RECONSTRUCTION OF CRIMINAL SANCTIONS FOR RAPE CRIMES IN CRIMINAL CODE BASED ON JUSTICE VALUE

Gunarto
Soediyono
Sri Endah Wahyuningsih

ABSTRACT

Formulation of Article 285 of the Criminal Code is concerning criminal acts of rape, especially regarding criminal sanctions. In practice, it raises a gap in its application in the community, namely criminal sanctions imposed by judges on rape offenders. It is unbalanced and has not realized balance and gives less value of public protection and individual protection. This study aims to examine and to analyze criminal sanctions against rape perpetrators in Indonesia. It is argued not realizing justice, and the ideal construction of criminal sanctions for rape crimes in the Criminal Code based on justice values. This study is a non-doctrinal/socio legal research study that is descriptive in nature of analysis, with paradigm constructivism. The method used was normative, sociological, qualitative and sociolegal research. Primary data sources are interviews, observations, while secondary data sources are primary, secondary and tertiary legal materials. They were collected and analyzed later on. The results of the findings in this study indicate that (1) The application of criminal sanctions by judges to perpetrators of rape crimes in Indonesia is not yet fair, because criminal sanctions applied by judges against perpetrators of rape crimes in Indonesia are currently only oriented to the acts of rape only and not oriented to public/community protection and individual protection of conceptually known as monodualistic balance. (2) Value reconstruction: the application of rape sanctions is not only oriented to the acts of perpetrators of rape crimes but also oriented to public protection and individual protection which is not only the imposition of imprisonment, but also criminal payment of restitution. Legal reconstruction was done on the provisions of Article 285 of the Criminal Code.

Keywords: Reconstruction, Sanctions, Rape Crime, Justice

INTRODUCTION

The issue of decency cannot be separated from the nation's civilization and the civilization of nations. However, the most important role is the nation's civilization concerned. In Indonesia we know various tribal civilizations as a reality. While heading towards the unity of that civilization, the present reality must be confronted and uphold justice and truth. [1]

In the process of handling rape crimes, it also creates the most difficulties in resolving it both at the stage of the investigation of the National Police, the prosecution stage by the Prosecutor's Office/Prosecutor and at the stage of the decision by the judge in the court. In addition, to evidentiary the rape crime is difficult, because rape or obscene acts are generally carried out without the presence of others. [2]

In the Indonesian Criminal Justice System, the protection arrangements for rape victims have not revealed a clear pattern. According to Barda Nawawi Arief[3] in the positive criminal law that applies the protection of victims is mostly "abstract protection" or "indirect protection". It means that various formulations of criminal acts in legislation have essentially been in abstract protection directly against interests legal and human rights victims.

When viewed from the formulation of Article 285 of the Criminal Code (KUHP) above, sanctions or punishments or crimes imposed by judges in court for rape actor are imprisonment for a maximum of twelve years and no other sanctions formulation. It is oriented to the interests of victims, so that the sanctions contained in the formulation of the Criminal Code do not yet have a monodualistic balance between the value of protection against the perpetrators and victims. Starting from the idea that the criminal is essentially only a means to an end, in identifying the purpose of the punishment departs from a monodualistic balance, between the interests of the community and individual interests, so that the protection aspects of the community will be considered, namely protection of victims and restoration of disturbed balance in society for example restitution.

[1] R.Soesilo, 1976, Kitab *Undang-Undang Hukum Pidana, serta komentar-komentarnya lengkap Pasal Demi Pasa*l, Politeia, Bogor, page. 182.

[2] Leden Marpaung, 2004, *Kejahatan Terhadap Kesusilaan Dan Masalah Prevensinya*, Sinar Grafika, Jakarta, page. 81

[3] Barda Nawawi Arief, *Perlindungan Korban Kejahatan Dalam Proses Peradilan Pidana*, (Jurnal Hukum Pidana Dan Kriminologi, Vol. I/No. I/1998), page. 16-17.

In the Criminal Code there is no purpose of punishment as the sentence of punishment is imposed by the judge in court for the offender. As a result, imprisonment (deprivation of liberty) is most often imposed on imprisonment and detention (a form of deprivation of independence as well) which is often used in the law enforcement process. [4]

If we look at the current criminal justice system, there seems to be an impression that the party most often harmed in the criminal justice process is the suspect/defendant[5]. This is what encourages the emergence of various reactions or movements to fight for the rights of suspects or defendants in criminal proceedings, and at the same time serve as an indicator of the implementation of a fair legal process. Although it turned out later that this condition seemed to close the space for victims to participate. As a result, there is an imbalance of interests, namely between the interests of the suspect/defendant and the victim. The rights of suspects/defendants are often put forward, while the rights of victims are forgotten.

Efforts to fulfill the rights and protection of victims are more or less began to be accommodated by the Law of the Republic of Indonesia Number 31 year 2014 concerning Amendment to Law Number 13 year 2006 concerning Witness and Victim Protection (PSK Law). One of the important points in The law is given special attention regarding the protection and rights of witnesses and victims. However, what is still unfortunate is that the protection and rights of witnesses and victims are given to witnesses and/or victims of criminal acts in certain cases according to the decisions of the Witness and Victim Protection Agency. Including the submission of victims' rights in the form of restitution rights or damages which are the responsibility of the perpetrators of crimes must go through the Witness and Victim Protection Agency. It is considered to limit the general concept of providing assistance to victims whose principles are not discriminatory. The inadequacy of the concept of providing assistance in the Witness and Victim Protection Act (UU PSK) is feared to complicate the implementation of assistance by the Witness and Victim Protection Agency (LPSK) in the future.

