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RECONSTRUCTING LEGAL PROTECTION FOR VICTIMS IN THE NEW INDONESIAN CODE OF CRIMINAL PROCEDURE (KUHAP): BETWEEN LEGAL CERTAINTY AND HUMAN RIGHTS

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Abstract

The reform of Indonesian criminal procedure through Law Number 20 of 2025 has strengthened the formal recognition of crime victims, but the practical relationship between legal certainty and human-rights protection requires closer examination. This study aims to assess the victim-protection framework in the new Criminal Procedure Code (KUHAP) and formulate a reconstruction that makes victims' rights operational without weakening the due process rights of suspects and defendants. The research uses normative legal research with statutory, conceptual, comparative, and human-rights approaches. Primary materials comprise Law Number 20 of 2025, the 1945 Constitution, and the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; secondary materials comprise recent legal scholarship and methodological literature. The analysis shows that the new KUHAP represents a substantial advance because it expressly regulates victim rights, including information, protection, restitution, restorative justice, assistance, and victim-impact statements, notably in Articles 53, 79–88, 144, and 161. Nevertheless, several implementation questions remain, particularly concerning institutional coordination, operational standards, time limits, and effective remedies for non-fulfilment. The study therefore proposes a reconstruction centred on victims as rights-bearing legal subjects, clearer implementation duties, integrated recovery mechanisms, and accessible review procedures. This model seeks to connect normative recognition with enforceable protection while maintaining a balanced criminal process grounded in legal certainty, justice, utility, and human rights.

Keywords: criminal procedure, human rights, legal reconstruction, victim-oriented justice, victim protection

1. Introduction

Criminal procedure is not only an instrument for establishing criminal responsibility; it is also a mechanism through which the state allocates protection, participation, and remedies among the persons affected by crime. Contemporary victim-oriented approaches therefore treat the victim as a rights-bearing participant rather than merely a source of evidence. Recent Indonesian scholarship likewise emphasizes that

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victim protection has become a central issue in the reform of criminal procedure, particularly because procedural fairness is incomplete when the harm suffered by victims is not addressed through information, protection, participation, and recovery (Sumardiono & Sugianto, 2026; Angkasa et al., 2026).

The international normative baseline is the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly in 1985. The Declaration links victim protection with access to justice and fair treatment, information about proceedings, the opportunity for victims' views and concerns to be considered when their personal interests are affected, restitution, compensation, and assistance (United Nations General Assembly [UNGA], 1985). The significance of this framework is not that it mechanically determines Indonesian law, but that it provides a comparative human-rights benchmark for evaluating whether domestic procedural rules make victim protection meaningful rather than merely declaratory.

Indonesia's reform agenda must be understood against the background of the former Criminal Procedure Code, Law Number 8 of 1981 (Republic of Indonesia, 1981), which was principally structured around the regulation of investigation, prosecution, adjudication, and safeguards against coercive state power. The reform literature identifies the need to update the procedural system in response to developments in human rights, technology, accountability, and alternative dispute resolution, including stronger protection for victims and witnesses (Saputra et al., 2025; Triana et al., 2025). The enactment of Law Number 20 of 2025 on the Criminal Procedure Code (KUHP 2025), which entered into force on 2 January 2026 and repealed Law Number 8 of 1981, expressly strengthens the rights of victims among other procedural reforms (Republic of Indonesia, 2025a).

The new KUHP contains a much more visible victim-protection architecture than its predecessor. Article 53 establishes protection for reporters, complainants, witnesses, and/or victims during the investigation stage. Articles 79–88 establish restorative justice mechanisms, including restoration of the victim's condition, restitution, medical and psychological expenses, and the victim's involvement in the settlement process. Most significantly, Article 144 consolidates a broad catalogue of victim rights, including access to information, protection, confidentiality of identity, restitution, restorative justice, legal advice, accompaniment, medical and psychosocial rehabilitation, temporary accommodation, and the right to make a statement concerning the impact of the crime. Article 161 also permits victims, reporters, or their legal representatives to challenge the legality of termination of an investigation or prosecution through pretrial review (Republic of Indonesia, 2025a).

