



Legal Paradox: Protection of Victims Taking the Law into Vigilantism

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Abstract

The rise of vigilantism in Indonesia, marked by public violence against alleged criminals that sometimes results in fatalities, reflects a significant misunderstanding of justice and a lack of specific legislation on vigilante actions. This behavior, akin to torture under Indonesian law, is fueled by public distrust in law enforcement. Research employing both the historical and current Criminal Codes, alongside a sociological analysis, highlights the government's crucial role in legally shaping societal behavior. Discussions on vigilantism involve examining its nature, the legal protections and assistance available, and shaping a societal view that considers both perpetrators and victims. These conversations aim to uphold human rights within the Pancasila ideology, striving for public order and justice that require collective understanding and effort. Addressing vigilantism effectively necessitates both preventive measures to discourage such actions and repressive responses to penalize offenders, ensuring that societal actions align with justice and human rights objectives.

A. Introduction

The state has a paramount duty to protect society and extend this responsibility to everyone, including the perpetrators of criminal acts and victims of a crime. This duty upholds the basic rights entitled to every human as stated in Article 28D paragraph 1 "Every person has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law." The state and every citizen mutually upholds the human rights and provides legal protection regardless of the legal status predicated upon him. However, the enforcement of human rights in Indonesia faces challenges and is not fully effective, with significant gaps in addressing human rights violations.



The tradition of enacting vigilante justice, passed down through generations, poses a persistent challenge in our society. This practice, where individuals take the law into their own hands, is often condoned by both the perpetrators and the wider community, especially when the target is believed to be a criminal. This indirect endorsement of vigilantism becomes a vexing issue that demands resolution¹. Criminalizing someone by depriving them of their rights is an offense, yet, paradoxically, it is this very rationale that society uses to perpetuate the existence of vigilantism². This scenario complicates social life significantly. Instead of adhering to established laws when violations occur within their community, people overlook these legal frameworks. Given the importance of human rights, individuals should feel protected by the law, regardless of the legal consequences of their actions. As a nation that identifies as a rule of law country, as stated in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia, it is only natural that human rights serve as the cornerstone of law enforcement.

However, the effective implementation of the law within society remains overshadowed, largely due to numerous factors that permeate the lives of Indonesian citizens. The news media, tasked with reporting on the prosecution of crimes and criminal acts, have failed to fulfill their role effectively, thereby fostering a sense of distrust among the public towards the legal authorities³. This erosion of trust has contributed to the persistence of vigilantism in Indonesia, as many people prefer taking matters into their own hands for crimes committed in their vicinity, perceiving the official legal process as unreliable. Moreover, vigilantism is fueled by the emotional responses of victims or their sympathizers, coupled with a general lack of public awareness and understanding of the law. These elements collectively drive individuals to take action against perceived criminals in their community.

The rising instances of vigilantism among the Indonesian populace can be attributed to several factors, yet it stands in violation of human rights as outlined in Article 33 paragraph (1) of Law No. 39 of 1999 concerning Human Rights, which states, "Everyone has the right to be free from torture, punishment, or cruel, inhuman, degrading treatment and human dignity." This law implies that all actions against individuals must be legally processed, emphasizing that human rights are inherent to each person and fundamental for an independent life in society. Despite the deep-rooted culture of vigilantism, efforts by the government and activists to address legal irregularities have been significant. However, raising awareness about the consequences of taking the law into one's own hands is emerging as the most effective solution. These efforts aim not only to protect the community but ultimately to enhance societal welfare, demonstrating the complex challenge of balancing immediate justice with the imperative of legal and human rights adherence⁴.

The National Violence Monitoring System (SNPK) recorded no less than 6,807 violent conflicts from January to November 2014. Vigilantisms contributed 3,952 cases, while 786 incidents were related to resource disputes, 767 were related to identity disputes, 467 related to elections and positions, 456 came from conflicts over governance, and 41 conflicts were triggered by separatism. The remaining 338 came from outside the conflict category. SNPK data also displays the impact and distribution of events regardless of the law. In terms of impact, the vigilantism resulted in 282 deaths, 1,032 injuries, and 422 buildings damaged. The capital city and its surroundings rank third at the provincial level for the most vigilantism. There were

¹ Syamsuddin Syamsuddin, Ridwan Ridwan, and Iksan Iksan, "The Crime of Witchcraft and Vigilante Action (Vigilantism)," *Jurnal Daulat Hukum* 4, no. 4 (2021), <https://doi.org/10.30659/jdh.v4i4.17951>.

² Heni Hendrawati and Johny Krisnan, "Main Hakim Sendiri (Vigilantism) Dalam Perspektif Kriminologis," *Proceeding of The URECOL*, 2019.

³ Heni Hendrawati and Johny Krisnan, "Main Hakim Sendiri (Vigilantism) Dalam Perspektif Kriminologis," *Proceeding of The URECOL*, 2019.

⁴ Gabriela K Kaawoan, "Perlindungan Hukum Terhadap Terdakwa Dan Terpidana Sebagai Pelaku Tindak Pidana Pembunuhan," *Lex Administratum* V, no. 1 (2017): 125, <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/15140>.

449 vigilantism cases in the region. The most common occurrences are theft or mugging⁵. In 2015 in May, the SNPK was disbanded that the latest data is quite difficult to find.

Despite its initial intention to aid victims of crime, vigilantism often leads to a troubling paradox where perpetrators inadvertently assume the role of suspects in various criminal offenses. The repercussions extend beyond the immediate parties involved, with victims of vigilantism suffering not only the potential loss of life but also significant material damages due to persecution and property destruction. Intriguingly, individuals previously deemed criminals find themselves on the receiving end of such vigilante justice, thus transforming into victims who, despite their past deeds, are entitled to legal protection. This complex dynamic occasionally allows these new victims to seek legal recourse for the injustices inflicted upon them, potentially holding their aggressors accountable⁶. While some may justify vigilantism as a form of self-defense, particularly when victims or bystanders react to criminal acts, the distinction between defense and deliberate harm hinges on the intentions behind the act.