Based on the description in the above background, it is very interesting to conduct an in-depth study of the application of criminal sanctions by judges to perpetrators of rape crimes in Indonesia without justice, and legal reconstruction of criminal sanctions for rape in the justice value-based Criminal Code .

RESEARCH METHODS.

The research method is an important means for determining, developing, and testing the truth of a knowledge[6]. The approach method in this study is empirical juridical, where the approach is to see a legal reality in the community, and serves as a support to identify and clarify findings of non-legal material for legal research needs. [7] This approach is used because the problems to be examined are closely related to social reality and the real behavior of humans themselves. Real human behavior must also refer to the social and legal norms in the community concerned. Sources of data in this study are primary data and secondary data. [8] The technique of collecting data through library studies and field studies (ie by observation and interviews). Observation is a study conducted directly to the object under study by conducting interviews with research sources, namely judges at the Banjarmasin State Court, Banjarbaru District Court and Martapura District Court. Literature study is carried out by collecting data from the search for literature, legislation/written legal material, court decisions regarding criminal rape, internet crime, journals and other sources relevant to this research. [9] The written legal material was used to facilitate analysis and construction work. [10] Data analysis was carried out after first checking, grouping, processing and evaluating, so that the reliability of the data was known, then analyzed qualitatively to solve existing problems.

RESEARCH RESULTS AND DISCUSSION

Application of Criminal Sanctions for Rape Crimes in the Criminal Code (KUHP) Based on Justice Values

The act of prosecuting is the most important issue and is the center of the criminal justice system. [11] It is said, because at this stage it was decided whether the defendant was deemed guilty and convicted, or not guilty and released from all lawsuits[12]. In

[4] Barda Nawawi, *Perumusan Pidana Dalam Peraturan Perundang-Undangan Sebagai Parameter Keadilan Dalam Penjatuhan Pidana*, Makalah Lokakarya BPHN: Perkembangan Hukum Pidana Dalam Undang-Undang Di Luar KUHP dan Kebijakan Kodifikasi Hukum Pidana, Semarang.:November 2010

[5] H.Heri Tahir, 2010, *Proses Hukum Yang Adil dalam Sistem Peradilan Pidana Di Indonesia*, LaksBang PRESSindo, Yogyakarta, page.151.

[6] Soerjono Soekanto,1986, *Pengantar Penelitian Hukum*, UI Press, Jakarta, page.7.

[7] H Zainuddin Ali, 2016, *Metode Penelitian Hukum*, Sinar Grafika, Jakarta, page. 105

[8] Peter Mahmud Marzuki, 2006, *Penelitian Hukum*, Kencana, Jakarta, page. 141

[9] Sumandi Suryabrata, 1998, *Metodologi Penelitian*, Raja Grafindo Persada, Jakarta, page. 16

[10] Soerjono Soekanto, 1982, *Pengertian Hukum*, UI Press, Jakarta, page. 251

[11] See Prof.'s Inaugural Speech Mardjono Reksodiputro, S.H., M.A. as a professor who views the court as the center of the criminal justice system. According to him, the tolerance limits for handling crimes in the criminal justice system can only be realized in the protection of the rights of suspects, defendants and convicts. Mardjono Reksodiputro, Criminal Justice System (Looking at crime and law enforcement within the limits of Tolerance), in

the context of the criminal justice system, the court functions to test the validity of the actions of investigation, prosecution and supervision of convicts convicted. [13]

Data were obtained from the Marabahan District Court, Martapura District Court, Banjarbaru District Court and Banjarmasin District Court in the last 3 (three) years namely 2015 (2017) as many as 6 (six) cases that have been decided and have permanent legal force as illustrated in the table below as follows:

Table 1

Comparison of District Court Decisions Classification of Sub General Crime Classification of Crimes against Decency

No	Decision Number	Decision	Information
1	191/Pid.B/2015/ PN. Mrh date 2 September 2015	1) Declare that the defendant MUHAIDIN is UTUH KARDIL Bin (Alm) MALKAN has been proven legally and convincingly guilty of committing a crime of "Rape"; 2) Imposing the criminal to the Defendant because of that with a prison sentence of 7 (seven) years;	Marabahan District Court Decision
2	210/Pid.B/2016/ PN. Mtp date 25 August 2016	1) Declare the defendant MUHAMMAD RAMLI Bin DARSUN proven to be legally and convincingly guilty of committing a criminal act of "Rape"; 2) Imposing the criminal to the Defendant because of that with a sentence of imprisonment for 6 (six) years;	Marabahan District Court Decision
3	306/Pid.SUS/ 2014/PN.BJB date 4 Pebruari 2015	1) Declare the defendant MUHAMMAD FIKRI Als FIKRI Bin H. KASPUL ANWAR proven legally and convincingly guilty of committing a criminal act of "Rape"; 2) Imposing the criminal to the Defendant because of that with imprisonment for 1 (one) year;	Banjarbaru District Court Decision
4	381/ Pid.B / 2016 /PN.BJB date 20 Desember 2016	1) Declare Defendant I NOOR HADI NOOR Als HADI Bin KH MUHAMMAD KURNAIN and Defendant II MUHAMMAD MAULANA Als LANA Bin HERMANTO proven to be legally and convincingly guilty of committing a crime of "Rape"; 2) Imposing the criminal to Defendant I NOOR HADI NOOR Als HADI Bin KH MUHAMMAD KURNAIN with imprisonment for 4 (four) years; and Defendant II MUHAMMAD MAULANA Als LANA Bin HERMANTO with imprisonment for 3 (three) years;	Banjarbaru District Court Decision
5	1178/Pid.B/ 2015/PN.BJM date 21 December 2015	1) Declare the defendant GERRY Bin HARTO ANDEN FLOWER (the late) proven legally and convincingly guilty of a criminal act of "Rape"; 2) To impose a criminal sentence on the Defendant because of that it is punishable by imprisonment for 5 (five) years;	Banjarbaru District Court Decision
6	85/Pid.Sus/ 2017/PN.BJM date 3 April 2017	1) Declare the defendant HAFID SIRAJI Als HAFID Bin AHMAD HK (Alm) is proven legally and convincingly guilty of committing a crime of "Rape"; 2) Imposing the criminal to the Defendant because of that with imprisonment for 2 (two) years 6 (six) months;	Banjarbaru District Court Decision