These provisions require a more precise assessment than the simple conclusion that victim protection remains absent or merely symbolic. The post-enactment literature

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identifies continuing questions of implementation, especially where statutory rights depend on institutional coordination and detailed implementing rules (Nurushobach & Ambarwati, 2026; Ahwan & Ufran, 2026). At the same time, the breadth of Article 144 means that the central problem has shifted: the issue is increasingly whether formally recognized rights can be translated into predictable, timely, and reviewable procedures. The existence of a right to information, for example, is less effective if the law does not sufficiently specify responsibility, timing, and consequences for non-compliance. Similarly, a right to restitution or restorative justice requires procedures capable of ensuring that the victim's consent and interests are genuinely considered (Utami et al., 2026; Saleh, 2025).

The research gap therefore lies not simply in documenting that victims are now recognized in the KUHAP 2025, but in identifying the normative relationship between recognition, implementation, and remedies. Existing studies discuss criminal-procedure reform, restorative justice, victim protection, legal aid, or broader transformation of the criminal justice system, but the interaction between legal certainty and human-rights protection for victims remains insufficiently integrated into one reconstruction model (Tanmadibrata, 2026; Refangga et al., 2026). This article addresses that gap by examining the new KUHAP against statutory requirements, the victim-rights standards in the 1985 UN Declaration, and the development of Indonesian scholarship.

Accordingly, this study has two objectives. First, it evaluates the regulation of victim protection under Law Number 20 of 2025 from the perspectives of legal certainty and human rights. Second, it formulates a reconstruction model that converts recognized victim rights into operational guarantees while preserving the due process rights of suspects and defendants. The contribution of the study is therefore normative and prescriptive: it does not merely list victim rights, but identifies the institutional and procedural conditions needed for those rights to be enforceable in practice.

2. Methods

This study employs normative legal research with a prescriptive orientation. The object of analysis is the legal construction of victim protection in Law Number 20 of 2025 and its adequacy in reconciling legal certainty with human-rights protection. Normative legal research is appropriate because the study evaluates legal norms, principles, institutional duties, and the coherence of the regulatory framework rather than measuring implementation through interviews or statistical observation (Sukmawan & Damayanti, 2025). The analysis also adopts a socio-legal awareness of the distinction between law as formulated and law as implemented, which is important when assessing whether formally recognized rights are capable of operating effectively in practice (Irianto, 2012).

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Four approaches are applied. First, the statutory approach examines the 1945 Constitution, Law Number 20 of 2025, and the relevant provisions governing victim protection, restorative justice, restitution, and pretrial review. Particular attention is given to Articles 53, 79–88, 144, and 158–164 of the KUHAP 2025. Second, the conceptual approach uses legal-certainty, legal-protection, victim-oriented justice, restorative justice, and human-rights concepts to evaluate the coherence of the statutory design (Anisyanawati et al., 2024; Sinaulan, 2018). Third, the comparative approach uses two comparators: the former Indonesian KUHAP under Law Number 8 of 1981, as the immediate domestic baseline, and the 1985 UN Declaration as an international normative benchmark. The comparison focuses on the visibility of victim rights, participation, recovery, and remedies rather than on transplanting foreign rules wholesale. Fourth, the human-rights approach tests the domestic framework against dignity, access to justice, fair treatment, protection from intimidation, and effective redress reflected in the UN Declaration (UNGA, 1985).

The primary legal materials were selected because they directly govern or define the rights under examination. Secondary materials were selected from the literature already relevant to the research question, with priority given to recent publications on KUHAP reform, victim protection, restorative justice, legal certainty, and criminal-justice transformation. The materials were collected through library research and then classified by issue: (1) legal status and information rights; (2) protection and assistance; (3) participation and restorative justice; (4) restitution and recovery; and (5) review or remedial mechanisms. The analytical steps consisted of identifying the governing norm, interpreting its legal function, comparing it with the domestic predecessor and international benchmark, identifying any implementation gap, and formulating a prescriptive reconstruction. The method is therefore traceable from source selection to normative conclusion rather than relying solely on abstract authorial reasoning.

3. Results and Discussion

3.1. The Legal Construction of Victim Protection under Law Number 20 of 2025

The KUHAP 2025 should be recognized as a substantive change in the legal position of victims. The law does not merely mention victims incidentally; it creates a dedicated chapter on the rights of witnesses, victims, persons with disabilities, women, and older persons. Article 144 places twenty-five categories of rights in one provision. These include protection against legal retaliation for good-faith testimony or reporting; access to an advocate; information about case developments and court decisions; protection of personal, family, and property security; confidentiality of identity; restitution; restorative justice; legal advice and accompaniment; medical and psychosocial rehabilitation; temporary and new accommodation; financial support; and

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the right to communicate the impact of the crime (Republic of Indonesia, 2025a). This consolidation is consistent with the victim-centred direction identified in recent Indonesian scholarship (Angkasa et al., 2026; Ahwan & Ufran, 2026).

