



Reconstruction of Legal Protection for Victims Against Secondary Victimization in the Examination Stage of Criminal Trials in Indonesia

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ABSTRACT

This study aims to analyze the weaknesses of the Indonesian legal system in protecting victims from secondary victimization during criminal trials and to formulate a legal reconstruction model oriented towards protecting the dignity of victims. Secondary victimization is the repeated suffering experienced by victims due to interactions with the criminal justice process, such as the repetition of traumatic stories, cornering questions, and insensitive treatment by officers towards the victim's psychological condition. The research method used was normative juridical with a legislative and conceptual approach, through an analysis of the Criminal Procedure Code, Law Number 31 of 2014 concerning Protection of Witnesses and Victims, and Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence. The results of the study indicate that weaknesses in victim protection occur in three main aspects: the legal substance that does not regulate operational standards for victim examination, the legal structure that is not supported by the victimology competence of law enforcement officers, and a legal culture that is still influenced by victim blaming and social stigma. The proposed legal reconstruction is implemented through the integration of a victim-centered justice approach into criminal procedural law, through the establishment of victim-friendly examination norms, the development of national procedural standards, the strengthening of the capacity of law enforcement officers through victimology certification, the optimization of the role of the Witness and Victim Protection Agency, and the reform of the legal culture of the judiciary.

INTRODUCTION

Empirical phenomena show that victims of criminal acts in court practice in Indonesia often experience secondary victimization, namely repeated suffering that arises precisely from the legal process itself. In many cases, especially sexual violence, victims are forced to repeat the chronology of traumatic events repeatedly before judges, prosecutors, and legal counsel, often even in open courtrooms that are insensitive to the victim's psychological condition (Nursabilah, 2025). In addition, it is not uncommon to encounter questions that are cornering, blaming the victim (victim blaming), and the use of language that demeans the victim's dignity (Maulida, 2024). This condition shows that the Indonesian criminal justice system is still oriented towards the perpetrator (offender-oriented), as reflected in the construction of the Criminal Procedure Code, which emphasizes the protection of the rights of suspects and defendants, while the position of victims tends to be marginalized and has not been positioned as a subject that must be optimally protected (Agustin, 2025).

From a human rights perspective, this condition contradicts the principle of protecting human dignity as guaranteed by the 1945 Constitution of the Republic of Indonesia, specifically

Article 28G paragraph (1), which affirms the right of every person to a sense of security and protection from the threat of fear, and Article 28D paragraph (1), which guarantees fair legal certainty. (Rambe, 2024) Secondary victimization also violates the victim's right to recovery and freedom from degrading treatment. Therefore, the state has a constitutional and moral obligation to guarantee the protection of victims in all stages of the criminal justice process (Naiborhu, 2023). It aligns with the development of the modern legal paradigm, which is shifting from retributive justice to victim-centered justice (Siregar, 2025), as reflected in recent legislative policies such as Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, which places victims at the center of protection by guaranteeing the right to treatment, protection, and recovery (Risal, 2022).

Normatively, victim protection in the Indonesian legal system is regulated by various instruments, including Law Number 31 of 2014 concerning Witness and Victim Protection, which provides victims with the right to security protection, medical assistance, and legal representation. The Law on Sexual Violence Crimes (TPKS) broadens the definition of a victim to include those who experience physical or mental suffering or social harm (Waluyo, 2022). However, these provisions are still general in nature and do not explicitly address mechanisms for preventing secondary victimization during the trial phase. Furthermore, the Criminal Procedure Code (KUHAP) regulates victims only in Articles 98 to 101, which relate to the consolidation of compensation claims, thus failing to address the psychological protection of victims during the evidentiary process (Ariyanti, 2019). It demonstrates fragmented norms and the lack of a comprehensive victim protection system.

These weaknesses are increasingly evident in the substantive aspects of the law, where there are no clear norms governing standards for examining victims from a victim-centered perspective, including limitations on questions that could potentially re-traumatize or the obligation for judges to use a sensitive approach to the victim's psychological well-being (Nasution et al., 2026). Existing norms remain open to interpretation and are not operational, thus opening space for practices that actually exacerbate the victim's suffering (Sesiola, 2022). Furthermore, in terms of legal structure, law enforcement officials such as judges, prosecutors, and advocates do not yet fully embrace a victimology perspective and are not supported by standard procedural standards for protecting victims in court (Munir, 2024). The situation is exacerbated by the suboptimal role of institutions such as the Witness and Victim Protection Agency (LPSK) in ensuring effective victim protection during the trial process.

