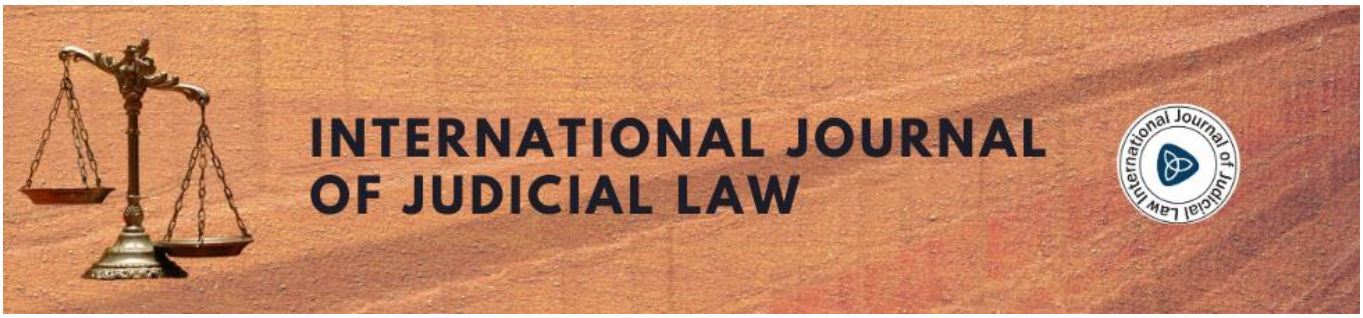




Reformulating Victim Assistance Norms for Sexual Violence Crimes Through a Victim-Oriented Approach

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Article Info

ISSN (online): 2583-6536

Volume: 05

Issue: 05

Received: 17-07-2026

Accepted: 16-08-2026

Published: 15-09-2026

Page No: 86-91

Abstract

This study aims to analyze the reformulation of the norms governing assistance for victims of sexual violence under Law Number 12 of 2022 on Sexual Violence Crimes, with a view to developing an ideal framework for realizing the *victim-oriented approach*. This study employs normative legal research using a statutory approach and a conceptual approach. The findings indicate that Article 26 paragraph (1) of the Law on Sexual Violence Crimes provides a normative basis for victim assistance but does not yet fully embody the *victim-oriented approach*. Accordingly, the norms governing assistance for victims of sexual violence should be reformulated to strengthen the *victim-oriented approach* by recognizing victim assistance as a fundamental right that must be guaranteed and facilitated from the earliest stage of case handling.

DOI: <https://doi.org/10.54660/IJL.2026.5.5.86-91>

Keywords: victim assistance, sexual violence, victim-oriented approach, legal reformulation

1. Introduction

Sexual violence constitutes a distinct form of criminal conduct, as it not only violates a person's bodily integrity and sexual autonomy but also produces complex and far-reaching consequences for the victim's psychological, social, and economic well-being and dignity. Victims of sexual violence may experience prolonged trauma, a diminished sense of security, social stigma, discrimination, and disruptions to their family and professional lives, with consequences that may persist and adversely affect their quality of life over the long term.

Therefore, addressing sexual violence crimes cannot be confined to an *offender-oriented approach* focused primarily on punishing perpetrators, but must also give due consideration to the interests, needs, rights, and recovery of victims through a *victim-oriented approach*.

From the perspective of criminal law reform, victim protection constitutes an essential component of the development of modern criminal law. The criminal justice paradigm, which initially focused primarily on the relationship between the state and the perpetrator, has gradually evolved toward a paradigm that recognizes victims as rights-bearing subjects whose legal rights and interests must be protected. Victims are no longer regarded merely as parties who provide information concerning criminal offenses, but as individuals who directly experience the consequences of such offenses. This paradigm shift necessitates a legal system capable of providing victims with comprehensive protection, ensuring the fulfillment of their rights, promoting their empowerment, and facilitating their recovery in an integrated manner.

According to Barda Nawawi Arief, social protection is essentially an integral component of criminal policy, which is not solely directed toward combating crime through penal measures but must also take into account the protection and welfare of society as broader objectives. ^[1] This perspective demonstrates that criminal law policy should not be oriented solely toward the

¹ Barda Nawawi Arief. (2016). *Bunga Rampai Kebijakan Hukum Pidana: Perkembangan Penyusunan Konsep KUHP Baru*. Edisi Kedua. Cetakan Ke-5. Jakarta: Kencana Prenada Media Group. p. 3-4.

prosecution and punishment of offenders but should also take into account the interests of those who directly experience the consequences of crime. In the context of sexual violence crimes, this societal protection perspective is particularly significant, as victims commonly suffer physical, psychological, sexual, social, and even economic harm that may persist over the long term.