The new architecture also strengthens protection at earlier procedural stages. Article 53 provides that every reporter, complainant, witness, and/or victim is entitled to protection. The provision is important because it frames protection as a procedural entitlement rather than as an exceptional administrative service. In addition, the KUHAP requires notification of the victim when an investigation is terminated, while Article 161 provides a route for the victim or reporter, or their legal representative, to challenge the legality of termination through pretrial review (Republic of Indonesia, 2025a). This is a meaningful institutional development because it connects victim protection with a review mechanism rather than leaving the victim dependent solely on prosecutorial or investigative discretion.

Restorative justice further demonstrates that the new KUHAP has moved beyond a purely punitive conception of criminal procedure. Article 79 frames restorative justice around restoration of the original condition, including forgiveness, return of property, medical or psychological expenses, compensation for other losses, repair of damage, and payment of compensation. The agreement must be fulfilled within seven days, and after fulfilment the case is to be terminated and submitted for judicial determination. Article 81 permits the mechanism to be initiated by the offender, suspect, defendant, family, and/or victim or family, and requires the process to be free from pressure, coercion, intimidation, deception, threats, violence, torture, or degrading treatment (Republic of Indonesia, 2025a). The regulatory design therefore gives the victim a defined place in restorative settlement rather than treating restoration as an exclusively offender- or state-driven decision (Nurushobbach & Ambarwati, 2026; Utami et al., 2026).

From the perspective of legal certainty, however, the central question is no longer whether rights exist, but whether the statutory framework makes their implementation sufficiently clear, consistent, and reviewable. Legal certainty requires more than a declaration of rights; it also requires clarity concerning the duty bearer, the procedure for claiming the right, the time within which the duty must be performed, and the consequences of non-compliance. This concern is particularly visible in the literature on restorative justice under the new KUHAP, which identifies ambiguity and the need for clearer implementing mechanisms despite the existence of a statutory framework

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(Nurushobdach & Ambarwati, 2026). The same analytical point applies to victim protection generally.

The legal-certainty problem should nevertheless be stated precisely. It would be inaccurate to describe the KUHAP 2025 as providing no mechanisms for victims. Articles 144 and 161 establish substantial rights and remedies. The more defensible finding is that the statutory recognition is broader than the operational detail. Questions remain concerning how agencies should coordinate the delivery of protection and rehabilitation, what standardized notice should contain, how victims can monitor the fulfilment of restitution, and what administrative or judicial consequence follows from delay or non-performance. In this sense, the remaining gap is one of operational certainty rather than basic normative recognition.

The principal findings of this regulatory assessment are summarized in Table 1.

Table 1. Regulatory assessment and reconstruction priorities for victim protection under Law Number 20 of 2025.

Dimension	Existing KUHAP 2025 framework	Remaining normative issue	Proposed reconstruction
Information and protection	Arts. 53 and 144 recognize protection and information rights, including case developments and decisions.	Operational standards, responsible officers, timing, and coordination are not fully specified in the statute.	Set minimum notice standards, responsible institutions, service timelines, and auditable records.
Participation	Art. 144 grants restorative-justice participation and victim-impact statements; Art. 81 permits victim/family initiation of restorative justice.	The scope and timing of victim participation across ordinary procedural decisions require clearer operational rules.	Guarantee notice and an opportunity to be heard where a decision materially affects victim interests.
Restitution and recovery	Arts. 79 and 144 provide restitution, medical/psychological support, rehabilitation, accommodation, and other recovery rights.	Delivery depends on coordinated institutional action and implementing arrangements.	Create an integrated referral and enforcement pathway linking investigators, prosecutors, courts, and LPSK.
Review and remedy	Art. 161 permits victims/reporters or their legal representatives to challenge unlawful termination of investigation/prosecution.	Not every failure to fulfil a victim right has a clearly specified review or corrective route.	Provide accessible complaint, supervisory, and judicial-review mechanisms with clear remedial consequences.