These weaknesses are also influenced by a legal culture that is still strongly influenced by social stigma, patriarchal culture, and a tendency towards victim blaming, so that questions that corner victims are considered normal in the evidentiary process (Hamid, 2021; Nurnaningsih, 2023). From the perspective of Lawrence M. Friedman's legal system theory, this situation indicates a disharmony between the substance, structure, and culture of the law, which simultaneously reinforces secondary victimization. As a result, victims become reluctant to provide full testimony, and many even withdraw their reports or refuse to pursue legal proceedings. This ultimately fails to prove the case and leads to a decline in public trust in the criminal justice system (Hardiogo, 2023).

The urgency of this research is reinforced by the increasing cases of secondary victimization in Indonesian courtrooms, which not only violate victims' rights to recovery but also have the potential to cause victims to withdraw their reports or refuse to testify, thus

hindering the evidentiary process and causing public distrust of the criminal justice system. The loss of public trust in the justice system is a serious threat to the rule of law and the effectiveness of law enforcement in Indonesia. Furthermore, international pressure through the Universal Periodic Review (UPR) mechanism has also urged Indonesia to strengthen protection for victims of violence, including in the judicial process. This research is also urgent because it is relevant to the ongoing process of revising the Criminal Procedure Code (KUHAP), which is an opportunity to incorporate victim protection provisions into the new criminal procedural law. Therefore, this research is urgent to fill the normative and practical gap in the protection of victims from secondary victimization.

Based on these conditions, there is a significant gap in norms regarding victim protection during the trial examination phase, particularly regarding national standards for victim examination, mechanisms for preventing re-traumatization, and parameters for judges in obtaining victim testimony in a humane and just manner. This gap underscores the urgency of legal reconstruction that focuses not only on changing the substance of norms but also on comprehensively improving the legal structure and culture. This reconstruction must integrate victimology and legal psychology approaches into criminal procedural law, thereby realizing a criminal justice system that not only guarantees legal certainty but also provides dignified and just protection for victims.

METHOD

The research method used in this research is the normative juridical method, which is a legal research method that focuses on the study of positive legal norms, legal principles, and legal doctrines to find arguments, concepts, and legal prescriptions on the issues studied, by placing the law as a rule written in legislation and in decisions and legal literature. The approaches used include the statute approach and the conceptual approach, where the statutory approach is carried out by examining all laws and regulations relevant to the issue of secondary victimization in the criminal trial process, to identify consistency, synchronization, and the absence of norms in the applicable legal system. Meanwhile, the conceptual approach examines the concepts, principles, and legal doctrines that develop in legal science, especially those related to victimology, legal protection, and victim-based justice, so as to build comprehensive and systematic legal arguments in formulating legal reforms. The legal materials used consist of primary legal materials in the form of relevant laws and regulations, secondary legal materials in the form of literature, scientific journals, and opinions of legal experts, as well as tertiary legal materials as supporting materials, all of which are analyzed qualitatively using deductive reasoning methods to draw prescriptive conclusions to answer the legal problems being studied.

RESULTS AND DISCUSSION

Construction of Secondary Victimization from the Perspective of Victimology and Criminal Procedure Law

The construction of secondary victimization from a victimological perspective demonstrates that victims of criminal acts not only experience suffering due to the crime (primary victimization) but also potentially experience further suffering due to interactions with the criminal justice system itself. In modern victimology, secondary victimization is

understood as the negative impact arising from treatment by law enforcement officers, legal procedures, and social environments that are insensitive to the victim's situation. This phenomenon is relevant in the context of criminal trials in Indonesia, where victims are often required to relive their traumatic experiences in detail during the evidentiary process. However, conceptually, victims, as defined in Article 1, point 4 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, are those who experience physical, mental, and/or economic loss as a result of the crime. Therefore, normatively, they should receive protection from potential further suffering during the legal process. (Yulia, 2019)

From the perspective of Indonesian criminal procedure law, the normative construction of the Criminal Procedure Code (KUHAP) still places victims in a limited position, namely as mere witnesses. This is reflected in Article 1, numbers 26 and 27 of the Criminal Procedure Code, which defines a witness as a person who can provide information for investigation, prosecution, and trial. Article 184 of the Criminal Procedure Code, which positions witness testimony as a valid form of evidence, is reflected in this approach. Consequently, victims are viewed more as instruments of proof than as subjects who must be fully protected. Furthermore, the Criminal Procedure Code regulates the rights of suspects and defendants more extensively, as outlined in Articles 50 to 68 of the Criminal Procedure Code, thus reinforcing the system's focus on protecting the perpetrator rather than the victim (Sujarwo, 2024). This construction indirectly opens up the opportunity for exploitative examination practices against victims in court.

