

## LEGAL PROTECTION AGAINST RAPE VICTIMS OF CRIME IN THE CRIMINAL JUSTICE SYSTEM

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### ABSTRACT

*Crime Rape is a form of violence against women which is an example of the vulnerability of the position of women, particularly against male sexual interests. Sexual image of women that have been placed as sexual objects of men turns away implications on the lives of women so he had to always face violence, coercion and physical and psychological torture. Attention and protection of the interests of victims of criminal acts of rape either through the criminal justice process and through the means concern certain social an essential part that needs to be taken into account in criminal law policy and social policies, whether by executive, legislative and judicial as well as by social agencies which exists. Based on the objectives to achieve distributive justice and the general welfare, the criminal offense of rape victims' rights to be protected is essentially an integral part of human rights in the field of social security. Police duties as an investigator in the case of rape is a very difficult task, because in cases of rape in general there are no witnesses. In addition, there are also difficulties in terms of finding evidence in accordance with the provisions of Article 285 of the Criminal Code. Trouble finding evidence of the rape would not be difficult, if a rape victim immediately reported the rape, otherwise if the alleged victim did not immediately report the rape, then such evidence can not be known by the investigator and difficult to be rediscovered. Legal protection of the victims of the crime of rape is still regarded as objects, and the victims are often blamed and not given what kind of protection they need.*

Key words: Legal Protection, Victim, Rape Crime, Criminal Justice System

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### Introduction

Currently the criminal offense of rape is a crime that sufficient attention among the public. Often in newspapers or magazines reported the criminal act of rape. If you study history, the actual type of criminal offense has been there all the time or it can be regarded as a classic form of crime that will always follow the development of human culture itself, he will always be there and growing all the time though probably not too much different from before. Criminal offense of rape is not only happening in the big cities that are relatively more advanced culture and the awareness or knowledge of the law, but also occurs in relatively rural areas still hold traditional values and customs. As is well known that in today's social development prevalent crime of rape, especially among the weak economy.

Although many criminal acts of rape that have been processed up to the court, but of the cases the perpetrators are not sentenced to the maximum in accordance with the provisions of the legislation listed in the Code of Penal (Penal Code) of the Crimes Against Decency (Article 281 s / d 296), in particular those set on the Crime of Rape (Article 285) which states: "Whoever by violence or threats of violence to force a woman have sex with her outside of marriage, threatened because of rape, with a maximum imprisonment of twelve years".

The problems faced by victims of the crime of rape is very complex. The problem faced not only rape that happened to him, but also occurs in the case of legal proceedings against him. Victims of crime can be a victim of a double in the proceedings and were given the unfair treatment as cornered with questions that discredit that he also took part in the event and snapped during the trial, in the process of seeking justice itself, so it is necessary to obtain protection law of the law enforcement authorities as well have been regulated by law.

Sudarto found to tackle crime required an effort that is rational from the public, by way of criminal politics. Policies or efforts to control crime is essentially an integral part of efforts to protect society (social defense). Therefore, it can be said that the main purpose of criminal politics is the protection of society to achieve the welfare of the community.

Reason rape cases are not reported by victims to law enforcement officials to proceed to trial because of several factors, including the victims feel ashamed and do not want to disgrace that befell him known by others or the victim feel scared because it has been threatened by the perpetrator that he will be killed if report the incident to the police. This of course affects the mental development / mental health of the victims and also affect the law enforcement process itself to create a sense of justice for the victims and society.

Victim factors play an important role in order to overcome or resolve these rape cases, this requires the courage of victims to report this incident to the police, since most victims of rape under threat will be performed again from actors and this makes the fear and trauma victims. Expected of this complaint, the case can be opened and can be done the inspection process so that victims will get justice for what happened to him. Based on the positive law, the victim can claim damages or compensation against the convict.

