

Viktimological Approach In Efforts To Resolve Criminal Disparities For Perpetrators Of Crimes Against Women

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ABSTRACT

Cases of violence against women identified in the community are an iceberg phenomenon, because the magnitude of these cases has not illustrated the total number of actual cases that occur in the community and only a small percentage of reported cases of violence. In fact, it is very difficult to precisely gauge the extent of violence against women, because it means having to enter a sensitive region of women's lives, which women themselves are reluctant to say. The criminal justice system that is oriented to criminals causes inequality in the protection of the law to victims of crimes, which results in victims (especially violent and sexual crimes) reluctant to report to law enforcement officials and witness the events they experience. This condition is an obstacle to the smooth running of the criminal law enforcement process which ultimately affects the success of overall crime prevention efforts.

Keywords: Disparity; Crime; Women; Penalty

ABSTRAK

Kasus kekerasan terhadap perempuan yang teridentifikasi di masyarakat merupakan fenomena gunung es, karena besaran kasus tersebut belum menggambarkan jumlah seluruh kasus yang sebenarnya yang terjadi di masyarakat dan hanya merupakan sebagian kecil kasus kekerasan yang dilaporkan. Pada kenyataannya, sangatlah sulit untuk mengukur secara tepat luasnya kekerasan terhadap perempuan, karena itu berarti harus memasuki wilayah peka kehidupan perempuan, yang mana perempuan itu sendiri yang enggan/tidak mau mengatakannya. Sistem peradilan pidana yang berorientasi kepada pelaku tindak pidana menimbulkan ketimpangan dalam perlindungan hukum kepada korban kejahatan, yang mengakibatkan korban (terutama kejahatan kekerasan dan seksual) enggan memberikan laporan kepada aparat penegak hukum dan menjadi saksi dalam peristiwa yang dialaminya. Kondisi ini menjadi penghambat bagi kelancaran proses penegakan hukum pidana yang akhirnya mempengaruhi keberhasilan upaya penanggulangan kejahatan secara menyeluruh.

Kata Kunci : Disparitas; Kejahatan; Perempuan; Pidana

A. Introduction

The 1945 Constitution affirms that the state of the Republic of Indonesia is a state based on law (*rechtstaat*). As a state of law, Indonesia always upholds human rights and guarantees that all citizens have the same position in law and government with no exception.

The ratification of the Convention on the Elimination of all forms of discrimination against women (called the Convention on The Elimination of All Forms of Discrimination Against Women) which was later ratified in Law Number 7 of 1984 proves that the State of Indonesia is serious about dealing with issues involving women both as perpetrators and as victims of crimes. The Convention on the elimination of all forms of discrimination against women, currently known as

the CEDAW (Convention On The Elimination of All Forms Of Discrimination Against Women) received by the United Nations (UN) general assembly on December 18, 1979 has grown dynamically, deepened and expanded in meaning by formulating and issuance of general recommendations by the Committee on the Elimination of Discrimination Against Women. The International Convention makes it an obligation for the Indonesian state to respect, protect and fulfil human rights and eliminate all forms of discrimination against women, especially in Indonesia.

Within the framework of human rights protection, in essence, the protection of women is one of the manifestations of the right to life, the right to be free from slavery (slavery). This human right is universal, meaning it applies to everyone regardless of origin, gender, religion, and age so that every country is obliged to enforce it without exception.