3.2. Victim Protection from the Perspective of Human Rights

The human-rights perspective reinforces the conclusion that victim protection must be assessed through both substantive and procedural dimensions. The Constitution

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guarantees equality before the law and fair legal certainty, while Article 28G protects security and dignity. Within the criminal process, these constitutional commitments are relevant not only to suspects and defendants but also to persons who suffer harm from crime. The state therefore has a dual responsibility: to prevent arbitrary coercion against suspects and to provide effective protection and remedies to victims (Republic of Indonesia, 1945). This balance is compatible with the international victim-rights framework, which expressly states that victim-oriented measures should operate without prejudice to the rights of suspects or offenders (UNGA, 1985).

Article 144 of the KUHAP 2025 substantially reflects the UN Declaration's core dimensions. The right to information corresponds to the Declaration's emphasis on informing victims about the role, scope, timing, progress, and disposition of proceedings. Protection against threats and intimidation, confidentiality of identity, and freedom from degrading treatment correspond to the Declaration's concern for dignity and fair treatment. Restitution, compensation-related recovery, medical and psychological support, and assistance correspond to the Declaration's recognition that justice for victims includes redress and assistance rather than conviction alone (UNGA, 1985; Republic of Indonesia, 2025a).

The human-rights assessment therefore leads to a more nuanced conclusion than the proposition that Indonesian law simply fails to recognize participation. The KUHAP 2025 expressly recognizes participation in restorative justice and allows victims to submit statements on the impact of the crime. It also creates a pretrial route to challenge termination of an investigation or prosecution. Nevertheless, the right to participate must be distinguished from a power to control the criminal process. A rights-based system can give victims information, voice, protection, and remedies while preserving prosecutorial independence and the accused's fair-trial guarantees. The reconstruction proposed in this article follows that distinction: participation should be meaningful where personal interests are directly affected, but it should not convert the victim into a substitute prosecutor or undermine the presumption of innocence (Triana et al., 2025; Tanmadibrata, 2026).

This distinction is particularly important in restorative justice. A restorative process is human-rights compatible only when participation is voluntary and free from coercion. The KUHAP 2025 already prohibits pressure, intimidation, violence, torture, and degrading treatment in restorative mechanisms. The statutory design can therefore be understood as a framework that seeks to reconcile victim recovery with procedural fairness rather than as an alternative to due process (Republic of Indonesia, 2025a; Saleh, 2025). The remaining challenge is to ensure that victim consent and preferences are documented and that non-participation or disagreement is not transformed into a disadvantage within the ordinary criminal process.

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3.3. Reconstruction: From Formal Recognition to Enforceable Victim Rights

The reconstruction proposed here begins from the premise that the KUHAP 2025 has already crossed the threshold of formal recognition. The task is therefore not to create an entirely new victim-rights chapter, but to strengthen the legal architecture that connects rights with implementation. This approach is consistent with Radbruch's understanding of law as requiring a balance among justice, legal certainty, and utility: certainty without justice may become formalism, while justice without workable norms may remain aspirational (Anisyaniawati et al., 2024). Recent work on criminal-justice transformation likewise stresses that procedural efficiency should not displace substantive human dignity (Refangga et al., 2026).

First, victims should be expressly treated as legal subjects whose procedural and substantive rights are capable of independent enforcement. The language of Article 144 already supports this direction. The reconstruction should operationalize it by requiring investigators, prosecutors, and judges to identify applicable victim rights at the relevant stage, record the delivery of information and assistance, and explain decisions that materially affect the victim's protected interests. Such a duty would not give victims control over prosecution, but it would make the state's treatment of their interests transparent and reviewable. This is consistent with the victim-centred approach in current Indonesian literature, which warns against reducing victims to passive recipients of administrative protection (Ahwan & Ufran, 2026; Angkasa et al., 2026).

Second, legal certainty should be strengthened through procedural standards. For information rights, the implementing framework should identify the minimum information to be supplied, the officer responsible, and the time at which notification must be made. For protection, it should specify referral procedures, risk assessment, coordination with the Witness and Victim Protection Agency (LPSK), and emergency measures. For restitution and recovery, it should clarify how claims are documented, how the victim is informed of the status of the claim, and how unpaid obligations are followed up. These mechanisms would give practical content to the distinction between preventive and repressive legal protection discussed in Indonesian legal scholarship (Sinaulan, 2018).