## Rape Victim

According to IS Susanto, the victim was divided in two senses, namely in the narrow sense and in a broad sense. Victims in the narrow sense is a victim of crime while the victims in a broader sense includes also the victims in various fields such as pollution victims, victims of abuse and others.

According to Boy Mardjono Reksodiputro, there are four notion of victims, namely:

1. Victims of conventional crimes, such as murder, rape, assault, theft.
2. Victims of non-conventional crimes such as terrorism, piracy, illegal drug trafficking, organized crime and crime through a computer.
3. Victims of abuse of economic power unlawfully (illegal abuses of economic power), such as the violation of labor laws, consumer fraud, violations of environmental regulations, irregularities in marketing and trading by firms transnational, division rule violation, violation tax regulations and so on.
4. Victims of abuse unlawfully general rule (illegal abuses of public power) such as violations of human rights, abuse of authority by means of the authorities, including arrest and detention were unlawful, and so forth.

According to Arif Gosita, a rape victim is a woman, who by force or by threat of violence forced intercourse with another person outside marriage.

From the definition above can be some understanding as follows:

1. Victims of rape should be a woman, no age limit (object), while there are also men who raped women
2. Victims should be subjected to violence or threats of violence. This means there is no consent of the victim of the intentions and actions of the perpetrator treatment.
3. Intercourse outside marriage is a goal to be achieved by violence or the threat of violence against a particular woman.

The development of the science of victimology in addition invites the public to pay more attention to the position of the victim also sort out the type of the victim until later came the various types of victims, namely:

- a. Non-participating victims, to those who do not care about crime prevention efforts
- b. Latent victims, those who have a certain character trait that tends to be a victim
- c. Provocative victims, that they are provoking the crime
- d. Participating victims, namely those with behavior ease himself into a victim
- e. False victims, those who become victims because of what he made himself.

According to Arif Gosita, the kinds of rape victims are:

a. Pure victim consists of:

1. Victims of rape who have been in contact with the offender before rape
2. Victims of rape who had contact with the offender before rape

b. Victims double, are victims of rape in addition to suffering during raped, also experienced various mental anguish, physical and social, for example, suffered threats that disturb the soul, gets the service was not good during the trial, did not receive compensation, spend treatment, excluded from society because it has special handicapped and others.

c. Apparent victims, is the actual victims as well as perpetrators. He pretended to be raped with the purpose of obtaining something of the perpetrator.

1. It's possible he did so because of his own volition
2. There is a possibility he did so because was told, was forced to do so for the sake of the order. In a certain sense, the perpetrator becomes the victim of other malicious actions.

Ezzat Abdul Fathah, distinguishing categories of victims as follows:

- a. Victims of non-participatory, ie those who have refused or anti stance against crime and criminals, and did not participate in the emergence of crimes directed against them
- b. Victims latent, are those that have certain characteristics that tend to place themselves as the victims of a particular form of crime
- c. Victims who are not related are those that are completely unrelated to the perpetrators. Perpetrators usually undertake actions solely on his own decision and there is no relationship at all with the condition of the victim
- d. Provocative victims, made up of victims that have to be or do something against the offenders, so that the perpetrators are encouraged to make them as victims. Thus for this category that the victims who precedes do something so that the perpetrators are driven to commit a crime.
- e. Presipitativ victims, are those who are victims even though they do not do anything against the perpetrators. Someone who because of careless and reckless pose a temptation for criminals to commit crimes against them.

- f. Victims of physical weakness, consists of a group of people who have physical characteristics or a certain mental so with these characteristics encourage someone to commit a crime. They are included in this group are women and children under age who are victims of crime.
- g. The victim himself, is among those who are victims and perpetrators at the same time, for example, drug addicts, alcoholics, gambling and others.