Based on the results of research by the Women's National Commission, the Women's National Commission was born with Presidential Decree Number 181 of 1998, on October 15, 1998, which was strengthened by Presidential Regulation Number 65 of 2005. There were findings of documents on 103 cases of violence against women spread across thirteen cities/regencies in Aceh Besar, Aceh, Aceh Jaya, Southwest Aceh, Pid. These cases occurred during military operations (≤ 1999 , 2 cases), peaceful dialogue periods (2000-May 2003, 14 cases), Martial Law & Civil Emergency (May 2003 – August 2005, 65 cases), Post MoU Peace (\geq August 2005) and 5 cases across periods. This total of 103 cases are really just small shoots of the pile of cases of violence against Acehnesewomen. More than half of the documented cases were cases of sexual violence (59%, 61 cases), consisting of 31 cases of rape, 11 cases of sexual abuse, 7 cases of sexual abuse and inhumane punishment, 4 cases of sexual abuse, and 8 cases of sexual exploitation. While forty-two non-sexual cases take consist of torture (32 cases), cruel treatment and inhumane punishment (9 cases) and persecution (1 case).

The results of the 2006 National Survey showed that there were 2.3 million (3.07%) cases of Violence against Women, with a ratio of cases between rural and urban areas being 3.08%: 3.06%. Most of the victims (77%) did not make any efforts and only 17% of the victims received services from NGOs and social workers and 6% from public figures. Komnas Perempuan Annual Record in 2013, we know that there have been 279,760 cases of violence against women, with the number of cases of sexual violence increasing to 5,629 cases from 4,336 cases in 2012. This means that in 3 hours at least 2 women experience sexual violence. This act of sexual violence is carried out even by the people closest to the victim, namely within the family and in the circle of his

association, for example at school. Also, by a number of law enforcement officials, state organisers and public figures.

Cases of violence against women identified in the community are an iceberg phenomenon, because the magnitude of these cases has not illustrated the total number of actual cases that occur in the community and only a small percentage of reported cases of violence.

Acts of violence in society are actually nothing new. Violence is often committed together with various forms of crimes as stipulated in the Criminal Code (KUHP) such as Persecution (Article 351), Rape (Article 285). The crime is committed by violence or threat of violence, while the way violence or threats of violence are used, each depends on the case. The placement of these articles under the chapter on crimes against decency itself raises conceptual problems because the existence of women is reduced to mere decency values and not in order to protect their existence as humans.

In the Indonesian legal system, in terms of substance, the attitude of law enforcement and the attitude of their respective communities think that violence against women is seen as a crime in general. Therefore, this type of crime is equated with a general criminal offence. Violence against women has historically been known in Indonesian society, it's just that violence against women is still considered one of the legal social problems.

In fact, it is very difficult to precisely gauge the extent of violence against women, because it means having to enter a sensitive region of women's lives, which women themselves are reluctant to say. The results of many studies show that violence committed against women is very widespread but many stem from domestic violence committed by couples, besides sexual violence against women.

Legal protection efforts for women, one of which is through the prevention and eradication of human trafficking, need to be continuously carried out in order to maintain quality human resources. The quality of protection for women should have the same degree/level as the protection of men, because everyone has the same position before the law (equality before the law).

Indonesia's criminal justice system is too oriented to criminals. This can be seen from the many articles in the Criminal Code (Book of Criminal Procedure Code) which regulates various rights owned by a suspect or defendant, in the name of human rights protection (HAM), while the rights given to Victims of Crime are only regulated in one article, namely Article 98 which gives victims of Then he had to report to the police by retelling the incident he experienced and

sometimes getting less sympathetic treatment from the police. This is a very unfair treatment of the victim of the crime, even though the success of the criminal investigation depends on the reports and testimony of the victim.

Due to the lack of legal protection for the victim, it is increasingly rare for victims to report crimes experienced and fewer people who are willing to witness criminal cases, especially in cases of sexual crimes. This makes it that criminal statistical data from law enforcement agencies is irrelevant to the actual number of crimes that occur in society because of the number of crimes (dark number) becoming more and more. This can ultimately lead to failure to the overall crime prevention policy committed by the government.

As a state of law, Indonesia adheres to one of the most important principles, namely the principle of presumption of innocence, namely everyone who is suspected, arrested, detained, prosecuted and or before a court hearing, must be considered innocent until there is a court decision that states his guilt and obtains permanent legal force or *inkrah* (Article 8 of Law No.14 of 1970). So the court's judgement is an important milestone for the reflection of justice, including court judgements in the form of criminal prosecution and convictions. The birth of criminal prosecution and conviction did not just arise but through a very long judicial process. The law's desired process is fast, simple and light cost. Usually the principle is still added to be free, honest and impartial and fair, of course, regarding the principle of justice.

