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Overcoming Global Issues on Gender-Biased in Adjudication Process: The Role of Companions for Rape Victims

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ABSTRACT

This study aims to determine the level of state protection provided to rape victims throughout the litigation process under existing laws. However, the prevailing gender bias in society and among law enforcement often leads to victim-blaming, discouraging victims from reporting their cases. Consequently, this study argues for the necessity of providing a victim's companion during the trial, particularly during the victim-witness examination, to ensure their comfort and security while providing detailed information. Employing a normative-empirical legal approach and utilizing primary and secondary data sources, the study explores the extent of protection offered to rape victims and the importance of a companion in the litigation process. The findings indicate that the State has made efforts to protect rape victims by implementing a series of laws beyond the Criminal Code, such as Law No. 11 of 2012 concerning the Juvenile Criminal Justice System and Supreme Court Regulation No. 3 of 2017 regarding Guidelines for Adjudicating Cases Involving Women. However, these efforts are deemed insufficient in providing adequate protection for rape victims, as evidenced by the significant number of rape cases resulting from the insensitivity of legal enforcement authorities towards women as victims during the litigation process.

Keywords: *The Crime of Rape, Victim's Companion, Criminal Justice System*



INTRODUCTION

Rape is a sexual crime that must be dealt with a focus and earnest approach since it brought severe and complex impacts on the lives of the victims in broad society, primarily for the lives of women and children and the future of a family.¹

Supporting by the data, the authorities reported that rape cases occur on average every four hours and no fewer than 1,700 per year. Nonetheless, these data confirmed to exceed the actual condition considering the presence of 'dark numbers' coming from unreported rape cases in criminal statistics.² According to the annual records of the National Commission on Violence Against Women (KOMNAS Perempuan), in 2021, violence in the personal sphere experienced the same pattern as in previous years, the most prominent form of violence was physical violence in 2,025 cases (31%) ranked first followed by sexual violence with 1,983 cases (30%), psychological 1,792 (28%), and economic 680 cases (10%). This shows that the level of violence against women is still high, including rape.³

In Lampung Province, rape cases steadily ranked first amongst the category of violence against women acts. In 2000, there were 199 (76%) cases reported, 103 (53%) cases in 2001, and 175 (69,7%) cases in 2002, calculated from the total criminal acts of violence against women.⁴ Moreover, the development of rape cases reported by the DAMAR Women's Advocacy Institute in 2014 noted 237 rape cases

¹ Bambang Heri Supriyanto, "Perlindungan Hukum Terhadap Anak Pelaku Perkosaan Berdasarkan Hukum Positif Indonesia," *Adil: Jurnal Hukum* 6, No. 2 (2015): 147–81.

² Sabar Yonathan Reynaldo S, "Kebijakan Hukum Pidana Perkosaan Dalam Perkawinan Dalam Perspektif Pembaharuan Hukum Pidana" (Universitas Jambi, 2022).

³ Komnas Perempuan, "Perempuan Dalam Himpitan Pandemi: Lonjakan Kekerasan Seksual, Kekerasan Siber, Perkawinan Anak, Dan Keterbatasan Penanganan Ditengah Covid-19," *Catatan Tahunan*, 2021.

⁴ Hidayat Arif, "Layanan Konseling Dalam Meningkatkan Kepercayaan Diri Korban Pemerksaan (Studi Kasus Korban Pemerksaan Inses Di Unit Pelaksana Teknis Daerah (Uptd) Perlindungan Perempuan Dan Anak (Ppa) Provinsi Lampung)" (Uin Raden Intan Lampung, 2021).

with case details of 15 incest⁵, 12 rapes in the private realm, and 210 rapes in the public realm. This data decreased significantly compared to the previous year (2013), which confirmed 352 rape cases with case details of 10 incest, 10 rapes in the private realm, and 332 rapes in the public realm.⁶

However, these numbers are considered nothing compared to the actual cases that occur in society. The condition is worsened by the fact that there are only very few cases informed by the media. Other supporting factors are the low numbers of the institution involved in the protection of violence against women, along with the discouragement of victims or victims' families to report their case due to fear and shame.⁷ Unfortunately, these events are exasperated by the judicial mechanism that is deemed not in favor of the victim. It is rather often to find that the litigation process, or even court decision, still fails to possess impartiality and achieve a proper perspective of human rights and gender equality.⁸

The inadequate protection from mentioned factors will potentially retain women and children as a victim. These events are torturous for them, considering in their perspective, rape could ruin their lives and future. Rape mostly caused immense psychological damage and not to mention severe effects on their reproductive health. Oftentimes, the victims had to experience Reproductive Tract Infections (RTI's), Sexually transmitted Diseases (STD's, including Human Immunodeficiency Virus (HIV) and AIDS, undesirable pregnancy or others reproductive organ damages.

