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Legal Protection Against Rape Victims Based On Victimology

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Legal Protection Against Rape Victims Based On Victimology

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Abstract

The purpose of this study is to find out the legal protection for victims of rape, to find out the protection of Victims in terms of victimology, and to find out the obstacles in the protection of rape Victims. Based on the nature of the research, The research leads Juridical normative legal research that is research Aimed at analyzing the rules of law regulations. The basic idea of protection against rape Crime Victims is due to the Suffering experienced by rape crime viktims and does not require a short amount of time to be Able to recover them, so law enforcement Officials are obliged to provide protection against rape Victims who are implemented to the legislation as legal products in favor of the victim. Protection of the Victims of rape in terms of victimization that the victim is still treated as an object, not a subject that must be heard and respected in his legal rights. The mostly still the make women victim of rape victim a second time (revictimization) for the cases the experienced. Victims are still Often blamed and not given as much protection as what is needed, namely about assistance by a psychologist to recover mentally and traumatized over Incidents of rape. Constaints in the protection of rape Victims in terms of victimization are internal and external barriers. Internal barriers in the form of the many parties Involved from various institution and the extent of funding activivites create Difficulties in conducting supervision of the implementation of each activity. While the external obstacle is the bureaucracy that is related to not being a priority issue that is brought up among policy makers.

Keyword: Legal protection, Rape Victims, Victimology

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INTRODUCTION

Crime is not an event hereditary (inborn, heritage) is also not a biological inheritance.[1] Criminal acts or behavior that could do anyone either male or female, and can take place in the age of the child, adult or elderly. The criminal act of rape is an act of crime receive enough attention in the community. Often we hear in the newspapers or on television news reported the occurrence of the crime of rape.

If we study history, is actually kind of no criminal was basically a long time, or it can be regarded as a form of crime that are old or classic that will always follow the development of culture, age, the man himself, kejahatakan will always exist and flourish each moment though perhaps not too much different from the previous. Offense act of rape is not only happening in big cities are relatively more advanced culture and the awareness or knowledge of the law, but can also occur in the countryside relatively still hold traditional values and customs.

although the act the crime of rape have been many who have been processed up to the court, but the cases that have a lot going on that the perpetrators are not sentenced to the maximum in accordance with the statutory provisions contained in the Code of Penal (Penal Code) Chapter XIV of crimes against morality (Article 281 s / d 296), in particular those set on the crime of rape (Article 285) which states "whoever by force or threat of violence to force a woman have sex with her outside of marriage shall be punishable as rape by criminal imprisonment twelve years old.[2] Though rape victims endure a lifetime.

Barda Nawawi Arief said that to solve crimes required a rational effort of the community, by way of criminal politics. Policies or efforts to combat crime is essentially an integral part of efforts to protect the public (social defense) therefore it can be said that the main purpose of criminal politics is the protection of society to achieve social welfare.[3]

Reasons rape cases are not reported by victims to law enforcement officials to proceed to trial because of several factors, including the victims feel ashamed and do not want to disgrace that befell him known by others, or the victim was afraid because it has been threatened by the perpetrator that he will be killed if reporting the incident to the police. This of course affects the mental perembangan/ liabilities of the victims and also influence the process of law enforcement itself to create a sense of justice for the victims and society.

Attention and protection of the interests of victims of crime of rape through the criminal justice process and through the means of social concern particular is an essential part that needs to be taken into account in criminal law policy and social policies, whether by executive, legislative and judicial branches of government as well as by the social institutions which exists. From the foregoing it is a factor that excuse in the study entitled "Legal Protection Against Rape victims in terms of victimology" containing formulation of the problem: 1. What legal protection against rape victims in terms of victimology? 2. What are the constraints in the protection of rape victims in terms of victimology?