In court practice, the orientation of evidence, which focuses on the search for material truth, often neglects the psychological protection of victims. Judges, prosecutors, and legal counsel tend to probe victims' statements in depth without clear boundaries, including through repetitive questions, cornering, or even touching on the victim's private aspects. However, from a victimology perspective, this approach can trigger retraumatization, a concrete form of secondary victimization (Saputra, 2022). The absence of explicit norms in the Criminal Procedure Code (KUHAP) governing standards for examining victims further reinforces this situation, making victim protection in court highly dependent on the subjectivity of law enforcement officials.

On the other hand, efforts to reform the law have begun to be seen through Law Number 31 of 2014 concerning Witness and Victim Protection, which grants victims the right to physical, psychological, and social protection, as well as the right to restitution, as stipulated in Article 7A of the law (Asafari, 2023). Furthermore, Law Number 12 of 2022 concerning Crimes of Sexual Violence also stipulates the obligation of law enforcement officials to consider the victim's perspective and prohibits actions that demean victims during case handling, including in Articles 21 and 22, which emphasize the importance of competence and sensitivity to victims. However, these provisions have not yet been fully integrated into general criminal procedure law, particularly in the examination mechanism in court.

This situation demonstrates a disharmony between the development of the concept of victimology, which emphasizes victim protection, and the still traditional and retributive construction of criminal procedural law. The Indonesian criminal justice system still prioritizes proving the defendant's guilt, while protecting the victim's dignity, and rehabilitation has not been prioritized. This contradicts modern legal developments, which demand a balance

between the interests of the perpetrator, the victim, and society, and position the victim as a subject who must be actively protected at every stage of the judicial process (Heryanto, 2020).

It can be emphasized that secondary victimization is an inherent phenomenon in the Indonesian criminal justice system, resulting from a normative construction that is not yet victim-oriented. The absence of specific regulations regarding victim protection during the trial phase, coupled with the dominance of the retributive paradigm in the Criminal Procedure Code, leaves victims vulnerable to repeated suffering during the legal process. Therefore, it is necessary to reconstruct criminal procedural law that integrates the principles of victimology and a victim-centered justice approach, so that the trial process not only functions as a means of providing evidence, but also as a safe, just, and dignified space for victims.

Analysis of Weaknesses of the Legal System in Protecting Victims against Secondary Victimization at the Trial Stage

An analysis of the legal system's weaknesses in protecting victims from secondary victimization during the trial phase reveals serious empirical and systemic issues in criminal justice practices in Indonesia. In reality, victims of crime, particularly sexual violence, often experience repeated psychological stress during the trial process, such as being forced to recount the chronology of events in detail, being confronted directly with the perpetrator without adequate protection, and being subjected to questions that tend to marginalize or demean them. This situation demonstrates that although the law normatively recognizes victims' rights, its implementation in practice remains far from ideal protection principles. It indicates a gap between what should be (*das sollen*) and what actually happened (*das sein*), which is a crucial entry point for analyzing the legal system.

From a substantive legal perspective, although there are provisions in Law Number 31 of 2014 concerning Witness and Victim Protection and Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, existing norms do not specifically address the prevention of secondary victimization during the trial phase. Articles 66 to 70 of the TPKS Law regulate victims' rights to treatment, protection, and recovery, including the right to protection from demeaning behavior by law enforcement officers. However, these provisions are still general and have not been formulated into standard operating procedures for trial examinations. In practice, there are no explicit provisions limiting the types of questions that may be asked of victims or mechanisms to prevent retraumatization. This indicates that the substance of the law is not yet fully operational and remains open to multiple interpretations that could potentially harm victims.

From a structural legal perspective, weaknesses are evident in the capacity and perspective of law enforcement officers, which are not fully victim-oriented. In trial practice, judges, prosecutors, and advocates still tend to use a conventional evidentiary approach that positions the victim as the object of examination without considering the psychological impact. The absence of standard procedures for victim examinations leaves victims' treatment highly dependent on the subjectivity of law enforcement officers. In some cases, judges even permit questions that blame the victim or delve into private aspects irrelevant to the evidence, which directly exacerbate secondary victimization. This situation indicates that the legal structure is not yet supported by adequate competence, technical guidelines, and oversight mechanisms to protect victims.

