

# Reconstruction Protection of Law of Victims of Victims Based on Justice Values

Ervin Hengki Prasetyo, S. H., Mh<sup>1</sup>, Prof. Dr. H. Gunarto, Sh, Se, Akt., M. Hum.<sup>2</sup>,  
Dr. Sri Endah Wahyuningsih, S. H, H. Hum.<sup>3</sup>

Doktor Legal Program Faculty of Law, Islamic University Sultan Agung, Semarang, 2017

**Abstract:** *The crime of rape is the most difficult case in the settlement either at the stage of investigation, prosecution or at the stage of the decision. Imposition of too mild criminal sanctions causes the purpose of punishment as a special prevention and general prevention not achieved optimally as expected. This is evidenced by the recent increase in criminal acts of rape, whereas the existence of sanctions provides direction and consideration of what should be used as sanctions in a crime to enforce the norm of justice. So in this study, the formulation of the problem is 1) Why the regulation of legal protection against victims of the crime of rape in the positive criminal law is not currently based on the value of justice? 2) How the weaknesses of legal protection of victims of the crime of rape in positive criminal law when this? and 3) How is the reconstruction of legal protection against victims of justice-based rape crime? The results of this study are 1) The regulation of legal protection against victims of criminal rape in the current positive law in Indonesia that is not based on the value of justice is based on the regulation in the current positive law that is in the Criminal Code where rape penal Code regulated as a crime of morality contained in Article 281 of the criminal Code to Article 296 of the criminal Code, but the offense of criminal Rape (Verk rach ting) in this case copulation contained in Article 285 of the criminal Code, Act No. 31 of 2014 on the Protection of Witnesses and Victims 2 ) the inadequacies of legal protection of victims of crime of rape in the positive law today that weakness from a legal perspective, the weakness of the approach / method thinking law enforcement officers, the weaknesses during the criminal justice process, and 3) Reconstruction of the legal protection of victims of crime of rape based on values justice can be viewed from Vik Tuo logic as stale s reconstruction of legal protection against victims of criminal acts of rape, from reviewing the crime against perpetrators of rape crime based on justice value, based on legal protection against victims of rape in various countries, based on the idea of Progressive Law Theory of Reconstruction of Legal Protection of Victims of Action Criminal Rape, reconstruction of legal compensation for victims*

**Keywords:** Reconstruction, Victim Protection, Rape Crime

## 1. Background

The crime of rape is the most difficult case in the settlement either at the stage of investigation, prosecution or at the stage of the decision. In addition to the difficulties in the limits above, also the difficulty of proof such as rape or lewd acts are generally done without the presence of others. Many cases of rape are not reported to the authorities. The reasons for rape cases are not reported by the victim to the law enforcement officers to be processed to the Court due to several factors, among them the victim is embarrassed and does not want the disgrace that befell him or herself known to others, or the victim fears that it has been threatened by the perpetrator that he/she will be killed if reporting the incident to the police. This, of course affects the mental development / mental health of the victims and also influence the process of law enforcement itself to create a sense of justice for the victims and the community<sup>1</sup>. With the imposition of too mild criminal sanctions, it causes the purpose of criminalization as a special prevention and general prevention is not achieved optimally as expected. This is evidenced by the increasing criminal acts of rape lately, whereas the existence of sanctions provides direction and consideration of what should be a penalty in a criminal action to enforce the enactment of the norms of justice<sup>2</sup>.

Sudarto argues (as quoted by Barda Nawawi Arief in his book Bunga Rampai Penal Law Policy) that to combat crime requires a rational effort from society, that is by way of criminal politics. Policies or efforts to combat crime is essentially an integral part of efforts to protect the public (*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"<sup>3</sup>.

Efforts to change the legal paradigm of rape victims in Indonesia would be the right momentum because of the development of law in the era of Legal Development, among others, aims to carry out the preparation of a national legal system (penal). Although the draft of the National Criminal Code (under the heading: Crime Against Unlawful Acts in the Public, Chapter XVI Article 467) has been compiled, the draft provisions on criminal acts in the field of decency (not the type but the legal construction) still require special studies, from the point of criminology and victimology approach<sup>4</sup>.

In the view of Sabian Utsman, speaking legal issues are speaking dynamics, ie, speaking in the context of the challenges on the other side answers in a problem (*challenge and response*) and the law itself is supposed to be designed based on certain assumptions, certain circumstances, territorial-territorial certain principles, and in certain normalizations. In arbitrate in Indonesia, still, believes that the law is Law without regard to the turmoil in the community so that there is no commitment and morality to build the ideal law justice alongside professional in a state of affair not transactional<sup>5</sup>. Although the concept of Indonesian criminal law beyond the codification of the year to show good progress in the basic conception view of criminal law that is passed through the absorption of scientific progress in terms of criminal law and the values of a culture or a legal culture that comes from changes in the development of Indonesian society<sup>6</sup>. One of the developments of the law is through the establishment of a

national Criminal Code to replace the existing Criminal Code (WvS) becomes very urgent because it is realized that after more than 50 (fifty) years of independent Indonesia still use criminal law created by other nations who have the philosophy and views a life different from the philosophy and worldview of the Indonesian nation.

The protection of crime victims in the settlement of criminal cases is not only important for the victims and their families but also for the wider interests of crime prevention on the one hand and on the other for the perpetrators themselves. The perpetrator of a crime that has done well to the victim will be easier in terms of coaching because then the perpetrator has felt acted concretely to remove the stains caused by his crime. Criminal punishment in the form of an obligation to provide compensation to the victim will develop responsibility offender because it takes an active role in the implementation of the perpetrator <sup>7</sup>.

