

Taking Restitution Seriously? Victim-Oriented Gaps in the Criminal Justice System

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Abstract

In cases of sexual violence, child victims have the right to seek restitution in alignment with their best interests. Although this right is enshrined in various regulations, in practice, victims face significant challenges in accessing it. For example, at the Kaimana District Court, out of 61 cases, only 1 case successfully accessed restitution. A critical examination of the obstacles faced by law enforcement officials in institutionalizing victim restitution is essential to bridging the gap between victims and the criminal justice system. This article explores the findings related to the failure of law enforcement officials to provide access to justice for victims of sexual violence at the Kaimana District Court. The research employs a qualitative approach, utilizing data collected through field research techniques such as in-depth interviews with judges, documentation review, and a literature study. Secondary legal materials are also analyzed to provide context to the findings. The study reveals that the failure to implement restitution at the Kaimana District Court stems from the prevailing paradigm within the



criminal justice system, which prioritizes the retribution of the accused over the needs and rights of the victim. Another institutional challenge is the inaccessibility of the LPSK which is difficult for victims to reach. To address these issues, it is crucial to enhance the role of professional social workers in regional offices, who act as subordinates of the LPSK. Furthermore, the proactive involvement of judges in court is necessary to ensure the effective application of Regulation of the Supreme Court on Restitution.

Keywords

Restitution; Victim-Oriented; Restorative Justice; Criminal Justice System; Professional Social Workers.

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Introduction

In the contemporary criminal justice system, there has been a shift in focus from the interests of perpetrators to those of victims of criminal acts.¹ Victims of crime are defined as individuals who are most adversely affected by the occurrence of a criminal offense.² These victims often experience both material and immaterial losses, including physical and psychological trauma, which can persist over extended periods.³ The rights of crime victims, especially children, must be prioritized in the pursuit of legal justice. Children require special consideration from law enforcement officials to ensure that their rights as victims are not overlooked.⁴ Currently, children are among the most prevalent victims in the community. A significant proportion of these children are subjected to criminal acts, ranging from minor offenses to more serious crimes.⁵ Sexual violence against children, in particular, remains a pressing concern, driven by various factors such as fatalistic perspectives, religious beliefs that condone sexual violence, a culture of violence between the "strong and powerless," a collectivistic and patriarchal culture that fosters gender inequality,⁶ racist

¹ Supriansa Supriansa et al., "The Essence of Restorative Justice in the Development of Indonesian Law," *Revista De Gestão Social E Ambiental* 18, no. 8 (2024): 1–15, <https://doi.org/https://doi.org/10.24857/rgsa.v18n8-025>.

² Trias Saputra and Yudha Adi Nugraha, "Pemenuhan Hak Restitusi: Upaya Pemulihan Korban Tindak Pidana," *KRTHA BHAYANGKARA* 16, no. 1 (2022), <https://doi.org/10.31599/krtha.v16i1.1038>.

³ Akbar Sayudi, "Upaya Perlindungan Korban Tindak Pidana Perkosaan Dalam Sistem Peradilan Pidana Indonesia," *Fiat Justisia: Jurnal Ilmu Hukum* 10, no. 1 (2016): 203–20.

⁴ Rajarif Syah Akbar Simatupang, "Pelaksanaan Sistem Peradilan Pidana Anak Di Indonesia Perspektif Nilai Keadilan," *Jurnal Yuridis* 11, no. 1 (2024): 54–63, <https://doi.org/https://doi.org/10.35586/jyur.v11i1.8356>.

⁵ Miszuarty Putri, "Pelaksanaan Restitusi Bagi Anak Yang Menjadi Korban Tindak Pidana Sebagai Bentuk Pembaruan Hukum Pidana Berdasarkan Peraturan Pemerintah Nomor 43 Tahun 2017," *Soumatera Law Review* 2, no. 1 (2019): 115–34, <https://doi.org/10.22216/soumlaw.v2i1.3567>.

