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## Policy of Criminal System Formulation Oriented to Rape Crime Victims

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### Abstract

Criminal act of rape has received considerable attention among the public nowadays. The care and protection of the interests of the victims of the rape crime either through criminal justice process or certain social care facilities is an absolute part that needs to be considered in criminal law policies and social policies. Therefore, in the formulation of the criminal system, it is time to pay attention to the victim's interest to realize the equitable distribution of justice for the rights of rape victims to be protected. In the effort of developing and renewing the criminal law in Indonesia, it is necessary to conduct an assessment related to the policy of punishment formation system which is oriented to the rape crime victims in the coming criminal law. This study employed a qualitative research using normative law research design. In an effort to achieve the research objectives that have been determined, this study used statute approach and conceptual approach. Based on the results and discussion, policy formulation of punishment system that is oriented to rape crime victims in future criminal law is as follows: (1) in the material criminal law, protection of rape crime victims in its development is regulated in a Bill of Criminal Law, including the formulation of passive national principles, the extension of the concept of criminal acts of rape, and the formulation of types of sanctions. (2) in formal criminal law, the protection of victims, especially the rape crime victims, has been regulated in a Bill of Criminal Procedure Law, with the granting of procedural rights such as the right of a translator and the right of reimbursement of expenses. It is because legal protection against victims of rape crime is in need of services such as psychosocial, medical, and safe house.

**Keywords:** Criminalization; Rape Crime; Victim

### I. INTRODUCTION

Digital media consumption in contemporary society has become a standard of how many people acquire their news and viewpoints on cultural issues (Zaleski, Gundersen, Baes, Estupinian, & Vergara, 2016). Rape is underreported, potentially because individuals self-blame and/or are blamed by others (Russell & Hand, 2017). With large number of criminal acts, such as rape and murder, identification of the perpetrator is very difficult to determine (Jakovski et al., 2013). Unfortunately, despite the limited abilities of labels such as "rape victim" and "rape survivor" to appropriately describe the identities of women who have been raped, such labels not only carry different connotations, but may also influence the identities and outcomes of women who have been raped (Hockett & Saucier, 2015). The international discourse of responding to crime or wrongdoing emphasizes "justice for victims," often expressed as a moral and sometimes legal obligation usually paired with the need for punishment of the wrongdoer (Porter, 2015).

Rape appears to be a universal phenomenon across cultures. Although statutes written in the recent past refer to victims as females, it is currently understood that men can be victims of rape (Miller, 2014). A careful and thorough examination for the presence of genital injury is considered to be an important component in the clinical evaluation of a victim of sexual assault (Walker, 2015). From the victim's perspective, knowing about the nature of the places provides informative and practical support for

intervention which may have the power to prevent outdoor rapes to occur (Ceccato, 2014). An increasing number of research efforts have sought to empirically explore the crime scene characteristics of serial sexual offenders and the relevance of these characteristics to understanding typological distinctions between rapists or in linking offenses perpetrated by single offenders (Warren et al., 1999).

Crime of rape is a crime that has received considerable attention among people in the society. It is often found in news both printed and online media. This criminal act of rape not only occurs in the larger cities of relatively advanced culture and awareness or legal knowledge but also in rural areas that still hold the value of tradition and customs. Modus operandi perpetrators of rape are quite varied, such as: threatened, forced, seduced, killed, given drugs, and stimulants lied or deceived.

The rape crime is a form of violence against women which is an example of the vulnerability of women's position, particularly to male sexual interest. The sexual image of women who have been placed as male sexual objects has far-reaching implications for the life of women. Therefore, they are forced to always face violence, coercion and physical as well as psychological abuse.

