

Re-conceptualizing Child Victim Rights: A Normative and Comparative Analysis of Victim Impact Statement in Indonesia's Juvenile Justice System

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Abstract

In Indonesia, the participation of child victims in criminal proceedings remains highly constrained. Courtroom questioning still centers on extracting material facts, while the psychological, emotional, and developmental harm inflicted by crime receives scant judicial attention. This article analyzes whether embedding Victim Impact Statements (VIS) in juvenile proceedings could correct that imbalance. Using a normative-juridical methodology that combines statutory interpretation, doctrinal analysis, and comparative research, the study reviews VIS implementation in the United States, Canada, England and Wales, and South Africa, and tests its coherence with Indonesia's Law No. 11 of 2012 on the Juvenile Criminal Justice System (JCJS Law). The comparative findings demonstrate that VIS offer a structured, low-cost channel for children and their guardians to describe the multidimensional fallout of crime, thereby enriching judges' sentencing rationales and promoting restorative outcomes. Evaluations in those jurisdictions also show that VIS boost victim satisfaction and enhance perceived legitimacy of the courts. To harness these benefits, the paper proposes amending the JCJS Law to require judges to solicit and consider VIS in every juvenile case involving a child victim. Procedural safeguards-mandatory psychological assistance, child-friendly language, closed-court delivery options, and trauma-informed questioning are recommended to prevent secondary victimization. Codifying these protections would close a normative gap, align national law with both

1. Introduction

Indonesian criminal law currently focuses on victims in a disproportionate manner compared to perpetrators.¹ In the current Indonesian criminal justice system, perpetrators are more accommodated than victims.² However, over the last few decades, there has been a growing global effort to make the criminal justice systems more inclusive of victims' perspectives, including in the juvenile justice system. This shift seeks not only to rehabilitate young offenders but also to ensure that the rights and voices of victims especially children are meaningfully acknowledged. One important tool that has emerged from this victim-centered approach is the Victim Impact Statement (VIS). It enables victims to describe the consequences they suffered as a result of the crime, thereby fostering emotional validation, procedural fairness, and more informed judicial decisions.³

Indonesia’s juvenile justice framework, largely governed Law No. 11 of 2012 on the Juvenile Criminal Justice System (hereinafter referred to as the JCJS Law), incorporates restorative justice principles such as diversion and the best interests of the child.⁴ Other key legal instruments include Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (hereinafter referred to as the Child Protection Law)⁵ and Law Number 31 of 2014 on Amendment on the Law

¹ John Kenedi, “Constitutional Protection for Crime Victims and Witnesses in Indonesia and Its Problems,” *MIMBAR: Journal of Social and Development* 36, no. 1 (June 2020): 61.

² Herlyanty Bawole, “Legal Protection for Victims in the Criminal Justice System,” *Lex Et Societatis* 9, no. 3 (September 2021): 23–24.

³ M. Alimahrus and S. Nurhidayat, “The Urgency to Adopt Victim Impact Statement in the Indonesian Criminal Justice System,” *KnE Social Sciences* 8, no. 9 (May 26, 2023): 376–385, <https://doi.org/10.18502/kss.v8i9.13350>.

⁴ Articles 6 and 7 Law No.11 of 2012 on the Juvenile Criminal Justice System

⁵ Article 64 paragraph 3 Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection

Number 13 of 2006 on the Protection of Witnesses and Victims (hereinafter referred to as the PSK Law), which acknowledge the rights of child victims and witnesses. Internationally, Indonesia has ratified the Convention on the Rights of the Child (CRC) and refers to soft law instruments such as the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) and the UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (ECOSOC, 2005).⁶

The juvenile criminal justice system, as outlined in the JCJS Law, is grounded in principles that emphasize protection, justice, non-discrimination, and the best interests of the child. These principles also uphold respect for children's opinions, their survival and development, and the guidance and care they require. Additionally, the system stresses proportionality, the use of detention and punishment only as a last resort, and the avoidance of retaliation.

The JCJS Law, as currently formulated, places greater emphasis on the protection of child offenders than on that of child victims and witnesses. This is evident in the limited provisions addressing the rights of child victims and witnesses, which are found only in a few articles of the law, while the majority of its provisions prioritize the interests of criminal offenders. Nonetheless, child victims and child witnesses are equally entitled to protection and the fulfillment of their rights, particularly child victims, who are harmed parties due to the violation of their human rights.

One of the core principles in the juvenile criminal justice system is the principle of respect for children's opinions, as outlined in Article 2 of the JCJS Law, which affirms children's rights to participate and express their views.⁷ This principle is also reflected in Article 2 of the Child Protection Law, which states that the implementation of child protection must be grounded in Pancasila, the 1945 Constitution of the Republic of Indonesia, and the fundamental principles of the Convention on the Rights of the Child (CRC). These principles include non-discrimination, the best interests of the child, the

⁶ C. C. I. Putri, "Juridical Review of Restorative Justice in the Juvenile Justice System through Diversion," *Indonesian Journal of Criminal Law Studies (IJCLS)* 4, no. 1 (2019), <https://doi.org/10.15294/ijcls.v4i1.18680>.