Mardjono Reksodiputro, Potential Problems in the Criminal Justice System, (Jakarta:Pusat Pelayanan Keadilan dan Pengabdian Hukum (d/h Lembaga Kriminologi),2007, page.18-19.

[12] Muhammad Ainun Syamsu, 2016, *Penjatuhan Pidana dan Dua Prinsip Dasar Hukum Pidana*, Kharisma Putra Utama, Jakarta, page. 1

[13] *Ibid*, page 2

Criminal sanctions against rape perpetrators in Indonesia have not yet realized justice. These reasons are:

1. There is no formulation of other criminal sanctions in the Criminal Code/WvS to the perpetrators of rape crimes.

Article formulation in the Criminal Law Book concerning the types of Indonesian crimes is basically regulated in Book I of the Criminal Code in Chapter II from Article 10 to Article 43, which is then also regulated more on certain matters in several regulations, namely:

1) Prison Regulation (Stb 1917 No. 708) which was amended by LN 1948 No. 77;
2) Conditional Revitalization Ordinance (Stb 1917 No. 749);
3) Coercive Education Regulations (Stb 1917 No. 741);
4) Law Number 20 of 1946 concerning Criminal Coverings.

According to the structure of the Criminal Law, criminal law is divided into two groups, between principal and additional criminal penalties:

The basic criminal code consists of:

1) capital punishment;
2) imprisonment;
3) criminal confinement;
4) criminal penalties;
5) criminal cover (added based on Law No. 20 of 1946).

Additional crimes consist of:

1) criminal revocation of certain rights;
2) criminal seizure of certain goods;
3) criminal announcement of a decision by a judge.

Based on Article 69 of the Criminal Code, for basic crimes, the severity and severity of non-similar crimes is based on the sequences in the formulation of the Article. The differences between the types of principal and additional types of criminal acts are as follows:

1) The imposition of one type of principal criminal is mandatory (imperative), while additional criminal charges are facultative;

2) The imposition of a principal type of crime does not have to impose an additional type of criminal sanction (standalone), but the imposition of additional types of criminal sanctions must not be without dropping the type of principal;

3) The type of principal punishment imposed, if it has permanent legal force (in kracht van gewijsde zaak), an executie action is needed).

By looking at the formulation of criminal sanctions contained in the Penal Code, both basic and additional criminal penalties and are associated with the formulation of criminal sanctions contained in the formulation of Article 285 of the Criminal Code do not mention the formulation of other sanctions such as additional criminal sanctions in the form of restitution or compensation, so that in this case the only choice made by the judge is only the imposition of imprisonment for a maximum of twelve years (criminal deprivation of independence).

The imposition of criminal acts on the perpetrators of rape by the judge is still not optimal.

As the formulation of rape sanctions in Article 285 of the Indonesian Criminal Code, it is stated that "Anyone who is violent or threatens to force forces a woman who is not his wife to have intercourse with her, is punished for raping, with a maximum prison sentence of twelve years".

The results of the research on various judges' decisions which were used as the basis of analysis, there seems to be a contradiction in logical thinking among judges between the burden of juridical proof and the problem of imposing sanctions. In the process of proving that the rape (defendant) verdict declared according to the law has been proven guilty legally and convincingly. But when the judge sets out the legal sanctions that must be imposed on the perpetrator, it turns out that the judge does not punish and give maximum sanctions. Except for various factors and considerations as explained, the difficulty of obtaining material evidence (proof based on actual events) in rape cases is a juridical obstacle, both in prosecution and decision. Therefore, the maximum sentence has never been applied.

The judge's consideration at the hearing at the trial to explore the element of coercion, especially the element of violence or the threat of violence which is an essential element in rape cases, is difficult to prove in the trial, therefore rarely primary demands fall to become subsidiary. Based on such legal reasons, the judges are more directed at the principle of minimizing legal sanctions for rapists, so that there are no judgments that punish rape perpetrators with imprisonment that is maximum 12 (twelve) years imprisonment, or between 1 (one) year imprisonment up to 7 (seven) years in prison.

The application of maximum punishment in the criminal justice system does not conflict with the principle of punishment or the principle of punishment which is known and applies in Indonesia today, namely three theories or three streams namely absolute theory (retributive), teleological theory (purpose) and *retributifteleological* theory (combined). Criminal sanctions to perpetrators of rape crimes seem to have a dual purpose, namely in return for their actions as well as an effort to raise awareness, unfortunately, so far there has been no clear evaluation of the results of imposition/punishment. If the two goals are successful, the convict will give up after his actions are rewarded with punishment and his behavior changes to good.

There is one other purpose of punishment, namely to prevent others from doing the crime. There is a strong opinion echoed that if the maximum punishment or severe punishment is applied to rape, there is awareness in the community not to do so. This opinion is strongly supported by feminist groups, hypothetically quite strong, but not too much empirical data supports it.