⁶ Christ Sella, Della Rolansa BR Siboro, and Muhammad Iqbal Baiquni, "Legal Protection Against The Crime of Abortion Performed by Child Victims of Rape from Victimological Perspective," *Indonesian Journal of Criminal Law Studies* 7, no. 2 (2022): 199–214, <https://doi.org/https://doi.org/10.15294/ijcls.v7i2.36054>.

cultural views,⁷ domestic violence within families,⁸ and in other forms also due to economic exploitation.⁹ The long-term impact of sexual violence against children can lead to the development of behaviors that may eventually result in the victim becoming a perpetrator of sex offenses. The helplessness experienced by victims of childhood sexual abuse can unconsciously shape their perception, normalizing the idea that sexual acts can be committed against weaker or more vulnerable individuals.¹⁰

According to data from the Indonesian Child Protection Commission over the past three years, criminal cases involving children as victims have reached thousands annually. In 2021, there were 2,971 complaints related to child rights issues, while cases categorized under the child special protection totaled 2,982, including 859 cases of sexual violence against children. In 2022, the total number of complaints—both direct and via media reports—rose to 4,683. By 2023, there were 1,800 complaints made directly to the Indonesian Child Protection Commission, 252 of which involved sexual violence against children. Additionally, 912 cases were reported through the media, with 314 involving sexual violence against child victims.¹¹ Much like the iceberg phenomenon, this data does not account for all instances of sexual violence against children across Indonesia each year. With the growing number of children who fall victim to sexual

⁷ Trilia Trilia, Nisha Nambiar, and Faridah Mohd Said, “Culture Perspective on Child Sexual Violence: A Systematic Review,” *Malaysian Journal of Medicine and Health Sciences* 20 (2024): 138–44.

⁸ Joko Susanto and Indah Sri Utari, “Children as Victims of Sexual Violence Committed by Parents: A Criminological Perspective,” *Journal of Law and Legal Reform* 1, no. 2 (2020): 353–63, <https://doi.org/https://doi.org/10.15294/jllr.v1i2.36007>.

⁹ Indah Sri Utari et al., “Legal Protection for Children as Victims of Economic Exploitation: Problems and Challenges in Three Major ASEAN Countries (Indonesia, Vietnam and Philippines),” *Lex Scientia Law Review* 7, no. 2 (2023): 771–842, <https://doi.org/https://doi.org/10.15294/lesrev.v7i2.68301>.

¹⁰ Indah Sri Utari, Ridwan Arifin, and Diandra Preludio Ramada, “Exploring Child Grooming Sexual Abuse through Differential Association Theory: A Criminological and Legal Examination with Constitutional Implications,” *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 7, no. 1 (2024): 69–88, <https://doi.org/https://doi.org/10.24090/volksgeist.v7i1.9564>.

¹¹ Komisi Perlindungan Anak Indonesia, “Data Kasus Perlindungan Anak Dari Pengaduan Ke KPAI Tahun 2023,” Komisi Perlindungan Anak Indonesia, 2023.

violence, law enforcement agencies must ensure that the rights of these child victims are not neglected. This includes upholding their right to legal protection as well as securing compensation for the harm they have suffered. At a minimum, the right to compensation can significantly help alleviate the burden on children, even though emotionally and psychologically, they often carry lasting wounds due to the trauma they have experienced.¹²

From a legal standpoint, the enactment of Law Number 1 of 2023 on the Criminal Code marks a significant advancement in the regulation of restitution. Prior to this, the Supreme Court Regulation of the Republic of Indonesia Number 1 of 2022 on Procedures for Settling Applications and Providing Restitution and Compensation to Victims of Crime (commonly known as the Perma), provided clarification on the technical aspects of restitution for crime victims. This Perma superseded the provisions outlined in Government Regulation Number 43 of 2017, which addressed the implementation of restitution. It offered more detailed guidance on the application and provision of restitution to crime victims, filling gaps that had previously existed in Government Regulation Number 43 of 2017, which focused on restitution for children as victims of crime, as well as Government Regulation Number 7 of 2018 on the provision of compensation, restitution, and assistance to witnesses and victims, as amended by Government Regulation Number 35 of 2020. Despite the availability of multiple legal provisions related to restitution, empirical evidence suggests that a limited number of victims submit restitution requests to the court. For example, a review of the Case Tracking

¹² Daniela Vilela Antunes, "Restorative Justice: A Differentiated and Innovative Response to Victim Reparation," in *Modern Insights and Strategies in Victimology*, ed. Gabriela Mesquita Borges, Ana Guerreiro, and Miriam Pina (Hershey, Pennsylvania: IGI Global Scientific Publishing, 2024), 157–90, <https://doi.org/https://doi.org/10.4018/979-8-3693-2201-7.ch008>.

