

## Research Article

# The Urgency to Adopt Victim Impact Statement in the Indonesian Criminal Justice System

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**ORCID**Mahrus Ali: <https://orcid.org/0000-0002-5864-1009>Syarif Nurhidayat: <https://orcid.org/0000-0001-6218-3808>**Abstract.**

This study is aimed to examine the need for adopting a Victim Impact Statement in the Indonesian criminal justice system. Due to the absence of Indonesian law that acknowledges the victims' right to express opinions that directly affect them prior to a panel of judges imposing a punishment, this adoption is necessary. This paper employed doctrinal legal research that mainly focused on the Code of Criminal Procedure provisions supported by secondary legal sources. The results showed that VIS was the statements made by someone who has lost something because of a crime or another painful occurrence. The content of the information indicated the psychic, emotional, psychological, or financial consequences of a crime suffered/experienced by the victim or their family. Several advantages were found in the VIS, including giving victims a formal role in the criminal justice system and raising victim satisfaction with the criminal justice system. As they allow victims to share their stories before the court's ruling, some of these advantages are essential for Indonesia's integration of VIS into its criminal justice system. Hence, the legislatures are suggested to adopt VIS in the Criminal Procedure Code and other sectoral legislation.

**Keywords:** Victim Impact Statement, Criminal Justice System, Proportionality, Prevention

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## 1. Introduction

The claim that the existence of criminal victims does not receive much consideration in the criminal justice system is not overstated. Criminal law frequently places more of an emphasis on criminal perpetrators than on victims.[1] The victims of the criminal justice system were initially disregarded. Instead of breaching the rights of victims and their families, crimes have long been seen as social wrongs. The rights of victims to be treated fairly, to be heard, to be brought before a hearing, and to have their human dignity respected are not upheld. Victims are viewed as little more than a practical

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tool for reporting and prosecuting criminal activity. The rights of the accused and the prosecution procedure occupy the public prosecutor's time. The rights of the victim and his family are not given much consideration by the judge, who is mainly concerned with the rights of the accused.[2]

Theoretically, the criminal justice system is built on the public prosecution model. This approach begins with the premise that crime is an offense against social standards rather than a breach of the personal rights of those who are harmed or suffer. According to this perspective, the accused/perpetrator is only accountable to the state and not the victim for the crime they are suspected of committing. Therefore, the state and the defendant are engaged in a rights dispute. To fairly manage the interests of the opposing parties, criminal procedural law norms are created. The victim plays absolutely no part nor has any place. Even if the victim is admitted as a witness at the trial, his presence amounts to little more than listening to complaints, pain, and losses. Additionally, the victim's rights have nothing to do with the judge's sentence.[3]

In its evolution, the victim's rights were acknowledged, including his right to express the annoyances, and suffering he had endured prior to the trial, throughout it, and after becoming a victim. These victims' rights are known as "Victim Impact Statements" in the US. In this context, the present study attempts to examine whether the Indonesian criminal justice system needs to adopt the Victim Impact Statement. This adoption is significant because, to this date, there has been no Indonesian law which has explicitly recognized the victims' ability to make declarations that directly affect them before a panel of judges imposes a penalty.

## 2. Methods

This paper employs doctrinal legal research that mainly focused on the possibility to adopt Victim Impact Statements in the Indonesian criminal justice system. It was noted that both Criminal Procedural Code and sectoral laws did not recognize the rights of victims of crime to convey all the suffering just prior to the panels of the judge impose penalty. This study also relied on secondary sources consisting of books and scientific journals on the rights of victim, Victim Impact Statement, and particular aspects relating to the rights of victim.

### 3. Results and Discussion

#### 3.1. Sub Section (If Available)

Victim Impact Statements (hereinafter, referred to as 'VIS') are statements made by someone who has lost something because of a crime or another painful occurrence. The content of the information indicates the psychic, emotional, psychological, or financial consequences of a crime suffered/experienced by the victim or his family. This information can be provided orally, in writing, or through audio-visual means.[4] VIS is said to be one of the factors that fosters victim empathy and enables the victim or his family to describe the atrocities they have gone through. Additionally, it gives criminal justice system victims more influence.[5] VIS is an illustration of the availability of evidence that jurors can consider when deciding the defendant's crime.[6] Informal VIS is provided by the victim or his family. The evidence of witnesses provided formally before the trial, which is bound by protocols, is quite different from VIS. Additionally, VIS typically gives a variety of additional details, such as: a) events that before or followed the incident or traumatic events; b) the identity and character of the victim; and c) the victim's perception of the person or people harming him.[4]