Land fires are still burning every year in Indonesia, especially in Pontianak due to a lack of public awareness and concern so that cases of forest and land fires in the city of Pontianak are still high inactivity.

Mardjono Reksodiputro also regards victim protection as an important component of the criminal justice system. According to him, the criminal justice system is designed to control crime, resolve conflicts arising from criminal acts, and restore balance and a sense of peace within society.^[2] Within this framework, the success of the criminal justice system should not be measured solely by its ability to investigate and resolve cases or to impose criminal sanctions on offenders. It should also be assessed based on its capacity to address the conflicts and harms suffered by victims. Accordingly, victim protection constitutes an integral and inseparable component of the objectives of the criminal justice system itself.

From a victimological perspective, this view is further reinforced by Arif Gosita, who regards victims as parties deserving attention throughout the entire process of crime prevention and control. According to Arif Gosita, the issue of victimization is fundamentally a human concern that warrants attention because victims suffer harm as a result of unlawful acts committed by others.^[3] Victim protection, therefore, is not limited to the provision of compensation or restitution after a criminal offense has occurred but also encompasses efforts to prevent victims from experiencing further harm throughout the law enforcement process.

This perspective is consistent with the concept of a *victim-oriented approach*, which places the interests and needs of victims at the center of the development and implementation of law. This approach requires victims to be treated as rights-bearing subjects entitled to protection, information, assistance, participation, recovery, and justice.

Nevertheless, the protection of victims of sexual violence crimes continues to reveal a gap between the law's ideal objectives and the realities of victim protection.

Indonesia has made significant progress in establishing a system for the protection of victims of sexual violence, particularly through Law Number 12 of 2022 on Sexual Violence Crimes. The Law on Sexual Violence Crimes explicitly recognizes the best interests of victims as one of the principles governing sexual violence crimes. In addition, victims' rights are framed as rights to treatment, protection, and recovery, aimed at restoring their physical, mental, spiritual, and social well-being. However, this orientation has not yet been fully translated into operational and mandatory legal norms that place the circumstances and needs of victims as the primary consideration at every stage of the judicial process.

The juridical problem concerning the absence of mandatory operational norms is reflected in Article 26 paragraph (1) of

the Law on Sexual Violence Crimes, which provides that "Victims may be accompanied by an Accompanying Person at all stages of examination in the judicial process." Although the types and qualifications of victim assistants have been comprehensively regulated, the use of the term "may" indicates that assistance has not yet been construed as a mandatory protection guarantee that must be made available to victims in accordance with their circumstances and needs. This is particularly significant given that victims of sexual violence may experience trauma, fear, psychological distress, unequal power relations, and the risk of secondary victimization throughout the judicial process.

Empirically, victims of sexual violence face challenges that are far more complex than those arising from the legal process alone. These challenges become particularly evident when examined through the experiences of victim advocates in handling sexual violence cases. One example is an alleged rape or sexual harassment case involving an employee of the Ministry of Cooperatives and Small and Medium Enterprises. The case was reported to the police and subsequently attracted considerable public attention after investigators terminated the inquiry through an Order for Termination of Investigation on the grounds of restorative justice. The victim was subsequently assisted by the Legal Aid Institute for the Indonesian Women's Association for Justice (LBH APIK) of West Java and decided to file a pretrial motion challenging the termination of the case. The victim's legal assistance team argued that the termination was inconsistent with the victim-protection principles established under the Law on Sexual Violence Crimes.^[4]

In this case, the victim did not navigate the legal process alone but received legal assistance. The victim's advocate played an important role in asserting and protecting the victim's rights after the legal proceedings were terminated. This case demonstrates that victims' positions within the judicial process require effective assistance from advocates who understand legal mechanisms while also safeguarding and advancing the victims' interests.

However, this case also highlights a broader issue: the victim's right to legal assistance does not, by itself, guarantee that the legal process will be conducted in a victim-oriented manner. In this case, despite having legal representation, the investigation was nevertheless terminated through an Order for Termination of Investigation, compelling the victim's legal team to pursue further legal remedies through pretrial proceedings.

