugs Report*, 2020).

UNODC also released a global phenomenon whereas in December 2019 it was reported that there were 950 (nine hundred and fifty) new types of narcotics. Meanwhile, in Indonesia, according to data sourced from the Laboratory Center of the National Narcotics Agency of the Republic of Indonesia, so far, as many as 83 (eighty-three) New Psychoactive Substances (NPS) have been found in Indonesia, of which 80 (eighty) NPS have been registered. in the Regulation of the Minister of Health Number 4 of 2021. The discovery of NPS in Indonesia continues to increase, the prevalence of narcotics abuse in Indonesia has also increased from 2017 to 2019. (BNN tanpa tahun)

Based on the results of research by the BNN RI (National Narcotics Agency of the Republic of Indonesia) and the UI Research Center (Health Research Center, University of Indonesia) in 2017 the prevalence rate of narcotics abusers aged 10-59 (ten to fifty-nine) years was 1.77% (one year). point seventy-seven per cent); while in 2019 based on research by BNN with LIPI (Indonesian Institute of Sciences) the prevalence rate of narcotics abusers in Indonesia was 1.8% (one point eight per cent). Thus, there was an increase in the prevalence rate of 0.03% (zero point zero three per cent) which means that the number of narcotics abusers in Indonesia has increased.

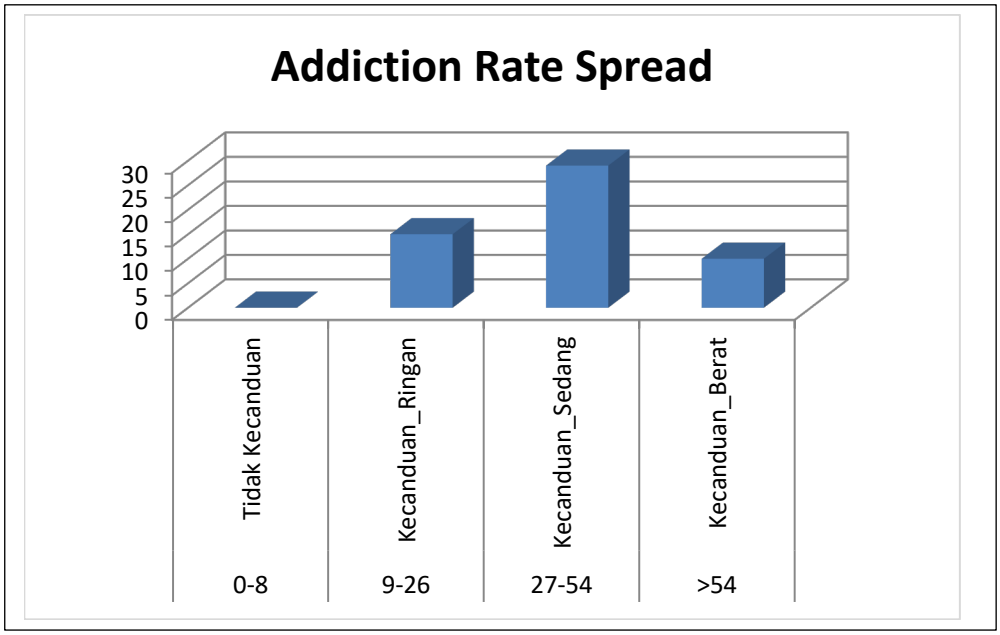

Figure 1 illustrates that the level of addiction of victims of narcotics abusers in Cianjur District Prison, most of which are as many as 29 inmates have moderate addiction,

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and none of them is not addicted. The level of mild addiction was 15 community-guided people and the level of severe addiction was 10 community-guided people.

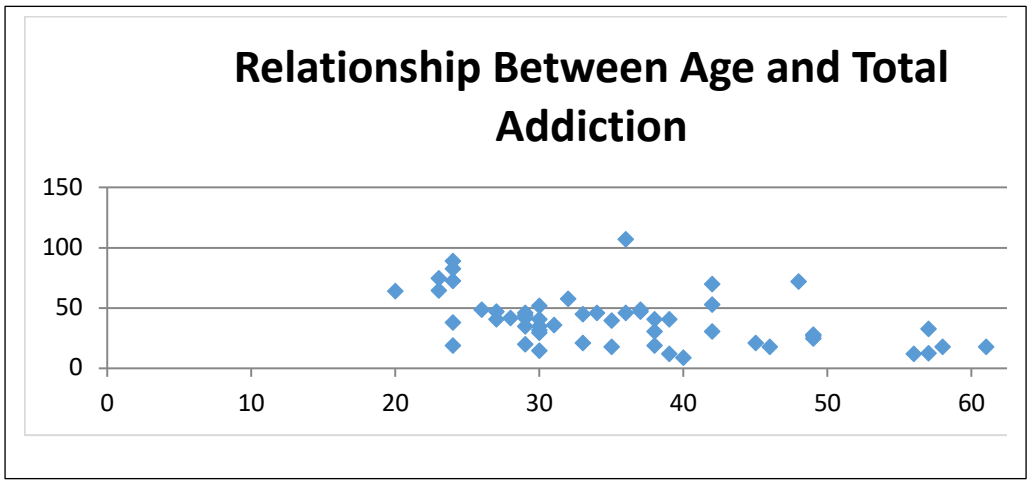

Figure 2 illustrates that the distribution of victims of narcotics abusers is mostly in the productive age, namely in the age range of 20 years to 40 years.

Laws Governing Drug Abuse Regulation of Narcotics in Law No. 35 / 2009 on Narcotics

1. Every abuser of, a. Group I Narcotics is sentenced to 4 years to prison, b. Group II Narcotics 2 years of imprisonment, c. Group III Narcotics a year of imprisonment;
2. Article 103, (1): A judge that investigates a drug addict case decides to command the defendant to undergo rehabilitation if he/she is found guilty or not guilty of narcotics criminal;
3. Article 103 (2) mention that Rehabilitation is the same as The Main of Criminal Sanction;
4. Article 127 (1): In deciding the case stated on point (1), a judge must consider the rules stated in Articles 54, 55, and 103. Sedangkan Pasal 127 ayat (2) dimungkinkan adanya restorative justice berupa sanksi rehabilitasi.

Article 54 of Law Number 35 of 2009 concerning Narcotics, which stipulates: "Narcotics addicts and victims of Narcotics abuse are required to undergo medical rehabilitation and social rehabilitation". Article 57 of Law Number 35 of 2009 states "In addition to medical treatment and/or rehabilitation, the healing of Narcotics Addicts can be carried out by government agencies or the community through religious and traditional approaches". The implementation of rehabilitation is the realization of a rule, this is very important because with implementation it can be known whether a rule has actually been implemented or not. Law Number 35 of 2009 concerning Narcotics has given different treatment to narcotics abusers, before this law came into effect there was no different treatment between users, dealers, dealers and narcotics producers. Narcotics users or addicts on the one hand are perpetrators of criminal acts, but on the other hand, they are victims. The reality shows that the implementation of verdicts by judges in narcotics cases is still not effective. Most of the narcotics addicts were not sentenced to rehabilitation as stated in the Narcotics Law but were sentenced to prison even though the provisions of the law guarantee the regulation of rehabilitation efforts, both medical rehabilitation and social rehabilitation for narcotics abusers and addicts. In the Narcotics Law, the legal provisions governing the rehabilitation of narcotics addicts are regulated in Article 54, Article 56, Article 103, and linked to Article 127 of the Narcotics Law. The interesting thing in the Narcotics Law is in Article 103 where the judge's authority is to impose a verdict/sanction for someone who is proven to be a narcotics addict to undergo rehabilitation.

Proper crime prevention efforts should not only focus on various matters relating to the causes of crime but on what methods are effectively used in crime prevention.

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Providing rehabilitation for narcotics abusers is considered necessary to suppress the use of narcotics and illegal drugs. Rehabilitation and criminal prosecution are often seen as two opposite things. Supporters of rehabilitation always put forward a number of reasons why rehabilitation is much better than the imposition of imprisonment, and vice versa. The article entitled Punishment Fails, Rehabilitation Works, written by James Gilligan, a professor from New York University provides an illustration of how prison sentences are no longer effective in the United States. Even rehabilitation, which has not been accepted for decades as a theory of punishment, has been brought up by the Supreme Court in the United States in the case of Graham Versus Florida in 2010. A drug addict can undergo treatment and or treatment through a rehabilitation facility after a decision is made. or a judge's decision. Judges in law enforcement decide a narcotic addict undergoing rehabilitation must be in accordance with the principles of justice. This decision or decision is based on information from the family or the hospital (doctor). During the rehabilitation period, supervision and monitoring are carried out until the addict is completely cured and free from narcotic addiction. In this rehabilitation, what is more, important is how the victim can survive the recovery, not relapse after returning home from the treatment and rehabilitation centre. An addict can undergo both medical and social rehabilitation. (Siti Hidayatun 2020)

Article 54 of Law Number 35 of 2009 concerning Narcotics states that narcotics addicts and victims of narcotics abuse must undergo medical and social rehabilitation. Article 103 of the Narcotics Law authorizes judges to order addicts and victims of narcotics abuse as defendants to undergo rehabilitation through their decision if they are found guilty of abusing narcotics.

Regarding the application of Article 103 of the Narcotics Law, the Supreme Court issued SEMA Number 4 of 2010 in conjunction with SEMA Number 3 of 2011 concerning Placement of Abusers, Victims of Abuse, and Narcotics Addicts in Medical Rehabilitation and Social Rehabilitation Institutions. According to SEMA No. 4 of 2010 rehabilitation measures can be imposed, namely, the defendant is caught in the hands of investigators from the National Police and the National Narcotics Agency; when caught red-handed found evidence of 1-day use; there is a certificate of positive laboratory test using narcotics based on the investigator's request; a certificate from a government psychiatrist appointed by a judge; it is not proven that the person concerned is involved in the illicit trafficking of narcotics

The conditions for the suspect, the defendant who can be rehabilitated medically or socially from the perspective of the public prosecutor, are positive for using narcotics (laboratory letter); there is a recommendation from the Integrated Assessment Team; does not act as a dealer, dealer, courier or producer; not a narcotics case recidivist; and when arrested or caught red-handed without evidence or with evidence that does not exceed a certain amount.

Imprisonment for victims of narcotics abuse is a deprivation of freedom and contains a negative side so that the purpose of punishment cannot be realized optimally. While Rehabilitation is intended so that abusers who are categorized as addicts are free from their dependence. It's not that they are free or free from punishment like prisons, but they are fostered. If in prison, instead of coaching in a correctional institution, the abuser gets worse, the result may be that the judge's decision will not bring benefits to the abuser and then the person will return to society and will not be a better person. So according to the author, rehabilitation is an effective punishment in suppressing narcotics cases in Indonesia. (Tim FH Unja 2020)

As a user (victim) of narcotics abuse and not a dealer as regulated in the Circular Letter of the Supreme Court Number 4 of 2010, it is obligatory to receive sanctions in the form of both medical and social rehabilitation. This is reinforced by the Decree of the Directorate General of Badilum of the Supreme Court Number 1691 of 2020 concerning Guidelines for the Implementation of Restorative Justice.

In the Supreme Court Circular Number 4/2010 there are Regarding the placement of abusers, the victims of abusers, and drug addicts into the medical rehabilitation institution and social rehabilitation.

For cases of relapse/relapse, such as the previously mentioned public figures, their legal status should change to not being prosecuted for criminal acts as mandated by

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Article 128 paragraph (2) of Law Number 35 of 2009 concerning Narcotics. Therefore, it is necessary to establish an Alcohol and Drug Treatment Court as has been implemented in the United States and Canada.

Alcohol and Drug Treatment Court

Regarding the drug court, it is not specifically found in Indonesia that the court for alcohol and drug abuse is linked with the treatment for the drug addict. Whereas in US and Canada, the drug court processes always include the treatment for the addict. This approach is relatively more effective as the goal of the drug court is to overcome the addiction, thus requiring all the drug addicts to undergo the therapy after the court decision is made. It also indirectly decreases the necessity for the state to take care of the addicts in the means of detaining them in prison.

Taking a look at how the United States of America handles the drug court, some key takeaways are explained on the following:

A. Drug courts integrate alcohol and other drug treatment services with justice system case processing. The judges, prosecutors, defence counsel, and any role involved in a court of a drug addict cooperate with each other to influence the defendant to enter the treatment and remain there if needed. Research indicates that coerced individual entering treatment is likely to do as well as the one who volunteers;
B. Using a non-adversarial approach, prosecution and defence counsel promote public safety while protecting participants due process rights. Once the defendant is accepted into the drug court, the court team works together on the defendant's recovery and law-abiding behaviour;
C. Eligible participants are identified early and promptly placed in the drug court program. This is to capitalize the crisis nature of the arrest, making it the arrested difficult to deny their action and to introduce the judicial action in form of intervention and introduction of the AOD treatment. Rapid and effective also increases trust in public of the criminal justice system;
D. Drug courts provide access to AOD treatment and other related facilities as well. Court also gives the AOD testing to gauge participants' progress;
E. Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations. Periodic education and training help drug courts achieve the goals and objectives. This also shares the issues regarding the AOD treatment, what can be improved on it, and what status it is currently in so they share the same understandings in fighting for drug abuse.

Those are the key components that drug courts in the United States must comply with to effectively stop the AOD abuse criminal cases. Summarily, there has been a relatively mature guideline for the drug courts to follow and a clear goal for the defendants to stop their addiction.

Another example of a drug court is in Canada. Under the Department of Justice Canada's DTCFP, the drug treatment court (DTC) model has continued to evolve to address local community contexts and population needs. DTCs are provincial courts. Currently, they target adult, non-violent offenders who have been charged under the Controlled Drugs and Substances Act (CDSA) or the Criminal Code in cases where their drug addiction was a factor in the offence. Offenders who are interested in participating in the DTC are assessed to ensure that they meet the Court participation criteria. Rather than being incarcerated, DTC participants receive a non-custodial sentence upon completion of treatment.

The key elements of DTCs funded under the Department of Justice Canada's DTCFP include:

1. A dedicated court that monitors the DTC participant's compliance and progress;
2. The provision of appropriate drug treatment services and case management to assist the DTC participant in overcoming drug addiction; and
3. Community support through referrals to social services (such as housing and employment services) can help stabilize and support the offender in making treatment progress and in complying with the conditions of the DTC.

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Each DTC has its own unique characteristics. However, there are certain characteristics that are common across the DTCs. For example, the programs are voluntary and the accused must voluntarily apply to enter the Court. The participants in the DTCs are most commonly charged with non-violent Criminal Code offences, such as theft, possession of the stolen property, non-residential break and enter, mischief, and communication for the purpose of prostitution. With respect to drug offences, the more frequent offences are those of simple possession, possession for the purpose of trafficking, and trafficking (at the street level). The above-noted offences are generally known to be committed by individuals who are trying to feed an addiction. The Crown screens potential participants for eligibility, and each DTC can set its own eligibility criteria. The Crown initially screens the applications; the Crown may also determine that an accused is suited to the DTC and suggest that he can apply for the program. The admission process is similar at the DTCs: eligible applicants are assessed by treatment personnel, but it is ultimately the judge's decision whether to admit the applicant into the program.

The accused must enter a guilty plea to be admitted into the DTC program and has a period of time (e.g., 30 days) to withdraw the guilty plea and re-enter the traditional criminal justice system. The participant is assessed in order to create a treatment plan that is tailored to his or her specific needs. DTC staff will help ensure that the participant has safe housing, stable employment, and/or education. The length of the program is approximately one year. Each participant is subject to random urine screening.

The participant will be required to appear personally in court on a regular basis. It is expected that the participant will be honest and disclose any high-risk activities and information on whether or not he or she has relapsed. The judge will review his or her progress and can either impose sanctions (e.g., a few days in jail) or provide rewards (e.g., coffee card).

To graduate from the program, participants must meet several criteria, including being abstinent for a certain period of time, complying with all conditions of the program, and showing evidence of life skills improvements, such as finding stable housing or employment. Participants who successfully graduate from the DTC may receive a non-custodial sentence. The sentence may include a period of probation, restitution and/or fines.

Although each DTC shares the same key elements (dedicated court, treatment and community support), operational structures and processes vary to some extent. The DTC court component usually consists of a judge, Crown, defence, probation officer, court staff, police, treatment, and community liaison. The vast majority of DTC participants have multiple issues (e.g., a serious addiction to illicit drugs, mental health concerns, inadequate housing, reliance on income assistance, minimal employment/ education opportunities) and are assessed as medium to high risk to re-offend. A dedicated treatment plan with a strong case management component ensures that the offender is directed to existing services within the community. By accessing these services, the offender establishes a network of community supports that continues beyond the time spent in the DTC.

E. CONCLUSION

The overcapacity of prisons in Indonesia is a huge burden for the state, while these prisoners are mostly involved in narcotics problems. The age of the inmates is mostly of productive age so that if medical and social rehabilitation is carried out outside the prison, it will reduce the burden on the state in financing the community-guided people, besides that it can also reduce the burden on the family because by doing medical and social rehabilitation, the inmates can do light work that is recommended as well as in the context of rehabilitation social. Restorative justice efforts have not been carried out for victims of narcotics abuse even though there are already several articles and regulations related to narcotics abuse so that rehabilitation is carried out.

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F. RECOMMENDATIONS

1. Implementasi Restorative Justice Instead of just giving only detention verdict, a system to restore the drug abuser from its addiction should be implemented;
2. Alcohol and Drug Abuse Court: Taking examples from US and Canada, they already have courts for drug abusers where all the court members cooperate to recover the abuser from its addiction. This is something that must be implemented in Indonesia as well;
3. Empowerment Through Meaningful Activities: Abusers can be guided to do meaningful activities. In Jakarta, there is a service called GoLife that enables people to find simple works like cleaning houses, doing laundry, and etc. Also, the company, under the guidance of the court, can also be directed as a place for abusers to have an internship.

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Surat Keputusan Badilum Mahkamah Agung Nomor 1691 tahun 2020 tentang Pedoman Penerapan Keadilan Restoratif.

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LEGAL PROTECTION AGAINST THE DEFENDANT ON THE VERDICT

"ONSLACHT VAN ALLE RECHT VERVOLGING"

(Analysis of the Verdict No: 1608/Pid.Sus/2016/PN.Tng Jo. Decision No: 293 K/Pid.Sus/2018)

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ABSTRACT

In the practice of criminal justice in Indonesia, not a few courts through a panel of judges examine, hear and decide criminal cases against defendants with decisions "*onslacht van alle recht vervolging*". This is based on the consideration that if the act alleged by the public prosecution to the defendant is proven, but the act does not constitute a crime. This journal discusses about how the form of legal protection for the convicted defendant is *onslacht van alle recht vervolging,* then how is the mechanism for restoring the rights of the accused as victims of the criminal justice system. This study uses normative legal research that is prescriptive, using a case approach. The types of legal materials used are primary legal sources and secondary legal materials. The results of this study indicate that there is no legal protection for the rights of the defendants who have been released based on court decisions that have permanent legal force. The mechanism for restoring the rights of defendants who have been acquitted should receive compensation as compensation in the form of a sum of money by the government. There is a need for strict regulation through laws and regulations against defendants who have been released in order to provide legal protection in the criminal justice process.

Keyword: legal protection, defendant's rights, acquittal.

A. INTRODUCTION

Legal protection for defendants who are dismissed from all lawsuits, still leaves various problems in criminal law. This is not only in the theoretical field, but further in legal practice. The reality in practice of the defendant who was acquitted (*onslacht*) as the aggrieved party, relatively little attention is paid and is getting further and further away from the attention of the criminal justice. Even though the defendant is a victim of a criminal justice system that is not carried out professionally and puts forward the principle of the presumption of innocence (*presumption on innocence*). This principle implies that any person suspected of, arrested, detained, prosecuted, and brought before a court shall not be deemed guilty until a court decision declares guilt and has obtained permanent legal force. This principle is contained in the General Explanation in article 3 c KUHAP.

Then, the final process of law enforcement through the criminal justice system to declare someone guilty or not, is determined by a court decision that examines, hears and decides on the case. It is said so, because the court is a judicial institution or law enforcement agency that is the foundation of hope for seeking justice through the settlement of a criminal procedural law case that aims to obtain or approach the material truth.[1] This is in order to find the defendant for coercion and a decision from the court to determine the legal subject who can be blamed where in this case the

[1] Boyoh, M. (2015). *Independensi Hakim dalam Memutus Perkara Pidana Berdasarkan Kebenaran Materil*. Lex Crimen, 4 (4). Pages 115-122

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judge plays a very important role in deciding a case, including giving a decision free from all lawsuits that still require carefulness to comply as regulated and determined in the regulations. As law enforcers, judges have a judicial duty, namely to receive, examine, decide and settle every case submitted to him.[2]

However, in the practice of criminal justice, a person who is accused of committing an act that fulfills the elements of a criminal act in the article that is accused is not always found guilty and sentenced to a criminal offense. There is 3 (three) the form of decisions in criminal cases that are tried in court. This is in line with the provisions in Article 191 Section (1) and (2) KUHAP which determines the existence of an acquittal and an acquittal of all lawsuits.

Article 191 Section (1) :
If the court is of the opinion that based on the results of the examination at trial, the guilt of the defendant for the actions he is accused of is not legally and convincingly proven, then the defendant is acquitted.

Section (2) :
If the court is of the opinion that if the act that has been charged against the defendant is proven, but the act does not constitute a criminal act, then the defendant is dismissed from all legal charges.

Then, in Article 193 Section (1) :
If the court is of the opinion that the defendant is guilty of committing the crime he is charged with, the court shall impose a sentence.

In the practice of criminal justice in Indonesia, there are not a few courts through a panel of judges who examine, hear and decide on criminal cases where the defendant is dismissed from all lawsuits (*onslacht van alle recht vervolging*). As for the consideration of the panel of judges, the verdict is free from all lawsuits, namely if the act charged by the public prosecution to the defendant is proven, but the act does not constitute a criminal act.

Against defendants who are dismissed from all lawsuits are victims of law enforcement through the criminal justice system. In this case, the defendant is a victim of abuse of power (abuse of power) committed by law enforcement and have an impact on human rights violations. Therefore, the defendant for the acquittal must obtain legal protection to ensure legal certainty and justice for all parties. In criminal law there are at least 4 (four) stakeholders, each of which has the authority to, namely: the state, society, perpetrators, and victims of criminal acts. To 4 (four) stakeholders their interests must be protected with a harmonious balance in accordance with their respective rights. However, in practice what has happened so far has not provided adequate protection as expected, especially for defendants who have been dismissed from all legal charges. This can be seen from The Constituion Number 8 In 1981 about Kitab Undang-undang Hukum Acara Pidana (KUHAP) which still very little regulates the protection of the rights of defendants who are dismissed from all lawsuits in the criminal justice process. Even as if deliberately ignoring their rights in the process of handling criminal cases and the consequences that must be borne by the defendant.

In this paper, we will discuss the legal protection for defendants who are dismissed from all lawsuits (onslacht van alle recht vervolging) based on a court decision that has permanent legal force. As in the decision of the Tangerang District Court Number 1608/Pid.Sus/2016/PN.Tng Jo. Putusan Mahkamah Agung Republik Indonesia Number 293 K/Pid.Sus/2018, which in essence the defendant was dismissed from all lawsuits (onslacht van alle recht vervolging). Previously in the indictment the public prosecutor had charged the defendant with committing a criminal act of exploitation of minors and or economic exploitation of minors as referred to in Article 2 The Constitution Number 21 In 2007 about Human Trafficking Criminal Act and/or Article

[2] Nurhafifah dan Rahmiati. (2015). *Pertimbangan Hakim dalam Penjatuhan Pidana terkait hal yang Memberatkan dan Meringankan Putusan*, Kanun, Jurnal Ilmu Hukum, 17 (66). Pages 341-362

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88 The Constitution 35 In 2014 about Alteration of The Constitution Number 23 In 2003 about Child Protection.

This study aims to find out how the form of legal protection for the convicted defendant is onslacht van alle recht vervolging, then how the mechanism for restoring the rights of the accused as victims of the criminal justice system. This research is important to do so that the description of the practice of the Indonesian criminal justice system is mapped, especially in terms of restoring the rights of the accused as victims of the practice of implementing the criminal justice system. Because, after all, it will have implications for the practice of criminal justice, which in turn can affect the achievement of legal objectives and the effectiveness of law enforcement practices.

B. RESEARCH METHOD

This research uses normative legal research that is prescriptive, using a case approach. The types of legal materials used are primary legal sources and secondary legal materials. The technique of collecting legal materials used is document research (library research). The technique of analyzing legal materials is to use deductive analysis, which is to draw conclusions from general things to the concrete problems faced.[3]

C. ANALYSIS AND DISCUSSION

1. Legal Protection For Victims

There are various definitions of victims put forward by experts based on their respective perspectives. According to the perspective of criminal law science, the definition of victim is usually a scientific disciplinary terminology criminology and victimology which were later developed in the criminal justice system. When examined from the perspective of victimology, the definition of victim can be classified broadly and narrowly. In a broad sense, the victim is defined as a person who suffers or is harmed as a result of a violation of criminal law (*penal*) as well as outside the criminal law (*non penal*) or including victims of abuse of power (*victim abuse of power*). While the definition of victim in a narrow sense is defined as *victim of crime* namely the victim of a crime regulated in the provisions of criminal law. From the perspective of victimology, in essence, the victim is only oriented to the dimensions of the consequences of human actions, so that outside of this aspect, for example, the consequences of natural disasters are not the object of study of victimology.[4]

Based on the perspective of victimology, victims who are only oriented to the dimensions of the consequences of human actions, can be classified globally into:[5]

5. Victim of crime as stated in the provisions of criminal law, so that the perpetrator (*offender*) threatened with the application of criminal sanctions. In this case, the victim is defined as penal victimology where the scope of crime includes traditional crimes, white collar crimes, and *victimless crimes* namely victimization in relation to law enforcement, courts and correctional institutions;
6. Victims abuse of power In this context, it is commonly referred to as terminology *political victimology* with scope *abuses of power*, human rights and terrorism;
7. Victims due to legal violations that are administrative in nature or non-penal in nature so that the threat of sanctions is administrative sanctions for the perpetrators. In this context, usually the environmental space is *economic victimology*;

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[3] Poerbaning, V., Gilang, A. Y., Ramadhania, & Fatimah, M.U., *Tinjauan Yuridis Pengajuan Kasasi oleh Penuntut Umum terhadap Putusan Lepas dari Segala Tuntutan Hukum*, Jurnal Verstek. 1 (3), (2013), pages 136-146

[4] Lilik Mulyadi, *Bunga Rampai Hukum Pidana; Perspektif, Teoretis dan Praktik*, (Bandung: PT. Alumni, 2008), pages. 246

[5] *Ibid*.,

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8. Victims due to violations of social rules and social relations that are not regulated in legal provisions so that the sanctions are social sanctions or moral sanctions.

Then, in terms of number 1 *Declaration of basic principles of justice for victims of crime and abuse of power*, the date of 6th September 1985 from United Nation suitable Declaration No. A/Res/40/34 In 1985 classify there are two victims, namely victims of crime dan victims of abuse of power. It explicitly determines that *victims of crime* as:

"Victims means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental right, through acts or omissions that are in violation of criminal laws operative within member states, including those laws proscribing criminal abuse of power".

Furthermore, the declaration also stipulates that victims of abuse of power as:

"Victims means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental right, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights".

Meanwhile, criminal law experts such as Muladi mention the definition of victim as a:[6]

"A victims is a person who has suffered damage as a result of crime and/or whose sense of justice has been directly disturbed by the experience of having been the target of a crime".

Arif Gosita, defines the victim as:[7]

"Those who suffer physically and spiritually as a result of the actions of others who seek the fulfillment of their own or other people's interests that are contrary to the interests and human rights of those who suffer".

Zvonimir Paul Separovic, defines the victim as:[8]

"....those person who are threatened, injured or destroyed by an act or ommission of another (man, structure, organization or institution) and consequentely, a victim would by a punisable act (not only criminal act but also other punisable acts as misdemeanors, economic offence, non fulfilment of work duties or from an accisdent (accisdent at work, at home, traffic accident, etc). Suffering may be caused by another man (man made victim) or another structure where people are also involed".

In Article 1 Number 3 The Constitution Num. 31 In 2014 about Witness and Victim Protection, defines a victim as a person who experiences physical, mental, and/or economic loss caused by a criminal act. From the various definitions of crime victims above, essentially oriented to the dimensions of the consequences of human actions that must be recovered by the perpetrators through the criminal justice system organized by law enforcement officials as a sub-system of the criminal justice system.

As a concrete effort to protect the rights of defendants in the criminal justice system, it can be done by seeking remedies for losses suffered by defendants during the law enforcement process, both physical and mental losses, emotional suffering, economic losses or substantial damage to their human rights. who have

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[6] Muladi, *Kapita Selekta Sistem Peradilan Pidana*, (Semarang: Badan Penerbit Universitas Diponegoro, 2002), pages 66

[7] Arif Gosita, *Masalah Perlindungan Anak (Kumpulan Karangan)*, (Jakarta: PT. Bhuana Ilmu Populer, 2004), page 45

[8] J. E. Sahetapy, *Bunga Rampai Viktimisasi*, (Bandung: Eresco, 1995), pages 204

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suffered losses as a result of a law enforcement process that is not carried out professionally and or their sense of justice has been directly disturbed as a result of undergoing the law enforcement process. This can be done by all sub-systems of the criminal justice system from the initial stage to the final stage of all criminal justice processes.

2. Right of the Defendant to Demand Compensation

Based on the provisions in Article 1 Section (3) UUD 1945 *"Indonesia is a legal state"* and according to Article 28D UUD 1945, *"everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law"*. Second of clause article UUD This means that human rights must be respected and protected as human beings before the law through a fair and dignified legal process. Therefore, the criminal justice process must be upheld *due process of law principle* which must be upheld by all parties, especially for law enforcement agencies by giving equal portions in defending their rights in a balanced manner*.*

Due process of law can also be found in the general description number 3rd KUHAP. Although the formulation of the articles in the criminal procedure code does not explicitly formulate human rights for suspects and defendants, the inner attitude of the criminal procedure code rejects human rights violations in the criminal justice process. With the result that, based on the principles of protection Human Rights in KUHAP, it should be interpratation and application article in KUHAP must be in accordance with the aim of protecting the rights of citizens who are part of the Human Rigths, especially for the suspect/defendant.Therefore, the rights of the suspect/defendant contained in the KUHAP should also be enforced as part of the implementation of protection Human Rights.

In an effort to protect the rights of the suspect/defendant, as well as to fight for the upholding of the rights of the suspect/defendant, the criminal justice process must use due process of law correctly. According to M. Yahya Harahap, that the essence of due process of law is that every enforcement and application of criminal law must be in accordance with "constitutional requirements" and must "obey the law". Therefore, in due process of law does not allow the violation of a part of a legal provision with the reason to enforce another part of the law.[9]

Futhermore, Mardjono Reksodiputro, connect to due process of law limited to the application of legal rules formally (criminal procedural law) in the process against suspects and defendants is wrong. Because, further than that, the principle contains an appreciation of the right to freedom of citizens, because after a person is made a suspect, his legal status changes, that person is marked by various restrictions on his independence and often also by moral degradation, thus limiting his abilities. to defend themselves against allegations raised by the state.[10] therefore, due process of law This can be done if law enforcement officers carry out their duties by not only applying the rules, but also guaranteeing the fulfillment of the rights of suspects and defendants. This is important to ensure that law enforcement is carried out in accordance with due process of law in ensuring legal certainty and justice for all parties.

The process of law enforcement through the criminal justice system should be able to provide justice for all parties, both for victims and perpetrators (defendant). In the criminal justice system, the Public Prosecutor on behalf of the state prosecutes the accused and at the same time represents the interests of the victims of the crime. Meanwhile, the panel of judges who examines, hears, and decides on cases brought to him must treat everyone the same without exception.

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[9] M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP: Penyidikan dan Penuntutan*, edisi kedua, cetakan 11, Sinar Grafika, 2015, pages. 95

[10] Mardjono Reksodiputro, *Hak Asasi Manusia Dalam Sistem Peradilan Pidana*, Pusat Pelayanan Keadilan dan Pengabdian Hukum (d/h Lembaga Kriminologi) Universitas Indonesia, 2007, pages. 28

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This includes defendants who are proposed by the public prosecutor to be tried before the court. In this case, it provides equal opportunities and rights to victims and defendants to obtain justice in accordance with their respective portions. In particular, the recovery of the losses suffered by the victim and the defendant, which in the end was decided to be free from all lawsuits.

In this context, the panel of judges as judicial administrators has a function to stand as representatives of victims and defendants in order to take actions that can provide protection for both. However, in practice the existence of a panel of judges in the criminal justice system has not been able to represent the rights and interests of victims and defendants. The judicial process carried out has not protected the interests of both parties as a principle of balance. Especially in terms of recovering losses for defendants who have been dismissed from all legal charges.

The difference between a acquittal and an acquittal in terms of the law of evidence, namely:

In the acquittal, all lawsuits for the actions committed by the defendant in the indictment of the prosecutor/public prosecutor have been legally and convincingly proven according to law, but the defendant cannot be sentenced to a crime, because the act is not a criminal act. Meanwhile, in the acquittal (vrijspraak) the criminal act that the prosecutor/public prosecutor indicted in his indictment is not legally and convincingly proven according to law.[11] In other words, the non-fulfillment of the minimum principle of proof (that is, with at least 2 (two) valid evidence) and accompanied by the judge's conviction.

Based on article 95 section (1) KUHAP, read :

A suspect, defendant or convict has the right to demand compensation for being arrested, detained, prosecuted, tried or subjected to other actions, without any reason based on law or because of an error regarding the person or the law applied.

Clause of Article 95 Section (1) this gives the suspect, defendant, or convict the right, or their heirs, to claim compensation for wrongful detention, prosecution, or judicial proceedings regarding the person or the law being applied.

M. Yahya Harahap's remind about claims for compensation for reasons of arrest, detention, prosecution, or trial carried out without reasons based on law, namely when :[12]

"…The court has rendered a verdict of acquittal or acquittal of all legal charges against the defendant. While during the investigation process to the court hearing, the defendant has been subject to detention. With the decision to release or release from all lawsuits handed down by the court, it has the consequence that detention without a reason justified by law".

Based on opinion M. Yahya Harahap's above, it can be understood that if there is archery and the decision is free or released, then the detention is without a reason justified by law. The Respondent has made a mistake regarding his actions or has been wrong in applying the law so that based on article 95 KUHAP the defendant has the right to claim compensation.

As for the claim for compensation at the court level due to a court decision that is considered detrimental according to article 95 section (4) and (5) KUHAP to examine and decide on this case, the chairman of the court appoints the same judge who has tried the criminal case in question and the examination follows the pretrial procedure. In KUHAP repeatedly regulated legal protection for suspects, defendants or convicts to demand compensation through pretrial hearings as stated in article 1 number 10 letter c dan point 22, Article 30, Article 68, and Article

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[11] Lilik Mulyadi, *Hukum Acara Pidana : Normatif, Teoritis, Praktik dan Permasalahan*, (Alumni: Bandung), 2012, pages. 152-153

[12] M. Yahya Harahap, (2016), *Pembahasan Permasalahan dan Penerapan KUHAP : Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali*, Edisi kedua, Cetakan 10, (Jakarta: Sinar Grafika), pages. 41

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77 letter b KUHAP. Then, reaffirmed in Article 9 section (1) The Constitution Number 48 In 2009 about Judicial Power that: "every person who is arrested, detained, prosecuted, or tried without any reason under the law or because of a mistake regarding the person or the law he applies, has the right to claim compensation and rehabilitation".

One decision that must be taken is to obtain compensation as compensation in the form of a sum of money by the government. Certain The mechanism that can be used to file a claim for compensation is through a pretrial application. Where in article 95 section (1) KUHAP determine that: "the scope of pretrial cases, among others regarding claims for compensation because a suspect, defendant or convict is arrested, detained, prosecuted and tried or subjected to other actions, without any reason based on law or because of an error regarding the person or the law applied.". So as a consequence of the aggrieved party, according to the law, compensation and rehabilitation must be provided (remedy and rehabilitation). This is in line with the Indonesian judicial system which adheres to the doctrine of "civil law system". In this case it means that a claim for compensation can be filed through a pretrial trial in a district court as a result of an adverse action at the level of investigation in the Police, prosecution at the Prosecutor's Office, and or the judicial process in the Court.

Based on the description in the explanation above, as a form of legal protection for a defendant who is dismissed from all legal charges, the right to claim compensation must be given. This becomes important for the defendant as a form of compensation, in addition to the rehabilitation of his good name so that he can recover in community life. Furthermore, the existence of compensation and rehabilitation for defendants who are released are also a form of legal certainty and justice for defendants who are victims of the implementation process of the criminal justice system.

3. Mechanism of Compensation Implementation

The government has prepared the rules regarding the amount of compensation payments and the payment procedure to applicants whose claims for compensation are granted in the "Pretrial Session". Starting from the date of enactment The Constitution RI Number 8 In 1981 about Criminal Procedure Law with Government Regulation RI Number 27 In 1983 which has been amended by Government Regulation RI Number 92 In 2015 regarding the Second Amendment to Government Regulation RI Number 27 In 1983 Regarding the Implementation of the Criminal Procedure Code, the second amendment is by Government Regulation RI Number 58 In 2010 but does not touch the compensation arrangement. In article 9 determine that the amount of compensation is at least Rp500.000,00 (five hundred thousand rupiah) and the most Rp100.000.000,00 (one hundred million rupiah), if it results in serious injury or disability so that it is unable to carry out work, the amount of compensation is at least Rp25.000.000,00 (twenty five million rupiah) and the most Rp300.000.000,00 (three hundred million rupiah), while those that result in death, the amount of compensation is at least Rp50.000.000,00 (fifty million rupiah) and the most Rp600.000.000,00 (six hundred million rupiah). Much different from the previous compensation based on the reasons as referred to in Article 77 letter b and Article 95 KUHAP at least Rp 5.000,00 (five thousand rupiah) and at the most Rp 3.000.000,00 (three million rupiahs).

In the past, it was implemented KUHAP There has been a pretrial decision that has granted the applicant's request. However, the compensation cannot be given because there is no Government Regulation that regulates it. This is as the verdict South Jakarta District Court Number : 05/JS/PRA/1992, on date 11th oct 1982

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whose decree states : The applicant is compensated in the amount of Rp 3.000,00 (three thousand rupiah) a day for 51 days in unlawful custody.[13]

Then, the problem is what losses arise as a result of the actions of law enforcement officers in carrying out their duties and obligations of law enforcement against the suspect or defendant. Involve reputation for defendant who are acquitted or acquitted of lawsuits, has been reinstated in the ruling on amar that read: "Declare to restore the rights of the defendant in his ability, position and dignity (Pasal 1 angka 23 KUHAP"), except the case is not submitted to the district court, a request for rehabilitation can be filed in a pretrial case (Pasal 97 ayat (3) KUHAP). Of course, this claim for material (money) losses as a result of being subject to acts of restraint on the freedom to live life in the form of "Arrest and Detention" during the legal process. Therefore has concerning about "Human Rights" So that in the court's decision the length of imprisonment imposed is reduced entirely by as long as the defendant undergoes arrest and detention (Pasal 22 ayat (4) KUHAP).

From section Pasal 1 angka 22 KUHAP dinyatakan "Compensation is a person's right to obtain fulfillment of demands in the form of a some of money". The importance of material losses whose substance is not limited only as consolation money while the suspect is or is in the State Detention Center but as well as in court practice includes loss of income and profits from business while serving a sentence, as well as losses because the Petitioner has to pay attorney fees. Even demanding immaterial losses due to not being able to optimally take care of the family, not having time to socialize with the community, and the reputation of the Petitioner being tarnished. *Jumlah tuntutan ganti kerugian yang besar ini apabila dikabulkan oleh pengadilan dapat dipenuhi oleh pemerintah karena Peraturan Pemerintah RI Nomor 92 Tahun 2015 menetapkan besarnya ganti kerugian paling sedikit Rp500.000,00 (lima ratus ribu rupiah) dan paling banyak sejumlah Rp600.000.000,00 (enam ratus juta rupiah).*

Based on decision No: 1608/Pid.Sus/2016/PN.Tng Jo. Putusan No: 293 K/Pid.Sus/2018 on behalf of the defendant Tajudin bin Tatang Rusmana, declare that he is innocent and free from all legal matters. That is to say law enforcement in this case the Police as Investigators and the Prosecutor's Office as Public Prosecutors have erroneously applied the law to the defendant, which matter was wrong regarding the actions of the person being prosecuted and tried. The act is an act against the law according to the applicable laws and regulations.

Against this decision, the defendant has filed a claim for compensation through a pretrial mechanism to the district court which examines, hears and decides at the first level. The sole judge who examines, hears, and decides has rejected the application submitted by the applicant on the grounds that:

'The court's decision which releases the defendant from all charges because his actions have been proven but are not criminal acts, this is not due to a mistake about the person or the application of the law, unless the Prosecutor in making the indictment does not comply with the formal and material requirements as stipulated in the law Pasal 143 KUHAP or error in persona atau ne bis in idem'.

Regarding the judge's consideration, it is better to look at the theory of separation and criminal responsibility to determine whether the act committed by a person is a criminal act or cannot be determined at the investigation stage.This is where the precautionary principles that must be carried out by investigators and public prosecutors before delegating the case to court. Furthermore in relation to the indictment of the Public Prosecutor as referred to in Article 143 KUHAP hould be the substance of the exception because the formal and material requirements of the indictment were not fulfilled.

Then, the pretrial single judge considered that:

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[13] O.C Kaligis, Rusdi Nurima, dan Denny Kailimang, *Praperadilan Dalam Praktek*, (Penerbit Erlangga: Jakarta), pages 164-166.

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'The criminal case process begins with a report on the finding of an alleged criminal act. Then, after being followed up, it is transferred to the Prosecutor's Office as the Public Prosecutor, where after being declared complete, it is then transferred to the District Court to be examined and decided. That when the court then conducted an examination at trial and it was stated that the defendant's actions were proven. That in this case it means that the Public Prosecutor has been able to prove the actions committed by the defendant as charged'.