Regardless of their own criminal actions, victims of vigilantism are entitled to human rights protection. They become victims of unwarranted persecution, and their rights as citizens must be safeguarded. The notion of vigilantism, even when aimed at criminals, lacks legitimacy and undermines the legal and moral fabric of society. The practice of individuals taking justice into their own hands is harmful to all involved and contradicts the principles of a law-governed community. Consequently, vigilantism should be unequivocally condemned and eradicated. Those affected by such acts require robust legal protection against the potential violation of their rights and the physical harm they might endure, which could result in serious injuries or fatalities. It is crucial for law-abiding citizens to actively participate in eradicating this issue, reinforcing the commitment to the rule of law and ensuring justice is appropriately administered through established legal processes.

Vigilantism is act of taking law enforcement into one's own hands that is not sanctioned by law. Authority in criminal matters is vested exclusively in police agencies, rendering it beyond the scope of ordinary citizens to mete out punishment to offenders. Such acts of vigilantism can escalate into further criminal activity and entangle those involved in legal troubles. Instances of mob justice against individuals—whether caught in the act or merely suspected of criminal behavior—are not uncommon. This phenomenon is partly driven by individuals who, perceiving themselves as powerful, inspire others to emulate their actions through vigilantism⁷. However, as discussed in this article, a legal framework exists to underscore that vigilantism is detrimental on all fronts, affecting both the alleged perpetrators and their victims.

In incidents where extrajudicial actions prevail, those initially labeled as criminals often find themselves as victims of vigilantism, highlighting the complex interplay between the rights of suspects, accused, and convicted individuals within the legal framework. The necessity to examine and uphold these rights is paramount, as any infringement not only undermines the legal system but also violates fundamental human rights⁸. This scenario necessitates a robust defense of legal protections for individuals subjected to vigilantism, rooted in the principles that both law and constitution safeguard citizens from arbitrary treatment. Advocating for these protections is essential in upholding justice and human rights, ensuring that every individual, irrespective of their legal status, is treated with dignity and fairness under the law.

⁵ Husni Mubarak, "Main Hakim Sendiri," Pusat Studi Agama dan Demokrasi Yayasan Wakaf Paramadina, accessed March 1, 2023, <https://www.paramadina-pusad.or.id/16021/>.

⁶ Aprisylia Dwi Hapsari, Rochmani, "Penegakan Hukum Terhadap Pelaku Perbuatan Main Hakim Sendiri (Studi Di Wilayah Hukum Kepolisian Resor Semarang Barat)," *Jurnal Ilmiah Dinamika Hukum* 20, no. 1 (2019), <https://doi.org/10.35315/dh.v22i1.8256>.

⁷ Fitriati, "Perbuatan Main Hakim Sendiri Dalam Kajian Kriminologis Dan Sosiologis," *Masalah-Masalah Hukum* 41, no. 2 (2012): 161.

⁸ Andi Sofyan and H. Abd. Asis, *Hukum Acara Pidana: Suatu Pengantar* (Jakarta: Kencana, 2014), 54.

The novelty of this research is on the intention to protect perpetrators of criminal acts who experience vigilante actions such as vigilantism in the form of persecution. Employing a sociology of law framework and motivated by normative goals concerning the regulation of vigilantism, this study presents a new viewpoint in seeking solutions, despite the phenomenon being a legal paradox with slim prospects of resolution.

B. Discussion

1. The Definition of Vigilantism, Legal Protection, and Legal Assistance

The study of legal aid for individuals who have committed crimes and subsequently face acts of vigilantism, such as people taking the law into their own hands, highlights the importance of understanding three main aspects. These aspects are essential to grasp why even those who have broken the law are entitled to their human rights. In Indonesia, vigilantism has been a prevalent issue for a long time, suggesting a low level of legal awareness among the population. Such acts of vigilantism reflect the public's expression of anger and hatred towards criminals, often targeting those accused of conventional crimes like theft and robbery (which involves theft with violence)⁹.

Vigilantism can be defined as the act of taking arbitrary action against individuals deemed guilty of committing crimes, thus categorizing those who engage in vigilantism as criminals themselves. This phenomenon is a subject of criminology.¹⁰ Vigilantism often arises from unresolved conflicts between the offender and the victim, or from resolutions perceived as unfair by the victim or their family, preventing the restoration of a positive relationship between the two parties. The term "vigilantism" breaks down into three parts: "vigil," "ante," and "ism," centering on the concept of judgment. It implies taking on the role of a judge or court without legal authority. According to the Black's Law Dictionary, vigilantism refers to actions by a self-appointed group that undertakes law enforcement within their community without legal sanction, often because they believe the official legal mechanisms are insufficient.

In the Dutch language, the concept of "vigilantism" refers to taking justice into one's own hands, bypassing legal processes, disregarding governmental oversight, and not utilizing the tools of state power. This approach to justice nearly always infringes upon others' rights, marking it as impermissible and reflective of a low legal awareness among the public¹¹ Vigilantism often manifests in individuals physically assaulting those they perceive as criminals, actions which can result in harm or even fatalities.

In fact, crime related to property, self-esteem, and the result of frustration are more appealing to the public. In general, society takes repressive actions against a crime and tends to be followed by emotional outbursts called "violent reprisal" becomes exaggerated¹². Therefore, there is a need for cooperation between law enforcement officials and the community in preparing or dealing with criminal acts. Taking judges in Indonesia includes acts of persecution and violence aimed at other criminal offenders.

Regardless of the intended target for this treatment, the actual perpetrators of criminal acts regarding violence and abuse and destruction are regulated in the Criminal Code, including

⁹ Liza Agnesta Krisna, "Kajian Yuridis Terhadap Pembelaan Terpaksa Sebagai Alasan Penghapusan Penuntutan Pidana," *Jurnal Hukum Samudra Keadilan* 11, no. 1 (2016): 113.

¹⁰ Hanif Azhar, "Persekusi Dalam Tinjauan Fiqh Jinayah," *Al-`Adalah : Jurnal Syariah Dan Hukum Islam* 4, no. 1 (2019), <https://doi.org/10.31538/adlh.v4i1.437>.

¹¹ Rayon Syaputra, "Penegakan Hukum Terhadap Kasus Perbuatan Main Hakim Sendiri (Vigilantism) Di Wilayah Hukum Kepolisian Sektor Cerenti," *Hukum* 1 (2015): 8.

