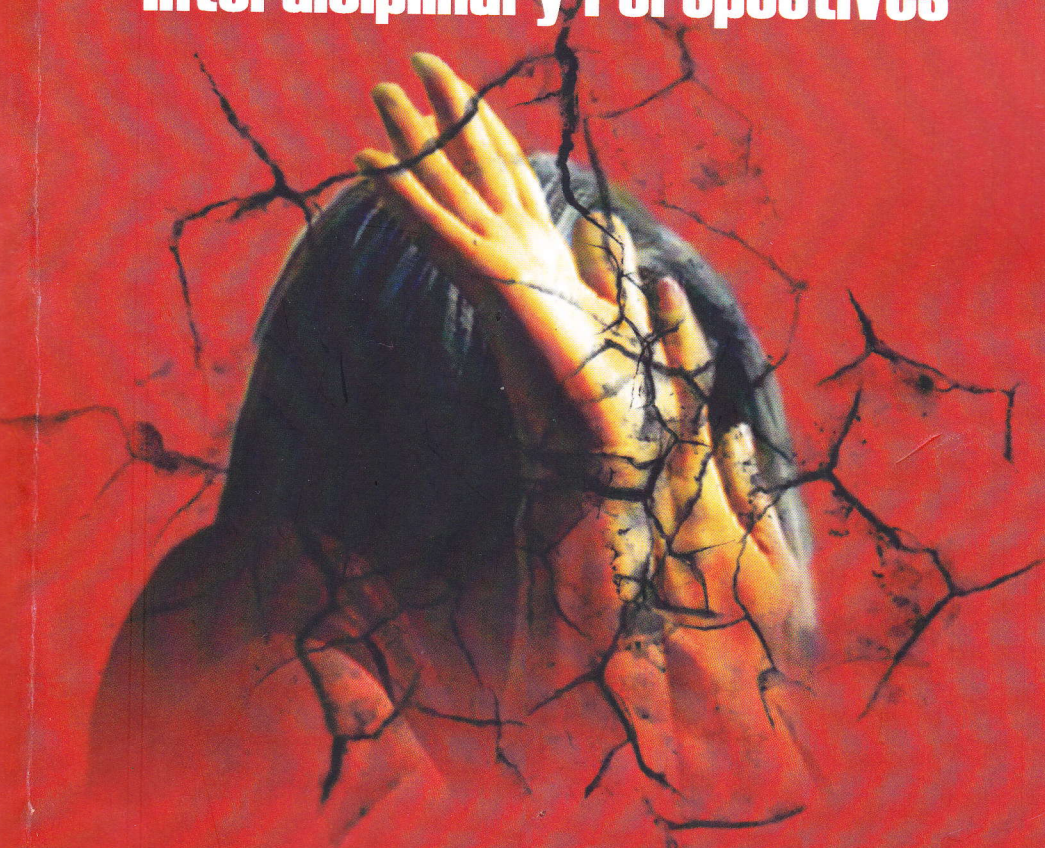


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VICTIMOLOGY IN A NUTSHELL: Interdisciplinary Perspectives



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VICTIMOLOGY IN A NUTSHELL

Interdisciplinary Perspectives

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Victims of Online Prostitution Involving Indonesian Actresses in Victimology Perspective

By: Hwian Christianto¹

1. INTRODUCTION

Online prostitution case involving artists has increasingly occurred. Two artists, PR and NM were arrested in Kempinski Hotel, Jakarta, for allegedly providing sexual service.² In similar cases, VA and AF were arrested by Special *Reserse* Directorate of East Java Regional Police Department during operation in a hotel in Surabaya based on public report upon immoral act.³ In different operation, artist PA was arrested in Batu, Malang during the similar operation.⁴ The disclosures of online prostitution that involve Indonesian artists recently raise a big question on victimology role. Basically, online prostitution is defined in the same meaning as prostitution which is prohibited in Article 296 of Penal Code (KUHP). As one of Moral-related Crime, Article 296 of Penal Code prohibits any act that encourages or facilitates obscene among one person and others as a livelihood. Focus of a quo legal form is found in the prohibition of facilitating or encouraging the obscene act as a livelihood or prohibition of establishing "sinful facility" or *bordeel*.⁵ It is clear that any person who facilitates or encourages the obscene act is defined as perpetrator. It indicates that the crime act formulation still focuses on perpetrator. The provision on victim side in Article 296 of Penal Code remains unclear whether she/he is the object or subject of obscene.