Criminal sanctions imposed by judges against perpetrators of crimes against women are still considered fearless and are influenced by norms outside the norm of the law, seem to still inherent and become an obstacle to law enforcement consequently. The authority of judges is so great in deciding cases that there are many disparities in judgements in similar cases. This is characterised by a substantially sharp difference between the decisions of District Court judges and each other or High Court judges and Supreme Court judges regarding the same case, even though they all refer to the same rules. The judgement of the court will have a humanitarian dimension if it is based on the principle of equality before the law and the presumption of innocence, because these two principles contain human rights values that must also be protected and considered by law enforcement, especially for judges who have the authority to decide cases. Court judgements are important milestones for the reflection of justice, including court judgements in the form of criminal prosecution and convictions.

The judge in his judgement without considering that aspect, will cause legal uncertainty and

injustice in giving criminals. This seems to be a lot of unequal criminal application to the same crime (same offence) in practice in court. According to Molly Cheang, the criminal application case as quoted by Muladi is called the disparity of the judge's judgement or known as the disparity of sentencing.

The disparity of this judge's judgement will be fatal, when it is related to the administration of inmate formation. The convict after comparing the punishment imposed on him with others then feels victimised from the uncertainty or disorder of the court will be a convict who does not respect the law, even though the appreciation of the law is one of the results to be achieved in the purpose of punishment.

Ideally as a legal state, Indonesia adheres to a system of legal sovereignty over the rule of law, namely law has the highest power in the state. As a legal state, Indonesia adheres to one of the important principles, namely the principle of presumption of innocence. This principle in addition to being found in Law Number 8 of 1981 (KUHAP), can also be listened to in Law Number 48 of 2009 on Judicial Power. It is stated that everyone who is suspected, arrested, detained, prosecuted and or presented before a court hearing, shall be considered innocent until a court judgement declares his guilt and obtains permanent legal force.

Based on the description above, the author is interested in analysing further the criminal disparity of perpetrators of crimes against women. The author in this case divides into two formulations of the problem, namely How is the legal construction and the impact arising from the criminal disparity of criminals on women. How effective is the method of the victimological approach in solving criminal disparities in cases of crimes against women.

B. Research Methods

Methods concern the problem of how it works is a way to be able to understand the object that is the target of the science in question. Research generally aims, develops or tests the truth of a knowledge. Finding means trying to acquire something that fills a void or deficiency. Developing means expanding and digging deeper into something that already exists. Testing the truth is done if what already exists is still or is in doubt.

With this research activity, it is expected to obtain complete and accountable data, so that it must be based on certain thoughts and methods as a condition for scientific writing. Thus the writing does not deviate from what is the goal.

C. Finding & Discussion

1. Legal Construction And The Impact Arising From Criminal Disparities Of Criminals On Women

So far, if there is an act of violence within the family or household, it always refers to the Criminal Code (Criminal Code). handling cases that befall women often does not give satisfactory results and even tends to increase the suffering of the victim. This is because the victim is often a double victim, meaning that the victim must repeat actions that did not happen to him starting at the time of examination in the police to court.

Nowadays some of the victims/women are increasingly open and dare to report acts of violence that used to always be protected or covered up. As for the perpetrators and the community, it is expected to be more responsive and understand that violence against women is a criminal offence. Of all the types of violence experienced by female victims in the domestic realm, the most psychological violence was identified (103,691), and successive types of economic violence (3,222), physical violence (2,790), and sexual violence (1,398). There are a number of types of violence that cannot be categorised into the types of violence mentioned earlier (only expressed as domestic violence without a more detailed record (National Commission on Women, 2014: 6). From the data of service procurities, cases of violence against women that occur in the Community realm can be categorised into: 1) sexual violence, 2) physical violence, 3) psychic, 4) traffic violence, 5) violence experienced by migrant workers, 6) escaping girls, 7) workplace violence related to labour issues.

