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# THE URGENCY OF FORMULATING LEGAL REMEDIES BY VICTIMS: A COMPARATIVE STUDY OF INDONESIA AND CHINA

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**Abstract**

Criminal legal remedies are regulated in Chapter XII of the Criminal Procedure Code, namely ordinary legal remedies and extraordinary legal remedies. The interests of victims of crime are represented by the Public Prosecutor, but unfortunately if the Public Prosecutor does not file a legal remedy against the verdict, then the victim cannot file a legal remedy and must accept the verdict. The purpose of this paper is to actualize the participation of victims in criminal justice. The method of this study was normative juridical approach with descriptive analytical specification. The stages of the study were literature research and comparison of legal systems with other countries. This research shows that the participation of victims in judicial practices has become a public concern in the international realm so that it is necessary to balance the roles of victims and defendants in the Indonesian legal system, especially in filing criminal law efforts. Therefore, there is a need for material testing to the Constitutional Court related to Article 50 to Article 68 of the Criminal Procedure Code.

**Keywords:** ***comparative legal system, equality before the law, legal remedies, victims.***

## INTRODUCTION

This article discusses the importance of victim participation in the criminal justice system. This discussion is needed to explain the monodualistic balance between the "public interest" and the "individual interest" in order to establish *equality before the law*. Furthermore, the discussion on victim participation is also based on the shift of the Indonesian justice system from retributive justice to restorative justice, which empowers victims, perpetrators, families and communities to repair an illegal act to improve social life.

The state is committed to providing fair treatment and equal standing for its citizens under the law. This commitment is stated in Article 27 paragraph (1) of the 1945 Constitution. One of the state's commitments in providing equal treatment before the law is the existence of Law Number 8 Year 1981 on Criminal Procedure. The existence of criminal procedure law aims to protect the interests of society, the state, and human rights in order to prevent crimes. Therefore, criminal procedure law must provide adequate protection not only to victims, but also to criminal offenders.

The definition of victim is stipulated in Article 1 point 2 of Law No. 13/2006 on Witness and Victim Protection, namely a person who suffers physical, mental, and/or economic loss caused by a criminal offense. Based on this definition, the victim is the party who suffers the most as a result of a criminal act, but the legislators do not provide victims with the same protection as offenders (offender oriented). At the criminal justice stage, the victim is a witness who can provide testimony to shed light on a criminal act. However, currently there are very few efforts that can be submitted by victims in the process of handling criminal cases.

Victims cannot file legal remedies. In this case, the position of the victim in Law Number 8 of 1981 concerning Criminal Procedure does not seem to be optimal compared to the position of the perpetrator. The interests of the crime victim are represented by the Public Prosecutor, but unfortunately if the Public Prosecutor does not file legal remedies against the judge's decision, then the crime victim cannot file other legal remedies and must accept the decision.

The absence of criminal remedies that can be filed by the victim in Law Number 8 of 1981 concerning Criminal Procedure Law has weakened the role of the victim. The unequal role between the victim and the defendant is certainly not in line with Article 27 paragraph (1) of the 1945 Constitution. This situation raises a classic problem, that the criminal justice system as the basis for resolving criminal cases does not recognize the existence of victims

as seekers of justice. A crime victim will suffer again as a result of the legal system itself, because victims cannot be actively involved as in civil law, they cannot directly submit criminal cases to the court themselves but must go through designated agencies. In this case, the interests of the victim are still interpreted as the interests of the community, making it very difficult for victims to get a remedy for the crime they experienced. The victim must be in a central position so that the focus of the criminal justice process is to restore the impact of criminal acts not only on the wider community but also on victims.

Currently, the criminal justice system in Indonesia has shifted from retributive justice to restorative justice. Victim participation in the international sphere has long been a matter of public consideration among criminal justice practitioners and human rights activists. One example of countries that have accommodated restorative justice since long ago and have provided legal efforts by victims are China and France. In addition, the UN provides direction to the Council of Europe and the EU requires member countries to reverse policies that ignore the sensitivity and interests of victims. Currently there are several countries that have provided legal remedies for victims but the Indonesian criminal system still does not accommodate this.

The analysis in this article uses *a comparative* approach, namely normative research used to compare laws of one country with laws from other countries with the same case. In this case, it is comparing criminal procedural law in Indonesia with China, where currently China has accommodated legal remedies filed by victims while Indonesia has not. Based on this, there is a need for legal reform in Indonesia.