⁵ Incest Is The Crime Of Sexual Relations Or Marriage Taking Place Between A Male And Female Who Are So Closely Linked By Blood Or Affinity That Such Activity Is Prohibited By Law. Incest Considered As A Statutory Crime, And Often As A Felony. The Purpose Of Incest Statues Is To Prevent Sexual Intercourse Between Individuals Within The Degrees Set Forth, For The Furtherance Of The Public Polivy In Favor Of Domestic Peace.

⁶ Asliani Asliani, "Legal Protection Against Rape Victims Based On Victimology," In *Proceeding International Seminar Of Islamic Studies*, Vol. 1, 2019, 891-900.

⁷ Damar, "Catatan Akhir Tahun 2014" (Lampung, 2014).

⁸ Elisabeth Yulia Rana Sinta Dewi, Melina Gabrila Winata, And Ella Yolanda Sakerebau, "Perspektif Gender Dalam Putusan Pengadilan Pada Kasus Pelecehan Seksual," *Kanun Jurnal Ilmu Hukum* 22, No. 2 (2020): 345-62.

Ironically, the actions to seek justice in the litigation process are a difficult challenge for victims. Commencing from the police's reporting process, examining at a Regional General Hospital appointed by the police, examining BAP at the police, and providing information at trial are the steps that must be carried out by the victim. In the trial process, based on article 153 paragraph (3) of the Criminal Procedure Code (KUHAP), the trial is closed to the public. However, these trial situations are rather depressing for the victims due to shame, solitude, and rage as their sense of humanity and honor has been shattered. In the courtroom, the victim must encounter a judge, prosecutors, the defendant attorney, and even the defendant itself, which most of them are males and considered insensible to the victims due to the patriarchal perspectives. In addition, the gender imbalance composition in the trial, provokes victims to sense the lack of protection from the State.

For instance, prosecutors, which ideally expected to represent victims' interests, often do not reflect these expectations. Therefore, this study argues that the state must accommodate companion for victims at the trial. The existence of companion, hopefully, will help victims to seek justice through the litigation process, as well to encourage the government to take responsibility and possess adequate protection and justice for victims through the enforcement of Regional Regulation (PERDA).

This study approach uses normative and empirical legal research. According to Soerjono Soekanto, the normative approach study conceptualizes law as norms, rules, regulations, and laws enforced at a particular time and place as a product of absolute sovereign state power. Normative legal research used in this study is a process to obtain related legal rules, principles, or doctrines to address the mentioned issue. In contrast, this study's empirical approach is taken from the author's personal experience in serving companion to women as rape victims at the trial. Moreover, this study uses primary and secondary data sources. Primary data are taken

directly at the field from the author's experience in serving companion for rape victims at the trial and interviews with distinct members of DAMAR Women's Advocacy Institute along with Judges at the Tanjung Karang District Court, whereas, the secondary data were obtained from regulations related to criminal law and criminal procedural law, doctrines, and some supporting information from relevant literature.

THE CHALLENGES OF THE RAPE VICTIM IN THE LITIGATION PROCESS AND THE IMPORTANCE OF A COMPANION

The discussion will further explain and describe 4 (four) main issues, namely the challenges of rape victims in the litigation process and the importance of a companion, the protection towards women as rape victims in the Criminal Code, the protection of women as rape victims at the trial based on the Criminal Procedure Code, and PERMA No.3/2017 concerning Adjudicating Women's Cases Against the Law.

Generally, rape and sexual assault are crimes of violence and control that arise from a person's determination to seek power over another. Rape happens due to the perpetrator's inability to endure his sexual turmoil, worsening by the perpetrator's perspective of being powerful over the victim (element of power). The element of power is an outcome of a patriarchal society, wherein the social aspect; believes that power is in the hands of men. The belief ultimately makes men considered as active beings (subjects) while women are considered passive or objective (subordinate).⁹

⁹ Anna Puji Lestari, "Blaming The Victim: Alienasi Gender Dalam Media Online," *Jurnal Ilmu Dakwah* 39, No. 2 (2019): 197-213.