The imposition of criminal sanctions that are oriented to the interests of the victims will not prevent the perpetrators from perpetrating the crime but instead will accelerate the process of rehabilitation of the perpetrators. The imposition of criminal sanctions is one of the obligation to pay compensation to the victims, also need to consider the ability of the perpetrators of criminal acts, especially in this case the crime or crime of rape. This is because if the compensation payment is imposed on the perpetrator then the objective of punishment will be hampered and will not even be achieved, especially the purpose to influence the convict in order not to commit another criminal act. The burden that exceeds the limits of his ability will make the prisoner even more sinister, so it can be said that punishment itself is criminogenic, meaning it becomes the source of the crime.

In other words, law enforcement and order efforts are placed on the legal framework for society and are not designed to reduce the suffering of individuals or rape victims so that it will generate dissatisfaction for rape victims.

Sebenarnya in Indonesia protection of victims has been regulated in the Act itself, which is based on the principle of equality before the law (*equality before the law*), which became one of the characteristics of a state of law, witnesses, and victims in the criminal justice process should be given legal protection that is to provide protection to witnesses under law No. 31 of 2014 on the protection of witness and victim <sup>8</sup>, yet in reality, at the level of law enforcement, victims of rape are often overlooked, where the police and sub criminal justice system that is not acting in the interests of people who report, but his attention is directed to public order, to actions that endanger the environment and efforts to limit the sources of the occurrence of disorder, while the interests of victims both in the protection and the success of the process of settlement of criminal cases and more broadly for the benefit of ng more broadly that is for the benefit of crime prevention on the one hand and on the other side for the interests of the perpetrator of the crime itself. The perpetrator of a crime that has done well to the victim will be easier in terms of coaching because then the perpetrator has felt acted concretely to remove the stains caused by his crime. The criminal penalty

in the form of an obligation to provide compensation to the victim will develop the responsibility of the perpetrator because in the execution takes the active role of the perpetrator and also the victim itself.

Changes in the national criminal law system will determine what actions are prohibited and threatened with criminal and determine what crimes are threatened, it must be understood that all was done in an effort to achieve the bigger goal of achieving the welfare of society in this case by means of criminal law that is with preventing or overcome the occurrence of crime. According to Barda Nawawi Arief <sup>9</sup>, policies or efforts to combat crime is essentially an integral part of efforts to protect the public (*social defense*) and efforts to achieve public welfare (*social welfare*). It can, therefore, be said that the ultimate or ultimate goal of criminal politics is "the protection of society to achieve the welfare of society".

In the National Criminal Code concept, there is progress in providing protection and attention to the victims of crime that is the regulation of giving compensation to the victim. Compared with the existing KUHP which does not include the provision of compensation to the victim as one of the criminal types, either as a criminal or as an additional criminal, in the concept of the National Criminal Code or the Draft Law on Penal Code, there is a regulation of giving compensation to victims as wrong one criminal despite additional criminal nature.

The protection of crime victims in the settlement of criminal cases is not only important for the victims and their families but also for the wider interests of crime prevention on the one hand and on the other for the perpetrators themselves. The perpetrator of a crime that has done well to the victim will be easier in terms of coaching because then the perpetrator has felt acted concretely to remove the stains caused by his crime. Criminal punishment in the form of an obligation to provide compensation to the victim will develop responsibility offender because it takes an active role in the implementation of the offender <sup>10</sup>.

In this study will be reconstructed on the legal protection of victims a crime of rape under the law of progressive, where the paradigm of progressive law holding on to the paradigm of 'the laws of man', not the paradigm of *analytical jurisprudence* that follows the paradigm of "man's law". Man is a symbol for the reality and dynamics of life. Legal guide and serve the public <sup>11</sup>.

Reconstruction itself has a sense of return as it was, reorganization. <sup>12</sup> According to BN Marbun reconstruction is the return something into place initially, preparation or depictions back from existing materials and reassembled as is or the original incident. <sup>13</sup> Meanwhile, according to Ali Mudhofir, the flow of reconstruction in philosophy or reconstructionism is one of the streams in the philosophy characterized by radicals. For this flow, the issues of education and culture seen far ahead and if necessary to arrange the formation of a new civilization system <sup>14</sup>.

Thus, a balance between statics and dynamics, between open rules and roads is required. All such legal minds basically

accept the interpretation of the law as a bridge between static, rigid laws, with the present and the future.

## 2. Problems

- 1) Why is the legal protection arrangement for victims of criminal rape in the positive criminal law now not based on the value of justice?
- 2) How weaknesses legal protection of victims of a crime of rape in the current positive criminal law?
- 3) How is the reconstruction of legal protection against victims of justice-based rape crime?

## 3. Research Methods

Research on the reconstruction of legal protection against rape victims in progressive law is a legal juridical sociological study, which puts the law as a social phenomenon. In such cases, the law is viewed from the outside only. Hence, in socio-legal research, a law is always associated with social problems. Such studies are studies that focus on the behavior of individuals or communities in relation to the law. <sup>15</sup>

This research is research *deskriptifanalitis*, the research illustrates the facts investigational then analyze and evaluate the problems that exist in these facts illustrate some of the issues contained in the legislation in force in particular regarding the protection of victims of rape, hereinafter will be analyzed using the concepts contained in the literature review.

## 4. Theoretical framework

### 1) Theory of Legal Protection

The theory of legal protection is one of the most important theories to be studied because the focus of this theory's study on the legal protection afforded to society. The society that is based on this theory is the society that is in a weak position, either economically or weakly from the juridical aspect. <sup>16</sup>

### 2) Theory of Justice as a Grand Theory

The theories of Natural Law from Socrates to Francois Geny, still maintain justice as the crown of the law. Natural Law Theory of the importance of "the search for justice" <sup>17</sup>. A variety of theories about justice and a just society. These theories concerning rights and freedoms, opportunities of power, income, and prosperity. Among the theories that can be called: a theory of justice Aristotle in his *Nicomachean Ethics* and the theory of social justice John Rawl in his book *A Theory of justice* and law and justice theory of Hans Kelsen in his *general theory of law and state*.

