



# Indirect Victim Position in Corrupt Criminal Acts

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Corruption criminal acts are very disliked by society and the country, because the impact can inflict enormous losses for the country's economy and undermine the development of good governance. In criminal acts of corruption, the victim can be classified into 2 (two) sections: (Direct Victims) and (Indirect Victims). One of the obstacles faced is the unclear rule of law governing the claims of indirect victims in criminal acts of corruption against the loss of social and economic rights arising from and as a result of perpetrators of criminal acts of Corruption.

**Key words:** *Indirect Victim, Corruption Criminal Act.*

## Introduction

Corruption crime is an act against law that aims to benefit oneself or others, the company and misuse the authority, opportunity or means inherent in positions that harm the state's finances. In the act of corruption that becomes and must be proved in the judicial process is the loss of state or economy of the state, as seen in article 2 and article 3 of the Law No. 31 year 1999 jo Law No. 20 year 2001 on Corruption Eradication.

Corruption as a form of an extraordinary crime stipulated in the International Convention of the United Nations (UN) in Vienna, on October 7, 2013, was committed by someone respectable, powerful, has authority, and the victims are not obvious. Sociologically, the nature of corruption is also a form of violation of trust given by the community<sup>1</sup>. The extraordinary nature of crime from corruption is that the lost element of the monetary state will have an impact on the basic economic life of the nation<sup>2</sup>. Corruption in Indonesia today is a common enemy and a chronic social disease that is very dangerous and threatens all aspects of social,



national and state life. Corruption has caused huge material losses to the country's finances<sup>3</sup>.

If referring to article 2 and article 3 of Law No. 31 of year 1999 *Jo.* Law No. 20 of 2001 on the eradication of corruption crimes, the so-called victims of corruption crimes are states. However, the impact on the corruption is the society that directly senses the corruption act. Thus, the victims in the corruption crime are divided into 2 (two) forms: direct victims of countries and indirect victims of society, corporations and individuals. Indirect victims here are victims of violations of social and economic rights as a result of corruption crimes.

Victims are persons who are individually or collectively, have suffered suffering include physical and mental suffering, emotional suffering, economic loss or substantial reductions in human rights, through deeds or (omissions) in violation of the criminal law in the Member States, which includes legal regulations that violate the misuse of power. The victim's position in a criminal offence including corruption crime is an important component in the prosecution of a criminal offence. Even Law No. 13 of 2006 on witness Protection and Victims provides protection for the safety of witnesses and victims on judicial proceedings.<sup>4</sup>

The impact of corruption crimes can be seen from the occurrence of natural disasters and environmental damage such as floods, even according to Nyoman states Putra Jaya said that the negative consequences of corruption crimes are severely damaging the order of nation's life, even corruption is the seizer of economic rights and social rights of Indonesian people.<sup>5</sup> Violations of the social and economic rights of the people have not been regulated by the Corruption Crime Act even though it has been included in consideration of Law No. 20 of 2001 and mandated by Article 35 of UNCAC. Therefore, sociologically, people who are harmed due to criminal acts of corruption need to be given a chance or given access by the State to sue or sue.

Losses and suffering due to criminal acts of corruption in their development are a very significant impact extends not only to the extent of losses to the state and national economy but also to the life of the nation and state. State budget leakage of 4 (four) Pelita by 30 percent has caused poverty and large social disparities in people's lives because some people are unable to enjoy the rights they should have. The logical consequence of such a situation is that corruption has weakened the social security of the nation and the state of the Republic of

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<sup>1</sup> Marwan Mas, *Pemberantasan Tindak Pidana Korupsi*, Bogor: Ghalia Indonesia, 2014, p 2.

<sup>2</sup> Firman Halawa dan Edi Setiadi, *Korupsi Dengan Nilai Kerugian Sedikit*, Bandung: Mega Rancage dan UNISBA, 2016, p 186.

<sup>3</sup> Hariyono et. al, *Membangun Negara Hukum yang Bermartabat*, Malang: Setara Pers, 2013, hlm. 350.

<sup>4</sup> It is explained in Article 1 Item 2 of Law number 13 of 2006 concerning Protection of Witnesses and Victims that "A victim is a person who suffers physical, mental, and / or economic loss caused by a criminal offense".