Amid the lack of clarity concerning whose party being determined as victim, the prostitution acts has changed along with the use of sophisticated information technology. The prostitution modus operandi is placed on the ease, speed and novelty of information to facilitate the information transaction. Internet access which spreads widely and individually has attracted perpetrator to commit obscene transaction. The access speed provided by internet enables perpetrators in real time to negotiate their potential service users and persons who will be offered to provide obscene services. It doesn't mention to the information novelty which can be changed, deleted and even made confidential has become incentive for perpetrator to commit the act. The online prostitution or cyber prostitution basically has same form with prostitution as stipulated in Article 296 of Penal Code, the difference is only found in the use of information technology and the scope of act. But still, the focus mainly on victim remains absent from online prostitution.

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²Did, "Tragedi Miss Indonesia Terlibat Prostitusi", <https://www.merdeka.com/peristiwa/tragedi-miss-indonesia-terlibat-prostitusi.html>, 12 Desember 2015, diunduh 4 September 2019

³Tia/ken, "Dua Artis Diamankan Terkait Kasus Prostitusi Online di Surabaya", <https://hot.detik.com/celeb/d-4372204/dua-artis-diamankan-terkait-kasus-prostitusi-online-di-surabaya>, 5 Januari 2019, diunduh 4 September 2019

⁴Luhur Pambudi, "Prostitusi Artis Wanita PA Yakni Putri-Pariwisata Indonesia Masih Belia, Polisi Amankan Kondom, CD dan Tisu Bekas", <https://ambon.tribunnews.com/2019/10/26/prostitusi-artis-wanita-pa-yakni-putri-pariwisata-masih-belia-polisi-amankan-kondom-cd-tisu-bekas?page=4>, 26 Oktober 2019, diunduh 4 September 2019

⁵SR, Sianturi. 1983. *Tindak Pidana di KUHP Berikut Uraiananya*, AHM-PTHM, Jakarta, hlm. 248

The focus on victim becomes very important part in comprehending online prostitution act overall. Focus on the cause of online prostitution to be committed becomes criminology part while Penal Code emphasizes on the prohibition of prostitution act. The role of victimology in understanding online prostitution is very important bearing in mind that every crime must result in victim. Any person as victim becomes important subject related to his/her position and contribution upon the prostitution act he/she involves in. The online prostitution involves 3 (three) parties including the trader and/or provider of obscene service (=perpetrator), the user of obscene service and person who commits the obscene act. The last two persons have not been having clarity upon their role and position in online prostitution. It results in fatal consequence in the fulfillment of victim right bearing in mind that the party to be determined as victim remains unclear. Victim blaming occurs both in normative and social ways since it is considered that all parties involved have committed wrongdoing and must bear public blasphemy. In addition, the mass media coverage has confirmed the non necessity of victim right fulfillment on online prostitution by non clarity of parties to be victims. Based on it, 2 (two) problems can be proposed for further studies including first, the significance of understanding online prostitution that involves artists based on victimology and second, the fulfillment of victim rights in online prostitution involving artists.

2. DISCUSSION

Characteristic of Online Prostitution

Online prostitution or cyber prostitution viewed from its form has similarity with act of facilitating obscene act between one person and others. The formulation of Prohibition in Article 296 of Penal Code becomes basis in understanding prostitution act. More specifically, Article 296 of Penal Code uses phrase "obscene act" (*raunchy-Dutch*) which is synonymous with term "obscene" found in Article 286 of Penal Code. The term refers to committing an act to have sexual enjoyment without any sexual intercourse. Should the understanding of "obscene" be related with Article 296 of Penal Code, it is found that the "obscene act" is limited to the act of having sexual enjoyment without any sexual intercourse. Interrelating the obscene as understood in this case is not referred to the specific act that must be committed by the involved parties. Article 296 of Penal Code has been fulfilled when the perpetrator connects two parties to commit obscene act hence the requirement is present. Concerning with the obscene that committed up to the sexual intercourse occurs then the obscene act is still fulfilled.