'That when the District Court is of the opinion that the act is not a criminal act, it does not mean that the investigators of the Police and the Prosecutor's Office as the public prosecutor have made mistakes, so that if the investigators of the Police and the Prosecutor's Office as the Public Prosecutor carry out their duties in accordance with their authority and in accordance with the regulations. and correct procedures, then they cannot be held accountable for having carried out their duties "pro justitia". That the implementation of tasks that have been in accordance with applicable procedures and regulations'.

As described in the explanation above, in which law enforcement through the criminal justice system must be carried out professionally and prioritize the principle of presumption of innocence (presumption on innocence). This principle implies that any person suspected of, arrested, detained, prosecuted, and brought before a court shall not be deemed guilty until there is a court decision that declares guilt and has obtained permanent legal force. This principle is contained in the General Explanation item 3 c KUHAP. The law enforcement process carried out by the sub-systems of the criminal justice system, especially the Police and the Prosecutor's Office, must demonstrate a high level of professionalism. This is important in order to provide protection to the community so that they do not become victims of the law enforcement process through the criminal justice system.

D. CONCLUSION

Based on the description in the discussion above, in this study it shows that there is no legal protection for the rights of the defendant who has been dismissed from all legal claims based on the court's decision legally binding. The mechanism for recovering the rights of the accused who has been acquitted of all lawsuits should receive compensation as compensation in the form of a sum of money by the government. As an effort to protect the law and provide legal certainty to all parties, both victims and perpetrators/defendants, it is necessary to have strict regulation through legislation against defendants who are dismissed from all legal claims in order to provide legal protection to all parties in the implementation of law enforcement through process of the criminal justice system in Indonesia.

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STRUCTURAL VICTIMIZATION ANALYSIS OF WOMEN TRAFFICKING VICTIMS IN PEKANBARU CITY (CASE STUDY ON DL, EE AND YA)

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ABSTRACT

Based on the results of the report from the Office of Women's Empowerment and Child Protection in Riau Province, it was stated that there was an increase in the number of trafficking in women and children or human trafficking. This study aims to find out how the victimization of trafficked women can be seen as a form of structural victimization. The methodology used in this study is a qualitative method, namely to obtain data information about what is happening at the research location through collection. The data were collected using interviews. Perpetrators of commercial sex workers and victims. The results of the study indicate that from interviews conducted with victims and former prostitutes, it is explained that doing work as a prostitute is caused by economic and social factors that are wrong because they always live extravagantly. Pekanbaru City Community Empowerment is still happening. This can be seen from every year there is data on trafficking in women. Even though the social service and civil service police units have provided prevention so that it doesn't happen again, there are still many cases of trafficking in women.

Keywords: Structural Victimization, Trafficking of Women, Victim.

A. INTRODUCTION

A report by the United Nations Office on Drugs and Crime (UNODC) explains that in 2006, there were 136 countries that reported victims of trafficking in women, two-thirds of these victims were women and 79% were victims of sexual exploitation (UNODC, 2010): 2-3). This is also supported by victim data from the International Organization for Migration (IOM) which has been processed by the United States Government Accountability Office (GAO), and it shows the victims of human trafficking for sexual exploitation are 81%, and human trafficking for economic or labor purposes is 14% and 5% for other exploitation purposes (GAO, 2006: 12).

Based on the report's data, it can be seen that sexual exploitation is the most important purpose of human trafficking. These data show that women and girls are the most vulnerable to victims and they are targets for human trafficking. Several literatures and investigative reports indicate that this is due to subordinate position of women in society. This subordinate position is caused by the structure in society. Therefore, this investigation looks at how the forms of victimization experienced by trafficked women and girls can be seen as forms of victimization structures.

Based on Indonesian law, Article 27 paragraph 1 explains that there are a recognition of the principle of equality for all citizens without exception. This principle of equality eliminates discrimination, because all citizen has the same rights on the law and the government regardless of religion, ethnicity, gender, position, and social class of the person. But, there is always discrimination and injustice or inequity againts woman in the implementation of state administration. Women are always left behind and sidelined in all fields such as economics, education, health, work, or politics.

Their women have the same rights as men, but in reality, women are often be the targets of crime. Women are a vulnerable group of human trafficking. Human trafficking is a modern form of human slavery. Human trafficking victims who experience oppression and coercion must be treated physically and medically, because everyone has the right of freedom.

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Human trafficking is the act of recruiting, transporting, or receiving a person under threat of violence, use of force, kidnapping, confinement, forgery, fraud, abuse of power or position of vulnerability, servitude or giving payments or benefits, to obtain the consent of a person who controls another person. , whether carried out within States or between countries, for the purpose of exploiting or resulting in the exploitation of persons. Witness The act of trafficking in persons stated in Indonesia Law Number 21 of 2007, Article 2 paragraph 1 which says:

"Everyone who intentionally recruits, sends, transfers someone with threats of violence and with the aim of exploitation will be punished with a minimum sentence of 3 years and a maximum of 15 years and a minimum fine of Rp. 120,000,000- (one hundred and twenty million rupiah) and a maximum of Rp. 600,000,000 (six hundred million rupiah)."

There are several factors that cause human trafficking and are interrelated which causes the development of human trafficking, such as globalization, poverty, lack of information and regulatory's problem, social and cultural contexts. Economic and social factors are the biggest factors causing human trafficking. Economic factors are influenced by personal income or needs. While social factors are influenced by environmental conditions and education.

Smith (2002) also reveals some important data on human trafficking in Harkrisnowon, which shows that between 700,000 and 4,000,000 people are in a cross-world (buying, selling, shipping, and forced to act against what they want). there are other data.) Most people come from countries with low economic development, then move to developed countries, and most victims of trafficking are employed through intermediaries, and are attracted to work elsewhere like a city or country with high wages to get a better life. At the destination, victims give money so they can go to work abroad, and then the mediator leaves. Most are not aware of this. They were not assigned to work in designated places, but were forced to work in prostitution, and if they did not, many of them were threatened or tortured.

According to Andy Yetriyani in (Suwandi,2014:30), the purpose of trafficking in women is economic and sexual exploitation from forced prostitution, domestic help, illegal work, contract work, unbalanced marriage, illegal adoption, tourism and entertainment. sex, pornography, begging, and its use in other criminal activities. There are several objectives regarding the crime of human trafficking that occurs in Indonesia but being studied there. This research is study on prostitution that happened in Pekanbaru.

The phenomenon of prostitution that occurs is growing among students and housewives. They said they need to do it, so they can fulfil their daily needs. They won't be able to work because they have no education or skills. Most of them know the consequences of their actions, but it doesn't make them deterrent, or think about the consequences of the prostitution. From the results of the report from the Office of Women's Empowerment and Child Protection in Riau Province, it is stated that there has been an increase in the number of trafficking in women and children or human trafficking. The average age of victims of human trafficking is 16 to 34 years.

This study aims to see how victimization of human trafficking by examing from structural victimization analysis. Therefore, this study examines a number of structural factors that exist in society and create a situation of vulnerability for women to become a victim of human trafficking. From the description above, the authors are interested in conducting research with the title " Structural Victimization Analysis Of Women Trafficking Victims In Pekanbaru City (Case Study On DL, EE And YA)"

B. METHODOLOGY

The research method used in this study is qualitative method. Strauss and Corbin (2003) define qualitative research methods as "a type of research whose findings are not obtained from statistical procedures or other forms of calculation". This definition can be understood by people who have studied qualitative research methods or people who are familiar with qualitative research methods in general, but this definition can confuse people who are new to this method because of the statement "Findings were

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not obtained through statistical procedures. or other forms of calculation (Afrizal, 2016:12).

Creswell explains that the research method is a plan and research procedures which include steps in the form of assumptions broad to detailed methods of collection, analysis and data interpretation. Creswell says qualitative research is convincing, every time you get information or answers on a problem, therefore the researcher uses a competent method, processing and conducting valuable research. Researchers use the method because the researcher need study and conduct interviews with respondents to obtain more in-depth information. Qualitative method is a complex picture that is studied in words, and information that we get from respondents (Creswell, 2016: 34).

The location of the research is in Pekanbaru city. Key informants in this study were employees of Women's Empowerment, Child Protection and Community Empowerment Office in Pekanbaru City, former sex workers, and the victims. Data collection techniques used in this research are observation, interviews and documentation. The data analysis technique is descriptive.

Table 1 : Informan and Key Informan.

No	Subject	Informan	Key informan
1	Employees of of Women's Empowerment, Child Protection and Community Empower-ment Office in Pekanbaru City	3	
2	Former sex workers	2	
3	A victim		1

C. DISCUSSIONS

There are several concepts that used in this reseach :

1. Victimology

Victimology comes from the Latin "*victim"* which means victim and *logos* which means knowledge. Terminologically, victimology means a study about the causes of victims and the consequences of victimization which is a human problem as a social reality (Yulia, 2010). Victimology is a science that studies victimization (criminal) as a human problem which is a social reality. Victimology is an English term for Victimology which means "Victim" means victim and "logos" means study / science.

Crime prevention is not only focused on the incidence of crime or the methods used in solving crimes. There is, another thing that is no less important, such as: the problem of victims of crime, which in certain circumstances can trigger a crime (Sahetapy, 1995). Humans who suffer both physical and mental suffering and suffer losses to their property or cause death for their actions committed by criminals and others are called Victims according to the Thursday Crime Dictionary (Waluyo, 2011).

According to Arief Gosita (1993), the objects of study or the scope of victimology are as follows:

a. Various kinds of criminal or criminalistic victimization;
b. Theories of the etiology of criminal victimization;
c. The participants who are involved in the occurrence or existence of a criminal or criminalistic victimization, such as perpetrators of perpetrators, observers of lawmakers, police officers, judges, lawyers and so on;
d. reaction to a criminal victimization;
e. Responses to a criminal victimization argumentation activities to resolve a victimization or victimization, prevention efforts of repression, follow-up (compensation), and the making of related legal regulations;

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Victimization is suffering for certain parties in the form of suffering physically and mentally as well as by the actions of other parties, this is an understanding of victimization. The victimization paradigm includes (Sahetapy, 1995):

a. Aspects of power, rape of human rights, interference of armed forces beyond their capabilities, conflicts, local or international intervention and wars can also be called political victimization;
b. The existence of collusion between the government and conglomerates, the production of goods of inferior quality or damage to health, including environmental aspects as well as Economic Victimization;
c. Acts of rape, videos of children and wives and the addition of advanced humans or their own parents as well as family victimization;
d. Drug abuse, alcoholism, malpractice in the field of medicine and others in this case are also called media victimization;
e. Aspects of the judiciary and correctional institutions as well as those concerning the dimensions of legal discrimination, including power and stigmatization, even though the judicial process has been completed, are often referred to as Juridical Victimization.

The benefits of victimology according to Arief Gosita (1993) are as follows:

a. Victimology examines the essence of who is the victim and who created it, what victimization means, and the victimization process for those involved in the victimization process.
b. Victimology contributes to a better understanding of victims of human actions that cause mental, physical and social suffering. The aim is not to flatter the victim, but only to clarify something about the position and role of the victim and their relationship with the perpetrator and other parties. This clarity is very important to carry out preventive activities against various types of victimization in order to ensure justice and improve their welfare, which is proven directly from the existence of victimization.
c. Victimology provides the belief that every individual has the right and obligation to know the dangers they face in their professional life. Especially in the field of counseling and guidance so that we do not become structural or non-structural victims. The goal is to understand well and be considerate.
d. Victimology also highlights the problems of indirect victimization, such as the political impact on the third world population due to international corporate bribery, social consequences for all, industrial pollution, the emergence of economic, political and social victimization whenever officials abuse government positions.
e. Victimology provides a rationale for solving the crime problem of victimization. Victimology opinions are used in criminal justice decisions and court responses to criminals. Examining victims from and in criminal proceedings is also an examination of human rights and obligations.

2. Victimization

Victimization comes from the word 'victim' which means someone who is harmed by crime (Bryan, 2000). In its development, victimology recognizes several types of prey, one of which according to Sandra Walklate is Von Henting's tripology. Tripology is based on predisposition to prey responses. In this case, a particular wedding party is the individual or group involved in the existence of the victim. The victim does not only apply to the victim but also to the other parties involved as a whole. The examples for this are perpetrators, police, accusers and judges. The witness can be a target of dissatisfaction, and revenge from the victim, which is a functioning process of interaction between target and perpetrator. Therefore, creating a victimogenous state, which is a situation that makes it easier for someone to become a target as a result of a given threat.

In this case, by using the word victim based on the actual social crime of the victim, the factors that cause a person to become a victim are:

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a. An.Individual victim and related perpetrator
b. Biology of perpetrator and victim,
c. Psychological,
d. Supportive social environment
e. Social status, social roles and social norms of the parties.

According to Arif Gosita, structural targets are basically the action of a person acting alone as an element of a certain group (syarikat) or with other people. E.A Fattah (1991) Ernesto Kiza defines the victim structure as a victim process related to the social structure and power in society. Structural victims know no boundaries, and one of the most common structural victims is the abuse of power, especially crimes against humanity.

According to Arif Gosita (1993) Victimization occurs from a community structure is called Structural Victimization. The benefits of studying victimization in the context of structural victimization by the state in terms of safeguarding the interests of the global economy, can explain how the relationship that is built between the state and corporations in carrying out the practice of land grabbing and agrarian resources of local communities. In addition, to overcome and prevent further structural crimes through victimological diagnosis.

Fattah (1991) concludes that structural victimization begins the process of the emergence of victims which is rooted in stratification, values and institutions in society. Gosita describes that structural victimization is basically the behavior of a person or group, carried out alone and or together with others as an element of certain entrenched social structures.

3. **Victim**

The victim is translated by Maya Indah (2014:30) thus, the victim is someone, either individually or jointly, as a result of an act that violates the criminal law applicable in a country (which does not exist), including provisions regarding wealth. Moreover, among the victims are people who are victims of acts (not acts) which, although they have not violated the applicable national criminal law, have violated human rights norms.

Meanwhile, according to Arif Gosita (1993) states that victims are those who suffer both physically and mentally due to the actions of others who seek identity or other people who are contrary to the interests and rights of the sufferer. Legally, the definition of victim is included in Law no. 13 of 2006 concerning the Protection of Witnesses and Victims, which states that a victim is someone who has suffered physical, mental, and/or economic losses as a result of a criminal act.

4. **Trafficking of Women**

Human trafficking is a form of human slavery. Human trafficking is also one of the worst forms of treatment for violating human dignity. Trafficking in persons means the recruitment, transportation, purchase, sale, transfer, harboring or receipt of persons by means of the threat or use of force, abduction, coercion, fraud.

The definition of Trafficking in Persons based on Article 1 Point 1 of the Republic of Indonesia Law No. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, namely:

"Trafficking in persons is the act of recruiting, transporting, harboring, sending, transferring or receiving persons by means of the threat of force, use of force, abduction, confinement, fraud, deception, abuse of power or a position of vulnerability, entrapment of money or giving payments or benefits, so as to obtain the consent of the a person who has control over another person, whether carried out within a country or between countries, for the purpose of exploitation or causing people to be exploited."

Based on empirical form. Victimsof trafficking is not only for the prostitution purpose or other forms of sexual exploitation, such as forced labor or forced

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services, slavery, or practices similar to slavery. The perpetrators of the crime of trafficking in persons carry out recruitment, transportation, transfer, hiding.

Research conducted by previous research on human trafficking in Indonesia focused on 3 problems. Focusing on the analysis of the factors of human trafficking by Nandang Mulyana, Everd Score Rider Daniel, Budhi Wibhawa (2017) that the causes of human trafficking in NTT are poverty, low education and unemployment. (Daniel, 2017:8)

According to Andy Yetriyani (2004:25) the purpose of trafficking in women is economic exploitation and or sexual exploitation in the following forms:

a. Forced prostitution
b. Household servant
c. Laborillegal
d. Contract Labor
e. Unbalanced marriage
f. Adopt Illegal
g. Tourism and entertainmentsex
h. Pornography
i. Beggar
j. And used in other criminal activities

D. RESULTS AND ANALYSIS

1. Results

There are some results of interview with the informan and key informan of this study :

a) **Former Sex Worker (DL) 30 Years Old**

DL is a former sex worker who has been out of work for the last 3 years. DL stated that he had been a prostitute because of social factors, friendships and economic needs. In addition, it was also driven by bad economic conditions that caused him to engage in prostitution to get money instantly. She can't work because he has a low education so he has difficulty in getting a job. her life went on as normal and normal when she stopped being a sex worker. DL stopped working and left the world of prostitution. Because her son was getting older, she wanted to make a living in a lawful way.

b) **Former sex worker (EE) 26 years old**

EE is a former commercial sex worker (CSW) in Pekanbaru. EE stated that she had been a prostitute because of social factors, friendships, economic needs, and to fulfill her desires who wanted to live extravagantly like her other friends. EE thinks that as long as she stops being a prostitute, life becomes calm and happier. EE Works as a prostitute through a friend that she knows, which in fact turns her into prostitution. She admitted that she was very happy when she worked as a sex worker. After quitting being a prostitute, EE returned to her family and worked lawfully even though she did not earn as much as when she was a prostitute.

c) **Victim (YA)**

YA is a sex worker (CSW) who has been working for 3 years. YA stated that the reason she became a prostitute was due to economic factors, and being a sex worker could help her to pay her sisters school fees. The reason she chose to become a prostitute is because of economic needs and social factors that require her to join the world of prostitution. YA earns Rp. 700,000 per day. YA's daily earnings will be shared with the pimps. YA is forced to continue working by her pimps in order to make a lot of money. YA stated that her pimp sold her in online. This activity is known as online prostitution.

Based on the results of interviews with victims and a former prostitute, she explained that the reason why engaged in prostitution is because of economic factors and she always want extravagant life.

d) **Women's Empowerment Section (INL)**

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INL is an employee of the Women's Empowerment Section. INL stated that at the Office of Women's Empowerment, Child Protection and Community Empowerment of Pekanbaru City, the case of trafficking in women and children in Pekanbaru still exists. It can be seen from the news. Even though preventive measures are given to it, but it still happens nowadays.

e) **Child Rights Fulfillment Section (RS)**

RS is an employee of the Child Rights Fulfillment Section. RS stated that at the Office of Women's Empowerment, Child Protection and Community Empowerment in Pekanbaru City. Cases of trafficking in women and children in Pekanbaru still exist. Nowadays, most of this is done online, in the sense that prostitution transactions are carried out online through chat media or social media. During the pandemic, sex workers are increasing due to the large number of unemployed or economic factors. This requires them to work as prostitutes. They themselves do not provide prevention because it is the duty of the Social Service. The Office of Women's Empowerment, Child Protection and Community Empowerment of Pekanbaru City is only a place for data and complaints or victims of human trafficking, especially women and children when they seek protection.

f) **Sector of Women's Protection and Special Protection of Children (HD)**

HD is an employee of the Division of Women's Protection and Special Protection for Children. HD stated that at the Office of Women's Empowerment, Child Protection and Community Empowerment of Pekanbaru City. There are cases of trafficking in women and children. And the Department provides prevention of such cases. Such as conducting socialization to prevent domestic violence, sexual harassment and sexual abuse of children.

2. **Analysis**

Based on the research results obtained above. The author tries to analyze the Analysis of Structural Victimization of Victims of Trafficking of Women in Pekanbaru City. Overall, the results of interviews with key informants and informants describe how the system works and the development of online prostitution cases in Pekanbaru. Based on the results of the study, it appears that women and girls are transported to places for sexual exploitation. This shows that women are treated as objects that can be trafficked. This is also related to their sexuality being a component of a business that can be trafficked so that women and children are the most vulnerable parties to become victims of trafficking.

Walklate (2007) mentions structural victimization as a process of victimization related to the social structures and forces that exist in society. Based on this definition, it is clear that victimization caused by certain structures in society and the existence of power is structural victimization. Cameron and Newmann (2008) identify four structural factors in society, namely economic factors, social factors, ideological factors and geopolitical factors. As Tomagola (2000) also explains that violence against women occurs because of the social order that regulates how citizens relate to aspects of economic, social, political and cultural life, which in turn blesses the phenomenon of violence against women. (Andari, 2010:307)

Based on feminism theory, feminism is a concept of thought that demands equal rights and equal justice for women and men. This concept is a form of women's emancipation around the world. According to Mujianto (2010) that the main cause of the emergence of feminism is the existence of one-sided views eyes on women, accompanied by various bad assumptions attached him and a negative image in society. (Zarkasih, 2019:4984)

This academic study is in line with the theory of Marxist feminism which assumes that the low position of women in economic, social and political terms, from the capitalist system and male concentration, places women in a non-special

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position. It sees women's problems in the context of a capitalism critique. The source of oppression against women is thought to come from class exploitation and reproductive methods. The status of women has declined because of personal wealth, which was originally a productive activity aimed at fulfilling their own needs, but has now turned into a need for exchange, but they also believe that men control reproduction by occupying a higher position, men often oppress weaker women.

E. CONCLUSION

Based on the results and and analysis of this research, we can conclude that:

1. From the results of interviews conducted with informants of victims and former sex workers, it was explained that the factors that caused them to work as sex workers were due to economic factors (such as family economic conditions), social factors (always wanted to live extravagantly), ideological factors (racism) and geopolitical factors (due to disasters such as Covid-19).
2. Women trafficking in Pekanbaru City according to employees at the Office of Women's Empowerment, Child Protection and Community Empowerment of Pekanbaru City is still happening. This can be seen from the annual data on trafficking in women. Even though the social service and civil service police units have provided prevention with the aim of preventing this from happening. however, there are still many cases of trafficking in women.

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STATE RESPONSIBILITY AND COMMUNITY PARTICIPATION IN FULFILLING THE RIGHTS OF WOMEN VICTIMS OF SEXUAL VIOLENCE

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Abstract

During the current Covid-19 pandemic, one of the social problems has increased, namely violence against women. The number of cases of Violence against Women (KtP) throughout 2020 was 299,911 cases. The most prominent cases were sexual violence with 962 cases (55%). The Criminal Code (KUHP) has not been able to reach the forms of sexual violence that have developed. Based on these conditions, the issue that will be discussed is how the state's responsibility and community participation in fulfilling the rights of women victims of sexual violence today are. The understanding of community law enforcement officers and the issue of sexual violence is not yet "gender sensitive".

The government's efforts to provide protection for women have many aspects, so their realization requires collaboration in networks. State responsibility and community participation are not only on a normative basis but also on the understanding of law enforcement officers and the need for changes in community behavior in fulfilling the rights of women as victims of sexual harassment. The research method used is based on socio-legal studies, located in the city of Semarang. The findings in the field show that state responsibility and community participation are not optimal because they are influenced by various factors, namely substance, structural and cultural. Furthermore, it is necessary to change related policies, equalize perceptions of the definition of sexual violence, change community behavior in fulfilling the rights of women victims of sexual harassment and strengthen networks between law enforcement officers, assisting agencies and the community.

Keywords: State responsibility, society, women's rights, victims, sexual violence.

A. INTRODUCTION

Women are one group that is subject to violence. Violence against women is a constraint on equality, development, security and peace. Article 1 of the United Nation's 1993 Declaration on the Elimination of Violence Against Women defines violence against women as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.[1]

Regulation in KUHP (Criminal Code) on sexual violence is very limited. In general, the forms of sexual violence are only rape and molestation. The existing preference have not completely guarantee victim's right protection, such as formulation of article specifying one of the elements, threat, thus victims who are in a power relation unequal to that of perpetrator or in a condition that cannot give actual approval are not protected by this provision. Sexual violence is an act, both oral and physical, performed by an individual to take control or manipulate others and make them involved in an undesired sexual activity. The important

[1] Harnoko, Rudi. *Dibalik Tindak Kekerasan terhadap Perempuan* [Behind the Acts of Violence against Women]. *Muwazah Journal Volume 2 Number 1 July 2010 Edition.* p. 182

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aspects in sexual violence are coercion aspect and no approval from victim aspect.[2] Violence against women occurs because of gender inequality or injustice. Gender inequality is difference in the roles and rights between women and men in the community that puts women in a status lower than men.

The violence against women issue is currently not individual or national issue, but global issue. In certain case, it can even be called a transnational issue. There are some terms used, such as domestic violence and others "violence against woman, gender-based violence, [3]gender violence, female-focused, domestic violence, etc." and so on[4].

UN Declaration on Human Rights in 1948 confirms that one of the issues getting attention and developing in the community is gender issue, that is an issue regarding inequality between the condition and position of women and men in the community, called gender inequality. Women still have very limited opportunities compared to men to actively participate in development program activities or in other life aspects in the community (economy, social-culture, education, organization and institution, and others). Such limitation is derived from various community values and norms restricting women's movement space compared to men's movement space.

UN Declaration on Human Rights in 1948 states that "all human beings are born free and equal in dignity and rights". This statement is the symbol of a community life with a vision of the necessity to respect every person without distinction of race, color, religious and political belief, language and sex. The world community acknowledges that women have the right to enjoy and gain human rights protection in political, economic, social, cultural, civil, and other fields. The acknowledgement is realized in the Declaration on the Elimination of Discrimination against Women in 1967, Convention on the Elimination of All Forms Discrimination against Women in 1979 that was declared effective in 1981, and Declaration on the Elimination of Violence against Women in 1993.

Gender based discrimination is the source of various human rights violations. The discrimination can be marginalization, commonly occurring in economic field, subordination, assumption that women are weak, stereotype (bad image), bad perspective on women, violence, namely physical and psychological assault, excessive workload, namely heavy and continuous duties and responsibilities.

The principle of state obligation according to Women Convention briefly includes: a. Prevent discrimination against women; b. Prohibit discrimination against women; c. Identify discrimination against women and do some measures to rectify if; d. Enforce sanction for discrimination act against women; e. Support enforcement of women's rights and encourage similarity, equality and justice, through proactive measures; and f. Increase de-facto similarity between women and men. Acts of violence against women are not only physical, but also non-physical, including psychological, socio-cultural, economic and political. The cases handled by the police are commonly physical violence. The strict structure and procedure prevent law enforcers to make a breakthrough and new interpretation. The culture, closely related to the *"patriarchic"* culture *or "men dominance culture"* taken by the community, is not accommodating to women's problem and the concerned (women) have no desire to fight for their rights or women's, as victim of violence, unawareness of doing legal action. Problem Statement.

In this study, the formulation of the problem is how is the responsibility of the state and community participation in fulfilling the rights of women victims of sexual violence.

B. RESEARCH METHOD

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[2] *Lealfet Kenali Kekerasan Seksual* [Leaflet on Be Aware of Sexual Violence]. Kolaborasi Yayasan Pulih, Maju Perempuan Indonesian untuk Penanggulangan Kemiskinan (MAMPU), Australian Aid, and Forum Pengadaan Layanan [Collaboration of *Pulih* Foundation through the Indonesian Advanced Women to Overcome Poverty (*MAMPU*) program with Australian Aid, and Service Procurement Forum]. p. 1

[3] Muladi, *Hak Asasi Manusia, Politik dan Sistem Peadilan Pidana* [Human Rights, Politics and Criminal Justice System], 1997, p. 31, Diponegoro University. Semarang.

[4] Muladi, *Hak Asasi Manusia, Politik dan Sistem Peadilan Pidana* [Human Rights, Politics and Criminal Justice System], 1997, p. 31, Diponegoro University. Semarang.

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This research used an approach method based on a socio-legal study which reviews law as a social fact which can be seen in experience as a behavioral pattern in the form of social institutions, legal studies conceptualizing and theorizing law as a positive and empirical social fact (Bruggink, 1996). Deep investigations and studies were conducted on the contents or values of the existing law in society called *normwissenschaft/ sollenwissenscaft.* Research location in Semarang.

C. DISCUSSION

According to Fuller, to measure the existence of a legal system, it is seen in eight principles called the Principles of legality, namely, a. A legal system must contain regulations, that is, it must not contain ad hoc decisions, b. The regulations that have been made must be announced, c. There should be no retroactive rules, because if they are not rejected, then these regulations cannot be used as a guideline for behavior. Allowing the regulation retroactively means undermining the integrity of the regulation that is intended to apply in the future, d. Regulations must be formulated in an understandable formula, e. A system should not contain rules that conflict with each other, f. Regulations must not contain demands that exceed what can be done, g. There should not be a habit of changing the rules frequently so that one will lose orientation, h. There must be a match between the regulations promulgated and their daily implementation.

Furthermore, according to Lawrence M Friedman, there are 3 elements in the legal system, namely structural, substance, and cultural aspects. Structural aspects, that is:

> "*First many features of a working legal system can be called structural – the moving parts, so to speak of the machine Courts are simple and obvious example; their structures can be described; a panel of such and such a size, sitting at such and such a time, which this or that limititation on jurisdiction. The shape size, and powers of legislature is another element of structure. A written constitution is still another important feature in structural landscape of law. It is, or attempt to be, the expression or blueprint of basic Features of the country's legal process, the organization and framework of government".* [5]

The three components in the legal system are interrelated and have an inseparable role in law enforcement efforts. In the system of state responsibility and community participation, the three aspects are interconnected and influence each other as a system that must be built in society in fulfilling the rights of women victims of sexual violence.

In its implementation, the influencing factors emphasize that apart from legal certainty, it is also necessary to pay attention to aspects of justice and benefits for the community in relation to laws and regulations regarding the fulfillment of the rights of women victims of sexual violence.

The position of victims of acts of violence against women has not been given with sufficient legal protection. Various legal products have not reached women's needs as victims, thus when the victims must face judiciary process, they are not protected but tend to be blamed instead or deemed to contribute to the occurrence of such violence. Such condition greatly hinders women from fighting for their rights. Violence against women is global phenomena occurring throughout centuries of human life and occurs in all countries. Realizing equality

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[5] Lawrence Friedmen, *The legal System; a Social Science Perspective*, New York: Russel Sage Foundation, 1975. Unsur yang pertama dari sebuah sistem bekerjanya hukum bisa disebut yaitu aspek struktural – sebagai bagian dalam sistem hukum yang bergerak , sehingga membicarakan mesin Pengadilan sebagai contoh yang sederhana dan jelas, strukturnya dapat digambarkan, sebagai sebuah panel dan mempunyai ukuran, kedudukan dalam waktu yang sudah ditetapkan, serta adanya pembatasan berdasarkan yurisdiksi. Ukuran maupun bentuk, dan kekuasaan legislatif yang merupakan bagian dalam elemen struktur. Sebagai sebuah konstitusi tertulis serta masih adanya unsur lain dan penting dalam bentuk struktural hukum. Dalam hal ini, berusaha untuk memberikan , ekspresi atau cetak biru unsur dasar dalam proses hukum suatu negara, sebuah organisasi dan dalam kerangka pemerintahan.

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between men and women is not easy to solve. The existing laws are the appropriate basis to realize protection for women as victim of gender-based violence. Government's effort in protecting women has many aspects, thus its realization requires cooperation in the network.

When the government gives its commitment to protect women as victim of violence, it is then our collective responsibility to attempt to prevent and protect women as victim of violence so that they will gain their rights as set forth in the laws while considering the influencing aspects in the community.

With regard to the constraints to be faced in effort to enforce law as the implementation of laws and regulations, it is necessary to observe some factors that are part of the system. According to Satipto Rahardjo, the basic definitions in the theory of system contained therein are: a. System is oriented to objective, b. It is entirely more than the number of its parts, c. A system interacts with a bigger system, that is its environment (system openness), d. Those parts of system work create something valuable (transformation), e. Every part must be compatible with each other (connectedness), f. There is a unifying force that binds the system (control mechanism).6

In regard to legal culture, community's response to social issue is generally collective action that is expected to affect a better life condition. In general, we can say that a community that is able to manage and solve social issues has higher welfare level than other communities. On the contrary, a community's inability to handle and solve social issues that it faces may lead to illfare social condition as the antonym of social welfare.7 Individual is willing to live under the normative behavioral pattern, even if it is to sacrifice his freedom since they believe that the pattern is correct, good and necessary.8

Penal reform is part of penal politics, bearing the meaning as an effort to reorient and reform criminal law in conformity to socio-political, socio-philosophical, and socio-cultural values of the Indonesians, through a policy-oriented approach and a value-oriented approach.9

In policy-oriented approach, penal reform is part of social policy, that is as an effort to solve social problems in achieving the national objective. As part of penal policy, penal reform is an effort to protect the community. Further, as part of law enforcement, penal reform is an effort to renew the legal substance for more effective law enforcement.

The scope of penal system reform includes: a. Legal substance (substantial system), covering material criminal law, formal criminal law, and criminal implementation law reform, b. Legal culture (cultural system), covering perpetrator's moral field and criminal law science education reform, c. Legal structure (structural system), covering investigation institution, prosecution institution, judiciary institution and criminal implementing institution reform.10

In regard to future regulation in woman and child empowerment based on Pancasila, it is an effort to study and analyze written and unwritten sources of law and develop legal values that are just and in line with Pancasila values. Policies through criminal law in preventing crime are carried out through three stages: first, formulation (legislative policy); second, application (judicative/judicial policy); and third, execution (executive/administrative policy).[11]

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[6] Satjipto Rahardjo, *Ilmu Hukum* [Law Science], Bandung: PT.Citra Aditya Bakti, 2000, p. 48

[7] Midgley, James, *Pembangunan Sosial, Perspektif Pembangunan dalam Kesejahteraan Sosial* [Social Development, Development Perspective in Social Welfare], Ditperta, Department of Religious Affairs, Jakarta, 2005, p.21

[8] Eka Dharmaputera, *Pancasila : Identitas dan Modernitas Tinjauan Etis dan Budaya* [Pancasila: Identity and Modernity, An Ethical and Cultural Review], Jakarta: BPK Gunung Mulia, p. 8

[9] Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana, Perkembangan Penyusunan Konsep KUHP Baru* [An Anthology of Criminal Law Policy, the Development of Drafting of New Concept of Criminal Code], Yogyakarta: Kencana Prenada Media Group, 2008, p. 25 - 26

[10] *Ibid*

[11] Barda Nawawi Arief, *Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan* [Law Enforcement Issues and Criminal Law Policy in Prevention of Crime] (Prenada Medea Group 2008) 79.

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D. CONCLUSION

The community's understanding of law is only focused on law as rules, norms and principles. In this case, law should be viewed as a system consisting of three components, namely legal substance (as a legal product, policy, rules of legislation), legal structure (legal institution or law enforcer) and legal culture (legal culture, including ideas, attitudes, beliefs, hopes, and view of law). Awareness of woman empowerment and child protection in the community cannot be realized on its own without social engineering. Such condition can be reached when all levels of community at executive, legislative, judicative and community member levels have an intact understanding that woman empowerment and child protection are our collective responsibility.

Some currently prevailing laws and regulations have sets government's obligations in effort to protect women, such as Article 7 through Article 16 Law Number 7 Year 1984 on the Ratification of the Convention on Elimination of All Forms Discrimination against Women, that sets government's obligation to eliminate discrimination against women in political, legal, educational, health, labor affairs, economic, social-cultural, rural women and marital relationship fields.

Further, in Article 71 Law Number 39 Year 1999 on Human Rights, the government must and is responsible to respect, protect, enforce and promote human rights.

Article 11 Law Number 23 Year 2004 on the Elimination of Domestic Violence states that the government is responsible for the effort to prevent domestic violence.

Besides physical harm, psychological disorder is also suffered by women as the consequence of violence they experience. The psychological disorder is in the form of mental disorder that can affect their emotion, mindset and behavior. Women's psychological disorder may harm themselves, their children and family. Psychological disorder can be delusion, hallucination, changing mood, unreasonable behavior that causes depression, Schizophrenia, anxiety disorder and even bipolar disorder.

The scope of criminal act of sexual violence is set forth in Article 11 through Article 20. Article 11 paragraph (1) states that sexual violence consists of: Sexual harassment; Sexual exploitation; Forced contraception; Forced abortion; Rape; Forced marriage; Forced prostitution; Sexual slavery; Sexual torture. Article 11 paragraph (2) states that sexual violence as referred to in paragraph (1) includes sexual violence incidents in the scope of personal relationship, household, work relation, public, including during conflict situation, disaster and other special situation.

Government policies in related countries as the realization of the effort to prevent violence against women have been made well in a repressive effort as set forth in laws and regulations.

Law enforcement according to Lawrence M. Friedman of the three elements of legal system includes structure, substance, and culture. The structure is related to all institutions and performance of law enforcers and substance related to legal norm stated in law book (law in book) and norms that develop and grow in the community (law in action). The third component is culture applied to the social value network in the community. The legal culture here is also an important element in the legal system, since legal culture shows the community's thinking and power that determine how the law is abided by, avoided or misused.

One form of protection for citizens is the protection of right of freedom from threat, discrimination, and violence. Violence can be declared as an act committed by one or more individuals that causes injury, either physically or non-physically, of others, and further is an act that causes an individual unable to actualize himself, as the result of the forms of oppression and repression addressed to him.[12]

According to Walby, patriarchy is a social structural system and practices where men dominate, oppress, and exploit women. Walby conceptualizes patriarchy in a number of levels. In abstract level, patriarchy is in the form of a social relational system, while in not really abstract level, patriarchy consists of six structures covering patriarchy production mode,

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[12] Guamarawati, Nandika Ajeng. "*Suatu Kajian Kriminologis Mengenai Kekerasan terhadap Perempuan* [A Criminological Study on Violence against Women]". *Indonesian Criminological Journal Volume 5 Number 1 February 2009.* p. 44

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patriarchic relation in occupation with wage, patriarchic relation in state, women's violence against women, patriarchic relation in sexuality, and patriarchic relation in cultural institution.[13]

The Criminal Code sets out suspect more than victim. Victim's position in the Criminal Code seems to be not optimal compared to perpetrator's position. This can be explained as follows:[14]

The 1945 Constitution of the Republic of Indonesia, Law Number 35 Year 2014 on the Amendment to Law Number 23 Year 2002 on Child Protection, Law Number 25 Year 2009 on Public Services, Law No. 23 Year 2004 on the Elimination of Domestic Violence (PKDRT), Regulation of the State Minister of Women Empowerment and Child Protection of the Republic of Indonesia Number 01 Year 2010 on the Minimum Standard Services of integrated service field for women and children as victim of violence, and Local Regulation of Semarang City Number 5 Year 2016 on Woman and Child Protection from Violence.

Based on Article 1 paragraph (17) Local Regulation of Semarang City Number 5 Year 2016 on Woman and Child Protection from Violence, what is meant by the Integrated Service Center is as follows. Integrated Service Center (PPT) Seruni Semarang, Central Java is established under Decree (SK) of Mayor of Semarang. Stipulation of Decree of Mayor of Semarang Number: 463.05/112 dated 4 May 2005 on the Establishment of Integrated Service Team for Dealing with Gender Based Violence against Women and Children "SERUNI" of Semarang City and confirmed by the Mayor of Semarang on 20 May 2005. In 2009 the Decree was renewed because many of the Team members were retired, thus the Decree of Mayor of Semarang on the Establishment of Integrated Services Team for Dealing with Gender Based Violence against Women and Children had been replaced with Decree No. 463/A. 023 dated 12 February 2009. In 2011 the Decree of Mayor of Semarang on the Establishment of Integrated Services Team for Dealing with Gender Based Violence against Women and Children "SERUNI" of Semarang City, Central Java had been replaced with Decree of the Mayor of Semarang dated 6 January 2011 No. 463/05/2011.[15]

Based on Article 1 point 9 Local Regulation of Semarang City Number 5 Year 2016 on Woman and Child Protection from Violence, what is meant by violence is all unlawful acts with or without using medium physically and verbally which may harm the life, body and/or depriving an individual's liberty.

Act of violence as indicated with victim's loss is a form of crime. According to Romli Atmasasmita, violence is one form of crime that has been set forth in the positive law. Consequently, the perpetrator that meets the elements in the law can be subject to criminal sanction pursuant to prevailing regulation.[16]

The Declaration on the Elimination of Violence against Women (1993) defines violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life".[17]

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[13] Ramadhan, Febi Rizki. "*Kekerasan itu Katarsis dari Patiarki: Resistensi pada Kekerasan terhadap Perempuan dalam Praktik Gerakan Sosial Aliansi Laki-laki Baru* [Violence is Cathartic and Patriarchic: Resistance to Violence against Women in New Men's Alliance's Social Movement Practice]". *Indonesian Anthropological Journal Number 2 Year 2017.* p. 83

[14] Angkasa, *Kedudukan Korban dalam Sistem Peradilan Pidana* [Victim Position in Criminal Justice System], Dissertation, Diponegoro University, Semarang, 2004, pp. 169-172

[15] Musofiana, Ida, *Peran Pusat Pelayanan Terpadu Seruni Semarang Jawa Tengah Dalam Memberikan Perlindungan Hukum Bagi Anak Korban Kekerasan Dalam Rumah Tangga Berbasis Nilai Keadilan* [The Role of Integrated Service Center Seruni, Semarang, Central Java, in Giving Legal Protection to Child Victims of Domestic Violence based on Justice Value], *Law Update Journal Volume IV*, Number 1, January – April, 2017, p. 87.

[16] Anjari, Warih, *Fenomena Kekerasan Sebagai Bentuk Kejahatan (Violence)* [Violence Phenomena as A Form of Crime], *E-Journal WIDYA Yustisia*, Faculty of Law, 17 Agustus 1945 University Jakarta, Volume 1, Number1, April, 2014, p. 45.

[17] https://www.kemenpppa.go.id/lib/uploads/list/7970a-5a3f9-8.-kekerasan-terhadap-perempuan.pdf retrieved on 19 November 2020 at 10.38 p.m. of Western Indonesian Zone

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Based on Article 1 point 10 Local Regulation of Semarang City Number 5 Year 2016 on the Protection of Women and Children from Violence, what is meant by violence against women is any sex-based act that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of certain acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

E. ACKNOWLEDGMENT

When the government provides a commitment to provide protection for women victims of sexual violence, it is our collective responsibility to work on how to prevent protection, countermeasures for women victims of sexual violence to obtain their rights as regulated in the law by taking into account the following aspects: influencing aspects of society.
There are many challenges that women have to face when dealing with legal settlement mechanisms. This is due to several factors, starting from the lack of policies that protect women's rights, wrong perspectives, to the lack of sensitivity of law enforcement officials when handling cases of women who are in conflict with the law as victims.