Although it is substantially more frequently employed in the context of criminal case trials, VIS is used in both civil case trials and criminal case trials in the United States. In legal disputes, VIS can be read or used to help the judge or jury decide how much the defendant must pay in damages.[7] When criminal sanctions are being assessed in court, VIS is frequently shown to juries, judges, or prison guards to terrify them as they decide how long the offender will serve or get in prison, or when the convict is about to be let go. Even in murder cases, the families of the deceased frequently provide VIS that details the victim's life and the effects of the death on their family.[4]

The first United States Supreme Court ruled that the eighth and fourteenth amendments to the Constitution were violated by VIS's admission in the *Booth v. Maryland* death penalty verdict.[5] The use of VIS was found to be unconstitutional because it directed the jury's attention away from the defendant and toward the victim, which could have resulted in the jury imposing the death penalty based on factors that were unknown at the time the defendant committed the crime and had no bearing on the defendant's choice to commit the crime.[8] Two years later, in the case of *South Carolina v. Gathers*, the court maintained his unwillingness to employ VIS. According to the judges' panel, a jury must consider the proper offence (proportionate) with the accused's personal

responsibility, moral failing, and reproach of his acts when considering whether to inflict the death penalty. In the *Payne v. Tennessee* case, this verdict was later changed. According to *Tennessee*, the use of VIS during the execution phase is legal and does not contravene the eighth Amendment. The judges' panel determined that the victim's family's testimony on the death of a defendant facing the death penalty did not establish the defendant's guilt. As a result, only the evidence supporting the defendant's guilt is taken into consideration while deciding whether to execute the offender. However, the court found that identifying the damages brought on by the defendant's actions has long been a crucial issue in criminal law, affecting both the formulation of the offense's essential elements and the guidelines for imposing criminal penalties. In this context, VIS just serves as an additional technique or form of the government's imposition of criminal sanctions on the injury brought on by the crime. Based on these factors, the panel of judges concluded that the pain experienced by the victim and his family is still significant in evaluating the accused's guilt and the appropriate punishment.[6]

According to Kempf, VIS is beneficial because it offers several advantages, including: 1) information for judges or jurors; 2) benefits for victims; 3) aid in the defendant's rehabilitation; and 4) more justice in the sentence.[9] Trueblood claims that VIS provides a variety of advantages. Initially, the victim empowerment in the criminal justice system. The victim gains confidence and starts to recuperate from his sorrow thanks to VIS. The victim might reclaim his honor and dignity by being given the opportunity to testify at the criminal investigation stage. Giving victims the chance to speak freely about their experiences at a court hearing sends a message to the public about how the criminal justice system views victims. The victim needs to find ways to fix his dysfunctional life.[10]

Additionally, VIS balances data. Criminal victims are treated in court as no more than mere witnesses. To be fair, the victim should have the same rights as the offender since the offender can provide evidence that exonerates him throughout the criminal prosecution process. The court only heard the evidence of the defendant, his attorneys, family, and friends in the absence of information from the victim. The victim should therefore be accorded equal rights to be just. Given the defendant's limitations on the information that he can reveal about himself, the victim ought to have had more of a chance to testify at trial in accordance with the justice principle.[10] Finally, VIS offers the courts and associated parties with sufficient information. The VIS outlines the financial losses that criminal victims and possibly their families have experienced. The VIS provides details on people with familial ties, emotional and mental illnesses, and

the kind of medical and psychological care that crime victims or their families may need. By allowing the victim to offer this information, the victim can provide the judge a more thorough account of all the harms caused by the crime since the judge cannot assess the gravity of the defendant's acts without being aware of how the victim was affected by the crime. The use of VIS enables victims and their families to illustrate the effects of a crime on victims, families, and society in a more elaborate manner.[10]

### 3.2. VIS and Theories of Punishment

Lawyers rarely link the victim to the notion of conviction; instead, they emphasize the existence of the accused. The inclusion of the victim as one of the criteria in the imposition of criminal punishments whose substance reflects the theories of punishment is really made possible using VIS in the trial of criminal cases. The "just desert" doctrine of today serves as an example of proportionality theory through its existence.[11] This idea holds that criminal threats are disproportionate if they surpass the legal authority of the state. Operationally, proportionality refers to the harshness of the threat of punishment and the seriousness of the offense itself.[12] The severity of the criminal penalties threatened against the perpetrator of a crime increases with its seriousness. The seriousness of criminal threats against crimes are also thought to violate the proportionality principle.[13]

The judge can examine the elements of the injury caused by the defendant's actions to VIS, which is relevant. VIS is highly helpful in making these calculations since proponents of the levy theory must identify the magnitude of the harm caused by the perpetrator's conduct to estimate the severity of the punishment the criminal must receive from the perpetrator. To make crimes relevant for conviction purposes and to ensure that the criminal matches the crime, VIS publishes information about crimes, regarding the harms of a crime. Judges and juries cannot evaluate whether a crime is justified unless they are aware of its scope and the damage it has caused. These unknowns (victim/family information) are taught to them by VIS so that they can impose a proportionate sentence.[4]