The care and protection of the interests of the victims of the crime of rape either through the criminal justice process or through certain social care facilities is an absolute part that needs to be considered in criminal law policies and social policies, whether by the executive, legislative and judicial institutions or by existing social institutions. Pursuant to the purpose of realizing equity and general welfare, the rights of rape victims to be protected are essentially an integral part of human rights in the field of social security (Poernomo, 1998). (Sudarto, 1979) argues that to cope with crime requires a rational effort from society, that is by criminal politics. Policies or efforts to combat crime are essentially an integral part of social protection. Therefore, the main purpose of criminal politics is "the protection of society to achieve the welfare of society".

Within this framework, the purpose of punishment should be oriented to an integrative view, comprising a set of objectives of punishment that must be met by noting that which purpose of a gravity is casuistic. In the purpose of criminalization is also covered the purpose of maintaining community solidarity (Poernomo, 2007). Criminalization should be directed towards maintaining and maintaining community unity to maintain social cohesion intact. Criminal law should not merely be oriented to human actions (*daad strafrecht*) because it makes the criminal law becomes inhuman and prioritizes retaliation. Conversely, criminal law is also untrue to solely pay attention to the perpetrator alone (*daderstrafrecht*) as the application of the criminal law will be impeccably spoiled criminals and pay little attention to the broad interests, namely public interest, state interest, and crime victim interest, particularly the rape victims (Prakoso, 1984).

All in all, the function of criminal law is to protect as well as to maintain the balance of various interests, namely the community, the state, the perpetrators of criminal acts and victims of criminal acts. Therefore, in the formulation of the criminal system, it is time to pay attention to the interests of the victims to realize the equitable distribution of justice for the rights of victims of criminal acts of rape can be protected. In the effort to develop and renewal of criminal law in Indonesia, it is necessary to conduct an assessment, how is the policy of formulation of punishment system that is oriented to rape crime victims in the later criminal law.

## **II. METHOD**

This study employed a qualitative research using normative law research design. Normative legal research is a scientific research procedure to find the truth based on the logic of legal science from the normative side (Ibrahim, 2010). Principally, it is used with the consideration that the starting point of the study analyzed against several legal sources that allow the implementation of policy formulation of punishment system oriented to victims of the crime of rape.

In an effort to achieve the research objectives that have been determined, this study used statute approach and conceptual approach. Types of legal materials used in this study included primary legal materials in the form of legislation and regulatory policies applicable in Indonesia that have relevance to this study, secondary legal materials, and tertiary legal materials. The three legal materials that have been collected were processed and analyzed qualitatively juridical so that it could provide answers to the problems of this present study.

### **III. DISCUSSION**

Punishment system from a functional/wide angle is the whole system (rule of law) on how the criminal law is enforced or operated concretely so that a person is punished by a criminal law. In this sense, the criminal system is identical with a criminal law enforcement system consisting of sub-systems of the Material/ Substantive Criminal Law and the sub-system of Formal Criminal Law.

#### ***The Policy of Criminal System Formulation which is Oriented to the Rape Crime Victims in Material Criminal Law***

Punishment system from a substantive/ narrow-angle is the entire rule of law relating to criminal and criminal prosecution. Hulsman in Arief (2007) put forward the meaning of the punishment system with "The sentencing system is the statutory rules relating to penal sanction and punishment. In the meaning of such a criminal system relating to criminal provisions, it is a process of granting or imposing a criminal by a judge, so that it covers the entire provisions of legislation governing how the criminal law is enforced or operationalized concretely so that a person is subjected to sanctions of the criminal law (Arief, 2007).

The criminal justice system policy is part of the criminal law policy; therefore, it is also an attempt to bring about criminal legislation in accordance with the circumstances and the situation at a time and for the future. Thus, the policy of punishment system is also part of Criminal law reform (Muladi, 1998).

The nature of criminal law reform implies an attempt to orient and reform the criminal law in accordance with the socio-political, socio-philosophical, and socio-cultural values of Indonesian society that underlies social policies, criminal policies, and legal policies in Indonesia. Briefly, the renewal of the criminal law is essential to be pursued by a policy-oriented approach and a value-oriented approach to criminal policy. Criminal law reform must be conducted with an approach policy because in fact, it is only part of a policy or policy step (for instance, part of the politics of law/law enforcement, criminal law politics, criminal politics and social politics.) Each policy covers consideration of the value. Therefore, the criminal law reformation should also be oriented towards a value approach (Arief, 2007). Particularly, the policy of the punishment system must also be oriented towards a value approach.