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NEW CRITERIA FOR DIVERSION FOR THE ESTABLISHMENT OF RESTORATIVE JUSTICE IN VICTIMS OF VICTIMIZATION

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ABSTRACT

In Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, diversion is not carried out on children who are threatened with imprisonment of 7 years or more. Then, for the sake of realizing restorative justice for victims of victimization, can the child's age be excluded from continuing to do diversion? This research is a normative legal research, the research is conducted on the articles of the rule of law so that there is a synchronization of diversion arrangements. The aim is to conceptualize diversion with criteria for the age of children which has not been carried out which can then be used as a reference for law enforcement in the juvenile justice system. Article 69 Paragraph (2) of the Juvenile Criminal Justice System Law states that children who are not yet 14 years old can only be subject to action, regardless of the qualifications of their actions, it means that children who are not yet 14 years old have actually been threatened with zero imprisonment regardless of the qualifications of their actions, so that any child who is not yet 14 years old the qualification of the act, diversion must also be carried out. Thus, the diversion criteria should also be based on the age limit of children less than 14 years old.

Keywords: Child; Diversion; Juvenile; Restorative Justice; Victimization.

A. INTRODUCTION

Article 82 Paragraph (1) of Law no. 17 of 2016 concerning the stipulation of Perpu No. 1 of 2016 concerning the Second Amendment to Law no. 23 of 2002 concerning Child Protection (Law No.17/2016) has changed the criminal threat for perpetrators of sexual crimes against children from a minimum sentence of 3 years to a minimum of 5 years, which is in accordance with the preamble of the Act which states that sexual violence against children Children from year to year are increasing and threatening the strategic role of children as the future generation of the nation and state, so it is necessary to STRENGTHEN CRIMINAL SANCTIONS.

However, this does not apply if the perpetrator of the crime is a child who is less than 14 years old, where he can only be subject to action (Article 69 Paragraph (2) of the Juvenile Criminal Justice System Law). Whereas when the crime is in the form of sexual violence from adult perpetrators and child perpetrators, the qualifications are similar, then the effects on the victim's child are certainly not much different, one of which is trauma, but because the child perpetrator has been regulated separately in the Juvenile Criminal Justice System Law then anyone, including the court (judge) must comply with the provisions of the law.

Then, according to the Juvenile Criminal Justice System Law against children who are threatened with criminal penalties for the articles charged with being more than 7 years (hereinafter referred to as serious crimes) including perpetrators of sexual violence against children, diversion cannot be carried out as a form of restorative justice. An example is the case of Number XY/Pid.Sus-Anak/2020/PNPbg. (case number disguised), where the Child is declared to have been legally and convincingly proven guilty of committing a criminal act of "obscene acts against a child" then the Child Judge imposes an action against the Child in the form of an obligation to attend education at Panti "X" Purbalingga Regency (disguised) for 1 (one)) consecutive years.

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As mentioned earlier, the Juvenile Criminal Justice System Law itself has provided an opportunity for Juvenile Judges to conduct diversion as a form of restorative justice, but this cannot be done for the criminal case No.XY/Pid.Sus-Anak/2020/PNPbg. where Child Perpetrators were charged with Article 82 Paragraph (1) of Law No. 17/2016 with the threat of punishment against him being a minimum imprisonment of 5 years and a maximum of 15 years, so that Child Perpetrators cannot be diverted, because of the threat of punishment from Article is more than 7 years.

Normatively, the Decision on Criminal Case No.XY/Pid.Sus-Child/2020/PNPbg. is not wrong, because Juvenile Criminal Justice System Law clearly states that children who are not yet 14 years old can only be subject to action (Article 69 of the Juvenile Criminal Justice System Law). Then related to the types of actions that can be imposed are regulated in Article 82 of the Juvenile Criminal Justice System Law. The provisions of Article 69 of the Juvenile Criminal Justice System Law itself have also ruled out Article 70 of the Juvenile Criminal Justice System Law where Article 70 of the Juvenile Criminal Justice System Law becomes meaningless because it has been imperatively determined that children with the age category under 14 years of age can only be subject to action, no longer being considered for any crime or criminal qualifications, including against Child Perpetrators in case No. XY/Pid.Sus-Anak/2020/PNPbg. where he is still 12 years and 9 months old, so it is natural for the judge to only take action.

From the perspective of the Child Victim, the decision is certainly considered to have violated the sense of justice, given the trauma experienced by the Child Victim at this time and the further negative impacts that may be experienced by the Child Victim in the future, but it turns out that the child perpetrator is only subject to action.

On the other hand, the author argues that Restorative Justice is not present in this case, where there is no recovery for the victim at all, the decision although normatively correct, but in reality only pays attention to the life of the Child Perpetrator in the future, while towards the future. The victim's child is not considered, because there is no diversion process, so that restorative justice is not achieved. In line with this, Angkasa in the Victimology book states that legal protection for victims of victimization in criminal law currently does not fulfill a sense of justice, especially for victims. Criminal law currently provides more protection for perpetrators of victimization.[1] Legal protection for victims of victimization in Indonesia's positive law can be said to be inadequate.[2]

In the end, the author considers that the provisions as referred to in Article 69 of the Juvenile Criminal Justice System Law can become an obstacle for the Child Judge in providing justice (restorative). With this article, the Juvenile Judge does not have any choice, regardless of the type of crime, the level of the crime, the severity of the victim or the effects of the crime on the victim, the Juvenile Judge can only impose actions on the Child. If the provisions of Article 69 of the Juvenile Criminal Justice System Law are applied, it will certainly hurt the inner attitude of the Child Victim Party, and can even hurt the hearts of the community in general.

The difference in perception of justice according to the Child Victim and the Child Perpetrator and seeing the provisions of Article 69 Paragraph (2) of the Juvenile Criminal Justice System Law, of course, becomes an inner conflict and becomes a separate difficulty for the Child Judge in deciding the case. Morally professionally, in the midst of conflicting perceptions of justice between the Child Party and the Child Victim, the Juvenile Judge must still be able to accommodate the legal interests of each party through its decision and must also pay attention to the side of restorative justice. Of course, the decision that can be felt in terms of justice and benefits by the parties, but still does not conflict with the provisions of the Juvenile Criminal Justice System Law itself. A Judge as a JURIS must be able to stand to provide justice and also benefits for both the Child Victim and the Child Perpetrator, although still limited by the value of legal certainty.

In line with the task of the judge as a juris, the philosophy of law seeks to seek and find the law essentially wisely. Thus, it is hoped that with this wisdom the juries can

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[1] Angkasa, Viktimologi (Depok: Rajagrafindo Persada, 2020), p.170.

[2] *Ibid.*,p.176.

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carry out their main task, namely to seek and find truth and justice. The right law can give birth to a sense of justice, while good law can lead to partiality; and a fair law can be reassuring.[3]

Departing from the problem that diversion cannot be accommodated as in the case above, the author will examine the possibility that diversion can be applied to children aged 12 years or older but not yet 14 years old on charges of serious crimes for the sake of realizing restorative justice.

The idea of a new criterion for diversion with the criteria of a child's age has never been studied before, it is noted in several journals that research on the implementation of restorative justice and diversion at the investigation, prosecution and trial levels of children.

Based on the description above, the following problems are formulated:

1. For the sake of restorative justice, can diversion be carried out against children aged 12 years or older but not yet 14 years old on charges of committing a serious crime?
2. What are the indicators that can be used as guidelines for the implementation of diversion for children aged 12 years or older but not yet 14 years old on charges of committing serious crimes?

B. METHODS

This type of research method is normative juridical. The research was conducted on the articles of the rule of law so that there is a synchronization of diversion arrangements. The approach used is a statutory approach and a case approach. This study uses secondary data with primary legal materials in the form of statutory regulations and judges' decisions and secondary legal materials in the form of books and legal journals.

The purpose of this research is to come up with the idea of diversion with the criteria of the age of the child, which has never been carried out by Child Judges for the realization of restorative justice. Furthermore, this research is expected to be used as a basis and reference for law enforcement in the juvenile justice process.

C. ANALYSIS AND DISCUSSION

1. Diversion Children with the age category of 12 years or more but not yet 14 years old with charges of having committed serious crimes for the sake of realizing restorative justice.

A judge must be able to apply the philosophy of law, namely trying to find and find the law essentially and wisely. So, it is hoped that with this wisdom the judge can find truth and justice.

Morally and professionally, with differences or inner conflicts of a Child Judge in handling a case with the qualifications of a serious crime such as sexual abuse of a child, a Judge is required to be able to empathize with the Child Victim by realizing restorative justice, and must also pay attention to the interests of the child. Child Actors, a Juvenile Judge must be able to consider these two interests and must also be more creative to find the best solution in the form of a decision that is fair and beneficial to both parties, of course without contradicting the provisions of the Juvenile Criminal Justice System Law.

In the case No. XY/Pid.Sus-Anak/2020/PNPbg. It is natural for the Child Victim and the community to feel disappointed with the decision, considering that the child's age is 4 years and has been molested twice by the Child Perpetrator. The results of the Visum Et Repertum concluded: An examination has been carried out

[3] Dominikus Rato, Filsafat Hukum: Suatu Pengantar Mencari, Menemukan, dan Memahami Hukum. (Surabaya: LaksBang Justitia, 2014), p.7-8;

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on a four-year-old woman. On the genitals found redness on the right labia minor. This could be due to a blunt object entering the area.

Thinking about the recovery of the victim's child, trauma, future, anger and disappointment that surrounds the victim's child for the incident (as stated in the witness statement in the decision No.XY/Pid.Sus-Anak/2020/PNPbg.), the victim's mother hopes that to the court so that the Child Perpetrators do not care how old the child is, so that the law is processed (punished by imprisonment) in order to make the child a deterrent. That the expectation that the child will be prosecuted to become a deterrent, associated with feelings of disappointment and anger is certainly identical with the hope that the child will be punished with a punishment commensurate with the child's actions, but what can be done, it turns out that Juvenile Criminal Justice System Law does not want that for children under 14 years old. can only be subject to action (Article 69 of the Juvenile Criminal Justice System Law).

Judging from the Juvenile Criminal Justice System Law itself, what is new in the Juvenile Criminal Justice System Law is the affirmation that the Juvenile Criminal Justice System must prioritize the Restorative Justice approach (Article 5 of the Juvenile Criminal Justice System Law). Restorative Justice in the Juvenile Criminal Justice System Law is defined as the settlement of criminal cases by involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair solution by emphasizing the restoration of rights to return to their original state, and not with retaliation (Article 1 number 6 of the Juvenile Criminal Justice System Law).

According to the author, in Juvenile Criminal Justice System Law, Restorative Justice is the main point of philosophy, where on the one hand the victim's child will get his rights back (recovery of rights) and on the other hand the child is not subject to punishment (retaliation) so that against the child there will be no stigmatization of society in general. This is in accordance with the philosophy of just peace principle which is integrated with the process of meeting, discussing and actively participating in the resolution of the criminal matter. Integration between perpetrators and victims to find solutions and create a pattern of good relations in society.[4]

Likewise, in cases involving children aged 12 years or more but not yet 14 years old who are accused of having committed serious crimes, a judge must be able to realize restorative justice by thinking wisely and wisely, because with Article 69 of the Juvenile Criminal Justice System Law, then The perception of justice on the part of the Child Victim as above cannot be accommodated, so that the probability or resistance of the disappointment of the Child Victim and also the community towards the decision of the Child Judge will be even greater if the Child Judge an sich applies Article 69 Paragraph (2) of the Juvenile Criminal Justice System Law, thus the decision Juvenile Justice will be a cruel law for the Child Victim and the community. The role of law enforcement, especially Child Judges, is to stabilize social conditions that deviate by referring to the laws and regulations, which are often contrary to the justice expected by the Child victims and the community, as happened in Decision No. XY/Pid.Sus-Anak/ 2020/PNPbg.

Gustav Radbruch simply divides the purpose of law into three, namely justice, legal certainty, and expediency.[5] The three objectives of the law are often used as

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[4] M. Alvi. Syahrin,. Penerapan Prinsip Keadilan Restoratif dalam Sistem Peradilan Pidana Terpadu (*The Implementation of Restorative Justice Principles In Integrated Criminal Justice System*) (Majalah Hukum Nasional Number 1 ,Year 2018), p.110;

[5] I Dewa Gede Atmaja Dewa Gede Atmadja, *Filsafat Hukum-Dimensi Tematis dan Historis*, Malang: Setara Press, 2013.,p.181. Gustav Radbruch simply divides the purpose of law into three, namely justice(Gerechtigkeit), l egal certainty *(Rechtssicherheit),* and expediency*(Zweckmaβigkeit),* on the footnote it is written: Gustav Radbruch, *Rechtsphilosophie* (Stuttgart: K.F. Koehler, 1973), p. 170-179. Also Gustav Radbruch, Einfuhrung in die *Rechtswissenschaft* (Stuttgart: K.F. Koehler, 1961), p.36;

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guidelines for judges in carrying out their judicial functions to enforce the law for justice. Benefit as a sociological value emphasizes benefit in society itself, society expects the birth of a law in the form of a rule of law to provide benefits and justice as a philosophical value. Legal certainty as a juridical element emphasizes that the rule of law is enforced as desired by the sound of the rule of law itself.

Justice and legal certainty themselves often collide and eventually become a polemic. Thus there is an antinomy between demands for justice and demands for legal certainty. These two things often cannot be realized at the same time in the same situation,[6] there must still be one that takes precedence. However, as the last bastion of justice, the judge is obliged to take a role in dealing with the antinomy. When faced with concrete problems.[7]

Empirically the judge must choose whether legal certainty or justice is preferred, the reference in this case is moral.[8] If legal certainty is put forward, judges must be wise to provide interpretations of existing laws. Without providing a proper interpretation, the lex dura sed tamen scripta principle will apply, namely where the law is indeed harsh/cruel, but that's how it says.[9]

Philosophically, Lex dura sed tamen scripta is highly avoided by judges. Basically, justice must be given to everyone by paying attention to what is their right (Justitia est ius suum cuique tribuere). Therefore, if the Child Judge still views the philosophical or justice aspect, then when the Child Judge finds a case as above, namely the case of a child who is not yet 14 years old who is accused of having molested a child victim who is 4 years old, which in Article 69 of the Juvenile Criminal Justice System Law can only be subject to action, so that is where the role of an active judge is needed in overcoming this, the judge must be wise in providing the right interpretation of the existing law.

Juvenile Criminal Justice System Law has ordained that restorative justice is the commander, so whatever the form of the crime, restorative justice must always be prioritized. The form of restorative justice in the Juvenile Criminal Justice System Law is diversion, Septianita said that through the application of restorative justice, benefits will be obtained for both victims and perpetrators. First, avoiding psychological pressure in the examination process. Second, avoiding the judicial process which tends to take up energy, time and attention. Third, each party can propose ways to solve problems in order to achieve the best accountability. Fourth, victims and their families are given space to ask for compensation both materially and immaterially. Fifth, avoid news that has the potential to disturb children's psychology.[10]

With diversion and reaching an agreement between the Child Party and the victim's Child Party, mutual happiness will be achieved (win-win solutions), so that directly or indirectly it will create justice and mutual benefit.

Diversion itself aims to achieve peace between victims and children, then there is a settlement of children's cases outside the judicial process, then prevent children from deprivation of independence, next is to encourage the community to participate and instill a sense of responsibility in children. Diversion in which the solution involves the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a just solution by emphasizing restoration to its original state, and not retaliation, known as the restorative justice approach.[11]

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[6] Peter Mahmud Marzuki,.Pengantar Ilmu Hukum, Cetakan ke-3, (Prenada Media Group., 2008), p.139

[7] Ibid.

[8] Ibid.

[9] Ibid.,p.140.

[10] Hesti Septianita, Keadilan restoratif dalam Putusan Pidana Anak (Kajian Putusan Nomor 9/Pid.Sus-Anak/2016/PT Bdg), (2018). p.203;

[11] Dheny Wahyudhi, Perlindungan terhadap Anak yang Berhadapan dengan Hukum Melalui Pendekatan Restorative justice. (Junal Ilmu Hukum Jambi.

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Seeing and observing the Academic Manuscript and the purpose of diversion, it can be seen that how important diversion is in realizing restorative justice for children in conflict with the law. With the diversion, a decision will be obtained which is desired by the child, the victim and also the community, if the diversion is reached an agreement.

On the other hand, Article 7 Paragraph (2) of The Juvenile Criminal Justice System Law has implemented a limitation that not all children in conflict with the law can be diverted. Limitatively, diversion can only be carried out against children who meet the following criteria: (1) the child is charged with an indictment that carries a penalty of under 7 years of age and (2) does not constitute a repetition of a crime.

However, with the provisions as referred to in Article 69 of the Juvenile Criminal Justice System Law which states that children who are not yet 14 years old can only be subject to action, Article 69 of the Juvenile Criminal Justice System Law has become an exception to Article 70 of the Juvenile Criminal Justice System Law which means that the level and negative impact of crimes against child offenders is no longer considered. This has the implication that in fact, the child who is not yet 14 years old is not threatened with any crime, including not being threatened with imprisonment, even though the prosecutor's indictment is articles which constitute serious crimes that carry a penalty of more than 7 years in prison, because the child is in the category of under the age of 14 years can only be subject to ACTION, there are no sanctions or no criminal threats.

In the absence of a criminal threat (zero) against a Child under the age of 14 years regardless of the type or qualification of the crime and the Child is not detained because the law says so, the Diversion of a Child with a category of 12 years of age or more but not yet 14 years of age with the charge of having committed a serious crime is not contrary to the Juvenile Criminal Justice System Law itself, where again the author explains that the condition for limited diversion is that the child is threatened with a criminal under 7 years of age and is not a repetition of the crime, while for children with the age category of 12 years or more but not yet 14 years old, even though he was charged with the articles of the most serious crimes that are punishable by 7 years or more, in reality the child still does not have a criminal penalty or is nil, because there are provisions in Article 69 of the Juvenile Criminal Justice System Law as an exception to Article 70 of the Juvenile Criminal Justice System Law .

With the existence of Article 69 of the Juvenile Criminal Justice System Law, if interpreted grammatically it tends to be very detrimental to the Child Victim, because of the expectation of the Child Victim to the court that the Child is given a reward (reply) commensurate with his actions, where this is a legal interest of the Party. Victim's Child, but in fact the interests of the Victim's Child Party cannot be realized, regardless of the crime, including even serious crimes. So, when diversion is not carried out, the Child Victim will not get what is considered to be an inner advantage for the Child Victim, but on the contrary, the Child Victim will experience emotional disappointment and material loss, for the victim there is no recovery. Therefore, to fulfill the sense of justice and benefit from both the Child Party and the Child Victim, diversion is the only way so that the Child Victim is given the opportunity to get benefits in the form of recovery (physical and/or psychological) or benefits from the provisions of Article 69 of the Juvenile Criminal Justice System Law. , which is also in accordance with Article 8 Paragraph (3) letter a of the Juvenile Criminal Justice System Law where it is stated that the diversion process must pay attention to the interests of the victim, so that in the later diversion process, the interests of the Child Victim will be given more attention.

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https://www.neliti.com/publications/43318/perlindungan-terhadap-anak-yang-berhadapan-dengan-hukum-melalui-pendekatan-resto. 2015),p.148;

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With the diversion itself, of course, the goal of restorative justice will be easy to realize, namely by trying to make a diversion agreement between the Child Party and the Child Victim involving the community, Community Counselors and Professional Social Workers. Against the Child, it may still be agreed to be subject to action as stipulated in Article 69 and Article 82 of the Juvenile Criminal Justice System Law, of course, which is proportional in accordance with the mutual agreement as a result of the crime committed by the Child, so that between the Child Party and the Child Victim there is no longer any grudge. The principle of restorative justice is the restoration of good relations between the perpetrators of the crime and the victims of crime, so that the relationship between the perpetrators of the crime and the victims of crime is no longer a grudge.[12]

With the diversion of the Child Party with the age category of 12 years or more but not yet 14 years old with accusations of having committed a serious crime, the Child Victim and also the community as well as Community Counselors and Professional Social Workers, three elements of law enforcement guidelines, especially by Child Judges in carrying out The law for the sake of justice for all Indonesian people can be realized, namely the juridical element (legal certainty) has been fulfilled, namely the diversion of children with the age category of 12 years or more but not yet 14 years old with charges of having committed serious crimes not contradicting the Juvenile Criminal Justice System Law itself because it has been indirectly guaranteed in Article 69 of the Juvenile Criminal Justice System Law, then related to the sociological value or benefits, it is clear and can be discussed together during the diversion process, namely for the child still being subject to action in accordance with Article 82 of the Juvenile Criminal Justice System Law and for the child victim, compensation can be given proportionally in accordance with the agreement. collective action as a result of the crime committed by the child, and related to its philosophical value, which is related to justice, because both parties, namely the child and the victim, both benefit from the diversion agreement, directly or indirectly, showing that there has been value. justice contained in the diversion agreement. The diversion is carried out by taking into account the principles of restorative justice, including: 1) prioritizing recovery or restoration for all parties, 2) focusing on the needs of victims, perpetrators and the community, 3) paying attention to the obligations and responsibilities that arise due to crime.[13]

2. **Indicators that can be used as guidelines for the implementation of diversion for children under 14 years of age and charged with committing serious crimes.**

Ery Setyanegara in the conclusion of his journal entitled "The Freedom of Judges in Deciding Cases in the Context of Pancasila (Viewed From "Substantive" Justice)" concluded that in academic discourse and legal politics, the function of judges as law reformers is known, in such a function the judge does not just apply the rules but is more dive. again discover and create laws. The judge's belief is a space that must be built, developed, and implemented as an ornament of science and religion in an effort to seek substantive justice. Enforcement of ethics and the legal profession of judges, as a noble or noble profession (officium nabile) must have technical/professionalism skills (technical aspect). The enforcement of the ethics of the legal profession of judges must also be based on the joy of the Pancasila law (Ground Norm) where the values of the One Godhead become a basic

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[12] M. Alvi Syahrin, Penerapan Prinsip Keadilan Restoratif dalam Sistem Peradilan Pidana Terpadu (*The Implementation of Restorative Justice Principles In Integrated Criminal Justice System*), (Majalah Hukum Nasional Number 1 ,Year 2018),p.111;

[13] Hariyanto, Diah Ratna Sari, dkk., Paradigma Keadilan Restoratif dalam Putusan Hakim, (Jurnal Kertha Patrika, Vol. 42, No. 2 August 2020), p.187;

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philosophical conception of each judge's identity, where also the concept of social justice in Pancasila must be accelerated in the form of decisions that are fair (substantive justice).[14]

Based on the things above, it is not against the law when a judge interprets an article wisely and wisely as long as the interpretation is relevant while still referring to the principles of justice and expediency, because this has been guaranteed in Law no. 48 of 2009 concerning Judicial Power, because the true function of the judge is as a law reformer, where in such a function the judge is not just applying the rules but more dipping to find and create the law.

Bagir Manan as quoted by M. Alvi Syahrin explained that the substance of restorative justice is that it contains principles, among others: building joint participation between perpetrators, victims, and community groups to resolve an event or crime. Placing perpetrators, victims, and the community to work together and immediately try to find a solution that is considered fair for all parties (win-win solutions).[15] In line with the characteristics mentioned above, Restorative Justice in the Juvenile Criminal Justice System Law itself is interpreted as the settlement of criminal cases by involving the perpetrators, victims, families of the perpetrators/victims, and other related parties to jointly seek a fair solution by emphasizing the restoration of rights back to the victims. the original state, and not with retaliation (Article 1 point 6 of the Juvenile Criminal Justice System Law).

Article 7 Paragraph (2) of the Juvenile Criminal Justice System Law states that a child criminal case that can be diverted is a case where a child is threatened with a criminal under 7 years of age and is not a repetition of a crime, then it has been explained in the first subject that against a child with a category of 12 years of age or over but not yet 14 years old on charges of having committed a serious crime can also be diverted because there are provisions in Article 69 of the Juvenile Criminal Justice System Law as an exception to Article 70 of the Juvenile Criminal Justice System Law which means that children in the age category under 14 years can only be subject to action no matter what type or qualification crimes which can then be concluded that significantly against children in the age category under 14 years, there is no criminal threat whatsoever so that diversion can be carried out against him for the sake of legal certainty, justice and benefit.

From the description above, the author can take an inventory of indicators that can be used as guidelines for the implementation of diversion in children aged 12 years or older but not yet 14 years old on charges of committing serious crimes, namely as follows:

- Children aged 12 years or over but not yet 14 years old on charges of having committed a serious crime;
- Not a repetition of a crime;
- There is agreement from the Child Victim and the willingness of the Child Party to carry out diversion (see Article 9 Paragraph (2) of the Juvenile Criminal Justice System Law);

If it has fulfilled the 3 (three) indicators above and is then attended by a Social Advisor and Professional Social Worker as a condition for holding a diversion, then diversion of a Child with a category of 12 years of age or more but not yet 14 years old on charges of having committed a serious crime can be carried out.

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[14] Ery Setyanegara, Kebebasan Hakim memutus Perkara Dalam Konteks Pancasila (Ditinjau dari Keadilan "Subtantif") (Jurnal Hukum dan Pembangunan Year 43rd No. 4 October-Decemberr 2013),p. 465;

[15] . Alvi Syahrin, Op. Cit.,p.101.

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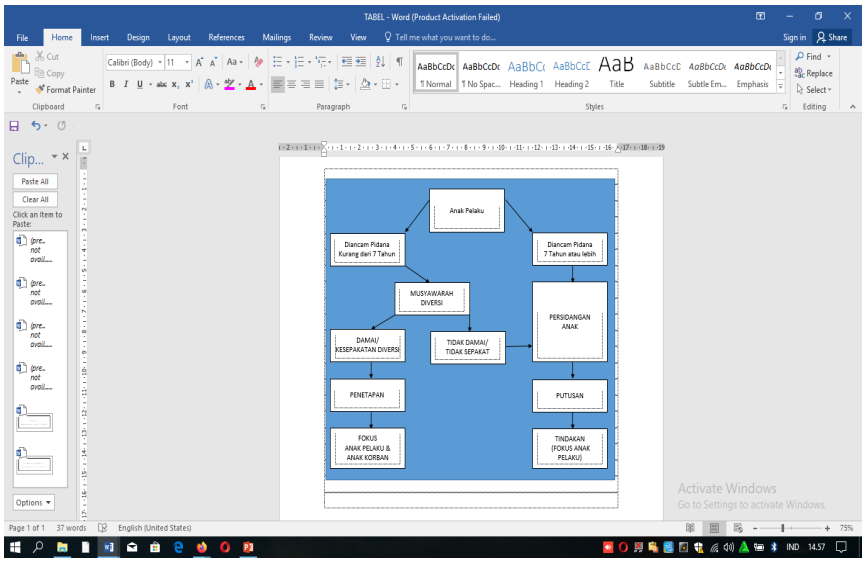
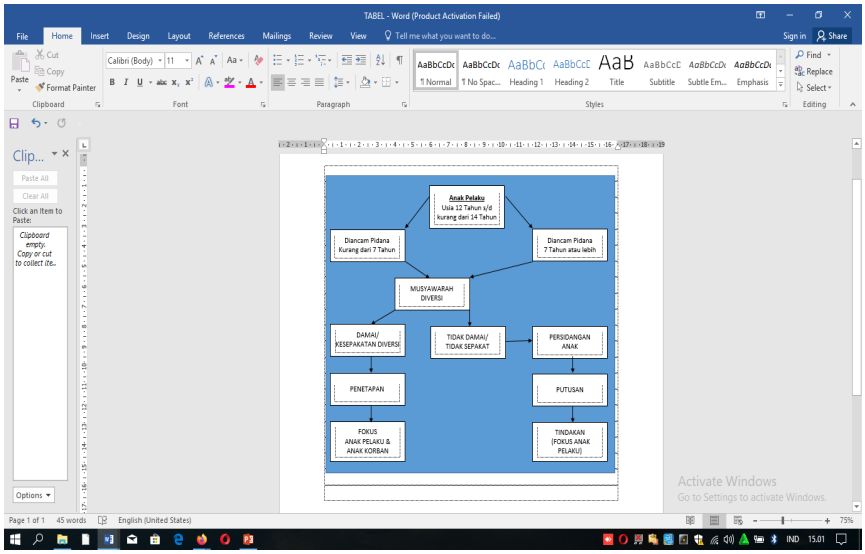


Schematic flow 1: trial against children



Schematic flow 2: trial of children aged 12 to under 14 years old

By looking at the two schemes above, it will be very clear that the difference is where scheme 1 is applied to cases of children aged 14 years and over, while scheme 2 is for children aged 12 years to less than 14 years which requires the child to take diversion first before the trial process begins for the sake of creating restorative justice, which is because children at that age are not actually threatened with any crime.

D. CONCLUSION

So important is diversion in realizing restorative justice for children in conflict with the law. With diversion or deliberation between children, victims and the community facilitated by diversion facilitators at their respective levels (investigators, public

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prosecutors or judges) it will be possible to obtain a decision that is desired by the child party, the victim child party and also the community, if the diversion is succeeded in reaching an agreement, namely by taking into account the principles of restorative justice, including: 1) prioritizing recovery or restoration for all parties, 2) focusing on the needs of victims, perpetrators and the community, 3) paying attention to the obligations and responsibilities that arise because of the crime.

Article 69 of the Juvenile Criminal Justice System Law states that children who are not yet 14 years old can only be subject to action, so in fact it has shown that children who are 12 years old but not yet 14 years old are threatened with zero imprisonment, so that children who are 12 years old but not yet 14 years old regardless of the type of criminal act/qualification, diversion should also be carried out against it, which is not contrary to Article 7 Paragraph (1) of the Juvenile Criminal Justice System Law which states that diversion is carried out against children who are threatened with a sentence of less than 7 years and not a repeat of the crime. Thus, the diversion criteria must also be based on the age of the child, which is applied to children aged 12 years but not yet 14 years old regardless of the act/qualification of the crime.

Furthermore, indicators that can be used as guidelines in the application of diversion to children aged 12 years but not yet 14 years old and charged with serious crimes are as follows:

- Children aged 12 years or over but not yet 14 years old on charges of having committed a serious crime;
- Not a repetition of a crime;
- There is agreement from the Child Victim and the willingness of the Child Party to carry out diversion.

E. SUGGESTION

Based on the conclusions above, it is hoped that juvenile judges will diversify children with the age category of 12 years or more but not yet 14 years old on charges of having committed serious crimes because they do not conflict with the Juvenile Criminal Justice System Law as written in Article 7 Paragraph (2) of the Juvenile Criminal Justice System Law as an effort to achieve the objectives of the law itself, namely juridically (legal certainty), sociological (benefit) and philosophical (justice) can be achieved jointly for both the Child Party and the Child Victim.

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LEGAL PROTECTION FOR THE ABANDONED CHILDREN AT POST-COVID-19 PANDEMIC

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ABSTRACT

The pandemic outbreak that has hit the world has made many changes, in all matters including Indonesia, these changes are related to the order of life, especially in terms of culture which is a habit of people's daily lives. Indeed, these changes are not revolutionary, but have a very big impact. So many Indonesians have died due to being exposed to covid 19. Indonesia seems to be faced with the consequences of war, many people have been abandoned by their partners, children have been abandoned by their parents or other families who have died as a result of being exposed to COVID-19. In Indonesia, there are thousands of children who have lost both their parents, which until now are still at the level of data collection alone, but there has been no ongoing concrete action from the government which in fact is the responsibility as mandated in the constitution and in the laws and regulations entitled child protection. Many problems caused by this incident after the covid pandemic caused various very dilemmatic problems, as a civilized nation, of course this problem is not only a government problem, but the community must also think about the best steps to overcome the problems of thousands of children who have become orphans so that they They can continue their life and enjoy their rights as children, even though they are not given by their own parents. Therefore, in this study, the problem discussed is how to protect children who are left behind by their parents after the COVID-19 pandemic. The state's financial condition which is mostly concentrated on handling covid and vaccination is one of the contributing factors so that the handling of children still does not show the real thing from the government's responsibility, about the data alone there are still many that are not valid and confusing, other things are also a problem that need to be addressed together is that the condition of these children is vulnerable to criminal acts, both children as victims and children as perpetrators who are in conflict with the law. Efforts are being made so that children do not become victims or perpetrators of criminal acts, the government must immediately make a real work program. This problem is not only a social problem, but also a community problem that must be prioritized for humanity, therefore we cannot only expect the government to do what it should.

Keywords: Legal Protection, Children, Covid-19 Pandemic

A. INTRODUCTION

Understanding everything that is happening, must be from the right point of view, the problem of the occurrence of the COVID-19 pandemic disaster cannot be viewed from a purely social point of view, serious handling requires arrangements that are intended for this. Responsive law will anticipate the situation, however, some policies may conflict with interest. Understanding the law as a social institution, making the law able to act as a means of justice, as stated by Prof. Alvi Syahrin that the law also has a function, ; maintain stability, provide a social framework for the needs proposed by

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community members, create rules so that the needs of community members can be met in an organized manner, and inter-institutional links.[1]

There are 3 (three) disasters that are designated as national disasters in Indonesia, namely; in 1992 the Flores Earthquake and Tsunami; in 2004 the tsunami in Aceh and in 2020 the covid-19 epidemic (non-natural disaster). The determination of national disaster is based on Law no. 24 of 2007, namely the number of victims, loss of property, damage to facilities and infrastructure, coverage of affected areas, and social and economic impacts.

The first case of the disease called Covid-19 occurred in the Chinese city of Wuhan around the end of December 2019, the spread was so fast that in the shortest time it could spread everywhere and currently, as far as the author knows, almost all over the world have been infected with this virus. The very fast spread has made several countries implement restrictive policies and even impose lockdowns so that the covid-19 virus can be prevented, and Indonesia has also implemented a lockdown policy since March 17, 2020, and then the policy of implementing restrictions on community activities, abbreviated as PPKM. The determination of the PPKM level depends on the color of the zone of each region. In July and August almost all areas are red or red zones and of course this is included in the level 4 (four) category. However, until the writing of this paper and the place where this seminar took place, Ternate was determined by the central government with a level 1 category.

The following are the five countries with the highest number of spreading cases and those exposed to COVID-19 in the third week of August 2021, namely the United States with 1,020,072 people, Iran with 251,610 people, India with 231,658 people, Britain with 219,919 people and Brazil with a total of 219,919 people. 209,099. Globally, with the figures seen above, the spread of the Covid-19 virus in Indonesia is still very far away. However, when compared to the number of deaths from the corona virus, Indonesia ranks the highest.[2] worldwide, the death toll in the last week of August amounted to; 8,784 souls. Then followed by the United States with 6,712 people, Brazil with 5,649 people and Russia with 5,545 people and Mexico with 4,666 deaths due to the COVID-19 virus.

Data collection of children aged 0-17 years whose parents died due to exposure to COVID-19 submitted by Dra. Elvi Hendriani As Dep of Child Protection Special Conditions of the Ministry of PPPA in a seminar on "Children Affected by Covid-19" stated that there were 29,056 children whose parents died due to exposure to Covid[3]. As a representative of the government in the event, of course, Mrs. Elvi Hendriani hopes that Empowered Women, Protected Children, Advanced Indonesia.

Based on the data that has been described previously, it is certainly very touching for us to remember that there are 29,056 children who were left by their parents because of COVID-19, either as orphans, as orphans or as orphans, where these children still really need love. from both parents, need a decent living, need proper education, and other forms of needs for children in their growth period. On the commemoration of National Children's Day on July 23, 2021, Covit19.go.ig (July 22, 2021) stated that the total cases of children exposed to Covid-19 were 388,267 cases and the total number of child deaths was 814 people.

In commemoration of National Children's Day (HAN) in 2021, the Ministry of Women's Empowerment and Child Protection (Kemen PP PA) with the theme of HAN in 2021 is "Protected Children, Advanced Indonesia" with the main message "Children Care in a Pandemic Period[4] which will be held on Friday 23 July 2021 online through

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[1] Alvi Syahrin, *Beberapa Masalah Hukum*, PT. Sofmedia, Medan Cetakan Pertama 2009, hal iii

[2] https://newssetup.kontan.co.id/news/duh-angka-kematian-akibat-covid-19-di-indonesia-masih-yang-tertinggi-di-dunia, diakses tanggal 27 Oktober 2021

[3] Dra. Elvi Hendriani AsDep Perlindungan Anak Kondisi Khusus Kemen PPPA, Seminar "Anak Terdampak Covid-19 Tanggung Jawab Siapa dan Mau Dibawa Kemana', Kamis 28 Oktober 2021. LBH Kongres Advokat Indonesia, Advokasi Peduli Bangsa

[4] https://dp3appkb.kalteng.go.id/puncak-peringatan-hari-anak-nasional-tahun-2021.html, diakses tanggal 4 November 2021

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the Ministry of PP PA's Youtube. This theme illustrates the commitment of the government and the community to continue to participate in protecting Indonesian children in the midst of the Covid-19 pandemic. The commemoration of National Children's Day is carried out as a form of respect, protection and fulfillment of children's rights as the nation's next generation. Based on the reasons above, the author is interested in discussing this

B. PROBLEM STATEMENT

How is legal protection for children who are left behind by their parents after the Covid-19 pandemic

C. DISCUSSION

1. Covid-19

Based on information obtained from TribunNews[5] The total number of corona infection cases in Indonesia as a whole as of October 26, 2021 is 4,241,090 people and meanwhile for cases that have recovered reached 4,084,831 people, where the additional recovery rate as of October 26 was 1,141 people.

Judging from the records issued by Dukcapil[6] as reported, the Directorate General of Population and Civil Registration of the Ministry of Home Affairs (Kemendagri) recorded the current population of Indonesia as 272.23 million as of June 30, 2021. With details of 137.52 million men and 137, 71 million people are female.

The corona virus that emerged in China at the end of 2019 has also mutated into several small variations that make it contagious and spread quickly. Corona virus disease (covid-19) is an infectious disease caused by the SARS-CoV-2 virus. Most people who are infected with COVID-19 will experience mild to moderate symptoms, and will recover without special treatment, unless there is a congenital disease (comorbid) suffered by a person who is infected with the Covid-19 virus, which can cause severe illness and can cause serious illness. death, especially after being exposed to Covid, the handling is too late. Viruses that can be spread through the mouth and nose of an infected person are in the form of small fluid particles that can be in the form of droplets that are sprayed out through coughing, sneezing, talking, singing or breathing, both exhaling and inhaling the air. And this virus spreads more quickly in close proximity and in crowded places.

According to data released by the Task Force for the Acceleration of Handling Covid-19 of the Republic of Indonesia, the number of confirmed positive cases as of August 6, 2021 was 3,568,331 people with a death toll of 102,375 people or around 2.9% case fatality rate.[7] confirmed and reported. Based on the age groups exposed and those who died from COVID-19, they are as follows;

- then 0-5 years old exposed 0.49% died 0.5%,
- 6-18 years exposed 0.14% , died 0.5%
- 19-30 years exposed 0.32% , died 2.8%
- 31-45 years exposed 1.26% , died 12.7%
- 46-59 years exposed 4.84% , died 36.8% and
- age over 60 years exposed 11.75%, died 46.7%

Meanwhile, based on the sex of the Covid-19 patients who died, 53.1% were male and 46.9% were female. Regarding the causes of contracting the virus and its variants, the symptoms when exposed to the covid-19 virus and the risk factors

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[5] https://www.tribunnews.com/corona/2021/10/26/breaking-news-update-corona-26-oktober-2021-611-kasus-baru-35-kematian-harian?page=4diakses tanggal 27 Oktober 2021

[6] https://www.google.com/search?q=jumlah+penduduk+indonesia+2021&oq=jumlah&aqs=chrome accessed on 27 October 2021

[7] https://www.alodokter.com/covid-19 accessed on 31 October 2021

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for contracting covid-19, the author feels, is widely known by the public. On the commemoration of National Children's Day on July 23, 2021, Covit19.go.ig (July 22, 2021) stated that the total number of Covid-19 child cases was 388,267 cases and the total number of child deaths was 814 people. When viewed from various sources regarding data on COVID-19 in Indonesia, there are disputes that the author himself has not found where the cause of the dispute is. What is clear is that fluctuations in changes in the number of cases will continue to occur while Covid-19 is still around.

2. Legal Protection

Legal protection is a theory that examines and analyzes the form and form or purpose of protection, protected legal subjects and objects of protection provided by law to the subject.[8]

The principle of legal protection for the people against government actions rests and originates from the concept of recognition and protection of human rights because historically in the West, the birth of concepts regarding the recognition and protection of human rights was directed at the limitations and laying down of human rights. obligations to society and government[9] Legal protection is a narrowing of the meaning of protection, in this case only protection by law[10] Meanwhile, according to Soerjono Soekanto, legal protection is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and/or victims. medical services and legal assistance.[11]

In fact, in Indonesia, legal protection has been carried out for all Indonesian people. This legal protection has also been regulated in the preamble to the 1945 Constitution of the Republic of Indonesia which states 'that in fact independence is the right of all nations and because of that, colonialism in the world must be abolished because it is not in accordance with the principles of humanity and justice'. . Thus, the existence of the 1945 Constitution of the Republic of Indonesia has proven that the independence of the rights of Indonesian citizens has been protected by the 1945 Constitution of the Republic of Indonesia.

Legal protection for children is one way to protect the nation's future generations. Legal protection for children concerns all applicable legal rules. This legal protection is considered necessary because children are part of society who have physical and mental limitations. Therefore, children need special protection.[12]

Legal certainty needs to be sought for the continuity of child protection activities and prevent abuses that have undesirable negative consequences in the implementation of child protection.[13] Child protection is an effort to protect children so that they can carry out their rights and obligations[14]

The protection of children's rights is essentially directly related to the regulation in laws and regulations. Policies, efforts and activities that guarantee the realization of the protection of children's rights are based on the consideration that children are a vulnerable and dependent group, in addition to the existence of

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[8] H. Salim Hs Dan Erlies Septiana Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis Dan Disertasi*, PT. Raja Grafindo Persada, Jakarta, 2013, hal 263.

[9] Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat di Indonesia*, PT. Bina Ilmu, Surabaya, 1987, hal 38.

[10] Kancil CST, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, Balai Pustaka, Jakarta, 1989, hal 102.