⁷ Article 2 (e) JCJS Law states that the juvenile criminal justice system is implemented based on the principle of respect for children's opinions.

right to life, survival, and development, as well as respect for children's opinions. These norms collectively affirm a child's right to protection, dignity, and participation throughout legal processes.⁸

Despite this strong normative base, there remains a critical procedural shortcoming: Indonesian law does not explicitly regulate the use of VIS for child victims in juvenile proceedings. Neither the JCJS Law nor related procedural codes currently provide for mechanisms through which child victims can express the impact of offenses committed against them.⁹ As a result, their participation is limited and often instrumentalized for evidentiary purposes rather than empowered as a right. This contrasts with various jurisdictions such as the United States, Canada, and Australia where VIS is well-integrated into both adult and juvenile court systems. In these systems, VIS has been shown to strengthen victim agency, inform proportionate sentencing, and support rehabilitative outcomes.¹⁰ The absence of a VIS mechanism in Indonesia not only limits child victims' access to restorative justice but also highlights a normative gap in aligning with international child rights standards. Addressing this gap is essential for strengthening a justice model that respects the dignity and agency of every child involved, whether as offender or victim.

2. Problem Statement

This paper thus seeks to explore the normative potential of integrating Victim Impact Statements into the Indonesian juvenile justice system, and to formulate a regulatory model that is consistent with international child protection standards. The paper also aims to contribute to scholarly discourse on adapting restorative justice mechanisms in civil law jurisdictions.

⁸ Articles 2 and 3 JCJS Law

⁹ E.Suharto, "Restorative Justice in Indonesian Law on Juvenile Criminal Justice System and Its Implications for Social Work," *International Journal of Criminology and Sociology* 10 (2021), <https://doi.org/10.6000/1929-4409.2021.10.104>.

¹⁰ Ramadianto, A. R., Istiqomah, M., & Aprilianda, N. , "Enhancing Victim-Centered Justice through Restitution: A Framework for Victim Impact Statements in Child Sexual Violence Cases," *International Journal of Educational Review, Law and Social Sciences (IJERLAS)* (2024), <https://radjapublika.com/index.php/IJERLAS/article/view/2572>.

3. Methods

This paper based on a normative legal research methodology, which is analysis on applicable laws and regulations are relevant with legal problem of the research.¹¹ This research is a study of legal norms with the intention of resolving existing legal issues.¹² Normative research is often referred to as doctrinal research which sees the discrepancy between the desired state and reality.¹³ Normative is not only about what is written but also what should be.¹⁴ This research is prescriptive in nature which provides an assessment of what should be done.¹⁵

To explore the normative potential of incorporating Victim Impact Statements (VIS) into Indonesia's Juvenile Criminal Justice System, the study utilizes three analytical approaches: legislative, conceptual, and comparative.

The legislative approach involves an in-depth analysis of both national and international legal instruments. This includes domestic laws such as Law No. 11 of 2012 on the Juvenile Criminal Justice System (JCJS Law), Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (Child Protection Law), and Law Number 31 of 2014 on Amendment on the Law Number 13 of 2006 on the Protection of Witnesses and Victims (PSK Law). International references include the Convention on the Rights of the Child (CRC), the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), and the UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime. These instruments are examined using statutory content analysis and teleological interpretation, focusing on whether and how they guarantee participatory rights for child victims through procedural innovations such as VIS.

¹¹ Kornelus Benuf and Muhammad Azhar, "Legal Research Methodology as an Instrument to Analyze Contemporary Legal Problems," *Gema Keadilan Journal* 7, no. 1 (June 2020): 24.

¹² Asmak Ul Hosnah, Dwi Seno Wijanarko, and Hotma P. Sibuea, *The Characteristics of Legal Science and Normative Legal Research Methods* (Depok: Rajawali Pers, 2021), 224.

¹³ Jonaedi Efendi and Johnny Ibrahim, *Legal Research Methods: Normative and Empirical* (Jakarta: Kencana, 2016), 124–125.

¹⁴ Herlambang Perdana Wiratraman and Widodo Dwi Putro, "Challenges of Interdisciplinary Research Methods in Indonesian Legal Education," *Mimbar Hukum – Faculty of Law, Universitas Gadjah Mada* 31, no. 3 (January 2020): 406.

¹⁵ Muhaimin, *Legal Research Methods* (Mataram: Mataram University Press, 2020), 71.

The conceptual approach is employed to elucidate key doctrines including restorative justice, victim participation, and child-centered justice. These concepts are framed within broader theoretical perspectives, particularly victimology, child rights jurisprudence, and restorative justice theory, which provide normative support for integrating VIS into Indonesia's procedural law. This theoretical lens allows the analysis to move beyond black-letter law toward a deeper evaluation of values underpinning juvenile justice reform.

The comparative approach is a critical component of this research. Comparative legal analysis focuses on jurisdictions such as the United States, Canada, South Africa, and the Netherlands. These countries were selected based on four criteria: (1) the maturity of VIS implementation in juvenile proceedings; (2) compliance with international child protection standards such as the CRC; (3) legal system typology (common law or civil law); and (4) institutional relevance for Indonesia as a civil law country integrating restorative justice principles. Comparative findings are analyzed through typological classification and regulatory comparison tables to identify components that may be adapted within the Indonesian context.

Primary legal sources in this study include statutory laws, international treaties, and court decisions, while secondary sources encompass peer-reviewed journal articles, government publications, and recognized doctrinal writings. Materials are selected based on their juridical authority, academic credibility, and topical relevance. Legal interpretation techniques applied in this study include grammatical, systematic, and teleological analysis, enabling both text-based and purpose-driven understanding of provisions relating to victim protection.

By integrating comparative insights with established legal theory, this methodological structure aims to provide both doctrinal clarity and normative innovation in proposing a legal framework for VIS within Indonesia's juvenile justice system.