Information System (SIPP) at the Kaimana District Court from 2018 to 2024 revealed only 61 cases of sexual violence involving children.¹³

Of the cases examined, only one was filed by a victim seeking restitution. The primary obstacle victims face in accessing restitution is the difficulty of reaching the Witness and Victim Protection Agency (LPSK), despite the restitution application requirement for loss assessment and quantification through the agency. The geographical distribution of LPSK representatives, who are primarily based in metropolitan areas, creates a significant challenge for individuals in rural regions, making it difficult for them to access LPSK services. A thorough examination and analysis of the challenges faced by law enforcement officials in managing victims' restitution claims is crucial to identifying the underlying factors that hinder the effective implementation of these claims. This article aims to contribute to the existing body of knowledge by exploring the findings related to the inability of law enforcement officials to provide access to justice for victims of sexual violence at the Kaimana District Court.

Previous research by legal scholars has highlighted various issues related to restitution mechanisms. Rani Hendriana et al.'s research¹⁴ discusses the complexities of restitution and compensation for crime victims in Indonesia, emphasizing the confusion among law enforcement agencies regarding these concepts and the challenges faced in the restitution process. Christina Maya and Sri Harini¹⁵ underscore the importance of improving the implementation of restitution by simplifying procedures, providing legal aid, and enhancing coordination

¹³ Pengadilan Negeri Kaimana, "Sistem Informasi Penelusuran Perkara (SIPP) Pidana Pengadilan Negeri Kaimana," Pengadilan Negeri Kaimana, 2024.

¹⁴ Rani Hendriana et al., "Development of a Restitution Model Based on Justice and Legal Certainty for Crime Victims in Indonesia," *Pakistan Journal of Criminology* 16, no. 3 (2024): 1409–25, <https://doi.org/https://doi.org/10.62271/pjc.16.3.1409.1425>.

¹⁵ Christina Maya Indah and Sri Harini Dwiyaatmi, "Advancing Access to Justice for Female Victims of Sexual Violence Through Restitution," *Jurnal Hukum Unissula* 40, no. 1 (2024): 171–86, <https://doi.org/http://dx.doi.org/10.26532/jh.v40i1.37794>.

among agencies. Research by Muchamad Iksan et al.¹⁶ notes that while these rights are recognized in various legal frameworks, actual implementation remains insufficient. Victims are often unaware of their rights and the procedures required to claim restitution, largely due to a lack of outreach and education by authorities. Research by Mahrus Ali et al.¹⁷ found that victims' rights to compensation and restitution under various laws are contingent upon the perpetrator's conviction, while victims face significant challenges in obtaining restitution, as perpetrators often prefer serving prison sentences overpaying compensation. At the regional level, research by Syarifah Rahmatillah et al.¹⁸ concluded that the existing regulations in the Qanun Jinayat in Aceh have hindered victims' access to restitution, thus requiring further analysis and reform to improve justice within the legal framework. Collectively, the above research suggests that while criminal law policy positions restitution as a key component of victims' rights and justice, it is not supported by comprehensive regulations, leading to gaps that make implementation difficult for law enforcement officials. This article seeks to address the existing gap in the implementation of restitution within the field, highlighting the innovative advancements observed in court practices. It examines the role of professional social workers as intermediaries for the LPSK in regional contexts. While previous research has predominantly been doctrinal, focusing primarily on statutory provisions, this study aims to explore the complexities of the restitution process from the court's perspective and

¹⁶ Muchamad Iksan et al., "Fulfilling the Restitution Rights of Crime Victims: The Legal Practice in Indonesia," *Academic Journal of Interdisciplinary Studies*, 12, no. 4 (2024): 152–60, <https://doi.org/https://doi.org/10.36941/ajis-2023-0101>.

¹⁷ Mahrus Ali et al., "Compensation and Restitution for Victims of Crime in Indonesia: Regulatory Flaws, Judicial Response, and Proposed Solution," *Cogent Social Sciences* 8, no. 1 (2022): 1–13, <https://doi.org/https://doi.org/10.1080/23311886.2022.2069910>.