### 3) Theory of Penalty Purpose

#### a) Theory of Vengeance or Absolute Theory

The term comes from the absolute theory of English, which is *the absolute theory*, while in the Netherlands, called the *absolute theories* <sup>18</sup>. The absolute theory emerged in the eighteenth century, embraced by Immanuel Kant, Hegel Herbart, Stahl, Leo Polak, Algra, and friends who expressed their views on absolute theory. The absolute theory argues that "the State shall

conduct penalties against the perpetrators because people have sinned (*quia pancratium*)".

In its original form, the absolute theory or the theory of vengeance rests on retaliatory thought, the principle of retaliation. For example eyes with eyes, teeth with teeth, and others. <sup>19</sup>

#### b) Relative Theory or Theory of Interest (*Doeltheorie*)

Algra and his colleagues put forward their views on the notion and purpose of punishment based on relative theory. This relative theory holds that the state punishes criminals as a means to achieve its goals. The purpose of the punishment is to frighten someone from doing evil. <sup>20</sup>

The relative theory is divided into two teachings, the teachings of general prevention (*general preventive*) and prevention specials (*special preventive*). In the doctrine of general prevention, a person may be a perpetrator, must be scared of evil, with the threat of punishment. The special prevention doctrine notes that the perpetrator has once been punished. Because you have felt yourself, will not quickly do again an evil deed.

### 4) Progressive Law Theory

The presence of a progressive legal theory is not a coincidence, not something that is born without cause, nor is it something falling from the sky. The progressive law is part of the process of truth-seeking (*searching for the truth*) that never stops. The progressive law which can be viewed as a concept that is looking for the identity, starting from the empirical reality of the working of the law in society, in the form of dissatisfaction and concern about the performance and the quality of law enforcement in Indonesia *setting* the end of the 20th century. <sup>21</sup>

The idea of progressive law arose out of Satjipto Rahardjo's concern for the legal situation in Indonesia. Legal observers including international observers have expressed it in negative phrases like the Indonesian legal system including the worst in the world. Not only the observers but generally the people also think so, although they do not express it as a clear demand but through their concrete experience with everyday laws. <sup>22</sup>

The progressive law is to change the paradigm that has dogma legalistic minds of law enforcement officers for not only based on mere legal text <sup>23</sup>. Law enforcers should observe and adapt to the socio-cultural changes taking place in society.

### 5) Research result

#### 1. Legal Protection of Victims of Current Rape Crime

The criminal act of rape in the Criminal Code is set as a crime of morality contained in Article 281 of the Criminal Code to Article 296 of the Criminal Code, but the offense of Criminal Rape (*Verk rach ting*) in this case copulation contained in Article 285 of the Criminal Code of the formulation is as follows: Whoever by force or the threat of violence forced a woman to have sex with her outside of marriage, threatened with rape with a maximum of twelve years imprisonment.

The juridical sense of the victim is contained in Law Number 31 The Year 2014 on the Protection of Witnesses and Victims stated that a victim is a person suffering physical, mental and/ or economic loss caused by a crime. Seeing the formula, the so-called victim is

- a) Each person
- b) Experiencing physical, mental and/or physical suffering
- c) Economic losses
- d) As a result of a crime. <sup>24</sup>

Renewal of criminal law (*penal reform*) as part of a policy of criminal law (*penal policy*) was not only focus on the suspect but the victim and the wider community. Therefore, with the existence of Law Number 31 Year 2014 concerning Protection of Witness and Victim, especially what is mentioned in article 5 point 1 concerning protection of witness and victim's rights especially in the case of protection for personal security, family and property, and is free from threats concerning testimony that will be, is, or has been given. Obtaining information on the progress of the case in court until the judge's decision from the court, knowing the convicted person is released and obtaining compensation, restitution, and guarantee or compensation for the welfare social.

The above is based on a basic paradigm that the victims of rape are the most disadvantaged, because the State guarantees the protection of personal, family, honor, dignity, and property under his control, and the right of security and protection from the threat of fear to do or not to do, as mandated by the 1945 Constitution CHAPTER XA on Human Rights, especially article 28 G paragraph (1). Therefore the state is obliged to provide compensation and restitution, as well as guarantees or compensation for social welfare to victims of criminal acts of rape.

The conviction of rape does not eliminate the traumatic sense suffered by the child. Child Victims Rape victims not only suffer once but can be repeatedly and require serious handling. Remembering Children is the foundation and hope of parents. The children will also be the successors of this nation. Originally, must be protected or given love. Yet another fact speaks. The rise of rape cases in children for several years seems to reverse the opinion that children need to be protected. So many children are victims of family, environmental and social violence today.

Some of those who become victims of rape will leave feeling embarrassed, self-hating and depressed, so to overcome these feelings, they use excessive drugs and some even injure their own body in order to express the pain they feel. The result will lead to a disturbance of the soul called "post-traumatic stress". In fact, there is a child's right as a victim to get medical help and psycho-social rehabilitation assistance.

Until now in Indonesia, there is no institution specifically addressing the issue of compensation for crime victims, as is done in some developed countries. Legal protection given to child victims of rape crime, that is by carrying out the rights of a victim as specified in Law Number 35 The year 2014 about Child Protection. Child Protection as referred to in

Article 1 Sub-Article 2 of the Act is all activities to guarantee and protect the children and their rights in order to live, grow, develop, and participate optimally in accordance with the dignity and dignity of humanity, and get protection from violence and discrimination.

Article 3 of the Law on Child Protection states that: "Child protection aims to ensure the fulfillment of the rights of the child to live, grow, develop and participate optimally in accordance with human dignity and dignity, and to be protected from violence and discrimination for the sake of the realization of the child Indonesia quality, morals and prosperous "

Legal protection of rape victims in the Law on Elimination of Domestic Violence (Law No. 23 of 2004) in which this law is a form of legal reform in Indonesia, which sides with vulnerable groups, particularly women and children.