<sup>5</sup> Nyoman Sarekat Putra Jaya. *Beberapa Pemikiran ke arah Pengembangan Hukum Pidana*. Citra Aditya Bakti. 2008, p 69.

Indonesia.<sup>6</sup>

Reviewing from a victimology perspective that the positive legal norm (Corruption Law Act) legally accommodated the rights of victims (communities) directly and concrete. Given the form of accountability perpetrators of criminal acts of corruption only limited to undergoing criminal and refund of state financial losses, certainly have not been able to reduce the suffering of people directly. Thus, there needs to be a policy that can reduce victim suffering. In the perspective of victimology, the policy may be restitution and/or compensation.<sup>7</sup>

## Problems

Problems in this research are :

1. How is the position of indirect victims of corruption crimes in Indonesia
2. How legal protection forms are given to indirect victims in criminal acts of corruption.

## Research Method

This research used normative legal research, which is legal research that uses secondary data sources whose emphasis is on theoretical and qualitative analysis, also known as literature review or document studies. This research is a descriptive analytical meaning this research is not only described by analyzing a condition or symptom, either at the legal level but also want to give a supposed arrangement (*das sollen*) and solve legal issues relating to indirect victims of corruption crimes. The Data collected using the literature review and document analysis aims to provide an overview of the legal knowledge governing the indirect victims.

## Discussion

### *The Position of Indirect Victims in Corruption Crimes in Indonesia*

(*Indirect victim*) are those who do not directly become the subject of the perpetrators, but also suffer or mourn. Indirect victims of corruption crimes are communities, legal entities/corporations and individuals. Corruption crimes other than the detriment of the state, can also cause harm to indirect victims (citizens, both individuals and legal entities), for example:<sup>8</sup>

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<sup>6</sup> Romli Atmasasmita, *Sekitar Masalah Korupsi Aspek Nasional dan Aspek Internasional*, Mandar Maju, Bandung, 2004, p. 4 – 5

<sup>7</sup>Badan Pembinaan Hukum Nasional (BPHN) Kementerian Hukum dan Hak Asasi Manusia, Final Report: *Tim Pengkajian Tentang Kompensasi Bagi Pihak Yang Menderita Kerugian Akibat Tindak Pidana Korupsi*, 14 November 2013, p 144.

<sup>8</sup>Manumpak Pane, article : *Implementasi Pemberian Kompensasi Bagi Pihak Yang Menderita Kerugian Akibat Tindak Pidana Korupsi*, final report: *Tim Pengkajian Tentang Kompensasi Bagi Pihak Yang Menderita Kerugian*



1. Building high rise buildings in community settlements that are not in accordance with the construction of buildings (in the implementation of criminal acts of corruption). If the building of the building collapsed and befalls some houses surrounding the building is so damaged, then the citizens who are victims and suffer losses from the incident is reasonable to get compensation for damage to the house.
2. Construction of a bridge over a river that becomes an irrigation channel to the rice fields of the population in a village, apparently in the implementation of the bridge is constructed not in accordance with the construction of the designated buildings (criminal acts occur Corruption). When the bridge building collapsed and resulted in the flow of river water to the rice fields of the population was stunted and resulted in rice plants in the rice fields are not growing well, then the citizens who suffered losses due to dissent the stream is meant worthy to obtain compensation.

In criminal acts of corruption, if understood narrowly then the party that suffers losses is the State, but it should be noted that the State is formed from several elements which when referring to the "Montevideo Convention on the Rights and Duties of States, December 26, 1933 or" the Montevideo Convention 1933 "Article 1 (Article 1) states:" the state as a person of international law shall possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other states;. Boer Mauna said that the elements of state formation were constitutive elements, namely (1) population; (2) certain regions; (3) Government; and (4) sovereignty. <sup>9</sup>

The victim's existence in the general explanation of Law No. 48 year 2009 on Judicial Power which became the foundation of Criminal Code on the position of victims in the criminal justice system, namely: *Firstly*, wanting the position of crime victims to the center of attention because the victim is a "justice seeker" in the criminal law, the party who reported criminal acts to the police, the party who was harmed and suffered from criminal acts so that the policy against justice in criminal law should also be both to the perpetrator and to the victims of crime.

