

# Compensation in Rape Cases: A Review of the Criminal Justice System in Indonesia

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## Abstract

*Sex related offences are universal phenomena, which take place in every society. Lately, violence in the community seemed to increase, both in quality and quantity. The aims of the research are to analyze and understand the essence of compensation for victims of crime in Indonesian law and reviewing the ideal concept of the provision of compensation for victims of rape. Type of the research is a normative research by abstracting legal materials and supported by sociolegal or empirical legal approaches related to the main issue. The location of the study was conducted in DKI Jakarta and Depok, Indonesia. Furthermore, analysis of legal material was carried out using qualitative analysis with content analysis method. The results show that the essence of compensation in rape cases for victims in national regulations is an effort made by providing a place for victims of crime to obtain justice, usefulness and legal certainty as the purpose of the law where victims of crime. Physical injury includes an increased risk of a range of sexual and reproductive health problems. Its impact on mental health can be equally serious as that of physical injury. Normatively, regulation in granting compensation claims regarding the implementation of compensation both material and formal in criminal law, so that the provision of compensation claims can be accepted by the victim. In future regulations, the effective mechanism for restitution and compensation must have "forced power" in this case if the perpetrator is unable to pay restitution to the victim within a certain period of time based on a court decision. Above all, the strong commitment and involvement of governments and civil society, along with a coordinated response across a range of sectors, are required to end sexual violence against women and children.*

**Keywords:** Compensation, Criminal Law, Rape, Criminal Justice System

## 1. Introduction

Sexual crime against women and children is universally condemned. In fact, this type of crime is a blot on the face of any civilized society. The problem of sexual violence in Indonesia needs more intensive and serious attention. Sexual offences aptly take the form of sexual violence, which sometimes cause severe and irreparable damage to the physical and mental health of the victims.<sup>1</sup> Physical injury includes an increased risk of a range of sexual and reproductive health problems. Its impact on mental health can be equally serious as that of physical injury.

Actually, violence in the community is not a new thing, it is often performed in coincide with other forms of criminal acts. Lately, violence in the community seemed to increase, both in quality and quantity. Among the types of violence, violence against women a lot of attention due to the nature and broad impact for the lives of women in particular and society in general. This kind of violence has deep roots in the cultural factors that place women on unequal position in relation to men.

Violence against women is one of the crucial social mechanisms which encourage women in a subordinate position compared with men. Meanwhile, in the Indonesian national legal system, both in terms of legal substance and attitude of law enforcement officials still regard violence against women is considered the same as other types of crime in general. Therefore, this type of crime are treated the same as other types of crime (classified into general crime).

Maintain security, order and peace of the country becomes the main task of law enforcement agencies to enforce

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<sup>1</sup> Chanda, Ruhi, Compensation in Rape Cases: A Critical Analysis of Supreme Court Cases from 2005-2009 (September 29, 2010). Social Science Research Network. Available at SSRN: <http://dx.doi.org/10.2139/ssrn.1684494>

the law without discriminate the social status. Anyone who violates the law will be prosecuted and punished in accordance with applicable law.<sup>1</sup> The purpose of criminal sanctions in the Indonesian criminal law is to deter offenders not in retaliation. Such views and understanding are in accordance with the life view of Indonesian Nation that contained in Pancasila values that uphold human values. However, the public interest is violence against women (wives) especially if such cases occur within the scope of domestic so often is called *the hidden crime*. So, called because the perpetrators and victims trying to conceal such actions from public view.

The dynamics of decency crime in Indonesia, in this case the rape case has entered the emergency phase of sexual violence which is concerning and has increased. According to the Chairperson of the National Commission on Violence Against Women, Azriana in 2015 there were about 6,499 cases of sexual violence, in March found sexual violence in the family environment, personal (courtship) there were about 3,325 cases and, in the community, around 3,174 cases, a total of 6,499 cases. The amount is not different from the data in 2016, sexual violence occurs in the family sphere, personal relationships (courtship), and in the community or people who have no kinship, blood or even unknown people.<sup>2</sup>

From the case data, we all understand that rape cases that were snatched away were not assets, but purity and self-esteem. And no one has ever questioned and questioned the fate of rape victims after the crime took place? The reality that has happened so far with the arrest of the perpetrators of rape was then tried and sentenced to severe punishment, it is considered that the actions committed by the perpetrators of the rape have been completed and so far have never cared for the situation of the victim himself. The occurrence of victims of crime can be considered a failure of the state in providing good protection and guarantees to its citizens. In this case, the state is guilty of victimization and therefore it is appropriate for the state to provide compensation to victims if they do not receive restitution / compensation from the perpetrators.