The Material Criminal Law contains the rules that define and formulate criminal acts, the rules which contain the conditions for imposing criminal and criminal provisions (Sudarto, 1990).

The renewal of the criminal law cannot be separated from the drafting of the Criminal Code Bill. Muladi (1998) gave some notes on the Draft Law on Criminal Law, specifically about the victims. Especially with regard to crime victims, the design team is concerned with the development of epidemiology, from the emergence of a "penal victimology/ interactionist victimology" which sees victim as co-precipitator of crime that develops the idea that "vicinity" can be reduced by development victim's clinic, then the development of the combined concept of the above two approaches, to the emergence of the central issue of the victim's attention to victims of human rights violations (abuse of power) that inspired the formation of the "General Assembly's 1987 Declaration" on Victims of Crime and Abuse of Power.

The scope of policy formulation of crime-oriented punishment system for the rape crime in Material Criminal Law is as follows:

#### ***Formulation of Principles of Criminal Law***

The provision of Article 4 of Book I of the Draft Law on the Penal Code, "Passive National Principle or Protection Principle" intends to protect the national interest. Elucidation of Article 4 states that the provisions of this article contain a passive national principle intended to protect the interests of state law or national interest in the form of (a) interests/safety of citizens abroad; and (b) certain national interests abroad. The scope of the national interest to be protected is determined in a limited manner; however, the type of offense is not determined with certainty. The determination of which types of criminal offenses are perceived as attacking/ endangering the national interest is left in practice openly within the limits of criminal offenses under Indonesian criminal law.

This openly limiting formulation is intended to provide flexibility in the practice as well as the flexibility of the formulation of a delict by the legislator in the future. Therefore, flexibility remains

within the limits of certainty under applicable legislation. The determination of the offense against the national interest is only limited to certain acts that actually violate the interests of national law that are important to protect. Manufacturers are only prosecuted for criminal acts under Indonesian criminal law. The criminal offender charged under this article shall be any person, whether Indonesian citizens or foreigners, committing offenses outside the territory of the Republic of Indonesia.

Based on this consideration, to protect Indonesia's national interests, this following provision is formulated. The penalty rules in the formulation of Article 4 may be related to Article 67 of "additional criminal" namely; "Payment of indemnity and the fulfillment of local customary obligations and/or obligations under the laws of the community. Thus, the perpetrators of criminal acts of rape against Indonesian citizens abroad may be subject to such criminal sanctions.

The victim-oriented criminal system policy in the material criminal law in the provision of Article 4 above constitutes a form of protection related to the victim.

#### *Expanding the Rape Crime Concept*

The article that regulates the rape crime in the Draft Law of the Penal Code is an extension of the article that regulates the crime of rape in the Criminal Code. However, in the Draft Law on Penal Code, it is affirmed that the rape crime is a violation of human rights, especially women's rights.

The Draft Law on the Penal Code that governs the criminal act of rape in Chapter XIV on the criminal act of morality, in the fifth section with sub-section on rape and lewd acts, in paragraph 1 of rape, Article 489 which reads as follows:

- A. Sentenced for committing a criminal act of rape, subject to imprisonment of at least 3 (three) years and no later than 12 (twelve) years:
  1. A man who engages in sexual intercourse with a woman outside of marriage, contrary to the will of the woman.
  2. A man who has intercourse with a woman outside of marriage, without the woman's consent.
  3. A man who engages in sexual intercourse with a woman, with the consent of the woman, but the consent is achieved through threats of being killed or injured.
  4. A man who has intercourse with women, with the woman's consent because she is believed that the man is her legal husband.
  5. A man who has intercourse with women under 14 (fourteen) years of age, with her consent, or
  6. A man who engages in sexual intercourse with a woman when it is known that the woman is in a state of unconsciousness or helplessness.
- B. It shall also be regarded as a criminal act of rape if, under the circumstances referred to in paragraph (1):
  1. A man inserts his genital into the anus or the mouth of a woman.
  2. A man who inserts an object that is not part of his body into the woman's vagina or anus.