This law was born considering the number of cases of violence, especially domestic violence, and some elements of criminal acts in the existing Criminal Code is no longer in accordance with the development of society, it is necessary to regulate specifically the crime of violence in the household.

This law provides for the prevention and protection of victims of domestic violence, specifically regulating domestic violence with elements of criminal offense different from the offenses set out in the Indonesian Criminal Code, as well as regulating the obligations of law enforcement officers, officers health, social workers and volunteers as a companion to protect victims of violence.

## 2. Weakness weaknesses Legal Protection of Victims of Crime Rape Current.

### a) Weakness of Legal

Rape as a violation of human rights is a mechanism to restrict women's movement in the form of sexual terrorism that attacks and harms the privacy rights associated with sexuality, and also attacks the public interest in the form of guaranteed human rights that must be respected collectively.

The positive law indicates inadequate regulation of victims, such as the provisions of Article 14c of the Criminal Code, Criminal Procedure Code (Article 98-101 CHAPTER XIII). In fact, the losses suffered by victims is very heavy. Women rape victims to bear the mental burden heavier than the penalty for the rape. Victims will experience lifelong disabilities and receive pressure from their community. Another impact is related to emotional distress as a psychological burden and subsequent psychological effect (eg *schizophrenia*) and physical (*physiological disorder*), fear, lack of security, of unhappiness, feeling abandoned, disability, and death. In addition, the scorn of the community, feelings of distress felt he was dirty and sinful. Added to the pressures arising from the judicial process both before the hearing, during the session, and after the session increasingly tell the victim.

### b) The Weakness of the Law Enforcement Approach

To address all the major legal disabilities, changes in the legal thinking of law enforcers are needed. *Analytic-positivist* can not be sustained for the underlying handling rape cases, which manifests that the law is only just seeing the law as written rules, which is a juridical method in the narrow sense

For law enforcement officials, in connection with the development of current thinking on women's position and gender equality efforts, it is necessary to base juridical thinking that links its social effects with the establishment of legal norms, so it is important to pay attention to the background of society. This is a juridical method in a broad sense, with a carrying capacity: living law in society, and using instruments: exegetical, sociological, or futuristic methods of interpretation, as well as utilizing: articles of the Criminal Code on sexual harassment.

### 3. Reconstruction of Legal Protection Against Rape Victim Value-Based Crime Justice

#### a) Viktuological Review on the Reconstruction of Legal Protection against Victims of Rape

Victimology as a field of science that examines all aspects related to victims in various areas of life and livelihood. The protection of rape crime victims is an activity of human rights development and human rights obligations. Attention and protection of victims of rape must be considered because they are very sensitive to various threats of mental, physical, and social disorders. In addition, they often do not have the ability to preserve, defend and maintain itself <sup>25</sup>.

In order to provide protection for victims of rape is more sense of fairness, benefits as well as law enforcement, we need to hold the reconstruction of the protection of victims of crime of rape <sup>26</sup>, which not only includes prevention, treatment, and rehabilitation, but more than that needed the attention of a broader aimed at victims, families, the environment, and the wider community. It is clear that in the management of the victims of the rape crime it will be able to involve many people from various disciplines

The theory of legal protection is one of the most important theories to be studied because the focus of this theory's study on the legal protection afforded to society. The society that is based on this theory is the society that is in a weak position, either economically or weakly from the juridical aspect. <sup>27</sup>

The term of protection theory derived from English law, namely *protection legal theory*, whereas in Dutch called *theorize a de letterlike Bescherming* and in German is called *Theorie der Recht like Schutz*. <sup>28</sup>

Grammatically, protection is a shelter or a thing (protects). Protecting is causing or causing shelter. The meaning of refuge includes (1) placing itself out of sight, (2) hiding or (3) asking for help. Meanwhile, the notion of protecting covers (1) cover that does not look or appear, (2) keep, treat or maintain, (3) the rescue or to provide relief <sup>29</sup>.

The definition of protection can be assessed from the formulation contained in the following legislation. In Article 1 Sub-Article 5 of Law Number 23 Year 2004 concerning

the Elimination of Domestic Violence has provided a formulation of the protection that protection is "all efforts aimed at providing a sense of security to victims committed by the family, advocates, social institutions, , court or other parties either temporarily or by court decision ".

The purpose of protection is to provide a sense of security for the victim. The sense of security is free from danger, free from disturbance, peaceful, not afraid or worried about a thing. Meanwhile, those who want to provide protection include family, advocates, social institutions, police, prosecutors, courts or other parties

According to Satjipto Rahardjo, legal protection is to give shelter to human rights (HAM) that harmed others and the protection is given to the community to enjoy all the rights granted by law <sup>30</sup>.

While Maria Theresia Game defines protection as related to the actions of the state to do something with (state laws apply exclusively) with the aim to provide assurance the rights of a person or group of persons <sup>31</sup>.

#### b) Overview of Legal Protection of Victims of Crime of Rape in Different Countries

A review of the legal protection of victims a crime of rape in different countries and paradigm begins with the picture of a country against the crime of rape itself.

#### c) Overview Criminalization against Perpetrators Victims of Crime of Rape Based Justice Values

In the ongoing legal construction required precision in the use of legal terms. Regarding the decision of the translated word by word, *Donnis* is the final result of the examination of the case in court. There is also the so-called *interlocutory* translated by the decision or decisions between the *preparatory* translated preliminary ruling/decision preparation and decision *provisionally* translated with the decision for a while.