¹⁸ Syarifah Rahmatillah Aljamalulail, Faisal A Rani, and Muazzin Muazzin, "The Politics of Law on the Fulfillment of Restitution Rights for Rape Victims Based on the Qanun Jinayat in Aceh," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 1 (2024): 299–316, <https://doi.org/http://dx.doi.org/10.22373/sjhk.v8i1.16307>.

investigate potential methodologies to mitigate its complexity.

Method

This research employs a qualitative approach. Conducted as field research at the Kaimana District Court, it is a type of sociological juridical research¹⁹ that analyzes field data as primary data and examines legal materials as secondary data. The data collection methods employed in this study included both in-depth and standardized interviews with relevant informants who possess a comprehensive understanding of the subjects under investigation.²⁰ Informant selection followed a purposive sampling approach, targeting key individuals closely associated with the research theme, specifically judges from the Kaimana District Court. To ensure the reliability of the data, source triangulation was applied—a method of cross-checking information by comparing data from multiple sources.²¹ This approach involved reviewing data gathered through in-depth interviews with judges at the Kaimana District Court. The results of the triangulation process provide valuable insights into the data presented in this study²², particularly regarding the failure of law enforcement officials to grant victims access to restitution rights within the criminal justice process. This issue highlights a critical aspect of the research: the reasons behind law enforcement's frequent failure to fulfill their responsibilities in this regard.

¹⁹ Muhammad Chairul Huda, *Metode Penelitian Hukum (Pendekatan Yuridis Sosiologis)*, Ilyya Muhs (Semarang: The Mahfud Ridwan Institut, 2021).

²⁰ Sulistyawati Sulistyawati, *Buku Ajar Metode Penelitian Kualitatif* (Yogyakarta: K-Media, 2023).

²¹ Nazar Naamy, *Metodologi Penelitian Kualitatif Dasar-Dasar Dan Aplikasinya* (Mataram: Pusat Penelitian dan Publikasi Ilmiah LP2M UIN Mataram, 2019).

²² Sholahuddin Al-Fatih, *Perkembangan Metode Penelitian Hukum Di Indonesia* (Malang: UMM Press, 2023).

Result and Discussion

Based on data from the Case Tracking Information System (SIPP) of the Kaimana District Court, there were 61 cases of sexual violence against children between 2018 and 2024. However, of these cases, only one (Case No. 20/Pid.Sus/2024/PN Kmn) involved a victim submitting a request for restitution, specifically in relation to a human trafficking crime. According to the filing procedure, the restitution request was made after the case reached the trial stage, with the Prosecutor submitting the request based on the calculation provided by the Witness and Victim Protection Agency (LPSK). In general, restitution requests were not submitted to the Kaimana Resort Police during the investigation phase, even after the case had been concluded.

The technical limitations in the criminal justice system regarding restitution claims have been addressed in the Supreme Court Regulation No. 1 of 2022, which outlines the procedures for the settlement of claims and the provision of restitution and compensation to victims of crime (Perma Restitution). Article 8(4) of this Regulation stipulates that "if the victim does not submit a request for restitution and is presented as a witness in court, the judge shall inform the victim of their right to restitution, which may be submitted either before the prosecutor files the indictment or before the court's decision becomes final." This provision emphasizes the active role of judges in safeguarding victims' rights to restitution. However, despite the enactment of Perma Restitution, the number of restitution claims filed by victims of sexual violence remains minimal.

In an interview with Judge Syafruddin of the Kaimana District Court, four main reasons were identified for the lack of restitution claims: (1) victims do not receive effective advocacy regarding their rights during the criminal justice process; (2) law enforcement officials lack understanding of restitution provisions in various laws and regulations; (3) a punitive paradigm persists within law enforcement, which hinders the

implementation of restorative justice; and (4) it is difficult for victims in rural areas to access the services of the LPSK. Therefore, this discussion will focus on two key arguments: (1) The lack of a victim-centered perspective among law enforcement officials has contributed to the failure to provide access to justice for victims. The entrenched punitive paradigm diminishes the effectiveness of restorative justice practices; and (2) Restitution policies remain overly focused on the Witness and Victim Protection Agency.