In the explanation, it is stated that intercourse that is done contrary to the will of a woman can be seen from the existence of resistance from the woman. However, because psychologically and physically the situation of woman is too weak to resist, the intercourse done without the woman's consent can also be punished under this provision. The explanation of this article also confirms that the provisions of paragraph (1) do not apply to men and women who are bound in marriage. It is because basically a rape from husband to wife cannot happen in marriage.

Indeed, the section that explicitly states that the intercourse is committed against a woman outside the bond of marriage is basically only in letters (a) and (b). Thus it can be interpreted that in letters that are not stated explicitly and expressly in the formulation of legislation, it is possible that the rape occurs in a marriage bond.

In relation to section 1 letter (e) in its explanation, it is stated that this letter regulates the rape crime known as statutory rape, namely that although the woman gives her consent, but because the woman has not reached 14 (fourteen) years, the action is still categorized as rape according to legislation.

The legal formulation of the rape crime in the Draft Law on Penal Code shows that there are efforts to protect women's rights by as much as possible to ensnare the perpetrators of rape so that it can be difficult to escape from prosecution and punishment.

The formulation of these provisions implies a broad impact in the evidentiary system that will be applied to disclose cases of rape in front of the court. Even the system of evidence to be applied has a fundamental difference with the evidentiary system that has been used in applying the provisions of Article 285 of the Criminal Code.

The fundamental differences are namely, first, it lies in the formulation of sentences that are used in the articles in the Criminal Code and articles in the draft Penal Code which is fundamentally different. The second difference lies in the evidentiary system and the evidence of evidence in the trial of a future rape crime case.

In the practice of proving to vide Article 285 of the Criminal Code, the most decisive evidence in the case of rape crime is the expert's information in the form of *visum et repertum* (VER) from a physician appointed by law. In addition, there must also be a judge's conviction that there has indeed been a criminal act of rape.

Referring to the formulation of Article 489 of the Draft Law of the Criminal Code, what will be the most decisive evidence is the statement of the victim's witnesses to all matters which support that during the occurrence of the rape, the victim does not want it, or the victim does not approve it or the victim agrees because of a threat, or the victim agrees because the offender is a person who is considered as her husband or a person she believes, or the victim has not reached the age of 14 (fourteen) years. The statement of the victim's witness must be proven by the Public Prosecutor before the court hearing.

#### *Formulation of Type of Criminal or Action Sanctions*

The provision of Article 67 Section (1) of the Draft Law on Penal Law states: "Additional criminal consists of; (d) payment of compensation; and (e) the fulfillment of local customary obligations and/or obligations under the law living in the community".

The provision of Article 67 Section (2) of the Draft Law on Criminal Law states: "Additional criminal punishment may be imposed together with principal punishment, as an independent criminal or may be imposed together with other additional penalties". Understanding of these provisions is not found in the explanation. Whereas in section (1) it is explained that: "Additional criminal is intended to add the principal penalty that is dropped and essentially facultative. Additional criminal offenses must be clearly stated in the relevant criminal formulation, so that judges may consider being charged against the convicted person".

The provisions of Article 67 Section (3) of the Draft Law on Criminal Law: "Additional criminal sanction in the form of fulfillment of local customary obligations and/or obligations under the law living in the community or the revocation of rights acquired by a corporation may be imposed even though it is not contained in the formulation of a crime". The explanation of additional crime in the form of compliance with customary obligations, the judge is free to consider whether to impose this additional penalty, even though it is not listed as a threat in the formulation of a criminal offense. The fulfillment of the customary obligations imposed by the judge is expected to restore the balance in a disturbed society due to the commission of a crime.