After understanding the meaning of "prostitution" in construction of act in article 296 of Penal Code, it then follows with the online prostitution. Use of information system (internet) in spreading immoral content or pornography in essence can be understood as part of cyber pornography from the content prohibition.⁶ The act of online prostitution has difference related to the manner with which the obscene is connected. It correlates with the use of electronic system (internet) that facilitates information transaction. Lim confirmed that this situation cause internet pornography is unique because:

- a. *It can be infinitely copied and distributed at minimal cost;*
- b. *The quality of image does not degrade on copying;*

- c. *It is difficult for law enforcement to detect due to the size and structure of the Internet and the availability of encryption;*
- d. *It cannot be seized, in the normal sense of the term, once it has been deemed illegal because it is very easy to re-stock after a confiscation.⁷*

As part of cyber crime, internet pornography has difference in term of distribution ease, view quality and technology sophistication. It is clear that online prostitution constitutes one crime that uses information technology. The regulation on online prostitution prohibition in national legal provision is found in Law No 11 year 2008 about Electronic Information and Transaction juncto Law No 19 Year 2016 about Revision of Law No 11 year 2008 about Electronic Information and Transaction (UU ITE) and Law No 44 Year 2008 about Pornography (Pornography Law). The legal provision of article 27 verse (1) juncto Article 45 verse (1) of UU ITE confirms the prohibition on act of distributing electronic information or electronic document that contain immorality. Based on the provisions, online prostitution is act that contains immorality content. The obscene is an act that lowers any person dignity as sexual object. In addition, the obscene is sexual abuse that threat and disrupt security and health of other's reproduction system. Furthermore, the act of connecting the obscene becomes worse act in lowering other dignity. The perpetrator of online prostitution facilitates the act of lowering other dignity by sexual term.

Different provision is shown in Article 4 of Pornography Act that the pornography content is basically understood in 2 (two) forms: explicit pornography and pornography service. The scope of explicit pornography includes the content that explicitly contains sexual intercourse/defiant sexual intercourse, sexual abuse, masturbation, nudity/content that resembles nudity, genital or child pornography. Second form, pornography service, involves providing nudity or content that resembles nudity, presenting explicitly genital, exploiting or exhibiting sexual activity or offering/advertising both directly or indirectly the sexual service. Based on these two pornography forms, online prostitution has characteristics of act that is similar with pornography service in form of offering/advertising both directly and indirectly the sexual services. The perpetrators of online prostitution basically perform sexual service offering between one party and others by benefit. Interesting thing in the formulation of article 4 verse (2) of Pornography Law uses phrase "both directly and indirectly" the sexual services. In this case, understanding upon the phrase uses *noscitur a sociis* principle to reach understanding. The use of phrase should be correlated with offering/advertising of sexual services. It means that the offering/advertising can be performed directly by offering sexual services or indirectly by performing it secretly by purpose of providing sexual service. The last statement can be explained as if in act of performing telephone service which talks sexual content or by short message services or social media related to the offering and services of information that containing sexual content in structured and routine way. The act of offering indirectly the sexual service is performed within context that user is bond by agreement he/she gave to pay or subscribe the information periodically. The difference with Article 4 verse (1) of Pornography Act that it is confirmed more to explicit pornography containing 6 (six) forms of pornography content. It should be confirmed that from the view or pornography content, article 4 verse (1) of Pornography Act can be enacted. Only bearing in mind that act committed by any offering that provides opportunity for other people to use the sexual service followed by payment or any bond then it is clearly confirmed as sexual services.

⁷Yee Fen Lim, *Cyberspace and Law: Commentaries and Materials*, second edition, Victoria, Oxford University Press, p. 395

Other important thing to observe from the use of “sexual service” phrase has very different meaning with obscene connection construction as contained in Article 296 of Penal Code. If the obscene requires the act has to be performed to fulfill the sexual desire without sexual intercourse is different with sexual service. Pornography Act seems to confirm the meaning of sexual services not only in obscene term but also in sexual intercourse. It means that scope of understanding upon Article 4 verse (2) letter d of Pornography Act is more directed to the offering of pornography service by sexual intercourse service. Definitely it affects proofing process in online prostitution case that requires the sexual intercourse to be present. It is difficult to prove bearing in mind that the obscene offering at the beginning requires it and the investigator/general attorney has to prove it later.

