

## **Legal Protection for Victims of Minor Crimes against Assets by Child Perpetrators in a Restorative Justice Perspective**

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### **Abstract**

Indonesia, as a country that upholds legal norms and human rights (HAM), has a major role in ensuring that every citizen gets protection for their rights, including the rights of victims of criminal acts. The position of victims in the criminal justice system as parties seeking justice has so far received little attention, this is a form of injustice for victims. In the event that a criminal act is committed by a child, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System provides provisions for using a restorative justice approach through diversion in its resolution, the involvement of the perpetrator and victim in the diversion process aims to produce a win-win solution in order to achieve justice for all parties. Based on this, the author feels it is necessary to study this legal issue more deeply to find a solution to the problem in order to create a sense of justice for all parties. Based on this, the author feels it is necessary to study this legal issue more deeply to find a solution to the problem in order to create a sense of justice for all parties.

Keywords: Victims, Child Offenders, Restorative Justice

### **Introduction**

The large number of crimes committed by children is a big challenge for this country. Children, who should be the hope of the nation and society in the future, are often involved in behavior that they should not do. The causes of children's criminal behavior are due to social influences, lack of attention, broken families, economic problems, and inadequate education.<sup>1</sup> Children do not yet have the same level of emotional, mental and intellectual intelligence as adults, so they tend to be more easily influenced by their surrounding environment, especially in the era of globalization and rapid technological development. Therefore, children require special attention to protect them from the negative influences of the social environment. Children have great potential that can be exploited by certain parties, especially for negative purposes that can harm other people and violate the law.

Children who violate the law or commit criminal acts are greatly influenced by several other factors outside the child.<sup>2</sup> In the juvenile criminal justice system, special regulations apply because of the differences between children and adults. When a child commits an unlawful act, a restorative approach is required to restore conditions to how

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<sup>1</sup> Marlina, *Juvenile Criminal Justice in Indonesia Development of the Concept of Diversion and Restorative Justice* (PT Refika Aditama 2009).[65].

<sup>2</sup> Zulfikar Judge, "Implementation of the Policy on Children in Conflict with the Law in Supporting the Development of Law and Human Rights at the West Jakarta Police", (2013) 10 *Lex Jurnalica* (Journal of Law),[155].

they were before the crime occurred. This is done in the best interests of the child and to protect the human rights of victims who have been injured by child perpetrators. As a country that respects legal norms and human rights, the Indonesian government has a central role in ensuring the protection of the rights of its citizens.<sup>3</sup>Law Number 11 of 2012 concerning the Juvenile Criminal Justice System emphasizes a restorative approach through diversion which aims to achieve peace between child victims and perpetrators. Diversion is carried out through deliberations involving children, victims and related parties. Attention to the interests of victims and the responsibilities of children is mandatory in the diversion process.

Criminal sanctions are not only about punishing the perpetrator, but also have broader and more useful goals.<sup>4</sup>Justice for child perpetrators has been achieved by carrying out diversion which prevents children from the criminal justice process. However, justice for victims must still be considered and must not be ignored. In article 9 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is stated that:

"Diversion agreements must obtain the consent of the victim and/or the victim's child's family as well as the willingness of the child and his family, except for:

- a. Criminal acts in the form of violations;
- b. Minor criminal offenses;
- c. Victimless crime; or
- d. "The value of the victim's losses is no more than the local provincial minimum wage."

Based on these provisions, there are several types of criminal acts where the diversion process does not require the victim's consent, one of which is a minor crime.

A light crime is a crime that has a loss value of no more than IDR 2.5 million based on the provisions contained in Perma Number 2 of 2012 concerning Adjustments to the Limits of Light Crimes and the Amount of Fines in the Criminal Code. Thus, if a child commits a criminal act with the loss suffered by the victim not exceeding this nominal limit, then the diversion agreement does not need to obtain the consent of the victim. This provision is a form of injustice for victims as parties whose human rights have been violated by child perpetrators, so it is necessary to carry out a deeper study to find a solution to this problem.

