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Greetings for APVI

I am delighted for completion and publication of the book containing collection of papers from several participants of International Conference on Victimology in Surabaya, which was held in a series of international conference activities and course on victimology on 26-29 November 2018 and also a collaboration between the Association of Indonesian Victimology Lecturers, Universitas Surabaya and Universitas Hang Tuah.

I certainly hope for the development of victimology. Besides, I also hope the thoughts expressed in the book by each writer can provide real benefits for humanity and stay consistent with the third goal of victimology, to create a system in order to reduce the suffering of victims.

I hope that these activities and papers do not stop there, but continue to be improved and developed. In this opportunity, as the chairman of APVI I would like to thank all the contributors of this book including writers, editors, and also specifically to my colleagues at the Ubaya Faculty of Law, commanded by Mrs. Dr. Elfina Sahetapy, SH, LLM, who surely has devoted a lot of thoughts and energies for publication of this book. Thank you ,, good luck for all of us...

Purwokerto, November 2019
The Chairman of APVI,

Dr. Angkasa, S.H., M.Hum.

Contents

Greetings for APVI	v
Contents	vi
Introduction	ix
Part 1:General Victimology	1
1. Women as the Victims on Breach of Marriage Promise (Study of the Law Implication and Court Decision) By: Fence Wantu.....	3
2. Legal Protection for the Community Resulting from the Mining of Tin in the Sea by: Jeanne Darc Noviayanti Manik.....	17
3. Ideal Concept of Institutional Revitalization of Regional Development Planning Agency to Optimize Poverty Reduction in Province of Central Java and East Java By: Lantik Kusuma Aji, Hartiwiningsih, I Gusti Ayu KRH.....	23
4. Euthanasia Applicants as Victim of Laws in Indonesia By: Sutarno	31
5. Review Position Institution of Crime Resolution in Indegenous People By: Blasius Mau Kau	39
Part 2: Special Victimology	47
1. Corruption in Victimology Perspective By: Angkasa Soedigdo.....	49
2. Unveiling The Victim of Corporate Crime and Corruption Cases in Indonesia: The Victimology Perspective By: A. Suhartati Lukito.....	57
3. Second Victimization Toward Woman as Victim of Sexual Harrassment by: Dwi Hapsari Retnaningrum, Rani Hendriana	67
4. Criminal Responsibility for Offenders of Traffic Violations that Cause Death of the Victim by: Henny Saida Flora.....	75
5. The Reformulation of Sanction of The Domestic Violence Act in Indonesia: Perspective of Restorative Justice By: Dewi Setyowati, Emillia Rusdiana.....	89
6. Stereotype View as A Victimation Strength Factor in Household Violence By: G. Widiartana	107

7. Legalization of Abortion Against Victims of Rape Crimes Viewed from Victimology Perspective	
By: Siska Elvandari, Mahda Zakiya Ahmad	115
8. Legal Protection for Women from Terrorism Crime	
by: Ferdicka Nggeboe	133
9. Victims of Online Prostitution Involving Indonesian Actresses in Victimology Perspective	
By:Hwian Christianto	143
10. Restorative Justice through Penal Mediation as One Way Resolve Domestic Violence in Order to Provide Protection to Victims	
By: Dwikari Nuristiningsih.....	151
Part 3: New Victimology	159
1. Victimology: Securing Rights and Delivering Services to Victims Terrorism	
By: Michael O'Connell AM APM.....	161
2. Men always Win: Structural Victimization to Ex-Wife at Post-Divorce Settlement	
by: Heru Susetyo.....	179
3. Protection of Civilians as Victims of War in International Armed Conflict	
By: Chomariyah, Levina Yustitiningtyas, Dita Birahayu	193
4. Criminalization and Victimization Against LGBT in Indonesia	
By: Elfina L.Sahetapy	203
5. Quo Vadis Formulation of Protection Policy for Victims of Defamation in the Cyberspace	
By: Zainal Arifin, Saivol Firdaus	211
6. Restorative Justice in Effort of Fulfilling Rights and Realizing The Justice Value for Victims of Crime	
By: Ani Triwati	223
7. Penal Mediation as Tool of Child Rights Protection	
By: Emi Puasa Handayani, Siciliya Mardian Y	237
8. The Problem of Restorative Justice in the Juvenile Justice System Legislation	
by: Pudji Astuti	247

Introduction

Michael O'Connell AM APM

Secretary-General, World Society of Victimology

"Ngai tampinhi ngadlu Javanese yaratanga inparrinhi. Naa marni. Marni naa pudni Surabaya. Naa marni. Ngai nari Michael O'Connell."