Hence, the issue of this study concerns the weak regulation of legal substances concerning the protection of victims of crime in terms of compensation claims that have not been maximally felt by victims of crime, either restitution or compensation, so that they have not reflected the principle of justice and protection for victims of crime.

## 2. Method of the Research

The type of study is a normative research by abstracting legal materials and supported by sociolegal or empirical legal approaches related to the main issue. The location of the study was conducted in DKI Jakarta and Depok. Furthermore, analysis of legal material was carried out using qualitative analysis with content analysis method.

## 3. The Essence of Compensation in Rape Cases for Victims in National Regulations

Law enforcement must provide benefits to the community and not to implement and enforce laws that harm the community which in turn will cause unrest.<sup>3</sup> Giving compensation for victims of crime as a form of punishment has existed since time immemorial and now this form of punishment is being fought back in the criminal law system. What is the philosophical basis so that compensation needs to be championed as a permanent legal order in modern criminal law today? Above all, domestic violence tends to be done by a group of men at a young age, not working, not in a valid marriage bond, and the presence of *psychiatric problems* that vary from depression to substance abuse. But those who committed violence in a conscious still take a greater proportion.

Domestic violence perpetrators can be identified into 3 (three) categories:<sup>4</sup> *First*, the “*cyclically emotional volatile perpetrators*”. Domestic violence perpetrators of this type have a dependency on the presence of his partner. In itself has developed a pattern of escalating emotions followed by aggressive action against the partner. When the perpetrator begin with psychological violence, such violence can lead to serious physical violence; *Second*, “*over-controlled perpetrators*”. Perpetrators of this type is the group that itself has formed a pattern of

<sup>1</sup> Herdiansyah Hamzah. (2016). Legal Policy of Legislation in the Field of Natural Resources in Indonesia. *Hasanuddin Law Review*, 1(1), 108-121. doi: <http://dx.doi.org/10.20956/halrev.v1n1.218>

<sup>2</sup> Source: the Indonesian National Commission on Violence Against Women Available online at: <https://news.detik.com/berita/3217101/komnas-perempuan-ada-6499-laporan-kasus-kekerasan> accessed on May 25, 2016.

<sup>3</sup> Riduan Syahrani, Rangkuman Intisari Ilmu Hukum, PT.Aditya, Jakarta, 1996 p.192

<sup>4</sup> Core Group. (2008). *Modul Konseling bagi Pelaku Kekerasan dalam Rumah Tangga*, Mitra Perempuan Workshop, Jakarta, 27 June 2008, page: 7

control that lead to psychological control than physical violence; *Third*, “*psychopathic perpetrators*”. Perpetrator that in itself does not form a relationship emotion or regret, and are likely also involved in the violence between men and other criminal behavior. Regret, and also tend to engage in violent or criminal behavior among men.

If carefully traced in everyday life, typical figures of violence directed at women increased enough such as sexual violence; rape and sexual harassment that majority of victims are women. The violence can be understood as gender-based violence or gender violence. This concept actually refers to the subordination of women as relations of both reflecting *powerless* and *powerful*, in other words there is a power imbalance between women and men.<sup>1</sup>

In the system of patriarchal culture, a man will feel that he has the power and right to do anything against women. High brideprice and responsibilities of men in support his family and a perception that women are weak, making the “Adam” man feel they have full power over the women and can do or treat anything of the women. Moreover, in some areas there are still indigenous cult male line firmly that family lineage, heritage and other fell into the hands of men. Customs like this are difficult to remove because it has been recognized and applied hereditary so when violence against women in the household is only rated as an internal problem so that the neighbors and relatives would not be appropriate to intervene.

Ideology and arguments as described above becomes a dilemma for the victim to continue the matter to the court. Domestic violence cases ended up being a hidden crime and allegedly little is revealed in the criminal courts, although there is legislation as its legal basis.<sup>2</sup> And also the nature of legislation is a complaint (*klacht delict*), the purpose of this nature is to protect the “privacy” that are not easily “*private trouble*” becomes “*public trouble*”.