## **Sub Titles**

### **Legal Protection for Victims of Minor Crimes Against Assets by Child Perpetrators in a Restorative Justice Perspective**

The position of victims in criminal justice as parties seeking justice has so far been neglected because criminals receive more attention, this is a form of injustice for

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<sup>3</sup>Taufik H. Simatupang, "Support of the Criminal Justice Sub-System for the Protection of Witnesses and Victims (Existence of Witness and Victim Protection Institutions)", (2010) 8 Lex Jurnalica (Legal Science), [1].

<sup>4</sup>Chairul Huda, From "No Crime Without Error" To "No Criminal Accountability Without Error" (Kencana Prenada Media 2008).[133].

victims.<sup>5</sup>The Criminal Procedure Code also gives the impression that the protection for criminals receives a greater share compared to crime victims, so that the impression appears that crime victims have not received adequate protection.<sup>6</sup>The principles of criminal procedural law as regulated in the general explanation of KUHAP point 3 provide that there are various principles that protect and prioritize the interests of criminals, including Equality Before the Law, namely equal treatment before the law, the Principle of Opportunity, the Principle of Presumption of innocence, the principle of a quick, simple and low-cost trial that is free, honest and impartial, the principle of court examinations being open to the public, the principle that suspects and defendants have the right to receive legal aid, and the principle of court examinations in the presence of the accused.

We are all aware that the Criminal Procedure Code prioritizes the rights of suspects/defendants.<sup>7</sup>We can see this from several explanations of the Criminal Procedure Code, most of which prioritize the rights of suspects/defendants over the rights and interests of victims. In the judicial process, the victim can become a witness who usually incriminates the defendant.<sup>8</sup>However, this still does not have a strong impact on the victim getting justice. The position and protection of victims still receive little attention, even though the victim is the party whose rights have been violated, so they should receive greater attention to obtain their rights, justice and protection. Some forms of protection for crime victims include the following:<sup>9</sup>

- a. Providing restitution and compensation;
- b. Counseling;
- c. Medical services/assistance;
- d. Legal assistance;
- e. Providing information.

*“a victim is a person who has suffered damage as a result of a crime and/or whose sense of justice has been directly disturbed by the experience of having been the target of a crime.”*<sup>10</sup>Victims of criminal acts are the parties who suffer losses because their human rights have been violated by the perpetrators of criminal acts, so justice for victims is very important to be upheld. Article 1 paragraph (3) of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims states that a victim is a person who experiences physical, mental suffering and/or economic loss resulting from an act. criminal. In our criminal law, the state takes over and represents the victim in obtaining their rights and justice by punishing the perpetrator of the crime. When the perpetrator of a crime has received punishment for the actions he has committed against the victim, then justice for the victim is deemed to have been fulfilled. Victims are not given the opportunity to play a direct role in the process of obtaining justice, so that victims only become objects of

<sup>5</sup> Maya Indah, Victim Protection from a Victimology and Criminology Perspective (Kencana Prenadamedia Group 2014).[97].

<sup>6</sup>Dikdik M. Arief Mansur and Elisatris Gultom, The Urgency of Protection of Crime Victims (PT RajaGrafindo Persada 2006).[173].

<sup>7</sup>Bambang Waluyo, Victimology of Victim & Witness Protection (Sinar Graphics 2011).[36].

<sup>8</sup>Ibid. [3].

<sup>9</sup>Dikdik Arief Mansur and Elisatris Gultom, Op.Cit. [166].

<sup>10</sup>Muladi and Barda Nawawi Arief, Bunga Rampal Criminal Law (PT Alumni 2010). [84].

the law. Justice according to the law is not necessarily justice according to the victim of a criminal act. In order to achieve justice, the process of resolving a criminal act must involve the parties involved in the case, namely the perpetrator and the victim.