Accordingly, the case involving an employee of the Ministry of Cooperatives and Small and Medium Enterprises illustrates that victim assistance constitutes a genuine need for victims in navigating the judicial process. However, the effectiveness of such assistance depends largely on the extent to which law enforcement authorities recognize and accommodate the role of victim advocates.

This situation becomes problematic when viewed through the lens of the *victim-oriented approach*, which requires victims to be treated as central subjects within the criminal justice system, such that their safety, needs, dignity, psychological well-being, and interests constitute primary considerations in every legal action.

² Mardjono Reksodiputro. (1993). *Sistem Peradilan Pidana Indonesia: Melihat kepada Kejahatan dan Penegakan Hukum dalam Batas-Batas Toleransi*. Jakarta: Fakultas Hukum Universitas Indonesia. p. 1–2.

³ Arif Gosita. (1993). *Masalah Korban Kejahatan: Kumpulan Karangan*. Jakarta: Akademika Pressindo. p. 63–64.

⁴ https://news.detik.com/berita/d-6368970/korban-perkosaan-akan-ajukan-praperadilan-sp3-kasus-asusila-pegawai-kemenkop?utm_source=chatgpt.com

Therefore, the issue requiring attention is no longer merely whether the Law on Sexual Violence Crimes grants rights to victims, but whether the existing formulation of these norms provides sufficiently strong guarantees to ensure that such rights can be exercised effectively, consistently, and in accordance with each victim's individual needs. Accordingly, the norms governing victim assistance under the Law on Sexual Violence Crimes require reformulation.

2. Research Methodology

This study adopts a qualitative approach and employs normative legal research. Normative legal research is a scientific method of inquiry aimed at establishing legal truth through the reasoning and logic of legal scholarship, particularly by examining law from its normative dimension.^[5] Normative legal research is a form of legal inquiry that examines written legal norms and the legal system comprehensively, encompassing legal principles, concepts, and doctrines.^[6]

To achieve the objectives of this study, a statutory approach and a conceptual approach are employed. The legal materials examined consist of primary legal materials, particularly Indonesian laws and regulations relevant to the subject of the research, as well as secondary and tertiary legal materials. These legal materials are systematically collected, examined, and analyzed using a qualitative juridical method to address the research questions.

3. Discussion

The reformulation of the norms governing victim assistance under Law Number 12 of 2022 on Sexual Violence Crimes is essential to ensure that the criminal justice process extends beyond the mere establishment of criminal liability and the imposition of sanctions on perpetrators, by also giving due and proportionate consideration to the rights, interests, and individual needs of victims.

A *victim-oriented approach* recognizes victims as rights-bearing subjects whose rights and interests must be respected throughout the proceedings. Under this approach, the victim's safety, dignity, needs, and preferences constitute important considerations in determining the legal measures and responses applied in each case.

The *United Nations* emphasizes that a *victim-centred approach* places the rights, dignity, well-being, and safety of victims at the core of all efforts to address sexual violence, with services that are individualized, holistic, sustainable, safe, and respectful of victims' needs and preferences.^[7]

Within the framework of the Law on Sexual Violence Crimes, this orientation is reflected, among other provisions, in the regulation of victim assistance under Article 26 paragraph (1), which provides that "Victims may be accompanied by an Accompanying Person at all stages of examination in the judicial process."

Although this provision reflects a normative recognition of the need to protect victims, its formulation does not yet fully embody a *victim-oriented approach*. The principal concern lies in the use of the phrase "may be accompanied," which, from a normative perspective, merely establishes the possibility for victims to receive assistance rather than

expressly recognizing victim assistance as a right that must be guaranteed and facilitated by law enforcement authorities. Such formulation leaves the provision dependent on the availability or initiative of the victim and may, in practice, result in unequal access to assistance. This condition is particularly problematic in cases of sexual violence, where victims may face trauma, fear, psychological vulnerability, and unequal power relations that can limit their ability to independently seek and exercise their procedural rights. Accordingly, the formulation of Article 26 paragraph (1) requires further strengthening to ensure that victim assistance constitutes an effective legal guarantee rather than merely an optional form of support.

