

REALIZING JUSTICE, RELATIONSHIP BETWEEN ACTORS AND VICTIMS IN INDONESIAN CRIMINAL LAW ENFORCEMENT

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REALIZING JUSTICE, RELATIONSHIP BETWEEN ACTORS AND VICTIMS IN INDONESIAN CRIMINAL LAW ENFORCEMENT

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Abstract - Achieving justice is the obligation of every party, even the purpose of law is also built around the context of achieving justice. However, realizing justice is not something easy. In criminal law enforcement, justice should be given not only in the form of punishment to the perpetrator. Budi Sastra Panjaitan occurs because of the role of the victim who has provoked the perpetrator. This research was conducted using the normative legal research method and a qualitative approach. This study determined the relationship between provocations of victims in criminal acts and how justice is achieved between perpetrators and victims who have provoked the occurrence of the crime. This study established that that not all criminal incidents occur because of the wish of the perpetrator; there are times when these actions occur because of the provocation of the victim. There must be a change in Indonesian criminal law to bring about justice and make criminal law a remedy in crime prevention, namely by participating in providing legal sanctions to victims who have intentionally provoked the perpetrator to commit a crime and make themselves the victim.

Keywords: victims, perpetrators, justice;

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INTRODUCTION

Humans are creatures that have various motivations and behaviors. All kinds of human actions will not be separated from good and bad behavior. Good behavior is always engaged with bad behavior, or vice versa. Good and bad behaviors are born from habits. Habits are memory-based tendencies to respond automatically to cues that lead to the performance of past behavior (Verplanken & Orbell, 2022). Good and bad behavior is not permanent, it can be changed. Changes in attitude can lead to changes in behavior (Wakefield et al., 2010).

Bad behavior is a deviant act that is always rejected by society because these bad behaviors can lead to criminal acts. Criminal acts are not always purely because of the will of the perpetrator. There are times when criminal acts are committed because of suggestions from other parties. An individual may engage in aggressive behavior after being provoked (Gelder, et al., 2022).

The development of the era has in fact given rise to new criminal acts for which it is not certain that the formula for resolution is found. "The rapid development and progress of information technology has resulted in changes in people's lives which directly affect new forms of legal action" (Hartono & Yuliantini, 2020). One of them is the involvement of the victim in a criminal act.

The reaction to suggestions becomes a series that cannot be separated in a criminal act. In general, it can be said that a crime occurs because the perpetrator has the nature to do evil but actually this is not always the case. Suggestions from the outsiders to the perpetrator can actually lead to criminal acts, as in the case of rape. Rape does not always occur because of the will of the perpetrator, but could have occurred because of the suggestion of another party. Like instigation from the victim that the perpetrator cannot control. In such conditions, the community will definitely see the perpetrator as guilty for having committed the act of rape. Even though the role of the victim in

the occurrence of the crime cannot be ignored. However, because Indonesian criminal law does not recognize complete cause and effect in sentencing, the victim in this case is saved by the criminal justice system. The role of the victim in making suggestions so that other parties become perpetrators of criminal acts is a very interesting field of study, especially since Indonesian criminal law does not regulate such matters.

Attention to victims of crime has encouraged the emergence of victimology as a scientific study of victims of crime (Mustofa, 2017). Victimization is a young and promising field, as well as an interesting subject of study (Fatta, 2000). Victimology traces criminal acts from the victim's point of view, the goal is to find a panacea for tackling societal deviations that result in criminal acts.

The fundamental problem of the occurrence of criminal acts because of the element of the victim must be addressed immediately through improvements to criminal law enforcement policies. This needs to be done so that there is no legal vacuum, and justice is appropriately served. If the criminal law is unable to provide justice, then there will be victims of punishment in the name of law.

1. PROBLEM

With the above considerations, this study examines the discussion of the role of the victim in the occurrence of a crime and how to deal with crimes arising from the victim's suggestion. There have been many studies discussing the relationship between the perpetrator and the victim, but this is very different from what is being studied, especially the relationship between the victim and the perpetrators in Indonesian criminal law. This research has positive findings in the development of Indonesian criminal law and further research can be conducted in Indonesia on the relationship between perpetrators and victims.

This article was compiled in the context of fair law enforcement between perpetrators and victims, as well as offering solutions in its settlement. Therefore, this article has no conflict of interest with anyone.

2. RESEARCH METHOD

This study used normative legal research methods and a qualitative approach. The basic materials used in this study came from library data. Everything related to data analysis is narrated holistically so that a complete combination is found and conclusions can be drawn in a balanced and structured manner using a deductive method.