Most of the victim is experiencing a massive trauma by the incident, and generally are unfamiliar in dealing with any legal issues, also received insufficient information regarding the 'what to do after the raping incident'. Another factor is the fear of retaliation from the perpetrator (in case the perpetrator is closely related to the victim); an obligation of the women as victim to protect the family's integrity, therefore, metaphorically reporting will only tarnish the charcoal on his own forehead (*mencoreng arang di kening sendiri*); victim also fears the victim-blaming phenomenon by law enforcers, and there is no guarantee that, as a victim, they will be protected immediately. These are one of many reasons why victims may choose not to report to law enforcement or tell anyone about what happened to them.¹⁰ The trauma, shame, and destruction rape caused are not only the challenge rape victims have to encounter. Even after the police reporting, the victim still had to coverage many steps forward through the litigation process. Therefore, a companion for rape victims is considered essential to make them feel safer and comfortable to assert their experience.

Rape under international law is categorized as a crime that violates human rights. International Humanitarian Law (IHL) and International Human Rights Law (IHRL) expressly prohibit rape and any sexual violation. However, In UN Special Rapporteur on violence against women Dubravka Simonovic, stated that there are gaps present in the legal concept of rape, who is protected, how long a victim has to disclose a crime, whether marital rape is prosecuted, whether prosecution is gender-sensitive and victim-focused, and whether victims are given protections.¹¹ Then, this prompted the

¹⁰ Imam Alfi And Umi Halwati, "Faktor-Faktor Blaming The Victim (Menyalahkan Korban) Di Wilayah Praktik Kerja Sosial," *Islamic Management And Empowerment Journal* 1, No. 2 (2019): 217-28.

¹¹ United Nations Human Rights, "Harmonization Of Criminal Laws Needed To Stop Rape - Un Expert," United Nations Human Rights, 2021, [https://www.ohchr.org/en/press-releases/2021/06/harmonization-criminal-laws-needed-stop-rape-un-expert#:~:Text=Rape Is Recognized Under International,Perpetrators Are Prosecuted%2c She Said.](https://www.ohchr.org/en/press-releases/2021/06/harmonization-criminal-laws-needed-stop-rape-un-expert#:~:Text=Rape%20Is%20Recognized%20Under%20International,Perpetrators%20Are%20Prosecuted%2c%20She%20Said.)

emergence of many organizations that campaigned for human rights, especially women's rights from sexual violence such as the Women's March. The presence of the Women's March since 2017 in the United States continues to receive support from outside the United States to Indonesia. Women's March is considered necessary to advocate and promote women's rights.¹²

According to Article 17 of Law No. 3 of 2004 on the Elimination of Domestic Violence (UU PKDRT), the definition of victim companion is a person who has the expertise in conducting counseling, therapy, and advocacy to strengthen and support healing to victims of violence. Furthermore, stipulated on Article 23 of UU PKDRT, the role of the companion is assisting the victim through the legal process, providing security, physical and psychological support, and providing information for legal interest on behalf of the victim. UU PKDRT also highlights several provision regarding victim companion, as follows:

1. Article 10 outlined the necessity for the victim's companion in each stage of the examination process under existing laws and regulations.
2. Article 17 outlined the companion's role to cooperate with the police in providing temporary protection towards the victim.
3. Article 23 outlined the role of companion to (a) provide information relating to the rights of the victim to receive one or several companions; (b) assisting the victim at the investigation, prosecution, or examination at the trial by encouraging the victim to objectively and comprehensively describe the violence they experienced; (c) listen empathically to narratives in order to conceive the victim to feel safe; (d) provide psychological and physical support to victims.
4. Article 29 outlined the protection warrant application for a companion in carrying out its duties.
5. Article 37 outlined the submission of a written report regarding the alleged violation of the protection order.

¹² M Solahudin Al Ayubi And M Syaprin Zahidi, "Perbandingan Pengaruh Women's March Terhadap Kebijakan Publik Di Indonesia Dan Amerika Serikat," *Politica* 13, No. 1 (2022).

6. Article 39 outlined the role of companion to provide service in victim recovery.
7. Article 41 outlined the companion's role to provide counseling and a sense of security in strengthening the victim mentally.
8. Article 42 outlined the companion's role in collaborating with health workers, social workers, and spiritual mentors for the victim restoration purposes.

Based on the information above, a companion has a vital role in carrying out protection and security for the victim through all litigation processes. However, in the trial adjudication process, the Criminal Procedure Code Article 153 Paragraph (3) stated that "For the examination purposes, the chief judge will open the trial and declare the trial to be accessible to the public, except in case concerning public decency or cases where the defendants are children". This article is furtherly emphasized in paragraph (4) that stated, "In any circumstance that Paragraph (3) is not fulfilled, the case is considered null and void."