Judging from the role of the victim in the crime, Stephen Schafer said the victim's principle, there are four types, namely

1. People who do not have anything wrong but still fall victim to this type of fault is the perpetrator.
2. The victim knowingly or unknowingly do something that stimulates others to commit a crime, for this type of victim stated participate have contributed to the occurrence of the crime so that the fault lies on the offender and the victim.
3. Those that are biologically and socially potential victim, children, the elderly, the physically or mentally handicapped, the poor, minorities and so on, are people who easily become a victim, the victim in this case can not be blamed but it is society that must be responsible.
4. The victim because he himself is an actor. This is said to be a victimless crime. Prostitution, gambling, adultery, a crime classified some crimes without victims, the guilty party is a victim because he is also a doer.

In terms of understanding crime victims contained in point 1 of the Declaration of basic principles of justice for victims of crime and abuse of power, on September 6, 1985, that victims of crime are:

1. In view of its nature, there are individual and there were collective. Because the individual victim can be identified so that the real victim protection is done while the collective victims is difficult to identify victims.
2. In view of its kind, there are victims of crime, namely the direct victims of crime itself and indirectly (apparent victim / abstract), namely public

Sellin and Wolf makes a classification of victims into five groups, namely:

1. The primary victimization, is individual victims. So the victims individual or not group
2. Secondary victimization, in which the victim is a group as a legal entity
3. The mutual victimization, occur because of the attitude or behavior of the victims who agree to crimes against her
4. Tertiary victimization, the victim arising from the implementation of the social order
5. No victimization, here does not mean no casualties were incurred, but the victim was not immediately known.

### **Suffering Rape Victim**

Acts of sexual violence occurring in the reality of everyday life resulted in the woman raised the fear, anxiety and insecurity. Moreover, supported by the position of victims who are often helpless in which the practice of criminal justice. meaning that the victim suffered is not bridged by law enforcement, in this case the judge, who is obliged to pass sentence. Proven decisions handed down are not comparable with the crimes committed on the victim.

Phasing suffering of victims of the crime of rape can be divided as follows:

#### **1. Prior to the trial.**

The crime of rape victims suffer from mental, physical and social as he tried to report to the police in a state of pain and disturbed. Then in the framework of data collection for evidence of the crime of rape, he should tell the events that cause trauma to the police. Victims also fear the threat due to report offenders so that there will be retaliation against him.

#### **2. During the trial**

Victims of crime of rape must be present in court proceedings on their own costs to be a witness. Victims of testifying had to repeat the story of bitter experience and make reconstruction of the events of the rape. He confronted the perpetrators have ever raped once people hated. Besides, he had to face a defender or lawyer of the offender who tried to eliminate errors offender. Prosecutors in criminal justice, representing the victim. But it can happen representatives not in favor of the victim. Not infrequently happens that victims face criminal rape is more capable mentally, physically, socially therefore himself. Here it turns necessary to provide escort or advocate for the victims of the crime of rape

#### **3. After trial**

After completion of the trial, the crime of rape victims still face many difficulties, especially not receive compensation from anyone. Health maintenance remain dependents. He remains seized with the fear of threats from the perpetrator. There is a chance he is not received within the family and the environment as before, therefore he has a disability. Increased mental suffering, the knowledge that the perpetrators of the crime of rape has been sentenced not problem countermeasures.

The problems faced by women victims of sexual violence are complex, the problems faced not only rape that happened to him, but also occurs in the case of legal proceedings against him. Women victims of sexual violence can become double victims in proceedings and may also receive unfair treatment in the process of seeking justice itself.

Rape victims suffer during rapes and continues for weeks, months or even for the rest of his life. They deeply regret itself. In simple terms the impact of rape can be distinguished:

- a. A physical impact, among other things, asthma, migraines, insomnia, pain during intercourse, sores on the lips (lesion on lip the caused by the scratch), sores on the genitals, bowel problems, forget the chin, infection of the tool sex, the possibility can not bear children, venereal disease, an infection of the pelvis and others.
- b. Impact mentally, among others, are very afraid of being alone, fear in others, nervous, hesitant (sometimes paranoia), often suprised, very worried, very careful with strangers, it is difficult to trust someone, do not believe anymore in men, fear with men, fear of sex, feeling that others do not like it, cool (emotionally), it is difficult to deal with the public and his friends, hate anything, withdraw / isolate themselves, nightmares and others.
- c. Impact in personal and social life, among others, were left close friends, feeling betrayed, the relationship with her husband deteriorated, not like sex, it's hard to fall in love, difficult relationships with men, afraid to talk to the man, avoiding every man and others.