Children who commit minor crimes, as the theme raised by the author in this research, are children who commit criminal acts with a loss value of less than IDR 2.5 million based on Perma Number 2 of 2012 concerning Adjustments to the Limits of Minor Crimes and the Amount of Fines in the Criminal Code. The nominal amount of Rp. 2.5 million, which is the limit for minor crimes, is indeed included in the category of minor losses, but we must pay closer attention to the fact that this nominal amount is a small nominal amount for upper middle class people who have quite large incomes. However, for lower class people, especially those who live in poverty, of course this nominal value has a very large value, namely IDR 2,

In the case of Children in Conflict with the Law (ABH), juvenile justice aims to provide the best for children without sacrificing the interests of society and upholding the authority of the law.<sup>11</sup>We must prioritize the obligation of a restorative justice approach in the juvenile justice system considering that children are the buds of hope for the nation and as far as possible must be avoided from the criminal justice process. The principle of The Best Interest of the Child is our reference in applying sanctions for children who commit criminal acts. Children who have committed criminal acts have the right to receive treatment that maintains their honor, dignity and self-respect and have the right to return to society so that they can immediately act as members of society because the ultimate goal of the guidance and education that will be given to child prisoners is so that children who come into conflict with the law in the future can return to society with a better mentality and behavior. In its implementation, restorative justice is based on several principles:<sup>12</sup>

- a. Building joint participation between perpetrators, victims and community groups in resolving an incident or criminal act. Placing perpetrators, victims and the community as "stakeholders" who work together and immediately try to find a solution that is considered fair for all parties (win-win solution).
- b. Encourage the perpetrator/child to be responsible towards the victim for incidents or criminal acts that have caused injury or loss to the victim. Next, build responsibility not to repeat criminal acts that have been committed.
- c. Placing an event or criminal act as a form of violation between individuals. Therefore, the perpetrator should be directed towards accountability towards the victim, not prioritizing accountability.
- d. Encourage resolving an incident or criminal act in more informal and personal ways, rather than resolving it using formal procedural methods in court (rigid and impersonal)."

*Restorative justice* has emerged more than 20 years ago as an alternative resolution of criminal cases with child perpetrators.<sup>13</sup> Completion of criminal acts by

<sup>11</sup>Maidin Gultom. Legal Protection for Children and Women (PT Refika Aditama 2013). [192].

<sup>12</sup> Lilik Purwastuti Yudaningsih, "Handling Children's Cases Through Restorative Justice", (2017), <http://online-journal.unja.ac.id/index.php/jih/article/download/1951/1299>, [17].

<sup>13</sup>Fransiska Novita Eleanora, "The Punishment System for Children Who Commit Crimes", (2013) 10, Lex Jurnalica (Journal of Law), [179].

children is required to use *restorative justice* through diversion, namely the resolution process by transferring the handling of child criminal cases from formal processes to extrajudicial processes through alternative solutions as long as they do not disturb the public interest. This is because the method of implementing actions or imposing punishment on a child is not just to punish, but rather to re-educate and rehabilitate the child so that in making this happen, you must still pay attention to the child's needs and interests. A child still has a long future, so the guidance must be rehabilitative so that the child in question does not have to deal with the law again and can socialize after serving his sentence.

Diversion is also stated in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (SMRJ) or The Beijing Rules (UN General Assembly Resolution 40/33 dated 29 November), where diversion is listed in Rule 11.1, 11.2 and Rule 17.4.<sup>14</sup> Accountability for perpetrators of criminal acts, restoration of the victim's condition through improvements to the victim's rights and the suffering experienced by the victim, and a win-win solution for justice for all parties are the goals of diversion as a restorative approach in resolving children's cases. Restorative justice implemented in the juvenile criminal justice system through diversion not only protects the rights of children as perpetrators of criminal acts but also aims to protect the rights of victims so that there must be involvement of all parties in the resolution process.

However, the involvement of victims of minor crimes is not the main thing in article 9 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, in this article it is stated that minor crimes committed by children must be diverted but the diversion agreement does not have to obtain the victim's consent. If examined more deeply, based on restorative justice which provides provisions for involving all parties including victims in the diversion process through deliberation, then the role of victims who are not included in the diversion process for minor crimes is contrary to the goals and values contained in restorative justice.