4. Main Heading of the Analysis or Discussion or Results

4.1 Reframing the Nature and Purpose of Victim Impact Statements for Child Victims of Crime

4.1.1 Definition and Child-Specific Framing of Victim Impact Statements

A Victim Impact Statement (VIS) is a formal mechanism enabling victims of crime to convey, in their own words, the physical, emotional, psychological, and financial effects of the crime to the court, either orally or in writing.¹⁶ In various jurisdictions, VIS is acknowledged as a participatory right of the victim, intended to enhance their procedural standing in the justice process and ensure that their suffering is duly considered during sentencing.¹⁷

While the foundational definition of VIS applies broadly to all victims, its application to child victims requires specific contextualization. Their responses to trauma, ability to articulate harm, and need for developmental safeguards necessitate a specialized form of VIS that aligns with child-centered justice principles as promoted by the UN Convention on the Rights of the Child (CRC).¹⁸

The United States, for instance, recognizes the “right to be reasonably heard” under the Crime Victims’ Rights Act, which includes the right to present a VIS during sentencing.¹⁹ The application for children should be more detailed, these legal provisions must be collectively underscore the imperative of safeguarding children's rights, reinforcing the pursuit of child welfare and equitable treatment within the legal framework.²⁰ In jurisdictions like the Netherlands and South Australia, child-specific protocols for

¹⁶ Nur Azisa et al., “Criminal Acts of Physical and Non-Physical Sexual Violence in University,” *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 3 (2024): 542–57, <https://doi.org/10.29303/ius.v12i3.1497>.

¹⁷ Commonwealth Director of Public Prosecutions (CDPP), *Victim Impact Statement* (2022), <https://www.cdpp.gov.au/sites/default/files/INDONESIAN-Victim-Impact-Statement.pdf>, accessed October 6, 2024.

¹⁸ UN Committee on the Rights of the Child, *General Comment No. 12 (2009) on the Right of the Child to be Heard*, UN Doc. CRC/C/GC/12.

¹⁹ 18 US Code § 3771(a)(4).

²⁰ Nur Afdhaliyah, Ismansyah Ismansyah, and Fadhillah Sabri, “Legal Certainty in Providing Legal Protection for Children as Victims of Sexual Crimes,” *Jurnal IUS: Review of Law and Justice* 6, no. 3 (December 28, 2018): 481–97, <https://doi.org/10.29303/ius.v6i3.578>.

submitting VIS include trauma-informed interview techniques and guidelines ensuring the statement does not exacerbate secondary victimization.²¹

International best practices also suggest that VIS for children must be developmentally appropriate, optional rather than mandatory, and supported by trained professionals who understand child psychology and legal processes.²² Thus, while VIS serves as a universal mechanism for victim participation, its application in juvenile justice systems must reflect the unique needs of child victims.

4.1.2 Normative Foundations and the Purpose of VIS in Child-Centered Justice

From a theoretical standpoint, the incorporation of VIS into juvenile justice is justified not only by procedural fairness but also by the broader doctrines of restorative justice, victimology, and child rights jurisprudence. Restorative justice theory emphasizes healing and empowerment of all parties affected by crime, especially victims, by fostering dialogue and recognition of harm.²³ For victim, restorative justice makes them feel they have control over the process, their views are considered, they are respected and treated fairly.²⁴ Victimology asserts the importance of acknowledging victims' trauma and integrating their voice into justice mechanisms to prevent secondary victimization.²⁵ Meanwhile, child rights jurisprudence particularly under the CRC recognizes children's right to be heard in all judicial proceedings affecting them (Article 12), and calls for their protection against further harm (Article 39).²⁶ This right has been practically implemented through procedural innovations such as video-

²¹ Ton Liefwaard, "Child Victims and Restorative Justice: A Child Rights Perspective," *International Journal of Children's Rights* 27, no. 3 (2019): 594–612.

²² UNICEF, *Child-Friendly Procedures in the Justice System* (Florence: UNICEF Office of Research, 2018), 21–25.

²³ Howard Zehr, *The Little Book of Restorative Justice* (New York: Good Books, 2015), 34.

²⁴ Carolyn Hoyle and Diana Batchelor, "Making Room for Procedural Justice in Restorative Justice Theory," *The International Journal of Restorative Justice* 1, no. 2 (September 2018): 175–186, at 175.

²⁵ Joanna Shapland, "Restorative Justice and the Victim," *Restorative Justice: An International Journal* 11, no. 1 (2012): 5–17.

²⁶ *Convention on the Rights of the Child*, adopted November 20, 1989, entered into force September 2, 1990, 1577 U.N.T.S. 3, arts. 12 and 39.

recorded testimony, which safeguards children's voices while minimizing secondary trauma, as shown in comparative studies between Indonesia and Malaysia.²⁷

The purpose of a VIS for child victims, therefore, extends beyond contributing to sentencing decisions. It affirms the child's dignity, promotes emotional healing, and serves as a medium through which justice actors can understand the holistic impact of crime on a young individual.²⁸ According to research, enabling child victims to articulate the effects of crime in a supported environment can significantly improve psychological recovery and reduce feelings of powerlessness.²⁹

In practice, the VIS allows the court to evaluate the full extent of the harm, which is particularly important for child victims whose suffering may be underestimated if evaluated solely through evidentiary or financial metrics.³⁰ For instance, in a theft case involving a child who loses access to medical treatment due to stolen funds, the impact transcends material loss and may include developmental regression, exacerbated illness, or emotional trauma. This individualized assessment is crucial for rendering proportionate and compassionate justice., VIS mechanisms must be optional, child-friendly, and embedded within a protective procedural framework.³¹

This design aligns with the principles of child-friendly justice as articulated within Islamic legal thought, which emphasizes procedural safeguards, non-revictimization, and the meaningful participation of victims in juvenile justice processes.³² Internationally, countries such as Canada and South Africa have developed protocols

²⁷ Nurini Aprilianda et al., "Strengthening the Position of Child Victims as Witnesses Through Video Recordings in Sexual Violence Crimes (A Comparison Between Indonesia and Malaysia)," *Brawijaya Law Journal* 11, no. 2 (2024): 196–214, <https://doi.org/10.21776/ub.blj.2024.011.02.02>.