In the Criminal Code (KUHP/WvS) there are already criminal penalties in the form of norms and sanctions, while the guidelines and objectives of punishment are explicitly not yet formulated. It seems that the purpose of criminal punishment is outside the system. With this model, the basis of justification or justification of the existence of a criminal lies only in criminal acts (objective conditions) and errors (subjective conditions). So it is as if the criminal is seen as an absolute consequence that must exist. This has an effect on the verdict by the judge, and as a result the decision handed down to the rape offender is not given a maximum sentence.

Reconstruction of Criminal Sanctions for Rape Crimes in the Criminal Code (KUHP) Based on Justice Value

a. Protection of Criminal Victims as part of social policy.

The assessment of the need for protection of victims of crime was raised by Muladi for the following reasons: [14]

1. The criminal process in this case contains general and concrete meaning. In a general sense, the criminal process as an authority in accordance with the principle of legality, namely poena and crimen must be determined. In advance, if it is intended to impose a criminal offense on the offender. In a concrete sense, the criminal process is related to criminal determination through penitentiary infrastructure (judges, prison officials, etc.). Here contained moral demands, in the form of philosophical linkages on one side, and sociological linkages within the framework of human relations in society. Sociologically, society is a "system of institutional trust"/institutionalized belief system and integrated through norms expressed in institutional structures such as police, prosecutors, courts, and correction institutions. The occurrence of crimes against the victim means the destruction of the belief system, the regulation of criminal law and other laws concerning the problem of the victim serves as a means of returning the belief system;

2. There is an argument for a social contract, that is, the state monopolizes all social reactions to crime and prohibits personal actions, and social solidarity arguments that the state must protect its citizens in meeting their needs/if citizens experience difficulties, through cooperation in society based on or using facilities provided by the state. This can be done either through improving services or by regulating rights;

3. Victim protection is associated with one of the objectives of punishment, namely conflict resolution. Conflict resolution caused by criminal acts, restoring balance and bringing about peace in society.

In connection with efforts to protect victims through criminal justice so far many have been abandoned. The problem of crime is always focused on what can be done to criminals and is less questionable about what can be done with victims. Everyone assumes that the best way to help the victim is to catch the criminal, as if the criminal is the only source of trouble for the victim. [15]

In the 1980 National Law renewal symposium, a broad formulation of the concept of community protection was stated, namely in addition to protecting the community from crime and the balance and harmony of life in the community, it also included an element of the need to pay attention to the interests of victims. [16]

[14] Muladi, 1997, *Hak Asasi Manusia, Politik dan Sistem Peradilan Pidan*a, UNDIP, Semarang,page. 176-177.

[15] Mulyana W. Kusumah, 1981, *Aneka Permasalahan dalam Ruang Lingkup Kriminologi*, Alumni, Bandung, page. 2

[16] Barda Nawawi Arief, 1994, *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara*, Ananta, Semarang, page. 91

The perspective of victim protection as an element in public protection policies is also included in the results of the congress in Milan Italy, as quoted by Barda Nawawi Arief in the Declaration of Justice for Victims of Crime and Abuses of Power, which states that "Victims must be perceived as integral part of the total criminal justice system "therefore, said Barda Nawawi Arief, that attention to the rights of victims must be seen as an integral part of the overall criminal policy. [17]

If it is associated with the protection of victims, the perspective of victimization provides a policy content on victim protection. In terms of the effort to orient the welfare of the victimism, it is also related to the policy of victim protection as an integral part of the policy of protecting the community as a whole, namely in order to achieve social welfare.

Bassiouni, as quoted by Barda Nawawi Arief, said that the objectives to be achieved by the criminal in general are manifested in social interests that contain certain values that need to be protected. Social interests according to Bassiouni are:

1. Orderly maintenance of society;
2. Protection of citizens from crimes, losses or harm that cannot be justified, carried out by others;
3. Re-socializing (resocialization) lawbreakers;
4. Maintain the integrity of certain basic views regarding social justice, human dignity and individual justice. [18]

Protection of victims is essentially a protection of human rights. As stated by Separovic, that the rights of part component of the concept of human rights. [19]

The human rights aspect in criminal justice is a strategic input dimension. In the national level, such as the value of human rights in the Pancasila, and at the global level, standards in international human rights instruments provide a humanitarian content recognized by civilized society. Some international human rights standards can be stated as follows: [20]

1. Code of Conduct for Law Enforcement Officials;
2. Basic Principle on the Independence of the judiciary;
3. Basic Principle on the Role of Lawyers;
4. Guidelines on the Role of prosecutors;
5. Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power;
6. Declaration on the protection of persons from being subjected to torture and other cruel;
7. Universal Declaration of Human Rights

The international instrument contains in particular the interests and rights of victims. The implementation of human rights which includes democracy and law enforcement needs to be recognized and adjusted to the standards of "International Civil and Political Right".

The human rights perspective provides insights for attention to victims and the ethical aspects and professionalism of law enforcement officers. In positive criminal law, the Criminal Code and Criminal Procedure Code, several aspects of human rights in its principles have also been listed, including: the principle of legality, nonretroactivity, respect for human dignity, proportionality, equality before the law, fast, simple, and low cost, legal assistance , compensation.