A. Victim-Oriented and Access to Justice

The development of modern criminal law has shifted the traditional punitive paradigm²³ in the criminal justice system, which was primarily focused on the punishment of the perpetrator.²⁴ This shift also emphasizes the role of the perpetrator within the punishment model, including opportunities for self-development²⁵, and the potential to repair the harm caused. While the old punitive paradigm may have a deterrent effect on perpetrators, it often neglects the victim's position in the resolution of criminal cases.²⁶ In the victim-oriented paradigm, two primary models have emerged globally. The first model is the "visible victim" model, prevalent in European continental law, where the victim is viewed as an active participant in the legal process, with

²³ Moh. Fadhil, "Restorative Justice Paradigm: Policy Problems and Practices in the Criminal Justice System in Pontianak City," *Al-Daulah: Jurnal Hukum Pidana Dan Ketatanegaraan* 12, no. 2 (2023): 246–63, <https://doi.org/https://doi.org/10.24252/ad.vi.33774>.

²⁴ Sukardi Sukardi and Hadi Rahmat Purnama, "Restorative Justice Principles in Law Enforcement and Democracy in Indonesia," *Journal of Indonesian Legal Studies* 7, no. 1 (2022): 155–90, <https://doi.org/https://doi.org/10.15294/jils.v7i1.53057>.

²⁵ Anis Widyawati et al., "Supervision in Integrated Justice: Legal Reform and Constructive Enforcement in the Criminal Justice System," *Journal of Law and Legal Reform* 5, no. 2 (2024): 433–58, <https://doi.org/https://doi.org/10.15294/jllr.vol5i2.3886>.

²⁶ Khudzaifah Dimiyati and Angkasa Angkasa, "Victimological Approaches to Crime of Rape in Indonesian Criminal Justice System," *Hasanuddin Law Review* 4, no. 3 (2018): 366–76, <https://doi.org/http://dx.doi.org/10.20956/halrev.v4i3.1292>.

rights equal to those of the defendant. In contrast, the “invisible victim” model, found in common law systems such as those in the United States and the United Kingdom, generally limits the victim’s role to that of a witness, permitting them to provide limited input through victim impact statements during the sentencing phase.²⁷ There are numerous models for handling conflict resolution involving victims, perpetrators, and the community. These include the victim-offender mediation model,²⁸ also referred to as victim-offender conferencing,²⁹ the settlement model using customary law,³⁰ the community participation model,³¹ and several other approaches.

In the context of children as victims, Indonesia has stalled in adopting the visible victim model for restitution claims, as evidenced by the absence of such provisions in the Child Protection Law, the Human Trafficking Law, the Elimination of Sexual Violence Law, and the 2023 Criminal Code. This is primarily because, within the criminal justice system, the right to claim restitution is contingent upon the authority

²⁷ Armando Saponaro, “‘Visible’ and ‘Invisible’ Victims in the Criminal Justice System: Victim-Oriented Paradigms and Models,” in *Invisible Victims and the Pursuit of Justice: Analyzing Frequently Victimized Yet Rarely Discussed Populations*, ed. Raleigh Blasdel, Laura Krieger-Sample, and Michelle Kilburn (Hershey, Pennsylvania: IGI Global Scientific Publishing, 2021), 1–23, <https://doi.org/https://doi.org/10.4018/978-1-7998-7348-8.ch001>; Also see in Robyn L Holder and Elizabeth Englezos, “Victim Participation in Criminal Justice: A Quantitative Systematic and Critical Literature Review,” *International Review of Victimology* 30, no. 1 (2024): 25–49, <https://doi.org/https://doi.org/10.1177/02697580231151207>.

²⁸ Sri Hartanto, Indah Sri Utari, and Ridwan Arifin, “Implementation Of Penal Mediation In The Perspective Of Progressive Law (Study At The Semarang City Police Department),” *Indonesian Journal of Criminal Law Studies* 4, no. 2 (2019): 161–88, <https://doi.org/https://doi.org/10.15294/ijcls.v4i2.21494>.

²⁹ Mark B. Scholl and Christopher B. Townsend, “Restorative Justice: A Humanistic Paradigm for Addressing the Needs of Victims, Offenders, and Communities,” *The Journal of Humanistic Counseling* 63, no. 3 (2024): 184–200, <https://doi.org/https://doi.org/10.1002/johc.12204>.