[11] Soerjono Soekanto, *Pengantar Penelitian Hukum*, UI Press, Jakarta, 1984, hal 133

[12] Marlina, *Peradilan Pidana Anak di Indonesia, Pengem-bangan konsep Diversi dan Restorative Justice Peradilan Pidana Anak di Indonesia*, Reflika Aditama, Jakarta, 2007, hal 43

[13] Arif Gosita, *Masalah Perlindungan Anak*, Akademi Pressindo, Jakarta, 2009, hal 35.

[14] *Ibid*, hal 52.

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groups of children who experience obstacles in their growth and development, both spiritually and physically. as well as social.[15]

Legal protection for children is one side of the approach to protecting Indonesian children. The problem is not merely a juridical approach, but a broader approach is needed, namely economic, social and cultural[16]

This child protection has actually been regulated by the government through Law Number 23 of 2002, which has been updated with Law No. 35 of 2014 concerning Child Protection contained in Article 20 which contains that the State, Government, Regional Government, Society, Family and Parents or guardians are obliged and responsible for the implementation of Child Protection.

The obligations and responsibilities of the state and government in carrying out legal protection for children are regulated in several articles in Law No. 23 of 2002 which has been updated with Law No. 35 of 2014 concerning Child Protection. The contents of each article are as follows:

a) In Article 21 paragraph (1) the State, Government and Regional Governments are obliged and responsible for respecting the fulfillment of children's rights without distinction of ethnicity, religion, race, class, gender, ethnicity, culture and language, legal status, birth order, and physical condition. and/or mental
b) In Article 22, the State, Government and Regional Governments are obliged and responsible for providing support for facilities, infrastructure, and the availability of human resources in the implementation of Child Protection.
c) In Article 23, paragraph (1), the State, Government and Regional Government guarantee the protection, maintenance, and welfare of the Child by taking into account the rights and obligations of Parents, Guardians, or other persons legally responsible for the Child. Paragraph (2) The State, Government, and Regional Government supervise the implementation of Child Protection.
d) In Article 24, the State, Government, and Local Government guarantee the child to exercise his right to express opinions according to the age and level of intelligence of the child

Likewise, in line with Satjipto Raharjo's opinion that legal protection is a variety of legal measures that must be provided by law enforcement officers to provide a sense of security, both mentally and physically from interference and various threats from any party.[17]

This also agrees with Phillipus M. Hadjon's opinion that preventive legal protection aims to prevent disputes from occurring, which directs government actions to be careful in making decisions based on discretion.[18]

Meanwhile, Abintoro Prakoso said that the impact of crime prevention efforts focused on the root of crime or situational prevention and increasing community capacity in the use of informal social control facilities.[19]

3. Child

Children according to language are the second offspring as a result of the relationship between a man and a woman. In the preamble to Law Number 23 of

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[15] *Ibid*, hal 52

[16] Bismar Siregar, *Keadilan Hukum dalam Berbagai Aspek Hukum Nasional*, Rajawali, Jakarta, 2006, hal 22.

[17] Satjipto Rahardjo, *Ilmu hukum*, Citra Aditya Bakti, Bandung, 2000, Hal 74.

[18] Phillipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia*, PT. Bina Ilmu, Surabaya, 1987, Hal 2

[19] Abintoro Prakoso, *Kriminologi Dan Hukum Pidana*, Laksbang Grafika, Yogyakarta, 2013, Hal 160

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2002 concerning child protection, it is stated that children are a mandate and gift from God Almighty, who has inherent dignity as a whole human being.[20]

In addition, according to Abu Huraerah, a child is someone who is born from a relationship between a man and a woman. The relationship between a man and a woman if bound in a marriage bond is usually referred to as husband and wife.[21] If viewed from the juridical aspect, the definition of a child in the eyes of positive law in Indonesia is commonly defined as a person who is not yet an adult, a person who is under age or under age or is often referred to as a child under the supervision of a guardian.[22]

Furthermore, it is said that children are buds, potentials, and the younger generation who succeeds the ideals of the nation's struggle, has a strategic role and has special characteristics and characteristics that ensure the continuity of the existence of the nation and state in the future. Therefore, in order for every child to be able to take on these responsibilities, he needs to get the widest possible opportunity to grow and develop optimally, physically, mentally and socially, and has a noble character. provide guarantees for the fulfillment of their rights and treatment without discrimination.[23]

To determine the age limit in terms of the definition of a child, then we will get various kinds of age limits for children considering the various definitions of age limits for children in several laws, for example[24]

1) Law Number 1 of 1974 concerning Marriage requires a marriage age of 16 years for women and 19 years for men. And according to the provisions of the latest Marriage Law No. 16 of 2019 amendments to Law no. 1 of 1974, requires that the age of marriage for women is equal to the minimum age of marriage for men, which is 19 (nineteen) years.
2) Law Number 4 of 1979 concerning Child Welfare defines a child as 21 years old and never married.
3) Law Number 3 of 1997 concerning Juvenile Court defines a child as a person who in the case of a naughty child is eight years old, but has not yet reached 18 years of age and has never been married.
4) Law Number 39 of 1999 concerning Human Rights states that a child is someone who is not yet 18 years old and has never been married.
5) Law Number 13 of 2003 concerning Manpower allows the working age of 15 years.
6) Law no. 20 of 2003 concerning the National Education System imposes 9-year Compulsory Education, which is connoted to be children aged 7 to 15 years.
7) Law No. 35 of 2014 concerning Child Protection, that children are not yet 18 years old, including those who are still in the womb
8) Law No. 11 of 2012 concerning the Juvenile Criminal Justice System and the Diversion process, children in conflict with the law are children who are 12 years old but not yet 18 years old

Maidi Gultom is of the opinion that the child, as long as the body is still undergoing the process of growth and development, the child is still a child and will only become an adult when the process of development and growth is complete, so the age limit for children is the same as the beginning of becoming an adult, which is 18 (eighteen). twelve) years for women and 21 (twenty) years for men.[25]

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[20] M. Nasir Djamil*, Anak Bukan Untuk Dihukum*, Sinar Grafika, Jakarta, 2013, hal 8.

[21] Abu Huraerah*, Kekerasan Terhadap Anak*, Nuansa, Bandung, 2006, hal 36

[22] Sholeh Soeaidy dan Zulkhair*, Dasar Hukum Perlindungan Anak*, CV. Novindo Pustaka Mandiri, Jakarta, 2001, hal 5.

[23] M. Nasir Djamil*, Op.Cit*, hal 8

[24] *Ibid*, hal 9.

[25] Maidin Gultom*, Perlindungan Hukum Terhadap Anak*, PT.Refika Aditama, Bandung, 2010, hal 32

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When a person becomes an adult, it is when he (male or female) as a married person, leaves the house of his mother and father or mother-in-law to live in another house as young men, which are independent families.[26]

The issue of legal protection and rights for children is one approach to protecting Indonesian children. In order for the protection of children's rights to be carried out regularly, orderly and responsibly, legal regulations are needed that are in line with the development of Indonesian society which are fully imbued with Pancasila and the 1945 Constitution.[27]

Then Article 2 of Law Number 23 of 2002 concerning Child Protection contains that the implementation of child protection is based on Pancasila and the 1945 Constitution and the basic principles of the Convention on the Rights of the Child include:[28]

a). Non-discrimination.
b). The best interests of the child.
c). Right to life, survival and development.
d). Respect for children's opinions.

Children's rights are regulated in Articles 4 to 18 of Law Number 23 of 2002 concerning Child Protection which include:

a) The right to live, grow, develop, and participate, as well as to be protected from violence and discrimination.
b) The right to a name as self-identity and citizenship status.
c) The right to worship according to his religion.
d) The right to obtain health services and social security.
e) The right to education and teaching.
f) Children with disabilities also have the right to get an extraordinary education, while for children who have advantages they also have the right to special education.
g) The right to express and be heard.
h) The right to rest and take advantage of free time.
i) Children with disabilities have the right to receive rehabilitation, social assistance, and maintenance of social welfare levels.
j) Children who are in the care of their parents/guardians are entitled to protection from the treatment of:
    1). Discrimination.
    2). Exploitation, both economic and sexual.
    3). Abandonment.
    4). Cruelty, violence and abuse.
    5). Injustice.
    6). Another mistreatment.
k) The right to obtain protection from:
    1). Abuse in political activities.
    2). Involvement in armed conflict.
    3). Involvement in social unrest.
    4). Involvement in events that contain elements of violence.
    5). Involvement in war.
l) The right to freedom in accordance with the law.
m) Every child who is deprived of his liberty has the right to:
    1) Get humane treatment and placement is separated from adults.
    2) Obtain legal aid or other assistance effectively in every stage of the applicable legal remedies.

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[26] Ter Haar dalam Syafiyudin Sastrawujaya*, Beberapa Masalah Tentang Kenakalan Remaja*, PT. Karya Nusantara, Bandung, 1977, hal 18.

[27] Wagiati Soetedjo dan Melani*, Hukum Pidana Anak*, Refika Aditama, Bandung, 2013, hal 49-54.

[28] *Ibid*, hal 130.

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3) Defend yourself and obtain justice before an objective and impartial juvenile court in a closed trial to the public.
n) Every child who is a victim or perpetrator of sexual violence or who is in conflict with the law has the right to confidentiality.
o) Every child who is a victim or perpetrator of a crime has the right to get legal assistance and other assistance.

A good child does not only ask for rights, but will carry out his obligations.[29] Children must respect their parents, because fathers and mothers are more entitled than all humans to be respected and obeyed. For Muslims, a child is taught to be devoted, obedient and do good to his parents[30]

Children must respect their parents, because fathers and mothers are more entitled than all humans to be respected and obeyed. For Muslims, a child is taught to be devoted, obedient and do good to his parents

Based on the basic principles of the Convention on the Rights of the Child

-. The best interests of the child
-. Right to life, survival and development

Under the Child Protection Act

-.. The right to live, grow, develop and participate, as well as get protection from violence and discrimination
-. The right to obtain health services and social security
-. Right to education and teaching

The problem of covid-19 still persists, even according to Kompas news as of November 14, 2021, there were additional 339 new cases of covid, bringing the total active corona cases throughout Indonesia to 9,018. So the total number of COVID-19 cases since March 2020 to date is 4,250,855 cases, 4,098,178 cases have recovered and 143,659 people have died.[31]

Based on the reviews above, the author gets an answer about the current real condition for the protection of children who are abandoned by their parents, died due to exposure to COVID-19.

1. That the implementation of the protection provided by the government for children whose parents have left after 20 (twenty) months of covid-19 attacking Indonesia has not yet reached the right target. To the best of the author's knowledge, until now the government has only collected data for the sake of data collection alone, there is still not much done by the government, the assistance provided is only limited to fulfilling obligations. As reported by the Minister of Social Affairs, Mrs. Tri Rismaharini, only 6 (six) people were given social assistance to children whose parents had died due to Covid, namely from Kutai, East Kalimantan, Samarinda, Sukoharjo, Purwakarta, Bekasi, and from Muna Regency, Sulawesi. Southeast. Of course, it becomes a question for all of us, why only a few regions have received assistance for children whose parents have died, Risma's mother explained that other regions have not made reports. The explanation given like this makes no sense, even though the existing data is very clear, what, who and where it happened. What about other areas throughout Indonesia that are still not covered by government assistance, especially for the fulfillment of children's rights, of course this is very important. The fulfillment of children's rights cannot be delayed. The right to live, grow, develop and participate, as well as get protection from violence and discrimination, the right to obtain health services and social security, and the right to obtain education and teaching. To whom the government transfers the responsibility to fulfill the rights of the child. In this case, there is no official statement from the government regarding children whose parents have died due to COVID-19. These children are taken over by their families, neighbors, or other official

[29] M. Nasir Djamil*, Op.Cit*, hal 21.

[30] *Ibid*.

[31] https;//covid19.go.id/p/berita/data-vaksinasi-covid-19-update-14-november-2021

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institutions or anyone who wishes to do so, because the condition of these children and their survival should not be worse than the situation before they lived with their parents. In accordance with the provisions of the 1945 Constitution, Article 34 which stipulates the obligation for the State to take care of neglected children, and to ensure the survival of these children, their education, their future and their aspirations.

2. In addition to the problems above, the next problem that the author found was regarding the data on reports of children whose parents died who were exposed to Covid-19, the data is confusing so that it confuses the public. Of course, this is also a problem considering the reports that have been submitted regarding the data on children whose parents have been left behind are clearly in the Ministry of Women's Empowerment, in the Covid Task Force data, and data on other institutions, but again this becomes a problem because between from one data to another there is a significant number of disagreements, namely;
    - Data collection on children aged 0-17 years whose parents died due to exposure to COVID-19 submitted by Dra. Elvi Hendriani, Assistant Department of Child Protection, Special Conditions of the Ministry of PPPA in a seminar on "Children Affected by Covid-19" stated that there were 29,056 children whose parents died due to exposure to COVID-19.
    - Based on data from the Covid-19 Handling Task Force as of July 20, 2021, it is known that 11,045 children have become orphans, orphans or orphans. On the other hand, the number of children exposed to Covid-19 was 350,000 children and 777 children died
    - Deputy for Special Child Protection at the Ministry of Women's Empowerment and Child Protection (PPPA) Nahar said that currently around 20,000 children have lost their parents. The number is expected to continue to grow

    The significant difference in numbers, of course, invites concern among the public, why there is a difference, especially if the difference is the death rate. There are those who argue that the difference in numbers because each agency announces it on a different day and date, it affects the number of additional numbers exposed to covid. Maybe that opinion can be accepted, but if the number of differences is not too significant in a short time range, this is really not logical or irrational. Which number will be used as a benchmark for carrying out the task of protecting children in need, providing assistance to children whose parents have died, what is the number stated by Dra. Elvi Hendriani AsDep of Child Protection Special Conditions of the Ministry of PPPA, is it the number stated by the Covid-19 Handling Task Force, or is it the number stated by Nahar, Deputy of Special Child Protection, Ministry of Women's Empowerment and Child Protection (PPPA). Because these numbers affect government policies, the funds to be used, and other matters related to the interests of this matter.
3. Another issue that needs to be observed further after the children are abandoned by their parents is the children who live with their extended family, with their neighbors, as well as children who do not want to leave the house with their children and biological parents, in this condition it is necessary to ask questions is how the living conditions of the extended family are, do they also have the ability to take care of the children well, of course there will be additional expenses, costs for the needs of new members of the family, as well as neighbors who take over the role of child care In this case, it is also necessary to question the suitability of the new caregiver, as well as other things about the condition of the house and relationships in the family. However, returning to the initial problem of who and where these children receive new care, this has not yet been recorded in detail, in this case of course further research will be needed on the effectiveness of distributing social assistance as a form of government responsibility to protect children. especially children who have been left behind by parents who have been exposed to COVID-

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19, which are not just small talk, promises or mere imagery. Handling the survival needs of children, good nutrition for the physical and psychological development of children is needed. Do not let these children be exposed to what is called "stunting" because the impact will be quite dangerous, for example, there will be a decrease in IQ of 10-15 points, underachievement, unproductiveness, and even intergenerational poverty.

4. Other problems that will also arise from the death of a parent who dies, for example regarding parental debt, or insurance that has been prepared by parents, or regarding pensions (retirement), inheritance and many other things which of course the children do not know about. and finish it. Of course, children should not be burdened with this problem, in accordance with the principle of protection that children should not be discriminated against, prioritizing the best interests of the child, guaranteeing the child's right to life and development, and involving children to participate in all activities related to education. .
5. In addition, efforts made by the government through the Ministry of Social Affairs of the Republic of Indonesia (Kemensos RI) are to help large families of children to overcome difficulties in raising children as has been done in several places, the Ministry of Social Affairs of the Republic of Indonesia, also provides therapeutic services through Social Assistance and Rehabilitation (ATTENSI) in the form of Physical, psychosocial and mental spiritual therapy are also given to children to overcome feelings of sadness due to the loss of a parent due to Covid-19 and revive their enthusiasm to continue their life. The question is that whether the efforts made by the government have been implemented, the answer is of course yes, but only in certain places, which means it is very unfair because most of the children whose parents have died are not touched by the help and attention of the government. The government cannot work alone in this matter, therefore the government must also cooperate with the community, child care organizations, and institutions that concentrate on dealing with children's problems. This problem is not only a social problem but also a social problem. In terms of distribution of aid when a second child or one of their parents has died, of course, the community will act first, and sometimes the distribution of aid will also be unequally distributed, to every child whose biological parents have passed away. no longer. The government is still imagining or interpreting the amount of fees that will be given to these children as planned by the government that for children who have not attended school they will get Rp. 300,000 (three hundred thousand rupiah) per month and for children who are already in school will get a donation of Rp. 200,000 (two hundred thousand rupiah) per month[32]. This needs to be further regulated more specifically, because as we all know that in providing social assistance for handling the covid pandemic, in reality there are many deviations, many things can be used as opportunities to commit fraud, and take advantage of the suffering of many people. In a country where there are also many rich people, but many of whom are below the poverty line, this condition is very significant, so that the handling of children's problems also needs to be considered more seriously, sometimes direct cash assistance does not solve the problem, even in certain places. instead it adds to many problems, the opportunities for corruption and collusion are wide open.
6. Another issue that must be our common concern, especially the government, is how to fulfill the most important children's rights, the author calls them vital rights, considering that these rights must be handled as soon as possible in the shortest possible time. . Of course, it is questionable how the technical handling is, because children who do not get serious attention from their caregivers, will have the potential to become children who have problems with the law (drugs, radicals, etc.) as stated by the Minister of Law and Human Rights, Mr. Yasonna H. Laoly[33] will have the potential to become a child who is broken home, there will be many

[32] https://newssetup.kontan.co.id/news/bagi-anak-yang-kehilangan-orangtua-karena-covid-19-pemerintah-siap-kan-bantuan. Diakses 12 November 2021

[33] https://dp3appkb.kalteng.go.id/puncak-peringatan-hari-anak-nasional-tahun-2021.html

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deviations in behavior, the destruction of moral values. Other problems are not after the circumstances that will be faced in the future, but also problems that have existed before. There are many behaviors that deviate from children due to lack of attention from parents, many children who seek pleasure outside the home so that they are wrong in the association. Lack of fulfillment of children's basic rights, lack of psychological support, children tend to be controlled by feelings of sadness, prolonged moodiness, so that this triggers vulnerability, trauma, violence and other deviant actions. The magnitude of the influence of social media and many other things that have the potential to make children in trouble with the law or dealing with the law.

This paper does not answer how to implement the government's attention in providing protection against the fact that thousands of children have been left behind by their parents who were exposed to COVID-19. Because there will be further research on this matter. The government has only done a few things, while the others are only in the form of planning, but at least it becomes our shared thought on how we must help the government to solve this problem so that the future of children as the nation's next generation needs to be maintained, so that they become useful children for the nation. national interest

D. CONCLUSION

That there are still many issues that must be considered by the government in the handling of providing assistance and protection to children whose parents have died due to exposure to COVID-19. That the strategy for handling COVID-19 in Indonesia needs serious attention, the strategy for community resilience, behavior change as the key to national resilience, must receive fast and targeted treatment. The safety of the nation and the state through the struggle for public health must be above all, especially for children, but do not ignore the existing legal rules. The government must have accurate data about children whose parents have died due to COVID-19 accurately so that the handling can be carried out fairly, thoroughly and evenly so as not to cause injustice, the need for special regulations on this matter, and the need to foster cooperation and coordinated, and prioritizing the vital rights of children

E. RECOMMENDATIONS

1. The government must immediately tidy up the data and digitize the data of children whose parents died due to Covid-19
2. Preparation of foster parents who meet standardized requirements to take care of children whose parents have died due to COVID-19
3. Prepare childcare institutions for efforts to care for, supervise and adopt children whose parents have died due to COVID-19
4. Conducting socialization, and cooperation with child care institutions and other social institutions..

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INDONESIAN MIGRANT WORKERS AS INVICIBLE VICTIMS IN CYBER CRIME

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ABSTRACT

Many migrant workers from Indonesia as workers who are abroad their days are spent in other countries. they are willing to be far away from their families in order to earn a living to meet the necessities of life and hope that their fate and that of their families will be better in the future after working and saving their money. A very tiring job, fulfilling daily needs, entertainment to unwind and easy internet access nowadays make these migrant workers look for all information and needs through social media. Without adequate experience and lack of education, migrant workers are often targeted by criminals and become victims in the cyber world. For example, when he conducts online buying and selling transactions with criminals from Indonesia, after transferring the money, the goods he buys are never sent to the address he requested and he does not know what to do, another example is when migrant workers seek entertainment through the world of social media, establish communication with criminals from Indonesia, with various tricks from criminals, migrant workers transfer some money to criminals in Indonesia, after a while he realizes that he has been deceived, but he himself doesn't know what to do and where to report , even though the loss he experienced was almost all of the results of his many years of working abroad. This situation shows that migrant workers are invisible victims. The state can do nothing. The general public also does not know the complexity of this legal issue. This study uses a normative juridical approach. How is the legal protection for migrant workers who are victims in the cyber. The result of this research is that the existing legal instruments have not been able to provide legal protection for migrant workers. Both in criminal procedural law and in criminal law have not been able to touch the perpetrator. The legal basis for ensnaring the perpetrators of this crime does not yet exist, for example where the victim can report the perpetrator of the crime, the victim is an Indonesian citizen and the perpetrator is also an Indonesian citizen but when a crime occurs the victim is outside the jurisdiction of Indonesian law. The police are unable to do anything to take action.

Keywords: Invisible Victim, Cyber Crime, Cyber Fraud Crime

A. INTRODUCTION

Job opportunities still narrow, unemployment increasing and high costs of life, make big problem Indonesia from years to years. There is no other choice for Indonesian citizens, except than to try their luck as Indonesian workers as migrant workers in abroad countries, such as Malaysia, Singapore, Taiwan, Hong Kong, South Korea, Saudi Arabia and so on. Without adequate skills and low education, most migrant workers work in the informal sector, such as household assistants, drivers, factory workers, beauty salons and so on. Statistical data on the placement of TKI during the

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2021 pandemic alone has shown fantastic numbers, there are 60,692 TKI who are placed abroad and spread across several countries[1].

In the study of victimology, anyone has the potential to become a victim of violence and crime, but there are parties who are very at risk of becoming victims, she is women. There is paradigm, show women as disguised or invisible victims of the male power structure and the inhumanity of this materialistic age. In this age of complete acquisitiveness people have become more self-centred and are hankering after the material things of life. There's no place for feelings and emotions and one's profit is one's only goal. This age of decaying humanity has resulted in a more hostile environment for women. Men look on women assome sort of entertainment, without any concern for their feelings and emotions. And this has been rightly presented in all the short stories of Indira Goswami. The stories have a stark reality in them which shocks everyone. The protagonists of all the stories are not subjected to any physical harm or abuse but are made inactive watchers of their own mental agony[2].

Gender-based violence is violence involving men and women, in which the female is usuallay the victim, and which derivered from uniqual power relationships between men and women. violence is detected specifically againts a women becauses she is women or affects women disproportionately. it includes, but not limited to, physical, sexual and psychological harm (including intimidation, suffering, coercion, and or deprivation liberty within the family or within the general community). it includes that violence whic perpetrated or condoned by the state[3]. This often happens, including female migrant workers from Indonesia.

Currently the internet is the most effective medium of information. Everyone can access the internet, this is a technological easy to use. only with a smart phone and internet quota, migrant workers can surf the cyber world. The lack of knowledge and experience has the potential for these migrant workers to become the target of criminals who use cyber media.

Various modes of fraud through online media also continue to emerge and perpetrators are getting neater in smoothing their actions in fraud, this can be seen from the many fake e-commerce that are made in such a way and offer various products at prices below normal prices, with the intention of attracting victims to buying, and there is also a fraud by sacrificing someone else's account into a place where the proceeds of a crime have the mode of the perpetrator having transferred to the seller's account more than the price stated for various reasons and asking for the excess in his account, but in fact the money is the result of fraud against the victim at other places where criminals sell a certain item, and provide the victim's account number before[4].

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[1] PusdatinBP2MI, 'Data Penempatan Dan Pelindungan PMI Periode September 2021', *Bp2mi.Go.Id*, 2021, 20 <https://bp2mi.go.id/uploads/statistik/images/data_29-10-2021_LAPORAN_PENGOLAHAN_DATA_PMI_BULAN_SEPTEMBER.pdf>.

[2] Yasmin Ansari, 'Women as Invisible Victims of Inhumanity and Male Power Structure in Indira Goswami's The Empty Chest and A City in Its Nakedness', *Galaxy: International Multidisciplinary Research Journal*, 9.IV, 37–42.

[3] Jane McCarthy, 'Women with Intellectual Disability and Mental Health Problems: The Invisible Victim', *Oxford Textbook of Women and Mental Health*, 2010, 7.

[4] Ikka Puspitasari, 'Pertanggungjawaban Pidana Pelaku Tindak Pidana Penipuan Online Dalam Hukum Positif Di Indonesia', *Humani (Hukum Dan Masyarakat Madani)*, 8.1 (2018), 1–14.

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victims, for workers who already have family cracking it is make their relationship become bad, someone has tried dating sites, this is where the basic problem begins. Offender pretend borrow money for venture capital, pay cost hospotal for sick family or buy a house for the victim to prize but the money is not enough. because to lack of knowledge and experience, the victim does believe it and sends the amount of money to the swindler. After that, the victim realized that he had been cheated. The victim just gave up not brave trying to tell his family. He could not report to the police office because he was abroad, because the area was different yurisdiction. Then after come back to Indonesia, the victim reported to the police, but the police couldn't do anything about it, considering that the offender was unknown, at the time of the incident the victim was not in Indonesia.

This condition is very concerning, Indonesia as a state of law must be able to protect its citizens from crime, because the rights of citizens to legal protection have been guaranteed in our Constitution, namely Article 28D of the 1945 Constitution which states that everyone has the right to recognition, protection, and protection of certainty. justice and equality before the law. From this description, the author tries to analyze the position of migrant workers from origin Indonesia as an invisible victim then analyze how Indonesian law provides legal protection for migrant workers as victims.

B. RESEARCH METHOD

The method in this research is to use juridical normative, normative juridical research is research conducted on legal principles, legal principles, good legal definitions obtained through law, judges' decisions, legal documents and others. Then presented descriptively, which examines the current legal issues then explained and analyzed according to existing rules or legal principles.

C. FINDING & DISCUSSION.

1. The Position of Migrant Workers from the Perspective of Victimology as Invisible Victims.

The problem of migrant workers is a very complex case, beginning from frequent cases of torture, suicide, to illegal workers who do not have work visas or even do not have passports. The government cannot ignore to the various legal problems experienced by migrant workers. However, they have contributed foreign exchange up to trillions of rupiah every year to the state. Thus providing great benefits to the country. At least there is attention from the government regarding this issue.

In the criminal justice system, victims are always neglected. Moreover, the Indonesian criminal procedure law on the accusator principle (accuisatoir) is a offender as a subject. As a result, this principle is even forgotten. The most important thing as negative impact of a crime is the victim. The victim was never involved except as a witness for the sake of evidence.

Both crime and victims are visible in the news and political discourse but victims of crime are often termed "invisible," particularly within the criminal justice system. During the 1960s and 1970s, two major claims were raised regarding systemic neglect and indifference toward crime victims. The first claim focused on difficulties in obtaining adequate restitution and restoration, especially when offenders had no means, which led to proposed state-run compensation schemes (Fry, 1957; Williams, 1961). This creates the problem of crime victims' visibility in the criminal justice system. Criminal justice systems intervene when a crime has already occurred and have developed an institutionalized ritual to ascertain facts and identify the broken rule and rule-breaker. However, most of the crimes have an injured individual. In these cases, criminal justice should have ritualized operations to contextually ascertain a "doer" and"sufferer" (Hentig von, 1948). Adjudicating law-breaking acts also should aim to identify a victim as "anyone who is injured or killed due to a violation of the criminal law" (Jerin & Moriarty, 1998, p. 1). The following question arises when adjudicating law-breaking acts: Which facts are included in aspecific law's definition of crime? The operation is not "mathematical,"

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even if a rule is clearly stated. If a fact is included, a 'sufferer' may be contemporarily included. Suffering (or victimhood) and the corresponding victim either become visible or risk remaining in social darkness. A second issue involves victim visibility and the justice structural dimension. Criminal justice systems, as institutionalized rituals, may be structured to ascertain facts by focusing on broken rules and rule-breakers (identification of the'implicit' sufferer), to punish or correct them. The sufferer's participation in the criminal justice institutionalized ritual is deemed unnecessary. Victims become invisible or less visible in the juridical fog[5].

According to Mudzakir, the criminal justice system through the products of Indonesian laws and regulations, in particular the Criminal Procedure Code (KUHAP) which is the basis for the implementation of the criminal justice system, is not yet true to what is implemented in the Constitution of the Republic of Indonesia 1945. This raises a classic problem, that the criminal justice system as the basis for resolving criminal cases does not recognize the existence of a victim of a crime as a seeker of justice, a victim of a crime will suffer again as a result of the legal system itself, because the victim of a crime cannot be involved actively as well as in civil proceedings, can not directly submit a criminal case to the court but must go through a designated agency (police and prosecutors)[6].

According to Mardjono Reksodiputro, there are 4 (four) definitions of victims, namely (J.E. Sahetapy, 1987: 96-97) [7]:

a) Conventional crime victims, for example, assault, theft, murder, and rape;
b) Victims of unconventional crimes such as terrorism, piracy, illegal narcotics trafficking, organized crime and cybercrimes;
c) Victims of unlawful abuses of economic power such as violations of labor regulations, consumer fraud, violations of environmental regulations, fraud in the field of marketing and trade by trans-national companies, violations of foreign exchange regulations, violations of tax regulations and others;
d) Victims of unlawful abuses of public power, such as violations of human rights, abuse of authority by means of the authorities, including unlawful arrests and detentions and so on.

from the four types of victims above, migrant workers can be categorized as victims of unconventional crimes. Victims of unconventional crime from cybercrime are invisible victims or hidden. It is also difficult to catch the offender, while the suffering experienced by the victim in the current law enforcement system is very painful for the victim. If the offender is caught, then the punishment given to the offender will not benefit the victim at all, even if it only reduces the suffering of the victim. In this study, when migrant workers become victims of crimes in cybercrimes, it is far from getting justice. There is even no access to complaint services for victims who make a living as migrant workers abroad.

Besides offender who are difficult to catch and prosecute, legal instruments are not able to reach perpetrators of crimes in cyberspace. The condition of the victim who is layman law, she has no knowledge and experience makes him just surrender and helpless. There is no simple service in every judicial process and victims ever not be heard their complaints and their aspiration, it very difficult to getting transparent information and considering the sense of justice that they want to get compensation or reduce suffering they feel.

The position of victims of cybercrimes faced by migrant workers is that they are hidden or invisible victims. base on of the condition of the victims who are far abroad. access to complaints or services to law enforcement places migrant

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[5] Armando Saponaro, '"Visible" and "Invisible" Victims in the Criminal Justice System: Victim-Oriented Paradigms and Models', in *Invisible Victims and the Pursuit of Justice: Analyzing Frequently Victimized Yet Rarely Discussed Populations* (IGI Global, 2021), pp. 1–23.

[6] Ni Putu Rai Yuliartini, 'Kedudukan Korban Kejahatan Dalam Sistem Peradilan Pidana Di Indonesia Berdasarkan Kitab Undang-Undang Hukum Acara Pidana (KUHAP)', *Jurnal Komunikasi Hukum (JKH)*, 1.1 (2015).

[7] Yuliartini.

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workers in a wilderness full of wild animals. No access to justice and forgotten victims. This situation is more than just the condition of victims of crime in Indonesia. In conventional mode, the victim does not listen to his complaints and wishes. But it is still better, because the criminal law here is to give sorrow to the perpetrators, so that they are deterrent or not to repeat their actions. Meanwhile, in cybercrimes that afflict migrant workers, the perpetrators of crimes continue to do so continuously and are free to look for other prey. Law enforcement officers can't do anything.

2. **Legal Protection for Migrant Workers in the Indonesian criminal justice system.**

The aspect of punishment is the "peak" of the Criminal Justice System, namely by passing a judge's decision. Theoretically, in the literature, both according to the scope of the Anglo-Saxon and Continental European systems, the terminology of criminal justice as a relative system is still being debated. the indiscriminate use of criminal sanctions to generalize and use coercively will cause the criminal means to become a "prime threatener" not an ultimum remidium. base on the restriction of the penal, so two policies should be used in crime prevention (criminal politics) namely the penal policy using criminal sanctions (including the field of criminal law politics) and non-penal policies (including using administrative sanctions, civil sanctions or restorative justice). The two policies are carried out through an integrated approach between political, criminal and social as well as the integration (integrity) between crime prevention efforts with penal and non-penal means[8].

Actually in Indonesia there are legal rules related to criminal acts of fraud in cybercrimes e-commerce and online scam, the perpetrators can be threatened with criminal punishment as appropriate in Article 378 of the Criminal Code (KUHP) and the Electronic Information and Transaction Law (UU ITE). There are several laws and regulations that apply in Indonesia related to this crime, each of which regulates it in one article. In the Criminal Code, the article specifically regulates the crime of fraud contained in Article 378 of the Criminal Code, which reads as follows; "Anyone who with the intent to benefit himself or others unlawfully, by using a false name or false dignity, by deceit or by a series of activities to induce others to surrender something to him, or to break the habit of writing off debts, is threatened with imprisonment for a maximum of period of 4 years", the article that regulates crimes related to crime, especially on the internet, in Article 28 paragraph (1), which reads as follows: (1) "Everyone intentionally and without rights spreads news in a misleading manner and results in consumer losses. Electronic Transactions" The criminal threat that can be imposed on the perpetrator is imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of Rp. 1 billion as stated in Article 45 paragraph (2) of the ITE Law, the criminal provisions of Article 28 paragraph (1) ITE Law[9]. However, implementing these articles in practice is not an easy matter.

For example, implementing Article 378 of the Criminal Code, where migrant workers want to report losses due to fraud. The victim himself did not know who the perpetrator was. If referring to Article 1 Number 24 of the Criminal Procedure Code, the provisions in the Legal Code have not yet reached that point. The perpetrator is an Indonesian citizen, the victim is an Indonesian citizen who resides abroad. Determining the locus delicti or the place where the crime occurred is very difficult, crimes in cybercrime can occur automatically across country limits.

Furthermore, implementing Article 28 paragraph (1) in the Electronic Information and Transaction Law is also not an easy matter. In this article, the procedural law used is still the same as the Criminal Code, namely Law Number 8 of 1981

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[8] Lilik Mulyadi and M SH, 'Pergeseran Perspektif Dan Praktek Dari Mahkamah Agung Republik Indonesis Mengenai Putusan Pemidanaan', *Majalah Varia Peradilan*, 2006, 1–17.

[9] Ika Pomounda, 'Perlindungan Hukum Bagi Korban Penipuan Melalui Media Elektronik (Suatu Pendekatan Viktimologi)', *Jurnal Ilmu Hukum Legal Opinion*, 3.Edisi 4 tahun 2015,hal. 4.

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concerning the Criminal Procedure Code. Similar to the Criminal Code, lawa enforcement of the Electronic Information and Transaction act is difficult.

Legal protection for migrant workers as Invisible victims as a result of cybercrimes not being optimal, therefore an effort is needed to provide protection for migrant workers by the state. The rights of victims must be seen as a form of equal treatment for everyone before the law (equality before the law). However, unfortunately the act Electronic Information and Transaction does not clearly regulate the protection provided to victims for the occurrence of criminal acts in conducting electronic transactions. The act Information and Electronic Transactions only regulates explicitly the rights of victims in the event of a criminal act in electronic transactions, including cheat via the internet, it is the right to settle cases and punish people who have committed criminal acts. With the right of victims to punish perpetrators of fraud through the internet, it is contained in Article 45 Paragraph (1) of the act ITE , which imposes a criminal sentence on the perpetrator in the form of imprisonment and a fine. That's if the offender and the victim are both in Indonesia[10].

The development of a legal protection system for users of information technology as victims of national cybercrime actors must be directed at realizing the values of Pancasila in the cybercrime legal system that will be created in the future, regarding experiences with legal protection system obstacles for users of information technology as victims of cybercrime perpetrators who separated by the different, it is enough to encourage faster to leave the legal system old, which is an era that is imbued with an individualistic spirit by using a system of protection to the act Electronic Information and Transaction as a victim of cybercriminals that is in line with the Indonesian people's view of life and the ideals of national law.[11]

D. CONCLUSION

The position of migrant workers is as an invisible victim, this is because existing legal instruments have not been able to provide legal protection for migrant workers. Both in criminal procedural law and in criminal law have not been able to touch the perpetrator. The legal basis for ensnaring the perpetrators of this crime does not yet exist, for example where the victim can report the perpetrator of the crime, the victim is an Indonesian citizen and the perpetrator is also an Indonesian citizen but when a crime occurs the victim is outside the jurisdiction of Indonesian law. The police are unable to do anything to take action.

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[10] Dhaniar Eka Budiastanti, 'Perlindungan Hukum Terhadap Korban Tindak Pidana Penipuan Melalui Internet', *Jurnal Cakrawala Hukum*, 8.1 (2017), 22–32.

[11] Hartanto Hartanto, 'Perlindungan Hukum Pengguna Teknologi Informatika Sebagai Korban Dari Pelaku Cyber Crime Ditinjau Dari Undang-Undang Informasi Dan Transaksi Elektronik (UU ITE)', *HERMENEUTIKA: Jurnal Ilmu Hukum*, 5.2 (2021).

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Lilik Mulyadi and M SH, 'Pergeseran Perspektif Dan Praktek Dari Mahkamah Agung Republik Indonesis Mengenai Putusan Pemidanaan', *Majalah Varia Peradilan*, 2006, 1–17.

Ni Putu Rai Yuliartini, 'Kedudukan Korban Kejahatan Dalam Sistem Peradilan Pidana Di Indonesia Berdasarkan Kitab Undang-Undang Hukum Acara Pidana (KUHAP)', *Jurnal Komunikasi Hukum (JKH)*, 1.1 (2015).

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THE CONSTRUCTION PROTECTION OF RANSOMWARE VICTIMS OUTSIDE THE COUNTRY BOUNDARIES

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ABSTRACT

The threat of Ransomware crime in the cyber world overlooks national boundaries and has a negative impact on victims. The presence of Ransomware is carried out in extortion mode to take control of the program and prevent victims from accessing their private data for a certain amount of ransom money. In general, the protection for victims of crime should be compensated. To date, no rule sets the basis for victims to obtain compensation from the perpetrators, recalling that both perpetrators and victims reside in different countries under different legal jurisdictions. Therefore, it is deemed necessary to study the construction of protection for ransomware victims outside the country's boundaries with legal certainty. This paper is arranged based on the results of normative research using a statutory approach and grammatical and teleological interpretation analysis. The results showed that restitution should be given to the victims, as in line with the clauses outlined in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. The regulation on the restitution for cybercrime where the perpetrators and victims are under different jurisdictions has not been regulated in the clauses of the ITE Law, and the restitution across borders of this country is also not regulated in the clauses of the Law on the Protection of Witnesses and Victims, hence it is necessary to regulate the right to obtain restitution and its mechanism as the basis assurance on the provision of restitution for victims with different jurisdictions from the perpetrators by taking into account legal certainty, balance principle and protection of human rights.

Keywords: Ransomware, Victims, Restitution

A. INTRODUCTION

The advanced technology and information mark the shift to a more modern and cutting-edge way of life. People have always been eager to live an easy and more efficient life with the availability of technology that keeps developing. Data network-based communication instrument, or simply called as Internet, represents advancement and modernism in technology and communication. Internet, standing for Interconnected Network, is everyone's preference with its never-diminishing popularity.

The Internet plays its major role, giving people unlimited access to information and virtual communication with others in other parts of the globe.[1] This advancement ensures that technology development seems to make this universe shrink to an extent where national boundaries are almost gone.[2]

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[1] Donovan Typhano Rachmadie, Supanto, Jurnal : *Regulasi Penyimpangan Artificial intelligence Pada Tindak Pidana Malware Berdasarkan Undang-Undang Republik Indonesia Nomor 19 Tahun 2016*, Recidive, Volume 9 No. 2, Mei-Agustus 2020

[2] Didik Endro Purwoleksono, **Hukum Pidana Untaian Pemikiran**, Airlangga University Press, Surabaya, 2019, p. 49

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Advanced information and communication technology bring about complex impacts of change that are interconnected between phases of development. This is in line with Talcott Parson's, suggesting that "... the invention of technology is a generator of social changes since it causes a chain of changes."[3]

Talcott Parson's idea is not only focused on a positive aspect of the existence of both information and communication technology but it is rather counterbalanced by the negative effect that gives more space for cybercrime that is common to take place in several countries in the world, including Indonesia.

Cybercrime appears in different forms of practices, such as blackmailing another person, threatening that the hacked system will run back to normal after the blackmailed person pays ransom money. This act involves software and Artificial Intelligence called malware. Malware, literally standing for malicious software, has several categories called ransomware, a harmful software able to encrypt users' data and demands the ransom to allow the description of the data in a certain period.[4]

Harapan Kita Hospital and Darmais Hospital in Jakarta were the two victims of ransomware. This attack started with the locking of all computer systems and data of the victims, blocking access from users. Unblocking access was impossible unless a ransom in the form of bitcoin valued at US$ 300 was paid within three days from the day the systems were hacked. Failing to pay the ransom would lead to vanishing data of the patients.[5]

This case indicates that all people or organizations have a chance to become the victims of this ransomware. The loss caused by this cyberattack is not only restricted to individuals but is also potential to harm organizations. This situation is pertinent to Van Boven's idea, defining victims as those, either individuals or groups, who suffer from losses, either physically, mentally, emotionally, or economically. It could also appear as a violation of fundamental rights due to an intentional act or negligence.[6]

To fulfill one of the rights in the recovery process victims may experience, compensation could be taken into account through restitution mechanism, given in accord with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. With regard to the restitution, Law Number 19 of 2016 concerning Amendment to Law Number 11 of 2008 concerning Electronic Transactions and Information does not set forth the principles of the rules, but these are outlined in the provisions of Law Number 31 of 2014 concerning Amendment to Law Number 13 of 2006 concerning Protection of Witnesses and Victims (henceforth referred to as Law of Witness and Victim Protection), in which the latter guarantees the rights of the victims to petition for the restitution.