²⁸ Daniel W. Van Ness and Karen Heetderks Strong, *Restoring Justice: An Introduction to Restorative Justice* (Cincinnati: Anderson Publishing, 2015), 113–118.

²⁹ Anne-Marie McAlinden, "Therapeutic Impacts of Participation in the Justice Process for Victims of Sexual Offences: A Restorative Approach," *Legal Studies* 30, no. 1 (2020): 79–97.

³⁰ Criminal Division, U.S. Department of Justice, *Victim Impact Statements*, <https://www.justice.gov/criminal/criminal-vns/victim-impact-statements>, accessed June 15, 2024.

³¹ United Nations Office on Drugs and Crime (UNODC), *Justice in Matters Involving Child Victims and Witnesses of Crime: Model Law and Related Commentary* (New York: United Nations, 2009), 28–31.

³² Shinta Ayu Purnamawati et al., "Child-Friendly Justice and Children's Rights from Criminal Cases; Islamic Law Notes," *Legality: Jurnal Ilmiah Hukum* 32, no. 1 (2024): 1, <https://doi.org/10.22219/ljih.v32i1.31681>.

that reflect these values, integrating VIS into multidisciplinary victim support services to ensure holistic and trauma-informed responses.³³

In Indonesia, although Law Number 31 of 2014 on Amendment on the Law Number 13 of 2006 on the Protection of Witnesses and Victims and Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection recognize the rights of child victims,³⁴ they do not yet operationalize VIS as a formal procedural right.³⁵ Introducing VIS into the Indonesian juvenile justice framework thus requires careful regulatory design, grounded in both international standards and empirical evidence of child-specific needs.³⁶

4.2. Comparative Analysis of Victim Impact Statement (VIS) Regimes

4.2.1 United States

Victim Impact Statements emerged in many American states during the 1970s and were first implemented in 1976 in Fresno, California.³⁷ VIS gained a strong constitutional foundation after Payne overruled the restrictive approach of “Booth v Maryland” (1987) and limited “South Carolina v Gathers” (1989), forty-four states and the federal system codified VIS rights, typically permitting oral or written statements at the sentencing phase subject to judicial discretion.³⁸ Juvenile-court practice varies by state, but most statutes extend the same participatory opportunities to child-victim proceedings, again tempered by protections for youthful offenders. VIS is currently recognized as a right in all areas of the United States both Federal and

³³ Tali Gal and Benedetta Duramy, eds., *International Perspectives and Empirical Findings on Child Participation: From Social Exclusion to Child-Inclusive Policies* (Oxford: Oxford University Press, 2015), 190.

³⁴ Article 64 (3) Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002

³⁵ Law Number 31 of 2014 on Amendment on the Law Number 13 of 2006 on the Protection of Witnesses and Victims (Indonesia); Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (Indonesia).

³⁶ Mahfud Jufri et al., “Restorative Justice: An Alternative Process for Solving Juvenile Crimes in Indonesia,” *Brawijaya Law Journal* 6, no. 2 (2019): 157–69, <https://doi.org/10.21776/ub.blj.2019.006.02.03>.

³⁷ Leah E. Daigle, *Victimology: The Essentials* (Thousand Oaks, CA: SAGE Publications, Inc., 2018), 131

³⁸ National Center for Victims of Crime, *Victim Impact Statements: A State-by-State Guide* (Washington, DC: National Center for Victims of Crime, 1998).

State.³⁹ In general, VIS is set out in 18 US. Code § 3771 (a)(4) which states “*The right to be reasonably heard at any public proceeding ... or any parole proceeding*”.⁴⁰ Similarly, other federal rules such as (Fed. R. Crim P.) Number 32 and 60 are found in Fed. R. Crim. P. No. 32(i)(4)(B) states “*Opportunity to Speak ... By a Victim. Before imposing sentence, the court ... must permit the victim to be reasonably heard*” which means “*Opportunity to speak ... for a victim. Before imposing sentence, the court ... must permit the victim to be reasonably heard*”.⁴¹ As for the Fed. R. Crim. P. No. 60(a)(3)190 explains the same thing as 18 US. Code § 3771 (a)(4) but without the phrase parole proceeding in it.

4.2.2 Canada

Parliament introduced VIS nationally through Bill C-89 (1988), now found in sections 722 and 672.5(14) of the Criminal Code.⁴² Section 722(1) obliges a sentencing judge to “consider” any statement that describes the physical, emotional, or economic harm suffered, while later amendments authorise oral presentations and broaden standing to family members. Canadian appellate jurisprudence strictly confines VIS to factual evidence of harm, judges must redact or exclude passages that constitute vengeance, sentencing recommendations, or character attacks.⁴³ Review Boards handling young or mentally disordered offenders likewise receive VIS, ensuring a coherent federal standard that respects both victim participation and the principle of proportionality.

4.2.3 England and Wales

The Victim Personal Statement (VPS) scheme was piloted under the 1996 Victim’s Charter and is now embedded in the 2024 Victims’ Code.⁴⁴ A VPS may be submitted in writing, read aloud by the victim, or presented by a representative, enabling courts to

³⁹ David W. Neubauer and Henry F. Fradella, *America’s Courts and the Criminal Justice System* (Boston, MA: Cengage Learning, Inc., 2019), 274.

⁴⁰ United States Code, *Crime Victims’ Rights Act*, 18 U.S.C § 3771 (2004).

⁴¹ *Federal Rules of Criminal Procedure*, Rule 32, effective December 1, 2023.

⁴² *Criminal Code*, R.S.C. 1985, c. C-46, §§ 722, 672.5(14) (Canada).