These are Kurna words – words of the traditional custodians of the Adelaide plains in South Australia, which is where I live. In English, I said, *I acknowledge we meet on the land of the Javanese people. Welcome. It is good that you all came to Surabaya. My name is Michael O'Connell.*

In 1973, Benjamin Mendelshon, Hans von Hentig and Israel Drapkin organised the first International Symposium on Victimology. In 1979, the World Society of Victimology (WSV) was founded. Since then, the WSV has hosted symposia every three years.

The WSV promotes research in the field of Victimology, for example on victims' rights and victim needs; fosters responses to victims that do no more harm, such as evidence-based victim assistance programmes; and, encourages collaboration between victimologists and victim service providers. It also through an international faculty and in partners with, for example, universities like the University of Surabaya, to provide education and training; and, through its members and activities advocates for victims' rights.

More than once I have used the term Victimology without explanation. What is Victimology? The answer is contentious; however, last night at the closing session for the two-day Victimology course I read an acrostic poem titled *Victimology*.

An acrostic poem is one in which each letter of a word is associated with another word, and the collective of these other words explain the principal word. Acrostic poems are one way to capture the meaning within a word.

VICTIMOLOGY

V is for valiant and virtuous ... valiant because victimologists must at times be courageous and virtuous because it cherishes worthy endeavours to rightfully foster good understanding of, among other things, the victimisation process.

I is for instructive ... instructive in ways that guide those who fund victim assistance and those who help victims so their needs are met and no more harm is done.

C is for challenging ... such as challenging myths and misconceptions about victims, the nature of victimisation and the uniqueness and commonalities of the victimisation experience.

T is for theoretical ... that is, theory ground on empirically sound research but also aware of the limitations of scientific inquiry.

I is for influential ... as the record of achievements, including the growth of international and domestic victims' rights law, so the victim is neither invisible, nor forgotten.

M is for maturing because Victimology is an evolving discipline that arguably has yet to become a fully-fledged social science; however, is no longer a hodgepodge of ideas, concepts and so on.

O is for objectives ... such as to diagnose a situation, to interpret the situation, to suggest ways of creating desired situations, to prevent undesired situations, and to minimise the effects / the impact of victimisation.

L is for learnings ... learnings that are the unique body of knowledge that results from scientifically valid research and scholarly critique, as well as victims' narratives.

O is for oriented – victim-centricity is integral; it is the central feature that distinguishes Victimology from other social sciences.

G is for gathering – gathering from various disciplines or professional specialisations to address problems, such as the riddle of choices victims face in the aftermath of victimisation – whatever the source of such.

Y is for youthful – comparative speaking Victimology is youthful and new challenges if tackled with enthusiasm and energy will ensure that youthfulness will not fade.

The articles within this book suggests the diversity of current issues for a new Victimology. Hopefully, the articles will contribute to your understanding of Victimology.

Part 2

SPECIAL VICTIMOLOGY

CORRUPTION IN VICTIMOLOGY PERSPECTIVE¹

By: Angkasa Soedigdo²

1. INTRODUCTION

Corruption in the formulation of Article 2 paragraph (1) The Republic of Indonesia constitution Number 31 year 1999 concerning the Eradication of Corruption Crimes is “Every person who violently violates the law by enriching themselves or someone else who is a corporation that can detriment the state’s finances or country’s economy .. “

In addition, the formulation of corruption in the law is spread in several articles within various threats of sanctions and the maximum sanction in the form of capital punishment. Corruption is very dangerous because it brings a huge detrimental effect towards the victims, namely the people of a nation that live in a country. In one of the consideration of the Republic of Indonesia constitution Number 31 of 1999 concerning Eradication of Corruption Crime states that the consequences of corruption criminal acts that have been detriment the state’s finances or the country’s economy and also inhibit the growth of national development sustainability which demands high efficiency.