If there is no reinforcing and clear-cut regulatory basis regarding the guarantee and the provision of the restitution for the victims of the ransomware that could extend beyond national boundaries in the provisions of Law of Witness and Victim Protection and the Government Regulation concerning Compensation, Restitution, and Aid for Witnesses and Victims, and Law concerning Electronic Information and Transactions, it indicates that there are legal loopholes in the provision and guarantee of restitution especially when the victims and perpetrators are within different jurisdictions.

Thus, departing from this issue, it is necessary to conduct a more profound study on the construction of the protection of ransomware victims outside a state boundary

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[3] Satjipto Rahardjo, **Hukum dan Perubahan Sosial**, Bandung, Alumni, 1979, p.153

[4] Ferdiansyah, Jurnal: Analisis Aktivitas dan Pola Jaringan Terhadap Eternal Blue & Wannacry Ransomware, Jurnal Sistem Informasi, Volume 4, Nomor 1, Juni 2018, p. 37

[5] Lesthia Kertopati, Dua Rumah Sakit di Jakarta Kena Serangan Ransomware WannaCry, https://www.cnnindonesia.com/teknologi/20170513191519-192-214642/dua-rumah-sakit-di-jakarta-kena-serangan-ransomware-wannacry, accessed 20 June 2021

[6] Rena Yulia, **Viktimologi Perlindungan Hukum terhadap Korban Kejahatan**, Graha Ilmu, Yogyakarta, 2013, hlm. 49.

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based on legal certainty. This research employed normative-juridical methods and a statutory approach. The research data were analyzed based on grammatical and theological interpretations.

B. DISCUSSION

1. The Construction of Protection of Ransomware Victims outside a State Boundary according to Legal Certainty

Ransomware is one of the malware types that could encrypt all the data of the victims in cybercrime.

Malicious software or commonly dubbed as malware is computer-based software deliberately designed by a cyber attacker to damage a system, network, or server silently, unnoticed by data or server owners. Etymologically, malware was derived from two words, namely *malicious* meaning bad intention and *software*.[7] In a nutshell, malware is dangerous software intentionally created to attack computer systems, computer users, and networks.[8]

The following are examples of malware types commonly seen on computers:

a. Worm, a program intentionally made to access a computer system where specific damaging codes are spread from one computer unit to another automatically;
b. Spyware, a malware program that spies all the activities of the victims silently and could obtain sensitive information like passwords, login data, and even credit cards;
c. Ransomware, software created to encrypt the data of the victims on a computer so that it blocks access. This act is usually followed by the demand for ransom money to unblock the access.[9]

Thus, ransomware is specifically created to encrypt a computer and all data to block access to the computer, and unblocking is only possible when the ransom is paid. As it is dubbed, ransomware demands an amount of money over encrypted data.[10]

This cybercrime has posed some negative effects for victims, including material loss since the access to the computer and data saving is held up. This loss escalates especially when the computer systems are owned by a legal entity. This loss is also contingent upon the way the blackmailing is done for the ransom that has to be paid by the victims to unblock the access.

The loss always escalates and creates discomfort for the victims. This worsening situation indicates that recovery measures need to be taken for the ransomware that is committed beyond national boundaries, and restitution can be one of the protection types that can be provided for the aggrieved parties. The restitution given to compensate the loss by perpetrators serves as a connector to embody an act of re-introduction to the social responsibility of an individual.[11]

The concept of this re-introduction is pertinent to the meaning and definition of restitution as outlined in the provision of Article 1 point 11 of Law Number 31 of 2014 concerning Amendment to Law Number 13 of 2006 concerning Protection of Witnesses and Victims (Law of Witness and Victim Protection), stating "restitution

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[7] Nur Syamsi Tajriyani, Jurnal : Pertanggungjawaban Pidana Tindak Pidana Pemerasan Dengan Modus Operandi Penyebaran Ransomware Cryptolocker, Juris-Diction, Vol. 4 (2) 2021, p. 688

[8] Retno Adenasi & Lia A. Novarina, Jurnal : Malware Dynamic, Jurnal of Education and Information Communication Technology, Volume 1, Nomor 1, Tahun 2017, p. 37

[9] Awan Setiawan & Erwin Yulianto, **Keamanan dalam Media Digital,** Informatika, Bandung, 2020. p. 61

[10] Badan Siber dan Sandi Negara, Penanganan dan Pencegahan Insiden Ransomware, https://govc-sirt.bssn.go.id/penanganan-dan-pencegahan-insiden-ransomware/, accessed 21 June 2021

[11] Marlina dan Azmiati Zuliah, **Hak Restitusi Terhadap Korban Tindak Pidana Perdagangan Orang**, Refika Aditama, Bandung, 2015, p. 40

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is a compensation provided for the victim or his/her family by the perpetrator or the third party".[12]

The definition of restitution as outlined in the Law of Witness and Victim Protection implies that restitution is compensation an individual should consider principally to help recover the situation as it was before.[13]

The restitution given plays its indispensable role in enforcing the protection of the victims to help them get their rights as the parties harmed by the crime. Thus, the UN through the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power clearly states that the chance of recovery given to the victims in the form of compensation is one of the forms of protection. These protection forms, governed in the declaration mentioned, constitute restitution and compensation.[14]

This compensation must be provided justly for the victims of the crime, their families, or their dependents. The restitution must constitute the return of the properties or an amount of money, covering the cost spent by the victims, service provision, or right recovery.[15]

Recalling that restitution holds its position as an effort to fulfill the rights of the victims to get compensation, it is obvious that the restitution is inextricable from the dignity attached to human rights, where there are several instruments of human rights implying that every person principally has the right to effective recovery guaranteed by the state constitution and legislation.[16]

Several regulatory provisions in Indonesia principally and specifically govern the restitution resulting from certain criminal offenses, such as Law Number 21 of 2007 concerning Human Trafficking Eradication, Law Number 35 of 2014 concerning Amendment to Law Number 23 of 2002 concerning Child Protection, and several regulatory provisions in other specific laws. However, the principles of the restitution provision addressed to the victims of cybercrime are not assertively regulated in the law concerning Electronic Information and Transactions, and, thus, the restitution only referred to the provisions of Law of Witness and Victim Protection as one of the laws in Indonesia that governs the provision of restitution for the victims of crimes, not to a certain specification.

Specifically, the provision of restitution is governed in Article 7A of Law concerning Protection of Witnesses and Victims:

i. The victims of a criminal offense have the right to get restitution of the following forms:
    1. Compensation over the loss of property or income
    2. Compensation over the suffering directly related to a criminal offense, and/or
    3. The cost paid as compensation that covers medical and/or psychological treatments.

i. The criminal offense as intended in Paragraph (1) is stipulated under the Decision of Witness and Victim Protection Organization (henceforth referred to as LPSK)

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[12] Article 1 point 11 of Law Number 31 of 2014 concerning Amendment to Law number 13 of 2006 concerning Protection of Witnesses and Victims

[13] Fauzy Marasabessy, Jurnal: **Restitusi Bagi Korban Tindak Pidana : Sebuah Tawaran Mekanisme Baru,** Tahun ke-45, No. 1 January-Maret 2015, p. 55

[14] Rena Yulia, op.cit p. 58

[15] Declaration of Basic Principal of Justice for Victim of Crime and Abuse of Power, General Assembly Resolution 40/34 of 29 November 1985.

[16] Theo Van Boven, Tentang Mereka yang menjadi korban: Kajian terhadap Hak Korban Atas Restitusi, Kompensasi, Rehabilitasi, ELSAM, Jakarta, 2001, p. 13

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ii. The petition for restitution can be filed before or after a court decision that has permanent legal force according to LPSK.
iii. LPSK could petition for restitution petitioned before a court decision that has permanent legal force
iv. LPSK could petition for restitution after a court decision that has permanent legal force
v. If a case takes the decease of a victim, restitution could be given to the victim's family members as heirs/heiresses.[17]

Article 7B of Law concerning Protection of Witnesses and victims states "further provisions regarding the procedures of petitions and compensation and restitution as intended in Article 7 and Article 7A are governed in government regulations".[18] To enforce the mandate as set forth in Article 7B of Law of Witness and Victim Protection, Government Regulation Number 7 of 2018 concerning Compensation, Restitution, and Aid for Witnesses and Victims was passed. This government regulation governs the procedures of filing a petition and the provision of restitution for a victim of a criminal offense. The mechanism of the petition to the process of the restitution is set forth in Article 19 to Article 36 of Government Regulation Number 7 of 2018 concerning Compensation, Restitution, and Aid for Witnesses and Victims.

However, all regulatory provisions relating to the procedures of the petition to the provision of restitution for victims as suggested in the Government Regulation mentioned still leave legal loopholes concerning the procedures and guarantee of the process of restitution provision for the victims of criminal offenses that go beyond national boundaries. The legal certainty regarding regulatory principles, the patterns of the procedures, and the petition for restitution for victims need to be taken into account recalling that ransomware can be committed by whoever has the intention to harm others, that it can go beyond national boundaries outside Indonesia, and that it can be committed by another person overseas.

These shortcomings are getting more obvious with the absence of the mechanism of LPSK in terms of the coordination that should involve law enforcers of the domicile where a ransomware perpetrator resides. Thus, it is considered essential that the principles of coordination established by LPSK be set to fulfill the right to restitution of the victims in Indonesia against the perpetrators residing in another state.

That is, restitution sets an important milestone in creating justice for victims or recovering all the losses the victims suffer from due to the crime. This is in line with the thought of Cortney Lollar, "Traditionally, in both the civil and criminal contexts, restitution was used to financially restore a person economically damaged by another's actions, thereby preventing the unintended beneficiary from being unjustly enriched at the aggrieved party's expense."[19]

The absence of the provision of restitution for the victims harmed by ransomware with the situation where the perpetrator possibly resides in another state also means the absence of the principle of legal certainty and justice for the victims concerned in terms of getting compensation regarding the losses caused. These legal loopholes and shortcomings could potentially injure the principles of restitution provision, elaborated in the following, for the victims.

a) Legal Certainty

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[17] See Article 7A of Law Number 31 of 2014 concerning Amendment to Law Number 13 of 2006 concerning Protection of Witnesses and Victims.

[18] See Article 7B of Law Number 31 of 2014 concerning Amendment to Law Number 13 of 2006 concerning Protection of Witnesses and Victims.

[19] Cortney Lollar, Jurnal : **What Is Criminal Restitution,** Iowa Law Review, Vol.100, 2014. p. 7

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This principle could set a strong fundamental for law enforcers to perform their tasks in providing several forms of legal protection for victims.[20] Legal certainty is principally a fundamental that adheres to legislation that is made in a concrete form and governs certain behavior. Legal certainty asserts that regulatory provisions in legislation must guarantee certainty and must not appear gray or ambiguous (*Obscurlibel*); it must not leave any legal loopholes and conflict of norms.

Departing from the above understanding of legal certainty, it can be understood that legal certainty lies in the principle highlighting how law enforcers act and implement legal provisions set in society. Therefore, the absence of regulatory provisions that should serve as a stepping stone of law for the LPSK in performing the tasks intended to recommend the perpetrators residing off the national boundaries to provide restitution for the victims could potentially injure the principle of legal certainty in the provision of restitution for the victims of the crime. Moreover, in terms of legal loopholes of Law concerning Electronic Information and Transactions, it is obvious that there is no clear legal certainty for the victims of cybercrime to get restitution as their compensation directly paid by the perpetrator, thereby injuring the values of justice for the victims.

b) Balance

Law is principally intended to set a balance in regulation, justice, and law per se. With this balance in society, especially in the balance of justice, benefits and happiness can be achieved in society. This balance represents equality between rights and responsibilities owned by a person before the law. When this principle is connected to the mechanism of restitution, this connection, without doubt, also takes into account the equality between rights and responsibilities that an individual should accept.

With the principle of balance, this study suggests that the provisions of the principles of criminal law not only recognize the imposition of punishment on perpetrators but there should also be the principles of criminal law on the side of the victims to help them get their rights and protection due to the crime. One of the principles that requires extension is a passive national principle, where the protection of the victims of the crime should accommodate the passive national principle. With it, the provisions of the legislation regarding the protection of witnesses and victims in Indonesia could be in place for each citizen of Indonesia as the victim of the crime committed by a foreigner, so that restitution provision could reach what goes beyond the national boundaries by still adhering to the principle of human rights and the provisions in the Declaration of Basic Principles of Justice for Victim of Crime and Abuse of Power that asserts that restitution is a right accepted by a victim of the crime. This equality is certainly based on the principle of equality before the law for everyone, not to mention the victims of the crime that deserve protection and recovery following the crime.

c) Compensation and rehabilitation

This principle requires the party concerned to give compensation over the material and non-material losses caused to an aggrieved party in a crime, relating to either the crime per se or procedural matter over the investigation of a criminal case.[21] Principally, the compensation and rehabilitation following the losses are indispensable for the victims, which is intended to restore the conditions of the victims as they were before.

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[20] Marlina, Azmiati. op.cit. p. 120

[21] Ibid. p. 123

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The principle of compensation and rehabilitation constitute the principle that serves as the basis of the implementation of compensation in the form of restitution. This principle is focused on the compensation addressed to the victims over both material and non-material losses. That is, pertinent to its principle to provide compensation for the aggrieved party, restitution should be able to give the right to the party concerned through restitution, and this right should be protected by law.

Following the analysis and the elaboration on some basic principles regarding the rights of the victims in the form of compensation through the mechanism of restitution, this study presents the obvious construction that should be established to bring about justice and legal certainty for the victims of the ransomware to help them get restitution from the perpetrators that reside outside the jurisdiction of Indonesia. This construction may take the extension of the passive national principle, implying that the legislation concerning witness and victim protection applies to all people in Indonesia as the victims of the foreigners. This extension should also take into account the principle of equality before the law, and the protection of the victims should also be upheld. This extension of national principle is manifested by making an additional regulation and authority for LPSK to coordinate efforts that aim to encourage the restitution payment to the victims of ransomware in connection with the structure of the law of the jurisdiction where a criminal commits a crime. A clear-cut regulation is expected to govern the restitution that touches what goes beyond the national boundaries and to bring justice and legal certainty to the victims of a transnational crime that may involve different laws due to different jurisdictions.

C. CONCLUSION

Restitution should be provided for the victims, and this mechanism adheres to the provisions set forth in the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. The regulation governing restitution provision in a cybercrime, where the perpetrators and victims can be from different jurisdictions, is not yet outlined in the Law concerning Electronic Information and Transactions. In terms of the restitution regarding transnational crimes and its mechanism as the basis of the guarantee to provide the restitution for the victims from the jurisdiction different from that of the criminals, efforts to establish the construction of the extension of the passive national principle, legal certainty, balance, and the protection of human rights are also to be taken into account.

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THE PHENOMENON OF INMATES BECOMING VICTIMS IN CORRECTIONAL INSTITUTIONS

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ABSTRACT

Inmates becoming victims in Indonesian correctional institutions is not a new phenomenon and has been happening for a very long time. Inmates may be considered victims because some of their rights as human beings have been violated, causing enormous damage and/or losses. There are 4 things that can be studied related to this. First, the conducting parties. Second, the regulations. Third, the forms of violations. And the Last, the solutions. Through research with a sociological juridical approach, it can be stated that the conducting parties are the institutions, the officers and the prisoners. The proposed Solution is through criminal policy by reducing the inmate populations in most Indonesian correctional institutions which are experiencing overcrowding situations. It is also important to increase the quantity and quality of professionals and the integrity of the officers.

Keywords : Inmates, Correctional Institutions, Overcrowding

A. INTRODUCTION

Correctional Institutions (Lapas) as stipulated in Article 1 number 3 of Law Number 12 Year 1995 concerning Corrections are places to carry out the guidance of inmates and Correctional Students. This guidance uses a system called the Correctional System which is regulated in Article 1 number 2 which states that "The Correctional System is an order regarding the direction, limit and method to foster Correctional Inmates so that they are aware of their mistakes, improve themselves, and do not repeat criminal acts so that they can accepted by the community, can play an active role in development, and can live normally as a good and responsible citizen. Correctional Institutions should be in congenial, condusive, and sterile settings in order to carry out their goal of guiding inmates and correctional students. According to Andrew Coyle, when the state "robs" a person of his independence and makes him an inmate, the state is still obliged to be able to place the person concerned as a dignified human being[1] and can ensure that the person concerned is safe from actions that can harm him both physically and psychologically.[2] Providing a sense of security for all people who enter it, including inmates, officers, and visitors, is one of the concrete forms.[3]

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[1] Dignity is defineds as a quality or state of being worthy, honoured or esteemed, and it is 'realized through individual freedom that is brought to bear in the course of the self's participation in meaningful decision making and exercise of individual responsibility' (Shannon, D.W. Six Degrees of Dignity: Disability in an Age of Freedom; Creative Bound International: Ottawa, ON, Canada, 2007; ISBN 1894439317., hlm.17)

[2] Andrew Coyle, A Human Rights Approach to Prison Management: Handbook for Prison Staff (International Centre for Prison Studies, 2002) hlm. 8

[3] Alison Liebling, 'Moral performance, inhuman and degrading treatment and prison pain', Punishment and Society 13, 2011, hlm. 533.

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However, the condition of Correctional Institutions in Indonesia does not seem to be the case, there are still aspects related to infrastructure and facilities as well as the behavior of officers and inmates that are not in accordance with existing provisions. This Inadequate infrastructure and facilities lead to overpopulation or overcrowded, which greatly disrupts the purpose of guidance. This can cause disturbances in the behavior and psychological health of inmates.[4]

Furthermore, García-Guerrero, Marco A, stated that Overcrowding can entail on a general level: a) a violation of international rules on the separation of inmates (men-women; preventive-sentenced inmates, etc.); b) a risk to the psychological and physical health of inmates; c) a risk for the public healthcare; d) a dangerous environment for inmates and for penitentiary professionals; and e) an attack against human rights, for it can lead to a cruel or inhuman treatment.[5] On October 25, 2021, data on prisoners and detainees shows that there are 270,167 people in the facility. However, the facilities are only suitable for 132,107 people. This facts indicates that there is an excess of 138,060 residents, or 154% increase.

Wolf refers to this situation as a "inmates management catastrophe. Wolf stated that there were 8 factors that caused the situation, namely "(1) the prison population was high; (2) Excess occupants; (3) poor conditions in prison (for both inmates and prison officers); (4) Lack of officers; (5) Riots between prison staff; (6) Poor security; (7) Improper placement of prisoners of long term and life sentence prisoners and mentally disturbed prisoners; (8) Riots and other damages of control over prisoners. [6]

In several concrete cases, in addition to the very high and almost evenly distributed overcrowding of correctional institutions throughout Indonesia, there is also violence perpetrated against inmates by officers, as well as violence perpetrated by fellow inmates. In this situation, The prisoners or inmates who experience the above-mentioned losses and/or violence are deemed to be victims. This refers to Vonomir Paul Separovic's opinion regarding the limit of victims as follows.

> *The person who are threatened, injured or destroyed by an actor or omission of another (mean, structure, organization, or institution) and consequently; a victim would be anyone who has suffered from or been threatened by a punishable act (not only criminal act but also other punishable acts as misdemeanors, economic offences, non fulfillment of work duties) or an accidents. Suffering may be caused by another man or another structure, where people are also involved.* [7]

B. PROBLEM STATEMENT

1. Which parties can make inmates become victims and what rules are violated?
2. What policies can be implemented to reduce inmates becoming victims?

C. DISCUSSION

1. Parties who can make inmates becoming victims.

Three (three) parties, meaning institutions, officials, and prisoners, act as perpetrators who may lead inmates to become victims. These three parties fall within the qualifications regarding their victims whose limits are given by Separovic. "*The person who are threatened, injured or destroyed by an actor or omission of another (mean, structure, organization, or institution)…"*[8] The institution referred to here is the Ministry of Law and Human Rights cq. Directorate General of Correctional Institutions. This institution is included in the qualification as a perpetrator based on Separovic's opinion which states:"…*a victim would be*

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[4] García-Guerrero, Marco A, Overcrowding in prisons and its impact on health, Rev Esp Sanid Penit 2012; 14: 106-113

[5] *Ibid.*

[6] Michael Cavadino and James Dignan, *The Penal System an Introduction,* (London: Sage Publications), 2003, hlm. 10.

[7] Zvonimir Paul Separovic, 1985. *Victimology Studies of Victims.* Zagreb: Pravni Fakultet. hlm. 29.

[8] *Ibid.*

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anyone who has suffered from or been threatened by a punishable act (not only criminal act but also other punishable acts as misdemeanors, economic offences, non fulfillment of work duties) or an accidents. Suffering may be caused by another man or another structure, where people are also involved". [9]

The element of someone who has suffered a loss as a result of an act that has been threatened with punishment. The presence of some rules that are not applied are acts that are threatened by punishment. Basic rights are not respected due to the high number of inmates. This can be seen as stated in the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 11 of 2017 concerning the Grand Design of Overcrowded Handling in State Detention Centers and Correctional Institutions. This condition raises new problems, including the non-fulfillment of the basic rights of each detainee/inmates. It is even further stated that other impacts that arise as a result of overcrowded conditions include the emergence of irregularities, escapes, riots, fires, drug smuggling, and human rights violations. When there is a violation of human rights, it means that there are victims of violations of human rights, which in this case are individual prisoners who do not obtain their basic rights while serving prison sentences.[10]

The suffering of inmates is also experienced by them as a result of not implementing Article 12 of Law Number 12 year 1995 concerning Corrections, especially paragraph (1) letters c and d related to the classification of the length of the sentence imposed and the type of crime

Law Number 12 of 1995 concerning Corrections Article 12 paragraph (1) formulates: In the context of fostering prisoners in Correctional Institutions, classification is carried out on the basis of: age; b. gender; c. the length of the sentence imposed; d. type of crime; and e. other criteria in accordance with the needs or development of coaching.

In actuality, because most correctional institutions lack sufficient space and capacity, inmates are not placed according to the length of their sentence or the sort of crime they committed.

Another violation is against the provisions contained in the 10 Principles of corrections. The alleged violations are mostly found in the fourth principle, which states that: "The state has no right to make them worse or worse off than before they were convicted.

One of the ways is to avoid mixing inmates and students, or those who commit serious crimes with those who commit minor crimes, and so on". Violation of this principle has the same character as the violation of Article 12 paragraph (1) particularly letter c and letter d inmates who are mixed together are more likely to become victims because they are more miserable, hurting, and tense. From a criminological perspective, this may encourage inmates to commit crimes once they are released. In other words, inmates have a proclivity for recidivism, which means that the goal of criminal law and imprisonment is ultimately unfulfilled.

Another victimization occurs when some inmates are unable to do the five daily prayers, particularly the mahgrib and isya prayers, when they are in their rooms. This happens especially in correctional institutions that are overpopulated with a very high percentage, for example 500%. In this condition, the institution has violated Article 14 of Law Number 12 of 1995 concerning Corrections, especially paragraph (1), which states that prisoners have the right to: a. worship according to their religion or believe. Violations of this Article are considered human rights violations.

Officers as perpetrators who could cause inmates to become victims occur with the presence of several officers who carry out actions in the form of violence, as well as extortion of inmates. The violence was reported in the media, with a video of an inmate suspected of being abused at the Class IA Tanjung Gusta

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[9] *Ibid.*

[10] https://peraturan.bpk.go.id/Home/Details/133191/permenkumham-no-11-tahun-2017 Accessed on October 20th, 2021.

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Penitentiary in Medan going popular on social media. The officer's request for a sum of money was not met, resulting in the violence. An inmate also revealed that they were frequently subjected to extortion in the video narration that circulated.

A qualitative statement is also seen in the news which states that "This is the action of an employee of the Correctional institutions Class IA in Medan. We are not animals. "We are humans. We have been dragged here for years because of small cases. We can not get out. If we did not give the money, we would be beaten like this, " [11]

There were incidents of violence conducted by unscrupulous officers against inmates in Cilacap On Thursday, March 28, 2019, during the transfer process of 26 narcotics offenders from the Krobokan Correctional Institution and Bangli Correctional Institutions to Nusakambangan. Officers acted violently while a group of inmates were being unloaded in the front yard of the Wijayapura Task Force Post on their way to the ferry boat. The Directorate General of PAS has examined 13 officers suspected of having committed acts of violence whose videos have been widely circulated on various social media. In the video, a number of men with handcuffs on their hands and heads covered with shirts squatting down to a ship. Some of them have fallen and received a hit from the correctional officer. They were then violently dragged by the officers.

For this behavior, the perpetrator can be qualified to have committed a criminal act of persecution, which is defined in Article 351 paragraph (1) of the Criminal Code with a maximum imprisonment of two years.

In addition, the event of a fire that occured at the Tangerang Penitentiary on September 8, 2021, can also be classified as acts of victimization against inmates. The big fire killed 41 inmates on the spot, critically injured 8 others, and left 72 more with minor injuries.[12] The officer in charge could be charged with committing a criminal act under Article 359 of the Criminal Code, which stipulates that negligence causing the death of another person is punishable by a maximum sentence of five years in prison or a maximum sentence of one year in jail.

Victimization can also take the shape of acts of persecution, confiscation, or theft carried out by fellow inmates. The most recent example that went viral in the media was the maltreatment of an inmate by another inmate in a public restroom in the mosque inside the Jember Class IIa Penitentiary on September 4, 2021.The victim was hounded by the perpetrator after he was accused of being a police spy.[13] In cases of rape or sexual assault, convicts are frequently subjected to torture. This is as qualitative statements stated by ex-inmates:

They were stripped naked and pummeled for the first few weeks. Their 'genitals' are lubricated every day with balm or chili. They are told to Crawl around the field. They are, nonetheless, alive and suffering. Rapists are the ones we despise the most. Prison must have made them give up.[14]

Furthermore, it is stated Being stripped and beaten alternately has been a procedure. The most heinous act is telling them to eat and drink their own feces. Not to mention being ordered to "serve" the inmates one by one. For inmates, having sex with young children is an unforgivable crime," he explained.[15]

One of the rape case inmates, who is an inmate at the Yogyakarta Class II Correctional Institution, made the following statement:

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[11] https://www.merdeka.com/peristiwa/viral-penganiayaan-terhadap-napi-di-lapas-tanjung-gusta-6-orang-di-periksa.html Accessed on October 23rd 2021.

[12] https://megapolitan.kompas.com/read/2021/09/29/12071561/polisi-tetapkan-3-tersangka-baru-kasus-kebakaran-lapas-tangerang-salah, Accessed on October 23rd 2021.

[13] https://www.merdeka.com/peristiwa/dituduh-mata-mata-polisi-narapidana-baru-dianiaya-sesama-penghuni-lapas-jember.html, Accessed on October 23rd 2021.

[14] https://bergelora.com/ngeri-ini-siksaan-di-penjara-bagi-pelaku-kekerasan-seksual/ Accessed on October 23rd 2021.

[15] https://bergelora.com/ngeri-ini-siksaan-di-penjara-bagi-pelaku-kekerasan-seksual/ Accessed on October 23rd 2021.

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"When I initially arrived, I was beaten by a cellmate, and I had to put up with it for a while." In any case, things aren't looking good. Not only the treatment between inmates, but also the officers' discriminating behavior. People in my neighborhood have also been stressed because they have been tortured in the Penitentiary for rape cases. In the Correctional Institution, people with rape charges have been bullied."[16]

Several current legal rules are violated by this act of victimization, including the following provisions::

1. Article 4 letters n and o of the Minister of Law and Human Rights' Regulation No. 6 of 2013 concerning the Order of Corrections and State Detention Centers ("Permenkumham 6/2013") confirms that every inmate or detainee is prohibited from:
   n. *commit acts of physical and psychological violence against other inmates, detainees, correctional officers, or guests/visitors;*
   o. *deliver provocative statements that could disrupt security and order. If the above actions are violated, the inmate or detainee may be subject to sever disciplinary sanctions, in the form of:*
      a. *6 days in solitary confinement, which can be extended twice for another 6 days; and*
      b. *In the current year, they are not eligible for remission rights, leave to visit family, conditional leave, assimilation, leave before release, or parole, and they are registered in register F.*

2. **Policies that can be implemented to reduce inmates become victims.**

The policy that will be implemented must be based on the problem's root cause. The primary cause of the problem is that the Correctional Institution's inmate population exceeds its available capacity, or it is overcrowded. As a result, real, meaningful and concrete policies and realistic initiatives to minimize the number of inmates in correctional institutions are required. The government through related institutions can optimize existing positive legal norms, which include the Criminal Code, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 03 of 2018 concerning Terms and Procedures Method of granting remission, assimilation, leave to visit family, parole, leave before release, and conditional leave, National Police Chief Regulation Number 6 of 2019 concerning Criminal Investigations. The government through related institutions can optimize existing positive legal norms including the Criminal Code, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 03 of 2018 concerning Terms and Procedures Granting of remission, assimilation, leave to visit family, parole, leave before release, and conditional leave, National Police Chief Regulation Number 6 of 2019 concerning Criminal Investigations. Furthermore, In this case regarding the occurrence of the covid-19 pandemic, Ministerial Regulation Number 10 of 2020 concerning Conditions for Providing Assimilation and Integration Rights for Prisoners and Children can be used in the Context of Preventing and Controlling the Spread of Covid-19. Another rule released by the prosecutor's sub-system is the Restorativ Justice policy, which was promulgated on July 22, 2021 by the Attorney General's Regulation (Perja) No. 15 of 2020.

[16] Aroma Elmina Martha dan Chandra Khoirunnas, 2019, Penganiayaan Terhadap Narapidana Pelaku Perkosaan Yang Mengalami Label Negatif Di Lembaga Pemasyarakatan (Studi Di Lembaga Pemasyarakatan Wirogunan Yogyakarta), Jurnal *Veritas et Justitia* Vol Volume 4 • Nomor 2 • 388 DOI: 10.25123/vej.3064.

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Meanwhile, it is vital to develop character for officers with integrity and professionalism in order to overcome the violence committed by officers against inmates who are driven by financial motives.

The presence of violence among inmates is usually induced by the residence's extremely unpleasant atmosphere, which makes it psychologically easier for them to become emotional and, as a result, resort to violence as an outlet. Then, once again, limiting the number of inmates in the Correctional Institution is the way to be taken.

D. CONCLUSION

Based on the discussion above, it can be concluded as follows.

1. The party that can make inmates become victims is the institution, which in this case is the ministry of law and human rights cq. Directorate of Corrections, Correctional Institution officers, and prisoners. The regulations that are violated include the Correctional Law, Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 11 of 2017 concerning Grand Design, Regulation of the Minister of Law and Human Rights Number 6 of 2013 concerning Regulations of Correctional Institutions and State Detention Centers, correctional principles and The Criminal Code.
2. The form of policy that can be taken to reduce inmates becoming victims is to significantly reduce the number of inmates by optimizing legal norms related to the reduction of inmates, and increasing the integrity and professionalism of correctional officers.

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QUALIFICATIONS OF EXPERT WITNESS ON TERRORISM CASE

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ABSTRACT

Trial of PT Chevron Pacific Indonesia (PT. CPI) bioremediation case. provides its nuances in disclosing material truth in the realm of criminal law. The allegation that arises is that there are expert information providers who do not have scientific, subjective work and have other motivations that are by the objectives of the criminal procedure law itself. There are no regulations regarding the qualifications of expert information providers in Indonesian laws and regulations. The purpose of this study is to analyze the qualifications of an expert on the disclosure of criminal acts of terrorism that occurred in Indonesia. The research method is normative juridical and analyzed prescriptively. The results of the study indicate that an expert witness on a criminal act of terrorism is someone who not only has competence in the form of special knowledge or skills as a result of training and experience, or information in helping to find facts with specialization in knowledge, skills, training in the fields of politics, religion, philosophy, ideology, criminal law or the social field or a combination of several fields but it is better to have joined in certain institutions with a specific study on the issue of terrorism or criminal acts of terrorism.

KEYWORDS: qualification of expert witnesses, criminal acts of terrorism, Indonesia.

A. INTRODUCTION

Disclosure of a criminal case does not seem complete without the presence of an expert information provider. Expert testimony is legal evidence according to Article 183 of the Criminal Procedure Code (KUHAP). The expert's statement is as evidence in the second order after witnesses, letters, instructions, and statements from the defendant.

The description related to the expert witness controversy is at the trial of the bioremediation case of PT Chevron Pacific Indonesia (PT. CPI) (Abraham Lagaligo. 2021). The experts presented at the trial was Rob Hoffman, an expert who has directly handled more than 60 bioremediation projects in the world. These include Argentina, the United States, Canada, Nigeria, Kazakhstan, Bangladesh, Australia, and Angola. Hoffman directly handled Chevron's bioremediation project in Indonesia during 2000-2004. The second witness is Ali Dikri, a biologist who has researched bioremediation technology since 1994 as well as the author of a research paper on bioremediation that was presented at the IPA (Indonesian Petroleum Association) forum in 1998. Two other experts are Prof. M Udiharto as a bioremediation expert from the Lemigas Ministry Energy and Mineral Resources (ESDM), as well as Dr. Ir. Sri Haryati Suhardi as a bioremediation expert from the Bandung Institute of Technology (ITB). Then there is Edison Effendi as a bioremediation expert, whose statement was used as a reference by investigators from the Attorney General's Office (AGO) in investigating the bioremediation case of PT Chevron Pacific Indonesia (CPI), as a reference for the Financial and Development Supervisory Agency (BPKP) auditor Juliver Sinaga in calculating state losses, then used by the Public Prosecutor (JPU) in filing indictments and prosecutions at trial.

Another expert witness in question is a criminal law expert as well as an academic from the University of Indonesia, Eva Achjani Zulfa was sued at the Depok District Court

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(RED 2020), because her statement as an expert at the investigation the level was considered burdensome to the Plaintiff and resulted in sitting in the defendant's seat in the alleged criminal act of embezzlement of rights to immovable property.

Discussions in groups of legal observer organizations in Indonesia resulted in conclusions (Salmande n.d.). Another opinion stated that if the judge wants to take the interpretation of legal experts, then the right time is post proof. The emphasis is on the contestation to test the relevance of the legal expert in a case. each litigating party should be given the opportunity to test whether the expert's information is relevant or not before giving his opinion. He hopes that the objections of each party to the presence of experts should also be included in the decision and be considered by the judge. This opinion is reinforced by the opinion of Andi Hamzah (MYS n.d.) that judges adhere to the ius curia novit principle, namely that judges are considered to understand the law, so they are expected to resign if they do not deal with legal developments. In practice, there is almost no clear parameter of who can become an expert at the trial.

The purpose of the expert being presented at the trial is by the purpose of criminal procedural law in general, namely to seek and obtain or at least approach the material truth. Allegations that arise are that there are experts who do not have scientific, subjective work and have other motivations that is not by the objectives of the criminal procedure law itself.

The discussion on expert testimony applies to almost all criminal cases, not limited to general crimes and special crimes, but also ordinary crimes and extraordinary crimes.

The unification of perceptions and the formation of existing patterns has been the author's attention. The above becomes an important matter to be investigated regarding the neutral question is what is called an expert? who can be declared an expert? There are no regulations regarding the qualifications of expert information providers in Indonesian laws and regulations. This has become the author's interest to study further the signs regarding the definition of experts, expert statements, expert qualifications and information regarding evidence of expert testimony and patterns formed over the last few years. Legal issues that require discussion are the qualifications of experts and the parameters of a person declared as an expert witness on terrorism or an expert in handling terrorism crimes.

B. METHODS

type of research used is normative juridical research (Peter Mahmud Marzuki 2011) which is a process to find the rule of law, legal principles, and legal doctrines to answer the legal issues faced. The research approach in this study uses a statutory approach and a conceptual approach.

The types of legal materials used in this research are primary legal materials, secondary legal materials and tertiary legal materials. The technique of collecting legal materials used is a literature study which is then processed and analyzed using prescriptive methods.

C. ANALYSIS AND DISCUSSION

1. The Complexity of the crime of terrorism

Terrorism as a general description is a criminal act, including against civilians, which is carried out to cause death or serious bodily injury, or taking hostage, to cause terror in the general public or in groups of people. certain actions, intimidate a population or compel Governments or international organizations to take or not to take any action ("Resolusi Dewan Keamanan PBB No. 1566," n.d.), then the four waves of modern terrorism (Rapoport 2004) are anarchism, namely conceptualizing ideas and tactics for strategies to overthrow the political system by carrying out serial attacks on public places, then the new left, namely the use of ideas

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that are in line with the Marxist revolution to try and undermine the existing capitalist system, anti-colonial, namely abolishing colonial law, colonial rulers withdrew from the territory, forming the new state, and religion, namely the motivational energy of participating groups based on religious beliefs rather than political goals.
In connection with The Four Horsemen of Terrorism (Sitter 2016) that nationalism, socialism, religion and social exclusion. Then there is the statement that it is called terrorism only if it is done to us. When we do much worse to them, it is not terrorism (Chomsky 2011).
Terrorism has a definition when referring to Article 1 paragraph (2) of Law No. 5 of 2018 (Republik Indonesia, n.d.) concerning Amendments to Law No. 15 of 2003 concerning Stipulation of Government Regulations instead of Law No. 1 of 2002 concerning Eradication of Acts Crime of Terrorism Becomes Law (hereinafter referred to as Law Number 5 of 2018) jo. Law No. 15 of 2003 concerning Stipulation of Government Regulations instead of Law No. 1 of 2002 on Combating Criminal Acts of Terrorism Into Law has the following definition:

> *"Terrorism is an act that threatens or endangers a person's life. or many people by using physical or psychological violence that creates a widely tense atmosphere and also causes damage to strategic vital objects, the environment, public facilities, international facilities with ideological, political, or security disturbance motives."*

All kinds of acts of terrorism are always carried out on a deliberate basis because they have political goals. According to terrorism experts, the characteristics of terrorism are as follows:

a. Violence is carried out based on goals and motives. These motives are political, religious, ideological, and others. Of the several motives mentioned above, political motives are the most widely cited by terrorism experts as the most powerful motive in influencing terrorist acts of violence. Violence committed obtaining financial gain is not considered terrorism even though the act has the effect of fear;
b. An act can be called terrorism if it involves violence or threats of violence. In addition, violence can be considered as terrorism if the violence is planned, so an act of terrorism does not occur by chance or suddenly appears without a clear cause or there must be a plan behind an act of terrorism;
c. An act of terrorism must be able to affect the victims directly (target) and indirectly (audience), so the main target of an act of terrorism is not the direct victim but the indirect victim;
d. Terrorism involves non-state actors who commit acts of violence against people who are not involved in combat (non-combatants), namely civilians and soldiers who are not on duty in war;
e. Terrorism is carried out in a planned way by rational people, not by crazy people who think irrationally. Therefore, acts of terrorism are included in organized crime because the targets are carefully selected and carried out in an organized manner by terrorists (Muis 2013)

Based on the theories and concepts above, the field of criminal acts of terrorism oversees several main fields, namely the fields of politics, religion, ideological philosophy, criminal law and social fields.

2. **Identification of experts on terrorism crimes**

Expert Witnesses are witnesses who master certain skills according to article 56 of the Criminal Procedure Code, the suspect or defendant has the right to seek and propose witnesses or someone who has special expertise to provide information that is beneficial to him.

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Expert Witness/Expert testimony based on Article 1 point 28 of the Criminal Procedure Code that information is given by a person who has special expertise on matters needed to make light of a criminal case for the purpose of examination. In criminal cases, expert testimony is regulated in Article 184 paragraph (1) of the Criminal Procedure Code ("KUHAP") which states that one of the valid evidence in a criminal court is expert testimony. while Article 186 of the Criminal Procedure Code states that expert testimony is what an expert states in court.

Several factors and criteria that can be used as a requirement to become an expert witness (Shinder 2010), include:

a. Higher education degree or advanced training in a specific field;
b. Have a certain specialization;
c. Recognition as a teacher, lecturer, or trainer in a particular field;
d. Professional License, if still valid;
e. Join as membership in a professional organization; a better leadership position in the organization;
f. Publish articles, books, or other publications, and can also serve as reviewers. This would be one support that expert witnesses have long term experience;
g. Technical certification;
h. Awards or recognition from the industry.

Another opinion was expressed regarding the criteria for expert witnesses according to Yahya Harahap (Harahap 2009), that when viewed from a legal perspective, a person can be said to be an expert if he meets the following criteria:

a. A person who has special knowledge in a particular field of science so that that person is competent in that field of science;
b. A person is said to have expertise in a particular field of knowledge, it can be in the form of skills because of the results of practice and experience; and
c. Information and explanations are given by an expert can help find facts beyond the ability of ordinary people's general knowledge which is of course adapted to the specialization of knowledge, skills, training, and security.

The study of expert witnesses is directed at the opinion of the Constitutional Court of the Republic of Indonesia regarding the provisions concerning expert witnesses. These provisions include: 1) an expert is a person who is summoned in a trial to provide information according to his expertise; 2) expert testimony is information given in court; 3) experts can be proposed by the applicant, president/government, DPR, DPD related, or summoned by order of the court; 4) experts must be summoned legally and appropriately; 5) the expert must be present to fulfill the summons of the court; 6) expert testimony that can be considered by the court is information given by a person who does not have a conflict of interest with the subject and/or object of the case being examined; 7) before giving his/her statement, the expert is obliged to take an oath by with his/her religion or belief; 8) expert examination in the same field of expertise proposed by the parties is carried out at the same time;

The ethics and professionalism of expert witnesses do not yet have a standard rule in Indonesia, meanwhile the provisions of the Constitutional Court regarding expert witnesses in the eight provisions above are only in a formal form and do not cover the form of substance or material. This expert qualification is only based on objective provisions in the form of special knowledge or leads to expert professionalization and not on the code of ethics of terrorism experts.

The author's opinion is that the witness is someone who has competence in the form of special knowledge in a particular field of science, or in the form of skills due to the results of training and experience; or in the form of information and explanations that can help find facts with specialization in knowledge, skills, training, and security.

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Qualifications of expert witnesses on terrorism crimes related to special knowledge competencies in certain fields of science, for example, are experts in the fields of political philosophy and religion, then philosophy of religion and law, philosophy of social science and religion or a combination of the three fields.

