

LEGAL PROTECTION FOR RAPE VICTIMS IN INDONESIA: Seeking an Ideal Concept

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Abstract: This paper analyzes and provides advice on legal protection for rape victims in Indonesia in transcendental, restorative law, and responsive law perspectives. These perspectives are compared and combined in an effort to seek an ideal concept. The implication of this paper is to provide advice for an ideal concept of legal protection for victims of rape in an Indonesian context. This paper uses a normative juridical approach with a legal interpretation method. This paper concludes that law enforcement against perpetrators of rape in the Indonesian context can employ transcendental, restorative law, and responsive law approaches. However, in an effort to find an ideal concept, the transcendental perspective of *maṣlahah mursalah* which considers benefits for the public and prevents harm is more suitable for use in Indonesia's pluralistic society. This is because, in addition to emphasizing moral, ethical, and religious values in law enforcement, the approach will prevent recurrence of cases through handing out severe punishment to perpetrators of rape and providing physical and psychological rehabilitation to victims to make it in line with restorative justice in which victims get the right to recover physically and mentally without reducing the punishment for rape perpetrators.

Keywords: Legal Protection, Rape Victims, Substantive Justice

Abstrak: Tulisan ini menganalisis dan memberikan masukan tentang perlindungan hukum bagi korban perkosaan di Indonesia dalam perspektif transendental, hukum restoratif, dan hukum responsif. Perspektif ini dibandingkan dan digabungkan dalam upaya mencari konsep yang ideal. Implikasi dari tulisan ini adalah untuk memberikan saran tentang konsep perlindungan hukum yang ideal bagi korban perkosaan dalam konteks Indonesia. Tulisan ini menggunakan pendekatan yuridis normatif den-

gan metode interpretasi hukum. Tulisan ini menyimpulkan bahwa penegakan hukum terhadap pelaku perkosaan dalam konteks Indonesia dapat menggunakan pendekatan transendental, restorative law, dan responsive law. Namun, dalam upaya menemukan konsep yang ideal, perspektif transendental masalah mursal yang mempertimbangkan manfaat bagi masyarakat dan mencegah kerugian lebih cocok digunakan dalam masyarakat Indonesia yang majemuk. Sebab, selain menekankan nilai-nilai moral, etika, dan agama dalam penegakan hukum, pendekatan tersebut akan mencegah terulangnya kasus melalui pemberian hukuman berat kepada pelaku perkosaan dan memberikan rehabilitasi fisik dan psikologis kepada korban agar sesuai dengan restoratif. Keadilan dimana korban mendapatkan hak untuk pulih secara fisik dan mental tanpa mengurangi hukuman bagi pelaku perkosaan.

Kata Kunci: Perlindungan Hukum, Korban Perkosaan, Keadilan Substantif

Introduction

One problem that is often found, constantly arises, and repeatedly occurs in Indonesia is sexual harassment and rape. Fatkhurozi, Director of the Legal Resource Center for Gender Justice and Human Rights (LRCKJHAM), said that from 1999 to 2011, cases of sexual violence, especially rape, stood at 4,845 out of 400,939 cases.¹ Meanwhile, the National Commission on Violence Against Women (Komnas Perempuan) noted that in 2015 there were 321,752 cases of violence against women, 72% of which or 2.39 were rape cases. Sexual abuse accounted for 18% or 601 cases, while sexual harassment was 5 % or 166 cases.² Interestingly, according to the data published by Bappenas, processed based on Regional Police Data, from 2010 to 2017 there were 1690 rape and 3160 sexual abuse cases in Indonesia.³ This high number indicates that women and children are increasingly vulnerable to being vic-

tims of rape, while at the same time there is no legal protection and rights fulfillment as an application to fulfill substantive justice principles in law enforcement in Indonesia. Therefore, this paper explains, analyzes, and provides suggestions for an ideal concept for legal protection for victims of rape. More precisely, this paper discusses legal protection for victims of rape from a transcendental perspective, restorative law, and responsive law, all of which are combined in an effort to seek an ideal concept.

This paper uses a normative method or a method with a normative or doctrinal juridical approach. Meanwhile, to obtain information to address these problems, the approach used is not only the doctrinal approach, but also conceptual, statutory, comparative, and sociological approaches.