Based on this consideration, corruption also goes to be a concern of the world, including in 2003, the United Nations (UN) formed the Anti-Corruption Convention (United Nation Convention Against Corruption-UNCAC). On its statement UNCAC aims to: Promote and strengthen the preventive efforts due to eradicate corruption more effective and efficient; To promote, facilitate and support the international cooperation and technical assistance in order to prevent and fight the corruption, including the assets recovery; (c) To improve the integrity, accountability and good management of public affairs and public property.³

Toward the existence of corruption, there are very much reviews from various perspectives or points of view.

In the following article, the corruption crime seen from victimology perspective based on victimology goal which conceptualized by Zvonimir-Paul Separovic includes these three objectives as follow. 1. Analyze the manifold aspects of the victim’s problem; 2. to explain the causes of victimization; 3. to develop a system of measures for reducing human suffering.

Based on this perspective, rise an intention to bring up a new idea in the form of a system to reduce the loss and / or suffering of corruption victims.

¹Presented on 3rd International Conference, Course on Victimology and APVI Annual Meeting, Surabaya 26th-29th of November 2018.

²The Lecturer of Law Faculty of Jenderal Soedirman University and The Chairman of Indonesia Victimology Lecturer Association (APVI)

³Article no 1 General Assembly resolution 58/4 of 31st October 2003. The detail of UNCAC purposes was formulated on Article no 2

2. DISCUSSION

The Victim Problem of Corruption Crime

Victims of corruption are people from various community groups and as a whole nation and/or society. This was also stated in the United Nations Convention Against Corruption (UNAC) statement that corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish.⁴ Further more, they said that the evil phenomenon is found in all countries - big and small, rich and poor - but is developing the world that its effects that are most destructive. Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a Government's ability to provide basic services, feeding inequality and injustice and discouraging foreign aid and investment. Corruption is a key element in economic underperformance and a major obstacle to poverty alleviation and development.⁵

In The Fourth Session of the Conference of the States Parties to the United Nations Convention against Corruption in Marrakech (24-28 October 2011) there was an opinion that Corruption is a global threat. It is a serious roadblock to economic development," said the Executive Director of the United Nations Office on Drugs and Crime (UNODC), Yury Fedotov. "Corruption aggravates inequality and injustice, and undermines stability, especially in the world's most vulnerable regions."⁶

Corruption is a global phenomenon found in all countries but evidence shows it harms poor people more than others, stifles economic growth and diverts desperately needed funds from education, healthcare and other public services. An estimated one trillion US dollars get siphoned off through bribes every year according to the World Bank.⁷

Based on United Nation office on Drug and Crime (UNODC) corruption is a complex social, political and economic phenomenon that affects all countries. Corruption undermines democratic institutions, slows economic development and contributes to governmental instability. Corruption attacks the foundation of democratic institutions by distorting electoral processes, perverting the rule of law and creating bureaucratic quagmires whose only reason for existing is the soliciting of bribes. Economic development is stunted because foreign direct investment is discouraged and small businesses within the country often find it impossible to overcome the "start-up costs" required because of corruption.⁸

The economic perspective on corruption victims community raises inefficiencies and destroys incentives. Corruption often leads the waste or misuse of natural and national resources, with economic consequences, through incentives to repay the government who officially supervise the large investment projects. Corruption affects economic growth, reducing income in the tax sector which leads to the rise of misery and poverty oto many people.⁹

⁴ United Nations Office On Drugs And Crime Vienna, 2004, page iii

⁵ *Loc.it*.