According to the prevention approach, a criminal's effectiveness is measured by how well they contribute to both general and targeted deterrence. Special prevention refers to the perpetrator being a rational actor who weighs the costs and benefits of committing a crime, and the criminal conviction that results will make him consider the costs that

must be incurred when he turns out to be guilty. General prevention refers to convicting a perpetrator of a certain criminal act as an example for potential offenders, so that they will think of both good and bad when committing a similar crime in the future.[14] Michele Cotton established that the theory of prevention uses the threat of criminal penalties as a tool of social control and protection, as well as the application of such threats as suffering to deter potential offenders from committing the same crimes or to deter specific offenders from repeating their crimes.[15] By using VIS, the severity of the punishment can be raised, deterring offenders from committing crimes in the future.[6]

### 3.3. Adopting VIS in Indonesian Criminal Justice System

The Indonesian criminal justice system does not recognize VIS in civil nor criminal case trials. The victim's role in a criminal trial is essentially that of a witness who is being cross-examined for the first time. Victims are asked to recount their experiences to provide evidence. The victim may be questioned by teleconference, but the actual content of the testimony is still strongly tied to the demonstration of the offense's essential aspects.[16] The trial will be biased, non-objective, and may even violate the rights of the accused if the victim's or his family's loss or suffering after becoming a victim is conveyed. The position of the victim was forgotten after making a statement or a testimony before the court. The victim is unable to restate their suffering or the loss they have endured. In the Indonesian legal system, the defendant has the right to read out a personal defense because the victim is not given the chance to describe their pain or loss prior to the tribunal making a ruling. The criminal justice system in Indonesia still places more of an emphasis on defending and upholding the rights of defendants than those of victims. The interests of the defendant are prioritized more in the judge's decisions.

VIS needs to be accepted in the criminal justice system in Indonesia in order for the rights of victims to be recognized for their existence and so that the losses or suffering caused by victims and/or their families can be repaired.[9] A panel of judges must invite the victim or his family to the trial before reaching a decision or passing judgment on the offender. This will allow the panel of judges to meet with the victim or his family face-to-face and better comprehend the suffering they have endured.[17] The judge's decision is anticipated to satisfy not only the interests and rights of the defendant but also the interests, rights, and suffering of the victims. Before the judge decides on a case, VIS can be used after the defendant or public prosecutor has done providing his

replies or duplicates (verdict). In the current legislation, it was promulgated that when the public prosecutor read the criminal accusations, the defense attorney read their response, and the presiding judge read the defense's response, the trial was ruled closed (Article 182 of the Code of Criminal Procedure). No clause exists that guarantees the victim will have the chance to voice the beliefs, sentiments, emotions, and suffering brought on by the offender's actions.

Psychology should be used to guide this process so that it is not constrained by formalities that really bind and prevent the victim and/or his family from discussing their losses, struggles, and future hopes.[5] It is also expected that the victim describes how the crime affected the victim's view and expression of the crime as well as the emotional, bodily, or financial harm the victim suffered as a result of the crime. The victim impact statement helps the criminal justice system provide more just outcomes. The study of VIS makes procedural and substantive references to matters of criminal law. VIS is employed as a method of procedure for blending criminal law to incorporate the victim's participation in delivering a statement describing the impact of the criminal act he suffered as a form of consideration by the judge, based on the framework of procedural law. The judge's belief that will affect the judge's decision is thus tied to VIS when evaluated from the perspective of substantive criminal law. Judges must generally consider several factors before sentencing, including this VIS. In Article 54 paragraph (1) of the Draft Criminal Code, it is stated that the impact of criminal acts on victims or the relatives of victims, as well as the benefits to victims and/or their families, must be considered when sentencing.[18]

## 4. Conclusions

Victim Impact Statement describes the financial, social, psychological, and physical suffering or loss that the court procedure had on him. The victim is now being individualized instead of the perpetrator because of the growing popularity of the victim impact statement. In addition to granting victims a formal role in the criminal justice system, VIS also benefits victims psychologically, fosters a sense of fairness by acknowledging the existence or status of victims in a system that prioritizes the rights and interests of the perpetrator, and raises victim satisfaction with the criminal justice system. VIS also fits the proportionality of punishment because judges and juries must be aware of the extent of the crime and the harm it has caused to assess whether it was justified. Utilizing

VIS allows for increase in the severity of the punishment, which deters criminals from committing crimes again in the future. Some of these benefits are crucial for Indonesia to integrate VIS into the criminal justice system because they provide victims more voice in sharing their experiences prior to the court decision. To increase victims' rights in the criminal justice system, it is strongly recommended that the legislatures need to incorporate VIS in amendment to the Criminal Procedure Code and other sectoral rules.

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