In discussing efforts to fill the void for victim participation in applying for legal remedies is to recognize the concept of *restorative justice*, namely the recovery of victims who suffer from crimes which involve the victim, the victim's family, the defendant and the defendant's family. Therefore, the justice that will be created is no longer *retributive justice* but *restorative justice*. Furthermore, the author will argue about the lack of the victim's role and the application of the principle of *restorative justice* because, in Indonesia, victims are still unable to file legal remedies. Unlike the case with China, thus it is necessary to fill the legal vacuum by including the Draft of Criminal Procedure Code (RKUHAP) in the national legislation, *judicial review,* and the formation of supreme court regulations. Based on this description, it is intended to compile an article on **"The Urgency of Formulating Legal Remedies by Victims: A Comparative Study of Indonesia and China"**

## LITERATURE REVIEW

Criminal legal remedies are regulated in Chapter XII of the Criminal Procedure Code in Articles 50 to 68 of Law Number 8 of 1981 concerning Criminal Procedure Law, namely ordinary legal remedies and extraordinary legal remedies. Legal remedy is the right of the defendant or public prosecutor not to accept a court decision in the form of resistance or appeal or cassation or the right of the convicted person to submit a request for judicial review in the terms and according to the procedures regulated in this law. Legal remedies consist of ordinary legal remedies and extraordinary legal remedies, which are:

1. Ordinary legal remedies: Efforts submitted to court decisions that do not yet have permanent legal force. Ordinary legal remedies consist of 2 (two) types, which are:
   - Appeal: An attempt by the defendant and the prosecutor to have the first instance decision reviewed on appeal.
   - Cassation: An attempt made by the defendant and the public prosecutor to review the court's decision at the final court level which is filed with the district court clerk. There are 3 (three) reasons for filing a cassation petition as stipulated in Article 253 paragraph (1) of KUHAP, namely: Whether it is true that a rule of law has not been applied or applied improperly, whether it is true that the trial method has not been carried out in accordance with the provisions of the law, whether it is true that the court has exceeded the limits of its authority.
2. Extraordinary legal remedy: Efforts submitted to court decisions that already have permanent legal force. Extraordinary legal remedies do not suspend the execution of a decision, except for court decisions that impose the death penalty. Extraordinary legal remedies are divided into 2 (two) types, namely:
   a. Cassation in the interest of the law: An appeal against a decision that has obtained permanent legal force by the attorney general. Filing a cassation in the interest of the law must take into account the interests of the convict and must not harm the convict.
   b. Judicial Review: An action filed by a convicted person or his/her heirs against a judgment that has obtained permanent legal force on the basis of:
      - if there are new circumstances that give rise to a strong suspicion, that if the circumstances had been known while the trial was still ongoing, the result would have been a verdict of acquittal or a verdict

of release from all charges or the prosecution's charges are inadmissible or a lighter punishment is applied to the case;
- if in various decisions there is a statement that something has been proven, but the matters or circumstances as the basis and reasons for the decision that is stated to have been proven, turn out to have been contradicted by one another;
- if the verdict clearly shows a judicial error or a real mistake.

## METHOD

The method used in this study is the normative legal method supported by empirical data, where empirical data is used to assist research results from normative studies so that the results obtained are in accordance with the legal and data available in the field.

## RESULTS AND DISCUSSION

### THE ROLE OF VICTIMS IN THE INDONESIAN JUSTICE SYSTEM

Masyarakat In Indonesia's criminal justice system, we must always guarantee access to justice for all people equally regardless of their social status. This principle is known as the principle of equality before the law which is one of the requirements of "due process of law". The application of this principle aims to create harmony, balance and harmony between individual interests and public interests, in this case the interests of society.

The principle of *Equality before the law* certainly does not only apply to victims but also to suspects, defendants, and convicts. It is also recognized by Law No. 8 of 1981 on Criminal Procedure which gives rights to each victim, suspect, defendant, and convict. For example, Articles 50-68 of Law Number 8 of 1981 on Criminal Procedure accommodate the rights and roles of suspects and defendants, which are basically suspects and defendants giving testimony freely, providing defense accompanied by legal counsel, and applying for legal remedies. Furthermore, one of the rights and roles of convicts regulated in Article 263 of Law Number 8 of 1981 on Criminal Procedure is that convicts can submit extraordinary legal remedies in the form of a review of a decision that has permanent legal force. As for the role and rights of victims in the criminal justice system as regulated in Article 98 of Law Number 8 of 1981 on Criminal Procedure, namely victims can claim compensation for losses suffered as a result of a criminal offense. In addition, victims can also provide their testimony as witnesses because, based on Article 1 point 27 of Law Number 8 of 1981 on Criminal Procedure, witness testimony is the evidence in a criminal case in the form of a statement from a witness regarding a criminal event that he heard, saw and experienced personally by stating their reasons and knowledge.