The weakness of the legal structure is also evident in the suboptimal role of supporting institutions such as the Witness and Victim Protection Agency (WPPA) in the trial process. Although this agency is legally authorized to provide physical and psychological protection to victims under Law Number 31 of 2014, in practice, its involvement is often limited to the investigation stage and is not fully integrated into the trial process. As a result, victims often face trial without adequate psychological support, leaving them vulnerable to stress and re-traumatization. This demonstrates weak coordination between institutions within the criminal justice system, which directly impacts victim protection.

From a legal culture perspective, secondary victimization is reinforced by the persistent culture of victim blaming, social stigma, and patriarchal constructs that influence how law enforcement officers and the public view victims. In many cases, victims are positioned as partly responsible for their experiences, so that provocative questions are considered part of the normal evidentiary process. This perspective not only violates the principle of justice but also contradicts the constitutional guarantees stipulated in Article 28G paragraph (1) of the 1945 Constitution, which guarantees the protection of human security and dignity. This legal culture demonstrates that legal reform cannot be carried out solely on normative aspects; it must also address paradigm shifts and the values embedded in judicial practice.

Based on Lawrence M. Friedman's legal systems approach, it can be concluded that the weakness in victim protection against secondary victimization at the trial stage results from an inharmonious interaction between legal substance that is not yet operational, a legal structure that is not yet professional and sensitive to victims, and a legal culture that remains biased against victims. This gap results in victim protections stipulated in various laws and regulations not being effectively implemented in the field. Therefore, legal reforms are needed that not only improve norms but also strengthen the capacity of law enforcement officials and transform the legal culture toward a criminal justice system that focuses on comprehensive victim protection and recovery.

Reconstruction of the Law on Victim Protection against Secondary Victimization in Criminal Trials in Indonesia

Reconstruction of the law on victim protection against secondary victimization in criminal trials in Indonesia must begin with a concrete and operational update of the substance of criminal procedural law, not simply the affirmation of general protection norms. The first concrete action that must be formulated is the addition of explicit norms in the revised Criminal Procedure Code (KUHAP) or through a Supreme Court Regulation (PERMA) concerning standards for examining victims in court. These norms must prohibit questions that are victim-blaming, demeaning, delving into irrelevant sexual or private aspects, and repetitive questions that have the potential to cause re-traumatization. Normatively, this direction aligns with Articles 66 and 67 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, which guarantee victims' rights to treatment, protection, and recovery. However, this needs to be translated into more technical procedural norms so that they can be implemented by judges and parties in court. Therefore, the reconstruction of the substance aspect must result in the formulation of new, implementable articles, such as the obligation for judges to reject questions containing victim-blaming and the right of victims to raise objections through legal counsel or a psychologist.

The second concrete action is at the level of victim-friendly trial procedures. National guidelines for victim-centered justice-based examinations are needed, which must be implemented by all district courts, particularly in cases of sexual violence, violence against children, and crimes that cause severe trauma. These guidelines should regulate technical measures such as teleconference examinations, the use of screen barriers to prevent victims from directly interacting with the perpetrator, limiting the number of repeated testimonies, and requiring a break in the trial if the victim exhibits psychological distress. The legal basis for this can be linked to the Supreme Court's authority to establish technical judicial regulations through the Supreme Court Regulation (PERMA), while also aligning with the spirit of Article 5 paragraph (1) letter a of Law Number 31 of 2014 concerning Witness and Victim Protection, which guarantees victims' rights to personal security and freedom from threats. With these technical guidelines, victim protection will no longer depend on the judge's personal sensitivity but will become a binding national procedural standard.

In terms of legal structure, concrete actions that must be taken include mandatory training and certification of victimology competency for judges, prosecutors, advocates, and court clerks handling sensitive victim cases. To date, one of the roots of secondary victimization is a highly formalistic approach to evidence that lacks psychological sensitivity. Therefore, the Supreme Court, the Attorney General's Office, and advocate organizations must develop a continuing education curriculum based on victimology, trauma psychology, and non-revictimization examination techniques. Judges handling certain cases must hold special certification, similar to the certification model for juvenile judges and commercial judges. This step represents a very concrete form of structural reconstruction because it targets the personal capacity of law enforcement officers as implementers of norms. In other words, legal changes are not simply made in texts; they must be translated into measurable and mandatory professional competencies.