⁶ *Op.cit*

⁷ The Fourth Session of the Conference of the States Parties to the United Nations Convention against Corruption in Marrakech (24th-28 October 2011) accessed through https://www.unodc.org/documents/treaties/UNCAC/COSP/session4/CoSP4_Factsheet_cp658e.pdf Tuesday November 20th 2018

⁸ UNODC's Action against Corruption and Economic Crime

<http://www.unodc.org/unodc/en/corruption/index.html?ref=menuaside> accessed on Tuesday November 20th 2018

⁹ James M. Leaman, 2009, *Religion, Spirituality, Corruption And Development: Casual Links and Relationships*, Dissertation, Faculty of The Graduate School of Public and International Affairs University of Pittsburgh. Available from the World Wide Web: http://d-scholarship.pitt.edu/6291/1/JamesLeaman_ETD.pdf. Page 25-26.

Corruption victims are not only short-term but long-term. It leads to a sense of community distrust, apathy and frustration with the state. On the other hand, the victim community can be very weak to pursue a change of government to be more representative and responsive..¹⁰

Based on several descriptions above, the victims of corruption isn't only the public but also the state (government). The forms include damaging democracy and the rule of law, leading to human rights violations, distorting markets, eroding quality of life and enabling the organized crime, terrorism and other threats to human security to develop. In addition, corruption harms poor people disproportionately by diverting funds intended for development, so does damage the ability of the Government to provide basic services. The most basic occurrence of criminal acts is that human rights violation.

Causes of Corruption Crime Victims

In addition to victimology perspective, corruption can be occurred because of structural factors, institutional, historical, and economic factors. In Indonesia the study results show that the causes of corruption are about personal interests and political networks, low-paid civil servants, low quality regulations, and weak judicial independency. Besides, local officials are given broad discretionary powers and resources without proper mechanisms, accountability and enforcement.¹¹

The Victimology Perspective says that the occurrence of victimization can be led by the role of victim factor which is theoretically known as *Victim precipitation*. *Victim precipitation* is a term that was first used by Wolfgang to describe a situation where the victim was the initial attacker in an action that caused their loss¹². In further development Victim precipitation theories attempt to explain victimization through an analysis of the situational contingencies and dynamics that exist in interpersonal interactions. Lifestyle theories of victimization also examine the situational characteristics of victimization events, but they focus more intensely on the personal characteristics of victims and offenders. These theories have direct implications for prevention in their explicit focus on the structure of criminal events and the subjective intentions and perceptions of offenders.¹³

The concept of VP in corruption crime is very appropriate to explain the practice of bribery as stipulated in the Law of the Republic of Indonesia Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption renewed by the Law of the Republic of Indonesia Number 20 of 2001 concerning Amendment to Law Number 31 1999 concerning the Eradication of Corruption Crime (Corruption Law). In these provisions, bribery is regulated in Article 12 letters a and b and Article 13.

Corruption Laws Article 12 "Convicted with a lifetime imprisonment or imprisonment for a minimum 4 (four) years and a maximum of 20 (twenty) years and a fine of at least Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp1 .000,000,000.00 (one billion rupiah);

- a. civil servants or state administrators who receive gifts or promises, even though it is known or reasonably suspected that gifts or promises are given to do or not to do something in their positions, which is contrary to their obligations;

¹⁰ *Ibid.*

¹¹ Transparency International, 2012, *Causes of corruption in Indonesia*, <https://www.u4.no/publications/causes-of-corruption-in-indonesia>, Tuesday November 20th 2018.

¹² Petherick WA, Sinnamon GCB (2013) Motivations: *Victim and Offender perspectives*. In Petherick WA (Eds.), *Profiling and serial crime: Theoretical and Practical Issues* (3rd edn), Anderson Publishing, USA, pp. 393-430.

¹³ Brad A. Myrstell and Steven M. Chermak, 2005, *VICTIMOLOGY*, London:Longman. P. 464.

- b. a civil servant or state administrators who receive gifts, even though it is known or reasonably suspected that the gift is given as a result or caused by having done or not done something in his position that is contrary to his obligations.

In the Criminal Code, bribery is regulated in the provisions of Article 419, Article 420, Article 423, Article 425 and Article 435.

Threatened by a maximum five years imprisonment for an official:

1. The one who received gifts or promises even though it is known that the gift or promise are given as a reason to lead him/her do or not to do something in his position that is contrary to his obligations;
2. The one received the gift has already known that the gift is given as the result or by having done or not done something in his position that is contrary to his position.