⁴³ *R. v. Bremner* (1994) 93 C.C.C. (3d) 193 (Ont. C.A.); Department of Justice Canada, *A Review of Section 722 Victim Impact Statements* (Ottawa: Department of Justice, 2017).

⁴⁴ Ministry of Justice (England & Wales), *The Victims’ Code* (London: Ministry of Justice, 2024).

appreciate the emotional and practical consequences of crime.⁴⁵ In the youth jurisdiction, VPS practice sits alongside restorative-justice conferencing, providing children with a structured opportunity to articulate harm in a developmentally appropriate manner. Judicial guidance instructs sentencers to distinguish factual descriptions of impact (admissible) from punitive or sentencing suggestions (inadmissible).

4.2.4 South Africa

Section 276(1A)(bA) of the Criminal Procedure Act 51 of 1977 empowers South African courts to receive VIS detailing personal and community impact at sentencing.⁴⁶ The Constitutional Court's dignity-oriented jurisprudence and the restorative philosophy of ubuntu reinforce the practice, framing VIS as a means to acknowledge the humanity of victims while still safeguarding the accused's fair-trial rights.⁴⁷ Statements may be written or oral, and specific judicial protocols protect child witnesses from secondary traumatization such as testimony through intermediaries or in camera sessions thereby harmonising victim participation with child-offender rehabilitation goals in juvenile matters.

The comparative overview shows that all four jurisdictions grant victims a participatory voice at sentencing, subject to judicial control to safeguard fairness. The United States relies on a plurality of state statutes guided by Payne. Canada imposes a mandatory consideration duty in its Criminal Code. England and Wales regulate VPS in the Victims' Code and South Africa grounds VIS in statutory and constitutional principles of dignity and ubuntu. Each system adapts procedures for juvenile cases, balancing victim expression with the rehabilitative aims of juvenile justice.

⁴⁵ Laely Wulandari et al., "Pertanggungjawaban Pidana Pelaku Kejahatan Terhadap Anak Yang Dilakukan Oleh Ibu Yang Mengalami Syndrom Depresi Postpartum," *Jurnal IUS Kajian Hukum Dan Keadilan* 10, no. 1 (2022): 168–79, <https://doi.org/10.29303/ius.v10i1.993>; Shinta Ayu Purnamawati et al., "Child-Friendly Justice and Children's Rights from Criminal Cases; Islamic Law Notes," *Legality : Jurnal Ilmiah Hukum* 32, no. 1 (2024): 141–54, <https://doi.org/10.22219/ljih.v32i1.31681>; Nurini Aprilianda et al., "Excusing Child Offenders: A Victim Justice Perspective," *Legality : Jurnal Ilmiah Hukum* 32, no. 2 (2024): 433–52, <https://doi.org/10.22219/ljih.v32i2.33937>.

⁴⁶ *Criminal Procedure Act* 51 of 1977 (South Africa), § 276(1A)(bA).

⁴⁷ *S v. M* (Centre for Child Law as Amicus Curiae) 2007 (2) SACR 539 (CC), paras 35–37.

4.2.5 Implications for Indonesian Juvenile Criminal Justice System Reform

The four jurisdictions demonstrate that robust VIS regimes can coexist with offenders' procedural protections, including for juveniles.⁴⁸ Indonesia could (i) insert an explicit "shall consider" clause modelled on Canada; (ii) authorise both oral and written statements with judicial power to redact prejudice, reflecting U.S. and U.K. safeguards; (iii) embed dignity and best interests of the child principles, drawing on South African constitutionalism; and (iv) develop detailed practice directions to guide Bapas, LPSK, and juvenile judges in implementing VIS without re-traumatising young offenders or victims.

4.3. Legal Analysis of the Indonesian Juvenile Justice System

4.3.1. Potential Points for Integrating Victim Impact Statements (VIS) into the Juvenile Criminal Justice System (the JCJS Law)

The shortcomings of the Indonesian legal system in accommodating victim participation, particularly for children, have been widely noted in scholarly literature. Afdhaliyah, Ismansyah, and Sabri emphasize the absence of clear and enforceable norms that ensure legal protection for child victims of sexual crimes, underscoring the urgent need for procedural innovations that provide both legal certainty and restorative opportunities.⁴⁹ VIS is important to adopt so that victims have the opportunity to convey the impact of the crime they have experienced⁵⁰ and seek compensation.⁵¹ In line with this, Indonesia needs VIS so that judges receive more information about victims.⁵² VIS at the trial stage serves as knowledge for the judge to consider the appropriate sentence based on the impact of the crime.⁵³

⁴⁸ Tantimin et al., "Duress Prevention in Juvenile Criminal Proceedings: Comparative Analysis of The United Kingdom and Indonesia," *LITIGASI* 26, no. 1 (2025): 1–25, <https://doi.org/10.23969/litigasi.v26i1.19168>.

⁴⁹ Afdhaliyah et al., "Kepastian Hukum Dalam Memberikan Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Pencabulan."

⁵⁰ Anggi Mustavia Maulani and Rusmilawati Windari, "Victim Impact Statement in the Criminal Justice System: A Legal Urgency," *Rechtidee* 17, no. 1 (June 2022): 50.

⁵¹ Riskyanti Juniver Siburian, "Reforming the Compensation Mechanism for Crime Victims," *Indonesia Criminal Law Review* 1, no. 2 (2022): 165.

⁵² Angkasa, "The Urgency of Using Victim Impact Statements in Indonesia's Criminal Justice System to Ensure Fair Legal Protection for Victims," in *Proceedings of the 2019 National Seminar on Victimology*, Indonesian Association of Victimology Instructors, Tegal, 2019, 30.