The qualification of an expert witness is in the form of skills due to the results of training and experience or finding facts due to skills or training, this means that it applies to someone who has special knowledge, for example from certain institutions with specific studies on terrorism issues such as the National Counterterrorism Agency (BNPT), Indonesia Intelligence Institute, Center for Political Studies, Indonesian Strategic Policy, and the International Crisis Group or not limited to these institutions but can be from other institutions as long as they specifically study terrorism or terrorism criminal acts.

An expert witness in a criminal act of terrorism is a person who not only has competence in the form of special knowledge or skills as a result of training and experience, or information in helping to find facts with specialization in knowledge, skills, training in the fields of politics, religion, philosophy, criminal law or other fields. social services or a combination of several fields but it is better to have joined in certain institutions with a specific study on the issue of terrorism or terrorism crimes.

D. CONCLUSION

An expert witness on a criminal act of terrorism is someone who not only has competence in the form of special knowledge or skills as a result of training and experience, or information in helping to find facts with specialization in knowledge, skills, training in the fields of politics, religion, philosophy, ideology, criminal law or social sector or a combination of several fields but it is better to have joined in certain institutions with a specific study on the issue of terrorism or criminal acts of terrorism.

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PREVENTIVE MEASURES AGAINST POTENTIAL CRIME IN THE STATE CAPITAL (IKN) OF EAST KALIMANTAN

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ABSTRACT

The stipulation of two regencies in East Kalimantan Province, namely Penajam Paser Regency Utara and Kutai Kartanegara Regency as the Indonesian State Capital (IKN) which will replace DKI Jakarta Province will certainly bring many impacts. In the equitable development aspect, this capital relocation is certainly a positive decision, though it is necessary to conduct a study related to its social impact. The high community mobility, the financial turnover, and other accompanying aspects will of course also have an impact on the potential crime rate that may occur in Utara Penajam Paser Regency and Kutai Kartanegara Regency as the new State Capital (IKN). It is necessary to formulate strategic steps with comprehensive planning with views from various perspectives in order to be able to provide the preventive efforts against potential crimes in the State Capital (IKN) of East Kalimantan.

A. INTRODUCTION

The poorly-planned Urban and nation development will potentially lead to various impacts on the economic, social, and quality of the urban environment, mainly due to population growth and migration. According to the United Nations (2012), more than half of the world's population occupies urban areas, and this trend will continue until 2050 when around 70 percent of the population will live in urban areas.[1]

In order to reduce the economic impact due to the dense population, especially on the Java island, Indonesia is now tackling it by relocating the new state capital from Java to Penajam Paser Utara Regency and Kutai Kartanegara Regency in East Kalimantan. The reason behind the choice of the particular location is because of the minimum risk of natural disaster. Also, the area is considered quite strategic between developing cities, Balikpapan and Samarinda. This capital relocation plan is projected to trigger growth in various sectors in the East Kalimantan region.[2]

The government stated that the main reason for moving IKN out of Java was economic equity. Government and business activities based in Java, especially DKI Jakarta, have hampered the growth of new economic centers outside Java. The head of National Development Planning (Bappenas), Bambang Brodjonegoro, asserted that the aggregate regional disparities have hampered the national economic growth rate. With the

[1] Dadang Jainal Mutaqin et al., "Analisis Konsep Forest City dalam Rencana Pembangunan Ibu Kota Negara" (2021): p. 14.

[2] Reni Ria Armayani Hasibuan, "Dampak Dan Resiko Perpindahan Ibu Kota Terhadap Ekonomi Di Indonesia," *AT-TAWASSUTH: Journal Ekonomi Islam* 53, no. 9 (2019): P. 184

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state capital relocation plan, the government expects to accelerate economic equity while reducing the gap between Java and outside Java.[3]

Bappenas in its study stated that the relocation of State Capital will bring a positive impact on the national economy with a 0.1% Gross Regional Domestic Product (GDRP) increase prediction. Bappenas stated that the increase in GRDP will be triggered by the utilization of potential resources such as land clearing for productive infrastructure purposes and job creation for skilled human resources that have not been utilized so far. Specifically, Bappenas calculates that there will be an increase in labor wages for the surrounding area as reflected by an increase in the price of labor by 1.37%.

On the other hand, the relocation plan of state capital will also bring an impact on rising national inflation. Bambang Brodjonegoro estimates that there will be an increase in inflation of 0.2% during the state capital relocation process. The increase in inflation will be triggered by the improvement in people's income which of course is also followed by basic goods prices increase. However, inflation is predicted will not significantly affect consumer purchasing power nationally because price increases will only be concentrated in new state capital locations and surrounding areas.[4]

Various discussions related to the relocation of new state capital only view the economic problem and put little or even no attention to other impacts such as the impact of potential crimes that may arise. Crime is caused by several factors such as economics, crowd association, existing opportunities, and others. These factors that occurred in Indonesia have shown a negative effect. The sole aims of a number of people who commit wrongdoing are to meet the basic needs of their lives. Therefore, a critical study is needed to identify the cause of a person committing a crime, which can be done using criminological theories. Although the theory is abstract, it is needed to examine the reason behind why some humans are able to implement social norms and legal norms, but there are some also humans who actually violate them. This theory is not only important for academic and research purposes, but also for civic education[5].

Expectedly, by conducting a study related to preventive measures against potential crime in the State Capital (IKN) of East Kalimantan, a formulation can be set out and provided that can be used to minimize the potential crimes that may occur in the future. Building an adequate system is an effort to prevent the reoccurrence of crimes that are observed in DKI Jakarta as the current capital not to occur in the new state capital.

B. LITERATURE REVIEW

1. The Study of Crime

The era development and technological advances that are growing rapidly bring a huge impact on socio-cultural changes. One of them is related to the crime phenomenon. The phenomenon of crime is an eternal issue in human life because crime develops in line with the level of human civilization development. From the sociological aspect, crime is a type of social phenomenon, which relates to individuals or society. There are several paradigms proposed to explain the existence of crime. According to Muhammad from the criminology perspective, crime is a pattern of behavior that is detrimental to society (in other words there are victims) and a pattern of behavior that receives a social reaction from the community.[6]

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[3] Ibid., p. 185.

[4] Ibid., p. 188.

[5] Hardianto Djanggih, "Pandecta Penerapan Teori-Teori Kriminologi dalam Penanggulangan Kejahatan Siber (Cyber Crime)," *Pandecta* 13, no. 1 (2018): p. 11

[6] Ibid.

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In the aspect of legal protection related to crime, the Victimology approach is sufficient to provide an important role related to the prevention of potential crime itself. There are three stages of development on the definition of victimology. At first, victimology only studied the victim of a crime. This phase is described as penal or special victimology. In the second phase, victimology does not only examine the problem of crime victims. This phase is known as general victimology. The third phase, victimology has developed more broadly, namely examining the problems of victims of abuse of power and human rights, in this phase, it is called new victimology.[7]

Criminological theories can be used to enforce criminal law because they offer answers to the question of how or why certain people and behaviors are considered a crime by society. Why non-juridical factors can affect behavior and the formation of law? How state and community resources can tackle crime? The criminological theory attempts to provide answers to those questions through understanding sociological, political, and economic variables that can also influence legal, administrative decisions on the implementation of law in the criminal justice system. The effectiveness of crime prevention strategies needs to consider the factors that cause the crime. When certain conditions can consistently be associated with crime. Crime prevention requires the improvement of certain conditions because there are many causes of crime that cannot be detected by the police. These criminogenic conditions need to be communicated by the police to the public so that the public becomes aware.[8]

2. Overview of the State Capital of Penajam Paser Utara and Kutai Kartanegara

a. Penajam Paser Utara Regency (PPU)

PPU Regency was established on April 10, 2002, with an area of 3,333 square kilometers. It has four sub-districts including Sepaku, Penajam, Babulu and Waru. Until this year, PPU has a population of around 160 thousand people. The PPU Regency, which its motto "Benuo Taka" or Our Place, was previously a several sub-districts of Paser Regency. As for its boundaries, PPU is bordered to the north by Kutai Kartanegara Regency, to the east by the Makassar Strait, and to the west by Kutai Barat Regency and to the south by Paser Regency.

Muslims, Protestant Christians, Catholics, Hindus, and Buddhists live side by side there. Muslims dominate the community with up to 94 percent population. Most of the areas of PPU are transmigration destinations, of which around 60 percent are from Java. While 35-40 percent came from Sulawesi. The rest member of the community is originated from South Kalimantan (Kalsel), as well as other regencies in East Kalimantan.

Since the opening of the 99 km Samarinda-Balikpapan toll road, it shortens the travel time of PPU from Samarinda city as the East Kalimantan capital to only 1.5 hours from 3 hours of travel. As from Balikpapan, traveling to PPU is done by crossing by ferry port and will take 1.5 hours. The current regent of PPU is Abdul Gafur Mas'ud. PPU has many sources of clean water. In addition, most of the people in PPU earn living by farming. Babulu Sub-district became the center of agriculture in PPU.

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[7] Rena Yulia, ***Viktimologi Perlindungan Hukum Terhadap Korban Kejahatan***, Graha Ilmu, Yogyakarta, 2010, pp. 44-45

[8] Djanggih, "Pandecta Penerapan Teori-Teori Kriminologi dalam Penanggulangan Kejahatan Siber (Cyber Crime)," p.13

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b. **Kutai Kartanegara Regency**

Kutai Kartanegara was designated as a district in 1959 with an area of 27,263 square kilometers. To date, it has 18 sub-districts and 225 urban villages, with a population of 655,127 in 2015. The capital city of Kutai Kartanegara is Tenggarong, once the richest regency in Indonesia during the reign of Regent Syaukani Hasan Rais. Most of the areas are located on the coast such as Samboja Sub-district, Muara Jawa sub-district, Anggana sub-district, and Muara Badak sub-district which are rich in oil and gas.

The distance between Tenggarong and Samarinda is relatively close, only 45 minutes. It is not uncommon for residents of Tenggarong and surrounding areas to visit Samarinda on weekends to shop. Samboja District, for example, is an area that has the potential to develop rapidly in the future, with various advantages such as being close to the sea, close to the Indonesian Archipelagic Sea Lanes II route. In addition, the 99-kilometer toll road is located in the Samboja area as the first toll road in Kalimantan. In fact, the Indonesian Army forces Combat Training Center (Puslatpur) will be built in Samboja, which in the future will become the Defense Area III Command Center, and was reviewed by The Indonesian Army Forces Commander Marshal Hadi Tjahjanto on August 8, 2019. Samboja Sub-district has an area of 1,045.9 square kilometers and has a coastal area. As of February 2019, the population was recorded at 63,781 people, spread over 4 villages and 19 urban villages.[9]

3. **Crime Prevention**

Theoretically, the study of crime prevention is the development of the study of crime control, which discusses the reaction to crime at a formal level. Crime control studies are generally examined with a positivist theoretical approach. The foundation of positivist thinking produces a disintegrative model of crime prevention and is not in accordance with the needs of the community. Therefore, the study of crime prevention is then viewed only as a practical field, which is the material for thoughts and studies of practitioners. Similar to the theory of Fixing Broken Windows by Kelling and Coles, which emphasizes the maintenance factor of the area to reduce the possibility or chance of crime. The theory is an example of a positivist, pragmatic and practical approach.[10]

Understanding crime control and crime prevention is part of the scope of social control. Social control is a mechanism to influence the behavior of individuals (or social groups) to be in line with the norms and expectations of the group, with the aim of creating social harmony. This view departs from the idea that society is bound by mutual agreement or consensus. Social control examines the relationship of individuals with families, schools, or religious institutions (or conceptualized as significant others) in preventing crime.[11]

The use of a more specific concept of social control gave birth to the concept of crime control. Crime control is related to the study of crime and relates to the analysis of the things that must be controlled (as seen from the size of the cost of control) and is still in the study of the formal dimensions of crime control. For example, Hudson argues that crime control has the function of the criminal justice

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[9] Quoted from https://www.merdeka.com/events/profile-ibu-kota-negara-baru-penajam-paser-utara-dan-kutai-kartanegara.html on 06 November 2021

[10] Anggi Aulina, "Kejahatan di Wilayah Perkotaan dan Model Integratif Pencegahan Kejahatan," *Journal Ilmu Kepolisian* 11 (2017): p. 7.

[11] Ibid., p. 8.

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system (criminal justice system), while Gilsinan relates crime control to the making of policy principles.[12]

Analysis and explanation of crimes committed by crime control studies result in crime prevention studies that are only practical or on a micro-scale. The study of crime prevention only discusses methods, techniques, and strategies aimed at reducing crime (or reducing criminal behavior) in addition to controlling crime with a formal dimension (criminal justice system), by closing the opportunity for crime. Some social thinkers have revealed that the pragmatic tendency towards crime prevention strategies results in the conceptual basis being put forward having weak links with theory or in other words, little reference to theory.[13]

Based on the description that has been put forward, the relationship between studies of social control, crime control, and crime prevention has so far been understood as a fragmentary study at the macro, meso, and micro levels. At the macro level, social control studies talk about values, regulations, norms, socialization, and law enforcement, while crime control studies in the meso dimension talk about crime analysis and formal policy regulation against crime. Then at the micro-level, the study of crime prevention talks about practical techniques in an effort to reduce crime. The study of crime prevention, for example, is pragmatic and particular, which concentrates on how to prevent behavior, reduce the opportunity of the perpetrator and the motivation of the perpetrator partially.[14]

C. RESEARCH METHODOLOGY

This research was conducted with a normative juridical approach, but it is possible that empirical research is also needed, namely by conducting a critical and in-depth study of library materials and legal documents that have a good relationship with the subject and object that will be studied further. Researchers approach the problem under study at least three approaches, the first is a conceptual approach, the second is a statutory approach and the last is a case approach.

D. DISCUSSION

In international forums, especially in the development of the United Nations Congress, which describes "The Prevention of Crime and The Treatment of Offenders", the problem of crime prevention/handling is seen more from the context of global development/social policies. According to the UN Congress, the policy strategy for crime prevention and prevention is as follows:

a. The main basic strategy of crime prevention is to eliminate the causal factors or conditions that lead to the occurrence of crime.
b. Crime prevention and criminal justice must be pursued with an integral or systematic policy [15]

Crime as a social problem seems not only a problem for a particular society (national) but also a problem faced by all people in the world, it has become an international phenomenon or according to Sciichiro Ono's term is a universal phenomenon. Understanding crime in the past often loses its meaning because it detaches itself from the concept of society as a totality, namely from the scene and understanding of the crime,

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[12] Ibid.

[13] Ibid.

[14] Ibid.

[15] Saleh Muliadi, "Aspek Kriminologis Dalam Penanggulangan Kejahatan," *FIAT JUSTISIA:Jurnal Ilmu Hukum* 6, no. 1 (2015): Pg. 2.

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while crime as a social phenomenon is always a crime in society which is a whole social, cultural, political, economic process, and the structures within them, and all of which are the result of the history of human relations.[16]

Thus, in order to understand the problem of crime in our country, it is also necessary to pay attention to the whole processes mentioned above that occur in society. This is because the notion of crime is relative and far from absolute. Furthermore, Baharuddin Lopa, asserted that of these three crime prevention groups, primary prevention was the most effective. Because it is undeniable, in fact, if we wish to prevent crime, the root cause must be eliminated first. There is still too much evidence that socioeconomic inequality is one of the causes of crime.

Preventive efforts focus on actions before a crime occurs. Considering that the prevention of crime through preventive measures is more of prevention before the occurrence of a crime, the main target is to deal with conducive factors, among others, centered on problems or social conditions that can directly or indirectly lead to or foster crime. The crime problem has been tackled in many ways. In an effort to overcome crime by using criminal law with sanctions in the form of a criminal sentence.[17]

In an effort to overcome crime with a criminological aspect (Crime Prevention), researches are a very useful material for the preparation of crime prevention programs. These countermeasures include looking for factors that can lead to crime starting with crime research, so that finding certain factors that are associated with various factors that can lead to crime, it will provide material for developing crime prevention programs, including those directed at the concerning factors that can lead to crime occurrence.[18]

It is deemed necessary to be related to the existence of crime factors in the capital city of Jakarta, this is necessary to be able to provide a formulation of efforts to prevent criminal acts from recurring in the new capital city, the government should not only formulate related to the economic impact as well as the political impact related to the transfer of the state capital but also needs to encourage the provision of studies related to the potential for criminal acts and their prevention strategies so that the reoccurrence of past mistakes do not repeat and can be prevented.

E. CONCLUSION

As is well known, the Indonesian Government has taken considerable steps to relocate the state capital from Jakarta to Penajam Paser Utara and Kutai Kartanegara Regencies, various studies have been carried out, especially studies on economic and geographical aspects, but then there are also other important matters relating to the planned relocation of the country's capital that is paid little attention to. To this day, the social study that focuses on the social impacts associated with the relocation of the nation's capital has not been conducted, especially studies related to the potential for crime and how to tackle the crime. Penajam Paser Utara Regency and Kutai Kartanegara Regency, which have been known to be conducive to crime rates below the national rate, of course, will have the potential to become criminal areas along with the relocation of the capital. The relocation of the state capital is supposedly not transferring the criminal that frequently occurs in Jakarta to Penajam Paser Utara Regency and Kutai Kartanegara Regency. Therefore, there needs to be a government formula to tackle and prevent potential criminal actions.

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[16] Ibid.

[17] Ibid., p. 8.

[18] Ibid., p. 10.

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SOCIAL MOVEMENTS TO PROTECT VICTIMS OF CORPORATE CRIMES AGAINST THE ENVIRONMENT IN THE CONTEXT OF HUMAN RIGHTS

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ABSTRACT

The regulation of environmental rights as Human Rights (HAM) in the 1945 Constitution of the Republic of Indonesia, in general, has not had much impact in resolving disputes or cases of environmental crimes in Indonesia, especially victims, such as crimes committed by legal subjects called corporations. (recht person). However, as is well known, the soul and spirit of the Constitution obliges the State to provide, maintain and protect human rights in the environment in addition to accelerating the improvement of existing regulations and improving the performance of environmental law enforcement officials, including improving existing environmental dispute resolution mechanisms, especially when dealing with environmental disputes. with corporations,

Keywords: Human Rights, Corporations, Social Movements.

A. INTRODUCTION

Human rights are one of the elements of the concept of the rule of law, human rights are basically a right that is owned from birth or a basic right that is owned by humans as individual beings. "Those fundamental rights, wich empower human beings to shape their lives in accordance with liberty, equality, and respect for human dignity".[1]

History records that in April 2001 the United Nations (UN) through its Human Rights Commission concluded that everyone has the right to live in a world free from pollution and environmental degradation. The decision of the United Nations Human Rights Commission (UN) is the first time to link the environment with human rights. As is well known, the current state of the environment, empirically in the field, shows the extent to which humans can enjoy their basic rights to life, the rights to health, the rights to good food and the right to adequate housing.

It is seen that basic rights to life are now threatened by degradation and deforestation, exposure to toxic chemicals, hazardous waste and contamination of drinking water. For this reason, the successful implementation of international environmental treaties on biodiversity, climate change, desertification and chemicals can make a major contribution to the protection of human rights. In fact, the United Nations' concern on environmental issues has begun, in 1972 in Sweden through the holding of the first environmental summit in Stockholm.[2]

Countries in the First and Third Worlds attended the Summit facilitated by the United Nations (UN). The most dominant issue discussed at the summit was the sustainability of natural resources in supporting human life and also the problem of world population development.[3]

Ten years later, when the second Environmental Conference (UNCHE II) was held in Nairobi, Kenya, 1982, the picture of the situation had changed. The United Nations Environment Program (UNEP) was formed as soon as possible after the Stockholm

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[1]Nowak Manfred, 2003, *Introduction To The International Human Rights Regime, Martinus Nijhoff Publishers*, Boston: Leiden, hlm. 1.

[2]M. Ridha Saleh, 2020, *Menghijaukan HAM*, Jakarta: Rayyana Komunikasindo, hlm. 10.

[3]https://walhijabar.wordpress.com/2008/01/21/politik-lingkungan/, diakses 4 Desember 2020, pukul 15.07 WIB.

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Conference as a new UN agency in addition to other actions, the second conference was successful with the help of international environmental experts and experts in initiating theories theory and strategy of eco development as an alternative to development politics.[4] This discussion continued until the Earth Summit in Rio De Janeiro, Brazil in 1992. It was a sign that this issue was not a light problem in the international political arena. However, the hope for improvement in environmental conditions that swelled with the holding of these summits did not grow into buds.[5]

Until the 1992 Earth Summit was held, there was no explicit acknowledgment of the relationship between the environment and human rights. It was only after the decision of the UN Commission on Human Rights in 2001 that the link between the environment and human rights was explicitly explained. Human Rights in the UN System According to Burns H. Weston there are three generations of human rights. The three generations of human rights show a dialectical atmosphere between various ideological streams, especially liberal and social as well as the aspirations of third world countries that were newly independent from colonialism. But his inspiration was inspired by the three norms of the French Revolution, those rights are the first generation of civil and political rights (liberte-liberty), the second generation of economic, social, cultural rights (egalitarian-social equality) and the third generation of rights. solidarity (fraternity).[6]

The close and inseparable links between human rights, environmental sustainability, development, and peace have been recognized by countries in the world for at least three decades. Complete development can only be achieved in a peaceful atmosphere and in a well-maintained environment, so that in turn it will create a conducive condition for respecting, protecting, upholding, and fulfilling human rights. We can use the commemoration of World Environment Day every June 5 as a point of time to consolidate and reflect on the effectiveness of the environmental movement that has been running so far.[7]

In real life, it shows that the environment in the world is increasingly being damaged by legal subjects, namely human actions (natuurlijk persoon) or corporations (rechts persoon). As is known, the environment is sometimes positioned as an object of exploitation, such as by carrying out uncontrolled mining activities, clearing forests without reforestation, polluting water without regard to ecosystems and violations or other environmental crimes.

Respect for Human Rights (HAM) for the environment is a very important and fundamental aspect that the environment also has all its limitations, so that control over human and corporate behavior over the environment becomes absolute because the environment also has the right to naturalize and evolve, which is the nature of nature that cannot be prevented by humans and corporations. Violations of human rights in the environment have resulted in disasters, both natural and man-made, and have cost millions of human lives. The destruction of the environment by a few people or corporations has caused suffering and human rights violations to the majority of other living things.

The United Nations Conference on the Environment and Humans in Stockholm, Sweden, in 1972, which sparked the Stockholm Declaration, was the initial step of the international community's awareness of the importance of environmental sustainability as a fundamental part of the fulfillment of human rights.[8] The draft declaration "Principles on Human Rights and the Environment" made at the initiative of the United

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[4]https://staff.blog.ui.ac.id/andreas.pramudianto/2009/07/29/diplomasi-lingkungan-hidup/. diakses 4 Desember 2020, pukul 15.11 WIB.

[5]https://berkas.dpr.go.id/puslit/files/info_singkat/Info%20Singkat-IV-12-II-P3DI-Juni-2012-69.pdf. diakses 4 Desember 2020, pukul 15.13 WIB.

[6]https://pusham.uii.ac.id/ham/9_Chapter3.pdf, diakses 4 Desember 2020, pukul 15.15 WIB.

[7]https://hukum.ub.ac.id/ wp-content /uploads /2019 /10/Hukum-dan-Kebijakan-Lingkungan.pdf, diakses 4 Desember 2020, pukul 15.20 WIB.

[8]https://www.hukumonline.com/klinik /detail ulasan /cl3824/penerapan-deklarasi-stockholm-di-indonesia/, diakses 4 Desember 2020, pukul 15.27 WIB.

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Nations Special Rapporteur on Human Rights and Environment, Fatma Zohra Ksentini, in Geneva, Switzerland, in 1994, was the first international instrument to comprehensively link human rights and the environment.[9]

Massive development patterns based on the exploitative use of natural resources by a small number of people or corporations in developed countries have caused losses and human rights violations for most of humanity living in poor and developing countries in Asia, Africa, and South America. According to ecological footprint data released by the Ecological Footprint Network, since 1961 there has been an ecological deficit that has been increasing year by year, where human need or greed for ecological resources has exceeded the earth's ability to fulfill it.[10]The largest ecological consumption is carried out by the people of developed countries, such as America and Europe, namely the consumption of energy, forests, water, food, and so on. When ecological resources in one's own country are depleted and depleted, ecological colonization occurs, as is happening today, through mining, logging in natural forests, and large-scale industrial relocation in developing countries that are still ecologically surplus.[11]

The rate of violation of Human Rights (HAM) goes hand in hand with the rate of environmental destruction by humans and corporations, so that a synergistic and systematic social movement is needed that integrates the environmental movement as a Human Rights (HAM) movement, especially in Indonesia in order to minimize environmental crimes. life, society, especially vulnerable groups, minorities, and the poor, who are the first and hardest victims of the consequences of human rights violations and environmental damage.

B. METHOD

The research used in this research is normative legal research. In this study the law is conceptualized as what is written in the legislation (law in book). In this paper, as stated by Peter Mahmud Marzuki, a study and analysis is carried out using the statute approach, conceptual approach, analytical approach, historical approach.[12]

C. ANALYSIS AND DISCUSSION

1. Corporations As Subjects of Environmental Crime Law

A corporation is a business entity or a combination of several companies that are managed and run as a large company or a group of people or organized assets, whether in the form of legal entities or non-legal entities.[13]

The definition of a corporation is closely related to the terminology of legal entities (rechtpersoon) in civil law, etymologically about the word corporation or corporatie (the Netherlands), corporation (English), korporation (Germany) comes from the word corporatio in Latin which means the result of corporate work. or in other words, namely the body obtained by human actions as opposed to the human body, which occurs according to nature.[14]

A corporation is said by Satjipto Rahardjo as quoted by Marwan Effendy, as a legal creation body, the created body consists of a "corpus" which is its physical

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[9] http://miminhartono.blogspot.com/2006/10/ accessed on 4 December 2020

[10] https://kontras.org/home/WPKONTRAS/wp-content/uploads/2018/09/Terjemahan-FIDH-Kontras-Juni-2014.pdf. Accessed on 4 December 2020

[11] http://perpustakaan.menlhk.go.id/pustaka/home/index.php?page=ebook&code=ka&view=yes&id=1, diakses 4 Desember 2020, pukul 14.40 WIB.

[12] Peter Mahmud Marzuki, 2005, *Penelitian Hukum*, Jakarta: Kencana, hlm. 93.

[13] M. Marwan, 2009, Dictionary of Law (Dictionary of Law Complete Edition, Surabaya: Reality Publisher, p. 384.

[14] M. Marwan, 2009, *Kamus Hukum (Dictionary of Law Complete Edition*, Surabaya: Reality Publisher, hlm. 384.

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structure and into it the law includes an "animus" element that makes legal creations, except for the creator, their death is also determined. by law.[15]
Corporate Crime according to Black's Law Dictionary (1990) quoted by Suhaimi states that corporate crime is:

> *Any criminal offense committed by and hence chargeable to a corporation because of activities of its officers or employees (eg, price fixing, toxic waste dumping), is often referred to as "white collar crime.* (Corporate crime is a crime committed by a corporation and therefore can be charged to a corporation and therefore can be charged to a corporation because of the activities of its employees or employees (such as pricing, waste disposal), often also referred to as a "crime". white collar").[16]

Simpson, quoting John Braithwaite, stated that corporate crimes are:

> *"Conduct of a corporation, or employees acting half of a corporation, which is proscribible and punishable by law"* Simpson states that there are three main points of Braithwaite's definition of corporate crime. First, the illegal actions of corporations and their agents differ from that of socio-economic class criminals in terms of administrative procedures. Therefore, what is classified as corporate crime is not only civil and administrative. Second, both corporations (as "individual legal subjects" "legal persons") and their representatives are included as criminal actors (as illegal actors) which in their judicial practice, depend on, among other things, the crime committed, the rules and quality of evidence and prosecution. Third, the motivation for crimes committed by corporations is not aimed at personal gain, but rather at meeting needs and achieving organizational benefits.[17]

In line with the development of corporate growth whose impact can have a negative effect on the environment, the position of the corporation has begun to shift from being a subject of civil law to being a subject of criminal law.[18]

At first it was very difficult for corporations to be held accountable, because of the many obstacles in determining the forms and actions of corporations that were to blame in the concept of criminal law. The problem of lack of physical form. As stated by G. William that: "corporations have "no soul to be damned, nobody to be kicked" and corporations cannot be ostracized because "they have no soul".[19]However, developing further as a subject of criminal law, corporations can be subject to criminal sanctions in the environmental field. In this regard, according to Muladi,**[20],** that :

1. Corporations cover. Both legal entities (legal entities) and non-legal entities such as organizations and so on;
2. Corporations can be private (private juridical antity) and can also be public (public entity);
3. If it is identified that environmental crimes are committed in an organizational form, natural persons (managers, agents, employees) and corporations can be punished, either individually or jointly (bipunishment provision);

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[15] *Ibid*, hlm. 86.

[16] Suhaimi, 2010, *Pertanggung jawaban Pidana Direksi*, Jakarta: Books Terrace dan Library, hlm. 12.

[17] *Ibid*.

[18] Mas Ahmad Santoso, 2014, *Good Governance Hukum Lingkungan, Dalam Muhammad Akib, Hukum Lingkungan Perspektif Global dan Nasional,* Cet ke-2, Depok: PT. Rajagrafindo Persada, hlm. 174.

[19] Anthony O Nwator, *Corporate Criminal Responsibility: A Comparative Analysis, Journal African Law*, Volume 57, Issue 01, April 2013, hlm. 83.

[20] Muladi, 2014, *Prinsip-prinsip Dasar Hukum Pidana Lingkungan dalam Kaitannya dengan Undang-undang Nomor 23 tahun 1997,* Jurbal Hukum Pidana dan Kriminologi, Vol 1 No. 1 tahun 1998 dalam Muhammad Akib, *Hukum Lingkungan Perspektif Global dan Nasional,* Cet ke-2, Depok: PT. Rajagrafindo Persada, hlm. 174.

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4. There is a management error in the corporation and what is called a breach of a statutory or regulatory provision;
5. The liability of a legal entity is carried out regardless of whether the responsible persons within the legal entity have been identified, prosecuted, and convicted;
6. All criminal sanctions and actions can basically be imposed on corporations, except for capital punishment and imprisonment. In the United States, the so-called "corporate death penalty" or "corporate imprisonmenty" began to be known, which implies the prohibition of a corporation from doing business in certain fields of business and other restrictions on the steps of the corporation in doing business;
7. The application of criminal sanctions against corporations does not eliminate individual mistakes;
8. Criminalization against corporations should pay attention to the position of the corporation to control the company, through the policies of the management or the management (corporate executive officers) and the decision has been accepted by the corporation.

In the lex specialis rules in Indonesia regarding environmental protection regarding the regulation of corporations as legal subjects, it can be seen in Article 78 of Law 41 of 1999 concerning Forestry, in Article 116, Article 117, Article 119 of Law 32 of 2009 concerning Environmental Protection and Management.

2. Commitment To Enforcement Of Human Rights Andsocial Movements To Fight For The Rights Of Environmental Victims Of Corporate Crimes

With the regulation of Law 39 of 1999 concerning Human Rights (UU HAM) and Law 32 of 2009 concerning Environmental Protection and Management (UU PPLH). Therefore, it is time for the Government of the Republic of Indonesia to be more serious in dealing with the rampant cases of environmental destruction/pollution that have occurred in Indonesia. The seriousness of the Government of the Republic of Indonesia can be realized in terms of planning development activities by implementing permits based on and having to pay attention to the environment, such as Environmental Impact Analysis (AMDAL),Environmental Management Efforts and Environmental Monitoring Efforts (UKL/UPL).

According to Jimly Asshiddiqie and Hafid Abbas, human rights mean talking about the dimensions of human life. Human rights exist not because of society and the goodness of the state, but on the basis of their dignity as human beings. Recognition of the existence of humans as living creatures created by God Almighty, deserves positive appreciation.[21]

When talking aboutHuman Rights (HAM), some terms that are often used:

1. *Human Rights* namely the rights are universally applicable without space and time limits, but can be alienated by the relevant State Law;
2. *Fundamental Rights* ie those rights cannot be eliminated under any circumstances;
3. *Citizen Rights* namely, that right only applies to humans who are citizens of the country concerned;
4. *Constitutional rights* that is, only insofar as those rights are contained in the relevant constitution;
5. *Legal rights* that is, as long as these rights are contained in the laws and regulations of the country concerned.[22]

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[21]Jimly Asshiddiqie dan Hafid Abbas, 2015, *Hak Asasi Manusia dalam Konstitusi Indonesia*, Cetakan ke-5, Jakarta: Kharisma Putra Utama, hlm. 1.

[22]Max Boli Sabon, 2008, *Hak Asasi Manusia Bahan Untuk Perguruan Tinggi*, Jakarta: Universitas Katolik Indonesia Atmajaya, hlm. 14.

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Regarding cases of environmental destruction, law enforcement efforts are no longer limited to taking action against perpetrators in terms of their actions that damage the environment, but perpetrators can also be held accountable for violating human rights because of human rights. Human (HAM) adheres to four basic principles that must always be considered in the implementation and respect for human dignity, namely:

1. Basic Principles of Freedom, meaning freedom as respect for human dignity as a creature created in the image of the Creator, and given freedom by the Creator to rule over all other creations;
2. The Basic Principle of Independence, meaning that humans have been given freedom by the Creator since the moment of creation, therefore they must be allowed to be free, in the sense that they should not be colonized, or shackled, or shackled in any form;
3. The Basic Principle of Equality, that every human being comes from the same product, namely God's creation, then humans as fellow creatures have no right to distinguish one human from another. On that basis, it is formulated in the legislation that every human being is equal before the law and the government;
4. Basic Principles of Justice, that the principle of equality before the law and government is the main characteristic of a state of law and democracy. The main goal of a state of law and a democratic state is to guarantee the existence and upholding of justice.[23]

Various regulations implemented by the WTO system even reduce labor rights, rob farmers of rights, reduce state regulations for environmental protection, liberalize the land sector, including cutting subsidies for the fulfillment of basic rights. Water, forest, food, health, social services, public social services which used to be human rights, are now only treated as commodities.

There are at least 25 million people who have become victims and refugees due to the environmental crisis around the world, the symptoms of massive exploitation of natural resources openly, especially those carried out by corporations, have in fact led to acts of destruction and destruction of ecosystems, sources of life and the environment. living as a result of the ecocide.

Every year no less than million hectares of forest in Indonesia are turned into mining areas, large plantations, housing and other industrial areas. The juridical concept of forest is formulated in Article 1 Paragraph (1) of Law Number 41 of 1999 concerning Forestry. According to the law, forest is an ecosystem unit in the form of expanses of land containing biological natural resources which are dominated by trees in a natural environment alliance, which cannot be separated from one another, more and more have been polluted, some have even dried up.

Corporations can be said to be part of an ecosystem, where there is a very close relationship between the corporation which is also carried out by humans and the environment around the business activities of the Corporation. The community as the giver of the mandate to the government, should understand the basic rights that must be fulfilled by the state.

The right to the environment has been implied from article 28 Universal Declaration of Human Rights (UDHR), Article 12(b) of the International Covenant on economic, social and cultural rights, the declaration of the right to development agenda 21 and the charter on the economic rights and obligations of States. In the policy instruments, the second amendment of the 1945 Constitution Article 28H paragraph (1) states:

> *"Everyone has the right to live in physical and spiritual prosperity, to live and to have a good and healthy environment and to have the right to health services."*.

Law Number 39 of 1999 concerning Human Rights Article 9 paragraph (3) states:

"*Everyone has the right to a good and healthy environment"*

[23] *Ibid*, hlm. 15 – 16.

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Law Number 32 of 2009 concerning Environmental Protection and Management Article 65 paragraph (1) states:

"Everyone has the right to a good and healthy environment as part of human rights".

This is the government's obligation to fulfill and protect the basic rights of the Indonesian people. The indifferent nature of the government which increases exploration, whether carried out by the Central Government or Regional Government (PEMDA), to pursue government revenues so far has made the people lose their right to the environment which is a people's human right.
Permits granted to corporations that ignore environmental principles have resulted in expanses of critical land, damaged forests, polluted river ecosystems due to the actions of irresponsible corporations. Therefore, community participation is needed, one of which is to overcome environmental crimes committed by corporations with community social movements.

Social movements are more organized and have more common goals and interests than collective behavior. Collective behavior can occur spontaneously, but social movements require a mass organization. Sunarto in Nanang Martono provides a definition of social movement. According to him, social movements must have four criteria, namely:

1) The existence of collectivity;
2) Have a common goal, namely to realize certain changes in their society which is determined by participation in the same way;
3) Collectivity is relatively dispersed but lower in degree than formal organizations;
4) Its actions have a high degree of spontaneity but are not institutionalized and unconventional. There are several forms or classifications of social movements. The classification is based on several criteria, namely:
   a. According to the desired area of change;
   b. According to the desired quality of change;
   c. According to the change target;
   d. According to the desired direction of change;
   e. According to the underlying strategy or logic of their actions;
   f. According to the history of its development.[24]

The social movement of the community towards environmental conservation is a response to the ecological crisis and environmental conflicts in this country. The social movement for environmental preservation is present in the form of a struggle for environmental justice with the aim of making changes and maintaining a decent quality of the environment.[25] This movement is also included in the public environmentalist[26], namely the citizens of the general public who try to improve the condition of the surrounding environment, directly through their respective actions and attitudes. A proper quality of the environment is the right of the entire community in accordance with the mandate of Law Number 32 concerning Environmental Management Article 5 paragraph (1), namely:

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[24]Abd. Rahman dkk, Gerakan Sosial Masyarakat Peduli Lingkungan, Jurnal Equilibrium, Volume 3, No. 2 November 2016, hlm. 177.

[25]http://repository.ipb.ac.id:8080/handle/123456789/89384, dikases 4 Desember 2020, pukul 13.48.

[26]George Junus Aditjondro, 2003, Pola-Pola Gerakan Lingkungan: Refleksi Untuk Menyelamatkan Lingkungan dari Ekspansi Modal, Yogyakarta: Pustaka Pelajar, hlm. 149.

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"Every human being has the same right to a good and healthy environment".

With regard to the sound of Article 5 paragraph (1) other than the government and other than existing NGOs such as WALHI, PEKA Indonesia Foundation, LESTARI Indonesia, Yayasan Konservasi Alam Nusantara, Rumah YAPEKA, Asean Social Forestry Network (ASFN), The Center for People and Forests, Forum Komunikasi Kehutanan Masyarakat (FKKM), HuMa (Community and Ecological Based Society for Law Reform), Working Group on Forest Land Tenure (WG Tenure), World Agroforestry Centre, Partnership Partnership as a social movement to protect the environment[27]In Indonesian society, there are also examples that can be imitated, such as Kampung Ramah Lingkungan (KRL) in Bogor, Kampung Hijau in Surabaya, and Gerakan Masyarakat Awangpone. Especially for young people, there is also Gerakan Greeneration Indoneisa, Teens to Green, Tunas Hijau and AV Peduli, all of which are forms of social movements in Indonesia and are growing with public concern for the issue of environmental damage. Through these social movements, they can become agents in the field to prevent environmental damage by crimes committed by corporations.

Because by involving the community in this form of social movement, which is potentially affected by activities and interest groups, decision makers can capture the views, needs and expectations of the community and these groups and put them into concepts. The views and reactions of the community, on the other hand, will help decision makers to determine priorities, interests and positive directions from various factors. With the existence of these environmental social movements, justice will be achieved in society so that it is hoped that the interests of humans and the environment will be protected, especially from corporations that commit environmental crimes or that have the potential to commit environmental crimes.
The progress of communication and information technology in the era of the industrial revolution 4.0 which is very rapid in the last two decades has changed many aspects of human life. The activities of the environmental social movement did not escape the wave. For example, when submitting a petition related to the environment, before the internet entered Indonesia, the petition signing activity was carried out offline (offline). This means that the signatories put their signatures directly on paper, cloth, or other media documents, which are then sent to the parties they demand to make changes. Using the internet, people simply sit at their computer and then "click" on a particular option to declare that they signed the petition. The digital signature is then sent to the e-mail address in question. Some also share this information through their social network accounts.[28]

D. CONCLUSION

The Indonesian state is on the verge of concern in environmental matters committed by corporations that commit environmental crimes such as:

1. Exploitation carried out by the Corporation on the environment that leads to the destruction of the source of life;
2. The destruction carried out by the Corporation is an act of eliminating Human Rights (HAM);
3. Being a part that threatens the security of human life today and generations to come, as well as the biodiversity it contains.

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[27]https://rimbakita.com/lsm-kehutanan-indonesia/, accessed on 4 December 2020

[28]Andreas Ryan Sanjaya, *Wacana Lingkungan dalam Gerakan Sosial Digital Discourse of Environment in Digital Social Movement*, IPTEK-KOM, Volume. 19 No. 2, Desember 2017, hlm. 137.

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This is not only happening in Indonesia, many developing countries have become major ecocides. This is also caused by the policies and political economy system of a country. The state becomes an exploiter with the service of capital and includes the great power of the state. So that it can be seen from the author's point of view that there will be various problems that are present, such as losing the source of life.

In this case, in order to achieve environmental justice and the recognition of the right to the environment for the people, a social movement for Human Rights is needed in the realization of this justice in order to create a good environmental management continuity in the present and in the life to come. In other words, a social movement with the community and government around the issues of environmental justice will feel enormous and potential in order to fight injustice against environmental crimes. In addition to existing NGOs such as WALHI, PEKA Indonesia Foundation, LESTARI Indonesia, Yayasan Konservasi Alam Nusantara, Rumah YAPEKA, Asean Social Forestry Network (ASFN), The Center for People and Forests, Forum Komunikasi Kehutanan Masyarakat (FKKM), HuMa (Community and Ecological Based Society for Law Reform), Working Group on Forest Land Tenure (WG Tenure), World Agroforestry Centre, Partnership Partnership as a social movement to protect the environment[29]In Indonesian society, there are also examples that can be imitated, such as Kampung Ramah Lingkungan (KRL) in Bogor, Kampung Hijau in Surabaya, and Gerakan Masyarakat Awangpone. Especially for young people, there is also Gerakan Greeneration Indoneisa, Teens to Green, Tunas Hijau and AV Peduli which is a form of social movement towards the environment in Indonesia.