Even though it strictly stipulated that in case of rape, the trial will be held close to the public, a companion's presence is allowed. However, the companion is required to attach a power of attorney or letter of assignment from their institution of origin. Thenceforth, the panel (judges) will inquire the approval of prosecutors and the defendant's lawyers. After the approval, the panel may ask several questions relating to the companion's interest at the trial.

The vital role of companion for a victim at the adjudication process visible at the examining process where the judge, prosecutor, and lawyers begin to ask the question to the victim, whereas, generally, the gender of those individuals are men. This situation will bring nervousness and mental fragility and may lead to missing or inconsistent information by the victim. In principle, the companion possessed a passive role in the trial. However, other than its duty to encourage the victim to provide detailed information, a companion also has the authority to answer questions on behalf of the victim.¹³

¹³ Nirmala, "Wawancara Pribadi [Wawancara Pribadi]," 2016.

An interview with the Executive Director of the DAMAR Women's Advocacy Institute, Mrs. Selly Fitriani, stated that a victim's companion at the trial would effectively empower women as a victim of violence to convey the event they experienced, encourage them to answer the question comprehensively and accordingly, and even have the authority to provide detailed information on behalf of the victim. As an expert in assisting women in violence, a companion will possess a deep understanding of the victim's condition.

Therefore, the companion will be able to represent the victim's interest accurately. In striving for victims' rights, a companion can also provide a written opinion regarding the psychological condition of the victim after conducting *psychiatric visum et repertum* beforehand.¹⁴ The material will elaborate explicitly on the extent of trauma suffered by the victim. The material is practical as an overview to the panel that the incident suffered by the victim, indeed, leaves a deep trauma and is irreversible to the victim, which will effectively encourage the panel to achieve the fairest verdict.

Despite all the effort, in actual circumstances, several challenges are inevitable, such as:

1. The insufficient number of judges specializes in women and children's cases. In this circumstance, the case will be adjudicated by general judges. General judges are considered apathetic and insensitive to the psychological condition of victims/witnesses.
2. The pressure of question relating to the defendant would potentially break down the psychological stability and could lead to missing and conflicting information provided by the victim. This circumstance will conceivably fall into the light verdict of the defendant.
3. During the trial process in cases where the rape victims is a minor, some panel still has the audacity to ignore the regulation stipulated on Article 22 of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System, which prohibits the use of toga or any attributes in the adjudication process, however, this provision is still widely violated.
4. Based on the author's experience in accompanying victims through the adjudication process, some panel of judges and prosecutors do

¹⁴ Selly F, "Wawancara Pribadi," 2016.

not bear gender awareness or gender-based violence, or worse, unrecognized the existence of PERMA No. 3 2017.

5. During the examination of evidence through *visum et repertum*, the judge frequently presents the doctor as an expert witness in the trial. However, some doctors feel objected to the duty, and as a result, they refuse to undergo *visum et repertum* towards the victim.
6. In the adjudication process, the majority of the Panel declines a *visum et repertum psychiatricum* issues by a psychologist, arguing that such evidence is impermissible due to an unclear mechanism.
7. Most of the victim is unaware of the verdict received by the defendant. However, this study argues that the defendant's conviction is necessary for the victim to ensure the safety of the rape victims, both physically and mentally.
8. Poor coordination amongst law enforcers in implementing PERMA No. 3 of 2017, mainly on Article 8 Paragraph (2) regarding ordinary lawsuits and demands for restitution under article 98 of the Criminal Procedure Code. Until now, there has been no restitution decision for rape cases.

PROTECTION TOWARDS WOMEN AS RAPE VICTIMS IN THE CRIMINAL CODE (KUHP)

The regulation relating to public rape outlined under the Criminal Code Chapter XIV concerning Crimes against Decency commencing from Articles 281 to 303. The term of 'decency' (*zeden, eerbaarheid*) is defined as a sense of disgrace related to sexual activities, such as intercourse, grope on private lady's parts, flashing genitals, caress, etc. Furthermore, the scope of rape crimes emphasized in Chapter XIV of the Criminal Code Article 285, stated that: "*Any whom (men) by the threat of violence forces intercourse to a woman who is not legally married to them will be punished for rape with a maximum imprisonment of twelve years.*" Article 285 convicts the perpetrator with a maximum imprisonment of 12 years.