⁵³ Robert M. Bohm and Keith N. Haley, *Introduction to Criminal Justice* (New York: McGraw-Hill Education, 2018), 322.

The Indonesian Law Number 11 of 2012 on the Juvenile Criminal Justice System (the JCJS Law) offers various stages where Victim Impact Statements (VIS) can be normatively incorporated to improve victim participation while maintaining child offender protections. These stages include investigation, diversion, prosecution, and sentencing (pre-verdict).⁵⁴

First, during the investigation stage, VIS could be introduced as part of the case file when compiling psychological or social assessment reports under Article 27 and Article 28 of the JCJS Law, which already mandate a report on the child's background from the Correctional Center (Balai Pemasyarakatan or Bapas). Here, VIS could be submitted to inform investigators about the psychosocial harm suffered by the victim, aiding in decision-making regarding diversion or restorative processes.

Second, diversion proceedings, regulated under Articles 6, 7, and 8 may incorporate VIS to inform the deliberations of the multi-party deliberation team (BAPAS, police, and prosecutors) about the victim's expectations and emotional recovery needs. This aligns with the restorative approach embedded in Article 3(c), which emphasizes restoration rather than retribution.

Third, during prosecution, Article 42 allows the Public Prosecutor to include elements of victim protection. VIS can be introduced as an attachment to the indictment dossier to aid the court in understanding the context and impact of the crime. Fourth, in the sentencing phase, the judge may consider the VIS as part of the social inquiry report or victim testimony, aligning with Article 64. To maintain balance with the rights of the child offender under Article 3(b), judicial discretion must be exercised to ensure VIS does not stigmatize or retraumatize the accused.

By identifying these entry points, VIS can be tailored to the child justice process without undermining the child-centered and rehabilitative ethos of the JCJS Law.

⁵⁴ Daud Rismana et al., "The Legal Effectiveness of Juvenile Diversion: A Study of the Indonesian Juvenile Justice System," *Khazanah Hukum* 7, no. 2 (2025): 190–205, <https://doi.org/10.15575/kh.v7i2.44162>.

4.3.2. Compatibility of VIS with the Principles of Child Offender Protection

Introducing VIS into the juvenile justice system must respect the foundational principles enshrined in Article 3 of the JCJS Law, namely the avoidance of secondary victimization and the prioritization of the child's best interests. From the lens of Restorative Justice Theory, VIS supports the victim's voice and encourages dialogue between victim and offender. The difference is that VIS is delivered by the victims themselves so there is an active role.⁵⁵ In Indonesia, the use of diversion as the preferred mechanism is already a manifestation of this restorative intent, and integrating VIS can provide a structured means for victims to articulate harm in a safe and constructive manner.

The victims are often marginalized in conventional legal systems. The inclusion of VIS offers an avenue for recognizing the psychosocial impact of crimes on child victims, including trauma, fear, and disrupted development. This recognition is crucial in cases of peer-on-peer violence, bullying, and sexual abuse, where emotional recovery is central to justice.

Procedural Justice Theory emphasizes the importance of voice, neutrality, respect, and trust in legal processes. VIS allows victims to participate meaningfully, increasing perceptions of fairness and legitimacy. However, safeguards must be installed to prevent VIS from being used punitively or disproportionately against child offenders.

Judges and prosecutors must be trained to evaluate VIS not as a tool of vengeance, but as a channel for validating harm while respecting the developmental status of the offender. Thus, VIS can be harmonized with the JCJS's rehabilitative paradigm if carefully regulated. Integration should be accompanied by procedural protocols to prevent re-victimization of both parties, and should ensure that the child's best interests including psychological development and reintegration potential remain the guiding principles of adjudication.

⁵⁵ Andrew Karmen, *Crime Victims: An Introduction to Victimology* (Boston, MA: Cengage Learning, 2020), 257.

4.4. Conceptual Model for the Implementation of Victim Impact Statements (VIS) in the Indonesian Juvenile Criminal Justice System

4.4.1. Diagrammatic Model of VIS in the JCJS Law Framework

To operationalize Victim Impact Statements (VIS) within the juvenile criminal justice process under Indonesia's the JCJS Law, a structured conceptual model is needed. This model delineates the actors, procedural stages, institutional responsibilities, and legal integration required to ensure VIS is both child-sensitive and restorative in nature.

Actors Involved:

- a. Judges: responsible for admitting and weighing VIS during adjudication.
- b. Investigators (Police): collect initial VIS content during early proceedings.
- c. Correctional Center Officers (Bapas): prepare social inquiry reports and assess the psychosocial impact.
- d. LPSK (Witness and Victim Protection Agency): ensures victim protection and may assist in drafting VIS.
- e. Psychological Assistants or Counselors: support victims in articulating their statements, especially in sensitive cases involving trauma or abuse.

Procedural Steps:

- a. Initiation Stage (Investigation): VIS is first introduced when the police, in collaboration with Bapas and LPSK, identify the psychosocial impact on the child victim. It is then documented with the victim's consent.
- b. Diversion Hearing: VIS is presented to the diversion team to assess emotional harm and restitution possibilities (Article 8 of the JCJS Law).
- c. Prosecutorial Stage: The prosecutor submits VIS as part of the indictment dossier, ensuring alignment with Article 42 of the JCJS Law.
- d. Judicial Review (Sentencing): Judges assess the VIS alongside social inquiry reports under Article 64 to determine a rehabilitative and fair sentence.

Institutional Responsibilities and Coordination Mechanisms:

- a. Bapas: coordinates psychosocial assessments and incorporates VIS into their reports.
- b. LPSK: may act as co-author or validator of VIS, particularly in high-impact or abuse cases.