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LEGAL EMPOWERMENT OF INDIGENOUS COMMUNITIES IN SUPPORTING THE ENVIRONMENT AS A GREEN VICTIMOLOGY DURING THE COVID-19 PANDEMIC

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Abstract

This article will discuss the legal empowerment of indigenous peoples through the values of local wisdom capable of supporting the environment as green victimology, especially its relevance during the Covid-19 pandemic. The normative research method is used to be able to explore secondary data through library study techniques and interviews. The secondary data obtained were analyzed through qualitative juridical analysis so that the conclusions of the study were obtained, namely the values of local wisdom possessed by indigenous peoples when related to their living environment are always based on a very good ethical relation value. This environmental ethic delivers the prevention of the environment as a victim of environmental crime because the interaction pattern that is built is balance and harmony between environmental elements.Indigenous peoples understand that this nature is cosmic where everything in nature is a single entity, cannot be separated from one another. To meet the needs of humans and other living beings through magical-religious-cosmic properties, indigenous peoples believe that humans are part of the natural surroundings that cannot be separated from one another*.*

Keywords: Legal Independence, Indigenous Peoples; Environment; Green Victimology

A. INTRODUCTION

The Covid-19 pandemic has changed our lives a lot. Adaptation needs to be carried out in accordance with the prokes set by the Government.

In various information it is known that this Covid-19 pandemic, one of the causes is the loss of the balance of nature, as a result of human exploitation of nature.Humans always exploit nature without paying attention to sustainability and ecological justice for nature itself. One of them is that humans destroy the original ecosystem of animals and consume them to fulfill human desires, for example bats which have now become food for humans. According to wildlife experts, many animals are hosts for viruses, including the coronavirus, and bats are one of them. Thus, if humans destroy animal habitats and consume them, it is the same as humans disturbing the life of the virus that is in them. When the habitat or host where the virus lives is destroyed or lost, the virus will look for a new host and the human body will become one of its targets and disease outbreaks will occur.[1] Thus, there is a role for humans to cause the emergence of the virus because the habitat of the virus has been destroyed by humans. In this case, the balance of nature and its harmony has been

[1]Mella Ismelina FR, "Natural Morality and C rona",Kompas.com.:https://www.kompas.com/tren/read/2020/03/30/115620265/moralitas-alam-dan-corona?page=all, download date 12 September 2021

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disturbed because the quantity or number of populations in nature is reduced or unbalanced.

The impact of the COVID-19 pandemic is felt both in the economic, religious, social, political, cultural sectors and even in the fields of defense and national security. From an economic point of view, of course, the presence of COVID-19 has caused economic shocks for entrepreneurs, from a social perspective it has raised a high level of suspicion among the public, especially when gathering, from a religious perspective, we were unable to worship in our respective places of worship. and in the political atmosphere it has an effect, especially when the election is held and from a legal culture perspective a new pattern is formed in the relationship between humans and the law.[2]

In this pandemic condition, can we deal with it well? It seems that a good adaptation has been shown by indigenous peoples in the face of this covid-19 pandemic through local wisdom, culture, values and practices that have been carried out from generation to generation which are always obeyed as a law in behaving and behaving well when dealing with people. nature and with its social environment.

As we know that indigenous peoples have a very harmonious relationship with their nature. They are ethical nature managers because they always pay attention to the balance and harmony of nature when utilizing its natural resources. Indigenous peoples understand that this nature is cosmic where everything in nature is a single entity, cannot be separated from one another. To meet the needs of humans and other living beings through magical-religious-cosmic properties, indigenous peoples believe that humans are part of the natural surroundings that cannot be separated from one another.

Sundanese people have a philosophy that humans and nature are one unit.[3]Humans must respect their nature for the survival and life of humans and other living creatures. Indigenous peoples have a very harmonious way of thinking and perspective in interacting with their nature through local wisdom. Local wisdom has taught that humans must always respect and be friendly with the universe and when humans respect and maintain the balance of nature, nature will always provide what humans need. Based on this paradigm and equipped with environmentally friendly values and practices, indigenous peoples are barely touched by the Covid-19 pandemic. This becomes interesting to discuss in an article considering that legal empowerment actually optimizes legal sources,[4]

B. RESEARCH METHOD

This study uses a normative juridical approach. The data collected in this study is secondary data by focusing more on document data, texts or scientific works that are relevant to the problem under study. The data collection technique was carried out through a literature study supported by interviews to clarify the secondary data obtained. The data sources obtained are conditional with values, and are also dialogical, meaning that they are correlated with each other, especially in the sense of science as a network, various theories/concepts will be very closely related.[5] The data triangulation method is also used to check various literatures, so that every library source obtained will be checked by other libraries, and other theories will be checked

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[2] Mella Ismelina Farma Rahayu, Anthon F. Susanto, "Paradigm of Human and Environmental Relations Based on Local Wisdom During the Covid-19 Pandemic", Environmental Law Development, P-ISSN 2541-2353, E-ISSN 2541-531X, Volume 5, Number 3, June 2021, DOI: http://dx.doi.org/10.24970/bhl.v5i3.212, Thing. 486.

[3]Mella Ismelina Farma Rahayu, et al, "Wisdom of the Customary Law Community of "Tatar Sunda" In Preservation of Functions of Forests for Mitigating Climate Change," International Journal of Innovation, Creativity and Change. Volume 5, Issue 2, Special Edition, 2019,www.ijicc.net, p.5.

[4]Mella Ismelina Farma Rahayu et al, "Social Movement for Legal Empowerment in Preserving Environmental Functions through the Patanjala Method", Environmental Law Development, P-ISSN 2541-2353, E-ISSN 2541-531X Volume 2, Number 1, October 2017 DOI: 10.24970/ jbhl.v2n1.5 , p. 55.

[5]Valerie J. Janesick, The Dance of Qualitative Research Design; Metaphor, Methodolartry, and Meaning, in Norman K. Denzin and Yvonna S. Lincoln, Hand Book of Qualitative Research, Sage Publication, California, 1994, p.25.

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by other theories. Triangulation is an attempt to gain a deeper understanding of what is being studied. According to Agus Salim, triangulation is not a tool or strategy for proving, but only as an alternative to proof.[6]Then, data analysis was carried out through qualitative juridical analysis. Through internal coherence, seen the interrelationships of all the elements in the aspects studied to find out which elements are central and dominant, and which are marginal.

C. DISCUSSION

1. Indigenous Peoples and Local Wisdom in the Frame of Norms

Each region of course has its own local wisdom where this local wisdom is used as a reference for the community in attitude and behavior, including when dealing with nature. The juridical understanding of local wisdom based on Article 1 Point 30 of Law No. 32 of 2019 concerning Environmental Protection and Management (UUPPLH), are noble values that apply in the life of the community to, among other things, protect and manage the environment sustainably." . Thus, local wisdom contains values, local knowledge that has been rooted, is fundamental and integrated with belief systems, norms, culture and is expressed in traditions and myths. This local wisdom has taken root and is fundamental, and manifests itself in the attitudes and behavior of indigenous peoples. Furthermore, Normatively local wisdom has become the spirit of a norm or rule in the field of environmental protection and management as affirmed in Article 2 letter L of UPPLH. The article explains that "Environmental protection and management is carried out based on the principle of local wisdom."

Local wisdom has diversity in different places and times with different tribes. The difference is because each place has natural challenges and the necessities of life so as to form different experiences and knowledge systems.

Knowledge is defined broadly which includes all what we know about objects. Humans get this knowledge based on their abilities as beings who think, feel, and sense. Broadly speaking, knowledge is classified into three main categories, namely (1) knowledge of what is good and bad (ethics); knowledge of what is beautiful and ugly (aesthetics); (3) knowledge of what is right and wrong (logic).[7] In the context of the search for human knowledge in the universe, it is actually not just a natural stimulus to humans so that it makes humans interested in studying the mini world, but also an urge from within humans themselves, because not the nature of the universe, this is a more comprehensive picture. wider than man himself.[8]

Talking about local wisdom, it doesn't just stop at ethical issues, but includes discussing norms and behavior, so that local wisdom can be a guide for humans in attitude and behavior when interacting with nature to form a human civilization.

Philosophically, the recognition of indigenous peoples and local wisdom has been contained in Article 18 B paragraph (2) of the 1945 Constitution where it is emphasized that: "The state recognizes and respects customary law community units and their traditional rights as long as they are alive. and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law."

Referring to the article, it can be seen that constitutionally the state has recognized the existence of indigenous peoples and traditional rights, including those related to local wisdom. This local wisdom has become a cultural identity

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[6]Agus Salim, Theory and Paradigm of Social Research from Denzin Guba and Its Application, PT. Tiara Wacana Yogya, Yogyakarta, 2001. p.6-7.

[7] Susanto, Philosophy of Biology, UM Purwokerto Press, Purwokerto, 2020, p.2.

[8] Amril, Integrative-Interconnective Epistemology of Religion and Science (Exploring Conceptual Potential Towards Application-Theory in the Development of Islamic Sciences and Learning), PT RajaGrafindo Persada, Jakarta, 2016, p.136.

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and the rights of traditional communities are respected in line with the development of the times and civilization as affirmed in Article 28 I paragraph (3) of the 1945 Constitution.

In the context of environmental protection and management, in this case the Government has the duties and authorities as stipulated in Article 63 paragraph (1) letter t of the UUPPLH, namely establishing policies regarding procedures for recognizing the existence of customary law communities, local wisdom, and rights of indigenous peoples who related to environmental protection and management.

Furthermore, normatively there is an acknowledgment of local wisdom as contained in other laws and regulations, namely, among others, in Article 8 letter c of Government Regulation Number 68 of 2010 concerning Forms of Procedures for Community Roles in Spatial Planning, it is emphasized that: Community activities can be in the form of activities that utilize space in accordance with local wisdom and predetermined spatial plans. Local wisdom in this context includes governance, customary values as well as procedures and procedures, including the use of space (ulayat land)".

Other arrangements can be found in Article 11 letter k of Presidential Regulation Number 122 of 2012 concerning Reclamation in Coastal Areas and Small Islands, where in the preparation of the master plan for reclamation, local wisdom must be considered. The local wisdom in question is the rights of customary law communities to carry out management of coastal resources and small islands which are carried out for generations. Also in Article 3 letter g of the Regulation of the Minister of Home Affairs Number 33 of 2009 concerning Guidelines for Ecotourism Development in the Region where it is emphasized that local wisdom is one of the principles in ecotourism development. The local wisdom in question is the socio-cultural values that exist in the community around the ecotourism area.

There are still many laws and regulations relating to indigenous peoples and local wisdom. But the most important thing about the existing laws and regulations is that these norms can actually provide protection and happiness for the people they regulate.

2. Adaptation of Indigenous Peoples in Facing the Covid-19 Pandemic

Basically, humans want prosperous conditions in life that are related to the fulfillment or fulfillment of most of what is needed to live a calm and peaceful life. These needs are either primary, secondary, tertiary or quaternary needs. Tranquility and tranquility of humans or society in an environment is achieved because all that is needed for a decent and perfect life is fulfilled for various layers or classes of society so that satisfaction is achieved in life. Therefore, the fulfillment of primary and secondary needs as a whole for the community is a minimum requirement for community welfare.[9]

As we know, indigenous peoples have a pattern to survive and their lives are closely related to the nature in which they live. Thus, during the Covid-19 pandemic, indigenous peoples are relatively more able to survive compared to society in general.Indigenous peoples always make nature a place to depend on for the fulfillment of all kinds of needs of their life. The management of nature and natural resources is adapted to the hereditary traditions that develop in their jurisdictions. This tradition develops in accordance with the habits that live in the midst of indigenous peoples. These habits continue to be carried out so that it becomes a customary law.

In dealing with the Covid-19 pandemic, there are relevant customary patterns of indigenous peoples as a defense against Covid-19 attacks, namely indigenous

[9] H. Effendi, Environmental Economics, A Theoretical and Practical Review, UPP STIM YKPN, Yogyakarta, 2019, p. 42-43.

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peoples have various rituals of rejecting reinforcements and even closing their villages. The ritual of rejecting reinforcements is of course intended so that the covid-19 pandemic does not spread and infect them, while the ritual of closing the village is intended to temporarily close the visit of outsiders from their village so that the covid-19 pandemic does not spread.

In addition, there is local wisdom wherecustomary law communities in Indonesia in preventing epidemics or diseases, they have a habit of washing their hands and feet before entering the house. Therefore, we often find in front of indigenous people's houses a jar to store water or a small pool in front of the house as a medium to clean hands and feet before entering the house. The tradition of self-isolation is also carried out by indigenous peoples for someone who is suspected of being sick because of a certain disease. This is done to prevent the spread of disease between them.Restrictions on outsiders to enter their area were also carried out when a disease outbreak began to spread in the community. In terms of food, indigenous people are smartmake natural ingredients made from natural ingredients such as leaves, roots, fruit, tree trunks and other things. The ingredients made can be efficacious to cure disease or as a natural disinfectant.

Likewise, in meeting food needs, indigenous peoples are relatively able to fulfill their food sufficiency well, one example is the Baduy indigenous people by making food kumbung to maintain their food availability.[10] They have local wisdom in storing food ingredients safely and durable so that the period of time is long enough to be consumed so that when there is a famine season they do not lack food for consumption, including during the current Covid-19 pandemic. Indigenous peoples always have natural resources that they can use to strengthen their food security and always maintain the balance and productivity of their natural resources. Indigenous peoples are able to live side by side with nature in harmony.The adaptation of indigenous peoples is also carried out by those who live in areas near rivers or the coast, they also have local wisdom to survive in their lives.

Based on the description above, we get an understanding that indigenous peoples during the Covid-19 pandemic can adapt based on their relationship with nature in order to maintain and continue their life by sticking to the values of their ancestral beliefs and living habits. Indigenous peoples have a very ethical perspective on their nature and have an ideology to manage the environment and preserve the natural resources they have by aligning a harmonious and balanced relationship between humans and their environment as part of the heritage of their ancestors in life and living.

Related to this, the agreement of most experts states that humans are a microcosm and the universe with a macrocosm, is a proposition that shows that humans and the universe are one unit.[11]Humans are part of the ecosystem because the environment in which humans live is also an ecosystem. Therefore, humans as part of the ecosystem can be viewed from two perspectives, where humans are passive and more submissive to nature, which is often referred to as ecological determinism, and humans as an active part of the ecosystem and have a very large role in the environment. The occurrence of changes in these ecosystems which in geography and ecological anthropology is called possibilism. Humans in this case are more submissive to nature, that the culture possessed by humans is basically the result of human adaptation to the natural environment or its physical environment.[12]

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[10] NN, Indigenous Peoples Implement Food Security Long Before Covid https://www.gatra.com/detail/news/479454/economy/community-adat-apply-ketahanan-pangan-far-before-covid, download date 15 September 2021.

[11]Amril, Loc. ci..

[12] Adri Febrianto, Ecological Anthropology, An Introduction, Kencana Jakarta, 2016, p.13.

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Based on the description above, it appears that indigenous peoples with their local wisdom are able to survive the Covid-19 pandemic by applying environmentally friendly values and practices that they have been handed down from generation to generation.

D. CONCLUSION

Through the values of local wisdom possessed by indigenous peoples, it has proven the power of law in supporting the environment as green victimology, especially during the Covid-19 pandemic. Good adaptation has been shown by indigenous peoples in dealing with the Covid-19 pandemic through a relationship pattern that is ethical in the environment and adheres to the values of ancestral beliefs and their living habits so that indigenous peoples are able to maintain and continue their lives even during the Covid-19 pandemic.

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IMPACT OF STRUCTURAL VICTIMIZATION ON THE COMMUNITY OF NORTH MALUKU (NATURAL RESOURCE CAPITALIZATION)

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ABSTRACT

The abundance of natural wealth in North Maluku does not necessarily make its people live prosperous and prosperous, but instead becomes a potential conflict that results in structural victimization through the capitalization of resources carried out by the state and corporations, either directly or indirectly. This study aims to identify, understand and provide solutions for any impacts faced by the people of North Maluku, especially in the archipelago as a result of structural victimization by the state and corporations.

The object/focus of this study is to cover the impact of structural victimization on the people of North Maluku due to the capitalization of natural resources. The method used is through the type of empirical law with a conceptual approach. The urgency is to measure how global economic interests influence the political policy of state law, especially in the era of regional autonomy, and theoretically be able to explain how these interests give birth to structural victimization.

The results of the study show that the political practice of expropriation of living space and natural resources has resulted in social-ecological disasters, namely environmental damage in the upstream and downstream sectors, and mass poverty caused by the loss of community livelihood sources, either through the practice of relinquishing land rights, conversion of forest areas, and privatization of control and management of coastal areas and small islands, as well as direct results of land and hill dredging practices that damage ecosystems on land, rivers and seas.

Keywords: Natural Resources; Structural victimization

A. INTRODUCTION

During the New Order government, the method of capitalism development got quite a good space in Indonesia. This regime has marked its alignment with capital since the issuance of Law Number 1 of 1967 concerning Foreign Investment. Since then, the capitalization of living space, land, and natural resources has become increasingly massive. In order to expedite the implementation of its policies in terms of maintaining the stability of capital activity in the regions, this centralized and authoritarian system of power also requires the function of local governments to be no more than 'accomplices' to the regime at the local level. Almost all rights and permits in the natural resource management sector are issued by the central government. Local governments are only responsible for being local supervisors. After the 1998 reform, local governments regained the authority to regulate and manage their respective regions by relying on the principles of decentralization and autonomy.

Capitalization is a development process that is driven by the laws of capitalism, namely competition, profit maximization and capital accumulation without stopping. This kind of development process is limited by the crisis due to overproduction followed by a decrease in production prices by suppressing labor wages. The suppression of production costs through low labor wages then gave birth to a decrease in the

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market's purchasing power for capital products. In such conditions, the movement of capital can be stopped.

This system was renewed by the crisis in the form of a solution to space and time by carrying out geographical and connectivity expansion (infrastructure investment, telecommunications, and education). In principle, this capitalization practice utilizes space and time by making circulation smoother to generate profits in order to develop further accumulation.[1]

Natural resource capitalization referred to here refers to the transfer of control over land and natural resources on a large scale (by whatever means) to corporations, both domestic and foreign companies, and often cross-border (territory, administrative territory, or country).) for investment purposes and seeking profit as well as certain ecological reasons (such as balance and maintaining the carrying capacity of the environment at a macro level) on the one hand, but on the other hand ignoring the rights of local residents to also control and/or use land for the sake of their sustainability, maintaining sustainability their culture, as well as participate in protecting the environment[2].

Article 1 paragraph (1) of Law Number 6 of 1996 concerning Indonesian Waters states that an archipelagic state is a country consisting entirely of one or more islands and may include other islands. While Article 1 paragraph (3) of the same law explains:

"Archipelago is a group of islands, including parts of the island, and the waters between the islands, and other natural features that are so closely related to each other that the islands, waters and other natural features constitute a geographical, economic and economic unit, defense and security and politics that are essential, or historically considered to be so"[3]

Thus, what is meant by structural victimization of the people of the North Maluku Islands through capitalization of natural resources is the practice of converting land and natural resources that were previously controlled and managed by coastal communities and small islands in North Maluku by the state for the sake of expansion of extraction investment. plantations, mining, fisheries, forestry) on a large and massive scale which has implications for poverty and environmental damage.

North Maluku is an archipelago located on the equator. Even though North Maluku Province is not referred to as the Province of the North Maluku Islands, what is meant by a province with archipelagic characteristics in accordance with the explanation of Article 29 of Law Number 23 of 2014 concerning Regional Government is a province that has a sea area of 30%. Thus, North Maluku can be categorized as an archipelagic province which has a sea area of 76.27% consisting of 805 large, medium and small islands. So what is meant by the people of the North Maluku Islands are people who inhabit coastal areas and islands (medium and small), and take advantage of natural resources found on land and waters of North Maluku.[4].

In addition to the characteristics of the archipelago, North Maluku also has a wealth of mineral resources that are attractive for economic development investment. Mineral wealth such as gold, nickel, iron sand, manganese and bauxite has become food for hundreds of mining permits. Halmahera's forests are thin when compared to the other five big islands: Kalimantan, Sulawesi, Java, Sumatra, and Papua, which are also looted and converted for capital purposes.

Meanwhile, the majority of North Maluku residents work as garden farmers and fishermen who use the forest, land, and sea as a source of livelihood. Conflicts over agrarian resources are also increasing in several areas around the concession. These

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[1] Savitri, Laksmi. A. *Korporasi dan Politik Perampasan Tanah*. First Print. Yogyakarta: Insist Press, 2013, page 2.

[2] Bachriadi, Dianto. *Penggusuran dan Eksploitasi: Kapitalisme, Pencaplokan Tanahdan Penataan Ruang,* Paper presented at the Spatial Planning Advocacy School (SATAR) II, Participatory Mapping Network (JKPP), Bogor, 12 December 2013, page 2.

[3] Law Number 6 of 1996 concerning Indonesian Waters (pdf), page 1

[4] Tomagola, Thamrin, , *Kepulauan Rempah-Rempah: Perjalanan Sejarah Maluku Utara 1250-1950*, First Print (Jakarta: popular library Gramedia, 2010), page 4.

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include conflict and criminalization of 13 Gane residents who refused to invest in oil palm plantations by PT. Gelora Mandiri Building (GMM).[5]
In 2013 or the conflict and criminalization of 10 Weda residents who fought against the unilateral layoffs carried out by PT. Weda Bay Nickel (WBN) in 2011.
North Maluku and the Maluku Islands in general are the targets of global capitalism for the benefit of the extraction industry. State policies issued by the central and regional governments are dictated by global economic interests. According to Topatimasang, the context of the problem of depriving the people of the Maluku Islands is motivated by three factors, namely:

1. **Capital Attack**
   Since the 17th century, Maluku's economy has been fully integrated into the world capitalist system—starting from European mercantilist capitalism in the 18th century, then into industrial capitalism in the 19th century, and finally into modern post-industrial capitalism in the 20th century. The main actors alternated, starting from the VOC, The Dutch Colonial Government, the Government of the Republic of Indonesia (through state companies or joint ventures with other countries, through bilateral and multilateral economic agreements), to national and transnational private companies. The logic remains the same, namely for capital accumulation in the extraction industry sector in accordance with the interests of production growth and market demand. As a result, the interests and needs of local residents are neglected.
2. **Concentration of power**
   The centralization of power that had been going on since the VOC era was then maintained, and even strengthened to this day. In order to support, protect and secure the interests of large and massive investments, political policies were issued with the aim of eliminating the autonomous self-government system of local communities in the Maluku Islands. Law Number 5 of 1969 concerning the Principles of Regional Autonomy and Law Number 5 of 1979 concerning Village Administration, for example, sterilize all autonomous functions of government and village level traditional institutions, so that these institutions only function as implementers of ceremonial rites. The 1960 LoGA did not succeed in issuing an implementing regulation that explicitly recognized communal ulayat rights to land. When all these legal bureaucratic tools do not work, military force is also used, so that bloody physical clashes often occur, such as what happened on Yamdena Island in 1991, residents demanded their traditional ulayat rights which were taken over by PT. Alam Nusa Segar with the support of government permission without going through democratic talks with residents.
3. **Coercion of values**
   All of the imposition of these new values is related to economic and political interests, namely to create a cultural legitimacy base for the expansion of capital and government power, so that the Moluccans can no longer use their traditional teachings and beliefs to reject, refute or protest the invasion of supported capital. by the official power of the state.[6]

This development, which is biased by capital and land, fails to understand that the cultural characteristics of indigenous peoples in coastal areas and small islands do not only live and develop from the products they live in, but also from the land and natural resources found on uninhabited islands. The archipelagic area is an integral part of their customary territory. The subsistence economy in the form of agriculture, plaintaations, and traditional fisheris of coastal communities and small islnads in North Maluku is then marginaalized by today's development economy. Residents are lured into being employees of companies thaat will have been operating on their evicted and gardens. They let go of their means of production and go back to "begging" to be employed by the corporation.

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[5] Reports of residents of Gane and WALHI MALUT to Komnas HAM, 2013

[6] Roem Topatimasang et. al., *Orang-Orang Kalah: Kisah Penyingkiran Masyarakat Adat Kepulauan Maluku*, First Print (Yogyakarta: Insist Press and PERDIKAN, 2004), page 25-29

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The politics of depriving local residents of their living space also had an impact on the Tribal-Religious-Ras-Intergroup (SARA)-based humanitarian tragedy that occurred in North Maluku in the 1999-2002 period. Tomagola concludes the results of his research analysis on the tragedy in North Maluku which originates from three root causes, namely competition for religious territory; the seizure of gold mines in Malifut; and the struggle for the governorship of North Maluku. In Gane Dalam Village, South Halmahera, since the palm oil company, PT GMM, a subsidiary of Korindo Group, started plugging its heavy equipment, the villagers have been polarized into two sentiment blogs, pros and cons.

B. METHOD

This type of research is juridical-normative, by conducting a study of the capitalization of agrarian resources by the state and corporations that have an impact on structural victimization in the era of regional autonomy. The approach used in this research is a conceptual approach and a legislative approach using primary data and secondary data. The data from the results of this study were then processed and analyzed descriptively qualitatively.

C. ANALYSIS AND DISCUSSION

Capitalism is a global economic system which, since its emergence in the 17th century, is believed to be the only system capable of producing prosperity in the world community. Historically, capitalism has always experienced developments and changes from time to time. This system change occurred as an effort to develop capital and a solution to the crisis experienced due to overproduction in the midst of declining purchasing power.

The development of capitalism in the 21st century today is better known as economic globalization or neo-imperialism which aims as a medium for market expansion to increase purchasing power, as well as to expand capital in countries that still have abundant reserves of raw resources and cheap labor. Generally, this expansion mechanism is through a system of combined capital in the form of multinational or transnational corporations. Although in its development it has undergone many changes, the capitalist system always departs from the same specific characteristics.

In an abstract sense, it can be said that a civilization in the capitalist system contains the following characteristics:

1. Private ownership of the means of production such as land, factories, and businesses;
2. Paid workers or often referred to as 'wage workers'; and
3. Production of goods or businesses offering services for profit through a market exchange system.[7]

Geographically, North Maluku is located at the interaction of three major world plates, namely the Eurasian, Indian-Australian and Pacific plates. In addition, this area is an area traversed by the Pacific Ring of Fire (a series of active volcanoes in the world), which makes the North Maluku Province prone to tectonic earthquakes, volcanic earthquakes, and tsunamis.[8].

Based on the Decree of the Minister of Forestry Number 302/Menhut-II/2013, the forest area of North Maluku is 2,519,623.91 ha on a land area of 31,982.50 km² (21.94% of the total area). With a limited forest area, the state then divides the allocation for conservation forest ± 218,499 ha, protected forest ± 584,058 ha, and production forest ± 1,712,663.10 ha. Based on this division, there are Business Permits for Utilization of Timber Forest Products in Natural Forests (IUPHHK-HA)

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[7] Tormey, Simon. *Anti-Kapitalisme: Panduan Bagi Pemula.* First Print. Makassar: Wind Publisher, 2016, page 14.

[8] Disaster Management Plan (RPB), North Maluku National Disaster Management Agency (BNPB), 2012.

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782,006 ha, Business Permits for Utilization of Timber Forest Products in Industrial Plantation Forests (IUPHHK-HTI) 65,908 ha, and Business Permits for Utilization of Timber Forest Products in Community Plantation Forest (IUPHHK-HTR) 19,438 ha. In addition to the utilization of timber forest products, there is also the Release of Forest Areas for Plantations covering an area of 58,516.92 ha and Borrow-Use Forest Areas for Mining Activities covering an area of 33,153.66 ha. To date, there are 112 IUPs that will and have been operating on an area of 638,604.52 ha.[9]

By Arif Gosita, victimization does not only affect individual victims, but can also involve certain community structures. Victimization of the structure of society is commonly called Structural Victimization.[10]

The rampant practice of confiscation of land and natural resources by corporations with state legitimacy is nothing but a politics of ecological destruction and impoverishment in the name of development that takes place in a systematic and organized manner. Shiva (1993) asserts that development that aims to create prosperity and prosperity for the people of the third world, in fact in most areas and communities causes environmental degradation and poverty.[11]

The people of North Maluku, who are generally gardeners and fishermen, are accustomed to using forests, land, and the sea as a source of livelihood. So that the thesis built by Shiva is very visible here, how the conversion of forest areas and productive land for the benefit of the capital-intensive extraction industry has actually succeeded in creating conflict, sectarian violence, poverty, and even crime.. In Gane Dalam Village, residents complain that their garden produce is often stolen by their own villagers who no longer own land and gardens. School-age children started stealing from stalls and shops in the village. In October 2021, in the concession ring of Indonesia Weda International Park (IWIP), Central Halmahera, a teenage girl was raped to death by six nickel mining workers.

1. Ecological Crisis in Coastal Areas and Small Islands

   Maba bay in East Halmahera is one of many examples of this development failure. The East Halmahera area, especially Teluk Maba is often referred to as the 'laboratory' of the mining industry in North Maluku. Even small islands such as Gee Island, Mabuli and Pakal, were not spared from dredging activities for nickel mining by the Antam corporation. At present, the ecological conditions of the three islands are very worrying, especially Gee Island which has received a dredging permit since 2000. The once green island has turned barren, arid, and not a single shady tree grows on it.

   Gee Island, an island located in the armpit of the eastern part of Halmahera Island, precisely in Buli Village, Maba Regency, East Halmahera. According to local residents, this island is a place usually used by fishermen in Buli as a stopover for fishing. In the past, before it was destroyed, this island could be used by anyone, including meeting needs during a layover, such as eating coconuts as a hunger and thirst reliever. However, since Antam started to get permission to dredge the island, the story of the residents about Gee Island's coconut, which has sweet water, has been completed. Since the mine has been operating, a ban has been imposed on local residents from approaching this island. Antam even placed a security unit consisting of the Indonesian National Police to patrol the island[12].

   As narrated by the student from Mabapura above, the Sayogyo Institute in its research in 2012 also found the fact that Buli bay (Epa), Mornopo Hill, and Gee Island no longer give the impression of green. The three mining exploitation sites have been left wrapped in brown soil, plus piles of ore (piles of nickel containing

[9] Data of WALHI MALUT , August 2021.

[10] Gosita, Arif. *Masalah Korban Kejahatan*. First Print. Jakarta: Akademika Pressindo, 1993, page 123

[11] Shiva, Vandana. *Water Wars: Privatisasi, Profit dan Polusi*. Fist print. Yogyakarta: Insist Press dan WALHI, 2002. page 79-81.

[12] Yanuardi, Dian et. al. *MP3EI-Master Plan Percepatan dan Perluasan KrisisSosial-Ekologis Indonesia.* First Print. Yogyakarta: Tanah Air Beta and Sayogyo Institute, 2014., page 208.

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soil that are ready to be exported) wrapped in orange tarpaulins. In 2019, the two small islands (Gee and Pakal) have started to look green. The trees and grass began to grow. The islands regenerate themselves. Unfortunately, at the same time, the company's heavy equipment was again brought down to dredge the two islands. Even on Pakal Island, company ships line up around the port to transport ore from there. [13]

In the pre-mining period, mangrove forests grew around the coast and small islands in Maba Bay. But now, when viewed directly or through satellite imagery, it will be seen how the exploitation of this mine has eroded the hills, headlands, and islands that are rich in mangroves. In fact, mangroves themselves have ecological functions as coastal abrasion archery, preventing seawater intrusion (infiltration) into land, storm and wind containment containing salt, reducing carbon dioxide content in the air, as well as anchoring pollutants (poisons) in coastal waters.

In Article 21 paragraph (1) and (2) of Law Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands, it is stated that the utilization of space and resources of coastal waters and islands Small areas in the territory of the Customary Law Community are under the authority of the local Customary Law Community and are carried out taking into account the national interest and in accordance with the provisions of the applicable laws and regulations. Furthermore, Article 22 paragraph (1) explains that Indigenous Law Communities are excluded from having a utilization permit by the government. Furthermore, Article 60 letters (c) and (d) state that indigenous peoples who have utilized and managed coastal areas and small islands must propose their territories into the RZWP-3-K, as well as coastal and small islands management based on applicable customary law must not conflict with the provisions of the legislation.

In the general description of the explanation of the law, it is stated that, one of the foundations of the amendment to Law No. 27 of 2007, is because the implementation of the law in the management of coastal areas and small islands is seen as not providing maximum results. In addition, this change is also on the basis of recognizing and respecting indigenous peoples and their rights in accordance with the principles of the Unitary State of the Republic of Indonesia. Sentences such as "taking into account the national interest"; "in accordance with the applicable laws and regulations"; "must propose customary territory'; "not against the law"; or "in accordance with the principles of the Unitary State of the Republic of Indonesia", does not explicitly explain what the intent and purpose are.

In the name of this national interest, there was a rush of permits for the use of small islands by the minister recommended by the local government, which in the end alienated indigenous peoples in the archipelago from their living space and put aside aspects of ecological sustainability.

Not only forest and sea damage that occurred on the coast and small islands in Maba Bay, East Halmahera. The dredging of the hill for nickel mining by the Antam corporation also has an impact on the clean water crisis. From the results of interviews with several residents of Maba Pura, currently several sources of clean water—both rivers and water flowing from mountain rocks, such as the Nof river for example, can no longer be consumed because the water has become cloudy..

Another fact illustrates that the incessant granting of permits to clear forest and peatland areas issued by the government for the palm oil plantation industry has finally penetrated coastal areas and small islands in Gane Bay, South Halmahera, North Maluku. The ecological impacts that occur in Gane Bay are more or less the same as those in Maba Bay, East Halmahera, due to the exploitation of nickel mining. The conversion of forest areas and community

[13] The results of field observations conducted in May 2019 in Teluk Maba, East Halmahera.

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plantation lands for oil palm plantations covering an area of 11,003.90 hectares in Gane Bay, clearly poses a threat to the destruction of ecosystems in coastal areas and small islands.

Oil palm plantations are a type of monoculture plant that is very water-intensive. In areas overlying peatlands and swamps, it takes about 400 liters of water to produce just one kilogram of palm oil. According to Azwar Maas, Peatland Expert at UGM, when there is no rain in 15 days, then there must be an additional supply of water from rivers or other sources, while the ground water continues to be sucked up by the plants until the ground motion decreases. Especially on peatlands in coastal areas and small islands.[14]

Since 2020, PT GMM has started building employee barracks and a factory for palm oil management. This development uses sand from the coast of "Gane Dalam" and Jibubu Villages. Previously, the company had planned to bring sand from Palu, but local residents refused. Finally, PT GMM asked the residents of Gane Dalam to supply six thousand cubic meters of sand to the company. The majority of villagers who have lost their source of livelihood flocked to dredge sand in several headlands and then sold it to the company. Now the location of the village cemetery at the end of the south coast is starting to thin out the sand. There are trees falling from their roots. Don't let the corpse float in the grave when it is buried. residents outsmart by using a water pump.

In addition, some residents complained about a number of other problems, including the location of the boat moorings getting farther from the garden location. They have to go down about 1 km to walk to the garden. The landslide occurred due to the dredging of the hill to make land planted with oil palm. Soil and mud flow along the river's path into bays around bobane or boat moorings. There are also those who complain of itching on the skin after bathing in the river in their garden location which is close to the location of the oil palm plantation. Allegedly, it happened due to fertilization on their gardens.

In October 2020, 16 children were reported to have been poisoned by popaco (snails or snails) taken from around Lemo bay, the location of PT GMM's palm oil plantation which has displaced hundreds of hectares of forest area and land cultivated by residents. Since 2018, residents of Gane Dalam, Sekely and villages around the oil palm concession area reported that the yield of coconut, banana and nutmeg plantations had decreased drastically. Their gardens are increasingly being attacked by pests and rats, presumably due to the shrinking habitat in the forest and the accumulation of wood crumbs. The roots of the plants were destroyed in the flood and mud. Hundreds of coconut trees standing upright without palms are now a common sight in Gane.

2. Structural Impoverishment of Residents of Coastal Villages and Islands

Furthermore, capitalism through this development economy works solely with the aim of capital accumulation which is accommodated into the market economy mechanism. The looting of natural resources continues to meet market demand. Nature's ability to reorganize itself was then distorted by technological advances that introduced chemical fertilizers. The southern world farmers who previously were able to produce their own food, were then taught to use fertilizers from factories in order to be able to increase production yields to meet the pace of world food demand. Savitri (2013) narrates how the dream of feeding the world through the MIFEE program, actually wreak havoc to a catastrophe of poverty and hunger for the Malind Tribe community in the Merauke Outback Forest. This project has displaced food sources in the form of sago, cassava, pigs, deer and their sources of clean water.[15]

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[14] https://m.tempo.co/read/news/2015/11/18/061719842/ahli-produksi-1-kilogram-sawit-habiskan-400-liter-air, accessed on 12 February 2021

[15] Savitri, Laksmi. A. *Korporasi dan Politik Perampasan Tanah*. First Print. Yogyakarta: Insist Press, 2013, page 54.

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Shiva (1993) explains that the conventional paradigm of this kind of development assumes that poverty is simply a matter of the absence of consumption patterns that are common in the west, or that poverty can only be overcome through economic development..[16] The Gane Dalam people are considered poor if they eat sago and fish caught by traditional fishermen, instead of consuming commercial and instant food products sold by global entrepreneurs. The Maba Pura people look poor if they live in a house built by themselves using natural materials such as bamboo walls and thatched roofs, instead of using concrete. Tobelo Dalam people look poor when they use their own clothes made of bark and fibers instead of using synthetic materials. Subsistence which is culturally considered poor, does not mean the low level of available material. In contrast, sago and fish, for example, are more nutritious than processed foods; houses made with local materials will be more adaptive to the local climate and ecology than concrete materials; bark and fibers are preferred by residents and are more likely to be produced than synthetic materials.

The people of Gane Dalam Village, South Halmahera who are used to producing their own consumption needs in the form of sago, bananas, vegetables, fruits, spices, and seafood; also financially independent with coconut, walnut, cocoa, nutmeg and clove crops, as well as forest products such as resin, mangroves, bamboo, palm, ironwood, and sea pandanus. Now they are forced to change local production patterns to become oil palm farmers or farm laborers in the oil palm monoculture plantation industry. The independence of the residents in producing their sources and necessities of life is then reduced to dependence on oil palm corporations.

Currently, residents who sell their traditional gardens have turned into laborers at PT. GMM. Several female workers, who were previously garden farmers, have to wake up at 04.00 am every day and clean the house, prepare breakfast, and prepare to go to the company location. These women work as day laborers who are paid no more than 50 thousand. To get to the plantation site which is located across the bay, these workers are picked up at 06.00 by using the company speedboat. If they are late, then they cannot go to work which means that the day's income will be lost. Some residents who have given up their cultivated land and changed professions to become plantation workers are then called regretting their choice.[17]

In contrast to Gane who are still consistent in defending their living space from capital attacks, the residents of Maba Pura and Teluk Maba in general are actually tempted by the presence of mining companies that are dredging nickel on their villages and islands. After clearing forest areas and garden lands to be exchanged for cash, residents then became dependent on mining companies. Structural impoverishment as a result of the pattern of centralized policies implemented by the central and local governments (without any consultation with the residents) then became an epidemic in East Halmahera, especially post-mining.

a. **Food Crisis**

Doro Sago is an area of sago plants that can be harvested, utilized, and maintained by residents together. When the New Order government began campaigning for rice as a national food in the 1980s, residents around Teluk Buli still maintained *Doro Sago* by continuing to consume sago as a staple food source. However, after the mining industry began to enter in 2000, *the Doro-Doro Sago* downstream began to die and dry up, due to water shortages caused by deforestation and soil dredging upstream. In the last 10 years, almost all residents of Maba bay are rice eaters imported from Tobelo, North Halmahera and the transmigration area in Wasilei, East Halmahera..[170] The same thing applies to the residents of Maba Pura Village who no longer

[16] Vandana Shiva and Maria Mies, *op. cit*., page 81.

[17] *ibid*

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consume sago produced by themselves and replace it with rice which must be purchased at the stalls of traders from Bugis and Buton. Currently, residents can only produce and consume sago and papeda which are made from cassava as the basic ingredient.[18] In 2009, the World Food Program in collaboration with the Indonesian Ministry of Agriculture released a map of food security and vulnerability in Indonesia, showing that East Halmahera is an area that has problems with the availability of food and clean water..

In addition to the changing needs for carbohydrate food consumption, the consumption pattern of the residents of Maba bay towards protein has also changed. In the period before the presence of the mining industry, these coastal residents depended on the sea around the bay. Since the mine started operating, the majority of fishermen have complained about the reduced catch and cloudy sea water due to nickel mining. In order to get a lot of catches and quality, these local fishermen have to go to sea some distance offshore which is of course risky because the boats used are very simple. In addition, the need for expensive fuel is increasing.[19]

b. **changes in consumption patterns**

This change in production patterns occurs due to the loss of sources of livelihood and space for residents, such as forests, gardens, and the sea. The residents of Maba bay gave up their land for development. Mines, mining support infrastructure, and district government infrastructure were built by displacing these productive lands. Furthermore, when forests, gardens, and the sea no longer function as producers of their necessities of life, residents become dependent on money. The money they earn is then spent to meet consumption needs.

Apart from working as freelancers in the mining industry, some residents who have lost their living space (land and sea) also work as masons. In Wailukum Village, East Halmahera, about four kilometers from Buli, dozens of women and women work as stone-breakers. This rock-breaking work is usually done for nine to ten hours a day. After these medium-sized boulders were broken down, the women then peddled them under the tarpaulin in front of the highway. Usually these stones are purchased for the needs of road and building construction.

As a result of the loss of their living space and source of livelihood, residents have become more consumptive than ever before. The commodification of basic needs and the creation of new 'and 'modern' necessities of life are justifications for shopping, and no longer producing. The consumptive behavior of these residents has increased after the presence of mining companies.

Another story is that social strata began to emerge in society based on money income and material wealth in the form of houses, motorbikes, or cars.