Concept and Comparison of Law

Rape is an unlawful sexual act that occurs when one human (or more) forces another human to have vaginal or anal intercourse with the penis, other body parts such as hands, or with certain objects without consent, either by force or threats of violence.⁴

¹ Meita Agustin Nurdiana and Ridwan Arifin, "Tindak Pidana Pemerkosaan: Realitas Kasus Dan Penegakan Hukumnya Di Indonesia (Crime of Rape: Case Reality and Law Enforcement in Indonesia)," *Literasi Hukum* 3, no. 1 (2019): 53.

² Adinda Ayu Shabrina, Reni Windiani, and Andi Akhmad Basith Dir, "Peran United Nations High Commissioner for Refugee (UNHCR) Dalam Menangani Pengungsi Suriah Korban Sexual and Gender-Based Violence (SGBV) Di Lebanon," *Journal of International Relations* 1, no. 1 (2018): 82.

³ <https://www.bappenas.go.id/files/data/Politik.../Statistik%20Kriminal%202014> Accessed on 31 January 2020.

⁴ Arif Gosita, *Masalah Korban Kejahatan, Pemahaman Perempuan dan Kekerasan* (Jakarta: PT. Bhuwana Ilmu Populer, 2004), p. 13.

The World Health Organization defines rape as "a vaginal or anal penetration with a penis, other body parts or an object - even if superficially - by means of physical or non-physical coercion." The International Criminal Court for Rwanda in 1998 defined rape as "a physical invasion that is sexual in nature carried out on a human being in a commercial setting".⁵

The term *rape* can also be used in a figurative sense, for example to refer to common criminal offenses such as massacre, robbery, destruction, and unlawful arrests committed against a community when a city or country is at war.

Since ancient times until the end of the century, raping a girl or a woman has generally been not considered a crime, but rather the man who "owns her." Thus, the punishment for rape was often a fine, which had to be paid to the father or the husband who suffered "losses" because "his property" was "damaged". This understanding later changed in many cultural circles because of the view that, like the "owner", the woman herself should be compensated too.

In the United Kingdom's and the United States' legal systems, what is usually meant by "rape" is when a man forces a woman to have sexual intercourse with him. Until the end of the 20th century, sexual intercourse forced by a husband against his wife had not been considered "rape", because a woman (with some intent) was not considered to have the right to refuse. Sometimes it is also thought that a marriage was an implied statement for a lifelong sexual relationship.⁶

However, modern criminal law in most western countries rejects this view. Now rape is also defined as forced intercourse by a part-

ner, such as vaginal intercourse, and acts of violence such as anal intercourse which are usually prohibited by sodomy laws. In Scotland, up until now only women who can be categorized as having experienced rape.⁷ The term "rape" is sometimes taken so broadly that it includes all forms of sexual assault.

In the UK, under the Sexual Offences Act 2003, which came into force in April 2004, rape has expanded from vaginal or anal intercourse without the other's consent to penetration of the penis into one's vagina, anus or mouth without his/her consent. This change also includes the sentence, which the maximum penalty for rape is now life imprisonment.

Under the British law, although a woman forcing a man to have sexual intercourse cannot be charged with rape, if found that the woman assisted a man in committing the rape, she can also be prosecuted for the crime. A woman can also be prosecuted if it is proven that she has caused a man to have sexual intercourse without the man's will. This is a crime that carries a life sentence if it involves penetration of the mouth, anus, or vagina.

The regulation also includes a new sexual offense called "penetrating assault", which carries the same punishment as rape, and is committed when a person sexually penetrates one's anus or vagina with any parts of his body, or with a certain object, without the person's consent.⁸

In Indonesia, normatively, rape is stated in Article 285 of the Criminal Code which reads "Anyone who by force or by threats of violence forces a woman to have extramarital sex with him, is considered rape, with a maximum imprisonment of twelve years."⁹

⁵ *ibid.*

⁶ Arif Rohman, "Upaya Menekan Angka Kriminalitas Dalam Meretas Kejahatan Yang Terjadi Pada Masyarakat," *Perspektif* 21, no. 2 (2016): 126.

⁷ Marchelya Sumera, "Perbuatan Kekerasan/Pelecehan Seksual Terhadap Perempuan," *Lex et Societatis* 1, no. 2 (2013): 39.

⁸ Victoria Nagy, "Narrative Construction of Sexual Violence and Rape Online," *International Journal for Crime, Justice and Social Democracy* 6, no. 2 (2017): 99.

⁹ Article 285 of the Criminal Code

The normative understanding in this study, according to the author, is not helpful in explaining complex problems. Therefore, in addition to interpreting rape normatively, the author interprets rape as a victory symbol of the masculine represented by men against the feminine or women.