³⁰ Ni Putu Rai Yulianti, Dewa Gede Sudika Mangku, and Lukas Norman Kbarek, “Customary Law and Justice: Protecting the Rights of Women Victims of Sexual Violence in Bali,” *Jurnal Hukum Novelty* 15, no. 2 (2024): 180–99, <https://doi.org/https://doi.org/10.26555/jhn.v15i2.28542>.

³¹ Nur Rochaeti and Nurul Muthia, “Socio-Legal Study of Community Participation in Restorative Justice of Children in Conflict with the Law in Indonesia,” *International Journal of Criminology and Sociology* 10 (2021): 293–98, <https://doi.org/https://doi.org/10.6000/1929-4409.2021.10.35>.

of the public prosecutor, who controls the case³², rather than being granted directly to the victim.³³ The primary focus of law enforcement remains on ensuring legal certainty, rather than on facilitating victim recovery.³⁴ This tendency is also linked to the prevailing ideology in criminal law, which has historically prioritized punitive measures as the primary means of holding perpetrators accountable.³⁵ According to Nurini et al., victims often experience significant emotional and psychological harm, and their needs should be given priority within the criminal justice process.³⁶

Gal's proposal to strengthen victim-orientation was pioneered through the conceptual framework of a needs-rights model, which emphasizes four fundamental domains. First, the "best interests" cluster focuses on rehabilitation and the recognition of harm. Second, the "control" cluster highlights the necessity of treating children as partners in the process. Third, the "procedural justice" cluster underscores the importance of a fair and transparent process. Fourth, the "protection" cluster emphasizes the impact of victimization and the unique needs

³² Lenna Andriyani, Hartiwiningsih Hartiwiningsih, and Pujiyono Suwadi, "Reconceptualization of Restorative Justice in The Attorney General's Office of The Republic of Indonesia," *Revista De Gestão Social E Ambiental* 18, no. 1 (2024): 1–13, <https://doi.org/https://doi.org/10.24857/rgsa.v18n1-053>.

³³ Cahya Wulandari, Ali Masyhar, and Muhamad Sayuti Hassan, "Legal Reform for Victims in Criminal Justice System of Indonesia and Russian Juridical Review," *Journal of Law and Legal Reform* 5, no. 2 (2024): 783–816, <https://doi.org/https://doi.org/10.15294/jllr.v5i3.7322>.

³⁴ Debby F Ng Fallo, Heryanto Amalo, and Adrianus Djara Dima, "Barriers to Law Enforcement Responsive to the Interests of Victims: A Study on the Practice of Justice for Violent Crimes in the Jurisdiction of Class IA Kupang District Court," *Journal of Ecobumanism* 3, no. 7 (2024): 1195–1206, <https://doi.org/https://doi.org/10.62754/joe.v3i7.4281>.

³⁵ Anis Widyawati et al., "The Regulation of Integrity Zone and the Corruption-Free Zone in Indonesia and Rusia," *Bestuur* 11, no. 2 (2023): 253–70, <https://doi.org/https://doi.org/10.20961/bestuur.v11i2.76306>.

³⁶ Nurini Aprilianda, Ansori Ansori, and Febrianika Maharani, "Excusing Child Offenders: A Victim Justice Perspective," *Legality: Jurnal Ilmiah Hukum* 32, no. 2 (2024): 433–52, <https://doi.org/https://doi.org/10.22219/ljih.v32i2.33937>.

and vulnerabilities of children who have experienced harm.³⁷ The judicious implementation of these four elements is crucial for facilitating the optimal recovery of victims.

Research by Natalie Hadar has shown that the preponderance of victim-oriented interventions has been effective in enhancing the psychological well-being of survivors.³⁸ The goal of victim-oriented efforts is the recovery of the victim. This recovery is dependent on four key factors: First, resilience serves as a protective mechanism, preventing secondary victimization. Second, victims must secure compensation and restitution. Third, support networks are essential to help victims navigate the criminal justice process. Finally, forgiveness emerges as an outcome of the victim's recovery³⁹.