### Types of Rape

Rape can be classified as follows:

- a. Sadistic Rape, rape sadistic, meaning that in this type of sexuality and aggressive chime in the form of destructive. Perpetrators of rape has seemed to enjoy the erotic pleasures not through sexual intercourse, but through the terrible attack on the genitals and the victim's body.
- b. Anger rape, sexual abuse that characterized the sexuality became a means to express and vent fury and anger were restrained. Here the victim's body as an object of who the perpetrators are projecting solution to the frustrations, weaknesses, difficulties and disappointments of his life.
- c. Domination rape, which is a rape that occurred when the offender tried to staunch the power and superiority of the victim. The goal is sexual conquest offenders to hurt the victim, but still have the desire to have sex.
- d. Seductive rape, a rape occurs in situations that stimulate created by both parties. At first the victim decided that personal intimacy should not be restricted as far as intercourse. Perpetrators generally have confidence requires coercion, because without it does not have feelings of guilt regarding sex.
- e. Victim precipitated rape, the rape happened (in progress) by placing the victim as originators.
- f. Exploitation rape, rape showed that on each occasion having sexual relations obtained by a man by taking advantage opposite the women who depend on them economically and socially. For example, a wife who was raped by her husband or household help raped by her employer while aides do not question or complain about this case to the authorities.

### Types of Rape can also be distinguished:

#### a. Rape perpetrators have been known to the victim

1. Rape by a husband or ex-husband. Rape can also occur in a marriage, because the husband was entitled to force his wife to have sex at any time in accordance with his wishes, regardless of the wishes of his wife. Even sometimes happen much ex husband who was still entitled to impose sex on his ex-wife.
2. Rape by a date or boyfriend, a date or boyfriend could force the victim to have sex with various excuses, because he had already spent money to please the victims, because they never had sex before, because the victim is considered deliberately provoke lust, or because the boyfriend had promised to marry the victim, an invitation to the fair sex still included if the woman still had a chance to reject and refusal was honored by her boyfriend. Persuasion can still be considered normal if the failure to persuade not followed by actions of coercion. But if the female girlfriend to impose its will, it has refused to say "no" but her boyfriend desperate to do that mean rape. Rape cases like this are very rarely heard anyone else because victim shame and fear of blame people.
3. Rape by employer / employer, rape occurs among others when a woman is forced to have sex by a supervisor or employer with threats of layoffs if refused, or with other threats related to the power of the boss or employer.
4. Sexual abuse against children. A girl or boy can be raped by a grown man. This issue is very sensitive and slit. Children who are victims do not fully understand what happened to them, especially if the child was believed offenders. Even if the child reports to the mother, grandmother or other family members, most likely the report was ignored, not trusted, even accused of lying and fancies, they usually deny it was only by reason of "not possible father / grandfather / uncle / etc heart to do so ,

#### b. Rape by a stranger

Type of rape is extremely scary, but it is less common than rape where the perpetrator is known to the victim.