¹² Read the psychological studies in Eunike Mutiara Himawan, Annie Pohlman, and Winnifred Louis, "Memahami Dinamika Psikologis Individu Yang Turut Terlibat Dalam Kerusuhan Massa Mei 1998: Sebuah Kerangka Psikologis," *Jurnal Psikologi Ulayat*, 2021, <https://doi.org/10.24854/jpu464>.

respectively in Article 351 and Article 170 as well as Article 358 paragraph 1. Article 351 of the Criminal Code regulates abuse as for it reads as follows:¹³

Paragraph (1):	"Abuse is punishable by imprisonment for a maximum of two years and eight months or a maximum fine of four thousand five hundred rupiahs."
Paragraph (2):	"If the act results in serious injury, the guilty person is subject to imprisonment for a maximum of five years."
Paragraph (3):	"If it results in death, a maximum imprisonment of seven years is imposed"
Paragraph (4):	"With the persecution equated with deliberately damaging health."
Paragraph (5):	"Attempt to commit this crime is not punishable"

Article 170 Of the Criminal Code which regulates violence includes:¹⁴

Paragraph (1):	"Anyone who openly and jointly uses violence against people or goods, shall be punished by a maximum imprisonment of five years and six months"
Paragraph (2):	"The guilty are threatened:
The 1 st :	by a maximum imprisonment of seven years if the goods are deliberately destroyed or the force used results in injury;
The 2 nd :	by a maximum imprisonment of nine years, if the violence results in serious injury;
The 3 rd :	by a maximum imprisonment of twelve years if violence results in death.
Paragraph (3):	"Article 89 does not apply to this article."

Article 358 paragraph 1 reads "Those who deliberately take part in an attack or fight in which several people are involved, in addition to their respective responsibilities for what was specifically done by them, are threatened: 1. by a maximum imprisonment of two years and eight months, if as a result of the attack or fight someone is seriously injured; 2. by imprisonment for a maximum of four years, if the result is someone dies." In 2022, Indonesia enacted the most recent criminal law regulations under Law Number 1 of 2023. However, the provisions addressing vigilantism are somewhat implicit, emphasizing that behaviors threatening an individual's safety must be constrained to offer legal safeguards for victims.

Chapter V Crimes Against Public Order Part Four Disturbance to Public Order and Peace

Paragraph 6 Committing Violence Against People or Goods Together in Public

Article 262

Paragraph (1):	"Any person who openly or in public and with joint energy commits violence against people or goods,
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¹³ Moeljatno, *KUHP: Kitab Undang-Undang Hukum Pidana* (Jakarta: Bumi Aksara, 2007), 125.

¹⁴ Moeljatno, 65.

	shall be punished with imprisonment for a maximum of 5 (five) years or a maximum fine of category V."
Paragraph (2):	"If the violence referred to in paragraph (1) results in the destruction of goods or causes injury, the penalty shall be imprisonment for a maximum of 7 (seven) years or a maximum fine of category IV."
Paragraph (3):	"If the Violence referred to in paragraph (1) results in Serious Injury, the penalty shall be imprisonment for a maximum of 9 (nine) years."
Paragraph (4):	"If the violence referred to in paragraph (1) results in the death of a person, the penalty shall be imprisonment for a maximum of 12 (twelve) years."
Paragraph (5):	"Every person as referred to in paragraph (1) and paragraph (2) may be subject to additional punishment in the form of payment of compensation as referred to in Article 66 paragraph (1) letter d."

Chapter XXII concerning Crimes Against the Body Part One concerning Persecution Article 466

Paragraph (1):	"Anyone who commits maltreatment shall be punished with imprisonment for a maximum of 2 (two) years and 6 (six) months or a maximum fine of category III."
Paragraph (2):	"If the act referred to in paragraph (1) results in Serious Injury, the penalty shall be imprisonment for a maximum of 5 (five) years."
Paragraph (3):	"If the act referred to in paragraph (1) results in the death of a person, the penalty shall be imprisonment for a maximum of 7 (seven) years."
Paragraph (4):	"Included in the persecution as referred to in paragraph (1) is an act that damages health."
Paragraph (5):	"Attempt to commit a criminal act, as referred to in paragraph (1), shall not be punished."

Article 470

Criminal acts as referred to in Article 466 to Article 469, the sentence can be added 1/3 (one-third), if the crime is committed:

- a. against Officials when or because of carrying out their legitimate duties;
- b. by giving materials that are dangerous to life or health; or
- c. to mother or father.

Chapter XXII concerning Crimes Against Bodies Part One concerning Assault and Fighting in Groups

Article 472

Everyone who participates in an attack or a fight involving several people, apart from their respective responsibilities for specific crimes committed, shall be punished with:

- a. imprisonment for a maximum of 2 (two) years and 6 (six) months or a maximum fine of category III, if the attack or fight results in serious injury; or
- b. imprisonment for a maximum of 4 (four) years, if the attack or fight results in the death of a person.

The article's explanation highlights distinct aspects. As a law enforcement officer, it is imperative to meticulously categorize the application of elements discussed in each article. This is crucial when identifying appropriate threats in the pursuit of justice, as it underscores the importance of diligence. Actions of vigilantism, which may lead to legal infractions, underscore the necessity of legal protection. This protection extends even to crime perpetrators, acknowledging their inherent dignity and the fundamental rights that must be both recognized and upheld. Human rights, as defined by law, serve as boundaries guiding how individuals should interact within society and towards the state. These rights are best upheld through community involvement, as the government alone cannot shoulder this responsibility. Thus, obtaining legal protection, as a facet of human rights, is among the intrinsic rights afforded to every individual.

Judging perpetrators of criminal acts independently not only undermines the principle of justice but also violates human rights, negatively impacting the law enforcement process. It is a common misconception that human rights apply only to victims; however, criminals, too, have the right to legal protection, which cannot be disregarded. Addressing crime requires a broader perspective that encompasses not only direct punitive measures but also an understanding of the underlying social factors. Acknowledging these factors—ranging from cultural to economic influences—through a sociological analysis can indirectly reduce criminal activities by addressing their root causes, thus enriching our approach to crime and punishment.