METHOD

This type of research used in this paper is the research library (library research). Library research means research using written documents as data, and data sources used in this study include the ingredient primary law and secondary law. Primary legal materials are legally binding or a material that makes people obey the law, including laws that became law study materials and products as a means of criticism. Secondary law includes a description of

[1] Kartini Kartono. 2003 Social Pathology, Jakarta PT. King Grafindo, p. 139
[2] Penal Code Section 281-296
[3] Barda Nawawi Arif, 2002. Anthology of Criminal Law Policy, Bandung, Citra Aditya. p.1-2

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primary legal materials in the form of the doctrine of experts found in books, journals, and websites.[4]

Source of research data obtained through secondary data, secondary data consists of the:

1. The primary legal materials namely Law No. 7 of 1984 concerning the Retifikasi Convention on All Forms of Discrimination Against Women, Law No. 39 Thun 1999 on Human Rights, Law No. 13 of 2006 on the Protection of Witnesses and Victims.
2. Secondary legal materials in the form of books that are relevant to this study.
3. tertiary legal materials namely Indonesian Dictionary and Dictionary of Law.

RESULTS AND DISCUSSION

A. Legal Protection

Article 1 Point 6 of Law No. 13 of 2006 on Protection of sanctions and Victims Protection are all efforts to fulfill the rights and the provision of assistance to provide security kapada witnesses and / victim that must be implemented by the Agency (Institute for the Protection of Witnesses and Victims) or other institutions in accordance with the provisions of this Act.

Understanding the protection of victims can be seen from the two (2) meaning:

1. Interpreted as a protection for not being a crime victim (meaning the protection of Human Rights (HAM) or legal interests of a person).
2. Interpreted as to obtain insurance protection / compensation law on pederitaan / loss of people who are victims of (identical with the sponsorship of the victim). The form of compensation that can be vindication / rehabilitation, recovery equanimity another antarab with forgiveness, compensation, such as restitution, compensation, guarantee / compensation for social welfare and so on.

The purpose of the protection of victims under article 4 of Law No. 13 of 2006 on the Protection of Witnesses and Victims are as follows:

a. Providing security to the victims, especially when giving information on any criminal perdilan process;
b. Provide encouragement and motivation to victims not to be afraid to undergo criminal proceedings;
c. Restoring the confidence of victims in civic life;
d. Sense of fairness, not just to the victims and their families, but also to the public;
e. Ensuring women are free from all forms of violence;
f. Putting gender-based kekersan as a form of serious crime and a violation of human rights;
g. Embodies the attitude that does not tolerate gender-based violence;
h. Fair law enforcement against perpetrators of violence against women (rape).

Legal protection of the victim is not only a national problem. Be interpreted as recognition of legal protection and guarantees provided by the law in relation to human rights. Legal protection is a condition sine quanon law enforcement. While law enforcement is the form and function of law. According to Siregar Bismar in reviewing other legal protection no legal protection in accordance with justice.

The success in the implementation of the law is that the law that created it has reached the point. The purpose of the norm of law is to regulate human interests. If the norm of law was complied with and implemented by the community and law enforcement, the implementation of the law to be effective or successful.[5]

[4] Rahmat Ramadhani, Security Rule of Law Contained in Certificate of Land Rights. Lata De Lega Journal, Volume 2, Number 1, July 2017, p. 142.

[5] Fajaruddin, Effectiveness of Law Number 33 Year 2014 About Halal Product Guarantee In Consumer Protection, Journal De Lega Lata, Volume 3 Number 2, July-December 2018, p. 207.

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Assessment of the need for protection of crime victims proposed by Muladi with reasons as follows:[6]

1. The process of sentencing in this case contains a general sense and concrete. In a general sense, the process of sentencing means authority accordance with the principles of legality, ie poena and crimen must be set first if about to convict upon the offender. In a concrete sense, the process associated with the determination of criminal convictions through infrastructure penitensier (judges, prison staff). Moral demands contained herein, in the form of a philosophical association on the one hand and on the other sociological linkages within the framework of human relationships in society. In sociology, society as a "system of institutional trust" / institutionalized belief systems and integrated through the norms expressed in institutional structures such as the police, prosecutors, courts and corrections agencies.
2. Their social contract argument that the state monopolized the social reaction against crime and prohibiting acts of a personal nature, so if there is a crime and bring the victim, in this case the state should be responsible to the needs of victims. The argument of social solidarity, which the state must keep its citizens to meet their needs or if citizens have difficulty, through cooperation in a society based on or using the means provided by the state. This can be done through an increase in services and the right setting.
3. Protection of victims of crime associated with one of the goals of sentencing is to resolve conflict. Settlement of conflicts caused by criminal acts, restore balance and bring a sense of peace in society. It is also adopted in the Draft Concept of the new National Penal Code.