During the trial, victims are not very active because their interests are represented by the public prosecutor. The Public Prosecutor is in charge of prosecuting criminal offenses that affect victims. However, if the Public Prosecutor carries out the prosecution with a very small penalty or the panel of judges decides the criminal offense with a small penalty the victim cannot take legal action. It raises the possibility that the victim may suffer from re-victimization. According to Barda Nawawi Arief, in the current positive criminal law, victim protection is more of an "abstract protection" or "indirect protection".

However, there have been several efforts to place victims at the center of the criminal justice system. Indonesia, which used to prioritize a *retributive justice* system that aims to punish the perpetrator, is slowly changing to *restorative justice*. Indeed, criminal law enforcement is the last resort in law enforcement (*ultimum remedium* principle). In accordance with the spirit of Pancasila Indonesia, conflict resolution must be prioritized. It is in accordance with the Fourth Pillar of Pancasila, namely "Democracy Led by Wisdom in Deliberation/Representation". The concept of *Restorative Justice* aims to create a balance between the perpetrators and victims of criminal acts. In addition, it is also able to realize the handling of criminal cases that are flexible, not rigid and not formalistic and can be resolved quickly in order to save time, money, and energy. *Restorative justice* aims to empower victims, perpetrators, families, and communities to repair an illegal act by using awareness and conviction as a basis for improving social life, and explains that the concept of *Restorative justice* is basically simple. In an effort to restore victims when the choice of a more *retributive* and *legalistic* approach is difficult to treat the victim's injuries, restorative justice attempts to stress the responsibility of the perpetrator for his behavior that causes harm to others.

*Restorative Justice* is implemented by Law No. 11/2012 on the Juvenile Criminal Justice System which provides for diversion. This process is basically carried out through discretion (policy) and diversion, namely the transfer of the criminal justice process outside the formal process to be resolved by deliberation. In addition, there is a Supreme Court Regulation No. 1 of 2024 concerning *Restorative Justice*. In this regulation, Judges apply the guidelines for trying criminal cases based on Restorative Justice if one of the following criminal offenses is fulfilled:

a. the criminal offense committed is a minor criminal offense or the victim's loss is worth more than Rp2,500,000.00 (two million five hundred thousand rupiah) or more than the local provincial minimum wage.;
b. criminal offense is a complaint offense;
c. criminal offense with a maximum penalty of 5 (five) years imprisonment in one of the charges, including *jinayat* criminal offense according to *qanun*;
d. criminal offenses with juvenile offenders whose diversion is unsuccessful; or
e. traffic offenses that constitute criminal offenses.

## COMPARISON OF LEGAL REMEDIES FILED BY VICTIMS IN INDONESIA AND CHINA

Despite the existence of restorative justice at the level of examination of cases at the first level, the victim's right to remedy should remain at all stages of the trial, one of which is legal remedies which must also pay attention to the rights and needs of victims.

Legal remedy is the right of the defendant or public prosecutor not to accept the court's decision in the form of resistance or appeal or cassation or the right of the convicted person to submit a request for judicial review in the case and according to the procedures regulated in this law. Legal remedies in criminal cases are regulated in CHAPTER XII of the Criminal Procedure Code which consists of:

1. Ordinary legal remedies: A remedy filed against a court decision that has not yet become final. Ordinary legal remedies consist of 2 (two) types, namely:
   a. Appeal: An appeal filed by the defendant and the public prosecutor to have the decision of the first instance reviewed at the appellate level. Appeals are regulated in Article 233 to Article 243 of the Criminal Procedure Code. Based on Article 233 paragraph (2) of the Criminal Procedure Code, an appeal can only be filed within 7 (seven) days after the verdict is imposed or after the verdict is notified to the absent defendant to the clerk of the District Court. If the grace period has passed, the defendant and prosecutor are deemed to have accepted the verdict. Furthermore, the clerk sends a copy of the first level decision, case file, and evidence to the court of appeal no later than 14 days. The appeal is a *judext factie* which is a re-examination for all aspects. It is the right of the defendant to file an appeal. Upon an appeal, the High Court may issue a decision that affirms, modifies, and annuls the decision of the District Court.
   b. Cassation: A remedy by the defendant and the public prosecutor to review the judgment of the court at the final instance, which is filed with the registrar of the district court. Cassation is regulated in Articles 244-258 of the Criminal Procedure Code. An application for cassation shall be filed within 14 days after the court decision for which cassation is sought has been notified to the defendant and if no application for cassation is filed within that period, the defendant shall be deemed to have accepted the verdict. There are 3 (three) reasons for filing an application for cassation as stipulated in Article 253 paragraph (1) of the Criminal Procedure Code, namely:
      1. Whether it is true that a rule of law is not applied or applied improperly
      2. Whether it is true that the trial was not conducted in accordance with the provisions of the law
      3. Whether it is true that the court has exceeded its authority