The legal framework that governs the relationship between crime and punishment benefits significantly from considering these social factors. Indonesian Law No. 39 of 1999 on Human Rights, specifically Article 33 paragraph (1), and the Constitution of the Republic of Indonesia, 1945, Article 28D paragraph 1, both emphasize the right of every individual to be free from inhumane treatment and to receive fair legal protection and certainty. These legal provisions affirm the state's commitment to uphold the human rights of all individuals, including those who have committed criminal acts, underscoring the importance of a justice system that respects human dignity and equality before the law.

Emotional reactions often cloud the fact that individuals who commit criminal acts still possess human rights, necessitating legal protection, especially in instances where these individuals face persecution. This dichotomy places perpetrators in a dual role: firstly, as violators within the purview of the Criminal Code and Criminal Law, and secondly, as victims when subjected to acts of vigilantism. The Law No. 13 of 2006 on the Protection of Witnesses and Victims offers an intriguing perspective, extending protections to perpetrators who are victimized, emphasizing that such protection is rooted in the principle of upholding the rule of law. The definition of a victim, according to Article 1 number 2 of this law, encompasses individuals suffering from physical, mental, or economic harm due to criminal actions, including those harmed by vigilante justice.

This broad interpretation underscores the importance of comprehensive legal protection for all victims, including those harmed by acts of violence. Ensuring the safety and rights of these individuals requires concerted efforts from the government, relevant victim protection agencies, the community, and the enforcement of laws and regulations. Legal protection is ultimately about safeguarding human rights from infringement by others, allowing individuals to fully enjoy the rights afforded to them by law.¹⁵ This encompasses a range of legal remedies law

¹⁵ Tim Allen, "Vigilantes, Witches and Vampires: How Moral Populism Shapes Social Accountability in Northern Uganda," *International Journal on Minority and Group Rights* 22, no. 3 (2015), <https://doi.org/10.1163/15718115-02203004>.

enforcement officials must provide to ensure individuals feel secure, both mentally and physically, against any form of disturbance or threat.¹⁶

In situations of vigilantism, victims often endure significant harm, particularly through physical attacks. It is crucial to recognize that all victims deserve legal protection, including those targeted by acts of vigilantism who may also be perpetrators of crimes. Law No. 31 of 2014, from Articles 5 to 10, outlines the provision of protection and rights for witnesses and/or victims, emphasizing that victims are entitled to certain rights and protections. Society should not resort to punishment out of a desire for revenge or as a reaction to emotional outbursts. The responsibility for administering justice lies with the state, which operates based on established criminal laws—both substantive and procedural. These laws aim to ensure that perpetrators receive sentences proportional to their offenses, thereby fulfilling the victims' need for justice and satisfaction.

The responsibility for the crime cannot be placed on the victim, who suffers as a result of the criminal act. This situation grants the victim certain rights, highlighting that victims are not to be seen as individuals who had a choice or awareness that could have prevented the crime. The rights afforded to victims of criminal acts can be categorized into two types as follows.¹⁷

1. The right of Allah, arising from a criminal act involving the benefit and order of the general public;
2. Human rights arise from criminal acts that touch individuals and human rights.

Despite victims of vigilantism often being perpetrators of criminal acts themselves, Article 5 of Law No. 31 of 2014—which amends Law No. 13 of 2006 on the Protection of Witnesses and Victims—addresses the rights of victims involved in crimes. This legislation aims to ensure victims receive compensation, restitution, and assistance. However, the full extent of these provisions cannot always be applied straightforwardly because holding perpetrators accountable is also a priority. The law mandates that every crime perpetrator should receive legal assistance, recognizing that not all are fully aware of the legal processes and thus require the support of legal practitioners. This requirement is rooted in the principles of criminal procedural law, designed to ensure everyone has the chance for legal representation, primarily for self-defense.

The provision of legal aid is a critical component of the legal protection owed to victims of crimes, reflecting the broader mandate of Article 28D paragraph (1) of the 1945 Constitution. This Article asserts everyone's right to recognition, guarantees, protection, fair legal certainty, and equal treatment before the law. The Constitution's articulation of these rights brings about specific obligations for their fulfillment¹⁸. The criteria and procedures for victims to receive legal assistance are detailed in Government Regulation No. 42 of 2013. Furthermore, the role of advocates in providing legal aid is outlined in Law No. 8 of 2003 concerning Advocates, underscoring the state's commitment to ensuring legal support is available to those in need, including those who have committed crimes but also find themselves victims of vigilantism.

Legal aid, as referred to here, specifically pertains to providing assistance to parties involved in judicial disputes. Its role within the criminal justice system is integral to ensuring the realization of legal justice for victims. Beyond this, legal aid plays a crucial role in protecting victims from potential intimidation—whether that involves pressure to retract reports

¹⁶ I Wayan Brahmana Putra, Gede Made Swardhana, and I Made Walesa Putra, "Tinjauan Viktimologi Tentang Perlindungan Hukum Terhadap Korban Main Hakim Sendiri (Di Wilayah Polres Bangli)," *Kertha Wicara: Journal Ilmu Hukum* 6, no. 1 (2017): 4.

¹⁷ Abdul Qadir Audah, *Ensiklopedi Hukum Pidana Islam*, Edisi Baha (Jakarta: Kharisma Islam, 2008), 70.

¹⁸ Pugh Wiyono, "Golongan Yang Berhak Menerima Bantuan Hukum," 2019, <https://sulsel.kemenkumham.go.id/pusat-informasi/artikel/4449-golongan-yang-berhak-menerima-bantuan-hukum>.

or threats that jeopardize their safety. The foundation of human rights rests on the principle of inherent human dignity, transcending distinctions like race, ethnicity, culture, and social status. Yet, in the journey towards securing legal protection, many find that only a fraction of their rights are effectively upheld. These rights include access to a trial, the right to a fair and impartial hearing, the right to legal assistance, and protection from violence.

Legal aid is a vital service designed to ensure everyone has access to legal protection and equality before the law, as outlined in human rights provisions within the constitution.¹⁹ It provides assistance through legal professionals in areas of criminal justice, civil matters, and state administration. The framework for delivering legal aid is detailed in Law No. 16 of 2011 on Legal Aid, along with Government Regulation No. 42 of 2013, which outlines the terms and procedures for providing legal assistance. Additionally, Law No. 8 of 2003 on Advocates addresses the professional aspects of offering legal aid services through the advocacy profession.