In the daily practice, bribery with the victim involvement can be seen on traffic violation cases, as well as the obligations of taxpayers who faced the tax officers in order to ask for smaller payment illegally or any kind of law violations.

Those traffic offenders often "ask for help" to the police who wanted to give them ticket, due to make the case closed easily and avoid the court.

The way they do this is by giving amount of money to the officer who wants to give them ticket, they do it neatly so that it won't be seen by the public. In big cities these methods are more vulgar, even among those who want to bribe and be bribed, there is such a bargainable price. In fact, according to the informations from several taxi drivers in Jakarta, several officers did not want to be paid with Rp. 10,000 in bills, they wanted at least Rp. 50,000 in denominations.

The main motivation of motor riders to bribe is to get a smaller fine as the result of violations that they have been committed. Can be exemplified by the Law Number 22 of 2009 concerning Road Traffic and Transportation, which was passed by the Parliament on June 22th, 2009: Violations of not having a driving licence is punishable by imprisonment for a maximum of 4 months or a maximum fine of Rp. 1 million (Article 281); Every motorized driver who has a driver license but cannot show it during a raid can be punished by a maximum of 1 month imprisonment or a maximum fine of Rp 250 thousand (Article 288 paragraph 2);

Every motorized driver which the vehicle number is not embeded can be punished a maximum of 2 months imprisonment or a maximum fine of Rp. 500 thousand (Article 280); Every driver who violates traffic signs is sentenced to imprisonment for a maximum of 2 months or a maximum fine of Rp. 500 thousand (Article 287 paragraph).

The threats of fine are very burdening, so by initiating a shortcuts like a bribery, the offender's bill becomes much smaller. However, on the other hand, state losses greater due to loss of income which should be accepted from the fine of violators of Law Number 22 of 2009 concerning Road Traffic and Transportation.

Another bribery action that can help victims to be involved VP aspect is bribery in the field of taxation, in this case the taxpayer bribes the tax officers or Tax Institution in order to reduce the nominal of the tax that should be paid. For example, the well-known case about two Ambon tax officers and one person from a private sector who had been arrested by the Corruption Eradication Commission (KPK).

In the news on media, taxpayers should pay taxes in the range of around Rp. 1.7-2.4 billion, but based on negotiation that illegally conducted with the officials of the tax office, the taxpayer is only burdened with of Rp. 1.037 billion. It's ensured by certain requirements so that can be called bribe from the taxpayers to the tax officials. For this practice, it seems at a glance that the country has suffered a large loss by not accepting funds from taxpayers as it suppose to. The practice of bribery for police officers and taxation can be exemplified as a victimization (criminal act) with participation of victims or victim precipitation. It was said that there was victimization (crime) because the act was qualified as a bribe, prohibited and regulated in Indonesian positive criminal law both in the Criminal Code and the Corruption Act.

Based on those examples above, the most suffered victims are the state and society. Because of the bribery practices, state has lost its income that should have been received or in the several corruption act articles formulation, mentioned that there are state losses. If it is claimed, the income (fine) from the community as the evidence of violation or taxes payment belong to the state. The collected funds will be returned to the community for various interests including various development programs both physical and non-physical. For state losses due to the non-entry of state as the illegal diverts result which should go to the state treasury but switched to individual cash or corporate cash, create the consequences such as the government's program get reduced in quantity and quality as well as the impact for the society include those who have done a bribery. It means the bribers also become victims of what they have been done.

Restitution as a System for Reducing Corruption Crime Victims

Beside explaining the various aspects of the of victim problems, the causes of victimization (crime), victimology perspective also tries to build a system to reduce the suffering of victims. The alternative offered through this paper is the sanction of granting restitution to the corruption perpetrators.

Restitution in the victimology perspective is related to the repair or restoration of physical repairs, moral and property losses, the position and victims rights after the attacks of criminal offenders (criminals). Restitution is an accountability indication of the criminal offenders. Restitution is a restitutive act against a criminal offender who has a criminal character and describes a corrective purpose in a criminal case.¹⁴

in *Webster's World University Dictionary* restitution is defined as.