It is stated in the provisions of Article 99 of the Draft Law on Criminal Law that:

The judge's decision can be determined by the obligation of the convicted person to perform payment of compensation to the victim or his heirs.

If the indemnity payment obligation as referred to in paragraph (1) is not enforced, the applicable criminal prison criminal penalty for a fine shall be applied.

It is seen on the Elucidation of Article 99 Section (1) of the Draft Law on Criminal Law that: "the inclusion of additional criminal sanctions in the form of compensation payments indicates an understanding of the suffering of victims of criminal acts. Indemnification shall be paid to the victim or the victim's heir. For that, the judge determines who is the victim who needs to get the compensation. The provision of Article 99 Section (1) of the Draft Law on Criminal Law "in a judge's ruling" can be

interpreted to all provisions of Book II of the Concept of "Criminal Acts" while the word "may" relates to the jurisdiction of the judge in handling each case not always these additions.

Elucidation of the provision of Article 67 Section (1) of the Draft Law on Criminal Law states: "Additional criminal is intended to add principal and essentially facultative punishment. Additional criminal offenses must be clearly stated in the relevant criminal formulation, so that judges may consider being charged against the convicted person". The sentence "additional criminal must be clearly stated in the relevant criminal formula" is a "contradictory" provision with "in the judgment of the judge can be determined the obligation of the convicted person to carry out payment of compensation" (Article 99 section (1)). This means that if based on the provisions of Article 99 section (1), the judge may impose additional criminal "compensation payments" even though the additional criminal is not explicitly stated in the formulation of the article, while the "explanation" of Article 67 Section (1) is also the basis for the judge to impose additional criminal "compensation payments" if such provision is clearly stated in the relevant criminal formula.

There is actually a provision that can be used as a reference to overcoming something that does not sync that is the formulation of the provisions of Article 67 section (3). In the explanation put forward; as well as additional criminal compliance with customary obligations, the judge is free to consider whether to impose this additional penalty, even though it is not listed as a threat in the formulation of a criminal offense. The fulfillment of the customary obligations imposed by the judge is expected to restore the balance in a disturbed society due to the commission of a crime. Therefore, the consideration of his submission is left to the judge. For additional criminal, this type is not determined against what criminal offense can be imposed. The status of "indemnity payments" with "adherence to customary obligations" is equally as "additional criminal", so it is possible to formulate in one (1) provision of "criminal guidelines" for both.

Article 100 Section (3) of the Draft Law on Criminal Law states: "Local customary obligations and/or obligations under the law living in the community referred to in section (1) shall be deemed to be comparable to Category I penalties and may be subject to a substitute for penalty of fine, if the local customary obligations and/or obligations under the law living in that society are not fulfilled or not served by the convicted person". This provision is not found an explanation, but interesting to analyze if returned to the basic idea. The basic idea of formulation policy "criminal fines substitute" oriented to the perpetrator, while the basic idea of formulation policy "compliance of customary obligations" is victim-oriented. Therefore, the provision of Article 100 section (4) states: "The substitute criminal as referred to in paragraph (3) may also be in the form of criminal damages" can be used as a reference for "reformulation" policy of Article 100 section (3), so the new formulation will it may read: "Local customary obligations and / or obligations under the law living in the community referred to in paragraph (1) shall be deemed to be proportional to the damages, if the local customary obligations and/or obligations under the law living in that society are not fulfilled undertaken by the convicted". The policy of "reformulation" to the provisions of Article 100 section (3) is fair to say because there is a "synchronization of orientation" between "fulfillment of customary obligations and compensation" namely "victim fulfillment".