Furthermore, if studied from the theory of legal protection, legal protection is given to the community and the communities targeted are communities that are in a weak position, both economically and weakly from a juridical aspect.<sup>15</sup> One of the functions of law is to provide protection to society, especially people who are in a weak position due to unequal legal relations. The provision that the victim is not involved in the diversion process for minor crimes of course enters into an unequal legal relationship so that the victim is in a weak position, where the victim should be involved to get justice because his human rights have been violated by the perpetrator.

The author concludes that legal protection for victims of minor crimes by child perpetrators from a restorative justice perspective has not been achieved, this is because the provisions in article 9 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System have broken justice and the interests of victims minor criminal offences. The provisions of this article focus too much on child protection, thereby sacrificing legal protection for victims of minor crimes, this creates a sense of injustice. Diversion, which is a form of restorative justice in the implementation of

<sup>14</sup>Robert Anriano Piodo, "Prosecution of Children's Cases in the Juvenile Criminal Justice System in Indonesia", (2014) <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/viewFile/6093/5599>, [14].

<sup>15</sup>Salim and Erles Septiana Nurbani, Application of Legal Theory in Thesis and Dissertation Research (PT RajaGrafindo Persada 2016). [259].



minor criminal cases by children, does not reflect the principles of restorative justice in it,

A sense of justice can not only be obtained through the litigation process but also through the process of consensus deliberation by the parties.<sup>16</sup> A win-win solution which is justice for both parties must be achieved, without sacrificing the interests of one party for the interests of the other party. The nominal value of Rp. 2.5 million is not a small amount for lower class people who live a simple life. The involvement of victims of minor crimes in the diversion process is a hope for victims to get justice. The justice referred to here is not justice according to investigators, public prosecutors, or judges as parties carrying out the diversion process, but the most important justice is justice for the parties. Children as perpetrators of criminal acts have received justice when they were avoided from the justice process and diverted to extrajudicial processes through diversion.

### **Arrangements for Legal Protection for Victims of Minor Crimes Against Assets as *Ius Constituendum* in the Juvenile Criminal Justice System in Indonesia**

*Restorative justice* aims to repair the wounds suffered by the victim and the perpetrator's confession as well as exposing child perpetrators to accountability so that victims who are usually prevented from participating in the justice process are now given the opportunity to participate in the process of seeking justice.<sup>17</sup> The aim of implementing restorative justice is to provide opportunities for victims to participate in the process of seeking justice, this is what differentiates restorative justice from the judicial process. The aim of restorative justice through the diversion process is not achieved by the provisions of article 9 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, so the author tries to analyze this problem more deeply using criminal law policy theory.

According to Barda Nawawi Arief, criminal law policy is a criminal law enforcement policy which is a series of processes and consists of three policy stages, namely formulative/legislative policy, applicative/judicial, and executive/administrative.<sup>18</sup> Formulative/legislative policy is the stage of formulating or compiling statutory regulations, applicable/judicial policy is the stage of implementing criminal law, for example court decisions, and executive/administrative policy, namely the implementation stage of criminal law.

The aim of criminal law policy theory is to enable positive legal regulations to be formulated better, this is done for the sake of creating social justice. Criminal law policy aims to:<sup>19</sup>

- a. Maintaining public order;
- b. Protecting citizens from crimes, losses or unjustified dangers committed by other people;
- c. Returning law violators to society; And

<sup>16</sup>Rachmadi Usman, *Mediation in Court in Theory and Practice* (Sinar Graphics 2012). [31].

<sup>17</sup>Paulus Hadisuprpto, *Restorative Justice: Alternative Models for Handling Delinquent Children in Indonesia* (Sinar Graphics 2000). [33].

<sup>18</sup>Barda Nawawi Arief, *Policies for the Formulation of Criminal Provisions in Legislation* (Master Library 2012). [9].

<sup>19</sup>Barda Nawawi Arief, *Anthology of Criminal Law Policy, Development of the Drafting of the New Criminal Code Concept* (Semarang 2010). [36].



- d. Maintaining or defending the integrity of certain basic views regarding social justice, human dignity and individual justice.