Role of Victimology in Treating Artists Online Prostitution

Victimology is science that has specific argument related to crime. When criminology focuses on the quest and understanding of the cause any act being committed which later to be defined as crime, victimology provides view from victim side upon the crime that occurs. In correlation with penal law that provides normative basis on the prohibition of act, victimology focuses on the fulfillment of victim right upon the prohibited act. Mudzakkir⁸ confirms that there is correlation between perpetrator and victim upon the crime case, the victim must have contribution that determines the crime act. In understanding the victim role some victimology experts have different vies. Ezzata Fattah grouped victim typology into 5 (five) forms, first the victim considers himself/herself is immune on the crime (non participating victim), second, the victim facilitates himself/herself to be victim (predisposed victims), third, the victim due to his/her acts has caused the crime to occur (provocative victims), fourth, the victim due to his/her act becomes the victim of crime (participating victim) and fifth, the victim that is willing to be victim (false victims). It is observed that the victim grouping is based on the extent of person’s knowledge and willingness to be victim of the crime that occurs to him/herself. Other view about victim typology is stated by Stephen Scafer⁹ who introduced 6 (six) forms of victim: first, victim who doesn’t have any role in the crime (unrelated victims), second, victim that facilitates himself/herself to be victim (provocative victims), third, victim who indirectly makes others to commit crime upon himself/herself (precipitative victims), fourth the victim due to his/her weak physical/biological condition (biologically weak), fifth, the victim due to himself/herself to be isolated from society and sixth the victim who is also the perpetrator (self-victimizing victims). Stephen Scafer’s typology seems to have similarity with Ezzat A Fattah’s. however some differences are exist among them.

Table 1.

Comparison of Victim Typology according to Ezzat A. Fattah and Stephen Scafer

Victim Role	Victim Typology according to Ezzat A. Fattah	Victim Typology according to Stephen Scafer
None		Unrelated victims

⁸Mudzakkir, “Perkembangan Viktimologi dan Hukum Pidana”, *Makalah*, Pelatihan Hukum Pidana dan Kriminologi Kerjasama Fakultas Hukum UGM dan Masyarakat Hukum Pidana dan Kriminologi Indonesia (MAHUPIKI), Yogyakarta, 23-27 Februari 2014, h. 4

⁹Stephen Scafer, “The Beginning of Victimology” in Galaway & Hudson J., 1981, *Perspectives on Crime Victims*, Mosby, St. Louis, h. 10-19

Wrong thinking	Non participating victims	Precipitative Victims
Character Condition	Predisposed Victims	Provocative Victims
Triggering Behavior	Provocative Victims	
Participation	Participating Victims	
Physical Condition		Biologically weak victims
Public Isolation		Socially weak victims
Crime Perpetrator	False Victims	Self-victimizing victims

Based on the comparison, it is clear that Ezzat A Fattah put more emphasis on the victim contribution on crime while Stephen Scafer through unrelated victims explains the contrary. Other interesting thing in Ezzat A Fattah’s is the victim role in the crime act is measured from character, behavior and contribution on the crime act. Differently, Stephen Scafer scrutinizes the victim role not only the character and behavior but also his/her physical condition and public isolation he/she experiences. Seemingly, Stephen Scafer thought is influenced by criminology thought particularly from victim biological condition and public role on the crime act. The understanding has similarity with *Biological, Physiological and Biosocial Theories of Crime*¹⁰ from psychological side of crime perpetrator. Whereas, understanding of person’s contribution in making him/herself victim due to social factor has resemblance with criminology theory based on sociological perspective like Anomie theory by Durkheim and Strain theory by Merton¹¹ as explained later by von Hentig research.¹² The two kinds of criminology theory seemingly had influenced Stephen Scafer’s concerning victim role in a crime act.

Understanding on victim typology provides basis for understanding that victim determination must be performed from the role or contribution of the victim upon the crime act. Related to internet pornography, Lim confirmed 3 (three) main parties involved including the maker or originator of the content, the user who access the content and the internet service provider.¹³ If this understanding be related to online prostitution that involves artists then it can be found that the originator of the content is the owner of internet website, the act of providing information and information service with sexual service from the user to the artists that provides sexual service. The user in this case can be understood as 2 (two) parties including the persons who receive and provide agreement to enjoy internet sexual service or artists who provide sexual service. The last party is named as user bearing in mind that the activity utilizes the internet service with immoral content. The internet service provider in this case is the social media like facebook, whatsapp, instagrm or other services that connect to internet. For the last party, it needs to be discussed further by concerning the purpose and direction of social media service making. A social media service which from beginning was established to distribute immoral material or pornography has been responsible for internet pornography (online prostitution that involves artists). However, it is impossible for any social media to have such purpose from beginning, but the owner of social media must take some measures to prevent those who misuse the social media for sexual service. The author has opinion that the first two parties were