In a symposium of national law reform in 1980, it was stated that the comprehensive formulation of the concept of public protection is in addition to protection of the public from crime, balance and harmony in the society also incorporated elements of the need to consider the interests of the victim.[7] Victim protection perspective as an element in the protection of public policy is also included in the results of the Congress in Milan stating that victims of crime are entitled to become an integral part of the criminal justice system. Therefore, it is emphasized that attention tehadap victims' rights should be seen as an integral part of the overall criminal policy.[8]

B. Overview About Rape

Law No. 13 of 2006 embraced the notion of victims in a broad sense, that is a persecution, not just physically or mentally or economics, but the bias is also a combination of the three. It can be seen in Article 1 paragraph 1 of Law No. 13 of 2006 which states the victim is a person experiencing physical, mental and / or economic loss caused by a criminal offense.

Article 5 (1) of Law No. 13 of 2006, regulating some of the rights granted to witnesses and victims include:

1. Obtain the protection of personal safety, family and property, and free from the threat with respect to the testimony that will be, is being or has been given.
2. Participate in the process of selecting and determining the forms of protection and security support
3. Provide information without pressure.
4. Provide information without pressure

[6] Muladi, Human Rights, Politics and the Criminal Justice System, Semarang Diponegoro University, 1997, p. 176-177.

[7] Barda Nawawi Arief, Legislative Policy in Combating Crimes with Criminal Prison, Semarang, Ananta, 1994, p. 91.

[8] Barda Nawawi Arief, Criminal Law Policy Anthology, Bandung, Citra Aditya Bakti, 1996, p. 19-20.

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5. Freedom of questions that ensnare
6. To be informed of developments in the case.
7. To be informed of the court decision
8. Knowing in the convict released.
9. Get a new identity.
10. Getting a new residence.
11. Obtaining reimbursement of transport costs in accordance with the needs
12. Getting legal advice
13. Get help with living expenses while the time limit peerlindungan end.

Preamble and content of Article 5 (1) of Law No. 13 of 2006 on the Protection of Witnesses and Victims above reflects the development of the protection of victims has not been set explicitly in the legislation before. The success of a judicial process relies heavily on bubkti tool that successfully revealed or discovered. In the trial process, particularly with regard to the witness, many cases are not revealed due to the absence of witnesses who support the work of law enforcement.

Suffering someone who is a victim of crime does not stop at the time of completion of the crime. Not only must strive alone to heal wounds (both physical and psychological) at their own expense as well and had to replace goods damaged/ lost because of these crimes, but should also provide time, money and effort to play a role in judicial proceedings criminal against the case. According to Article 1 paragraph 2 of Law No. 13 of 2006 on the protection of victims and witnesses, the victim is a person experiencing physical, mental and/or economic loss caused by a criminal offense.

Identification of women who has always been the victim of a criminal act of rape can also be seen in the formulation of Article 285 of the Criminal Code which states that: "Whoever by force or threat of violence to force a woman have intercourse with her outside of marriage shall be punishable for committing rape, with imprisonment twelve years". So based on the formulation of Article 285 of the Penal Code, the crime of rape victim is a woman, who by force, or the threat of violence are forced to have intercourse with another person outside marriage.[9]

C. Crime of Rape

Soetandyo Wignjosoebroto argued that the offense of rape is an attempt sexual lust by a man against a woman with the morals and ways according to applicable law or violated.[10] The criminal act of rape (sexual intercourse) in the book of the law of criminal law (Penal Code) are set to book II, Chapter XIV of crimes against decency. In short and simple, decency offense is offense-related (problems) decency. In a large dictionary Indonesian, morality is defined as an act related to manners and decorum, amoral behavior. However, to determine how much scope is not easy, because the sense and limits of decency was quite extensive and can vary according to the views and values prevailing in society.