Services for the world community in the field of crime prevention and criminal justice carried out by advisors between regional and consultative missions, UN agency formulation missions help to implement UN standards and guidelines and assist in planning national programs. This form of assistance covers technical fields, especially for victims as follows:

1. Policies and procedures to protect victims and their legal models;
2. Restitution, compensation and funding schedules;
3. Health, social and legal services for child protection victims, a shelter for abused women, the center of the rape crisis;
4. Engagement of victims in judicial procedures; alternatives to the judicial process;
5. Special services from the police and special procedures for victims and their training programs;
6. Reporting the occurrence of victims and studies of victims;
7. Compensation for victims of abuse of authority and economic power. [21]

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power approved by the UN General Assembly November 29, 1985 (resolution 40/34) at the recommendation of the seventh Congress, stated the protection of victims in the following forms:

[17] Barda Nawawi Arief, 1996, Bunga Rampai Kebijakan Hukum Pidana, *op. cit*, page. 19-20.
[18] *Ibid*, page. 39-40
[19] Zvonivir Separovic Paul, 1985, *Victimologi Studies at Victims*, Pravni Fakultet, Zagreb, page. 25
[20] M. Cherif Bassiouni, 1994, *The protection of Human Rights is the Administration of Criminal justice, a Compendium of United Nation Norms and Standards, collaboration with Alferd de Zayas,* Centre for Human Rights United Nation, new York, page. xiii-xx
[21] Kunarto, 1996, Penyadur, *PBB dan Pencegahan Kejahatan Ikhtiar Implementasi Hak Asasi Manusia dalam Penegakan Hukum*, Cipta Menunggal, Jakarta, page. 148-149

1. Victims of crime must be treated with respect for their dignity, and given the right to immediately claim compensation. Legal and administrative mechanisms must be formulated and legalized to enable victims of crime to obtain compensation;

1. Crime victims must be informed about their role, time schedule, and progress that has been achieved in handling their cases. The suffering and concerns of victims of crime must always be displayed and delivered at each level of the process. If comprehensive compensation cannot be obtained from delinquents, in cases of severe physical or mental loss, the state is obliged to compensate victims of crime or their families;

2. The crime victim must receive compensation from the perpetrator or his family.[22]

Victim Protection in the Criminal Code.

In line with the function of protection in the operation of the criminal justice system, which must protect integrally the interests of the state, the public interest, and the interests of individuals (both victims and perpetrators), the characteristics of the schools of criminal law need to be expressed. The school in criminal law includes:

1. Classical school with various characteristics (including doctrine of free will, punishment should be fit the crime, legal definition of crime, determinate sentence, daderstrafrecht, no empirical research, justice model, equal justice, criminal retaliation) shows weakness, namely do not take into account human dignity too prioritize the interests of the state and the public interest;
2. Modern school with science weapons with its various characteristics (natural crime, indeterminate sentence, doctrine of determinism, punishment should be fit the crime, judicial discretion, daderstrafrecht, medical model, individualization of punishment and treatment and educative sanctions) show weakness, that is, to over-indulge criminals and when applied is really too expensive, less attention to the interests of victims of crime;
3. The neoclassical school is seen as a very human state and describes proportional balance of interests. The characteristics are as follows: Modification of the doctrine of freedom of will on the basis of age, pathology, and environment, daad-daderstrafrecht. Justice model of the protection of the rights of convicted persons including the development of non-institutional treatment, decriminalization, and depenalization. [23]

Regarding the interests of the victims who must be considered in the main criminal matters as above, Muladi's opinion can be argued that the model of criminal justice that is most suitable for Indonesia refers to the "strafrecht daad-dader" or the balance of interest model chosen from the neoclassical school. This model is referred to as a realistic model that pays attention to the interests that must be protected by criminal law, namely the interests of the state, individual interests, the interests of the perpetrators of crime, and the interests of victims of crime. [24]

c. Compensation for Victims.

Protection of victims, especially the rights of victims to obtain compensation is an integral part of human rights in the field of welfare and social security.

It also received recognition in the Universal Declaration of Human Rights in Article 25 paragraph 1 which states: Every person has the right to an adequate standard of living for the health and well-being of himself and his family, including food, clothing, housing, and health care and social services that necessary, and the right to security during unemployment, illness, inability to work, widow, elderly, or lack of other livelihoods in circumstances beyond his control. [25]

Protection of victims in criminal justice according to positive legal provisions seeks to be criticized in terms of the critical approach of working the legislation to be directed in the hope of a protective and just legal image.

Barda Nawawi Arief argues that positive criminal law currently places more emphasis on the protection of victims "in abstraction" and indirectly. This is because a positive criminal act according to positive criminal law is not seen as an act of attacking/violating the legal interests of a person (victim) personally and concretely, but is only seen as a violation of abstracto legal norms. Therefore, criminal liability for victims' loss/suffering is direct and concrete, but is more focused on personal accountability. [26]

[22] *Ibid,* page. 107
[23] Muladi, 1997, Hak Asasi Manusia, Politik dan Sistem Peradilan Pidana, *op.cit*, ,page. 147-148, 152-153
[24] *Ibid,* page. 5
[25] James W. Nickel, 1996, *Hak Asasi Manusia, Making Sense of Human Rights, Refleksi Filosofis atas Deklarasi Universal Hak Asasi Manusia*, Gramedia Pustaka Utama, page. 267
[26] Barda Nawawi Arief, 1998, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, Citra Aditya Bakti, Bandung, page, 5, 58

In the practice of implementing criminal law, victims are positioned as "victim witnesses" and sometimes ignore the position of victims as "justice seekers". In the trial process, the victim is "represented" to law enforcement. reaction to offenders is the state's full right to be resolved. [27]

In this case the violation of a right (legal interest) of a citizen (which is considered serious enough to be formulated in the Criminal Code) is acted upon by the state because; the first is considered an "attack" on society. Second, as the state's reaction to crime so that it does not depend on the interests and needs of victims to satisfy the desire for revenge. The state's actions are often without feeling the need to include the victim (in the sense that the victim's opinion about the violation of his rights does not determine the decision of the law enforcement body) with an exception to the complaint offense. [28]

The above points are related to the protection of victims indirectly, especially protection of potential victims or potential victims, namely through basic criminal offenses and deprivation of liberty as well as imposition of additional penalties in the form of revocation of certain rights, seizure of certain goods and announcement of judges' decisions.