- c. Courts: establish guidelines to determine admissibility, scope, and weight of VIS.
- d. Ministry of Law and Human Rights: issues technical guidelines for inter-agency coordination and standard operating procedures.

This model aligns with Restorative Justice Theory, as it prioritizes the acknowledgment of harm and victim participation in the justice process. It also echoes Victimology Theory by centering the victim's voice and emotional needs within legal mechanisms.⁵⁶ Finally, from the lens of Procedural Justice, the model reinforces principles of dignity, fairness, and active inclusion of victims in judicial decision-making.

4.4.2. Legal Mapping and Reform Proposal: Normative Integration of VIS in the JCJS Law

Incorporating VIS in a legally sustainable manner requires a reformulation of the normative framework of the JCJS Law and its harmonization with other relevant legal instruments. Such regulatory innovation should not only align with international child rights standards but also embody national legal values, including those derived from Islamic jurisprudence. As noted by Saepullah, the application of the *dhariah* method in interpreting Law No. 35 of 2014 reflects how Islamic legal reasoning can support protective mechanisms for children, especially in anticipating harm and prioritizing dignity (*karāmah*) and life preservation (*ḥifẓ al-nafs*).⁵⁷ Building on this foundation, Aibak, further affirms that the integration of *Maqāṣid Sharī'ah* into child protection policy provides a normative basis for embedding legal instruments such as VIS that are consistent with the values of dignity, protection, and justice (*ʿadl*) for child victims.⁵⁸

In light of these considerations, the following proposals are offered:

- a. Addition of New Provisions in the JCJS Law:

⁵⁶ Sandra Walklate, *Victimology: The Victim and the Criminal Justice Process* (London: Routledge, 2015).

⁵⁷ Usep Saepullah, "Aplikasi metode dhariah dalam UU No. 35/2014 tentang Perubahan atas UU Nomor 23 Tahun 2002 tentang Perlindungan Anak," *Ijtihad : Jurnal Wacana Hukum Islam dan Kemanusiaan* 16, no. 1 (2016): 1, <https://doi.org/10.18326/ijtihad.v16i1.105-129>.

⁵⁸ Kutbuddin Aibak, "Implementation of Maqāṣid Sharī'ah in Reform of Case Management of Violence against Women and Children," *De Jure: Jurnal Hukum Dan Syar'iah* 15, no. 1 (2023): 1, <https://doi.org/10.18860/j-fsh.v15i1.20666>.

- 1) New Article 64A: “Victim Impact Statements may be submitted by or on behalf of child victims in all criminal proceedings involving minors. Such statements shall be considered by the judge at the sentencing stage, provided they do not unduly harm the child offender's rehabilitative prospects.”
- 2) Amendment to Article 28: Add a clause mandating that Bapas reports include any available VIS prepared with the support of LPSK or psychologists.

b. Harmonization with Related Laws:

- 1) Criminal Procedure Code: Introduce a cross-reference allowing VIS to be part of evidence considered under Article 184 Criminal Procedure Code.⁵⁹
- 2) Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection: Include VIS as a component of psychosocial recovery mechanisms under Article 59.
- 3) Law Number 31 of 2014 on Amendment on the Law Number 13 of 2006 on the Protection of Witnesses and Victims: Extend LPSK's mandate to assist child victims in preparing VIS.

This legal mapping creates an integrated regulatory ecosystem that gives normative grounding to VIS, thereby ensuring legal certainty and operational clarity. By framing VIS as part of restorative outcomes, these reforms also avoid conflict with the rehabilitative orientation of the juvenile justice system.

4.5. Socio-Legal Feasibility Analysis for Implementing Victim Impact Statements (VIS) in Indonesia

4.5.1 Challenges to Implementation

4.5.1.1 Cultural Barriers to Expressing Trauma

In many Indonesian communities particularly in rural Java and parts of Eastern Indonesia customary norms regard public expressions of grief or shame as aib (dishonour) and encourage victims to suppress emotional disclosures.⁶⁰ Child victims,

⁵⁹ Currently, Article 184 of Law Number 8 of 1981 concerning the Indonesian Criminal Procedure Code regulates the types of evidence consisting of witness testimony, expert testimony, letter evidence, clue evidence, and testimony of the defendant.

⁶⁰ A. Sulistyowati, “Cultural Silence and Child Victims in Rural Java,” *International Journal of Children's Rights* 30 (2022): 503–525

socialised to show deference to adults, often experience “double silencing”: first by patriarchal hierarchies and second by courtroom formality.⁶¹

4.5.1.2 Institutional Resistance and Work-Load Pressures

Empirical studies of Indonesian district courts reveal heavy dockets averaging 25 juvenile cases per judge per month leaving little time to read narrative evidence such as VIS.⁶² Prosecutors and police officers likewise report scepticism, viewing VIS as “subjective” and therefore of limited probative value.⁶³ This resistance reflects a positivist legal culture that privileges material evidence over experiential accounts, a stance at odds with restorative-justice ideals that prioritise recognition of harm.

4.5.1.3 Technical and Evidentiary Challenges

VIS necessarily rely on personal narratives, often without corroborating documentary proof. Judges must therefore balance victims’ expressive rights against the juvenile offender’s due-process guarantees under Article 3(b) the JCJS Law. This balance becomes even more delicate when child victims’ identities and narratives are disclosed without sufficient procedural safeguards, as seen in current issues with data exposure in SIPP court databases.⁶⁴ Comparative research warns that unfiltered emotional content can skew sentencing severity if not moderated by guidance on relevance and proportionality.⁶⁵ The absence of uniform rules on admissibility heightens the risk of forum shopping and inconsistent outcomes.