Three Perspectives

In science, theory occupies a vital position because it is a set of constructions (concepts), limitations, and propositions that present a systematic view of phenomena by taking into account relationships of variables with an aim to explain and predict phenomena.¹⁰ This section discusses and explains legal protection for victims of rape from the perspective of transcendental legal theory, restorative law, and responsive law.

1. Transcendental Perspective

Kuntowijoyo once interpreted transcendental as basing faith in Allah (Ali Imron: 110) by introducing prophetic knowledge through inviting others to goodness (*ta'murūn bi al-ma'rūf*), preventing evil (*tanhawūn 'an al-munkar*), and transcendence (*tu'minūn bi Allāh*). As for its correlation to law, legal protection for victims of crime in a transcendental perspective includes ethics, morals, and religion. Thus, to understand law there has to be more emphasis on substantive and transcendental things by basing them on social facts that cannot be separated from religious, ethical, and moral values.

In the Islamic transcendence perspective, benefit is one of the indications that must be prioritized by law enforcers. This is because the benefit itself includes preserving religion (*hifẓ al-dīn*), soul (*hifẓ al-nafs*), property (*hifẓ al-māl*), reason (*hifẓ al-'aql*), and offspring (*hifẓ al-*

nasl).¹¹ As a consequence, the protection of these five basic human rights has bound every human being throughout centuries, regardless of one's belief, class, race, ethnicity and even gender.¹² Therefore, if rape cases against women are still rampant, it is worth asking how deep the religious quality of the perpetrators is in capturing noble messages of Islam on morality.¹³

Any religions, in their transcendental philosophies, will reject all kinds of rape, especially in Islam's transcendence perspective. In Islam, rape is punishable by *ḥadd* or *ta'zīr*, if proven. Punishment for adultery is stoning (throwing with small stones) to death if a perpetrator is a husband, wife, widower, or widow.¹⁴ In the context of *ta'zīr* or learning to rape perpetrators, punishment may vary. It can be in the form of preventing or guiding the convict to repent. Thus, rapists cannot and must not be punished lightly because a light sentence does not create a sense of deterrence and can cause disturbance to the community.¹⁵ Sentences of several months, or only a year or two as we often hear and witness is not an ideal model of legal protection for women victims of rape.

¹⁰ Khudzaifah Dimyati, *Teorisasi Hukum, Studi Tentang Perkembangan Pemikiran Hukum di Indonesia 1945-1990* (Yogyakarta: Genta Publishing), p. 41

¹¹ On these five aspects, see: Edi Kurniawan et al, "Early Marriage, Human Rights, and the Living Fiqh: A Maqasid Al-Shari'a Review," *Al-Risalah* 20, no. 1 (2020); Edi Kurniawan, "Distorsi Terhadap Maqasid Al-Syari'ah Al-Syatibi Di Indonesia," *Al-Risalah* 18, no. 2 (2018).

¹² Hasyim Sy'afiq (ed.), *Menakar Harga Perempuan* (Bandung: Mizan, 1999), p. 91.

¹³ Abdul Wahid at al, *Islam dan Kontruksi Seksualitas* (Yogyakarta: Pustaka Pelajar Offset, 2002), p. 29.

¹⁴ Firman Wahyudi, "Mengontrol Moral Hazard Nasabah Melalui Instrumen Ta'zir Dan Ta'widh," *Al-Banjari: Jurnal Ilmiah Ilmu-Ilmu Keislaman* 16, no. 2 (2017): 186-202.

¹⁵ Nur Rochaety, "Menegakkan HAM Melalui Perlindungan Hukum Bagi Perempuan Korban Kekerasan Di Indonesia," *PALASTREN Jurnal Studi Gender* 7, no. 1 (2016): 1-24.

2. Restorative Law Perspective

The term restorative justice is a foreign term known in Indonesia since the 1960s. Restorative justice is an approach in solving criminal problems involving victims, perpetrators, and other elements in society in order to create justice.¹⁶

In relation to rape, according to Markom and Dolan, restorative justice is needed because rape is very dangerous for the victim, both psychologically and medically.¹⁷ Psychologically, the victim feels no longer valuable due to the loss of her virginity (chastity) in the eyes of the community, her husband, her future husband (*fiancée*) or other parties related to her. She will feel anxious, lose self-confidence, no longer be cheerful, be introverted or stay away from public, grow hatred (antipathy) against the opposite sex and excessive suspicion of other people who try to be kind to her.¹⁸ Meanwhile, physically, rape can cause injury to the victim, both to body organs in general and the genitals.¹⁹ Thus, restorative justice is very much needed by women victims of rape owing to enormous negative impacts/losses/suffering experienced by the victim.²⁰

In addition, legal protection for victims of rape in the perspective of restorative justice is aimed at providing justice.²¹ Laws and regulations regarding legal protection for rape victims are also generally in place in Indonesia, such as Law No. 8 of 1981 concerning Criminal Procedural Law (KUHP) and Law Number

13 of 2006 concerning Protection of Witnesses and Victims jo. Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims.