The form of direct and collective protection of victims includes the interests of many people, including improving the consequences of the recovery of polluted or damaged environments and the order to terminate certain activities that cause consumer losses, as well as the obligation to withdraw goods from circulation in additional criminal cases. Direct forms of victim protection in the form of compensation that can take the form of restitution or compensation. [29]

According to Stephen Schaffer, the difference between restitution and compensation can be assessed from two things. Compensation is a demand for fulfillment of compensation made by the victim through an application and paid by the community. In this case there is no requirement for punishment for perpetrators of crimes. In restitution, compensation claims are made through a criminal court decision and paid for by the perpetrators. Stephen Schaffer writes in the book The Victim and His Criminal recognizes five different systems of restitution and compensation to victims of crime, namely:

1. Compensation with character/civil character and given in civil proceedings. In this form, separating the claim for compensation that the victim can submit through a civil event from the criminal justice process that prosecutes the defendant. Crime is seen as a crime against the state, the interests of victims are not part of criminal procedures;
2. Compensation with civil characteristics but given through the criminal justice process. This system still maintains the difference between civil and criminal errors. In Germany, this system is called adhasionprozess, in France the restitution of victims is referred to as "i'action civile". And the criminal justice of the victim is only "*a civil partie*";
3. Restitution that has a civil character but is intertwined with criminal nature, and is given through criminal procedure. In solving this problem, victim claims that it can be decided in criminal justice. Although this restitution is civil in nature, it is undoubtedly its "general punitive" nature. This fine is in the form of "monetary obligation" imposed on the offender as compensation for the victim and the addition of the punishment that should be given;
4. Compensation with civil characteristics is provided through the criminal justice process, and is supported by state financial resources. Compensation does not have any criminal aspects, and even though it is given in criminal proceedings. Compensation from this country is the responsibility of the state for the actual compensation obligations charged by the court to the perpetrator. This is an implication of the state's recognition of its inability to carry out the task of protecting victims and preventing crime;
5. Compensation that is neutral in character and given through special procedures. This system is applied when the victim needs but the actor is "bankrupt" and cannot satisfy the victim's claim for compensation. Civil or criminal justice is not authorized to handle, but special and independent procedures that intervene the state at the request of the victim. [30]

Based on the system provided by Stephen Schaffer, if it is associated with the provision of a system of compensation in the criminal justice process in Indonesia, it tends to follow the second system. The Criminal Procedure Code actually does not adhere to the second purely as a whole or only limitedly. Based on Civil Code Article 98, it provides an opportunity for victims to combine compensation claims cases into the process of criminal transfer and compensation. It is further accounted for by the perpetrators of criminal acts. However, in Article 99 paragraph (1) the Criminal Procedure Code imposes a limitation that the compensation proposed is limited to a penalty for reimbursement that has actually been incurred by the aggrieved party, so that other claims for immaterial compensation must be declared unacceptable . Moreover, if it is to be submitted, it must be included as a new claim in a civil case. And, which does not constitute a nebis in idem if the decision is issued "unacceptable and must be submitted as an ordinary civil matter".

[27] Sudarto, 1986, *op.cit*, page. 184

[28] Mardjono Reksodiputro, 1994, *Kemajuan Pembangunan Ekonomi dan Kejahatan, Pusat Pelayanan Keadilan dan Pengabdian Hukum*, Lembaga Kriminologi UI, Jakarta, page. 44

[29] Vergil L. Williams; Mary Fish, 1974, "*A Proposal Model for Individualized Offender Restitution Through State Victim Compensation dalam Drapkin, & Viano, Victimology : A New Focus Vol. II; Society's Reaction to Victimization*, Lexington, London, page. 167

[30] Stephen Schaffer, 1968, *The Victim and His Criminal, A Study in Functional Responsibility*, Random House, New York, page. 27

In the general rule the Criminal Code does not recognize the type of criminal compensation in the form of restitution or compensation. Provisions for the possibility of compensation in Article 14 c of the Criminal Code are basically not criminal, but merely as a substitute for avoiding or not undergoing criminal proceedings. Therefore, Article 14c only bases the basic idea of punishment that is oriented to the interests of the perpetrators, not the interests of the victims.

In the declaration of the basic principles of justice for victims of crime and abuse of violence letter a point 12 stipulates: "if the compensation is not fully available from the guilty person or other sources. The state must endeavor to provide financial benefits to:

1. Victims who suffer severe physical injuries or physical or mental deterioration as a result of serious crimes;

2. Families, especially dependents of people who die or become physically or mentally paralyzed as a result of the crime.

From the description, it is clear that compensation is a complement or addition if the restitution is not able to be provided by the perpetrator or is not sufficient for the victim.

The main reasons for compensation compensation for victims by the state include: [31]

1. The obligation of the state to protect its citizens;
2. Not enough compensation given by the perpetrator to the victim;
3. Inability to share results;
4. The sociological view that crime is the fault of society in general.

d. Other victims' rights to obtain legal protection.

The rights and obligations of victims according to Arif Gosita include: [32]

1. The victim has the right to receive compensation for his suffering, according to the level of involvement of the victim himself in the occurrence of the crime;
2. Have the right to refuse restitution for the benefit of the victim's maker (do not want to be given restitution because they do not require him);
3. Get restitution/compensation for his heirs if the victim dies because of the action;
4. Get guidance and rehabilitation;
5. Got his property back;
6. Get protection from the threat of the perpetrator when reporting and becoming a witness;
7. Get help from legal counsel.