¹⁰Teori Biological, Physiological and Biososiai Theories based on Lombrosso theory which study criminal's moriology, Mark A. Lanier & Stuart Henry, *Essential Criminology*, Third Edition, Westview, Boulter, 2010. p. 95-99.

¹¹Topo Santoso & Eva Achjani Zulva, *Kriminologi*, Cetakan ke-16, Rajawali Pers, Jakarta. 2016, h/m. 57-66

¹²Fachri Boy, "Scope of Contemporary Victimology", *Makalah*, Pelatihan Asosiasi Pengajar Viktimologi Indonesia, Balikpapan, 19 April 2017, h. 11

¹³Yee Fen Lim, *Loc.cit*

involved in online prostitution that involved artists. However, in this case the role of artists in online prostitution should be considered. From this perspective, the artists having role as parties that participated in offering sexual service and performed the services must be determined as perpetrator and victim at once. It is interesting to comprehend the role of artists based on two victim typologies as stated previously.

Based on victim typology of Ezzat A. Fattah, the artists in online prostitution case can be categorized in forms of *Provocative Victims*, *Participating victims* and *False victims*. Form of *provocative victims* can be understood from the artists behavior as public figure who have fame and good outlook. The two things become important factor that attract sexual service user to agree with the services. Consumptive factor that triggers big demand from artists can be understood as one form of behaviors or life styles that stimulates the crime upon him/herself. In *Participating Victims* case, the artists provided the consent that his/her body be advertised in internet website as sexual service provider. While as false victims, the artists provided directly the sexual service in spite of prohibition. In comparison with Stephen Scafer typology, the artists had contribution in online prostitution. The understanding of artist contribution can be analyzed in *Provocative Victims* and *Self-Victimizing Victims*. The first form has similarity in condition with provocative victims from Ezatt A Fattah. Interesting thing is found in the case that artists in online prostitution has position as *self-victimizing victims* since he/she was considered to commit crime against him/herself. The thought is based on the understanding that everybody in general condition tend to avoid the crime against him/herself. The artists in online prostitution did the contrary, he/she put him/herself as perpetrator and victim at once. Definitely it becomes unique victim and needs the right fulfillment hence he/she didn't do the same mistakes or continuously becomes victim.

The fulfillment of Online Prostitution Victim Right

Idea of fulfilling victim right in artists who involved in online prostitution is inseparable from the purpose of victimology. The prohibition of online prostitution in penal code, both KUHP and UU ITE emphasizes the prohibition on perpetrator. In online prostitution, these artists constituted the perpetrators and victims at once in the act. Understanding on the role of artists in online prostitution by public is frequently considered as the artist wrongdoing. The disadvantage is found where public blasphemed the artists upon the cases and gave them negative stigma. The last condition in turn will create victim blaming that lead to the victim continuously becomes victim and creating new victim, socially weak victims. It means that the artists who are isolated by public will become victim of public isolation called second victimization¹⁴. Based on the importance of the victim protection, the understanding of victim right fulfillment for artists who were involved in online prostitution becomes very important.

The fulfillment of victim right must refer to the existing provision about the victim definition. International Instrument related to the victim right fulfillment can be referred to *The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985*. The declaration defines victims as

"persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omission of criminal laws operative within Member States, including those laws proscribing criminal abuse of power"

¹⁴Second victimisation is repetition or palecement of victims as further victims of what they experienced because they were considered to have contributed see Lorraine Wolhuter, Neil Olley & David Denham, *Victimology: Victimisation and Victims' Rights*, Routledge-Cavendish, New York, 2009, p. 49-51

..... through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights relating"¹⁵

Based on the declaration, any person becomes victim because he/she experiences suffering in physic, mental, emotional, economical loss or diminishing his/her right. Different understanding is stipulated in definition of "victim" according to Law No 13 year 2006 juncto Acts No 31 year 2014 about Witness and Victim Protection (The Witness and Victim Protection Law). This law strengthens the protection of victims' rights even though it is already regulated in other laws and regulations before.¹⁶ Victim is defined as "person who experiences physic, mental, and/or economical loss due to any crime act." The victim criterion is determined from the existence/absence of suffering or loss due to any crime act. In online prostitution, the parties who involve are conscious or willing to commit the prostitution act. It means that online prostitution doesn't create victim as defined by Witness and Victim Law.