      Unlike the appeal legal remedy, the cassation memory is mandatory to be submitted and if it is not submitted, the applicant's right to file a cassation will be canceled. This is because the examination of cases at the cassation court is judex jurist. The cassation examination is not a re-examination of the case as a whole but the Supreme Court will only examine limited to 3 (three) reasons for the cassation application.
2. Extraordinary legal remedy: Remedies filed against court decisions that already have permanent legal force. Extraordinary legal remedies do not suspend the execution of a decision, except for court decisions that impose the death penalty. Extraordinary legal remedies are divided into 2 (two) types, namely:
   c. Cassation in the interest of the law: An appeal against a verdict that has obtained permanent legal force by the attorney general. The filing of a cassation in the interest of the law must take into account the interests of the convicts and must not harm the convicts.
   d. Judicial Review: An action filed by a convict or his/her heirs against a judgment that has obtained permanent legal force on the basis of:
      - if there are new circumstances that give rise to a strong suspicion, that if the circumstances had been known while the trial was still ongoing, the result would have been a verdict of acquittal or a verdict of release from all charges or the prosecution's charges are inadmissible or a lighter punishment is applied to the case.;

- if in various decisions there is a statement that something has been proven, but the matters or circumstances as the basis and reasons for the decision that is stated to have been proven, turn out to have been contradicted by one another.;
- if the verdict clearly shows a judicial error or a real mistake.

Based on the types of legal remedies above, both ordinary and extraordinary legal remedies cannot be filed by victims. The role of the victim is very important in all aspects of the criminal justice system. The loss of the victim's role in the criminal justice system is based on four weaknesses that it currently has. They are:

a. Crime is defined more as an attack on government authority than as an attack on the victim or the community;
b. Victims are only part of the evidentiary system and not an interested party in the process.;
c. The process is only focused on punishing the perpetrators and preventing crime without looking at efforts to repair the harm caused and restore balance in society;
d. In its resolution, the focus of attention is only on the process of proving the guilt of the perpetrator. Therefore, communication only takes place in one direction, namely between the judge and the perpetrator, while the concept of the main dialogue, namely between the perpetrator and the victim, is completely absent.

According to Mudzakkir, there are 4 (four) general reasons for rejecting the inclusion of victims in the criminal justice system, namely:

a. public there is no right of crime victims as individuals in criminal procedure law as public law.;
b. The victim cannot be a party to the criminal justice system, (in addition to the defendant on the one hand, the police and prosecutors on the other), and the inclusion of the victim will damage the examination of the criminal case because the victim will only care about himself or herself;
c. justice in criminal law is aimed at violators of the criminal law not at victims; and
d. It is reinforced by the principle of legality which has strengthened the view that the state monopolizes the reaction to crime and has the authority to impose punishment.

One example of a decision that rejected a legal remedy filed by a victim is the existence of a judicial review filed by a "crime victim" (victim witness Prof. Dr. Ida Bagus Gede Manuaba, SP.OG) against the Indonesian Supreme Court Decision Number: 1991 K/Pid/2001 dated July 02, 2002. However, the Supreme Court of the Republic of Indonesia through Decision Number: 11 PK/PID/2003 dated August 6, 2003, stated that the request for reconsideration could not be accepted on the basis of the following considerations:

1. That the objections to judicial review filed by the applicant for judicial review Prof. Dr. Ida Bagus Gede Manuaba, Sp.OG cannot be justified, because the applicant for judicial review is a victim who is not authorized to file a request for judicial review, by Article 263 paragraph (1) of the Criminal Procedure Code, where the request for judicial review can only be submitted by the convicted person or his representative.;
2. That the applicant for judicial review in this case is the reporting witness who is not authorized to apply for judicial review, not the convicted person or his heirs, so the other reasons for judicial review do not need to be considered again;
3. That based on the aforementioned considerations, the request for reconsideration from the applicant for judicial review is not sufficiently grounded, therefore it must be declared inadmissible.