*Restitution is the act of restoring to the original owner, making good a loss, indemnification: restitution is reparation to an original shape: said of elastic bodies. Synonym compensation, damages, reparation, return*¹⁵

The restitution forms by Graborsky, mentioned that. "...restitution is the payment of money or provision of service to a crime victim by offender. The principle of restitution the offender should bear the cost of "restoring" the victim, .."¹⁶

The implementation of Galaway restitution distinguished in four types, namely monetary victim restitution, monetary-community restitution, service-victim restitution and serve-community

¹⁴Angkasa, 2004, *Victim Position in Criminal Justice System (Victimological Approach to Rape Crime Victims)*, Dissertation at the Faculty of Law, UNDIP, Page. 118.

¹⁵Webster, 1985, *World University Dictionary*, Copyright 1965. By Books Inc. Printed in The United States of America, Publishers Company Inc. Washington D. C. Hal. 841.

¹⁶Peter Grabrosky, 1989, *Victims in The Criminal Injustice System* vol. Two, George Zdenkovski, Chris Ronalds and Mark Richardson (ed.) Pluto Press. Australia. Page. 151.

restitution.¹⁷ *Monetary-victim restitution*, means the perpetrator directly pays the victim in the form of money based on the loss number or suffering of the victim. The amount and implementation are determined and supervised by the court.

Monetary-community restitution, the offender pays compensation not to individuals as above, but to the community group. This kind of restitution is applied to the criminal acts people/society as the victim. For example acts of vandalism, or destruction of facilities or public interests. It can also be applied towards victims who do not want to take a part the restitution program.

Service-victim restitution and *service-community restitution*, basically is same as the two types above. The difference is on *service-victim restitution* and *service-community restitution* the form of restitution is not money but service. This is because the perpetrator is not financially capable. For example if the perpetrator has low income and / or the perpetrator is a teenager.¹⁸

Referring to the classification of the restitution types, the most appropriate type to be applied for the community as corruption victim is the second model, the monetary-community restitution or the fourth (service community restitution). These kind of sanctions seem to have more justice value for victims in this case the community for some cases of corruption, rather than just perpetrators get sanctions in the form of imprisonment.

It is in line with the statement on international instruments "Declaration of Basic Principles of Justice for Victim of Crime and Abuse of Power" (UN Resolution No 40/34). In the provisions Number 10, the UN Declaration states that "In the case of large losses to the environment, if ordered, restitution includes up to the environment repair, infrastructure rebuilding, public facilities replacement and reimbursing the cost of relocation, if the losses lead to a broken society".¹⁹

3. CONCLUSIONS.

1. Corruption crime creates victims for community and / or the state, include impoverishes the community, inhibits development and violates the human rights.
2. For several types of corruption criminal acts such as bribery, the victims can contribute to a victim precipitation of corruption criminal acts.
3. Restitution sanction is one the alternative in order to reduce the suffering of victims.

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¹⁷ Galaway, 1981, "*The Use of Restitution*", In B Galaway and J. Hudson (eds.), *Perspectives on Crime Victims*. St. Louis, MO: Mosby. Hal.16

¹⁸ William G. Doerner , Steven P. Lab, 1998. *Op.cit.*Page. 76. Look up Andrew Karmen , 1984 *Crime Victims*. Monterey, California. Page. 176. Karmen refers to Galaway (1977) also mentioned: "Four combinations of restitution arrangements are possible payments by the offender to the actual victim, perhaps through an intermediary (the most common); earnings shared with some community agency or group serving as a substitute victim (rather than a fine collected by the government); personal services performed by the offender to benefit the victim (an uncommon outcome); and labor donated by the offender for the good of the community (frequently ordered).

¹⁹ Angkasa, *Restitution for Corruption Victims in the Victimology Perspective*, Paper presented at the Continuing Legal Education in National Law Development Agency of the Ministry of Law and Human Rights, Republic of Indonesia on September 3rd, 2013 at the BPHN Hall Jl. Major General Sutoyo 10 Ciliitan East Jakarta, Page.8.

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