3. DISCUSSION

3.1 Suggestions of Victims in Criminal Acts

Crime is a non-random event, distributed unequally in space and time (Harinam et al., 2022). Crime is the product of factors that influence both the perpetrator being motivated and the opportunity to commit a crime (Wang, Fung, & Weatherburn, 2021). Crime depends on an opportunity structure that varies according to changes in daily routine activities (Buil-Gil, Zeng, & Kemp, 2021). Talking about crime, there are many themes that can be studied broadly, not just perpetrators and victims. At least it can start from the definition of a criminal act, the parties involved, and the motivation for the act, the consequences of the act or the applicable law.

Criminal acts as a form of deviant behavior do not seem to stop at one theme of discussion, it is interesting to discuss because many aspects are related to criminal acts. Knowledge of crime is an area of interest for the public and for the police to highlight (Hart, Pedersen, & Skardhamar, 2022).

Criminal acts occur when a person or group of people commit an act that is strictly prohibited by law, as a result, the act causes harm to the other party. The act is declared a criminal act and is prohibited because legally there is a law that regulates it. Although as long as the act is not regulated, it cannot be referred to as a criminal act even though it has caused harm.

In a legal perspective, a criminal act is seen as a real reaction to the action taken. It is real in the form of an act, it is real as a result of the act, it is clear who the perpetrators and victims are and it is clear that there is a governing law. Not abstract, like they are still looking for forms of action, looking for consequences of actions, looking for who the perpetrators and victims are and looking for what laws apply.



Real reactions in criminal acts are not only limited to actively carrying out actions that result in the birth of victims. Passive actions are also seen as having committed criminal acts, if the party who should be providing assistance does not help. In this case the perpetrator acts as if he is not active but passively commits criminal acts and result in the emergence of victims. Hence, criminal acts can occur in real instances, not only actively committing criminal acts, but also including passively committing criminal acts.

A criminal act is not only an intention to commit an act, but also an act as an embodiment of intention. Intention is motivated by the will to commit a criminal act. The willingness to commit a criminal act can arise from the perpetrator's personal encouragement and can also arise from external encouragement.

Indonesian criminal law only regulates punishments to outsiders who encourage criminal acts to occur and cause harm to other parties, in this case the perpetrator's brain. The perpetrator and the perpetrator's brain are still referred to as perpetrators, not victims.

Criminal acts do not always happen because of the absolute will of the perpetrator, there are times when criminal acts occur because they are initiated by the victim himself, and hence the victim actually becomes part of the crime. "Victims have a functional role in the occurrence of criminal acts" (Widiartana, 2014). In a criminal act, the victim is a passive and marginalized party in the law enforcement process. Historical research has provided a measure of empirical evidence to challenge the 'marginality' of victims in past centuries (Walklate, 2012). However to give birth to criminal acts, the victim is not a passive party, but can act as an active party.

The activeness of the victim in giving birth to a criminal act can be seen from the act of suggesting the crime to the perpetrator so that the perpetrator commits a criminal act, and the party suggesting it becomes a victim. When the victim makes suggestions to the perpetrator, it shows that the victim is a predator hiding behind the perpetrator's actions. This also shows that there is a dependency of the victim on the perpetrator. The dependence between the perpetrator and the victim can be seen as a functional relationship between different individual predators (Cohen & Felson, 1979). Particularly, it can be said that victims who always make suggestions for other parties to commit criminal acts actually show that the victim is experiencing mental health problems. Mental health depends on the content and context of social relationships (Pescosolido, 2006).

Indonesian criminal law does not regulate how to apply legal sanctions to victims who have given suggestions for criminal acts to occur. It is dangerous in the process of law enforcement and justice in Indonesia.

In general, no one wants to be a victim, but that doesn't mean there aren't people who don't want to be victims. For a small part of society, there are people who always take the opportunity to make themselves the victim either by being a victim, or participating victims, namely behavior that makes it easier for them to become a victim.

Wanting to become a victim can be for so many reasons, namely; 1). The victim wants something from the perpetrator. 2). Victims want to become popular. 3). the victim wants to be declared as the party being abused, and 4). The victim because of his attitude and behavior becomes a victim.

The victim wanting something from the perpetrator, usually happens without the perpetrator's knowledge. The victim encourages the perpetrator directly to commit a crime, making himself the target. Feelings of entitlement and self-centeredness can reinforce beliefs that a person's retaliatory behavior is justified and it is (Gelder, et al., 2022). In this case the victim traps the perpetrator to commit a criminal act and positions himself as the victim.