For the validity of a court decision must meet the following requirements:

1. Loading matters required.
2. Pronounced in public sessions

These things must be expressed as an absolute condition decision was something other matters, for example in the presence of the defendant, not an absolute requirement. With the presence of one of the defendant's courses of several defendants then the decision is lawful. Similarly, with the exception that the defendant in absentia judge or court decides *verse*, the verdict remains valid. Thus experts say the presence of the defendant as a condition of the lawfulness of the decision is wrong <sup>32</sup>

#### d) Progressive Studies Legal Theory Reconstruction legal protection against the Crime of Rape Victims

Progressive is the word that comes from a foreign language (English) whose origin he is *a progress*, which means forward. Progressive Law means the law is advanced.

Progressivism law teaches that law is not a king, but a tool to describe the functioning of basic human gives grace to the

world and man. The underlying assumption of the law is the first law progressivism there is for humans and not for himself, both laws are always in the status of *law in the making* and are not final, the third law is a moral institution humanity.

Justice according to the progressive law is substantive justice. Justice based on the values of the balance of the equal rights and obligations. Justice values are derived directly from the people and not the values of justice textual and black and white that have a limited meaning. Not justice procedures are obtained through a variety of procedures which sometimes obscure the values of justice itself.

Defection law destinations in Indonesia require bold steps to change it. One of them is to ground the progressive law. The progressive law is part of the process of truth-seeking (*searching for the truth*) that never stops. The progressive law which can be viewed as a concept that is looking for the identity, starting from the empirical reality of the working of the law in society, in the form of dissatisfaction and concern about the performance and the quality of law enforcement in *setting* Indonesia late 20th century.

The presence of progressive legal theory is not something accidental and not something that was born without cause, nor is it something that falls from the sky. The progressive law is part of the process of truth-seeking (*searching for the truth*) that never stops. The progressive law which can be viewed as a concept that is looking for the identity, starting from the empirical reality of the working of the law in society, in the form of dissatisfaction and concern about the performance and the quality of law enforcement in *setting* Indonesia late 20th century.<sup>33</sup> Therefore, that needs to be explained is how the implementation of this progressive legal paradigm in the legal system in Indonesia.

A system is a unit consisting of elements or elements that interact with each other, the system does not want the conflict between the elements that exist in the system, if it comes to the conflict will be resolved by the system.

While the legal system has two meanings that are important to recognize, even in the talks the two are often used in mixed granted. The first is the notion as a kind of unit that has a certain order. Particular order here refers to a structure composed of parts. The second system as a plan, method or procedure to grind. In the understanding of the legal system, it would seem that both of them can be recognized back in use such as when talking about the interpretation and legal discovery.<sup>34</sup>

The legal system is open, meaning that the elements in the system affect the system, otherwise the elements in the system affect elements outside the system. But there is also closed, closed which can not be influenced by elements from outside the system.<sup>35</sup>

#### e) Reconstruction of Compensation for the Victims Settings

The criminal procedural law currently in force does not provide adequate protection for witnesses or victims related to a criminal case, in a general explanation of Act No. 31 of

2014 on Protection of Witnesses and Victims, explained that the presence of witnesses and victims is crucial the disclosure of criminal offenses in the criminal justice process. Therefore, against the Witnesses and Victims are given protection at all stages of the criminal justice process. The provisions concerning the legal subjects that are protected in

This law was expanded in line with the development of law in a society where it concerns the authority and scope of duties of the Agency as well as how the Agency functional relationship with other law enforcement agencies. Thirdly, the provisions on the protection and assistance. This concerns the procedural aspects of the operation of the Agency meantime. Providing assistance in Act No. 31 of 2014 on the Protection of Witnesses and Victims is part of one of the forms of protection to be provided by the Agency. For this reason, by Act No. 31 of 2014 on the Protection of Witnesses and Victims concept of aid is limited in such a way. For example, in Article 6 that victims of human rights violations are severe, victims of terrorism, victims of the crime of trafficking in persons, victims of the crime of torture, Victims of criminal acts of sexual violence, and victims of severe abuse, in addition entitled referred to in Article 5, are also entitled to medical assistance and psychosocial rehabilitation and psychological support.

Two provisions of the assistance, of course, has been a common limiting concept relief to the victims of non-discriminatory principle. Meanwhile, in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, specifically about aid, it is mentioned that the victims should receive material assistance, medical, psychological and social obtained through the means of the government or other means. Without discrimination, victims should have easy access and sufficient information on health and social services and 8 other assistance. In addition, the government should provide training for law enforcement personnel (police, prosecutors, judges) to make them sensitive to the needs of victims as well as to ensure the provision of correct and immediate assistance.

Limitations of the concept of the victims who are entitled to services and inadequate relief assistance concept in Act No. 31 of 2014 on the Protection of Witnesses and Victims feared to spark confusion the provision of aid by the Agency in the future. From here, identified the limitations of Act No. 31 of 2014 on the Protection of Witnesses and Victims in describing the principles of the declaration. But from this point that the challenges of the future Agency to provide assistance and protection for witnesses and victims can begin to be mapped or early on. How to answer the challenges of the limitations in the law to work. Fundamental rights of victims to be met is the right to know (right to know). These rights can be associated with the right to information get the progress of the case, the legal process, and the defendant. *Right to justice* (right to justice), which runs should aim legal process to seek truth and justice. Right to reparation (right to a remedy), this right shall be owned by the victim to recover physical and psychological condition.

In Act No. 31 of 2014 on the Protection of Witnesses and Victims, there are two articles that are specifically instructed

the government to draft government regulations on the provision of compensation and restitution and provisions regarding the feasibility of providing assistance regarding the determination of the period, and the amount of cost. This study is intended to look at the reality of the weaknesses that exist in Law No. 31 of 2014 on the Protection of Witnesses and Victims are faced with the need for the device legislation to organize the work of the Agency concrete fore.