One of the aims of criminal law policy is to protect members of the public from harm committed by other people, including victims of minor crimes who suffer harm due to acts committed by child perpetrators. According to A. Mulder, criminal law policy is a policy line that determines:<sup>20</sup>

- a. To what extent do the applicable criminal provisions need to be changed or updated;
- b. What can be done to prevent criminal acts from occurring;
- c. How investigations, prosecutions, trials and criminal execution must be carried out.

Based on the problems in this research, we need to remember in the previous explanation that the first stage in criminal law policy is formulative policy which is a stage of drafting or formulating statutory regulations, in this case namely Law Number 11 of 2012 concerning the Judicial System Child Crime. Article 9 paragraph (2) provides provisions not to involve victims of minor crimes in the diversion process. This provision is contrary to the principles of restorative justice and the theory of legal protection as discussed in more depth in the previous issue. Starting from this problem,

Apart from being contrary to the principles of restorative justice and the theory of legal protection, the provisions of article 9 paragraph (2) also conflict with several articles contained in the law, namely Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Article 5 states that the Juvenile Criminal Justice System must prioritize a restorative justice approach, namely through diversion. Article 6 states several goals of Diversion, one of which is "achieving peace between the victim and the child." Furthermore, article 8 paragraph (1) explains that diversion is carried out through deliberation involving children, victims and related parties based on a restorative justice approach. Article 8 paragraph (3) states that Diversion is obliged to pay attention to the interests of victims and the responsibilities of children.

Article 9 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System focuses too much on the protection and best interests of children but ignores the interests of victims. This is contrary to Human Rights, in article 28J paragraph (1) of the 1945 Constitution which states that "Every person is obliged to respect the human rights of other people in the orderly life of society, nation and state". Human rights are very important and we must respect and uphold them because these rights are a gift from God Almighty, every human being has human rights regardless of their identity and origin, including victims of minor crimes considering the victim's position as the party who has been injured. rights by the perpetrator of the crime, namely the child.

Legal protection for child perpetrators and victims must be realized through diversion efforts, this is an *ius contituendum* that must be pursued in order to create a sense of justice in society. So, to achieve this goal, the steps that must be taken are to reformulate article 9 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, to become:

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<sup>20</sup>Marwan Effendy, *Legal Theory in Policy Perspective, Comparison and Harmonization of Criminal Law* (Gang Persada Press Group 2014). [229]. Which quotes from A.Mulder's book, *Strafrechtspolitik, Delikt en Delinkwent*, 1980. [333].

"Diversion agreements must obtain the consent of the victim and/or the victim's child's family as well as the willingness of the child and his family, except for:

- a. Criminal acts in the form of violations;
- b. Victimless crime; or
- c. "The value of the victim's losses is no more than the local provincial minimum wage."

This reformulation removes point (b), namely "minor criminal acts" as one of the crimes that does not require the victim's consent in a diversion agreement, so that diversion agreements for minor criminal acts must obtain the victim's consent.

This reformulation aims to re-realize the interests and rights of victims who have been injured by child perpetrators because the law must protect all parties without discrimination, this reformulation is also an effort to implement true restorative justice in resolving cases of children in conflict with the law without prejudice. Justice for children has been achieved when children are kept away from the criminal process through diversion, so that justice for victims of minor crimes must also be considered. The author hopes that there will be no more discrimination against victims of minor crimes by child perpetrators, even though the loss resulting from minor crimes is not more than IDR 2,

## **Conclusion**

Legal protection for victims of minor crimes by child perpetrators from a restorative justice perspective has not been achieved, this is because the provisions in article 9 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System have broken justice and the interests of victims of minor crimes because contrary to the principles of restorative justice and legal protection theory. A win-win solution for both parties should be the main goal that must be achieved without sacrificing the interests of one party for the interests of the other party. The nominal value of IDR 2.5 million as the limit for minor crimes is not a small value for lower class people who live a simple life, so the involvement of victims of minor crimes in the diversion process is a hope for victims to get justice.