Crimes against decency under Article 281 of the Penal Code which states: legal custody forever two years and eight months or a maximum of Rp. 4500, -
1. Whoever intentionally damages decency in public;
2. Any person who deliberately destroy decency before others present are not of its own accord.

Crime of rape, including one of the crimes against decency under Article 285 of the Criminal Code, which states that "whoever by force or by threat of violence to force a woman have sex with her outside of marriage, diancaman for committing rape with a maximum

[9]Arif Gosita, 1987, Relevance victimology With Care Against Rape Victims - Some Notes, Indhill Co., Jakarta, p. 12.

[10]Abdul Wahid and Muhammad Irfan, Protection against Sexual Violence, Bandung: Refika Aditama, 2001, p. 40.

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imprisonment of twelve years". Article 285 further elements to prove whether or not the crime of rape, the elements in question are as follows:

a. Use of violence or threat of violence.

Violence or threats of violence, it means using force or physical strength is not small unlawfully, such as hitting with the hand or with a weapon, kicking, kicking and so forth until the person is unconscious or helpless.

b. Forcing a woman.

Forcing a woman, that is to say with violence or threats of violence to force women not his wife bersetubuhnya with him.

c. Intercourse outside of marriage with him (the perpetrator).

Intercourse outside of marriage, which means that the clash between the genitals of men and women usually run for a son, a member of the male sex must be logged in to members of the female sex, thus removing semen with a woman who is not his wife.

D. Legal Protection Against Rape Victims In victimology Review

Legal protection for the community is essential for good community groups and individuals, can be a victim or even a perpetrator. The legal protection of victims of crime as part of the protection of the public, can be realized in various forms, such as through the provision of retribution and compensation, medical care and legal aid.[11] Protection of witnesses or the victim or the complainant is given importance because it involves threats or intimidation received by a witness or victim or the complainant on the testimony or statements to reveal the crime.[12]

Some form of protection for victims, among others:

a. Compensation.

The term compensation used by the Criminal Code in Article 99 paragraph (1) and (2) with an emphasis on the reimbursement of expenses incurred by the injured party or victim.[13]This implies that the loss in question is material damage. Meanwhile, immaterial damages are not included in the criminal procedural law talks. Judging from the benefit of the victims compensation concept contained two benefits: first, to meet the material damages and all costs already incurred, and the second is the emotional gratification of victims of perpetrators. While the terms of the interests of the perpetrator, liability for damages is seen as a form of punishment imposed and perceived as a concrete and directly related to mistakes done perpetrators.[14]

Formulate Gelawy five objectives of liability for damages, namely:[15]

1) Relieve the suffering of the victims.
2) As a mitigating element of punishment to be imposed.
3) As one way to rehabilitate the convict.
4) Make it easier for the judicial process.
5) It can reduce the threat or the public reaction in the form of reprisals.

Of objectives that were defined Gelaway, that the provision of compensation should be well planned and integrated. That is, not all victims should be given compensation for unisex victims, either directly or indirectly involved in the crime. That need to be serviced

[11] Rena Yulia, Viktomologi Legal Protection Against Victims of Crime (Cet. I; Yogyakarta: Graha Science, 2010), p. 178.

[12] Nurhilmiyah, Legal Protection of Women against the Law Before And After Birth of the Supreme Court Regulation No. 3 of 2017 on Guidelines for Passing the Case of Women against the Law, De Lega Lata, Volume 4 Number 2, July-December 2019, H. 212

[13] Compare with Harris, Rehabilitation Indemnity Regarding Detention Incorrect or Invalid (Jakarta: Bina Cipta, 1983), p. 11-12.

[14] Chaerudin & Syarif Fadillah, Victims of Crime in the perspective of victimology and Islamic Criminal Law (Jakarta: Grhadhika Press, 2004), p. 65.

[15] ibid

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and diayomi was the victim of disadvantaged segments of society, both financially and socially. The core purpose of awarding damages is not to develop the justice and welfare of the victim as a member of society, and benchmark their implementation is the provision of opportunity for victims to develop their rights and obligations as human beings.[16]

b. Restitution.