Consequently, the effective exercise of this right may depend on the victim's own initiative to seek assistance. This is problematic because victims of sexual violence may be situated in circumstances that, in practice, affect their ability to access and assert their rights independently. From a *victim-oriented approach*, therefore, there is a need to shift from a discretionary model of victim assistance toward a rights-based model in which assistance is recognized as a victim's right and actively facilitated by the state. Such a shift would ensure that access to assistance does not depend solely on the victim's capacity to request or secure it, but constitutes an integral component of the state's obligation to guarantee effective victim protection throughout the criminal justice process.

Victim assistance in sexual violence cases serves not merely as technical support throughout the legal process, but also as an essential mechanism for ensuring that victims can navigate the proceedings in conditions that safeguard their safety, dignity, and individual needs.

A *victim-oriented approach* recognizes that each victim is an individual with distinct needs, circumstances, and priorities; therefore, protective mechanisms cannot be applied through a uniform model. Victims should be provided with adequate information concerning their rights, available options, and the potential consequences of legal actions, as well as meaningful opportunities to communicate their needs, preferences, and wishes throughout the proceedings.

On this basis, the reformulation of Article 26 paragraph (1) should clarify two fundamental aspects. First, victim assistance should be expressly recognized as a legal right of victims. Second, law enforcement authorities should be under a clear obligation to inform victims of this right, facilitate access to assistance, and ensure that such assistance is available from the earliest stage of examination and throughout every stage of the judicial process. This reformulation would strengthen the legal guarantee of victim assistance and ensure its effective implementation in accordance with the principles of a *victim-oriented approach*. Under such a formulation, responsibility for the fulfillment of victims' rights would no longer rest primarily with the victims themselves. Instead, the state, through law enforcement authorities, would assume an active role as the *duty bearer*, with the responsibility to ensure that victims' rights are effectively accessible and capable of being exercised in practice.

This need becomes even more compelling when examined

⁵ Johnny Ibrahim. (2010). *Teori dan Metodologi Penelitian Hukum Normatif*, Cetakan ketiga, Malang: Bayumedia Publishing. p. 57.

⁶ Peter Mahmud Marzuki. (2005). *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group. p. 60.

⁷ United Nations. (2019). *Protection of Victims of Sexual Violence: Lessons Learned*. New York: United Nations.

through the lens of the theory of legal protection. Hadjon distinguishes legal protection into two forms: preventive legal protection and repressive legal protection.^[8] Preventive legal protection provides legal subjects with opportunities to prevent violations before they occur, whereas repressive legal protection is directed toward addressing and resolving violations or disputes after they have arisen.

In the context of victims of sexual violence, victim assistance may be regarded as an instrument of preventive legal protection, as the presence of an accompanying person from the outset can help victims understand and exercise their rights, communicate their needs, navigate the examination process, and reduce the risk of pressure, intimidation, or other treatment that may result in retraumatization.

From the perspective of legal protection, victim assistance should not be understood merely as an optional facility that victims may choose to use or forego, but as an integral component of the state's mechanism for guaranteeing the effective realization of victims' rights. Preventive legal protection requires potential harm to victims to be identified and minimized before it develops into further violations. Accordingly, the legal provision should impose a clear obligation on law enforcement authorities to ensure that victims are informed of their right to assistance and are provided with access to competent and appropriate assistance that responds to their individual needs.

The reformulation of victim assistance norms under the Law on Sexual Violence Crimes should be grounded in a legal framework capable of responding to the concrete needs and circumstances of victims. In this context, the progressive legal theory developed by Satjipto Rahardjo provides a relevant analytical framework because it places human beings at the center and as the ultimate purpose of law. Law is not viewed as a fixed and final institution, but as a means of realizing justice, utility, human welfare, and protection. Satjipto Rahardjo emphasizes that legal progressivism is grounded in a humanistic perspective, positioning law as an instrument for translating fundamental human values into legal practice.^[9] Accordingly, law should not be confined to formal legal certainty when the application or formulation of a legal norm is unable to provide meaningful and effective protection to the individuals who are its subjects.

This progressive legal perspective is highly relevant to the protection of victims of sexual violence crimes. Victims should not be positioned merely as sources of information or instruments of evidence in criminal proceedings, but as rights-bearing subjects whose dignity, rights, needs, and interests must be respected. Progressive law requires legal norms and their implementation to respond to the concrete circumstances and needs of individuals. Accordingly, the effectiveness of law should not be measured solely by the state's ability to identify and punish perpetrators, but also by its capacity to provide meaningful protection, uphold victims' rights, and ensure justice for victims throughout the criminal justice process.