Regulation of legal protection for victims of minor crimes has not received attention compared to legal protection for juvenile offenders so that the goal of restorative justice through the diversion process is not achieved. Through criminal law policy theory (penal policy) as an analytical tool in answering this problem, the aim is to enable positive legal regulations to be formulated better, this is done for the sake of creating social justice and also to protect victims from harm caused by children. It is necessary to reformulate the provisions of article 9 paragraph (2) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System by removing point (b), namely "Misdemeanor criminal acts" as one of the criminal acts that does not require the victim's consent in a diversion agreement.



## **Bibliography**

- Bambang Waluyo, *Victimology of Victim & Witness Protection*, Sinar Graphics, Jakarta: 2011;
- Barda Nawawi Arief, *Policy for the Formulation of Criminal Provisions in Legislation*, Pustaka Magister, Semarang: 2012;
- Barda Nawawi Arief, *Anthology of Criminal Law Policy, Development of the Concept of the New Criminal Code*, Semarang: 2010;
- Chairul Huda, *From "No Crime Without Error" To "No Criminal Accountability Without Error"*, Kencana Prenada Media, Jakarta: 2008;
- Dikdik Arief Mansur and Elisatris Gultom, *The Urgency of Protection of Crime Victims Between Norms and Reality*, PT RajaGrafindo Persada, Jakarta: 2007;
- Maidin Gultom, *Legal Protection of Children and Women*, PT Refika Aditama, Bandung: 2013;
- Marlina, *Juvenile Criminal Justice in Indonesia, Development of the Concept of Diversion and Restorative Justice*, PT Refika Aditama, Bandung: 2009;
- Marwan Effendy, *Legal Theory in Policy Perspective, Comparison and Harmonization of Criminal Law*, Gaung Persada Press Group, Ciputat: 2014;
- Maya Indah, *Victim Protection from a Victimology and Criminology Perspective*, Kencana Prenadamedia Group, Jakarta: 2014;
- Muladi and Barda Nawawi Arief, *Bunga Rampal Criminal Law*, PT Alumni, Bandung: 2010;
- Nasir Djamil, *Children Are Not to be Punished*, Sinar Graphics, East Jakarta: 2013;
- Paulus Hadisuprpto, *Mediation in Court in Theory and Practice*, Sinar Graphics, 2012;
- Rachmadi Usman, *Mediation in Court in Theory and Practice*, Sinar Graphics, Jakarta: 2012;
- Salim and Erlies Septiana Nurbani, *Application of Legal Theory in Thesis and Dissertation Research*, PT RajaGrafindo Persada. Jakarta: 2016;
- Fransiska Novita Eleanora, *Punishment System for Children Who Commit Crimes*, *Lex Jurnalica (Journal of Law)*, Volume 10 Number 3, December 2013
- Lilik Purwastuti Yudaningsih, *Handling Children's Cases Through Restorative Justice*, <http://online-journal.unja.ac.id/index.php/jih/article/download/1951/1299>, 2017;
- Robert Anriano Piodo, *Prosecution of Children's Cases in the Juvenile Criminal Justice System in Indonesia*, <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/viewFile/6093/5599>, 2014;

Taufik H. Simatupang, Criminal Justice Sub-System Support for Witness and Victim Protection (Existence of Witness and Victim Protection Institutions), *Lex Jurnalica (Journal of Law)*, Volume 8 Number 1, December 2010.

Zulfikar Judge, Implementation of the Policy for Children in Conflict with the Law in Supporting Legal and Human Rights Development at the West Jakarta Police, *Lex Jurnalica (Journal of Law)*, Volume 10 Number 3, 2013.

The 1945 Constitution of the Republic of Indonesia;

Law Number 1 of 1946 concerning Criminal Law jo. Law Number 73 of 1958 concerning Declaring the Applicability of Law Number 1 of 1946 of the Republic of Indonesia concerning Criminal Law Regulations for the Entire Territory of the Republic of Indonesia;

Law Number 8 of 1981 concerning Criminal Procedure Law;

Law No. 11 of 2012 concerning the Juvenile Criminal Justice System;

Law No. 31 of 2014 concerning Protection of Witnesses and Victims;

Perma Number 2 of 2012 concerning Adjustments to the Limits of Light Crimes and the Amount of Fines in the Criminal Code;