The difference of definition on scope of "victim" in correlation with the position of artists in online prostitution appears when it is defined after the crime has been revealed. It is important to emphasize that victim contribution must be clear from the law it supposes to violate. If general attorney in online prostitution who involve artists use Penal Code (KUHP) or UU ITE (Electronic Information Law) then the perpetrator is the person who demand the sexual service or administrator of internet website whereas the artists are the victims. The fulfillment of victim right in this case has close relationship with the fulfillment of human right on security and legal provision. It is similar with Article 28 D verse (1) of Constitution 1945 that confirm the legal provision should the artists are defined as non perpetrator. He/she has right to be free from any blasphemy and his/her position in society must be restored or repaired according to Article 28G verse (1) of Constitution 1945. More importantly any negative labeling as perpetrator of online prostitution upon these artists is not allowed. It is different when general attorney prosecute them with article 30 jo Article 4 verse (2) letter d of Pornography Law. The construction of act in Article 30 jo Article 4 verse (2) letter d of Pornography Law confirms the prohibition on act of providing pornography service that offer or advertise both directly and indirectly the sexual services. It means that as long as the artist is proved sexual activity from sending photographs, videos or writings made purposefully to provide sexual service and she/he agree to the service then he/she has position as perpetrator and not the victim.

3. CONCLUSION

The determination of online prostitution victim that involves artists must be viewed from casuistic side based on the characteristic of online prostitution act and the role/participation of artists. The regulation on prohibition upon online prostitution as contained in Penal Code, UU ITE (electronic information law), and Pornography Act provide different effect on the definition of victim. Penal Code and UU ITE still put emphasis on perpetrator limited to the parties who offer sexual service as living or habit. It means that the artists have position as victim despite they agree to contribute in the act. It is different with the Pornography Law that provides prohibition on act of offering or advertising sexual service both directly and indirectly. Artists who involve in sexual service offering and proved

¹⁵ United Nations, "The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985", https://www.un.org/en/genocidprevention/documents/atrocities-crimes/Doc.29_declaration%20victims%20crime%20and%20abuse%20of%20power.pdf diunduh 4 September 2019

¹⁶ Abdul Haris Semendawai, "Pengakuan dan Pengaturan Hak-Hak Korban Kejahatan di Indonesia", *Makalah, Pelatihan Asosiasi Pengajar Victimologi Indonesia*, 22 April 2017, hlm. 11

to agree that information concerning their selves to be published in internet as sexual object are no longer positioned as victim. Role of victimology in defining online prostitution that involve crime is very important in defining position of victim as precipitating victim, provocative victim, and false victim at once. It is important bearing in mind that the artists who involve in online prostitution must obtain their right as victim. The fulfillment of right as victim so far remains focusing on the restoration of physical, mental, psychological and economic conditions. Indeed, the fulfillment of victim right for artists who involve in online prostitution is more related with the fulfillment of human right on the legal provision and security related to dignity and good name in society.

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VICTIMOLOGY IN A NUTSHELL:

Interdisciplinary Perspectives

The recent development of victimology study has always become one of the fascinating world-wide issue in line with the criminal law and criminal justice system. This international reference book is capturing the issue of the victims and victimization around the region, both in theoretical and practical approaches. The book is not merely emphasizing on general issues on victimology, but also well-written on particular victimology issues such as victims and restorative justice, victims and economic order, victims of medical practice and domestic violence, violence against children, women and sexuality, and any other forms of victims from terrorism as well as victims of war in international armed conflict.

The width range and in-depth analysis and exploration study in the book altogether with the competent contributors whom mastering the field, this book can be a great resource to learn more about the recent and future development of victimology. This book is striving to provide a better understanding on victimology in various perspectives. Therefore, this book is suitable for the academicians, researchers, undergraduate and post-graduate students, legal practitioners, victimologist, and those who are interesting to study about victimology.

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