Article 101 section (2) of the Draft Law on Penal Law states: "Measures that may be liable in conjunction with the principal penalty are: c. repairs resulting from criminal offenses". Provisions on criminal overhaul reflect direct victim protection efforts. Such provisions are not included in the "explanation", but the meaning/definition is contained in the provisions of Article 108, namely: "Any act of corrective action resulting from a crime may be the repair, replacement or payment of the damage estimate price as a result of the offense"

The relation of formulation policy to the provisions of Article 67 section (1) letter d (additional "compensation pay"), Article 101 section (2) and Article 108 ("Crime Improvement Act") are "perfection" -The Criminal Code in applying two-track system (double track system) namely; criminal and action.

The use of a "double track system" is the embodiment of the basic idea of a punishment system in addition to other equilibrium ideas, such as criminal offenders and victim. The provision of Article 67 section (1) letter d of Article 101 section (2), although it is a form of the idea of using "double track system" between criminal and acts, both are victim-oriented.

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***The Policy of Criminal System Formulation which is Oriented to the Rape Crime Victims in Formal Criminal Law***

Legal protection for victims, including the rape victims, is one of the most pressing needs. This is due to the lack of clear and clear regulation on legal protection against victims of criminal rape in the Criminal Procedure Code. The criminal justice process prioritizes how to impose criminal sanctions on the perpetrators. Meanwhile, legal protection against victims of criminal acts of rape in the criminal justice process is underestimated.

The Law No. 8 of 1981 on Criminal Procedure Law currently no longer suffices the need to present a modern criminal justice system because its arrangements are incapable of meeting the needs of the development of criminal law, among others in responding to the increasingly complex lawsuit process due to the emergence of new offenses and evolving crime law system. One of them is the demand for a fairer procedure for the parties involved in the criminal justice process such as witnesses and victims, where Law No. 8 of 1981 still focuses on the interests of suspects, defendants, and convicted persons.

The incompleteness and lack of Law No. 8 of 1981 have been minimized by adding special provisions on procedural procedures in the form of laws for certain crimes. The various laws also provide strengthening of new powers, even the establishment of certain institutions that serve to strengthen the criminal justice system. The effort, on the one hand, is capable of responding to needs, but on the other hand, it creates confusion and conflict which results in many of the provisions not being fully implemented.

One of the regulations that emerged as a response to the development of criminal law and answered the need is the emergence of Law No. 13 of 2006 on the Protection of Witnesses and Victims, in response to the importance of witness and victim protection that has not been adequately accommodated in various regulations. This law regulates the substantive rights of witnesses and victims, the procedural rights of witnesses and victims, the protection of witnesses and victims including their mechanisms and procedures and also regulates the duties and functions of the Witness and Victim Protection Agency (LPSK).

The Criminal Procedure Code as the main legal umbrella of the implementation of criminal procedure law is the most important instrument. Therefore, inserting the rights and protection of the victims, especially the victims of the criminal act of rape becomes an inevitable obligation. Based on the position, the Draft Law on Criminal Procedure Code should take its role.

In the development of several criminal procedural laws in various parts of the world, they have expanded the scope of the victim's procedural rights which then developed its criminal procedural system that includes: special treatment for children who participate in adult trials whose status as victims and witnesses; special treatment for defective or defective witnesses; special treatment for victims of sexual crimes, examination of witnesses in sexual crimes especially women and children, and gender-sensitive criminal procedure law for gender-based crimes; changing the structure of the courtroom design: for example a building space; victims support; the right to information on case progress; minimum standards for witnesses awaiting their turn to give testimony in court; the right to counsel to prepare himself for trial; assisted witness assistance services in court; sufficient financial compensation for the time that the witness spent for the court; and the role and participation of victims in the criminal justice process.

The development of the rights and protection of the victims is covered by the Draft Law on the Criminal Procedure Code. In essence, the role of the Criminal Procedure Code should be central to the norms of protection for victims as the main container of criminal procedure law in Indonesia.