Like “*iceberg*”, the data of violence recorded is far less than it should be reported because not all women who have experienced violence are willing to report their cases.<sup>3</sup> They are more hushing the problem to cover his family’s disgrace. Victims of domestic violence are mostly women in which the subordinate position reluctant to make a complaint. For them, need an enormous courage to decide complaints against their husband’s behavior, the victim will think a thousand times to report criminal acts that happened. Depression and life-dependency usually the biggest reason.

From the aspect of the purpose of punishment, namely the provision of restitution can be used as a consideration to alleviate the perpetrators of criminal prosecution. In addition, with the provision of restitution, the community is more easily accepting the perpetrators to return to live together in the community, because the provision of restitution is considered as a form of guilty plea as well as a form of apology to victims and the public. After analyzing the legislation regarding the mechanism for fulfilling the right to claim compensation, both restitution and compensation, it is very influential on the implementation of the fulfillment of the rights of victims of crime. The following data can be seen in Table 1.

**Table 1.**  
 Number of rape cases that have been decided by the District Court in 2012-2014

No.	District Court	Rape Cases Report			Total
		2012	2013	2014	
1.	East Jakarta District Court	27	33	52	112
2.	Depok District Court	28	24	34	86
	Total Cases	55	57	86	198

Source: Secondary data, 2016 (edited).

Based on the table 1 above, by looking at two district courts that have decided on rape cases in 2012-2014, there were 198 cases of rape crimes where most of the victims of crime were children. However, it can be concluded that the victims of rape are dominated by children. This causes harm to victims both material and immaterial and is in dire need of compensation, especially restitution and compensation in the form of recovery, psychology, medical care and education if the child is out of education. And for that, it is expected that the concern of criminal offenders and the attention and responsibility of the state in seeking to improve regulations concerning easy and fast procedures in obtaining restitution include efforts to strengthen their execution and the right

<sup>1</sup> Romany Sihite. (2007). *Perempuan, Kesetaraan dan Keadilan Suatu Tinjauan Berwawasan Gender*. Jakarta; PT. Raja Grafindo Persada, Jakarta, page. 226

<sup>2</sup> *Ibid*

<sup>3</sup> Siti Musdah Mulia. (2004). *Kekerasan Dalam Rumah Tangga: Perspektif Agama*. (Paper). Tim PUG of Religious Affairs and National Commission for Women, Jakarta, June 22, 2004.

solution if restitution is not obtained from perpetrators of criminal offenses.

#### 4. Ideal Concept Legal provisions of compensation for rape victims

The criminal law determines sanctions against any infringements of the law. The sanctions were in principle an additional suffering by intentionally. It is also important that the difference between criminal law with other laws. According to Satohid,<sup>1</sup> that sanction (criminal) it is torment or suffering, which by law criminal law is given to someone who breaks something norms prescribed by the law of criminal law, and torture or suffering with the judge's decision handed down on themselves the blame it. In principle, sanctions are an additional suffering by intentionally. It is also important that the difference between criminal law with other laws.

Efforts to determine this proportion is not at all easy, but very important for the sake of consistency, not only in the level of legislation but also at the level of implementation by the judiciary (the courts) later. The absence of these parameters can be ascertained is not just a technical problem, but also a philosophical problem, in connection with the absence of the philosophy of punishment. This condition is exacerbated because the legislative process as a political process that resulted in the law, until now it has not been satisfactory.

Although Indonesia has not "a pattern of punishment" with regard to the criteria of qualitative and quantitative in determination of special minimum punishment, but when realizing that the effectiveness of law enforcement was the starting point of the product quality legislative policy, then see the development of the doctrine of criminal and conduct a comparative study on some legislation criminal other countries that already regulates it is one solution.

Moreover, considering the law as a process and justice is a result, to determine the perfection of the functioning of the law and the achievement of the Justice, it cannot be separated from a wide variety of contexts and circumstances. Nevertheless, always remains undeniable are the fact that both are linked in the idea of the state to create a feeling of security and justice for every citizen. Because of institutional support coming from the state is too small, then the judge will perform his function is based on the quality of the individual. The vulnerability of quality force every judge to have and uphold conscience and deepest conviction that any decision to be taken.