In cases related to sex, sexual crimes are not always committed purely because of the will of the perpetrator. It is possible that these acts occur because of the instigation from the victim. The notion that the victim 'asked for it' or caused the rape because of his/her behavior or characteristics and is therefore blamed for their victimization (Gekoski, et al., 2023). For instance, when a victim asks to be alone with the perpetrator in a certain place, then a third party came to arrest him. The victim instigates the perpetrator to give the third party money to keep his mouth shut if he does not want it to be made public. Even though this is planned between the third party and the victim in order to get something from the offender.



"Yana Supriyatna, a resident of Sukajaya Village, South Sumedang, Sumedang Regency, was reported missing mysteriously, Tuesday (18/11) night on Jalan Cadas Pangeran. The news went viral on social media and there was even a recorded voice message sent to his wife" (Republika, 2021). In this case, it was as if YS had become the victim of a criminal act. However, over time, when YS was found, it was discovered that YS had engineered his actions because he wanted to take the opportunity to become popular.

In cases related to public figures, for example, many parties wish to position themselves as victims, so that they can be known in general. In cases of sexual relations where the perpetrators appear to be officials, celebrities, big businessmen or even political actors, there is a hidden desire from the victim who has instigated the public figure actor to commit the crime. The wishes of the victim are for example: wanting to be known by the public as a victim, wanting to take something from the perpetrator or actually wanting to bring down the perpetrator before the public.

The victim wants to be declared as the party being victimized even when the suggestion for the act comes from the victim, then the perpetrator commits abuse against the victim, this is a real action that is often found in practice. Criminal acts occur because there is a direct suggestion from the victim so that the perpetrator immediately abuses the victim and earns them the status of a victim. The victim also uses his rights as a victim to reveal the act through the media so that people's sympathy arises. In such a case, who is actually the victim?

Even in the political reality, there are many certain parties who act like they have been wronged, complain because they are not given facilities, and complain because of various reasons. These complaints are published in various media and in the end the sympathy of others comes to those concerned. Acting like the victim to be declared as the party being wronged is influenced by many factors, not only from legal factors, but can also occur due to political factors, even economic factors. There are many people who looked like mobile gold shops, or looked half-dressed or even said to be kings because there are still many people who are still under propriety economically.

Appearing like a mobile gold shop, looking half-dressed or even behaving like the owner of the earth and its contents, from the point of view of victimology places a person in a crucial position, namely behavior that makes it easy for him to become a victim of a criminal act. Surely there will be other parties aroused to commit criminal acts in the form of theft, abuse, revenge and others. Crime will appear instantly seeing the conditions and opportunities wide open to do so.

Not only a mobile gold shop, a real gold shop located in a modern location and equipped with various reliable security still experiences robbery. It is also said that it is easier to subdue a victim in a mobile gold shop, either by means of hypnosis, threats, kidnapping or robbery directly resulting in torture of the victim's body.

Appearing half-dressed is an opportunity to directly show your body to the public. Regardless of the side of beauty, ethics or religion, the act is actually a suggestion to other parties to commit evil deeds in relation to decency, both to the person who appears half-dressed and to other parties. Dressing half-dressed is like the owner of a house leaving the house unlocked with all its luxurious contents not secured, such an act is nothing but saying come in and take it.

Behaving like the owner of the earth and its contents, can cause bitterness and pain to those around. As a result, there will be mounting resentment, bitterness and pain that would be resolved in ways that are against the law. "The use of abusive verbal language is also aggressive behavior" (Khaninah & Widjanarko, 2016). Aggressive behavior is trivial, but the consequences are quite complicated, good relations can be torn apart and violations of the law become stowaways contained therein.

According to routine activity theory, there are three special elements for crime to occur: (a) a suitable target, (b) guardianship, and (c) the presence of a motivated perpetrator (Peguero, 2013). The presence of one of these special factors allows for increased victimization. The weak position of the perpetrator allows the victim to suggest it so that the perpetrator becomes motivated to commit a crime.

Why is it easy for perpetrators to be instigated by victims to commit criminal acts? The answer is of course because of weak self-control. When self-control is weak, it allows evil whispers to become reinforcements for committing mistakes. Low self-control is impulsive, has a preference for interesting

and risky activities, generally it is not concerned with the feelings and rights of others, and often responds to momentary temptations without regard for long-term consequences (Ngo & Paternoster, 2014).