Legal aid plays a crucial role in addressing the legal issues faced by citizens, particularly for vulnerable groups and individuals with disabilities. There is a theoretical link between the provision of legal aid, legal protection, and the prevention of vigilantism.²⁰ Vigilantism often arises from criminal activities, leading to community members taking matters into their own hands, which ultimately brings both criminals and vigilantes into the legal system. Indonesian regulations have been thoughtfully developed to specify the community's response and identify the authoritative bodies responsible for managing criminal, civil, and administrative cases, ensuring that these matters are handled within the appropriate legal framework.

Article 4 of the Law on Legal Aid specifically explains the scope of competence in the legal aid process, including:

1. Legal aid is given to legal aid recipients who face legal problems.
2. civil, criminal, and state administrative law issues, both litigation and non-litigation.
3. Legal aid, as referred to in paragraph (1), includes exercising power of attorney, accompanying, representing, defending, and/or taking other legal actions for the legal interests of the Legal Aid Recipient.

Article 5 clarifies that legal aid is specifically designed for individuals unable to independently secure their basic rights, including access to food, clothing, healthcare, education, employment, business opportunities, and housing. This stipulation naturally extends legal support to crime perpetrators, particularly those from marginalized backgrounds, such as theft offenders. The responsibility for providing legal aid in Indonesia falls to the state, represented by the Ministry of Law and Human Rights.

Typically, acts of vigilantism are committed by individuals unfamiliar with the legal boundaries, compounded by various other factors. A crucial issue is the lack of awareness that taking justice into one's own hands is considered deviant behavior that requires rectification. When examining the protection of individuals who commit crimes, it is evident that while they receive the same legal protection as victims, certain aspects are overlooked due to the need to hold them accountable for their actions. Therefore, the analysis of legal protection must consider multiple perspectives, including that of the offender (whether as a suspect, defendant, or convict) and the victim. This multifaceted approach is vital as it acknowledges that vigilante justice can cast offenders in dual roles: as both perpetrators and victims of retaliatory actions.

¹⁹ Leli Tibaka and Rosdian Rosdian, "The Protection of Human Rights in Indonesian Constitutional Law after the Amendment of the 1945 Constitution of the Republic of Indonesia," *Fiat Justisia: Jurnal Ilmu Hukum* 11, no. 3 (2018), <https://doi.org/10.25041/fiatjustisia.v11no3.1141>.

²⁰ Firyuza Abdurashidovna Mukhitdinova, "Advocacy and the Introduction of Digital Technology in Advocacy," *International Journal of Advanced Science and Technology* 29, no. 3 (2020).

2. Forms of Warranties for the Protection of Criminal Actors and Authority to Report Vigilantism Behavior

a. Legal Protection of the Rights of the Suspect

Concerning the issue of vigilantism against perpetrators of criminal acts, it raises the possibility that the predicate given will become perpetrators of criminal acts in other crimes and become victims due to the persecution they find. Under these circumstances, giving him legal protection is based on two views, namely, as a perpetrator and a victim of a crime together. Efforts to provide legal protection are aimed at his nature as a human being with all the rights he has. Regardless of the existing predicate, of course, the obligation to provide legal protection from all kinds of things that make the rights violated go beyond the provisions in the law.

Human rights thinking in Indonesia has an influence on the existing rule of law. Starting from the basis of the constitution, namely the 1945 Constitution of the Republic of Indonesia, both in the preamble and stated in the stem of the article. The 1945 Constitution of the Republic of Indonesia has regulated human rights more systematically in one chapter, namely in chapter XA on Human Rights which consists of articles 28A to 28J. Besides that, Indonesia's attention to the protection of human rights is shown by the regulation of human rights specifically through Law Number 39 of 1999 concerning Human Rights²¹.

Subsequently, a proposal was put forward to reform the Criminal Procedure Code, with the primary goal of reinforcing legal certainty, law enforcement, social justice, and rights protection, all through a lens focused on human rights. This initiative underscores the necessity for the principles shaping the Criminal Procedure Code to be deeply rooted in human rights values. Such a stance is propelled by the global advancement of human rights, drawing upon three foundational international conventions for guidance: the Universal Declaration of Human Rights (UDHR) established on December 10, 1948, by the United Nations, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). These documents are pivotal in framing the proposal's emphasis on human rights within the realm of criminal law.

Central to the protection offered to suspects or perpetrators in criminal proceedings are the principles in the UDHR and the ICCPR, highlighting the importance of the presumption of innocence. As articulated by C. De Rover, incorporating these conventions enhances the safeguarding of this principle, which dictates that every individual implicated in a criminal case must be considered innocent until proven guilty in a court of law.²² This principle is critical for all stages of the legal process, from investigation to prosecution and trial. Both Article 11, paragraph 1 of the UDHR and Article 14, paragraph 2 of the ICCPR affirm the right of every individual charged with a criminal offense to be presumed innocent until their guilt is legally established, serving as international legal standards that instruct courts to protect the rights of the accused by upholding the presumption of innocence.

The judicial system plays a pivotal role in safeguarding the rights of individuals accused of crimes, primarily aimed at protecting them from public outrage or arbitrary punitive actions by the community. This legal protection mechanism is particularly relevant in Indonesia, where instances of vigilantism are reported. Such occurrences underscore the imperative for legal authorities to diligently uphold the law, thereby preventing the recurrence of extrajudicial measures. To ensure the fairness and rights of the accused are preserved, the courts are endowed with the authority to uphold several rights. These rights include the stipulations that an arrest or detention must be predicated on lawful criminal charges, the accused should be promptly

²¹ Ari Wibowo, "Sumbangan Pemikiran Hak Asasi Manusia Terhadap Pembaharuan Kitab Undang-Undang Hukum Acara Pidana(KUHAP)," *Jurnal Media Hukum* 23, no. 2 (2017): 115, <https://doi.org/10.18196/jmh.2016.0074.128-136>.

²² Rusli Muhammad, *Hukum Acara Pidana Kontemporer*, Ed.1, cet. (Jakarta: Citra Aditya Bakti, 2007), 17.

presented before a competent judicial authority, and the right to a trial within a reasonable timeframe or to be released pending trial. Additionally, the accused are entitled to legal representation throughout the investigative and trial processes.