Restitution is more focused on the responsibility of the perpetrators of the consequences caused by the crime so that the main goal is to cope with all the losses suffered by the victim. Measurement used in determining the amount of restitution given is not easy to formulate. In this case depends on the social status of the perpetrator and the victim. If the victim with social setatus lower than the perpetrator, it will give priority to compensation in the form of the material, and vice versa if the victim's status is higher than the perpetrators of the recovery status and family name would be an advantage.[17]

Especially in cases of rape if the victim of a higher social status of the victim and her family will sue the perpetrators with penalties as severe as in any way. Another case if the victim's lower social status and earn the threat of the perpetrators, victims and families more resigned to submit the case to the judge's decision without defense.

c. Compensation.

Compensation is the form of compensation that can be seen from the aspect of humanity and human rights. The idea to realize the social welfare of society, building on the commitment of the social contract and social solidarity into society and the state is responsible and morally obligated to protect its citizens, especially those who experienced the disaster as victims of crime. Compensation as a form of compensation that is totally depends on how the passage of the judicial process and the decision handed down, even to the source of funds received from the government or public funds.[18]

In general the positive law in Indonesia is a rule that one aim is to prevent crime. This means, the law also aims to protect people from falling victim to a crime before the crime took place. Under the law, the victim can claim damages or compensation against the convict.

The forms of protection for the trial court also stipulated in Government Regulation No. 2 Year 2002 on Procedures for the Protection of victims and witnesses Article 4, which reads:

a. Protection of personal security of victims or witnesses of physical and mental threats
b. Concealment of identity of victims and witnesses, for example when in stand trial should be closed to the public so that the victim's identity can be protected.
c. Testifying during court trial examination without face to face with the suspect.

Protection is also contained in Law No. 13 of 2006 on the protection of witnesses and victims in Article 5, paragraph (1) letter as / dg, which reads:

a. The protection of personal safety, family and property, and free from the threat with respect to the testimony that will is or has been rendered;
b. Participate in the selection process and determine the forms of protection and security support;
c. Provide information without pressure;
d. Got a translator;
e. Free of questions that ensnare;
f. Getting information on the progress of the case;
g. Getting information about the court ruling.

Once the offender was sentenced by a judge, then in accordance with Article 5 (1) h until m Law 13 In 2006, the victims are entitled to protection as follows:

[16] ibid
[17] Ibid, p. 67.
[18] Ibid, p. 69

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h. Knowing in the convict released;
i. Getting a new identity;
j. Getting the new settlement;
k. Obtain reimbursement for transportation costs in accordance with the requirements;
l. Legal advice;
m. Obtaining temporary living expenses until the end of the time limit protection.

There is some protection for victims of crime commonly given as follows:

1. Provision of Restitution and Compensation. Elucidation of Article 35 of the Law No. 26 of 2000 gives the sense that the loss compensation granted by the State because the perpetrators are not able to give fully indemnified under his responsibility, while restitution namely, compensation for victims or their families by the offender or a third party.
2. Counseling, in general, this protection is given to the victim as a result of the emergence of a psychic nature negative impact of a crime. Providing assistance in the form of counseling is suitable given to victims of crime that leaves the prolonged trauma, such as in cases involving morality.
3. Service/medical assistance provided to the victims who are suffering medically as a result of a criminal act. Medical care can be referred to a medical examination and a written report. A medical certificate is required especially when the victim was about to report the crimes to police for further action.
4. Legal assistance.
   Legal aid is a form of assistance to victims of crime. In Indonesia's more aid granted by Governmental Organization (NGO). The provision of legal aid for victims, it is important in view of the low level of legal awareness of the majority of the victims who suffer from these crimes. The attitude of allowing victims of crime do not get proper legal assistance may result in further decline of the condition of victims of crime.
5. Provision of Information
   Provision of Information to the victims or their families with regard to process and inspection penyelidikkan criminal offense suffered by the victim. Providing this information provides a very important role in the effort to make society as a partner of the police because this information is expected to function through community control over police performance to be effective.