However, if sexual assault or rape only relies on positive law for a solution, a rape victim does not receive benefits from the application of the law. Sociologically and psychologically the victim is the one who is harmed the most in her life, especially in restoring her rights that have been lost.²² For this reason, it takes some aspects of benefits in order to restore the victim's lost rights, including:

- A. Prevention Aspect: deals with how families, communities and countries synergize to prevent sexual assault or rape problems.
- B. Litigation Aspect: judicial relief taken by the P2TP2A against victims in court proceedings.
- C. Therapy Aspect: aims to reduce or even eliminate suffering.
- D. Rehabilitation Aspect: an effort to obtain maximum function and adjustment and to help victims get prepared physically, mentally and socially in their future lives. It is not only victims who should be rehabilitated, but also perpetrators so that they do not commit other crimes, although in practice this (rehabilitation of perpetrators) has never been carried out due to various problems and existing regulations.

Based on the above points, restoring/recovering damage resulting from criminal offenses for victims, perpetrators and the community is a must in the context of restorative justice. This is based on an idea that restorative justice is an approach to solving crime-related problems between the parties involved, namely victims, perpetrators, and

¹⁶ United Nations, *Handbook on Restorative Justice Programmes* (New York: United Nations Publication, 2006), p. 6.

¹⁷ Abdul Wahid and Muhammad Irfan, *Perlindungan Terhadap Korban Kekerasan Seksual: Advokasi Atas Hak Asasi Perempuan* (Bandung: Refika Aditama, 2001), p. 82.

¹⁸ *Ibid.*, p. 83-84

¹⁹ *Ibid.*, p. 83-84

²⁰ Arief Gosita, *Masalah Korban Kejahatan* (Jakarta: Akademika Pressindo, 1983), p. 147.

²¹ Apang Herlina, "Restorative Justice," *Indonesian Journal of Criminology* 3, no. 3 (2004): 163-64.

²² Nur Rochaeti, "Keadilan Restoratif Dalam Sistem Peradilan Pidana Anak di Indonesia," Makalah pada Pelatihan Viktimologi Indonesia, 18-20 September 2016, Purwokerto, p. 221

the community, in an active relationship with law enforcement officials.²³

Therefore, in solving criminal offenses, restorative justice employs the following assumptions;²⁴

1. The crime sources are social conditions and relations in society;
2. Crime prevention depends on society's responsibility (including local and central governments in relation to social policy in general) to address social issues that may pave the way for crime to occur;
3. The interests of parties in the offense settlement cannot be accommodated without facility availability for personal involvement;
4. The justice measure must be flexible to respond to crucial facts, personal needs, and settlement in each case;
5. Cooperation among law enforcement officers as well as between officers and society is vital to optimize effectiveness and efficiency in resolving cases;
6. Justice is achieved by the principle of balanced interests between parties.

Thus, it can be said that restorative justice is an effort to protect human rights, which philosophically the effort to repair/heal is carried out without looking back for a justification basis. The restoration/repair/healing is carried out to build a better society in the future.²⁵

Restorative justice in principle is an approach to systematically respond to criminal offenses, whose main focus is to repair the damage or recover the suffering caused by a crime without neglecting balanced attention

between the interests of victims, perpetrators and the community.²⁶

The principles of restorative justice also demonstrate that sanctions/responsibility of perpetrators oriented on recovery/rehabilitation of victims for their suffering/losses that result from rape are more prioritized in restorative justice, as well as justice principles practiced in society²⁷

3. *Responsive Law Perspective*

A rule of law is considered responsive if it acts as a means of response to social provisions and public aspirations. In accordance with its open nature, this type of law prioritizes accommodations for accepting social changes in order to achieve justice and public emancipation. This is because responsive law is not a creator of miracles in the world of justice, and its achievement depends on the intent and resources in the political community. Its distinctive contribution is to facilitate public aspirations and infuse a spirit of self-correction into the governance process.²⁸ Responsive Law reinforces how openness and integrity can support each other even if there is conflict between the two. Responsive institutions regard social pressures as a source of knowledge and opportunities for self-correction.