Legal aid provision in Indonesia is structured under Law No. 16 of 2011, which aims to ensure access to justice, uphold the constitutional rights to equality before the law for all citizens, guarantee the uniform application of legal aid across the Indonesian territory, and foster an effective, efficient, and accountable legal system. Furthermore, the law acknowledges other vital rights for the accused and the prosecution, such as challenging court decisions through mechanisms like objections, appeals, or cassation, as well as the convict's right to request a case review under stipulated conditions. The government facilitates legal aid for those unable to afford it, reflecting a commitment to protect the rights of suspects or defendants, including provisions for spiritual and psychological support during the judicial process when necessary²³.

To bolster the rights of suspects or defendants throughout the legal process, the Draft Criminal Procedure Code has been revised to transform the pretrial stage, introducing the role of the Commissioner Judge. This new role supersedes the responsibilities previously held by the Head of the District Court (PN) or the Pretrial Judge. According to Article 1 number 10 of the Criminal Procedure Code, the pretrial phase is specifically tasked with determining the legality of arrests and/or detentions, the validity of discontinuing investigations or prosecutions, and assessing claims for compensation or rehabilitation by the suspect, their family, or representatives in cases that do not proceed to court. This focus is particularly relevant during the investigation phase, where human rights violations by investigators, including acts of violence, have been noted during the gathering of information. Notable instances include the tragic outcomes involving Marsinah and Tjetje Tadjudin, who were under investigation at the time of their deaths.

Investigation, as defined in Article 1 number 5 of Law No. 8 of 1981, is the process of systematically gathering evidence to ascertain the occurrence of a suspected criminal act and decide the feasibility of proceeding according to the law. However, this stage presents potential risks for deviations or abuses of authority, especially given that the police often employ force as part of their investigative measures.²⁴ This approach is reflective of the police's dual role in society, where they are expected to be *the strong hand of society and the soft hand of society*.

Resorting to violence fundamentally undermines human rights. The principle of equality before the law asserts that no individual or group should be privileged or exempt from legal standards, yet the application of violence as a quick fix to instill security bypasses the essential process of judicious deliberation²⁵. The persistence of outdated legal frameworks that sanction violence against suspects during investigations has entrenched a culture within the police force, leading to a widespread perception that their investigative methods disregard human rights, even when dealing with individuals accused of crimes. It is crucial to remember that human rights are inalienable and diminish only with the loss of life; thus, the police must maintain the integrity of treating every individual as a suspect under the law, without compromising human rights. A failure by the police to honor these rights may lead to a broader societal reluctance to adhere to legal directives and recommendations.

In Indonesia, instances of unequal treatment and arbitrary actions by authorities are not uncommon, with the investigative process often marred by violence, particularly against

²³ Rhona K.M. Smith et al., *Hukum Hak Asasi Manusia*, Cetak Ket (Yogyakarta: Pusat Studi Hak Asasi Manusia (PUSHAM) Universitas Islam Indonesia, 2015), 260–61.

²⁴ Agus Raharjo and Angkasa, "Perlindungan Hukum Terhadap Tersangka Dalam Penyidikan Dari Kekerasan Penyidik Di Kepolisian Resort Banyumas *," *Mimbar Hukum* 23, no. 1 (2011): 83.

²⁵ Daron Acemoglu and Alexander Wolitzky, "A Theory of Equality Before the Law," *Economic Journal* 131, no. 636 (2021), <https://doi.org/10.1093/ej/ueaa116>.

suspects of lower social standing. These individuals are more likely to be subjected to harsh treatment to extract confessions or information, in stark contrast to suspects from higher social echelons, who are spared such brutality. This discrepancy in treatment based on social status has been highlighted by advocate Riswanto, who has represented suspects across the social spectrum. This disparity not only violates the fundamental principles of human rights and equality before the law but also erodes public trust in the legal system and its enforcers²⁶.

Additional safeguards available to suspects include the rights to personal liberty and the possibility of detention suspension. These protections are explicitly outlined in Article 24, paragraph 2, and Article 31, paragraph 1, of the Criminal Procedure Code, supported further by Government Regulation No. 27 of 1983, which details the enactment of the Criminal Procedure Code. Such measures affirm the commitment to uphold, protect, and enforce the constitutional rights of all citizens. These rights encompass equality before the law, the entitlement to recognition, assured protection, and equitable legal certainty, as well as the right to non-discriminatory treatment within the legal framework. The provisions within the Criminal Procedure Code regarding the human rights of suspects and their entitlement to legal protections exemplify the codification of principles that govern the treatment of individuals accused of crimes within the justice system.²⁷

b. Legal Protection for Victims

The Indonesian government ensures the safeguarding of victims through Law No. 13 of 2006, which addresses the Protection of Witnesses and Victims. This law emphasizes the importance of protecting victims to prevent further infringements upon their rights. The commitment to victim protection is also inspired by international standards, specifically the United Nations Declaration No. 40/A/RES/34 of 1985. This declaration outlines essential protections for victims, including:

1. compassion, respect, and recognition;
2. receive information and explanation about the progress of the case;
3. provide information;
4. providing proper assistance;
5. protection of privacy and physical safety;
6. restitution and compensation;
7. to access the mechanism of the justice system.

The provision of rights to victims should be approached with an understanding that varies by the category of the victims, as victimology recognizes different types of victim categories, some of which may arise from the victims' own actions as follows.²⁸

- 1) *Nonparticipating Victims*, namely those who do not care about crime prevention efforts.
- 2) *Latent Victims*, namely those with certain character traits that tend to become victims.
- 3) *Provocative Victims*, namely those who stimulate the occurrence of crime
- 4) *Participating Victims*, namely those whose behavior makes it easier for them to become victims.
- 5) *False Victims*, namely those who become victims because of their own actions.

²⁶ Marcus Priyo Gunarto, "Perlindungan Hak Asasi Manusia Di Indonesia Dalam Dinamika Global," *Jurnal Mimbar Hukum*, 2007, 265.

²⁷ Suswantoro Suswantoro, Slamet Suhartono, and Fajar Sugianto, "Perlindungan Hukum Bagi Tersangka Dalam Batas Waktu Penyidikan Tindak Pidana Umum Menurut Hak Asasi Manusia," *Jurnal Hukum Magnum Opus*, 2018, 65, <https://doi.org/10.30996/jhmo.v0i0.1768>.