According to the previous matters, to determine a criminal act as rape, some elements need to be fulfilled, namely: *violence or any*

threat of violence, coercion (without consent of women), not bound in marriage (the woman as a rape victim is not a wife of the perpetrator), women as a rape victim (in rape crimes the victim are only women, any sexual assault against other genders, is not considered as rape).

However, this study further describe articles that should qualify as rape are outlined in Articles 286 and 287 of the Criminal Code, according to the definition by dr. Handoko Tjondroputranto states that "in Article 286 of the Criminal Code, intercourse forced to unconscious women shall be considered rape".¹⁵ In case the victim's unconsciousness is caused by the perpetrator, or the victim is considered minor, the perpetrator will be convicted under Article 89, Article 286, and 287 for nine years sentenced. Thus, it is understood that the younger the rape victim, the lighter is the verdict. Therefore, this regulation shows that young women's protection as a victim of rape is deemed inadequate.¹⁶

The study argues that rape crimes shall not be contained in the section of Crimes Against Decency. Rape crime included in such section will lead to the perspective that women as victims play a role in the criminal act, assuming that the victim is also violating the social norm. Often, women of rape victims are considered immoral by society as a result of a patriarchal viewpoint. It is a common circumstance that women of rape victims experienced victim-blaming from both society and the litigation process.

However, this study showed that Law No.23 of 2002 concerning Child Protection (UU PA) provides more reliable protection towards rape victims. Article 81 paragraph (1) stated, "Each individual who intentionally commit violence by forcing intercourse to a child, shall be punished for a maximum 15 (fifteen)

¹⁵ Ismail Navianto, "Perkembangan Konsep Tindak Pidana Perkosaan Dan Perlindungan Hukum Bagi Korbannya Sebagai Manifestasi Hak Asasi Manusia," *Risalah Hukum*, 2012, 1-12.

¹⁶ Ahmad Jamaludin, "Perlindungan Hukum Anak Korban Kekerasan Seksual," *Jic: Jurnal Cic Lembaga Riset Dan Konsultan Sosial* 3, No. 2 (2021): 1-10.

years imprisonment and a maximum fine of Rp. 300,000,000 (three hundred million rupiahs)". Emphasized by Paragraph (2), which stated that "the crimes referred to in paragraph (1) shall too apply for any individuals who are intentionally deceiving, or persuade a child to have intercourse with them or other individuals". It is clear that, UUPA carried better protection by imposing perpetrators with a maximum imprisonment of 15 years instead of 12 years, as stated in KUHP.

Moreover, in adjudicating rape cases, law enforcers shall consider the existence of Supreme Court Decree (SEMA) No. 1 of 2000 concerning Criminal Act to Justify Pressure and Nature, SEMA No. 3 of 2001 concerning Legal cases require special attention from the court and PERMA No. 3 of 2017 concerning Guidelines for Adjudicating Women's Cases Against the Law. Regulations issued by the Supreme Court show its seriousness and maintain the commitment of judges in conducting examinations and imposing sanctions on accused perpetrators, and protecting women victims of rape. Although in actual circumstances, law enforcers are failed to coincide with these expectations.

PROTECTION TOWARDS WOMEN AS RAPE VICTIMS IN THE CRIMINAL PROCEDURAL CODE (KUHAP)

Formal criminal law or widely known as criminal procedural code is a regulation which provides systems followed by the bodies involved in criminal proceedings and the courts to ensure that criminal offenses are correctly investigated and the perpetrators legally punished under the law due to fundamental rights and freedoms of natural persons and legal entities.¹⁷ Criminal procedural

¹⁷ Andi Hamzah, "Hukum Acara Pidana Indonesia," 2010.

law functions in providing procedures to carry out the Criminal Code (KUHP) as substantive material. KUHP regulates how law enforcers such as police, prosecutors, law and judges must collaborate to ensure criminal law enforcement based on humanity and justice in achieving the State's goals in protecting society against the crime.¹⁸ This function is emphasized by Article 36 of Law 4 of 2004 concerning Judicial Power.¹⁹

Furthermore, article 153 paragraph (3) KUHP regulates that in case of decency or when the defendant is a minor, the trial will be held close to the public, as stated in Article 3 letter h, and article 54 of Law No. 11 of 2012 concerning the Criminal Justice System for Children. This article aims to protect women or children in the trial to ensure the victim or defendant's safety and comfort.