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Akibat Tindak Pidana Korupsi oleh Badan Pembinaan Hukum Nasional (BPHN) Kementerian Hukum dan Hak Asasi Manusia, 14 November 2013.

<sup>9</sup> Parry and Grant, *Encyclopedic Dictionary of International Law*, New York: Oceanna Publications, 1986, p 375.

*Secondly*, crime victims are also a concern but the attention does not have to change the criminal justice system that is now due to police and prosecutors actions against real suspects to protect the victims 'crimes. For example, the existing system is assumed to be relatively quite representative as a form of protection of the state against people who become victims of crime.

The position of victims in the criminal justice system has not been placed fairly and even tends to be forgotten where the condition implicates the two fundamental things are:<sup>10</sup>

- a. No legal protections for victims and
- b. Judgment of judges has not fulfilled the sense of justice for victims, perpetrators and public.

The position of the Witness and Victim Protection Agency, especially in the criminal acts of corruption, is a component of a criminal justice system that has an important function in law enforcement, in particular providing protection against witnesses and victims, in order to obtain the truth of materiel and realize a good, balanced and fair criminal justice system. Strengthening the authority of witness and victim protection agencies is very important, because the witness information is very helpful to uncover a case. Given the security and safety assurance for witnesses and/or victims, can make sense of safety and comfort for them so that they can testify and provide information that could help law enforcement officials dismantle an organized crime criminal acts.<sup>11</sup>

In the United Nations Declaration No. 40/A/Res/34 year 1985 stated the victim is entitled to the opportunity to use the mechanisms of justice and obtain immediate compensation, as stipulated by national legislation, for damages that he sustained. The judicial and administrative mechanisms are enforced and strengthened where it is necessary to allow victims to obtain damages through formal or informal procedures that are appropriate, fair, inexpensive and affordable. The victim must be notified of his rights in seeking damages through the mechanisms.

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<sup>10</sup> H.S. Brahmana, *Kriminologi dan Victimologi (Menjelajah Masalah Kejahatan, Korban Kejahatan Dan Teori Penanggulangannya)*, Ratu Jaya, Medan, 2015, p 54.

<sup>11</sup> Pratiwi Eka Putri Tumian, *Kedudukan Lembaga Perlindungan Saksi Dan Korban Dalam Sistem Peradilan Pidana*, Jurnal: Lex Crimen, Volume VII, No. 10, Desember 2018, p 85.

The position of victims in the widespread corruption criminal act is the people of Indonesia. But in certain criminal acts of corruption, the feeling of immediate suffering is a citizen of the surrounding community. The victim's position requires special legal attention and protection, namely through the compensation and restitution of the most responsible parties. In corruption crimes according to the *United Nations Convention Against Corruption* (UNCAC), people who were harmed by corruption crimes had to be given the opportunity or given access by the state to prosecute or sue if social rights and His economy was harmed by corruption. It is based on the consideration and the mandate of article 35 UNCAC.

### ***Legal Protection Form given to Indirect Victims of Corruption Crimes***

Legal protection is a protection given to legal subjects in accordance with the rules of law, whether that is preventative or in a repressive form, whether written or unwritten in order to enforce regulations. Legal protection for the public is very important because the society and the individual, can be victims of crime. Legal protection of crime victims as part of protection to society, can be manifested in various forms such as through the provision of restitution and compensation, medical services and legal assistance.<sup>12</sup>

The protection of victims in relation to criminal acts of corruption is governed by the International Convention as set out in *United Nations Convention Against Corruption* (UNCAC) 2003<sup>13</sup>, in article 32 and 33 which:

Article 32 of UNCAC :

1. Each Member State shall take appropriate measures in accordance with the applicable legal system in his or her country and by all means provide effective protection from the possibility of retaliation or threat or intimidation of the witnesses and expert witnesses who bear testimony of the criminal offence established in accordance with this convention, and to the extent necessary for their families and others who are close to them.
2. The actions described in paragraph (1) of this article, may include, among other things, without prejudice to, eliminate, the right to obtain reasonable judicial.

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<sup>12</sup> Dikdik M. Arief Mansur & Elisatris Gultom, *Urgensi Perlindungan Korban Kejahatan*, PT. RajaGrafindo Persada, Jakarta, 2007, p 166.