**f) Cover**

1. Conclusion.

a. Setting the legal protection of victims of crime of rape in the positive law in Indonesia at this time are not based on values of justice based on the settings in the positive law today that in the Book of the Law of Criminal Law in which the criminal offense of rape of the Criminal Code is regulated by a criminal act of decency contained Article 281 of the Criminal Code to Article 296 of the Criminal Code, but the criminal offense of Rape ( *Verkrach Ting* ) in this case copulation contained in Article

- 285 of the Criminal Code, Act No. 31 of 2014 on the Protection of Witnesses and Victims
- b. The inadequacies of the legal protection of victims of crime of rape in the current positive law which weakness from a legal perspective, the weakness of the approach/method thinking law enforcement officers, the weaknesses during the criminal justice process
- c. Reconstruction legal protection for victims of criminal acts of rape based on the values of justice can be viewed from the victimology as a base reconstruction of the legal protection of victims of crime of rape, from a review of sentencing of perpetrators of crime victims of rape based on values of justice, by basing on the legal protection of crime victims rape various countries, based on the idea of the Progressive Legal Theory reconstruction legal protection Rape victims of Crime, the reconstruction of the legal arrangement redress for victims

Reconstruction of the legal protection of the Victims of Crime of Rape-based Justice Values can be described in the following table:

<i>Penal Code</i>	<i>before Reconstructed</i>	<i>after Reconstructed</i>
Article 285	Whoever by force or threat of violence to force a woman to have sex with her outside of marriage shall be punishable for committing rape, with a maximum imprisonment of twelve years	Whoever by force or threat of violence to force a woman to have sex with her outside of marriage shall be punishable for committing rape, with a maximum imprisonment of twelve years and provide compensation to victims of a maximum of Rp. 1.000.000.000, - (one billion rupiah)
Article 286	Whoever has sexual relations with a woman outside of marriage, but it is known that women unconscious or helpless, threatened with a maximum imprisonment of nine years	Whoever has sexual relations with a woman outside of marriage, but it is known that women unconscious or helpless, threatened with a maximum imprisonment of nine years and provide redress to victims of a maximum of Rp. 1.000.000.000, - (one billion rupiah)
Article 287	1) Whoever has sexual relations with a woman outside of marriage, but are known or reasonably should be expected, that has not been fifteen years old, or if age is not it turns out, that has not been able to be married, threatened with imprisonment for a period of nine years.  (2) Prosecution is only done on a complaint, unless the old woman had not been up to twelve years of age or if there was an article that 291 and section 294	Regulated by Law No. 35 of 2014 on Protection of Children accompanied by an obligation for the offender to provide compensation to the victims or a maximum of Rp. 1.000.000.000, - (one billion rupiah)
Article 288	(1) Whoever has sexual relations with a woman in marriage, which is known or reasonably suspected that before being able to be married, threatened, if the act resulted in injuries to a maximum imprisonment of four years.  (2) If the act results in serious injuries, inflicted maximum imprisonment of eight years.  (3) If the death resulted in imprisonment imposed twelve years	Regulated by Law No. 35 of 2014 on Protection of Children accompanied by an obligation for the offender to provide compensation to the victims or a maximum of Rp. 10.000.000.000, - (ten billion rupiah)
Article 289	Whoever by force or threat of violence to force someone to do or let do obscene acts shall be punishable for committing that attack the honor of decency, with a maximum imprisonment of nine years.	Whoever by force or threat of violence to force someone to do or let do obscene acts shall be punishable for committing that attack the honor of decency, with a maximum imprisonment of nine years and guarantees maximum casualties vindication Rp. 1.000.000.000, - (one billion rupiah)
Article 290	Punishable by a maximum imprisonment of seven years:  1) those who do obscene acts with someone when known, that the person is unconscious or helpless. 2) those who do obscene acts with a yet unknown or should have to consider that not fifteen years old or if age is not it turns out, that has not been able to be married.  3) whoever persuade someone who is known or reasonably should be expected, that age has not been	Regulated by Law No. 35 of 2014 on Protection of Children accompanied by an obligation for the offender to provide compensation to victims or their families with a maximum fine of Rp. 1.000.000.000, - (one billion rupiah)

Penal Code	Weakness	after Reconstructed
	fifteen years or if age is not it turns out, that has not been able to be married, to do or let do obscene acts or sexual relations outside of marriage with another person.	
Article 285	Just set the imposition of a maximum imprisonment of twelve years without setting an obligation for the offender to the member compensation and protection of victims	maximum criminal penalties of twelve and coupled with the obligation to provide redress offender or guarantee the physical and psychological health of the victim
Article 286	Stipulates that whoever has sexual relations with a woman outside of marriage, but it is known that women unconscious or helpless, threatened with a maximum imprisonment of nine years. A lower penalty of Article 285 and does not regulate the obligation offender to compensate the victim	Arranged that whoever has sexual relations with a woman outside of marriage, but it is known that women unconscious or helpless, threatened with a maximum imprisonment of twelve years (together with Article 285) and provide compensation to victims of a maximum of Rp. 10.000.000.000, - (ten billion rupiah)
Article 287	This article does not reflect the protection of children as victims of the crime of rape	Regulated by Law No. 35 of 2014 on Protection of Children accompanied by an obligation for the offender to provide compensation to victims or their families
Article 288	This article also does not provide legal protection of children as victims and do not give the rights of children as victims of the crime of rape	Regulated by Law No. 35 of 2014 on Protection of Children accompanied by an obligation for the offender to provide compensation to victims or their families
Article 289	Set about violence or threats of violence to force someone to do or let do obscene acts shall be punishable for committing that attack the honor of decency, with a maximum imprisonment of nine years, where the criminal threat too lightly with psychic suffering suffered by the victim	Arranged that whoever by force or threat of violence to force someone to do or let do obscene acts shall be punishable for committing that attack the honor of decency, with a maximum imprisonment of nine years and guarantees vindication of victims.
Article 290	This article also does not provide legal protection of children as victims and do not give the rights of children as victims of the crime of rape	Regulated by Law No. 35 of 2014 on Protection of Children accompanied by an obligation for the offender to provide compensation to victims or their families