The protection of a rape victim in the litigation process is essential to the victim and their families. This study argues that in order to ensure the rehabilitation of the victim's condition run effectively, it is necessary to impose a restitutive sentence for the perpetrator. The restitutive sanction will lie a responsibility to the perpetrator due to the misery they caused since such sanction is considered concrete and gives more direct impacts to the victim.²⁰

The protection towards rape victims in the litigation process under Indonesian's positive law relating to restitutive justice outlined on Article 98-101 KUHP. The law provides the option to the victim for filing restitutive claims towards the defendant. In case the claim is granted by the judge, the restitutive justice will compensate solely for material damage (accessoire sanction).²¹ Unfortunately, in practice, prosecutors never put any charges in respect of the victim's damage.

¹⁸ C Djisman Samosir, "Hukum Acara Pidana" (Nuansa Aulia, 2018).

¹⁹ Eigen Justisi, "Efektivitas Penegakan Hukum Tindak Pidana Perkosaan Dari Putusan Hakim Dihubungkan Dengan Undang-Undang No 13 Tahun 2006 Tentang Perlindungan Saksi Dan Korban," *Justisi: Jurnal Ilmu Hukum* 1, No. 1 (2016).

²⁰ Miszuary Putri, "Pelaksanaan Restitusi Bagi Anak Yang Menjadi Korban Tindak Pidana Sebagai Bentuk Pembaruan Hukum Pidana Berdasarkan Peraturan Pemerintah Nomor 43 Tahun 2017," *Soumatara Law Review* 2, No. 1 (2019): 115-34.

²¹ Maria Novita Apriyani, "Restitusi Sebagai Wujud Pemenuhan Hak Korban Tindak Pidana Kekerasan Seksual Di Indonesia," *Risalah Hukum*, 2021, 1-10.

In the evidence examination process on the rape case, the majority of evidence that could strengthen the verdict are victims/witnesses and expert testimony in the form of *visum et repertum*. However, the problem occurs if the victim has had intercourse prior to the rape incident. One solution is to provide *psychiatric visum et repertum* to verify internal trauma experienced by the victim.²² However, in practice *psychiatric visum et repertum* has not been implemented effectively due to unclear mechanism.

In connection with victim/witness's testimony, according to Article 1 point 26 of the Criminal Procedure Code, a witness is a person who can provide information for the investigation, prosecution, and trial regarding a criminal case that they heard, seen and experienced.²³ However, based on the principle of *unus testis nullus testis* empathized by Article 185 paragraph (2) of KUHP, which states that there must be a minimum of two witnesses for each accusation and testimony from only one witness is insufficient, unless supported by other valid evidence (Article 183 Paragraph (3)).

Thenceforth, the testimony of one victim-witness is insufficient to prove the accused act of the defendant. Meanwhile, in the rape crimes, witnesses' finding is considered complex since it is very likely that rape will not occur in witnesses' presence unless the perpetrator or victim-witness is more than one individual or linked with other crimes such as robbery *et al.* Thus, in judgment consideration, the panel of judges must earnestly adjust the compatibility among witnesses' testimony, the background motives, decency, and related evidence in ensuring the authenticity of the information provided (Article 185 paragraph (3)).

²² Yitro Daniel, Dian Adriawan Dg Tawang, And M H Sh, "Analisis Yuridis Terhadap Alat Bukti Visum Et Repertum Psikiatrikum Dalam Kasus Tindak Pidana Perkosaan (Studi Kasus Putusan Pengadilan Tinggi Banjarmasin Nomor 42/Pid/2017/Pt Bjm)," *Jurnal Hukum Adigama* 2, No. 2 (2019): 882-906.

²³ Ahmad Deda Darwis, "Peranan Saksi Korban Tindak Pidana Perkosaan Pada Tingkat Penyidikan," *Journal Of Law (Jurnal Ilmu Hukum)* 5, No. 2 (2020): 276-94.

Another challenge faced by rape victims is the service provided during the litigation process by law enforcement officers (police, prosecutors, judges) who usually place victims of sexual violence as objects instead of subjects whose legal rights must be considered and respected. Inevitably, revictimization often experienced by the victim due to the lack of gender equality awareness from law enforcers. The victim often blamed over the rape case for their experience since law enforcers are failed to understand and place themselves in victim's perspective.²⁴

Ironically, sometimes the defendant's testimony stated that the rape occurs based on mutual interest between them and the victim, or plead that they had given some amount of money in exchange to 'their service', or any related plead in which they deny to confess that the rape occurs by force as outlined in article 285 KUHP. The point being made is most perpetrators considers victim to be subordinated to them; therefore, in this case, the incident was not considered as rape but only as proof the men will always have the control over women.