In an Indonesian context, one of Indonesia's weaknesses which adhere to civil law based on a legal system on the law is that judges are law implementers, not lawmakers, as practiced by judges in England who adheres to common law, so Indonesian judges can make legal discoveries (*rechtsvinding*) through their decisions. They must not violate the content and

²³ Gordon Bazemore and Mara Schiff, *Juvenile Justice Reform and Restorative Justice: Building Theory and Policy Form Practice* (Oregon: Willan Publishing, 2010), p. 16-17.

²⁴ Widiartana, "Ide keadilan restoratif pada kebijakan penanggulangan kekerasan dalam rumah tangga dengan hukum pidana," (Ph.D Theses Universitas Diponegoro, 2011), p. 14

²⁵ Burt Galaway and Joe Hudson, *Criminal Justice, Restitution and Reconciliation* (New York: Criminal Justice Press, 2011).

²⁶ Afhonul Afif, Pemaafan, Rekonsiliasi, & Restorative Justice (Yogyakarta: Pustaka Pelajar, 2015), p. 77.

²⁷ Erfaniah Zuhriah and Himma Aliyah, "Pemenuhan Hak-Hak Korban Tindak Kejahatan Perkosaan Dalam Mewujudkan Keadilan Restoratif (Studi Kasus Di Pusat Pelayanan Terpadu Pemberdayaan Perempuan Dan Anak (P2TP2A) Kabupaten Malang)," *EGALITA* 12, no. 2 (2017): 36.

²⁸ Philippe Nonet and Philip Selznick, *Hukum Responsif* (Bandung: Nusa Media, 2010).

philosophy of the existing laws and regulations. In fact, rape can only be proven with evidence and proof that the crime has really occurred. To prove this is oftentimes a difficult job.

The difficulty in this case is the absence of witnesses where a perpetrator is not willing to admit that he is the one who did the rape and he always argues that it was done on a consensual basis, thus it is difficult for the judge to prove and settle the case.

Proving the elements rape is regulated and punishable as stated in Article 285 of the Criminal Code, namely: the element of anyone using violence or threats of violence forces a woman who is not his wife to have sex with him. The element of violence or threats of violence is an act carried out by the body and energy that can make a person faint or helpless, injured or depressed which makes the person experience deep fear. To prove the existence or absence of rape is by taking into account evidence regulated in Article 184 of the Criminal Code, namely witness testimony, expert testimony, documentary evidence, evidence of instructions and testimony of the defendant.²⁹

Legal protection for rape victims must receive compensation rights in serious human rights violations, and the compensation is provided by the state due to perpetrators' inability. It is possible as an effort to provide services to crime victims for welfare and justice. The granting of rights to restitution or compensation is a perpetrator's responsibility.³⁰

The decision on compensation and restitution is made by the court. Further provisions

regarding compensation and restitution are instructed in government regulations. By law, victims receive legal and rehabilitation assistance in the forms of medication, mental recovery (psychiatrists, psychologists, volunteers), and they must be informed about their health conditions.³¹

Hence, rape cannot be considered a crime that is private in nature (individual victims). Instead, it must be regarded as a public issue because this crime is undoubtedly immoral and heinous which not only violates human rights, but also causes physical, social, and psychological problems. Rape and its handling have so far been an indication and evidence of the weak human rights protection, from an act of sexual assault classified as the most serious violence.³²

Rape is not a new crime, but it is a conventional one that regularly occurs in society, and it is even increasing sharply every year. It is as if perpetrators of rape were not deterrent or afraid of all the sanctions that they will receive as stated in Article 285 of the Criminal Code: "Anyone using violence or threats of violence forces a woman to have sex with him outside marriage, is considered to commit rape punishable by a maximum of twelve years' imprisonment].³³

Based on the author's research, most judges do not dare or rarely decide a case beyond what has been indicted by the Public Prosecutor, so the sense of justice in society has not yet been fully fulfilled. In fact, in settling a case, the judge must consider long-term consequences that the victim endures, both materially and psychologically. In addition, the judge is also responsible for bringing justice to the

²⁹ Kuswardani Kuswardani, "Bentuk-Bentuk Kekerasan Domestik Dan Permasalahannya (Studi Perbandingan Hukum Indonesia Dan Malaysia)," *Jurnal Hukum & Pembangunan* 47, no. 4 (2017): 436.

³⁰ Adi Herisasono, Made Warka, and Otto Yudianto, "The Concept of Psychological Impact Compensation for Rape Victims," *International Journal of Multicultural and Multireligious Understanding* 7, no. 3 (2020): 271.