Beliefs and conscience are also not only help the judge made a decision that is fair, but also see that the cases of violence against women are cases that could gain the authority to create the atmosphere of the trial which is not detrimental to women. In general, women victims of violence to advance to trial did not easily erase the memory of the pain and fear that must be faced when meeting with the perpetrator. The courtroom is not the room that psychologically gives a sense of security to the victim. On this basis, then it is proper if the judge authorizes assistance to victims.

Renewal of criminal law must regulate the guarantee of balanced and just human rights protection for the entire community both as perpetrators and victims of crime. In the context of the criminal justice system, the function of criminal law is to provide protection, guarantee security, order and realize justice to the rights and interests of individuals, both criminal offenders and victims of criminal acts without discrimination. Because victims of crime are legal subjects that must be protected and have the same interests as those in criminal law.

As a comparison, Rape in The Encyclopedia American International Edition, the translation is as follows: Rape in law is a sexual act that is against the law where intercourse occurs without the consent of the victim. Regulations regarding the elements and penalties for these actions are regulated in regulations and laws that vary from country to country. But the essence of this action is that there is no agreement or rejection from the victim. In its development the core of these elements can be eliminated if the action is carried out on minors (statutory Rape).

In Black's law Dictionary, rape is defined as follows:

*"Unlawful seuzal intercourse with a female without her consent. The unlawful carnar knowledge of a woman by a man forcibly and againts her will. The act the sexual intercourse committed by a man with a woman not his wife and without her consent, committed when the women's resistance is overcome by force or fear, or under other prohibitive conditions"*<sup>2</sup>

From the definition of rape, it can be concluded that what is meant by rape is an interaction, namely sex relations (penetration) carried out by a man against a woman carried out by violence or threat, where the act has been regulated in legislation as a crime and to him can be sentenced.

Legal protection against victims of crime in the national legal system and the law enforcement process has not

<sup>1</sup> Van Bemmelen. (1987). *Hukum Pidana 1: Hukum Pidana Material Bagian Umum*. Bandung: Binacipta, page. 17

<sup>2</sup> Black Henry Campbell, *Black Law Dictionary*, sixth edition (st. Paul min. West Publishing. Co. 1990)

received adequate protection. Whereas in the concept of the rule of law, the form of protection for victims should have a large portion as a form of state protection for the community, so that the victims are often ruled out in order to obtain justice.

The need to be given legal protection for victims of crime adequately is not only a national issue, but also internationally, therefore this problem needs to get serious attention.<sup>1</sup> The importance of protecting victims of crime has received serious attention, can be seen in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power by the United Nations (UN), as a result of The Seventh United Nation Congress on the Prevention of Crime and the Treatment of Offenders.<sup>2</sup> as a result, based on the term violence stated above, it appears that violence is behavior that is contrary to the law in the form of threats or constitutes an act that actually results in physical damage.

## 5. Conclusion

The essence of Compensation in Rape Cases for Victims in National Regulations is an effort made by providing a place for victims of crime to obtain justice, usefulness and legal certainty as the purpose of the law where victims of crime. Physical injury includes an increased risk of a range of sexual and reproductive health problems. Its impact on mental health can be equally serious as that of physical injury. Normatively, regulation in granting compensation claims regarding the implementation of compensation both material and formal in criminal law, so that the provision of compensation claims can be accepted by the victim.

Given the right to compensation for special victims of procedural spread in several laws and regulations, it is necessary to socialize the right to compensation and restitution and the procedure for its implementation. In future regulations, the effective mechanism for restitution and compensation must have "forced power" in this case if the perpetrator is unable to pay restitution to the victim within a certain period of time based on a court decision. Above all, the strong commitment and involvement of governments and civil society, along with a coordinated response across a range of sectors, are required to end sexual violence against women and children.

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<sup>1</sup> Dikdik M. Arief & Mansur-Elisatris Gultom, *Op.cit.*, hal. 23.

<sup>2</sup> Kunarto, *PBB dan Pencegahan Kejahatan, Ikhtisar Implementasi Hak Asasi Manusia dalam Penegakan Hukum*, (Jakarta: Cipta Manunggal, 1996), p. 107.