Engineering effort in Indonesian law on rape may be an appropriate moment for the development of law in the era of the Long Term Development II, among others, aims to carry out the preparation of a legal system (criminal) nationwide. Although a draft of the Criminal Code of the National (under the heading: Crime Against Deeds Breaking Decency in advance General, Chapter XVI Section 467) has been finalized but a draft provision about crime in the area of morality (rather than kind, but the construction of the law) remains to be assessed in particular especially from the angle of approach of criminology and victimology.[19] Victimology as a science that examines all aspects relating to victims in various areas of life da livelihood. The protection of victims of crime of rape is an activity development of human rights and human rights obligations. Pay attention to and protection of victims of crime of rape should be considered because they are very sensitive to a variety of threats mental disorders, physical and social. In addition, they often do not have the ability to preserve, defend and maintain itself.

Management of the rape victims of crime will be able to involve many people from a variety of disciplines including:

[19] Romli Atmasassmita, Capita Selecta Criminal Law and Criminology (Bandung: Mandar Maju, 1995), p. 106

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1. Prevention can mean the prevention of rape and may also be intended as prevention of sexual problems in the future. To avoid the occurrence of the crime of rape it is recommended that women not traveling alone, especially at night time and place of the swing and silent, it helps if the woman belaja also martial sports. Just to protect himself from those who do evil orag. Avoid carrying weapons at the time of traveling, if there is a reasonable attempts of rape then act, as far as possible not to panic or fear.
2. Treatment of victims of crime of rape requires attention not only focus on the victim alone. In addition to the complaints of the victims, should also be heard kkeluhan of the family, who helped her keterngan the first time and information from the environment, the need but it is often caused by the disruption of family and community. The goal of therapy in the crime of rape victims is to reduce even possible to eliminate suffering. In addition, to improve his behavior, increasing its ability to create and maintain social relationships. This means that the treatment given to be able to restore the victim's on the job or his work within the limits of his ability and habits of their social role,
3. Rehabilitation of victims of crime of rape is the physical and psychosocial action in an effort to obtain the function and adjustment to the maximum and to prepare the victims physically, mentally and socially in the future life. The purpose of rehabilitation include aspects medic, psychological and social aims towards the achievement of adjustment, self-esteem and also the achievement of a view and a healthy attitude of the family community to the victims of the crime of rape in order to achieve that goal then the victims of the crime of rape always get service medic psychiatric intensive.

E. Technical Barriers

The protection of the victims of rape in terms of victimization that the victim is still treated as an object, not a subject that must be heard and respected in his legal rights. The mostly still the make women victim of rape victim a second time (revictimization) for the cases the experienced. Victims are still Often blamed and not given as much protection as what is needed, namely about assistance by a psychologist to recover mentally and traumatized over Incidents of rape. Constaints in the protection of rape Victims in terms of victimization are internal and external barriers. Internal barriers in the form of the many parties Involved from various institution and the extent of funding activivites create Difficulties in conducting supervision of the implementation of each activity. While the external obstacle is the bureaucracy that is related to not being a priority issue that is brought up among policy makers.

The solution to this, more participatory approach in all programs are:

1. Involving all interested parties;
2. Develop a strategy to equalize the perception and assessment of the programs that have been carried out by law enforcement agencies;
3. Introduce the concept of the law enforcement system with a gender equitable excavate the experiences of those involved in the PPH program in addressing violence against women. In terms of process experience then dealt with together. The introduction of the concept of integrated system of criminal justice cases of violence against women, slowly done and discussed together well to achieve the same perception and understanding.

Bureaucratic obstacles relating to not become a priority issue that carried the PPH program (gender equity) among policy makers. Relating to the protection of victims of crime, it is necessary to set up a special institute to handle it, but need to be submitted in advance an adequate information about what rights are owned by the victim and his family when the future losses or suffering as a result of the violation itself.

CONCLUSION

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There is some protection for victims of crime commonly given as follows: Provision of Restitution and Compensation, Counseling, Service/medical assistance provided to the victims, Legal assistance, Provision of Information, Rehabilitation etc. Internal barriers in the form of the many parties Involved from various institution and the extent of funding activivites create Difficulties in conducting supervision of the implementation of each activity. While the external obstacle is the bureaucracy that is related to not being a priority issue that is brought up among policy makers.

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