Moreover, contradictions of logical thinking among judges relating to the legal burden of proof and conviction towards the defendant are constant issues that occur at the court decision process. Frequently, the judgment did not impose maximum conviction on the defendant. The circumstance is inversely equivalent to what happened in the lengthy litigation process, even when the perpetrator is proven legally that they commit rape cases, in fact, this is still insufficient to maximize the sentence received by the defendant.

The light verdict imposed by the judge occurs due to the victim's inability to present supporting evidence apart from their own testimony, such as material evidence or the supplementary witnesses. Moreover, the victim never really receive a direct impact from the incident they experienced since restitutive justice has never been implemented at the court. Therefore, the study aims to encourage law

²⁴ Mia Hadiati Et Al., "Upaya Pemenuhan Ganti Kerugian Terhadap Perempuan Dan Anak Korban Kekerasan Seksual Di Indonesia," *Prosiding Serina 2*, No. 1 (2022): 191-98.

enforcers to recognize that dealing with rape cases will require specific measurements and gender equality-based mechanisms distinct from other forms of crimes adjudicated at the court.²⁵ It must be emphasized that judges' primary duty is to provide justice and protection to rape victims. Judges are the core actors who functionally execute judicial power, thus, the judge must understand the scope of his duties and obligations as regulated in statutory regulations.

PROTECTION TOWARDS RAPE VICTIMS BY SUPREME COURT REGULATION (PERMA) NO.3 OF 2017 CONCERNING GUIDELINES IN ADJUDICATING WOMEN'S CASES AGAINST THE LAW

The State's effort in strengthening protection towards women as victims in the litigation process is regarded by the enforcement of Supreme Court Regulation (PERMA) No.3 of 2017 concerning Guidelines in Adjudicating Women's Cases Against the Law. The regulation aims to ensure that women in its case against the law, especially women as victims of violence, do not be victimized at the litigation process due to the judge's poor perception of crimes and gender-biased perspective. Several provisions outlined in this regulation in administering its function effectively, as follows:

Provisions	Contents
Article 5	In examining Women's case against the law, judges may not: <ol style="list-style-type: none"> a. Show attitudes or address condescending statements, intentional blaming and/or intimidate women

²⁵ Atikah Rahmi, "Pemenuhan Restitusi Dan Kompensasi Sebagai Bentuk Perlindungan Bagi Korban Kejahatan Seksual Dalam Sistem Hukum Di Indonesia," *De Lega Lata: Jurnal Ilmu Hukum* 4, No. 2 (2019): 140-59.

	<ul style="list-style-type: none"> b. Justifying Discrimination Against Women adopted from culture, customary laws, and other traditional practices as well as gender-biased doctrines; c. To question or take into consideration women's sexual experience and background as an exculpatory for releasing or lesser the sentence of the perpetrator d. Declare a statement or perspective related to gender stereotypes
Article 6	<p>Judges in adjudicating woman cases against the law, demand to:</p> <ul style="list-style-type: none"> a. Take into consideration Gender Equality and Gender Stereotypes in statutory regulations and unwritten law; b. Interpreting statutory regulations and/or unwritten laws to guarantee Gender Equality; c. Examine legal values, local wisdom, and a sense of social justice in order to support gender equality, equal and non-discrimination based protection; d. Take into consideration the implementation of ratified international conventions and treaties related to Gender Equality.
Article 8	<ul style="list-style-type: none"> [1]. Judges shall question women as victims regarding the losses, the impact suffered, and the necessity for recovery. [2]. Judges shall inform the right victims to merge their case based on Article 98 of the Criminal Procedure Code and/or ordinary lawsuit or claim for restitution as provided in the provisions of laws and regulations. [3]. In the case of victims' recovery or harmed parties, the judge shall: <ul style="list-style-type: none"> a. consistent with human rights principles and standards b. disengaged themselves from gender stereotypes; and c. taking into account the situation and interests of victims of disproportionate harm due to gender inequality.
Article 9	<p>In the case of women experiencing physical and psychological obstacles that require assistance, therefore:</p> <ul style="list-style-type: none"> a. The judge shall encourage women in its case against the law to present a companion; b. The judge shall grant the woman's request in its case against the law to present a companion

Table 1.0 PERMA No. 3 of 2017 provisions to ensure protection towards women as victims against the law