The Draft Law on the Criminal Procedure Code has succeeded in defining the victims in Article 1 number 21 states that: "Victims are persons or individuals, institutions, environment, society, nation, and state suffering physical, life and economic losses caused by a crime". The inclusion of the victim's understanding of the Draft Law of the Criminal Procedure Code is progress because the notion of the victim is not exactly regulated by the Criminal Procedure Code. The definition of the crime Victim was proposed in the draft Draft Law on Criminal Procedure Law of 1979 but failed to be included in the 1981 Criminal Procedure Code.

Victim protection is provided in the Draft Law on Criminal Procedure Law, with the granting of

procedural rights such as translation rights and reimbursement rights. The Draft Law on the Criminal Procedure Code should further extend the rights of victims (witnesses) not only in court proceedings but also from the time of the reporting process, investigation to court examination. Arrangements on the rights of witnesses and victims in the Draft Law on Criminal Procedure Code are incomplete if compared with Law Number 13 Year 2006.

Therefore, the Draft Law on Criminal Procedure Law needs to extend the rights of witnesses and victims as defined in Law Number 13 Year 2006. This is important because it provides an opportunity to grant broader procedural rights of witnesses and victims. Actually from the provisions set forth in Article 5 of Law Number 13 Year 2006 can be used as a reference and should be included in the draft of Criminal Procedure Code namely:

A Witness and Victim has the right to: obtain protection for his or her personal, family, and property, and is free of Threats relating to the testimony that he or she will be, or has given; participate in the process of selecting and determining the form of protection and security support; provide information without pressure; get interpreter; be free from trap questions; obtain information on case developments; obtain information on court decisions; know in the event that the convicted person is released; get a new identity; get a new residence; obtain reimbursement of transportation costs as needed; get legal advice; and/or receive temporary living expenses to the end of the protection period.

The rights as referred to in section (1) shall be given to Witness and/or Victims of crime in certain cases in accordance with the decision of LPSK.

Renewal of criminal procedure law is currently moving towards rebalancing justice. This balancing effort at least focuses on stronger efforts to recognize and guarantee the rights of victims in the presence of comprehensive laws, the recognition of the rights of permanent victims, and adequate financial support. In legal protection against victims of rape crime, it needs the services such as psychosocial, medical, and safe house. Another important point on the legal process is that the rape crime victims are in need of the role of counselor or paralegal. When victimized by rape, the victim needs victim assistance and facilitation of recovery and post-event rehabilitation.

Based on these needs, the authors argue that there should be an important addition and improvement in the Draft Law on Criminal Procedure Law in the formulation of victim-oriented punishment system, especially the victims of future rape crimes, namely:

#### *Definition of Victim*

The rape crime or sexual assault as a form of crime has not been accommodated in the definition of the victims in Article 1 number 21 of the Draft Law of the Criminal Procedure Code. As a result, the formulation of the victim's definition of the proposed author becomes: "The victim is a person or more, an institution, the environment, a society, a nation and a state experiencing physical, mental, sexual, loss of good name, environmental damage and/or economic loss caused by a crime".

#### *Counselor/companion*

In the general provisions of the Draft Law of the Criminal Procedure Code, it has not yet accommodated the definition of a counsel as well as in the legal aid chapter. Whereas during this counseling role is very useful for victims of criminal acts of rape. So, it must be ensured that there is a provision that the victim's counselor is obliged to prepare the victim in the face of the entire judicial process and assist the victim to obtain the necessary services.

Therefore, the definition of counselor/companion with the addition of the number in Article 1 of the Draft Law on Criminal Procedure Code, namely "the victim's companion shall be an advocate, paralegal, an/or other social assistance which aims to provide a sense of security and comfort to the victim to convey information on every examination process from the police level to the court level".

#### *Restitution*

Since the Draft Law of the Penal Code provides for restitution, it is important to add to the definition in Article 1 of the Criminal Code Draft, namely: "Restitution is a material and immaterial damages to be paid by the perpetrator to the victim or his heirs, based on a powerful court ruling fixed law".