3.2 Recipes for Overcoming Criminal Acts Born From Victims' Suggestions

In order to realize an orderly, peaceful and secure society, regulations are needed to regulate human life. These regulations do not intend to silence civil rights, but rather legal efforts to create order and regularity. If it is not regulated, natural laws will open up opportunities that will make the stronger person win. If this happens, humans will be in an animalistic environment.

Actually humans are wise people, intelligent humans who position other people as friends, not enemies. When humans position themselves as opposed to others, it means the situation is in a state without law. A situation in which humans live naturally and there are no laws that apply as they exist today. Violence and cruelty are things that are considered normal and commonplace in a state without law.

Human relations is important between friends for all to be very meaningful, because in them there are attitudes and actions that respect each other and help each other. Not attitudes and behaviors that hurt each other let alone kill. So to regulate the life of a multi-interested society, law is absolutely necessary as means to regulate it. The purpose of law is "peace, justice, benefit (benefits), legal certainty and so on" (Ridwansyah, 2016). Criminal law functions like a double-edged sword. On one hand it regulates how the state protects its citizens while on the other hand, criminal law is the last remedy in overcoming crime.

The occurrence of criminal acts cannot be separated from the attitude of humans who still view criminal law as limited to how to punish the perpetrators, without looking at the causal elements of the occurrence of criminal acts. Even in certain cases, the perpetrators who were punished were the same person. In this case it seems that imprisonment is not a threat to make people stop committing criminal acts. Prison sentence increases have long had no deterrent effect on crime (Nagins, 2022).

When criminal law is the last remedy in overcoming crime which is seen as efficacious in eradicating criminal acts, there should be no other criminal acts that emerge to the surface. It turns out that criminal acts with various styles and variations are developing, which means that criminal law with the concept of imprisonment is difficult to declare as the last remedy in overcoming crime.

The birth of various variants of criminal acts from the usual model to the modern model shows that punishment does not deter people from committing crimes. There must be a model change in imposing criminal sanctions, if the imposition of sanctions has only been limited to perpetrators because they have committed criminal acts, it must be explored to the root of what actually caused the perpetrators to commit these criminal acts.

If the root of a criminal act originates from the victim, the model of punishment should not only be limited to the perpetrator who has committed an evil act but also to the victim because he has suggested that the perpetrator commits a criminal act. The provision of criminal sanctions must be extended not only to the perpetrator, but also to the victim. , because a criminal act is not always absolutely born because of the will of the perpetrator, but there are times when it is also the desire of the victim.

It will definitely be difficult to implement it if the existing regulations do not give law enforcement officials the authority to dig down to the roots, let alone give punishment to both, namely the perpetrator and the victim. Of course, there is always disagreement, on any topic, both moral and empirical, that will have a different impact on people's material interests (Lambert, 2017). This is where the integration of various desires is needed to change existing regulations for the better so that order and peace can be realized together.

Punishment in Indonesia is an inseparable part of simply punishing the perpetrators. From a behavioral aspect, maybe this can be a panacea for not committing criminal acts anymore, because they themselves have felt the punishment as a result of the abuse they have done. So that not a few people after undergoing punishment changed for good and no longer wish to accept any criminal law sanction, in this case criminal law succeeds as the last remedy in overcoming crime.

However, from the victim's point of view, whose nature is always to influence other parties to commit criminal acts, criminal law is not the last remedy in overcoming crime. Even criminal law for

him is only a tool to achieve something. Criminal law is only an intermediate goal to achieve other goals. For him criminal law is not a drug, because Indonesian criminal law has never regulated how to punish victims who participate in giving birth to criminal acts.

There must be intelligent legal politics if criminal law is to be used as the last remedy in overcoming crime for both victims and perpetrators. Legal politics can be defined as "the activity of choosing and the means to be used to achieve certain social and legal goals in society" (Rahardjo, 1982). "Legal politics is defined as the direction of law that will be enforced by the state to achieve state goals whose form can be in the form of making new laws and replacing old laws" (Hanafi, 2019).

There is no formula for how to complete a criminal act in a comprehensive manner, which is not only limited to giving punishment to the perpetrator but also to the victim who suggests the occurrence of a criminal act, in the field it is found that the perpetrator becomes a successive victim. One side is the victim from the victim who has suggested it and the other is the victim from the enforcement criminal law that has been blamed for his actions.