**Suggestion**

- a) Victims should receive compensation for their suffering. The compensation payment shall be adjusted to the loss of the ability to give the offender and the extent of involvement of victims in such crimes and delinquency;
- b) Victims are also entitled to refuse restitution for the benefit of the perpetrator (no refunds would be given because it does not require);
- c) Victims receive restitution/compensation to the heirs if the victim died of a criminal offense committed by the offender;
- d) Victims should receive guidance and rehabilitation of government
- e) Victims get their property back;
- f) Victims get protection from the threat of the offender when reporting crime that happened to him, and when a witness to that offense;
- g) Victims receive legal assistance;
- h) Victims are entitled to use legal remedies.

**References**

[1] Abdul Wahid and Muhammad Irfan, 2001, *the Protection Against Sexual Violence Victims Advocacy On the Rights of Women*, Bandung: Refika Aditama

[2] Algra, NE et al, 1983, *At Law*, Bandung: Bina Cipta

[3] Andi Hamzah, 2004, *Principles of Criminal Law*, Jakarta: Rineka Reserved

[4] Arief Gosita, 1983, *Issue Victims of Crime (Collection of Essays)*, Jakarta: Academic Pressindo

[5] ----- 1985, *Victimisasi Criminal Violence*, edition II, Jakarta: Academic Pressindo

[6] -----, 1995, *Anthology victimization*, Bandung, Eresco

[7] BN Marbun, 1996, *Dictionary of Politics*, Jakarta: Pustaka Sinar Harapan

[8] Bambang Waluyo, 2011, *victimology, Victim and Witness Protection*, Jakarta: Sinar Grafika

[9] Barda Nawawi Arief, 1996, *Anthology Criminal Law Policy*, Bandung: Citra Aditya Bakti

[10]----- 1998, *Some Aspects of Law Enforcement Policy and Development of the Criminal Law*, Bandung: Citra Aditya Bakti

[11]-----, *Protection of Victims of Crimes In Criminal Justice Process*, Journal of Criminal Law and Criminology, Vol. I / No.I / 1998

[12] Boy Mardjono Reksodiputro, 1987, in Sahetapy Et, *victimology An Anthology*, Jakarta: Pustaka Sinar Harapan

[13] C. Maya Indah S. 2010, *the Protection of Victims A Perspective of victimology and Criminology*, Salatiga: Widya Sari

[14] Ministry of Education and Culture, 1997, *the Great Dictionary of Indonesian edition II*, Jakarta: Balai Pustaka

[15] Dikdik M. Arief Mansur-Elisatris Gultom, 2007, *Urgency Protection of Victims of Crime Between Norms and Reality*, Jakarta: RadjaGrafindo Persada

[16] Faisal, 2010, *Breaking Legal Positivism*, Yogyakarta: crotch Education

[17] JE Sahetapy, 1987, *victimology An Anthology*, Jakarta: Pustaka Sinar Harapan