M. Zulfa Aulia explains that "the idea of progressive law emerged from a critique of legal practice that is overly bound by legal texts and the status quo, emphasizing that legal texts should be understood as instruments intended to serve human

beings and humanity."^[10]

In this context, Article 26 paragraph (1) of the Law on Sexual Violence Crimes provides that "Victims may be accompanied by an Accompanying Person at all stages of examination in the judicial process." Normatively, this provision demonstrates recognition of victims' need for assistance throughout the judicial process.

When examined through the lens of progressive legal theory, this formulation remains problematic because the use of the phrase "may be accompanied" places victim assistance within a discretionary framework. Although the provision creates an opportunity for victims to obtain assistance, it does not expressly establish victim assistance as a legal right that must be guaranteed and actively facilitated by law enforcement authorities. From a progressive legal perspective, such a formulation remains insufficient because it places greater emphasis on the formal availability of assistance than on ensuring its effective realization in accordance with the concrete needs and circumstances of victims.

This issue is significant because progressive legal theory is concerned not merely with whether a right has been formally recognized in legislation, but also with whether that right can be effectively realized in practice. A right that exists only at the normative level but remains difficult to access or exercise in concrete circumstances does not fully reflect a legal system that serves human needs. From this perspective, the effectiveness of victim assistance must be assessed not only by the existence of the relevant legal provision, but also by the extent to which the provision enables victims to obtain meaningful and accessible protection throughout the criminal justice process.

In sexual violence cases, victims may experience psychological and social vulnerability that limits their ability, confidence, or knowledge to actively seek assistance. Accordingly, a progressive legal approach requires law enforcement authorities to move beyond a passive role and take the necessary measures to ensure that victims' right to assistance is effectively realized in practice. This approach places an affirmative responsibility on law enforcement authorities to facilitate access to assistance, rather than leaving its realization solely to the initiative and capacity of the victim.

Victim assistance should not be regarded merely as an additional facility within judicial proceedings, but as an essential instrument for ensuring that victims can navigate the legal process safely and with dignity, while being protected from secondary victimization.

An accompanying person can assist victims in understanding and exercising their rights, provide support throughout the examination process, communicate victims' needs to law enforcement authorities, and provide psychosocial support in accordance with their individual circumstances. Accordingly, victim assistance constitutes an integral component of efforts to ensure that law functions effectively as an instrument for protecting human dignity and safeguarding victims' rights.

Based on the foregoing progressive legal perspective, Article 26 paragraph (1) should be reformulated by shifting its orientation from "victims may be accompanied" to "victims

⁸ Philipus M. Hadjon. (2007). *Perlindungan Hukum Bagi Rakyat di Indonesia*. Edisi Khusus. Cetakan Pertama. Surabaya: Peradaban. p. 5.

⁹ Satjipto Rahardjo. (2005). "Hukum Progresif: Hukum yang Membebaskan". *Jurnal Hukum Progresif*, Vol. 1, No. 1, April. p. 1-5.

¹⁰ M. Zulfa Aulia,. (2018). "Hukum Progresif dari Satjipto Rahardjo: Riwayat, Urgensi, dan Relevansi". dalam *Undang: Jurnal Hukum*, Vol. 1, No. 1, Juni. p. 159-185.

have the right to receive assistance.” This change should not be understood as merely a matter of textual revision, but as a substantive paradigm shift in the legal construction of victim assistance. It transforms assistance from a discretionary facility into a legally guaranteed right that must be effectively recognized, facilitated, and protected throughout the criminal justice process.

The phrase “have the right to receive” confers a stronger legal status on victims as *right holders*, while simultaneously imposing an obligation on the state and law enforcement authorities to ensure the effective realization of that right. Accordingly, the law does not merely provide a formal possibility of protection, but actively ensures that such protection is accessible to and effectively enjoyed by victims. Accordingly, the reformulation of Article 26 paragraph (1) entails not merely a textual amendment, but a substantive shift in normative orientation—from protection that is discretionary and reactive toward a rights-based framework that is active, preventive, individualized, and responsive to risk. Article 26 paragraph (1) should therefore ensure that victims receive assistance as a legally guaranteed right that law enforcement authorities are required to facilitate effectively throughout the judicial process.