Sexual violence in the categories of violence that occurs in the realm of this Community includes: obscenity, rape, attempted rape, intercourse, sexual harassment and other categories of sexual violence (such as abortion, sexual exploitation, prostitution, and pornography). Various acts of sexual violence are certainly inseparable from the social image that makes women sexual objects. The workplace of a woman will attach to her image to her, this is one of the factors of the many sexual violence that occur in women who work in certain places, especially at night (eg in nightlife venues, karaoke places, discos and so on).

The results of the study can be said that there are several factors causing violence against women both in the Domestic environment and in the Community Environment, namely, the first is the concept of patriarchal culture, which is a social system where men have higher control and

power with women below it (subordinate). Patriarchies can spread to every level of society and country regardless of cultural, religious and other social background differences. Patriarchal standards also influence the Indonesian bureaucracy where high government positions are dominated by men. Many Indonesian women realise their rights are not fulfilled and are more often under pressure from men in doing everything.

The second is that the misunderstanding of the teachings of Islam as the majority religion in Indonesia has given complete demands for married couples in married life. But unfortunately, this noble Islamic teaching still causes many misunderstandings due to patriarchal interpretations. The husband acts as the head of the household, and the role of the wife only takes care of domestic domestic domestic matters. A complete lack of understanding of the concept of marriage for Muslim society, is one of the factors in the large number of violence against women (in this case wives). Husbands prefer wives to take care of domestic matters than work, so many women who when they are married want to return to work but there is a husband's ban, so it is often a conflict that causes violence against women.

Third is the imbalance between men and women, that the reality of Indonesian society makes women the most responsible people to take care of daily household activities. The position of the husband in Islamic teachings becomes a leader for his family and the position of the wife as a companion. In practice, the position between husband and wife has nothing in common. The imbalance of male and female positions makes women objects only.

Fourth is the environmental factor which is interpreted as the neighbourhood where the residence contributes to violence against women. Currently, environmental problems are an external factor from outside the self making it lose direction of purpose. For example, someone who works in a Nightclub environment will be more identified with negative connotations when juxtaposed with the work of a woman to become a satay seller in the Medan City neighbourhood, so the satay selling woman remains a positive community.

Violence against women occurring in Indonesian society is a violation of an Indonesian state law. The violation of the law is based on Article 28 of the Constitution of the Republic of Indonesia in 1945, along with its changes. Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia stipulates that 'Everyone has the right to protect themselves, family, honour, dignity, and property under his control, and has the right to a sense of security and protection from the threat of fear of doing or not doing something that is a

human right'. Article 28H paragraph (2) of the Constitution of the Republic of Indonesia of 1945 stipulates that 'Everyone has the right to ease and special treatment to obtain equal opportunities and benefits in order to achieve equality and justice'.

In addition to the Indonesian Constitution, arrangements regarding violence against women are contained in several existing laws and regulations, including: 1) Law Number 1 of 1946 on Criminal Code and its Amendments; 2) Law Number 8 of 1981 concerning the Criminal Procedure Code; 3) Law Number 1 of 1974 on Marriage; 4) Law Number 7 of 1984 concerning 28 Ratification of the Convention on the Elimination of All Law No. 23 of 2004 on the Elimination of Domestic Violence, meaning that the handling of cases of violence against women by court officials (in this case at the court level) must refer to applicable laws and regulations (normative juridical) and also the values that live in Indonesian society to fulfil the sense of justice of the community.