1. Rape gang. A woman could be ambushed and raped in turn by a group of unknown people. There are times when the case of rape by a stranger, then others who witnessed the incident involved to do so. Often occurs several teenagers raped a girl in order that they are considered male or to prove manhood.
2. Rape in prison. Around the world, many women raped by the police or prison guards after they were detained or sentenced to confinement. Even rape is also common among the inhabitants of the male penitentiary, to indicate that the rapist is more robust and powerful than the victim.
3. Rape in war or unrest. The soldiers who were in the midst of battle are often raped women in the occupied territories, to scare the enemy or to embarrass them. Rollicking rape and systematic rape (deliberately done in order to meet certain political objectives or tactical), for example, what happened to the Bosnian Muslim women. This kind of rape goal is to show the strength and power in front of the enemy. Likewise that is in Indonesia, formerly in the colonialism the Netherlands and Japan, many indigenous women locked up in barracks or army camps, forced into the sex trade or into slave of lust of the soldiers and that denying them would be killed just so many who are forced to do so in order to save lives , Can also women were forced to

placate the army in order to save the children and their families (including her husband), or in order to get food that is difficult to obtain in the midst of war.

### General Characteristics of the Crime of Rape

- a. Aggressiveness, a trait that is inherent in every rape
- b. Motivation, violence is more prominent than the purely sexual motivation
- c. Psychologically, the crime of rape contains more control problems and hatred compared with lust
- d. The criminal act of rape can be divided into three forms, namely anger rape, power rape and sadistic rape. And this is reduced from anger and violation, control and domination, erotic.
- e. Characterize rape, the perpetrator over the victim's misperception, suffered a bad experience, especially in personal relationships (love) isolated socially, low self-esteem, there is an emotional imbalance.
- f. Rape victims is participatory. According to Meier and Miethe 4-19% the crime of rape occurred due to negligence (participation) victims
- g. Criminal acts legally difficult to prove rape.

Among the characteristics of rape, violence and the difficulty traits do seem to need to get a proof of major concern. Violence against the victim not only adversely impact physical endurance, but also the psychological resilience. Adverse conditions that makes the victim helpless further adverse impact on law enforcement issues.

### Provided the form of the Legal Protection to Victims of Crime of Rape

The treatment received by the victim during the criminal justice process is one form of legal protection for the victims of (the crime of rape). As for the legal protection given to victims of the crime of rape during the proceedings in different courts among judges as law enforcement officers with the actual or practice. Concerning the legal protection given to victims of the crime of rape during the examination process in court is:

1. The judge in the trial of criminal cases of rape are women with the aim that the victim more freely and not feel awkward in giving testimony. It is not always judge a woman, but most often handle cases of rape are female judges
2. The judge during questioning at the hearing does not aim to discredit the victims, are only required to tell the chronological events which have suffered rape.
3. If the witnesses in the trial would not meet with the offender, the judge has the discretion to require the offender to come out so that witnesses can testify without feeling any suffering.
4. For child victims of rape judge can request information from witnesses outside the trial. This meant that the child victims of rape do not feel depressed because of fear of the perpetrator and the atmosphere of the trial which he felt alien.

From this, there is the treatment and excellent protection from law enforcement officers. Law enforcement officials considered less concern against the victim, causing bottlenecks in handling criminal cases of rape. These barriers include:

1. Judge in providing victim cornered question (subjective assumptions / gender bias that blaming the victim) and considered to take part in the event
2. Not infrequently judges forming the victim while testifying
3. Obstructing a companion to accompany victims when testifying
4. Do not make the trauma or psychological disorders suffered by victims as a result of the rape she experienced as a consideration to incriminate the perpetrator.
5. The existence of levies was not clear (without wanting to give a receipt / proof of traffic).

In providing protection to victims of rape during the examination process in the courts, law enforcement officers (judges) still treat women victims of violence (rape) as an object, not a subject, which must be heard and respected their legal rights. They are mostly still makes women rape victims become victims a second time (revictimisation) on his case. Victims are often blamed and not given what kind of protection they need. Officials (judges) do not have the perspective of women victims of rape.