In the Criminal Procedure Code, several articles governing the rights of victims of criminal acts in the criminal justice system are:

1. The right to demand the incorporation of cases of compensation claims in criminal cases (Article 98-101 of the Criminal Procedure Code);
2. The right to return goods belonging to the confiscated victim (Article 46 paragraph 1 of the Criminal Procedure Code);
3. The right to submit a report or complaint (Article 108 paragraph 1 of the Criminal Procedure Code);
4. Right of Submission of appeal law (Article 233 KUHAP) and Cassation (Article 244 KUHAP);
5. The right to resign as a witness (Article 168 of the Criminal Procedure Code);
6. The right to be accompanied by an interpreter (Article 177 paragraph 1 of the Criminal Procedure Code);
7. The right to be accompanied by an interpreter (Article 178 paragraph 1 of the Criminal Procedure Code);
8. The right to obtain reimbursement of costs as a witness (Article 229 paragraph 1 of the Criminal Procedure Code).

In the Law of the Republic of Indonesia Number 13 year 2006 concerning the Protection of Witnesses and Victims. A witness and victim of a crime in certain cases is in accordance with the decision of the Witness and Victim Protection Agency entitled: [33]

1. Obtain protection for personal, family and property security, and be free from threats relating to testimony that will, is, or has been given;
2. Participate in the process of selecting and determining forms of protection and security support;
3. Give information without pressure;
4. Get a translator;
5. Free from entangling questions;
6. Get information about the development of cases;
7. Obtain information about court decisions;

[31] Arif Gosita, 1993, *Masalah Korban Kejahatan*, Akademi Pressindo, Jakarta, page. 25
[32] *Ibid*, page. 53-54
[33] *Undang-Undang Republik Indonesia Nomor 13 Tahun 2006 dan Peraturan Pemerintah Republik Indonesia Tahun 2008 tentang Perlindungan Saksi dan Korban, Cetakan I*, Citra Umbara, Jakarta, page. 4

8. Knowing in the event that the convict is released;
9. Get a new identity;
10. Getting a new residence;
11. Obtain replacement transportation costs as needed;
12. Get legal advice; and / or
13. Obtain temporary living expenses until the protection deadline ends.

Victims through the Witness and Victim Protection Agency are entitled to submit to the Court in the form of: [34]

1. The right to compensation in cases of severe human rights violations;
2. The right to restitution or compensation which is the responsibility of the criminal offender;
3. Decisions regarding compensation and restitution are given by the court.

e. Reconstruction of Criminal Sanctions for Rape Crimes in the Criminal Code Based on Justice Values

H.L.A. Hart in his book The Concept of Law states that the social function shown by criminal law is to regulate and to define certain types of rules as something that should be avoided or carried out by those who are subject to it, regardless of their wishes. Penalties or sanctions attached to the law for all forms of criminal offenses (whatever the other objectives of the sentence) are intended to give a motive for not carrying out these activities. [35]

Reconstruction of criminal sanctions for rape in the Criminal Code based on the value of justice is one form of public protection and protection of individuals. Protection of the community is by adding the threat of imprisonment for a minimum of 3 (three) years in prison and a maximum of 15 (fifteen) years in prison. With the addition of the criminal threat it aims to protect the public from committing criminal acts of rape.

Another form of community protection is the protection of victims and the restoration of the disturbed balance of values, namely the inclusion of additional penalties in the form of compensation payments. So besides the perpetrators of criminal acts of rape get criminal sanctions, victims also get attention and compensation.

Reconstruction of norms and reconstruction of the value of the formulation of sanctions in Article 285 of the Criminal Code/WvS will be carried out if supported by regulations that pay attention to the interests of the community and the interests of individuals/victims by adhering to the concept of monodualistic balance. To formulate a rape sanction formulation that reflects the values of justice in a legal state that has the philosophy of the Pancasila, for more details the author will put it in table form.

Table 2
Reconstruction of Rape Crime Norms in the Criminal Code / WvS

Construction Article 285 of the Criminal Code/WvS Before Change	Weaknesses	Ideal Construction
Anyone who is violent or threatens of violence forces a woman who is not his wife to have sex with her, is punished, for raping, with a sentence of twelve years imprisonment ”	- There has been no formulation of other criminal sanctions for the perpetrators of criminal acts of rape other than imprisonment (deprivation of liberty) for a maximum of twelve years, so that imprisonment (deprivation of liberty) becomes the judge's only choice in imposing criminal charges. - There is no minimum limit of punishment for the perpetrators of rape crimes, so that the judge's decision against the perpetrators of rape is still very light and that means that one of the objectives of punishment cannot be reached, where one of the objectives of the sentence is to give the perpetrator a deterrent effect at the same time to provide protection for the community not to commit rape crimes.	Anyone with violence or threat of violence forces a woman who is not his wife to have intercourse with him, convicted of committing rape with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a criminal payment of at least Rp. 150,000,000. 00 (one hundred fifty million rupiahs) and a maximum of Rp. 2,000,000,000.00 (two billion rupiahs).

[34] *Ibid*, page. 5

[35] H.L.A. Hart, 2011, *Konsep Hukum*, (terjemahan dari *Concept Law*, penerjemah Mohammad Nashihan & Ronny F. Sompie), Cintya Press, Jakarta, page.31.