There are several Court Decisions in Indonesia that decide on the issue of violence against women both committed in the household and outside the household, namely: 1) The decision of the Malang District Court with number: 372/Pid.B/2010/PN.MLG with cases on Rape, 2) Simalungun District Court Decision with Number.722/PID.B/2011/PN.Simalungun (Case on physical violence in the scope of the household against the wife), 3) District Court Decision Number.2454/PID.B/2008/PN.Medan. (Case on Domestic Violence against the wife committed by the husband) Of the three judgements above, the judge who decides the case gives different considerations and is adjusted to legal facts in the trial and outside the trial. The difference in interpretation of the case of each, is the interpretation of the judge in applying the law in accordance with the cases he is being examined. Interpretation in the judgement of a case, even if it is released to the judge but cannot be out of the rules of interpretation in law. Actions that are clearly regulated, then if there is a violation, it must be decided in accordance with the existing law.

In line with the increasing awareness among women of their rights, the imposition of sanctions for crimes of decency is seen as not to fulfil women's sense of justice. The decency offences regulated in the Criminal Code still override legal protection against women because in cases of attacks of honour/decency/politeness can be sanctioned if it is carried out openly (in public). Likewise, articles related to sexual crimes such as articles 285 to articles 288 and articles 296 and 297 of the Criminal Code tend to constrict the objectification of female figures

and are localised to the genitals. This trend can be seen in the contents of article 285 of the Criminal Code which reads: 'Anyone with violence or threat of violence forces a woman to have sex with her out of wedlock is threatened with rape by a maximum imprisonment of twelve years.'

The legal status of women becomes more difficult with the requirements for the existence of cumulative legal elements, namely: (1) perpetrators, men who can have intercourse; (2) victims, women who are not their wives; (3) violence or threats of violence; (4) intercourse occurs, The non-fulfillment of these legal elements often causes the impunity of punishment imposed on the In rape cases, for example, the heavy point of handling rape cases in the fourth element (happening intercourse) is also seen as burdensome for the victim and, conversely, lightening the perpetrator. Medically forensically, intercourse is defined as an event in which penetration of the penis into the vagina occurs, the penetration can be complete or incomplete and with or without ejaculation.

One of the causes of the disparity of criminal prosecution basically starts from the law itself, where the law opens the opportunity for criminal disparity due to the minimum and maximum limits on the punishment, so that judges are free to move to get the right criminal they think. In Indonesia's positive criminal law, judges have a very broad freedom to choose the type of criminal they want. This is related to the use of alternative systems in criminal security regulated in the law.

In the justice system, law enforcement officials such as the police, prosecutors and judges are very important pillars in the enforcement of the rule of law in this country. So it is hoped that these law enforcement officers in carrying out their duties must really be professional and always uphold the law and the values of justice. If the law enforcement officer does the opposite, it will be biased to the defendant alone so that it can have an impression on the defendant who is anti-starch towards the law enforcement officers who imposes a judgement that is considered unfair, especially on the defendant who is sentenced to more severely than others.

It is undeniable that the disparity of the severity or lightness of the sentence for the defendant cannot be separated from the law enforcement, be it at the level of investigation, the level of prosecution and even against the judge himself. This tendency often occurs in the field, so that defendants who do not make collusion efforts feel that there is an inequality in treatment

of justice itself, which ultimately makes the defendant less likely to believe in the law, especially in the justice system in this country. Judges in carrying out their judicial duties must always hold the provisions of applicable law, therefore in upholding the law, the Judge must always pay attention to 3 (three) important elements that must be his guidelines, namely: 1) There is legal certainty (*rechtssicherheit*), 2) Have benefits (*zweckmassigkeit*), 3) Upholding the values of justice (*gerechtigheit*).

The existence of the three components above has a significant influence on the perpetrator of crimes brought before the trial where the judgements handed down will later allow the defendant to reflect on all his mistakes and immediately repent so as not to repeat the crime again in the future and the judgement handed down can be felt fair to the defendant himself. For people who judge it, it has been felt fair so that the image of the court in the eyes of the community will increase and remain respected as a legal institution. Criminal acts of violence against women in Indonesia that are accommodated in several laws and regulations, including in the Criminal Code, the Human Rights Law, the Law on the Elimination of Domestic Violence and the Law on Child Protection have not been maximised in its enactment. Cases of violence against women, such as rape cases regulated in the Criminal Code, in the process of handling it strongly do not reflect the values of benefit the victim. elements of the game carried out by the defendant.