In fact, it is even possible for parties to complain about each other to the police, because legally it is everyone's right to make complaints about criminal acts he has suffered to the police. For the police, these complaints certainly make them more intensely scrutinized by the public. How can it be like that? How are this police? And other questions will arise. An example is making mutual complaints between the alleged perpetrator and the alleged victim Polsek Percut Sei Tuan Medan, As a result, the chief of police and the head of the Criminal Investigation Unit must be removed from their positions (Compass, 2021). Regardless of being professional or not, for the police not to heed one of the complaints will actually be seen as not being responsive to the needs of the people.

Punishment without looking at the factors causing the occurrence of criminal acts will in fact give birth to systematic victims in the Indonesian criminal justice system, because it is no longer the time for punishment to be solely based on evidence of who the perpetrators were, but must arrive at what stage the causes of the criminal act occurred.

Punishment in the form of imprisonment is not the last resort, let alone imprisonment caused by wrong law enforcement. If what happens is imprisonment for wrongly enforcing the law, then the principle of revenge will occur from the person who is imprisoned, this will actually increase the number of crimes. Imprisonment increases the likelihood of further imprisonment for all (Kolbeck, Bellair, & Lopez, 2022). There must be changes in Indonesian criminal law. Changes that provide strict sanctions to victims who are proven to have influenced the perpetrators to commit criminal acts and the victims themselves as victims.

If the sentencing model still relies on who committed it without looking at the cause of the act, in relation to a pure crime because of the will of the perpetrator it is fine to apply, because the criminal sanction is a conscious wish and choice of the perpetrator to be given to him occurs because the victim participates in a criminal act, in fact the act of punishing the perpetrator is unfair. Even the tools of state power in carrying out the law unfairly, the tools of power are just carrying out the law, but do not provide the right solution in punishment.

Perpetrators are threatened with imprisonment to prevent them from further offences, to rehabilitate them, and to protect society (Jiricka, et al, 2014). Then what about the victim who instigates the perpetrator to commit a crime? In criminal act, punishment is only from the side of the perpetrator, but does not look at the role of the victim, instead it shows that there has been a violation of the state's philosophy, namely the 5th precept of Pancasila, "Social Justice for All Indonesian People".

How unfair and undignified is the law? How inhumane is it for the state to make its people victims who must be punished from an inappropriate justice system? "In this case the state is committed to ensuring that every citizen must be treated fairly with equal status before the law, whether he is a suspect or victim of a crime (Yuliantini, 2015). There must be a commitment to treat all human beings fairly and receive the same attention (Benkler, 2006).

A theory however elegant and economical must be rejected or revised if it is not correct; Likewise, laws and institutions, no matter how efficient and well-organized, must be reformed or abolished if they are unfair (Rawls, 1999). By maintaining that the perpetrators of criminal acts must be punished, regardless of the victim's involvement in suggesting the perpetrators to commit criminal

acts, it shows that discriminatory practices have occurred. Discrimination is an illegal act that shows there is no equality. Equality is a principle rooted in human morality (Besson, S. (2005). In order for justice to truly materialize between perpetrators and victims who have suggested to the perpetrators that a criminal act occurred, Indonesian criminal law must be reformulated in terms of the principle of non-discrimination. The principle of non-discrimination is recognized as a basic right in international law (Reid & Houston, 2022).

In essence, humans inherit divine instincts, and also inherit the characteristics of bahimiyah (animals) and sataniyah (demon). There are only two ways to overcome this, namely approaching God Almighty and giving strict sanctions to victims who have instigated the perpetrators to commit criminal acts. It is dishonest to hide behind the actions of others.

4. CONCLUSION

Not all criminal acts are born because of the will of the perpetrator, but there are times when criminal acts are actually born from the desire of the victim which is carried out through a process of suggestion to the perpetrator. The approach to punishment solely from the side of the perpetrator without looking at the cause of the occurrence of the crime, is an inappropriate step which gave birth to systematic injustice.

There must be a new formula as a prescription in the punishment system. Punishment does not only look at who has committed a criminal act, but also at the victim who has encouraged the perpetrator to commit a criminal act.

If legal facts are found that the victim participated in encouraging the perpetrator to commit a criminal act, then the victim should be given legal sanctions, this action is absolutely necessary so that the law as a means of realizing social justice for all Indonesian people can be achieved and on the other hand imposing criminal sanctions on both actually put criminal law as panacea.


There must be a willingness to integrate various interests in order to create order, one of which is by formulating a new model of sentencing prescription, namely that punishment must be truly fair by placing legal sanctions not only on the perpetrator, but also on the victim if the criminal act occurred because of a victim suggestion factor.

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