Conclusion

1. The application of criminal sanctions by judges to perpetrators of rape crimes in Indonesia has not yet realized justice due to the absence of other criminal sanctions in the Criminal Code/WvS to the perpetrators of criminal acts of rape, in addition to imprisonment for a maximum of twelve years, criminal imposition on perpetrators the criminal act of rape by the judge is still not optimal, and has not been oriented to the protection of the community and protection to the individual, so that it is in harmony with the monodualistic balance.

2. Reconstruction of legal values and norms in the provisions of Article 285 of the Criminal Code (KUHP) with orientation to the monodualistic balance of the perpetrators and victims of rape crimes. The reconstruction of the value is as follows: the application of criminal sanctions for rape is not only oriented to the actions of perpetrators of rape crimes but also oriented to public / public protection and individual / individual protection where not only imprisonment, but also criminal payments for restitution and compensation, while the Reconstruction of legal norms against rape sanctions in the justice value-based Penal Code is to include reconstruction values in the provisions of Article 285, including regulating criminal payments of at least Rp 150,000,000.00 (one hundred fifty million rupiahs) and a maximum of Rp. 2,000,000,000.00 (two billion rupiahs).

REFERENCES

Arif Gosita, 1993, *Masalah Korban Kejahatan*, Akademi Pressindo, Jakarta
Barda Nawawi Arief, 1994, *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara*, Ananta, Semarang
Barda Nawawi Arief, 1998, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, Citra Aditya Bakti, Bandung
Barda Nawawi Arief, *Perlindungan Korban Kejahatan Dalam Proses Peradilan Pidana*, (Jurnal Hukum Pidana Dan Kriminologi, Vol. I/No. I/1998)
Barda Nawawi, *Perumusan Pidana Dalam Peraturan Perundang-Undangan Sebagai Parameter Keadilan Dalam Penjatuhan Pidana*, Makalah Lokakarya BPHN: Perkembangan Hukum Pidana Dalam Undang-Undang Di Luar KUHP dan Kebijakan Kodifikasi Hukum Pidana, Semarang.:November 2010
H Zainuddin Ali, 2016, *Metode Penelitian Hukum*, Sinar Grafika, Jakarta
H.Heri Tahir, 2010, *Proses Hukum Yang Adil dalam Sistem Peradilan Pidana Di Indonesia*, LaksBang PRESSindo, Yogyakarta
H.L.A. Hart, 2011, *Konsep Hukum*, (terjemahan dari *Concept Law*, penerjemah Mohammad Nashihan & Ronny F. Sompie), Cintya Press, Jakarta
James W. Nickel, 1996, *Hak Asasi Manusia, Making Sense of Human Rights, Refleksi Filosofis atas Deklarasi Universal Hak Asasi Manusia*, Gramedia Pustaka Utama
Kunarto, 1996, Penyadur, *PBB dan Pencegahan Kejahatan Ikhtiar Implementasi Hak Asasi Manusia dalam Penegakan Hukum*, Cipta Menunggal, Jakarta
Leden Marpaung, 2004, *Kejahatan Terhadap Kesusilaan Dan Masalah Prevensinya*, Sinar Grafika, Jakarta
M. Cherif Bassiouni, 1994, *The protection of Human Rights is the Administration of Criminal justice, a Compendium of United Nation Norms and Standards, collaboration with Alferd de Zayas,* Centre for Human Rights United Nation, new York
Mardjono Reksodiputro, 1994, *Kemajuan Pembangunan Ekonomi dan Kejahatan, Pusat Pelayanan Keadilan dan Pengabdian Hukum*, Lembaga Kriminologi UI, Jakarta
Muhammad Ainun Syamsu, 2016, *Penjatuhan Pidana dan Dua Prinsip Dasar Hukum Pidana*, Kharisma Putra Utama, Jakarta
Muladi, 1997, *Hak Asasi Manusia, Politik dan Sistem Peradilan Pidan*a, UNDIP, Semarang
Mulyana W. Kusumah, 1981, *Aneka Permasalahan dalam Ruang Lingkup Kriminologi*, Alumni, Bandung
Peter Mahmud Marzuki, 2006, *Penelitian Hukum*, Kencana, Jakarta
R.Soesilo, 1976, Kitab *Undang-Undang Hukum Pidana, serta komentar-komentarnya lengkap Pasal Demi Pasa*l, Politeia, Bogor
Soerjono Soekanto,1986, *Pengantar Penelitian Hukum*, UI Press, Jakarta
Stephen Schaffer, 1968, *The Victim and His Criminal, A Study in Functional Responsibility*, Random House, New York
Sumandi Suryabrata, 1998, *Metodologi Penelitian*, Raja Grafindo Persada, Jakarta
Vergil L. Williams; Mary Fish, 1974, "*A Proposal Model for Individualized Offender Restitution Through State Victim Compensation dalam Drapkin, & Viano, Victimology : A New Focus Vol. II; Society's Reaction to Victimization*, Lexinton, London
Zvonivir Separovic Paul, 1985, *Victimologi Studies at Victims*, Pravni Fakultet, Zagreb

Regulation

Undang-Undang Republik Indonesia Nomor 13 Tahun 2006 dan Peraturan Pemerintah Republik Indonesia Tahun 2008 tentang Perlindungan Saksi dan Korban, Cetakan I, Citra Umbara, Jakarta

Gunarto
Faculty of Law, Unissula Semarang Indonesia
Email: gunarto@unissula.ac.id

Soediyono
Doctoral Program in Law Science,
Faculty of Law, Unissula Semarang Indonesia

Sri Endah Wahyuningsih
Faculty of Law, Unissula Semarang Indonesia
Email: endah.w@unissula.ac.id