The next concrete action is to optimize the role of the Witness and Victim Protection Agency (LPSK) actively in the courtroom. To date, the LPSK's role has tended to be predominantly confined to the investigation and administrative protection stages, even though the mandate of Law Number 31 of 2014 allows for protection to be provided from the investigation through to the court hearing. Therefore, a mandatory coordination mechanism needs to be established between the court and the LPSK, whereby every case involving vulnerable victims is automatically notified to the LPSK to assign psychological counsel, legal advisors, or protection officers during the trial. More concretely, courts need to provide separate waiting rooms for victims, special entry points, and psychological assistance before and after testimony. This is a very practical, concrete step in minimizing re-traumatization.

In terms of legal culture, reconstruction must be achieved through a transformation of the judicial paradigm from offender-oriented to victim-centered justice. Concrete actions that can be taken include incorporating victim protection principles into the code of ethics for judges, the guidelines for prosecutors' conduct, and the professional standards of advocates, so that the practice of victim blaming can be classified as an ethical violation. Furthermore, monitoring of court decisions and trial transcripts is necessary to identify patterns of questioning that marginalize victims. The results of this monitoring can form the basis for institutional evaluation and the development of law enforcement officials. At a broader level, the Supreme

Court, in collaboration with the Judicial Commission, can develop indicators for victim-sensitive justice as part of the judicial legal culture reform.

Reconstruction of the law on victim protection against secondary victimization must result in concrete actions at three levels simultaneously: operational norms, victim-friendly trial procedures, and changes in the capacity and culture of law enforcement officials. This reconstruction must not stop at the conceptual level but must be realized through new articles in the Criminal Procedure Code (KUHAP)/Perma (Supreme Court Regulation), national standard operating procedures for victim examinations, victimology certification for officers, the active involvement of the LPSK (Lembaga Penitentiary Agency), and a judicial ethics evaluation mechanism. Through these concrete actions, the Indonesian criminal justice system can move towards a justice model that not only guarantees legal certainty but also truly protects the dignity, security, and psychological recovery of victims in a comprehensive manner.

CONCLUSION

The conclusion of this study confirms that secondary victimization in criminal trials in Indonesia is a systemic problem arising from disharmony between the substance, structure, and culture of the law. In terms of substance, the Criminal Procedure Code (KUHAP) still positions victims primarily as evidence through witness testimony, as stipulated in Article 184 of the KUHAP, thus failing to provide specific protection against potential re-traumatization in court. Although Law Number 31 of 2014 concerning Witness and Victim Protection and Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence recognize victims' rights to protection, treatment, and recovery, these norms remain general and are not yet operational during the trial phase. Structurally, the absence of standardized procedural standards and the limited capacity of law enforcement officers in a victimology approach often lead to exploitative examination practices that have the potential to lead to re-traumatization. In terms of legal culture, the strength of victim blaming, social stigma, and patriarchal culture further exacerbates victims' positions in the evidentiary process. Therefore, legal reconstruction is urgently needed through the integration of a victim-centered justice approach into criminal procedural law, by introducing victim-friendly examination norms, strengthening the competence of officers, optimizing the role of the LPSK (Lembaga Penitentiary and Social Welfare Institution), and transforming the legal culture of the judiciary so that victims are truly positioned as dignified subjects who must be protected. The recommendations put forward in this study are the need for concrete and measurable steps from legislators, the Supreme Court, and law enforcement agencies to immediately implement a victim protection model based on the prevention of secondary victimization. First, legislators need to include specific norms in the updated Criminal Procedure Code (KUHAP) or through a Supreme Court Regulation (PERMA) that regulate standards for examining victims in court, including a prohibition on inflammatory questions, the right of victims to be accompanied by a psychologist or legal counsel, and the use of remote examination mechanisms or screen barriers for vulnerable victims. Second, the Supreme Court, the Prosecutor's Office, and advocate organizations need to require victimology training and certification for officers handling sensitive victim cases. Third, courts must establish a mandatory coordination system with the LPSK to provide active protection during the trial process, including the provision of safe spaces and psychological support. Fourth, regarding legal culture, ethical reform and regular evaluation of trial practices

are necessary to eliminate victim blaming and strengthen a judicial paradigm oriented toward victim recovery. Therefore, this recommendation is directed not only at normative change but also at institutional and legal cultural reform so that the Indonesian criminal justice system can achieve substantive justice with a victim-centered perspective.

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