³¹ Nur Aina Abdullah and SS Shah Haneef, "The Statutory Rape Law in Malaysia: An Analysis from Shariah Perspective," *International Journal of Business, Economics and Law* 14, no. 5 (2017): 9.

³² Devi Arisandi and Safitri Safitri, "Sikap Terhadap Aborsi Pada Mahasiswa Universitas Esa Unggul," *Jurnal Psikologi Esa Unggul* 10, no. 1 (2012): 45.

³³ Article 285 of the Criminal Code.

people searching for the truth in order to establish social integration. The judge also sees as a complete human being with various affiliations to non-legal variables in the form of personal social power.

Seeking an Ideal Concept

Law enforcement is essentially not easy, not only owing to the complexity of the legal system itself, but also the relationship complexity between the legal system and society's social, political, economic and cultural systems. Renewal of legal substances is renewal of laws and regulations no longer relevant to society's progress. Second is renewal of the legal structure, that is the need to perfect various aspects of legal institutions. Third is renewal of the legal culture which includes reforming both law enforcement officials' attitude and society. Through legal reform, law enforcement is a strategic issue and at the same time determines roles of the legal function in establishing legal certainty to achieve justice.

However, ever since the modern law was in place, the court has no longer been a place to seek justice. The judiciary as law enforcement is nothing more than a mouthpiece of the law, playing around rules and procedures. The judiciary, which was once a place to seek justice, has turned into a place to apply laws and procedures. Law enforcement is strongly influenced by organizations that have vested interests.

The Law on Judicial Power states that judges are obliged to explore the values practiced in society. Law enforcement that is merely oriented to the law, the justice realized is only formal justice based on the law (procedural justice).

To enforce laws that embody the substantive justice value, judges must use the responsive legal approach with restorative justice supported by the transcendental paradigm of *maṣṭalaḥ mursala*, an approach no longer re-

stricted by legal formalism provisions but has advanced philosophically, namely preventing harm and considering benefits in making decisions.

The transcendental paradigm of *maṣṭalaḥ mursala* is to prevent the recurrence of cases by handing out severe punishment to perpetrators of rape and bringing about *maṣṭalaḥ* to the public by ensuring that this crime will be dealt firmly so that the public will not uphold justice with their hands. *Maṣṭalaḥ* is also carried out by providing physical and psychological rehabilitation for victims, and this approach is in line with restorative justice where victims get the right to recover physically and mentally without reducing punishment received by rape perpetrators.

This approach is suitable for law enforcement in plural Indonesia in which its citizens embrace different religions, cultures, ethnicity and so on. A pluralistic society requires different handling of cases compared to a homogeneous society, so law enforcement must take into account plurality. This is an approach that uses moral, ethical and religious values in law enforcement.

Rape from social justice's point of view will certainly be different from mere formal law studies. This means that in providing substantial justice judges need to always be responsive, have the courage to make decisions that are not the same as normative provisions, use moral, ethical and religious values in law enforcement to bring benefits and prevent evil by providing restorative justice that does not only punish rape perpetrators, but also provide physical and psychological recovery for the victims.

The decision regarding compensation and restitution is made by the court. Further provisions on the compensation and restitution are regulated by government regulations. Victims also receive legal and rehabilitation assistance in the forms of medication, mental recovery (psychiatrists, psychologists, volunteers), and

victims must be informed about their health conditions.

Conclusion

From the above discussion, it can be concluded that legal protection for victims of rape can employ three perspectives, namely the transcendental perspective, restorative law, and responsive law. However, in an effort to seek an ideal concept in the Indonesian context, the transcendental perspective of *maṣlaḥah mursalah*, law enforcement that adheres to philosophical values by preventing harm and considering benefits in making decisions, is more suitable to apply in Indonesia whose society is diverse in religion, culture, ethnicity and so on. This is because a pluralistic society requires different handling from a homogeneous society, so law enforcement must also pay attention to its plurality by prioritizing moral, ethical, and religious values in law enforcement. In addition, the transcendental perspective of *maṣlaḥah mursalah* will prevent recurrence of cases by handing out severe punishment to perpetrators of rape and bringing about *maṣlaḥa* to the public by ensuring that this crime will be dealt firmly. *Maṣlaḥa* is also carried out by providing physical and psychological rehabilitation for victims, and this approach is in line with restorative justice where victims get the right to recover physically and mentally without reducing punishment received by rape perpetrators.

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