²⁸ Dikdik M. Arief Mansur and Elisatris Gultom, *Urgensi Perlindungan Korban Kejahatan : Antara Norma Dan Realita* (Jakarta: RajaGrafindo Persada, 2007), 49.

Victims of vigilantism cases can be categorized as "False Victims" because others' actions made him a victim. The development of this nation's seriousness in providing protection to victims and witnesses is evidenced by the creation of new regulations in lieu of Law No. 13 of 2006 namely Law No. 31 of 2014, by providing a description of the various forms of rights that victims can obtain. With regard to the provision of protection and the rights of witnesses and/or victims, in Law Number 31 of 2014, it is regulated in Article 5 to Article 10. The rights of witnesses and victims are mentioned in Article 5 paragraph (1), in the form of ²⁹:

1. Protection of personal security, family, and property, and freedom from threats regarding the testimony that will be, is being or has been given. The explanation stated that such protection is the main protection needed by witnesses and victims. If necessary, witnesses and victims must be placed in a location that is kept secret from anyone to ensure that witnesses and victims are safe.
2. Participate in the process of selecting and determining forms of security protection and support.
3. Give information without pressure.
4. Get an interpreter, this provision is for witnesses who are not fluent in Indonesian to expedite the trial.
5. Free from ensnared questions. This guarantee is in line with Article 166 of the Criminal Procedure Code, which states that questions that ensnaring in nature may not be filed against either the accused or the witness.
6. Get information about the progress of the case.
7. Get information about court decisions. According to the elucidation of Article 5 paragraph (1) letter g, the provision of information on court decisions to witnesses and victims is a form of appreciation for the participation of witnesses and victims in the process of examining the case concerned.
8. Obtaining information in terms of the convict being released. The release referred to here is not a decision to acquit the defendant, but rather the time of release or the family of the accused as the convict. This information is needed by the witness that he can prepare himself for the possibility of retaliation from the defendant because of the testimony given. (see explanation of Article 5 paragraph (1) letter h).
9. Withheld identity.
10. Got a new identity. A new identity for witnesses and victims is needed, especially for organized crimes, because the safety of witnesses and victims can still be threatened even if the accused has been sentenced and has served a sentence.
11. Get a temporary residence. This temporary residence is meant to be a temporary residence that is deemed safe. This is necessary in terms of the safety of witnesses and victims, which is very worrying, thereby it is necessary to consider providing temporary housing that witnesses and victims can continue their lives in a safe manner.
12. Get a new residence. This new residence was provided solely to provide a sense of security for witnesses and/or victims, when there is no longer a safe place for them.
13. Obtain reimbursement of transportation costs as needed.
14. Get legal advice.
15. Obtaining temporary life assistance until the protection period expires, and/or
16. Get assistance.

The discussion surrounding the rights of victims, particularly in cases of self-defense or taking justice into one's own hands, raises several legal and ethical considerations. Victims who

²⁹ Mukhammad Irkham, Sularito Sularito, and Endah Sri Astuti, "Perlindungan Korban Perbuatan Main Hakim Sendiri Dengan Pendekatan Rertorative Justice (Studi Di Kabupaten Demak)," *Diponegoro Law Journal* 6, no. 2 (2017): 10.

seek retribution for abuse, violence, or harm they've endured often find themselves navigating the complex intersection of criminal and civil law. Specifically, articles 98 to 101 of the Criminal Procedure Code outline the legal stance on vigilantism, a practice where victims act outside the judicial system to exact justice. However, this approach conflates the distinctions between criminal acts and civil wrongs, particularly in matters of compensation for losses, which traditionally falls within the realm of civil law.

Compensation for victims, covering both personal and broader damages, is addressed in Chapter 13 of the Criminal Procedure Code. This inclusion highlights the necessity of integrating civil procedural laws to offer comprehensive legal protection and prevent individuals from resorting to vigilantism. The latter, characterized by unilateral, arbitrary actions without the consent or involvement of other relevant parties, often leads to further conflict and loss. Despite its roots in individuals' desires for justice and retribution, vigilantism underscores the shortcomings within the legal and law enforcement systems—specifically, the lack of specific regulations addressing it, leading to ambiguity and the potential for legal gaps.

Vigilantism often emerges from emotional responses to crime, diminished public trust in law enforcement, and broader disillusionment with the state's capacity for justice. This dual perception of criminals—as both perpetrators and victims of vigilantism—complicates the moral and legal landscape. The phenomenon points to a deeper societal issue: the need for reform and trust-building within the justice system to prevent the cycle of retribution and ensure that justice is both fair and perceived as fair.

3. The Role of Legal Practices to Provide Protection in The Form of Legal Assistance Against Criminal Actors

The process of addressing disputes involving vigilantism in Indonesia is complex, primarily because the nation's criminal law framework often appears to prioritize the rights of the perpetrators over those of the victims. This imbalance frequently leads to the rights of victims being overshadowed. Such an approach can result in the neglect of victims' rights, especially when considering the context of human rights. Vigilantism cases present a unique challenge as they intersect both civil and criminal law domains. While civil law clearly acknowledges the victims' losses by addressing compensation matters, the integration of claims for compensation within the criminal law framework involves specific legal provisions as follows.

Article 98

- (1) If an act which forms the basis of an indictment in an examination of a criminal case by a district court causes harm to another person, then the head judge at trial at the request of that person may decide to combine the case for compensation to that criminal case.
- (2) The request as referred to in paragraph (1) can only be filed before the public prosecutor. File criminal charges. If the public prosecutor is not present, the request shall be submitted no later than before the judge renders a decision.

Article 99

- (1) If the aggrieved party requests the amalgamation of his lawsuit in a criminal case as referred to in Article 98, the district court considers its authority to adjudicate the said lawsuit, the correctness of the basis of the lawsuit, and the penalty for reimbursement of costs incurred by the aggrieved party.
- (2) Except in the case of a district court declaring that it has no authority to adjudicate a lawsuit as referred to in paragraph (1) or the lawsuit is declared unacceptable, the judge's decision only contains a stipulation of a penalty for reimbursement of costs incurred by the injured party.

Article 100

- (1) If there is a merger between civil and criminal cases, then the merger will automatically occur at the appellate level.