<sup>13</sup> Siswanto Sunarso, *Victimologi dalam Sistem Peradilan Pidana*, Sinar Grafika, Jakarta, 2012, p 245



Article 33 of UNCAC :

Each Member State is obliged to consider incorporating into their national legal system actions against unfair treatment for any person who in good faith with rational reasons reports to Authorities, any facts about the crimes set forth under this convention.

According to Muladi, the importance of protection for victims of crime is because First, the community is considered as an embodiment of a system of institutionalized trust. This trust is integrated through norms expressed in institutional structures, such as the police, prosecutors, courts and so on. The occurrence of crime against the victim will mean the destruction of the belief system so that the regulation of criminal law and other laws relating to the victim will function as a means of returning the belief system. Second, there are social contract arguments and social solidarity because the state can be said to monopolize all social reactions to crime and prohibit acts of a personal nature. Therefore, if there are victims of crime, the state must pay attention to the needs of victims by improving services and regulating rights. Third, the protection of victims which is usually associated with one of the objectives of punishment, namely conflict resolution. By resolving conflicts caused by criminal acts, it will restore balance and bring peace to the community.<sup>14</sup>

Victim protection may include a form of protection that is abstract (indirect) or concrete (direct). Abstract protection is essentially a form of protection that can only be felt emotionally (psychic), such as contentment. Thus, the form of legal protection against indirect victims in the criminal act of corruption is restitution and compensation. The protection of the law against indirect victims in the form of restitution is given to the corruption perpetrators being compensated is given to the state. Damages to the state can be given to the victim if when the impact is directly perceived by the community.

*On Declaration Of Basic Principles Of Justice For Victim Of Crime And The Abuse Of Power* stated that the victims of crime must be treated with care and respect for his dignity, and are

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<sup>14</sup> Muladi, *Perlindungan Korban dalam Sistem Peradilan Pidana*: sebagaimana dimuat dalam kumpulan karangan Hak Asasi Manusia, Politik dan Sistem Peradilan Pidana, Semarang: Badan Penerbit Universitas Diponegoro, 1997, p 172



given the right to promptly claim damages (if any rules), mechanisms of law and administration must be formulated and ratified to crime to obtain damages. If a thorough indemnity cannot be obtained from a criminal, in cases of severe physical or mental loss, the state is obliged to compensate the victim of the crime or the family.<sup>15</sup>

According to Rena Yulia, there are several forms of legal protection for victims of crime:<sup>16</sup>

a. Compensation

The compensation is used by the Criminal Procedure Code in Article 99 paragraphs 1 and 2 with an emphasis on reimbursement of costs incurred by the injured party or victim. The concept of compensation consists of two benefits, firstly, to meet material losses and all costs incurred, and secondly to the emotional satisfaction of the victim. Whereas in terms of the interests of the perpetrators, the obligation to compensate for the losses is seen as a form of crime imposed and felt as something concrete and directly related to the mistakes made by the perpetrators.

b. Restitution

Restitution is more directed at the perpetrators' responsibility for the consequences caused by crime so that the main target is to overcome all losses suffered by the victim. The benchmarks used in determining the amount of restitution granted are not easy in formulating it. This depends on the social status of the offender and the victim. In the case of victims with lower social status than the perpetrators, prioritizing compensation in the form of material and vice versa if the social status is higher than the perpetrators, recovery of assets and good name will be prioritized.

c. Compensation

Compensation is a form of compensation that can be seen from the aspects of humanity and human rights. The idea of realizing the social welfare of the community based on social contractual commitments and social solidarity becomes the community and the state responsible and morally obliged to protect its citizens, especially those who have suffered as victims of crime. Compensation as a form of compensation does not depend at all on how

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<sup>15</sup> Kunarto, *PBB Dan Pencegahan Kejahatan, Ikhtisar Implementasi Hak Asasi Manusia Dalam Penegakan Hukum*, Jakarta: Cipta Manunggal, 1996, p 107.

<sup>16</sup> Rena Yulia, *Victimologi: Perlindungan Hukum Terhadap Korban Kejahatan*, Yogyakarta: Graha Ilmu, 2010, p 59.



the judicial process and decisions are handed down, even the source of funds for that is obtained from the government or public funds.