The construction of law enforcement against criminal acts of violence against women in general, can be carried out in the following ways (Referring to the Legal System Theory of Lawrence M. Friedman), namely in terms of legal substance, there are rules that support law enforcement that prioritise the interests and needs of women victims of violence, including: 1) Changing the basic rules related to material violence against women, procedural law, and others. For example, changes to the Criminal Code are related to regulating the rights of victims and proving cases of violence against women. 2) Develop thoughts about the need for interpretation of existing articles, including the formulation of legal changes. 3) Placing the victim as the subject in the process of examining the case and not the object as has happened so far. 4) Provide assistance for victims in every case examination process. 5) Consider alternative penalties strictly regulated in legislation for women who are considered 'perpetrators' of crimes because there is actually a Gender dimension in such cases.

In terms of legal structure, the availability of infrastructure that serves the needs of

women victims of violence, including: 1) Handling specifically for women victims of violence. This can be achieved with adequate infrastructure and budget allocation. 2) Provision of information and inspection services that are fast and convenient and gender sensitive, which can be accessed by victims, escorts and interested. 3) Clear authority and role in efforts to protect women victims of violence In terms of legal culture, namely the readiness of law enforcement officials who have an adequate understanding of the problem of violence against women. This can be achieved through counselling efforts such as gender training for law enforcement officials, including incorporating material into the educational curriculum, as well as the opening of public participation taps in handling cases of violence against women. Including efforts to build public awareness of the problem of violence against women. From the changes in the construction of the law enforcement system above, it is hoped that law enforcement officials can handle cases of violence against women with a gender perspective so that harmony is created between victim law enforcement officers.

The political policy of criminal law against violence against women in Indonesia must be carried out from the process of establishing laws and regulations related to criminal acts of violence against children, both at the initiative of the government and the House of Representatives. Criminal law politics can be divided into 3 forms, namely: 1) Preventive efforts or non-priminal policy, 2) Utilisation of the role of the mass media, 3) Criminal efforts by utilising an integrated criminal justice system (integrated criminal justice system) With these three forms it is intended that the settlement of criminal cases that occur in society, should be carried out in an integrated manner in a

With regard to criminal acts of violence against women, the government needs to make several related efforts as follows: 1) Provide legal protection in resolving cases of violence or sexual crimes against women, 2) Provide legal counselling, especially to women in order to know their rights and obligations according to the law, as well as about the dangers of violent crimes, including all consequences that will be borne by someone if they are victims of violence or sexual crimes. 3) Provide counselling to the wider community to change their views on victims of violent or sexual crimes against victims, because the victim is not the guilty party to the event.

2. How Effective Is The Method Of Victimological Approach In Resolving Criminal Disparities In Cases Of Crimes Against Women

The victimological approach, in essence, considers the condition of victims of criminal offences due to criminal acts or acts of crime or violence. Given the regulations on victim protection as stipulated in the Criminal Procedure Code (KUHAP), it is considered unbalanced. When compared to legal protection for suspects/defendants as perpetrators of criminal offences in this case the suspect or defendant.

The articles in the Criminal Code actually regulate the implementation of criminal justice. Broadly speaking, it regulates the General Provisions, Inquiry, Investigation, Prosecution, Evidence and Investigation. Of the entire articles, approximately 6 to 9 articles govern the legal protection of victims of criminal offences. The rest regulate legal protection against suspects or defendants. Articles governing the legal protection of victims, including articles on Legal Aid, Good Name Restoration, Rehabilitation, Compensation, Restitution, and Pretrial. Even though the victim is the most knowledgeable party due to criminal offences. Regardless of whether the criminal offence occurs as a result of the victim's fault, the fault of the suspect/defendant or because of the possibility of the victim and the suspect or defendant.