4.5.2 Mitigation Strategies

4.5.2.1 Trauma-Informed Capacity Building

Mandatory Continuing Judicial Education modules modelled on the Philippine ‘Justice for Children’ programme should familiarise judges, prosecutors, police, and Bapas

⁶¹ J. Setiawan and M. Hidayat, “Double Marginalisation: Children’s Testimony in Indonesian Courts,” *Child Abuse & Neglect* 139 (2023): 105506.

⁶² Supreme Court of Indonesia, *Annual Judicial Statistics 2024* (Jakarta: MA Press, 2025), 72.

⁶³ R. Putri et al., “Prosecutorial Attitudes toward Victim Participation in Indonesia,” *Asian Journal of Criminology* 18 (2023): 211–230.

⁶⁴ La Gurusi et al., “Islamic Legal Perspective on Data of Child Victims of Sexual Violence: A Case Study of the Indonesia’s Court,” *De Jure: Jurnal Hukum Dan Syariah* 16, no. 2 (2024): 2, <https://doi.org/10.18860/j-fsh.v16i2.28358>.

⁶⁵ Julian Roberts and M. Edwards, “Balancing Voice and Due Process: Victim Impact Statements in Youth Sentencing,” *Youth Justice* 22 (2022): 45–62.

officers with trauma-informed interviewing and the psychosocial development of children.⁶⁶ Training grounded in procedural-justice theory can also improve perceived legitimacy by ensuring victims feel heard and respected.

4.5.2.2 Standard Operating Procedures and Inter-Agency Coordination

The Ministry of Law and Human Rights, in concert with the Supreme Court and the Attorney-General's Office, should promulgate a joint SOP on VIS covering: (i) timing of submission; (ii) permissible content; (iii) redaction of prejudicial statements; and (iv) data-privacy safeguards. A dedicated electronic template integrated into the e-Berpadu case-management system would streamline filing requirements and reduce clerical burden.⁶⁷

4.5.2.3 Enabling Roles for LPSK, Bapas, and KPAI

LPSK can provide safe facilities and psychosocial counsellors to assist victims in drafting VIS, while Bapas officers incorporate the statement into the social-inquiry report mandated by Article 28 the JCJS Law. KPAI, vested with monitoring authority under Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, can audit compliance and issue corrective recommendations.⁶⁸ This tri-agency model operationalises restorative-justice goals by balancing victim healing with offender rehabilitation.

4.5.2.4 Comprehensive Psychosocial Support

Before and after giving a VIS, child victims should receive counselling funded through the Victim Support Fund administered by the Ministry of Social Affairs. Evidence from South African diversion programmes shows that combining VIS with therapeutic services reduces post-traumatic stress symptoms by up to 30 percent.⁶⁹ Embedding

⁶⁶ UNICEF Philippines and Judicial Academy, *Handbook on Child-Sensitive Court Procedures* (2021), 58–60.

⁶⁷ Directorate-General of Courts, *Standard Operating Procedure for Electronic Case Management (e-Berpadu)* (Jakarta: DJA, 2024), §4.3.

⁶⁸ LPSK and KPAI, *Joint Guidelines on Victim Assistance for Children* (2024), arts. 5–7.

⁶⁹ Mark Dawes et al., "Psychosocial Outcomes of Diversion Programmes for Youth Offenders in South Africa," *Journal of Child Psychology and Psychiatry* 64 (2023): 1184–1195.

such support mitigates the risk of retraumatisation and fulfils the best-interests-of-the-child principle recognised in Article 2 (d) the JCJS Law.⁷⁰

Viewed through Restorative-Justice Theory, VIS supply the narrative bridge that connects offender accountability with victim healing, facilitating the relational repair valued in Indonesian customary reconciliation practices. Victimology reminds us that without systemic channels for voice, child victims remain peripheral to a process ostensibly designed for their protection. Finally, Procedural-Justice Theory predicts higher satisfaction and compliance when participants perceive fairness, neutrality, and respectful treatment outcomes that structured VIS procedures can deliver. If these mitigation strategies are implemented, the socio-legal environment will be sufficiently enabling for VIS to advance both rehabilitative and protective aims of the juvenile justice system.

5. Conclusion

This study, titled Re-conceptualizing Child Victim Rights: A Normative and Comparative Analysis of Victim Impact Statement in Indonesia's Juvenile Justice System, has sought to critically examine and reframe the place of child victims within Indonesia's juvenile justice process. The research responds to a fundamental normative gap: the limited procedural recognition of child victims' voices and psychological needs in the existing legal framework under Law No. 11 of 2012 on the Juvenile Criminal Justice System (JCJS Law)

Through comparative legal analysis drawing from jurisdictions such as the United States, Canada, England and Wales, and South Africa, this paper has shown that Victim Impact Statements (VIS) serve not only as tools for expressing harm but also as normative affirmations of child victim agency. These jurisdictions demonstrate that VIS, when procedurally safeguarded, can coexist with child offender protections and enrich rehabilitative justice models.

The model is normatively grounded in Restorative Justice Theory, which frames VIS as a means to restore relational balance; in Victimology, which emphasizes the

⁷⁰ Article 2 the JCJS Law states that the juvenile criminal justice system is implemented based on the principle of the best interest of the child.

psychological harm of exclusion and the need for structured participation; and in Procedural Justice Theory, which underlines the importance of fairness, voice, and respect in legal processes to increase legitimacy and trust. By offering this integrated model and roadmap for reform, the paper re-conceptualizes child victim rights not as peripheral considerations, but as central pillars of a just, inclusive, and child-sensitive juvenile justice system. This reconceptualization provides both a normative justification and a regulatory pathway for embedding VIS within Indonesia's legal landscape thereby enhancing the dignity, voice, and psychosocial protection of child victims in ways that align with international standards and local cultural context.

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