Based on the provisions explained above, it indicates that the State has made its effort in providing adequate protection towards the women as a victim of violence by enforcing specific procedures during the litigation process. Furthermore, in preserving its commitment to ensuring justice and compliance of women's rights, Article 10 of this regulation stated that, in providing testimony, the victim-witness could give the information through an audiovisual communication platform, in case the victim has psychological trauma due to the incident.²⁶ Related procedures were also outlined under Article 58 of Law No.11 of 2012 concerning the Juvenile Criminal Justice System, which stated:

“In case the child victim and/or child witness is unable to attend and provide testimony at the trial, the judge may order the child victim and/or child witness to give their testimony:

- a. outside court proceedings through electronic recordings conducted by Social Adviser in the local jurisdiction under the presence of Investigators or Public Prosecutors and Advocates or other legal aid services; or
- b. through direct remote examination through audiovisual communication accompanied by a parent/guardian, social adviser or other companions.”

The method explained above aims to generate comfort and safe situations for violence victims to run the examining process effectively. Moreover, this study argues that PERMA No. 3 of 2017 is sufficient to fulfill victims' needs in dealing with the trial process. Therefore, if this PERMA is running effectively, the victim will feel more comfortable attending the trial due to the judge's obligation to fully respect the victim, eliminating the perspective of gender bias, and showing high empathy to the victim's trauma. Unfortunately, in concrete circumstances, this PERMA is scarcely implemented by law enforcers due to ignorance of this regulation's existence.

²⁶ Akbar Sayudi, “Upaya Perlindungan Korban Tindak Pidana Perkosaan Dalam Sistem Peradilan Pidana Indonesia,” *Fiat Justisia: Jurnal Ilmu Hukum* 10, No. 1 (2016).

However, victims shall be given protection from any threats and intimidating events that violate their rights. It is the government's obligation to provide sufficient protection towards women as rape victims due to the impact they have to endure by ensuring the enforcement and implementation of the existing laws. Sufficient protection towards the victim of violence will hopefully prompt them to be courageous in reporting such crimes they experience to law enforcers. Moreover, it should be underlined that the losses suffered by victims are not only in materials form such as costs incurred for healing physical wounds, but also immaterial losses that are difficult, even impossible to overcome, such as loss of mental balance, loss of life spirit and confidence out of anxiety and fear from experience.

Therefore, this study argues that, in the establishment of the National Criminal Code, the State shall integrate the rights of victims into the whole criminal justice system, including the provision of sufficient protection towards victims to restore the psychosocial and economic conditions of the victim in order to bring a sense of peace in society as one of the main concepts of the Criminal Code (KUHP). The significant number of rape cases in Indonesia is considered a State's failure to protect its citizen against the crimes. The State has not protected women as rape victims adequately, while at the same time, they encounter physically, psychologically, sexually, financially, and spiritual trauma.²⁷ These circumstance contrasts with the criminal justice system's purposes to protect society and victims against the crime.

²⁷ Andika Wijaya And Wida Peace Ananta, *Darurat Kejahatan Seksual* (Sinar Grafika, 2022).

CONCLUSION

According to the previous explanation, this study concludes that:

Victims of rape crimes require serious concern by the State in the means of protection against them. Unfortunately, the Indonesian criminal justice systems considered failed to achieve this function. The significant growth of rape cases has proved the insufficiency of protection provided. This issue occurs due to the victim-blaming phenomenon appearing in the society and legal aspect. In carrying out rape cases in the litigation process, the victim is often treated unfairly by law enforcers, commencing police reporting to the trial's adjudication process. This study proves that most law enforcers are ignorant of the gender-equality perspective and often place the victim (women) as a party who also plays a role in rape crimes, which results in leniency of the verdict.

Considering the victim's trauma and a series of challenges in the litigation process, this study argues that the victim's companion is considered important. A companion plays an influential role in assisting the victim through all stages of the litigation process, especially at the evidence examining process, where the victim-witness is required to provide their testimony. A companion conducting their support by encouraging the victim to elaborates their experience in the most comfortable manner. It is also possible for a companion to conduct a written opinion as a consideration material for the judge in drafting the verdict.

Protection towards women as rape victims in both Criminal Code (KUHP) and Criminal Procedural Code (KUHAP) is considered insufficient. Therefore, the study argues that the State must take into account an immediate improvement of legal protection, both materially and formally, in dealing with sexual violence cases.

To date, the protection carried out by the State marked by the enforcement of Supreme Court Regulation (PERMA) No.3 2017

concerning Guidelines for Adjudicating Women's Cases Against the Law. However, the regulation has not yet run effectively due to poor collaboration among law enforcers.

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