Mandelson said the involvement of victims in the occurrence of crime can be divided into six categories based on the degree of error:<sup>17</sup>

1. The victim is completely innocent;
2. Someone becomes a victim because of his own negligence.
3. The victim is as wrong as the perpetrator.
4. The victim is more guilty than the culprit.
5. The victim is the only guilty.
6. False victims and imaginary victims.

Law No. 13 of 2006 on Witness and Victim Protection governs the institution in charge of providing protection to victims including compensation, restitution, and rehabilitation issues. Chapters 98 – 101 Law No. 8 year 1981 of KUHAP also justifying a person to compensate when he suffered the loss of a criminal offence committed by a corruption criminal offence. Article 63 paragraph (1) of the Law No. 30 year 2002 on the Corruption Eradication Commission, states that a person who is harmed as a result of an investigation, investigation and prosecution by the Corruption Eradication Commission shall be entitled to submitting a rehabilitation lawsuit and/or compensation in addition to pretrial action in the Criminal Code. All chapters do not explicitly explain the qualifications regarding the loss of a criminal offence.

According to Lili Pintauli Siregar, stated that the form of legal protection for indirect victims or third party victims in criminal acts of corruption cannot be given by the Witness and Victim Protection Agency (LPSK) because the victim is not in the realm of threat, not in the realm of having important information, but if corruption is detrimental to the country's finances so that investors do not believe, development is stalled in several sectors and the impact is that roads are destroyed and so on, victims can sue civilly. However, if the indirect victim is a victim of the wider community, a Citizen Lawsuit lawsuit can be filed. A Citizen Lawsuit suit is a

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<sup>17</sup> C. Maya Indah S, *Perlindungan Korban Suatu Perspektif Victimologi dan Kriminologi*, Jakarta: Kencana, 2014, p 35.

mechanism for citizens to sue the state administrators for negligence in fulfilling the rights of citizens. Such negligence was postulated as an act against the law, so that citizen lawsuit was submitted to the scope of the general court in this case the civil case.<sup>18</sup>

Protection of victims, especially the right of victims to obtain compensation, is an integral part of human rights in the field of welfare and social security. In criminal law, the victim or the injured party in the formulation of the substance of the type of criminal act, criminal sanctions and criminal procedure are determined by the makers of the Act (executive and legislative).<sup>19</sup>

According to Jamaluddin<sup>20</sup>, some efforts can be made in legal protection for indirect victims in criminal acts of corruption are:

#### 1. Reverse Proof

Proof of reversing the criminal acts of corruption against indirect victims is one of the methods carried out before the fall of the court decision. However, the reverse verification system only applies to criminal offenses relating to gratification relating to bribery. The reverse verification system is contained in Article 37 jo 12B paragraph (1) jo 38A and 38B of Law Number 31 of 1999 jo of Law Number 20 of 2001 concerning Eradication of Corruption. The Corruption Crime Act classifies evidence into 3 (three) systems, namely:<sup>21</sup>

- a. The reversal of the burden of proof is borne by the defendant to prove he has not committed a criminal act of corruption. Reversal of the burden of proof is valid for bribery received gratuities with a value of Rp. 10,000,000.00 (ten million Rupiah) rupiah or more (Article 12B paragraph (1) letter a) and for assets that have not been charged in connection with a criminal act of corruption (Article 38B).
- b. Reversal of the burden of proof that is semi inverted or inversely balanced wherein the burden of proof is placed both on the defendant and the public prosecutor in a

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<sup>18</sup> Susanti Adi Nugroho, *Class Action dan Perbandingannya dengan Negara Lain*, Jakarta : Kencana Prenada Media Group, 2010, p 384.

<sup>19</sup> Abdussalam, *Victimologi*, Jakarta :PTIK, 2010, p 42.

<sup>20</sup> Interview with Jamaluddin, SH. MH, judge at Medan State Court, Tuesday, 03 September 2019.