### *Compensation*

Since the Draft Law on the Penal Code provides for compensation, it is important to add to the definition in Article 1 of the Criminal Code Draft, namely: "Compensation is a compensation provided by the state because the offender is unable to provide full compensation for which he is responsible".

### *Protection of Claimants, Complainants, Witnesses, and Victims*

Since the Draft Law on Criminal Procedure does not regulate the protection of women victims of rape and vulnerable groups, it is important that post-reporting protection arrangements be put in place so that perpetrators will not re-engage in violence and threats against victims. Therefore, the Draft Law on Criminal Procedure Law should accommodate the Letter of Determination of Protection issued by the Preliminary Examining Judge (HPP) upon the request of the investigator. The form of temporary protection is other than in the form of the safe house also limits the suspect/defendant so as not to approach within 1 Km of the victim's existence.

Protection for victims is provided from investigation to investigation in court. In addition, it takes a chapter that accommodates the Right for Women, Children and Vulnerable Groups who are status as witnesses and/or victims. The rights are as follows: get legal assistance; receive a copy of the medical description report or the Certificate of Expert or Medical Certificate; get assistance from stage of investigation to stage of hearing in court; provide information without pressure and violence; free from questions that trap, harass, and / or degrade the witness and/or victim's dignity; get information about case progress; obtain information on his/her rights; get an interpreter; obtain information on court decisions; obtain reimbursement of transportation costs as needed; obtain the costs of restitution of the perpetrator based on the court's determination; obtain protection from family, police, prosecutors, courts, advocates, social institutions or other parties temporarily or under the provision of a court order of protection; obtain health services according to medical needs; obtain temporary protection from the police; and have the right to apply.

### *Victim examination and Legal Aid Information*

In the process of examination of witnesses and victims of rape should be done in a special service room. It is where at the same time the investigator provides information about the rights of the victim to the complainant. The related information provided are: the rights of witnesses and victims guaranteed by law; references to witnesses and victims for health care (physical, psychological) and protection of safe homes; the right to be accompanied and the right to legal aid at each examination level; and the right to obtain information about the development of cases involving him. Among them can be a copy of the minutes of each stage of the examination.

### *Legal Assistance for Witnesses and Victims*

All victims and witnesses are entitled to legal aid so that in the legal process it is not only the suspects/defendants who must be accompanied, witnesses and victims are also entitled. Therefore, the Draft Law on the Criminal Procedure Code needs to add the norm in the form of "Legal Counsel is entitled to accompany the victim from investigation to investigation process in court".

## **IV. CONCLUSION**

In the policy formulation of crime-oriented punishment system in criminal law in the effort of renewal of criminal law, there are some rules as protection of victim in the future as stipulated in some new regulations that are: (1) In material criminal law, victim protection the rape crime in its development is regulated in the Draft Law of the Penal Code, including the formulation of passive national principles, the extension of the concept of rape, and the formulation of types of sanctions, among others: (a) the compensation for victims in Article 99 section (1) and section (2) of the Draft Law of the Penal Code, with compensation, must pay attention to the victims of the act of rape; (b) Article 101 section (2) of the Draft Law of the Penal Code shall constitute measures which may be liable in conjunction with the principal penalty in the form of reparations resulting from a crime. Provisions on criminal overhaul reflect direct victim protection efforts. The Draft Law on Penal Code does not only focus on the perpetrators but also on the victims. (2) In formal criminal law, the protection of victims, especially the victims of rape crimes, has been regulated in the Draft Law on Criminal Procedure Law,

with the granting of procedural rights such as the right of the translator and the right of reimbursement of expenses. Because legal protection against victims of rape crime is in need of services such as psychosocial, medical, and safe house. Moreover, during the legal process, the victims of rape crime are in urgent need of the role of counselor or paralegal and need facilitation of recovery and rehabilitation after the incident, then the formulation of the rights of victims in the Draft Law of the Criminal Procedure Code needs to be completed.

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