While legal protection for suspects or defendants is actually widely and thoroughly organised. Even since the start of the preliminary examination, both in the form of investigations and investigations of suspects, according to KUHAP, suspects must be accompanied by legal counsellors. Even up to the execution of the death penalty, for defendants who are sentenced to death; it must also be accompanied by legal counsel. This means that the Criminal Code gives very special treatment to the suspect or defendant. This special treatment, as described above, is legal protection. In the sense that it must be accompanied by a legal counsellor, since the investigation was carried out. Not including other articles governing the rights of suspects or defendants.

Since the birth of December 31, 1981, the Criminal Code, which replaced HIR, has been considered the Masterpiece of the Indonesian Nation. That assumption is not wrong, because the Criminal Code implies the protection of human rights. This means that with such a paradigm, it can be considered that KUHAP emphasises the principle of humane law enforcement. This is also in line with the criminal justice model applied, namely the Due Process Model which is the thinker of Paul Packer. Unlike HIR, with the Crime Control Model criminal justice model,

it still recognises ways of violent examination. Both at the level of investigation and at what level of investigation. With a model like this, it must be recognised to override the protection of human rights. That's the reason, so it positions the Criminal Code as a Great Work. In fact, the most disadvantaged party if a criminal offence occurs, is the victim. The victim not only suffered physical, psychological losses. In many cases, murders such as victims have to lose their lives.

Likewise in many cases of criminal offences against women, for example events in the May 1998 riots case. Many victims died or victims of rape offences. In this rape crime case; related to the May 1998 riots, not a few victims chose shortcuts. Suicide, unable to bear the shame, contains the seeds of babies from the heinous acts of the perpetrators of rape. Even if there are victims who then commit abortion, maybe with careful consideration. Both ethically and medically. Because the seeds of the baby in his womb are the result of a criminal offence of rape. The statement as outlined above, is a small example that the Criminal Code is not balanced in regulating legal protection against defendants or defendants with criminal victims. This unbalanced reality is also up to the criminal justice system adopted by the Criminal Code. The criminal justice system with the Due Process Law model does emphasise the protection of Human Rights. When compared to the Crime Control Model approach. This approach, as practised by HIR.

This Due Process Law approach model actually does not escape weakness. Especially in relation to the protection of victims. As stipulated in the Criminal Code, actually the rights of the victims of the crime have been taken over by the public prosecutor who is the representative of the state. Even if the presence of the victim is at the level of investigation to the trial in court, it is nothing more than a witness. Because some or all of the victim's rights have been taken over by the public prosecutor. The presence of witnesses and powerful victims at the level of investigation and in the counselling, is nothing more like a passive witness.

This reality is what is important, it is necessary to consider the victimological approach in terms of applying the same criminal sanctions to the same criminal offence. Including the application of criminal sanctions in cases of riots as well as in cases of criminal offences of terrorism. Offering a new paradigm in relation to the application of criminal sanctions similar to the victimological approach, is a consideration that places a parallel position between the suspect or defendant and the victim. Paradigm shift by putting forward this approach to

victimology, according to Von Hentig, as quoted by J. E. Sahetapy remembers that in a criminal offence or a criminal event there should be an interaction and dynamics that is not only caused by the perpetrator, but there is an interrelationship between the perpetrator and the victim. Interrelationship between the perpetrator and the victim, showing that actually an act that deviates from the norm, such as a criminal act. Because actions that deviate from the norm, whether they are criminal acts or crimes are not only formulated by criminal law, but also actions that cause suffering that are not justified and that have not been formulated in law.