- [18] Kahar Masyhur, 1985, *Fostering Moral and Morals*, Jakarta: Kalam Noble
- [19] Lexy Moleong, 1990, *Qualitative Research Methodology*, Bandung: Youth Rosdakarya
- [20] Leden Marpaung, 1006, *Crimes Against Decency And Problems Preventing*, Jakarta: Sinar Grafika
- [21] Mahmud Kusuma, 2009, *Immersion Progressive Spirit of the Law; On the paradigmatic therapy Weak Law Enforcement Indonesia*, Yogyakarta: Antony Lib cooperate LSHP
- [22] Maria Theresia Game, 2012, *Protection of Indigenous People of the Law of the Nature Reserve Management Watu Or Ngada East Nusa Tenggara province*, Legal Studies Doctoral Dissertation Faculty of Law, University of Brawijaya
- [23] Muladi and Barda Nawawi Arief, 1998, *Theories and Criminal Policy*, Bandung: Alumni
- [24] Muladi, 1989, *Principles of Criminal Law*, Bandung: Alumni
- [25] Mulyana W. Kusuma, 1981, *Various Issues Within the Scope of Criminology*, Bandung: Alumni
- [26] Mulyana W. Kusuma, 1982, *Analysis of Criminology About the Crimes of Violence*, Jakarta: Ghalia Indonesia
- [27] Pan Mohamad Faiz, 2009, *Theory of Justice John Rawls*, in the Journal Constitution, Volume 6 No. 1 (April 2009)
- [28] Peter Mahmud Marzuki, 2009, *Legal Research*, Jakarta: Kencana
- [29] Phillipus M. Hadjon, 1987, *the Legal Protection the People of Indonesia*, Surabaya: Development Studies
- [30] Romli Atmasasmita, 1995, *Capita Selecta Criminal Law and Criminology*, Bandung, Mandar Maju
- [31] Ronny Hanintjo Soemitro, 1990, *Methodology of Legal Research*. Jakarta: Ghalia Indonesia
- [32] Marbun SF, et al, 2004, *Dimensions of the State Administration of Legal Thought*, UII Press, Yogyakarta
- [33] Sabian Utsman, 2010, *Toward Responsive Law Enforcement*, Yogyakarta: Student Library
- [34] Salim HS., 2010, *Development of the Theory of Legal Studies*, Jakarta: Rajawali Press
- [35] Salim HS and Erlies Septiana Nurbani, 2013, *Application of Legal Theory at the Research Thesis and Dissertation*, Jakarta: Rajawali Press
- [36] Satjipto Rahardjo, 2000, *the Legal Studies*, Bandung: Aditya Citra Bhakti
- [37]----- 2006, *Dissecting Progressive Law*, Jakarta: Compass Books
- [38]----- 2009, *Progressive Law, A Law Synthesis Indonesia*, Yogyakarta: Genda Publishing
- [39] Aspects of the National Seminar On Legal Protection for Victims of Rape, (*Political Aspect Legislation Rape Victim Protection*), Faculty of Law, University of March, Surakarta, 1991
- [40] Teguh Prasetyo 2010, *Criminalization in Criminal Law*, Bandung: Nusa Media
- [41]----- 2012, *Criminal Law*, Jakarta: RajaGrafindo Persada
- [42] Theo Huijbers, 1995, *Philosophy of Law in track history*, set VIII, Yogyakarta: Canisius
- [43] Wirdjono Prodjodikoro, 1986 *Follow-Specific Criminal acts in Indonesia*, Bandung: Enesco
- The Code of Criminal  
The Book of the Law of Criminal Law  
Law No. 31 of 2014 on the Protection of Witnesses and Victims  
Law No. 12 The year 2011 on the Establishment of Legislation
- [1] Leden Marpaung 2006, *Crimes Against Decency And Problems Preventive*, Jakarta, Graphic rays, h. 81
- [2] Teguh Prasetyo 2010, *Criminalization in Criminal Law*, Bandung: Nusa Media, p. 78
- [3] Barda Nawawi Arief, 2002 *Anthology Criminal Law Policy*, Bandung: Citra Aditya Bakti, pp 1-2
- [4] Romli Atmasasmita, 1995, *Capita Selecta Criminal Law and Criminology*, Bandung, Mandar Forward, h. 106
- [5] Sabian Utsman, 2010, *Toward Responsive Law Enforcement*, Yogyakarta: Student Reader, p. 6
- [6] Teguh Prasetyo, 2012, *the Criminal Law*, Jakarta: RajaGrafindo Persada, p. 249
- [7] JE Sahetapy, 1987, *victimology An Anthology*, Jakarta: Pustaka Sinar Harapan, p. 43.
- [8] Explanation of Law No. 31 of 2014 on the Protection of Witnesses and Victims h. 19
- [9] Barda Nawawi Arief, 1996, *Anthology Criminal Law Policy*, Bandung: Citra Aditya Bakti, p. 2.
- [10] JE Sahetapy, 1987, *victimology An Anthology*, Jakarta: Pustaka Sinar Harapan, p. 43.
- [11] Satjipto Rahardjo, 2009, *Progressive Law, A Law Synthesis Indonesia*, Yogyakarta: Genda Publishing, p. 134-135
- [12] Development Team, 1995, *the Great Dictionary of Indonesian*, Jakarta: Balai Pustaka, h.829
- [13] BN Marbun, 1996, *Dictionary of Politics*, Jakarta: Pustaka Sinar Harapan, h.469
- [14] Ali Mudhofir, 1996, *Dictionary of Theories and Flow in Philosophy and Theology*, Yogyakarta: Gajah Mada University Press, h.213
- [15] Peter Mahmud Marzuki, 2009, *Legal Research*, Jakarta: Kencana, h. 87
- [16] Salim HS and Erlies Septiana Nurbani, 2013, *Application of Legal Theory at the Research Thesis and Dissertation*, Jakarta: Rajawali Press, p. 259
- [17] Theo Huijbers, 1995, *Philosophy of Law in track history*, set VIII, Yogyakarta: Canisius, h. 196
- [18] Salim HS., 2010, *Development of the Theory of Legal Studies*, Jakarta: Rajawali Press, p. 151
- [19] alga, NE et al, 1983, *At Law*, Bandung: Bina Cipta, p. 303-307
- [20] alga, *Op Cit*, p. 303-307
- [21] Faisal, 2010, *Breaking Legal Positivism*, Yogyakarta: rangkang Education, p. 70
- [22] Satjipto Rahardjo, 2009, *Progressive Law, A Law Synthesis Indonesia*, Yogyakarta: Genda Publishing, p. 3
- [23] Satjipto Rahardjo 2006, *Dissecting Progressive Law*, Jakarta: Kompas, p. 154
- [24] Bambang Waluyo, 2011, *Viktimologi; Victim and Witness Protection*, Jakarta: Sinar Grafika, p. 10
- [25] Arif Gosita, 1995, *Anthology victimization*, Bandung, Eresco, p 136
- [26] National Seminar On Aspects of Legal Protection for Victims of Rape, (*Disorders Psychiatric Rape*),

Legislation

Faculty of Law, University of March, Surakarta, 1991,  
h.10-14

- [27] Salim HS and Erlies Septiana Nurbani, 2013, *Application of Legal Theory at the Research Thesis and Dissertation*, Jakarta: Rajawali Press, p. 259
- [28] Salim HS and Erlies Septiana Nurbani, *Ibid.*
- [29] Ministry of Education and Culture, 1989, *the Great Dictionary of Indonesian*, p. 526
- [30] Satjipto Rahardjo, 2000, *the Legal Studies*, Bandung: Aditya Citra Bhakti, p. 54
- [31] Maria Theresia Game, 2012, *Protection of Indigenous People of the Law of the Nature Reserve Management Watu Or Ngada East Nusa Tenggara province*, Legal Studies Doctoral Dissertation Faculty of Law, University of Brawijaya, p. 99
- [32] Leden Marpaung, *Op Cit*, p. 148
- [33] Faisal, 2010, *Breaking Legal Positivism*, Yogyakarta: rangkang Education, p. 70
- [34] Satjipto Rahardjo, 2000, *the Legal Studies*, Bandung: Aditya Citra Bhakti, p. 48
- [35] Teguh Prasetyo and Abdul Halim Barkatullah, 2012, *Philosophy, Theory and Legal Studies*, Jakarta: Rajawali Press, p. 311