The absence of an opportunity for victims to file a judicial review is certainly not in line with Article 27 paragraph (1) of the 1945 Constitution, the principle of *equality before the* law, and the concept of *restorative* justice because the resolution of criminal acts focuses solely on retaliation against the defendant/convict and does not focus on victim recovery. The protection of victims of crime in making legal efforts is very important. It is based on empirical studies, that victims react to court decisions that are considered not in accordance with a sense of justice while victims cannot do anything to test the decision.

Victim participation in the international arena has long been a matter of public consideration among criminal justice practitioners and human rights activists. Victims must be given respect for their dignity as implemented in the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. The importance of protecting victims of crime in the provisions of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power is based on the awareness that millions of people around the world suffer losses as a result of crime and abuse of power and that the rights of these victims have not been adequately recognized.

Currently, there are several countries that accommodate legal remedies that can be filed by victims. One of them is China. Judicial Review in China is also known as *Trial Supervision* which is regulated in China *'s* procedural law, namely the *criminal procedure law of the people's republic of China*.

In China, the first instance judgment may be appealed if the parties are still not satisfied. Only supervision or judicial review can be filed against an appealed verdict, and the adjudicating court is a court that is two levels above the court of first instance. The request for review is not always submitted to the Supreme People's Court.

The procedure for judicial review is set out in Article 203 and Article 204 of this law. Parties who can apply for judicial review in China based on article 203 criminal procedure law of the people republic of China:

1. A party: as per Article 82 of the criminal procedure law of the people republic of China means the victim, the private prosecutor,
2. Legal representative: a legal representative means a parent, guardian
3. Close relatives

**Article 204:** A petition filed by the convict or his/her legal counsel or his/her close relatives, if certain circumstances are met, the decision of the District Court may be appealed on the grounds of:

(1) The existence of new evidence showing that the determination of facts in the original judgment or order was incorrect
(2) Evidence that the factual determinations that led to the verdict were unrelated or insufficient or that the parts of the evidence necessary to support the facts of the case were in contradiction with each other.
(3) The application of the Law to make the original judgment or order is incorrect
(4) Judges in deciding cases commit embezzlement or bribery, malpractice for personal gain or bending the law in making decisions.

Based on the two articles above, it can be concluded that there are similarities regarding the reasons for filing a judicial review. In addition to differences in the parties who can file for Judicial Review/Trial Supervision, there are also differences in the handling of the case In Indonesia: there is no limitation to give a decision, while in China: 3 (three) months after the case is heard and no later than 6 (six) months. In the People's Court below, the decision must be made at least 1 (one) month after the case is received.

Another effort made by China in providing protection to victims is Article 31 of the Criminal Law of the PRC (People's Republic of China) in 1979, which states, “If the victim suffers economic loss as a result of a criminal offense, in addition to the criminal sanction imposed by law, in accordance with the circumstances, the convict shall be sentenced to pay compensation for economic loss.” In line with this provision, the Criminal Procedure Law of the PRC in 1979 established a system of incidental civil actions. Therefore, victims of crime are entitled to access prompt judicial redress for the losses and damages they have suffered.

China further granted more rights to victims in 1996 when legislators amended the law. Under China's Criminal Procedure Law (1996) and Criminal Law (1997), the legal status and rights of crime victims in the criminal justice process are as follows:

- The victim becomes a party, and is entitled to all kinds of rights as a party (Article 82 of China's Criminal Procedure Law (1996)).
- Victims have the right to retain agent ad litem (Article 40,41 of China’s Criminal Procedure Law (1996)).
- Victims can initiate private prosecution (Article 170 of China's Criminal Procedure Law (1996)).
- Civil compensation to victims before fines or confiscation of property (Article 36 Criminal law (1997)).
- The victim's lawful property must be returned to them immediately (Article 64 Criminal law (1997)).
- No limitation period for prosecution is applied in cases where the victim files charges within the prosecution period (Article 88 Criminal law (1997)).

Indonesia and China actually use the same legal system, namely civil law. However, there are different characteristics in its implementation. It is because China is a country with a communist system, so it has different characteristics such as lack of respect for individual intellectual property, prohibiting citizens from having political rights, and prohibiting diversity of political views.