<sup>21</sup> Lilik Mulyadi, *Asas Pembalikan Beban Pembuktian Terhadap Tindak Pidana Korupsi Dalam Sistem Hukum Pidana Indonesia Dihubungkan Dengan Konvensi Perserikatan Bangsa-Bangsa Anti Korupsi 2003*, [https://badilum.mahkamahagung.go.id/upload\\_file/img/article/doc/asas\\_beban\\_pembuktian\\_terhadap\\_tipikor\\_dalam\\_hukum\\_pidana\\_indonesia.pdf](https://badilum.mahkamahagung.go.id/upload_file/img/article/doc/asas_beban_pembuktian_terhadap_tipikor_dalam_hukum_pidana_indonesia.pdf), access on 20 September 2019.

balanced manner with respect to objects of evidence that differ in the opposite manner (Article 37A).

- c. The public prosecutor fully bears the conventional system whereby the evidence of a criminal act of corruption and the error of a defendant commit a criminal act of corruption. This aspect was committed against bribery receiving gratuities with a value of less than Rp. 10,000,000.00 (ten million) rupiah (Article 12B paragraph (1) letter b) and principal corruption.

According to Jamaludin, the reverse evidence was submitted before a court ruling was used to determine that the assets or objects seized by the investigator did not belong to the defendant whose results were from corruption. If the reverse evidence is proven that the object or property is not the result of corruption, then it will be reported in the verdict to be returned.

## 2. Special Appeal of Confiscation

In a criminal act of corruption, the defendant may also be categorized as an indirect victim related to the seizure of property that is not the result of a criminal act of corruption. For example, a judge caught in Operation Catching Hands (OTT) related to bribery in the amount of Rp. 200,000,000.- (two hundred million rupiahs), in addition to taking the money, the investigator (KPK) also confiscated all assets owned by the defendant so that due to the actions of the investigator (KPK), the social and economic rights of the defendant were removed. because not all of these assets are the result of criminal acts of corruption so that if the State is not seized by the State of objects or assets which are not the result of corruption, the defendant has the right to appeal related to confiscation and evidence. The appellate statement made by the defendant is separate in the master file so that the decision submitted on appeal is the confiscation while the sentence is not in question.

## 3. Civil Lawsuit

Civil lawsuits may be filed against the defendant and / or those responsible for the crime. In examining this civil claim, the judge conducts an examination based on civil procedural law, namely: first, the judge examines absolute and relative competence. The verdict on the claim for compensation is inherent in the verdict of the criminal case. Article 99 paragraph (3) of the Criminal Procedure Code states: "Decisions regarding compensation

will automatically be granted a permanent force if the conviction is also legally binding."

Compensation against parties suffering from corruption due to a criminal offense must be based on a court ruling, by combining the cause of the indemnification suit in the event of a corruption criminal case Are being heard in court. In the allotment of the ruling, the most harmed is the indirect victim of the society, individuals and corporations, although the direct victim of the state has received a refund of the state, but against the victim's direct loss Its own impact on corruption crimes was not noticed. So the only way to be done against indirect victims is to file a civil lawsuit.

Based on article 4 *Council of Europe: Civil Law Convention on Corruption*, state that : (1) *Each Party shall provide in its internal law for the following conditions to be fulfilled in order for the damage to be compensated: (i) The defendant has committed or authorised the act of corruption, or failed to take reasonable steps to prevent the act of corruption; (ii) the plaintiff has suffered damage; and (iii) there is a causal link between the act of corruption and the damage.* (2) *Each Party shall provide in its internal law that, if several defendants are liable for damage for the same corrupt activity, they shall be jointly and severally liable.*

Based on the purpose of stated that the defendant should be responsible for indemnification due to criminal acts of corruption and the plaintiff must also prove that the losses he suffered due to the relationship between the corruption and the loss that he suffered. If there are some defendants causing the losses then each defendant is responsible in a range of damages for the same corruption crime.

## **Conclusion**

1. The position of indirect victims of corruption in Indonesia is merely a complement in a judicial process. The chapters discussing the victims in Criminal Code are very few in fact, not even the focus on the existence of victims of criminal acts but only as residents of ordinary countries who have the same rights as other citizens. The position of victims in criminal acts only as witnesses of a criminal case solely to prove the fault of the suspect/defendant.
2. The form of legal protection given to indirect victims in the criminal act of corruption is restitution and compensation. This provision of compensation and restitution is given to the body or person suffering losses as a result of the corruption act against the violation of



social and economic rights of society.



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