"And if we look at the distribution of poor families according to the area of land ownership, it also turns out that in the lower strata of land ownership there is a larger proportion of poor families. So once again this proves that although the proportion of income from the non-agricultural sector is greater than the agricultural sector, land ownership runs parallel to the level of sufficiency. This means that access to sources outside the agricultural sector is more owned by large landowners".[20]

Thus Gunawan Wiradi and Makali's analysis of their research results related to land tenure and institutions, particularly regarding land ownership and poverty levels, which explains that the spread of poverty at the village level

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[18] Interview with Naser Syamsi, January 22, 2020

[19] Dian Yanuardi et. al., MP3EI... *loc. cit*.

[20] Wiradi, Gunawan et. al.. *Ranah Studi Agraria: Penguasaan Tanah dan Hubungan Agraria*. First Print. Yogyakarta: National Land College, 2009, page 127

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generally occurs as a result of the unequal distribution of ownership and/or control over land rights. .

From the results of their research presented, it can be seen that people with higher incomes—both through agricultural and non-agricultural work sectors, always come from a background of greater land/land ownership than those with lower incomes. This means that even non-agricultural work access, is more easily accessed by the 'landlords' '.

D. CONCLUSION

Structural victimization of the people of the North Maluku Islands through the capitalization of natural resources in the era of autonomy, is still a long polemic of structural crimes committed by the state and corporations (directly or indirectly) to this day. The ability of local residents to manage and regulate natural resources is then eroded by a centralized system of control and regulation.

This deprivation of living space and agrarian resources has resulted in social-ecological disasters, namely environmental damage to the upstream and downstream sectors, and mass poverty caused by the loss of their livelihood sources—either through the practice of relinquishing land rights, conversion of forest areas, and privatization of control and management of coastal areas and small islands, as well as direct results of land and hill dredging practices that damage ecosystems on land, rivers and seas. There is a crisis of food, water and sources of livelihood for the residents of Gane bay, South Halmahera.

Another threat to the people who inhabit small islands in Pulau Morotai Regency, are no longer able to take advantage of the natural resources that exist in other islands in the vicinity, as a result of the Morotai Special Economic Zone policy which means small uninhabited islands are an area that controlled and managed directly by the state, in this case the local government.

E. RECOMMENDATION

The recommendations from this research are:

1. The expansion of access and control of indigenous peoples over agrarian resources is a strategic effort to restore the economic independence of citizens in regulating and managing their own livelihoods, free from dependence on corporations.
2. The existence of local policies in the form of Regional Regulations that provide legal certainty for the regulation of customary rights and the protection of indigenous peoples.

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LEGAL PROTECTION FOR VICTIMS OF ENFORCEMENT OF CORRUPTION CRIMES IN INDONESIA

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ABSTRACT

A fair trial is a principle that is an indicator of the development of a just society and legal system. Without the application of the principle of a fair trial, public confidence in the law and the judicial system will collapse. Included in law enforcement against perpetrators of criminal acts of corruption, it must be carried out properly based on evidence in accordance with article 184 paragraph 1 of the Criminal Procedure Code and the law on eradicating corruption, but the facts on the ground there may be cases of criminal acts of corruption, especially those related to the procurement of goods and services. services that are processed by law enforcement officers without being supported by evidence and without clear elements of violating the law, abuse of authority and elements of loss to the state, so that people who are suspected and accused of being perpetrators of criminal acts of corruption become victims in the criminal justice system. The problem in this research is how does the law on corruption regulate acts of corruption in the procurement of goods and services?, how is the implementation of Article 2 and Article 3 of the Corruption Law on cases of corruption in the procurement of goods and services?, and how is legal protection for victims in law enforcement? corruption law.

The research method used in this research is empirical juridical, namely legal research regarding the implementation of normative legal provisions in action on certain legal events that occur in society. The main legal material is by examining theories, concepts, legal principles and legislation. The data used are secondary data such as the Criminal Code, the Law on the Eradication of Corruption, the Criminal Procedure Code.

The results of the study conclude that the corruption law regulates corruption in the procurement of goods and services clearly as stated in Article 2 and Article 3. Implementation of Article 2 and Article 3 of the Law on eradicating corruption in cases of corruption in the procurement of goods and services. services are still not in accordance with the evidence as stated in Article 184 paragraph 1 of the Criminal Procedure Code as well as elements of articles 2 and 3 of the corruption law, as well as legal protection for victims in law enforcement of corruption crimes by being given the opportunity to test the determination of suspects to a pretrial institution. in connection with the absence of elements against the law, abuse of authority and elements of harm to state finances.

Keywords: Corruption, victims, state losses, and against the law.

A. INTRODUCTION

Corruption in Indonesia has been going on for a long time and is massive. Tackling corruption in Indonesia seems to only blame the existing system, such as the rule of law or community culture. Various ways have been carried out by the State to prevent and take action against perpetrators of criminal acts of corruption, including making rules or regulations. Corruption acts from day to day continue to occur, this can be seen clearly, because almost every day there is news in the print and electronic media about taking action against perpetrators suspected of committing acts of corruption,

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whether those carried out by state officials, civil servants , the private sector, and law enforcement officials.

Eradication of corruption is one of the priority agendas, even all reform agendas, either directly or indirectly, are aimed at minimizing the potential for corruption, for example the agenda for changing the 1945 Constitution to build a checks and balancing system (a system of monitoring and controlling each other) so that power is not concentrated in one branch of power. giving rise to the potential for corruption. (Fahrojih Brotherhood, 2016: 2).

The government has made several changes to the law on eradicating corruption, starting with Law Number 3 of 1971, changing to Law Number 31 of 1999, then changing again to Law Number 20 of 2001. there is still Law Number 28 of 1999 concerning the administration of a state that is clean and free from corruption, collusion and nepotism and there is Law Number 19 of 2019 concerning the Corruption Eradication Commission. The law states firmly that corruption is an extraordinary crime, because it will have an extraordinary impact.

Prosecution of perpetrators of corruption must be carried out professionally, because the nature of corrupt acts is extraordinary. Law enforcement officers when carrying out the process of prosecution must really prioritize justice, benefit and certainty. The evidence submitted and presented must be in accordance with the evidence based on Article 184 paragraph 1 of Law Number 8 of 1981 concerning the Criminal Procedure Code. The process of investigation, investigation, prosecution and examination in court must truly be carried out in a transparent, accountable, credible, independent manner and prioritize the principle of presumption of innocence. The independence of the judiciary in Indonesia is regulated in Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which regulates the power of an independent judiciary to administer justice to uphold law and justice. Judicial independence is free from all forms of intervention. This is so that the judicial power can administer justice to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia (Sutatiek, 2013: 1).

Actions taken by law enforcement officers, whether by the Police, the Prosecutor's Office or the KPK who are authorized by law to carry out law enforcement processes against perpetrators of criminal acts of corruption are sometimes carried out in a less professional manner so that it is not uncommon for several cases to be handled by law enforcement officers. The law causes victims because it is not uncommon for suspects or defendants to be brought to court who can be said to be victims. Actually, the perpetrator did not personally enrich himself or other people and even the state, but there was an error in terms of the administrative process as happened in the procurement of goods and services to increase drinking water capacity/uprating at PDAM Tirta Tarum, Teluk Jambe branch, Karawang Regency, West Java. The short chronology is as follows West Java High Prosecutor's Investigator has named a suspect and delegated a corruption case to the Court on behalf of Yogie Patriana Alsjah and Jumali as budget users and officials making commitments in the activities of Upratting IPA PDAM Teluk Jambe Branch, Karawang Regency. They were charged with committing a criminal act of corruption. The procurement of drinking water capacity building/uprating violates Articles 2 and 3, Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the eradication of criminal acts of corruption. The reason for increasing the capacity of drinking water/uprating in PDAM is due to the pressure of customers who demand to immediately improve the quality of service. After that, a feasibility study is carried out in the form of technical justification. After there was a technical justification, then submitted a request for a budget change in 2015 and only budgeted for the 2016 pure RKAP and in the end a contract was signed with the winning bidder, namely PT. Dharma Prema Mandala. Investigators consider that the auction process should not have been carried out in 2015 because it was not budgeted for in the 2015 RKAP, even though it was carried out in 2016 and budgeted for in the 2016 RKAP. From this case, it is certainly interesting to study and examine whether the actions carried out have elements of corruption or not.

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B. PROBLEM STATEMENT

Referring to the background above, the problems that can be formulated are as follows:

1. How does the corruption law regulate corruption in the procurement of goods and services ?
2. How is the implementation of Article 2 and Article 3 of the Anti-Corruption Law on cases of corruption in the procurement of goods and services ?
3. How is legal protection for victims in law enforcement of corruption crimes ?

C. PURPOSE

The purpose of this paper is to examine the legal protection for victims of law enforcement crimes of corruption in Indonesia which often appear in the process of law enforcement in Indonesia.

D. LITERATURE STUDY

Indonesia is a legal state based on law (rechstaat) and not based on mere power (machtstaat). Because Indonesia is a state of law, it is appropriate that the law is enforced correctly and fairly, including criminal law. Criminal law is made so that there is order in society. All people must obey it if there are people who violate it will be subject to sanctions, it aims to provide a deterrent effect to perpetrators who commit criminal acts, and provide an example for other perpetrators.

Lawmakers in Indonesia translate "straafbaarfeit" (Dutch) as a crime, but do not explain further about straafbaarfeit itself. Straafbaarfeit in Dutch actually consists of two word-forming elements, namely straafbaar and feit. Feit in Dutch means "part of reality", while straafbaar means punishable. So if translated literally, straafbaarfeit has the meaning of part of the reality that can be punished, even though what can be punished is humans as individuals, not reality, deeds or actions. Punishable actions must be carried out by humans as individuals.

Corruption is a criminal act. According to Fockema Andreae, the word corruption comes from the Latin corruptio or corruptus (Webster Student Dictionary, 1960). Furthermore, it is stated that corruptio comes from the root word corrumpere, which is an older Latin word. From this Latin language it is absorbed into many languages in European countries, such as English, namely Corruption, corrupt, France, namely Corruption, and the Netherlands Corruptie (korruptie). It is from this Dutch language that we translate corruption into Indonesian. Corruption literally means rot, ugliness, depravity, bribery, immorality, deviation from chastity, insulting and slanderous words or words. The Lexicon Webster Dictionary "Corruption (L. Corruption (n-)): The act of corrupting, or the state of being corrupt; putrefactive decomposition, princess matter; moral perversion; depravity, pervesion of integrity, corrupt or dishonest proceedings, bribery, pervesion from a state of purity, debasement, as of language; a debased from a word". General Indonesian Dictionary (W.J.S. Poerwodarminto): Corruption is a bad act such as embezzlement of money, accepting bribes and so on. Complete Dictionary of English – Indonesian, Indonesian – English, S. Wojowasito – W.J.S. Poerwodarminto: Evil, rottenness, bribery, immorality, depravity, and dishonesty. Economic Development Institute of the World Bank, "National Integrity System Country Studies" says: "an abuse of entrused power by politicians of civil servant for personal gain". Malaysia has regulations on anti-corruption, they do not use the word corruption but use the term rusuah which is taken from the Arabic riswah. In Indonesia, when people talk about corruption, what they think and say is only about bad, bad, corrupt actions, with various meanings according to time, place, and ethnicity, as well as other nations. Steps to formulate regulations on eradicating corruption in Indonesia have been initiated several years in the history of the Indonesian nation since gaining its independence, as an effort to eradicate corruption. And the term corruption as a juridical term began in 1957 when the Military Ruler Regulation was issued in the Army's territory (Military Regulation No. PRT/PM/06/1957).

Some of the laws and regulations governing acts of corruption in Indonesia are:

1. The 1945 Constitution Article 5 paragraph (1) and Article 20 paragraph (1);
2. Law Number 3 of 1971 concerning Eradication of Criminal Acts of Corruption;

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3. Decree of the People's Consultative Assembly of the Republic of Indonesia Number XI/MPR/1998 concerning State Administrators that are Clean and Free of Corruption, Collusion and Nepotism;
4. Law Number 28 of 1999 concerning State Administration that is Free from Corruption, Collusion, and Nepotism;
5. Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Criminal Acts of Corruption;
6. Law No. 19 of 2019 concerning the Corruption Eradication Commission;
7. Law Number 8 of 1981 concerning the Criminal Procedure Code
8. The Criminal Code;

In addition to the existing regulations in Indonesia, the provisions governing acts of corruption are also contained in the provisions of International Law that are directly related to the handling of corruption, including those that apply to the Asia Pacific and Southeast Asia regions, including the following:

1. Anti-Corruption Action Plan for Asia and The Pacific Action Plan (Tokyo Conference 2001).
2. MoU on Cooperation for Preventing and Combating Corruption 2004 (Singapore, Indonesia, Brunei, Malaysia).
3. The United Nations Convention against Corruption (UNCAC), which was formed on December 9, 2003 in Merida (Mexico).
4. The United Nations Convention against Transnational Organized Crime (UNTOC).

The law must be enforced by law enforcement officials to maintain order in society. The law enforcement process is a mechanism carried out by law enforcement agencies that have been given the authority according to law to enforce material law if it is violated by a person or a legal entity. The law enforcement process is sometimes not in line with the expectations of the community or justice/justice seekers, because the perpetrators who are processed may become victims due to administrative errors made. According to Arif Gosita, victims are those who suffer physically and spiritually as a result of the actions of others, who seek to fulfill the interests of themselves or others, which are contrary to the interests and human rights of those who suffer. The definition of victim here can mean an individual or a group, both private and government. (Bambang Waluyo, 2011, p. 31).

Mendelsohn formulated a typology of victims based on the level of error which was divided into five types, namely:

a. Who is completely innocent;
b. Those who become victims because of their negligence;
c. Which is as wrong as the perpetrator;
d. Who is more guilty than the perpetrator;
e. The victim is the only one guilty (in this case the perpetrator is acquitted). (Arief Mansyur, Dikdik M. and Elisatris Gultom, 2007, p. 52).

Rena Yulia in her book says that the problem of victims is actually not a new problem, only because certain things are not paid attention to, even ignored. When observing the problem of crime according to the actual proportion in terms of dimensions, then inevitably we have to take into account the role of the victim in the emergence of a crime or a crime. (Rena Yulia, 2013, p. 75). Furthermore, Rena Yulia also said that crime is a result of interaction, because of the interrelation between existing phenomena and influencing each other. Perpetrators and victims of crime are participants, who are actively or passively involved in a crime. Each plays an important and decisive role. Victims form criminals intentionally or unintentionally related to their respective (relative) situations and conditions. There is a functional relationship between the victim and the perpetrator of the crime. (Rena Yulia, 2013, p. 78).

E. RESEARCH METHODS

The research method in this paper uses empirical juridical, namely research that examines the applicable legal rules with circumstances occurring in reality in society. Regarding legal protection for victims of law enforcement corruption crimes in Indonesia. Inventory, review, and examine secondary data in the form of statutory

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regulations, namely Law Number 20 of 2001 concerning Amendments to Law Number 31 of 2001 concerning the Eradication of corruption, Law Number 8 of 1981 concerning the Criminal Procedure Code, Law Number 2 of 2002 on the police, Law Number 16 of 2004 on the Prosecutor's Office, Law number 3 of 2009 on the Supreme Court, Law Number 19 of 2019 concerning the Corruption Eradication Commission.

F. DISCUSSION

1. Regulation of acts of corruption in the procurement of goods and services in the law on eradicating criminal acts of corruption

Indonesia is a country based on law (rechstaat) and not based on mere power (machtstaat). The definition of a state based on law means that all national and state life must be based on rules. The law has a high position, so that everyone, be it a citizen or government, must be subject to the law. (Muladi, 2009: 37). The characteristics of a state based on law are: (a) the law is used as the basis for the government in carrying out its duties and obligations; (b) human rights (its citizens) are guaranteed by law; (c) there is a division of power in the administration of the state; (d) an independent judiciary and supervision of judicial bodies (rechterlijke controle) by the competent authorities. (Soemantri, 1984: 24.). Because Indonesia is a state of law, it is appropriate that the law is enforced correctly and fairly, including the criminal law of corruption. The regulation of criminal acts of corruption is regulated in Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning the eradication of criminal acts of corruption. Specifically regarding criminal acts of corruption related to the procurement of goods and services, it is regulated in Article 2 paragraphs 1 and 2, as well as Article 3. Article 2 paragraph (1), which reads that any person who unlawfully commits an act of enriching himself or another person or a corporation that may harm the state finances or the state economy, shall be sentenced to life imprisonment or a minimum imprisonment of 4 (four) years and a maximum of 20 (twenty) years and a minimum fine of Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 1.000.000.000,00 (one billion rupiah). Article 2 paragraph (2) states, in the event that the criminal act of corruption as referred to in paragraph (1) is committed under certain circumstances, the death penalty may be imposed. Whereas Article 3 reads that every person who with the aim of benefiting himself or another person or a corporation, abuses the authority, opportunity or facilities available to him because of a position or position that can harm state finances or the state economy, is sentenced to life imprisonment or imprisonment. a minimum of 1 (one) year and a maximum of 20 (twenty) years and or a fine of at least Rp. 50,000,000.00 (fifty million rupiah).

From the above provisions related to criminal acts of corruption in the procurement of goods and services that result in state losses, investigators, prosecutors and judges when carrying out law enforcement processes, both at the level of investigation, prosecution and in making decisions, will apply the two articles. These two articles are often used by law enforcement officers because the procurement of goods and services carried out by state officials is often carried out not in accordance with procedures, starting from the auction process, carrying out work to supervision. The handling of cases of irregularities in the procurement of goods and services should begin with identifying and classifying whether these deviations are included in the realm of administrative law or civil law or criminal law. This identification and classification step is important to know which legal rules (rechtsregel) will be applied to in-concreto cases. Characteristics of corruption cannot be equated with other conventional crimes. Corruption is always labeled as a white collar crime because its actions are always dynamic in its modus operandi from all sides so that it is said to be an invisible crime which is very difficult to detect. Therefore, the pattern of eradication cannot only be carried out with severe punishment or the death penalty, the punishment is only an ultimum remedium, so it must be preceded by another legal instrument, namely the enforcement of administrative law. This needs to be done because the perpetrators suspected of

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committing a criminal act of corruption have human rights guaranteed by law. Human rights are principles that are based on the assumption that humans are good and dignified creatures. Human rights are fundamental rights whose realization will make humans as dignified creatures. These fundamental rights are not only conditions that enable humans to express and actualize themselves, but also conditions that enable humans to live honorably. The existence of human rights is not determined by the ability to realize these rights. (Teguh Prasetyo, 2015: 22-23).

2. **Implementation of Article 2 and Article 3 of the Anti-Corruption Law on cases of corruption in the procurement of goods and services.**

According to Fockema Andreae, corruption is a criminal act. in Latin the term corruption is corruptio or corruptus (Webster Student Dictionary, 1960). Corruptio comes from the original word corrumpere, which is a Latin word older than Latin which is absorbed into many languages in European countries, such as English, namely Corruption, corrupt, France, namely Corruption, and the Netherlands Corruptie (korruptie). From the Dutch language, the word corruption was translated into Indonesian. Corruption can be interpreted as ugliness, rottenness, depravity, can be bribed, immoral, deviations from chastity, as well as insulting and slanderous words or words. The Lexicon Webster Dictionary "Corruption (L. Corruption (n-)): The act of corrupting, or the state of being corrupt; putrefactive decomposition, princess matter; moral perversion; depravity, pervesion of integrity, corrupt or dishonest proceedings, bribery, pervesion from a state of purity, debasement, as of language; a debased from a word". In the Indonesian Dictionary (W.J.S. Poerwodarminto): The definition of corruption is bad/bad actions such as embezzlement of money, accepting bribes and so on. Complete Dictionary of English – Indonesian, Indonesian – English, S. Wojowasito – W.J.S. Poerwodarminto: Crime, rottenness, bribery, immorality, depravity, and dishonesty. Economic Development Institute of the World Bank, "National Integrity System Country Studies" says: "an abuse of entrused power by politicians of civil servant for personal gain". (Military Regulation No. PRT/PM/06/1957).

Corruption is evil, rotten, dishonest, and against the law. Prevention and prosecution of criminal acts of corruption is the responsibility of the state, including in the procurement of goods and services. Corruption is actually not a new problem in Indonesia, because the corps has existed since after independence, namely in the era of the 1950s, even various groups consider that corruption has become a part of life. (Chaerudin et al, 2007: 1)

The abuse of authority by the authorities has become quite dominant in eradicating corruption. This understanding is the main one in understanding corruption. The world bank and donor agencies are considering strategies for prevention and eradication. The public sector is the focus in eradicating corruption. All corruption eradication programs are centered on how to prevent the abuse of public authority by the bureaucracy. Many programs are focused on preventing abuse of power in government institutions. (Journal of Integrity volume 2 , 2016 : 272.). In political science, the mainstream idea of eradicating corruption was developed from the Principal-agent theory (Hamilton-Hart, 2001; Person, Rothstein, & Theorell, 2010). In line with the principal-agent framework, Robert Klitgaard makes a very famous formulation of corruption: C = M + D-A (Corruption = Monopoly + Discretion-Accountability), (Klitgaard, 1988, p. 75). Corruption equals monopoly plus authority but minus accountability. Based on this formula, the anti-corruption program is designed to reduce the monopoly of power and authority and increase accountability. Based on Klitgaard's formulation, to reduce corruption, principals must ensure that agents are limited in power and authority and prepare accountability mechanisms. With strict supervision, corruption or betrayal by agents can be reduced (Journal of Integrity volume 2, 2016: 273).

The abuse of authority that causes state losses is a form of corruption that often occurs in the procurement of goods and services. This sector is dominant because it involves several parties, namely the Government (central and regional), BUMN

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and BUMD as those with the budget, planning consultants, construction management, contractors and supervisory consultants. If there is an allegation of abuse of authority so that it is suspected that there is a loss to the state, law enforcement officers will apply Article 2 and Article 3 of the Law on eradicating corruption, because both Articles require abuse of authority, elements against the law and state losses. There are 4 forms of unlawful categorization in the perspective of criminal law science. First, the nature of against the general law which is defined as a condition for the conviction of an act as defined by the definition of a crime. Second, the nature of special unlawful acts or the nature of unlawful facets is commonly found in the formulation of criminal acts against the law which are explicitly stated in the formulation of the article concerned, so that this unlawful nature is a written requirement for an act to be punished. Third, the nature of against the formal law is defined as all elements of the offense have been fulfilled by the actions of the perpetrators of the crime. Fourth, the nature of violating material laws, both positive and negative functions. The nature of violating material law in a positive function is defined as even though the act is not regulated in laws and regulations, but if the act is considered despicable because it is not in accordance with the sense of justice or norms of justice or the norms of social life of the community, then the act can be punished. The nature of violating material law in a negative sense means that even though the act has fulfilled the element of offense, but the act does not conflict with the sense of justice of the community, then the act cannot be punished. (Seno Wibowo, Ratna Nurhaya, 2015: 354-355). In practice, law enforcement against criminal acts of corruption in the procurement of goods and services is very difficult, especially in terms of proving the elements. Law enforcement officials must be careful because the element of abuse of authority, and the element of state loss is the domain of state administrative law and economic law, therefore in disclosing a case suspected of state loss must bring in experts in their fields, namely experts who explain the meaning of abuse of authority, experts to calculate state losses as well as experts in the technical field. After finding the abuse of authority and state losses, then it is related to the aspect of criminal responsibility, who is most responsible for the procurement of goods and services. The case that the author exemplifies, namely the procurement of goods and services for increasing drinking water capacity/uprating at PDAM Tirta Tarum, Teluk Jambe branch, Karawang Regency, West Java, is proof of how law enforcement officers must be really careful in applying the elements of Article 2 and elements of Article 3 of the Act. eradication of corruption. Law enforcement officers must really rely on the evidence provided for in Article 184 paragraph 1 of Law Number 8 of 1981 concerning the Criminal Procedure Code, namely witness testimony, expert testimony, letters, instructions and statements of the accused. From this case, it can be observed how careless law enforcement officers are in processing allegations of state losses because it turns out that the PDAM Teluk Jambe Karawang branch carried out the uprating activity starting with customer pressure demanding immediate improvement of service quality. After the customer urges, then conduct a feasibility study in the form of technical justification. After there was a technical justification and then submitted a request for a budget change in 2015 then it was only budgeted in the 2016 pure RKAP and in the end a contract was signed with the auction winner, namely PT. Dharma Prema Mandala. Investigators consider that the auction process should not be conducted in 2015 because it was not budgeted for in the 2015 RKAP, even though it was carried out in 2016 and budgeted for in the 2016 RKAP. From this case, it can be seen that there was an administrative error made by PDAM Teluk Jambe Karawang, due to the fact that the work has been completed. carried out and the community can enjoy the activities to increase the capacity of drinking water. Administrative errors should not be handled by using criminal means, because crime is a last resort or an ultimum remedium.

3. **Legal protection of victims in law enforcement of corruption crimes**

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Legal protection is an effort from the state or government to guarantee legal certainty, provide protection to citizens so that their rights as citizens are not violated, and those who violate will be subject to sanctions according to existing regulations. Legal protection must be given to anyone, including victims of crime. According to the view of criminal law, the definition of victims of crime is the terminology of criminology and victimology and then developed in criminal law and/or the criminal justice system. seek fulfillment of the interests of oneself or others that are contrary to the interests and human rights of the sufferer. (Arif Gosita, 2004, p. 97). Victims of crime are direct, namely victims of the crime itself and indirect (pseudo/abstract victims) namely the community, a person, community group and the wider community and besides that, the victim's losses can also be material which is usually assessed in money and immaterial, namely feelings of fear, pain, sadness, psychic shock and so on. The position of victims in the criminal justice system as well as in judicial practice is relatively underappreciated because Indonesian legal provisions still rely on protection for perpetrators (offender oriented). In general, in theory, there are two models of protection, namely: First, the procedural rights model or in France it is called the partie civile model (civil action system). In short, this model emphasizes that it is possible for victims to play an active role in the criminal justice process, such as assisting public prosecutors, being involved in every level of case examination, having their opinions heard if the convict is released on parole, and so on. In addition, by actively participating in the criminal justice process, victims can regain their self-esteem and confidence. However, the involvement of the victim has a positive side in law enforcement, and also has a negative side because the victim's active participation in the implementation of the criminal justice process can cause personal interests to be above the public interest. Second, the service model which emphasizes the provision of compensation in the form of compensation, restitution and efforts to take the condition of victims who are traumatized, fearful and depressed due to crime. When compared, it turns out that both the procedural rights model and the service model each have weaknesses. This model of procedural rights can place the public interest under the individual interests of the victim, in addition to a free judicial atmosphere based on the presumption of innocence, which can be disrupted by the victim's opinion about the sentence imposed because it is based on emotional thoughts as attempt to retaliate.

In the process of enforcing criminal law, there may be things that cause a victim, such as in the enforcement of criminal law on corruption against perpetrators who are suspected of having abused authority, causing state losses, as the author exemplified in the procurement of goods and services to increase water capacity/uprating in PDAMs. Jambe Bay, Karawang Regency, West Java. From the example of the case, there must be a form of legal protection for the victim because the law enforcement process may be carried out not in accordance with the procedures or stages set out in the criminal procedural law demands or in terms of the elements not being fulfilled. The form of legal protection that can be done is by being given the opportunity to test the determination of the suspect to the pretrial institution, presenting mitigating witnesses and presenting mitigating experts, so that a balanced law enforcement process occurs. In addition, the Government must make regulations that can provide complete guidance on the process of procurement of goods and services so that all elements in the criminal justice system clearly understand the process of procurement of goods and services. This needs to be done because the procurement of goods and services is always related to administrative aspects that must be completed by the Government, planning consultants, contractors and supervisory consultants.

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G. CONCLUSIONS AND SUGGESTIONS

1. Conclusion

a. The regulation of acts of corruption in the procurement of goods and services in the law on the eradication of criminal acts of corruption is contained in Article 2 paragraphs 1 and 2, as well as Article 3 of the Law on the eradication of criminal acts of corruption.
b. Implementation of Article 2 and Article 3 of the Law on eradicating corruption in the procurement sector of goods and services is difficult because law enforcement officers must be strictly based on the evidence as stated in Article 184 paragraph 1 of the Criminal Procedure Code and must be able to prove the elements elements of Article 2 and Article 3 of the Anti-Corruption Law,
c. Legal protection of victims in law enforcement of corruption crimes by being given the opportunity to examine the determination of suspects to the pretrial institution in connection with the absence of elements of abuse of authority and elements of harming state finances.

2. Suggestion

a. Law enforcement officials must be careful in applying Article 2 and Article 3 of the Law on eradicating corruption to perpetrators suspected of abusing their authority in the procurement of goods and services.
b. The government must provide legal protection in the event of a victim in the process of law enforcement of the crime of corruption.

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VICTIMOLOGICAL DIMENSIONS REGARDING LEGAL PROTECTION OF WOMEN IN ONLINE PROSTITUTION CASES

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ABSTRACT

This paper is the result of an idea that examines normative theoretical regarding legal protection for women in prostitution cases that is studied based on the victimization dimension. In order to realize and promote a just, prosperous and prosperous life which is the right of every citizen, every citizen is protected under Article 27 paragraph (2) of the 1945 Constitution to have the right to work and a livelihood that is for humanity. The Indonesian state has a strong foundation in protecting human rights above human dignity by recognizing them in work and a decent life or in accordance with human dignity. There should be a criminal law relating to the formulation of prostitution policies that are in line with the development of the community's needs for crime. The current Criminal Code is sociologically and juridically incompatible with the values that live and develop in society, and this adds to legal inconsistencies in the enforcement and prevention of prostitution which has an impact on the social, human rights, health and religion fields. Taking this into account, this paper is expected to be able to respond to the development of community needs for the development of decency as well as to contribute to criminal law in providing legal protection to women in cases of online prostitution.

Keywords: Legal Protection, Women, and Online Prostitution.

A. INTRODUCTION

The government views Law no. 11 of 2008 concerning Information and Electronic Transactions as amended by Law no. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions, hereinafter referred to as UU ITE, is absolutely necessary for the State of Indonesia, because currently Indonesia is one of the countries that has used and utilized information technology widely and efficiently. So the Government on April 26, 2008 ratified the enactment of the Law on Information and Electronic Transactions (ITE). Furthermore, on October 27, 2016 the government again ratified Law no. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions and comes into force on November 28, 2016). The ITE Law is intended to provide many benefits, including ensuring legal certainty for people who conduct electronic transactions, encouraging economic growth, preventing information technology-based crimes and protecting service users by utilizing information technology. This is in line with what was stated by Bambang Sunggono, namely:

> Law in its development is not only used to regulate behavior that already exists in society and maintain existing habit patterns, but more than that, the law leads to its use as a means. To carry out the goals that have been chosen and determined so that they can be realized in the community, several facilities are

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> needed. One of the adequate means is law with various forms of existing statutory regulations.[1]

Starting from the description above, efforts or policies to deal with online prostitution as part of a crime in the field of information technology can be carried out through criminal liability for online prostitution actors using the "penal" (criminal law) means, it is necessary to study the material / substance (legal substance reform) current online prostitution, especially those related to criminal liability to perpetrators.

Starting from this, it is clear that the scope is very broad, in order to prevent the extent of the coverage, and to facilitate the discussion, it is necessary to limit the problem. The problem in this paper is "what is the victimization dimension of legal protection for women in online prostitution cases?"

Based on the formulation of the problem above, this paper has a novelty from other writings related to the same theme and topic regarding prostitution and the protection of women, especially in the framework of the criminal law order in Indonesia. Thus, it aims to determine the victimization dimension of legal protection for women in online prostitution cases.

B. DISCUSSION

1. Regulation of Online Prostitution in Indonesian Positive Criminal Law

Online prostitution comes from two words, each of which can stand alone, namely prostitution and online. Prostitution comes from the Dutch language, namely prostitutie, and in English it is prostitution which means prostitution. Prostitution is the same term as prostitution. Prostitution according to Soerjono Soekanto can be interpreted as a job that is surrendered to the public to perform sexual acts for wages. Prostitution or prostitution is the provision of sexual services performed by men or women for money or satisfaction.

From several formulations of prostitution as put forward by several experts above, it can be concluded that what is meant by prostitution is workers both male and female who surrender or sell services to the general public to perform sexual acts by getting wages in accordance with what previously agreed.

From the juridical aspect, the regulation regarding prostitution as a crime at this time, apart from being regulated in the Criminal Code, is also regulated in Article 27 paragraph (1) of the ITE Law:

> Any person who knowingly and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents containing content that violates decency shall be punished with imprisonment for a maximum of 6 and six years and/or a fine of a maximum of Rp. 1,000,000,000. ,00 one billion rupiah.

Article 27 paragraph (1) of the ITE Law above confirms that there are acts that violate decency, namely displaying a collection of electronic data in the form of photos, and distributing, as well as accessing electronic documents on the suspect's website. As contained in Article 5 paragraph (1) of the ITE Law which states that "Electronic information and/or electronic documents and/or their printed results are valid legal evidence". The article confirms that the act committed by the perpetrator of prostitution can be proven to have committed a crime, by displaying photos of comfort women, and if the electronic document in the form of photos obtained from the suspect's website has printed results. The printout is an extension of legal evidence in accordance with the

[1] Law is a norm that directs people to achieve certain ideals and conditions without ignoring the world of reality. Therefore, the law is mainly made consciously by the state and is used to achieve a certain goal. Bambang Sunggono, Law and Public Policy, (Jakarta: Sinar Graphic, undated), p.76.

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applicable procedural law in Indonesia, as described in Article 5 paragraph (2) of the ITE Law, stating "Electronic information and/or electronic documents and/or their printed results as referred to in paragraph (2) (1) is an extension of valid evidence in accordance with procedural law in force in Indonesia".

The last word of the term online prostitution describes the place where this activity is carried out. Online is a term that people use to express something related to the internet or cyberspace. Thus, online prostitution is an activity to offer sexual services through cyberspace. Online prostitution can be defined broadly as the practice of prostitution or prostitution using the internet or online media as a means of transaction for those who are Commercial Sex Women (CSWs) and who want to use their services. Although if we want to deepen the meaning, the notion of online prostitution is a prostitution transaction that uses the internet as a means of connecting between prostitutes and those who want to use their services. So the internet is only as a means of support or liaison only. Unlike in general, PSK transactions are waiting for their customers on the side of the road. All the definitions mentioned have their own problems because they are defined from different societies which basically have different social and moral standards regarding prostitution or prostitution.

2. Dimensions of Victimology on Legal Protection of Women in Online Prostitution Cases

According to Satjipto Raharjo, legal protection is an effort to protect a person's interests by allocating a power to him to act in protecting his interests. Protection according to Law Number 13 of 2006 concerning Witness and Victim Protection is all efforts to fulfill rights and provide assistance to provide a sense of security to victims that must be carried out by the Witness and Victim Protection Agency (LPSK) or other institutions in accordance with the provisions.

Mansour Fakih, said that one type of violence due to gender bias (gender related violence) includes prostitution.2, which is defined as a form of violence against women organized by economic mechanisms that are detrimental to women. Mansour Fakih's opinion underlies the author's argument that, we cannot generalize to women as prostitutes, because not a few women who are involved as prostitution service providers are based on fear of reactions from pimps in the form of threats and even violence against them. when reporting his suffering due to the prostitution business.3 Article 1 point 3 of Law Number 31 of 2014 concerning the Protection of Witnesses and Victims, explains the definition of a victim as "a person who experiences physical, mental, and/or economic loss caused by a criminal act". Likewise, Article 1 point 3 of the TIP Law defines a victim as "a person who experiences psychological, mental, physical, sexual, economic, and/or social suffering, as a result of the crime of trafficking in persons". Barda Nawawi Arief defines victims as people who, individually or collectively, have experienced suffering including physical or mental suffering, emotional suffering, economic loss or substantial reduction of human rights, through acts or omissions.4

Based on these two juridical and doctrinal formulations, the author defines a victim as someone who bears the consequences of a crime, in the form of psychological, sexual, physical, social suffering; and/or suffering and/or economic loss. Victims can have a functional role in the occurrence of a crime, consciously or unconsciously, directly or indirectly. The role in question is the attitude and condition of a person who will become

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[2] Moerti Hadiati Soeroso, Domestic Violence (KDRT) in Juridical-Victimological Perspective, Jakarta: Sinar Graphic, 2010, p. 18.

[3] G. Widiartana, Victimology Perspective of Victims in Crime Management, Yogyakarta: Cahaya Atma Pustaka, 2014, p. 131

[4] Wessy Trisna and Ridho Mubarak, "The Position of Victims in Cases of Criminal Acts of Corruption", Journal of Public Administration, vol 7, No1, December 2017, p. 117-126

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a potential victim or attitudes and circumstances that can trigger someone to commit a crime. The author cites Hentig's opinion which provides an overview of the role of the victim in the emergence of crime, namely:

a. The crime was intended by the victim to occur;
b. Crime is made the victim in order to obtain greater profits;
c. The losses incurred are the cooperation between the perpetrator and the victim;
d. Crime does not actually occur if there is no provocation from the victim.[5]

Not much different from Henting, Mandelshon[6] who sees the "victim" from the side of his guilt, namely: first, the victim who is completely innocent; second, the victim because of his negligence; third, the victim whose fault is equal to the perpetrator; fourth, the victim is more guilty than the perpetrator; and the victim is the only one at fault. Women are latent or predisposed victims, because women are a vulnerable group based on the assumption that women are weak human beings who cannot carry out activities like men, so women tend to become victims such as rape, refugees, slave trade, prostitution, forced labor, and so on. so.7

Ezzat Abde Fatatah classifies latent or predisposed victims as part of the typology of victims in terms of victim involvement.8 When viewed from a cultural perspective, women are placed in an unequal position in relation to men, or which in the United Nations Declaration on the Elimination of Violence Against Women is referred to as a manifestation of the historical inequality of power relations between men and women, giving rise to the dominance of men over women. women, which gives rise to what is known as gender difference. Gender differences that have been going on for a long time, and are considered as a standard provision of God, have implications for one of the biological problems. Differences between men and women in the historical reality of all nations in the world, often these biological differences are translated too far into gender roles.9 Like men, they must be strong and aggressive compared to women, so this affects the emotional/psychic, physical, vision, and ideological development of women who are gentle10 Such conditions occur in almost all countries/cultures, not least in Indonesia, which in fact adheres to eastern culture.11

Another thing that raises the potential to cause women to become victims from a psychological point of view, women are generally characterized as being emotional, easy to give up, passive, subjective, easily influenced, physically weak. [12] The psychological characteristics of a woman in relation to being a victim begin when there is fear, which is then followed by an attitude of resignation. The meaning of "surrender" here is to accept as a fate for his suffering, where this thought can be said to be a fatalistic

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[5] Bambang Waluyo, Victimology of Legal Protection Against Victims of Crime, Jakarta: Sinar Graphic, 2011, page 9,

[6] Rena Yulia, Victimology of Legal Protection Against Crime Victims, Yogyakarta: Graha Ilmu, 2013. p. 52.

[7] Majda El Muhtaj, Dimensions of Human Rights Outlining Economic, Social and Cultural Rights. Jakarta: Rajawali Pers, 2008, p. 235. 21 Sri Suhartati Astoto, "The Existence of Victimology in Settlement of Compensation", Journal of Law, No. 18, Vol 8, October 2001, p. 212-224.

[8] Sri Suhartati Astoto, "The Existence of Victimology in Settlement of Compensation", Journal of Law, No. 18, Vol 8, October 2001, p. 212-224.

[9] Ali Murfi, "Gender Bias in Islamic and Christian Education Textbooks", Journal of Islamic Education, Vol III, No 2, December 2014, pp 267-287

[10] Moerti Hadiati Soeroso, Domestic Violence (KDRT) in Juridical-Victimological Perspective, Jakarta: Sinar Graphic, 2010, p. 15-16

[11] *Ibid*., p. 16.

[12] Eti Nurhayati, Understanding Psychology of Women (Integration and Intercomplementary Psychology and Islamic Perspectives), paper, Batusangkar International Conference I, West Sumatra, 15-16 October 2016, p. 245-258.

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culture.[13] The surrender condition of women will further open up the potential to become victims in the helpless phase, which then becomes the potential for perpetrators to seek profit from it. The condition of "surrendering" of women after experiencing fear resulting in exploitation of the victim will further open the potential of becoming a victim in the powerless phase, which then becomes the potential for the perpetrator to seek profit from it. The condition of fear followed by resignation, by Von Hentig due to biological factors, categorizes women as victims as the female, so that women in the world of prostitution are very vulnerable to becoming victims because they are physically weaker.[14]

Taking into account the description above, as well as by looking at the reality in Indonesia, the author views women in the practice of prostitution not only from the perspective of the perpetrator, but also from the perspective of the victim. Based on several criminological theories regarding the reasons why someone commits a crime, the author describes several factors that cause a woman to be involved in prostitution. That is:

a. Women provide prostitution services for money to meet urgent needs. The criminological study recognizes the sociological perspective of the birth of crime, the context of women becoming prostitution service providers in order to earn money, the theory of strain views economic problems as triggering crime (a social) to achieve economic stability;[15]
b. Women provide prostitution services for the purpose of luxury or just to fulfill worldly prestige in their social environment. According to Merton, the means must exist to achieve the goal (luxury), the limited means to achieve the goal (luxury) make people who are basically law abiding become depressed and then commit crimes (a social). The goal (luxury) is the cause or pressure for women who do not have access to it, so they are short-minded to peddle their bodies.[16]

C. CLOSING

Prostitution has brought women into a disadvantaged position, this is compounded by the bias of the paradigm of when women are victims and when they are perpetrators. Meanwhile, Article 486 of the Criminal Code Bill concerning the offense of prostitution, which regulates women providing prostitution services, places her as the perpetrator. Based on the study that the author has done, it can be concluded that there is a possibility that a woman is a victim, or a perpetrator, or even as a victim as well as a perpetrator of prostitution. If women are involved without pressure from outside parties to enter into the practice of the crime of prostitution, it can be said that women are perpetrators because these actions injure people's sense of decency. If a woman due to coercion from a party outside herself is involved in prostitution, then she is called a victim.

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[13] G. Widiartana, *Viktimologi*..., Loc.Cit., p. 132.

[14] *Ibid*., p. 31.

[15]. Topo Santoso and Eva Achjani Zulfa, Criminology, Rajawali Press: Jakarta, 2014, p. 61-62.

[16] *Ibid*.

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