Verdict on rape cases are still relatively low and does not meet the sense of justice for the victims and their families. So that law enforcement situation for rape victims who have not been able to fulfill a sense of justice for victims of rape is one reason why some cases of rape victims and their families choose the path of peace. Victims and their families choose the path of peace / family make the perpetrators of rape can not be caught by the law of free. Because the victims and their families then pull reports / complaints made in the police on the grounds has been no peace agreement or kinship between the perpetrator and the family of the perpetrator to the victim and his family.

This is because after the criminal justice process is quite complicated and requires a relatively long time to complete. Relating to the treatment of victims in criminal proceedings, law enforcement officers are very influential in handling the cases reported to him because the victim is also a witness that will determine the success of the judicial process until the verdict. Where it is feared by the victims and their families that the offender was found not guilty or acquitted or also just get a lighter sentence from the judge after what he experienced and endured by the victim during the criminal justice process.

### Efforts Can Do To Provide Legal Protection Against Rape Victims of Crime

Legal protection for crime victims of rape committed during the judicial process that is before the court, during the trial and after the trial.

### 1. Before Hearings

Legal protection given to victims of the crime of rape was first given by the police when the victim reported. Currently the police have formed a Special Service Room (RPK), represented by police women who are embodied in the Special Unit for stand-alone to handle cases of violence against women and children. Special Service Room (RPK) is a special room that is sealed and placed in the unity of the Police, where women and children who are victims of violence or sexual harassment may report the case to secure the police woman empathetic understanding and professional.

### 2. During Court Session

During the trial, the victim testified accompanied by members of LBH / NGO so that the victim can be calmer and not afraid in the trial. Given the victim is still unstable psyche and feeling depressed after being examined during the judicial process, the assistance effort is needed by the victim. Especially in the trial, the victim must be reunited again with actors who can make that will affect the trauma victim's testimony to be given in the trial.

Forms of protection during the trial was also stipulated in Government Regulation No. 2 of 2002 on Procedures for the Protection of Victims and Witnesses Article 4 states:

- a. Protection of personal security of victims or witnesses of physical and mental threats.
- b. Concealment of identity of victims and witnesses
- c. The provision of information during the examination in court without face to face with the suspect.

The same protection is also contained in Law No. 31 Year 2014 on the Amendment of the Act No. 13 of 2006 on the Protection of Witnesses and Victims in Article 5, paragraph (1) letter a till letter g asserts:

- a. The protection of personal safety, family and property, and free from the threat with respect to the testimony that will be, is being or has been given.
- b. Participate in the process of selecting and determining the form of protection and security support
- c. Provide information without pressure
- d. Got translator
- e. Free of questions that ensnare
- f. Get information about court decisions
- g. Information received in the convict freed

### 3. After the Court of Justice

Once the offender was sentenced by the judge, then in accordance with Article 5, paragraph (1) letter h till letter m Witness and Victims Protection Act, victims are entitled to protection are as follows:

- h. Information received in the convict freed
- i. Unidentified
- j. Gets a new identity
- k. Received a temporary residence
- l. Got a new residence
- m. Obtain reimbursement for transportation costs in accordance with the needs
- n. Received legal advice
- o. Obtaining temporary living expenses until the time limit expired protection and / or
- p. Get assistance.

So far there has been no officials that provide maximum protection. The country's efforts to provide protection to the legislation was not maximized. Only companion (NGO / LBH), which provide services for women victims of rape who has been engaged maximized. Although the existing Law on Witness and Victim Protection but what is in it has not been implemented by law enforcement officials.

The handling of rape cases is too long because it must follow legal procedures that make the victim became reluctant to deal with the legal process is very tiring. Therefore, the need for legal and policy reforms, especially the law enforcement system of gender justice.

### Conclusion

Forms of legal protection given to victims of the crime of rape during the trial was that the law enforcement officers (judges) still considers women victims of violence (rape) as an object, not a subject that should be listened to and respected legal rights. They are mostly still makes women rape victims become victims a second time (revictimisation) on his case. Victims are often blamed and not given what kind of protection they need. Officials (judges) do not have the perspective of women victims of rape.

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