Criminal acts or crimes from victimising victimological views in essence there are several components that need to be considered. Because so far there has been a tendency to only pay attention to the components of criminals or perpetrators of crimes, laws and law enforcement and interactions between the three components. Even though it is necessary to look at the constellations that occur in society and are wider in nature. This means how the factors of sociology, anthropology, psychology and the application of the criminal law itself. These components show how the victim's interaction of the crime or crime occurred. And almost these components are almost forgotten in scientific analysis related to the existence of the victim. Even if questioned, according to J. E. Sahetapy, an analysis of the victim factor, has not shown a holistic and comprehensive analysis, so the victim factor becomes neglected. Regarding victims due to riots or criminal acts of terrorism, it is necessary to put forward the typology of victims as formulated by Sellin and Wolfgang, namely the Tertiary Victimization that became victims were the wider community.¹⁴ Victims in the events of May 1998, were quite a large number of victims that year, which was the beginning of the rise of the Reform Order. is a phenomenon in the criminal act of terrorism that first occurred in the Reform Order government. In this incident, the victim was not only an Indonesian citizen, not a few foreign tourists who were foreign nationals became victims in this incident.

Efforts to minimise criminal disparity through the discussion of criminal law, including through the renewal of the Child and Women Protection Law, of course, are not just changing clothes. But what is expected is that by revising this law, substantively, the humanitarian aspect becomes a major and a top priority. Because so far the rights of the victim have only been procedural. Not something substantive, especially if you pay attention to the victims who died as a result of criminal offences of terrorism. Is a large number of victims as known as Tertiary Victimization.

The studies of victimology and criminology are at least considered in making regulatory changes to these laws. If in criminological studies, various forms of crime and violence can be revealed, then through victimological studies there are also various victims as a result of criminal acts and crimes. Even then, the victim is also known as a result of weak law. This is often referred to as judicial victimisation.

That attention is directed through this victimological study, directed at the quality of the victim's development as a result of the criminal offence or crime. So that thus, it should be noted that victims arising from criminal offences against women, can only become new victims due to the application of uned criminal sanctions against the same crimes. Or in other languages it has become a victim of terrorism crimes, it must be hit again because of the weakness of the law or judicial victimisation. Given that in recent years, radicalised movements have developed that are increasingly phenomenal in society. These radical movements can gradually develop into criminal offences of terrorism. Offering changes to the Terrorism Crime Act through victimological studies in an effort to minimise the occurrence of criminal disparities, thereby showing that in understanding a criminal act, it is not rigid or rigid. Not just looking at it from one aspect. But by accommodating other aspects, sociology, anthropology, and psychological aspects, it shows that changes to this law, consider many aspects around it.

D. Conclusion & Recommendation.

The criminal justice system oriented to perpetrators of criminal offences creates inequality in legal protection to victims of crimes, which results in victims (especially violent and sexual crimes) reluctant to provide reports to law enforcement officials and witness the events they experience. This condition is an obstacle to the smooth running of the criminal law enforcement process which ultimately affects the success of overall crime prevention efforts.

Several private institutions concerned about the fate of victims of violent and sexual crimes against women have provided assistance/services to victims of crimes in the form of consultation, assistance and legal assistance. However, the Indonesian government in reality is still not serious about dealing with violence that occurs to women (both physical and sexual violence) so that the handling carried out is still weak. The laws and regulations formed are only used as a tool of legitimacy on paper that sits that the government has cared about but in practice it is still not implemented properly.

Offering a victimological approach to minimising criminal disparity, is one form of the state's responsibility to protect human rights. This victimological approach, especially in criminal offences against women, often victims, namely the wider community, do not receive serious attention from the state. The state through the law, (related to this discussion, namely the Women and Children Protection Law), focusses more on legal protection to the suspect/defendant of the criminal offence. While victims due to criminal acts against women, have not received the attention of the state. The victimological approach to minimising the occurrence of criminal disparities, certainly does not just change the law. As referred to in the nature of this discussion is the Criminal Act on children and women Offering this victimological approach, not only a form of state responsibility to the international community, but how the state provides maximum legal protection to victims.

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