- (2) If a request for appeal is not filed against a criminal case, then an appeal regarding the decision for compensation is not permitted.

The surge of vigilantism in Indonesia is largely attributed to a widespread lack of legal awareness among the public regarding how to properly handle apprehended criminals. This deficiency emphasizes the critical role of legal professionals, as outlined in Article 1 point 1 of Law No. 18 of 2013 concerning Advocates, which defines advocates as individuals tasked with providing legal services, adhering to the Advocate Law's criteria. The passage of the Advocate Law consolidates various legal practitioners under the single title of 'Advocate', reflecting the profession's responsibility in enlightening the populace on legal matters. This is particularly relevant in a society where segments, less advanced in terms of legal civilization, may opt for immediate physical resolutions over legal recourse, contrasting with more legally aware communities that seek to address legal issues through the appropriate channels.

Addressing vigilantism effectively involves both litigation, taking disputes to court for judicial resolution, and non-litigation methods, such as mediation or deliberation grounded in kinship principles. These approaches highlight the crucial role of advocates in providing legal aid, especially significant given the Legal Aid Act's focus on aiding economically disadvantaged groups, who are disproportionately represented among victims of vigilantism. The distinction between those who turn to the law and those who resort to "taking the law into their own hands" underscores the necessity for comprehensive legal education and the mobilization of legal practitioners, law enforcement, and authorities to collectively address and mitigate the phenomena of vigilantism, leveraging legal aid as a tool for achieving broader social justice, as conceptualized in the two models of legal aid proposed by Soerjono Soekanto.³⁰

1. Individual juridical legal assistance is a right given to members of the public to protect their individual interests. The implementation of this legal aid depends on the active role of the community in need, where those who need legal assistance can request the assistance of a legal advisor, and then the legal advisor's services will later be paid for by the state;
2. Welfare legal assistance is defined as a right to welfare which is part of the social protection framework provided by a welfare state. Welfare legal assistance as part of a social direction is needed to neutralize uncertainty and poverty. Therefore, social development or social improvement is always part of implementing welfare legal assistance. The intensive role of the state is needed in realizing it because the state has an obligation to meet the basic needs of its citizens and to give rise to rights that can be demanded by them. Fulfillment of these rights can be carried out by the state through the provision of legal assistance to its citizens.

In Indonesia, legal aid is predominantly provided in the form of individual juridical assistance, aimed at safeguarding personal interests and, notably, at upholding human rights. The persistence of a culture of vigilantism risks escalating mutual accusations among individuals. Those subjected to mob justice—involving harassment, violence, and property damage—can find themselves in the paradoxical position of being both perpetrators and victims, as they may report the actions against them, while those engaging in vigilantism may also file reports, citing criminal behaviors by their alleged victims. In 2021 alone, there were 1,221 recorded incidents of collective violence, with research by the Centre for Strategic and International Studies (CSIS) indicating that 40.7% of these incidents stemmed from acts of vigilantism. With a political year on the horizon, addressing and mitigating this collective violence becomes increasingly critical.

³⁰Soekanto, Soerjono, *Legal Aid: A Socio-Juridical Review*, Jakarta: Ghalia Indonesia, 1983, p. 11

To curb the culture of vigilantism, a multifaceted approach is necessary. Such efforts are crucial for reducing or altogether eradicating this behavior. After incidents occur, resolving these issues can include repressive measures as follows.

a. Mediation By Village Leaders

The first step in the event of potential vigilantism is securing the perpetrators of criminal acts. This action should be carried out by village leaders such as the Village Head or Village Secretary thus the community has more trust in handling and handing over the perpetrators of criminal acts through legal channels according to procedures.

b. Preventing Provocative Actions

Prevention is done by increasing the awareness of each individual. The method is to avoid provocative roles and avoid being influenced by other people's provocations.

c. Contact the Police

Every public member is obliged to contact the police as a quick response to criminal acts and to prevent the practice of taking the law into their own hands. The telephone number for the Bandungan Police was obtained from the existing *Pos Kamling* (Safety Post)

d. Making Official News

To prevent fake news from happening or confusing news, the Village Office makes official news about criminal acts. News content includes time and place of crime, chronology of events, and current conditions.

Engaging lawyers or advocates with a deep understanding of the law is crucial for navigating towards justice. Prevention involves public education on the importance of legal compliance and the understanding that violence undermines law enforcement and constitutes a punishable offense. Enhancing public trust in law enforcement's ability to fulfill their duties and encouraging community collaboration with these officials are key steps towards mitigating actions deemed disruptive by society.

Lawyers have a significant role in raising legal awareness among the public, emphasizing the necessity of law adherence in a rule-of-law state like Indonesia. Given the detrimental impact of vigilantism on its victims, including the violation of their human rights and the lack of compensation or legal accountability for perpetrators, the legal community's involvement is pivotal. Through securing justice and compensation for victims, and advocating for a communal approach to policing based on principles of kinship, lawyers and law enforcement can work together to diminish the prevalence of vigilantism.

C. Conclusion

Research on legal protections for criminal offenders subjected to persecution underscores the need for a humanitarian approach, even towards those who have transgressed the law. The significance of the trilagusion theory in evaluating the protection of such individuals cannot be overstated, particularly when these individuals navigate the dual identities of being both crime suspects and victims of vigilantism. The Indonesian state's duty to protect its citizens necessitates interventions to mitigate future persecution, grounded in its overarching commitment to safeguard the nation and its people. This entails leveraging the trilagusion theory to extend protections similar to those afforded to victims of vigilantism, especially in the absence of specific vigilantism regulations, and aligning with human rights principles that recognize persecuted offenders as deserving of both suspect and victim rights to ensure their security and dignity.

Addressing vigilantism's impacts involves legal assistance and the use of kinship principles within Indonesian culture for conflict resolution, highlighting the role of lawyers as neutral mediators and educators on legal repercussions. The integration of compensation mechanisms within the Criminal Procedure Code aims to balance the rights of both suspects and victims of vigilantism. Enhancing public understanding of vigilantism's legal consequences, alongside

optimizing relevant agencies for victim protection, is critical. Establishing a clear regulatory framework for vigilantism victims, amidst the complexities of intersecting legal domains, poses a challenge that demands a meticulous approach to ensure legal clarity and uphold justice and human rights.

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