Third, the restorative-justice framework should be integrated with the broader victim-recovery framework. The KUHAP 2025 already provides a seven-day implementation period for restorative agreements and requires judicial determination after fulfilment. The reconstruction should add safeguards ensuring that victims receive understandable information about the consequences of agreement, have access to legal advice or accompaniment, and can document the physical, psychological, economic, and social effects of the offence. This would connect Article 79's restorative purpose with Article 144's victim rights and with the contemporary literature's emphasis on recovery

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rather than settlement for its own sake (Nurushobach & Ambarwati, 2026; Utami et al., 2026).

Fourth, remedial pathways should be expanded beyond the specific pretrial remedy in Article 161. Article 161 is a significant advance because it gives victims and reporters standing to challenge unlawful termination of investigation or prosecution. Yet other failures—such as delayed information, inadequate protection, or failure to facilitate an established recovery right—may not necessarily fit that procedural object. A coherent victim-protection framework should therefore provide a graduated system: internal complaint and supervisory review for service failures, expedited referral for urgent protection needs, and judicial review where a legally protected right is materially impaired. The objective is not to multiply litigation, but to ensure that a statutory right has a corresponding remedy.

Fifth, implementation should be supported by institutional coordination and measurable accountability. The new KUHAP distributes victim protection across investigators, prosecutors, courts, legal advisers, companions, and protection institutions. Without a defined coordination pathway, a victim may possess multiple rights but encounter fragmented services. The reconstruction should therefore require a single case-level victim-protection record or equivalent integrated mechanism through which notifications, referrals, protection measures, restitution status, and recovery services can be monitored. This is especially important because recent studies identify institutional fragmentation and regulatory ambiguity as risks to legal certainty in the implementation of restorative justice (Nurushobach & Ambarwati, 2026; Refangga et al., 2026).

The reconstruction does not diminish the rights of suspects and defendants. On the contrary, clear victim procedures can strengthen due process by reducing informal discretion and making the reasons for procedural decisions more transparent. The balance is therefore symmetrical in principle but differentiated in function: suspects and defendants require safeguards against coercive state power and unfair adjudication, while victims require recognition, participation, protection, information, and effective recovery. The legitimacy of criminal procedure depends on the state's capacity to protect both sets of interests without treating one as the negation of the other (Saputra et al., 2025; Triana et al., 2025).

The proposal also has a broader legal-policy implication. Law Number 20 of 2025 is already a significant normative reform, and its implementation should not be judged only by the number of new rights written into the statute. The decisive test is whether a victim can know the right, access the responsible institution, obtain the service within a predictable period, and challenge non-fulfilment. In that sense, the central reconstruction is a transition from a catalogue of rights to an enforceable architecture of rights. This is the point at which legal certainty and human rights cease to be competing slogans and

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become mutually reinforcing requirements of criminal procedure (Rahardja & Basani, 2025; Tuahuns, 2025).

4. Conclusion

The study finds, first, that Law Number 20 of 2025 materially strengthens the legal position of crime victims. The KUHAP 2025 expressly regulates protection, information, restitution, restorative justice, assistance, recovery, victim-impact statements, and a pretrial mechanism for challenging unlawful termination of investigation or prosecution. This represents a substantial shift from a procedural model in which victim interests were less systematically consolidated. Second, the principal remaining weakness is not the absence of victim rights but the gap between normative recognition and operational certainty. The effectiveness of several rights depends on clearer institutional duties, implementation standards, coordination, time limits, and remedies for non-fulfilment. Third, a balanced reconstruction should therefore treat victims as rights-bearing legal subjects and connect their substantive and procedural rights to enforceable implementation mechanisms while preserving the due process rights of suspects and defendants.

The proposed direction is to operationalize Articles 53, 79–88, 144, and 161 through clear notification standards, coordinated protection and recovery procedures, safeguards for voluntary restorative justice, transparent restitution monitoring, and accessible review mechanisms. Such reconstruction would strengthen legal certainty precisely because it makes rights predictable and reviewable, while strengthening human-rights protection because it gives victims meaningful access to information, participation, protection, and recovery. The resulting model is not victim dominance over the criminal process, but a more balanced criminal procedure in which the dignity and rights of all participants are protected through clear and accountable legal rules.

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