## PROVIDING OPPORTUNITIES FOR ACTIVE PARTICIPATION OF VICTIMS IN THE INDONESIAN JUSTICE SYSTEM

There is a need for a legal instrument that allows victims to actively participate in the Indonesian justice system. Currently, legislative members of Commission III of the House of Representatives are compiling a list of national legislation for 2025-2029, in which the chairman of Commission III said that the revision of the Criminal Procedure Code has been signed as one of the Priority National Legislation lists for the next session. Until now, there are still no accommodations for legal remedies that can be submitted by victims in actively participating in filing legal remedies in Indonesia, so a revision of the Criminal Procedure Code is needed. Indonesia has yet to amend

Law No. 8 of 1981 on Criminal *Procedure*, whereas China has amended the *criminal procedure law of the People's Republic of* China several times. The criminal procedure code in China has been revised twice, namely in 1996 and in 2013. The revision of the Code of Criminal Procedure is expected to ensure the protection of human rights for all parties involved in the judicial process. The reform of the Criminal Procedure Code needs to ensure that every individual receives fair and humane treatment.

In addition to including provisions for filing legal remedies in the revised Code of Criminal Procedure, other ways to review legislation have been accommodated. One of them is by filing a judicial review of Law No. 8 of 1981 on Criminal Procedure. Judicial Review in this field is included in the judicial review of the Constitution, which is a review and or test by a body of state power to be able to cancel the decision of the law-making body (legislation) and or the Government body (executive). The basis for the Constitutional Court to conduct constitutionality testing is found in Article 24C of the 1945 Constitution, namely the Constitutional Court has the authority to hear at the first and final level whose decisions are final to test laws against the Constitution. It is also regulated in Article 10 of Law of the Republic of Indonesia Number 8 of 2011 Concerning Amendments to Law Number 24 of 2003 Concerning the Constitutional Court. The decision of the Constitutional Court is final which means that the decision of the Constitutional Court immediately obtains permanent legal force since it is pronounced and no legal remedies can be taken. The final nature of the Constitutional Court's decision in this Law also includes binding legal force (final and binding). The authority of the Indonesian Constitutional Court in conducting Judicial Review is limited to laws against the 1945 Constitution. The examination of laws against the 1945 Constitution is further regulated in Article 50 through Article 60 of Law of the Republic of Indonesia Number 8 of 2011 on Amendments to Law Number 24 of 2003 concerning the Constitutional Court. Legal Standing used to submit a Judicial Review is regulated in Article 51 paragraph (2) of Law of the Republic of Indonesia Number 8 of 2011 on Amendments to Law Number 24 of 2003 on the Constitutional Court which explains that in submitting a petition it must clearly describe that:

a. The enactment of the law does not fulfill the provisions based on the 1945 Constitution of the Republic of Indonesia
b. The content of paragraphs, articles, and/or parts of laws that are considered contrary to the 1945 Constitution of the Republic of Indonesia.

Having the constitutional authority to review laws, the Constitutional Court can decide whether the articles on legal remedies set out in Article 233 to Article 269 of Law 8/2011 on Criminal Procedure are contrary to the 1945 Constitution, especially Article 27 paragraph (1). According to the principle of legal hierarchy, lower laws should not contradict and refer to higher laws.

## CONCLUSION

Based on the types of legal remedies above, both ordinary and extraordinary legal remedies cannot be submitted by victims. The protection of victims of crime in seeking justice is certainly important. Victims often get court decisions that are considered unfair, but victims cannot file legal remedies because the victim is represented by the public prosecutor. Victims' participation in judicial practice has become a public concern in the international forum so that it is necessary to balance the roles of the victim and the defendant in the criminal justice system in Indonesia, especially in filing criminal legal remedies. So it is necessary to fill the legal vacuum for victim participation by conducting a comparative study with China which has accommodated legal remedies for victims. In addition, it is necessary to apply the concept of *restorative justice* at every stage which is the recovery of victims who suffer from crimes which involve victims, victims' families, defendants and defendants' families. Currently, the concept of *restorative justice* can only be applied at the first level, for example diversion in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Supreme Court Regulation Number 1 of 2024 on Guidelines for Adjudicating Criminal Cases based on Restorative Justice. Therefore, it is necessary to fill the legal vacuum by including the Draft of Criminal Procedure Code (RKUHP) in the national legislation, *judicial review,* and the establishment of the Supreme Court Regulation.

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