A reformulation of Article 26 paragraph (1) of the Law on Sexual Violence Crimes that more fully reflects the *victim-oriented approach* may be formulated as follows:

“Victims have the right to receive assistance at every stage of examination throughout the judicial process. Law enforcement authorities are required to inform victims of this right and facilitate their access to an Accompanying Person in accordance with the victims’ needs and preferences.”

This formulation is more consistent with the principles of progressive law because it places human beings at the center of the legal system and shifts the normative orientation from formal protection toward substantive protection. The law would no longer merely recognize victims’ opportunity to obtain assistance, but would impose an affirmative obligation on the state, through law enforcement authorities, to ensure that victims can effectively exercise their right to assistance. In this way, the provision moves beyond the formal recognition of rights toward their effective realization in practice.

This reformulation also demonstrates that progressive legal theory does not disregard legal certainty. Rather, it seeks to establish a balance between legal certainty and substantive justice. Law remains necessary as a normative framework and guide for legal action; however, its formulation and implementation should ultimately be directed toward the fundamental purposes of law, namely ensuring meaningful protection, justice, and respect for human dignity.

M. Zulfa Aulia emphasizes that progressive law provides room to depart from conventional approaches to legal reasoning when legal texts are unable to adequately address the dynamic needs of society. Nevertheless, such an approach requires integrity and responsibility on the part of legal actors.^[11]

There is a close relationship between progressive legal theory and the principle of a *victim-oriented approach*. The *victim-oriented approach* provides a normative orientation in which the needs, safety, dignity, preferences, and interests of

victims constitute central considerations in the handling of sexual violence cases. Meanwhile, progressive legal theory provides the philosophical foundation for ensuring that law serves these human-centered objectives and does not remain confined to the fulfillment of formal legal requirements. The convergence of these perspectives supports a legal framework in which the effectiveness of victim protection is measured not merely by the existence of legal norms, but by their capacity to provide meaningful, accessible, and responsive protection to victims in practice.

Based on progressive legal theory, the reformulation of Article 26 paragraph (1) of the Law on Sexual Violence Crimes should, at a minimum, be directed toward three fundamental changes:

1. From text-oriented law to human-oriented law, by positioning victims as rights-bearing subjects whose rights and interests must be recognized and protected.
2. From formal protection to substantive protection, by ensuring that victims’ right to assistance can be effectively exercised and realized in practice.
3. From reactive protection mechanisms to preventive and responsive mechanisms, by requiring the identification and assessment of risks faced by victims and ensuring that appropriate protective measures are taken accordingly.

Progressive legal theory provides a theoretical justification for reformulating Article 26 paragraph (1) of the Law on Sexual Violence Crimes toward a legal framework that effectively serves and protects victims. Accordingly, Article 26 paragraph (1) should expressly recognize victim assistance as a right that must be actively facilitated by the state through law enforcement authorities. Such reformulation would not merely address technical deficiencies in the formulation of the provision, but would also reflect a paradigm shift from *law as a rule* toward *law as a means to achieve substantive justice*. In this way, law would no longer exist merely as a set of rules governing victims, but would function as an instrument that is genuinely oriented toward protecting victims and fulfilling their rights.

4. Conclusion

The reformulation of victim assistance norms under the Law on Sexual Violence Crimes is necessary to realize a *victim-oriented approach* by positioning victims as rights-bearing legal subjects whose rights, needs, safety, and dignity must be respected and guaranteed. Victim assistance should be expressly recognized as a right that must be facilitated from the earliest stage of case handling, while victim protection from perpetrators should be formulated on the basis of *risk assessment* to ensure that protective measures are preventive, proportionate, and responsive to the level of risk faced by victims.

The legislature should reformulate Article 26 paragraph (1) of Law Number 12 of 2022 on Sexual Violence Crimes by expressly establishing victim assistance, protection, and examination as affirmative obligations of the state based on victims’ needs and risk assessments, thereby ensuring their safety, dignity, and access to justice while preventing *secondary victimization*.

¹¹ *Ibid.*

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How to Cite This Article

Zahra AF, Haiti D, Syaafi A. Reformulating victim assistance norms for sexual violence crimes through a victim-oriented approach. *International Journal of Judicial Law.* 2026;5(5):86-91. doi:10.54660/IJL.2026.5.5.86-91.

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