A needs-rights model should be integrated into an appropriate policy framework in Indonesia through the reform of criminal law and criminal procedure law. Significant changes have been made to Article 94 of the 2023 Criminal Code (KUHP 2023) regarding the payment of compensation by the perpetrator to the victim. Article 76, paragraph (3), letter (a) also introduces the concept of supervision punishment, contingent on the payment of restitution by the perpetrator to the victim or their heir.⁴⁰ This provision underscores the idea of restitution as a form of punishment, a concept that has been widely discussed in

³⁷ Päivi Honkatukia, "Tali Gal, Child Victims and Restorative Justice: A Needs-Rights Model," *Restorative Justice* 1, no. 2 (2013): 302–4, <https://doi.org/http://dx.doi.org/10.5235/20504721.1.2.302>.

³⁸ Natalie Hadar, "Survivors' Paths Toward Forgiveness in Restorative Justice Following Sexual Violence," *Criminal Justice and Behavior* 50, no. 6 (2023): 911–28, <https://doi.org/https://doi.org/10.1177/00938548231162108>.

³⁹ Masahiro Suzuki, "Victim Recovery in Restorative Justice: A Theoretical Framework," *Criminal Justice and Behavior* 50, no. 12 (2023): 1893–1908, <https://doi.org/https://doi.org/10.1177/00938548231206828>.

⁴⁰ Moh. Fadhil and Ardiansyah Ardiansyah, *Transformasi Pemidanaan Restoratif* (Bantul: CV. Mitra Edukasi Negeri, 2025).

academic literature.⁴¹ This development marks a paradigm shift in law enforcement's approach, placing greater emphasis on strategically positioning victims within the criminal justice system.

B. Restitution and the Complexities in the Field

Ensuring access to justice for victims is a multifaceted challenge that involves two overarching issues: paradigm and structure. The paradigm refers to the perspective or belief system that underpins the ideology of law enforcement officials.⁴² In cases where the punitive paradigm predominates, despite the accommodation of victims' rights within the legal framework, law enforcement officials may perceive legal certainty as the prevailing priority.⁴³ Conversely, a shift towards a restorative paradigm could help address the subsequent challenge, namely structure. Structure, in this context, refers to the operational procedures and regulations that govern law enforcement officers' actions. The effectiveness of law enforcement in functioning as an integrated part of the criminal justice system—through more efficient procedures—is crucial for ensuring access to justice.⁴⁴ Quantitative research by Joseph Heffner and Oriel FeldmanHall supports this argument by suggesting that victims often prioritize restitution and compensation over witnessing the punishment of the perpetrator. When victims' interests are met, their response to sentencing becomes

⁴¹ Cortney E. Lollar, "Punishment Through Restitution," *Federal Sentencing Reporter* 34, no. 2–3 (2022): 98–106, <https://doi.org/https://doi.org/10.1525/fsr.2022.34.2-3.98>.

⁴² Erlyn Indarti, "Diskresi Dan Paradigma Sebuah Telaah Filsafat Hukum" (Universitas Diponegoro, 2010).

⁴³ Irma Indriyani, "Pengaruh Aliran Hukum Positivisme Dan Rasa Keadilan Di Indonesia," *Ahkam : Jurnal Hukum Islam Dan Humaniora* 1, no. 1 (2022): 193–204, <https://doi.org/https://doi.org/10.58578/ahkam.v1i1.752>.

⁴⁴ Indah and Dwiyatmi, "Advancing Access to Justice for Female Victims of Sexual Violence Through Restitution."

less significant.⁴⁵ Another quantitative study by Kotryna Stupnianeck and Manfred Schmitt found that fair trials and respectful treatment of victims can help maintain their trust in the justice system.⁴⁶ This analysis highlights the lack of victim-oriented focus in the current paradigm of law enforcement. Global feminist activists emphasize two key principles: (1) respecting the victim's choice and voice; and (2) considering the victim's reflections and experiences while participating in the criminal justice process.⁴⁷ Nonetheless, Maglione cautions that the misguided formalization of restorative justice could derail its transformative potential, thus limiting creativity and the ability to reintegrate conflict into society.⁴⁸

Failure to facilitate the rights of victims of sexual violence constitutes a form of structural or bureaucratic violence against them.⁴⁹ Law enforcement officials must engage in critical reflection to understand that the pursuit of legal certainty through punishment can create a "black hole," resulting in multiple layers of injustice for victims.⁵⁰ The conventional criminal justice process relegates victims to

⁴⁵ Joseph Heffner and Oriel FeldmanHall, "Why We Don't Always Punish: Preferences for Non-Punitive Responses to Moral Violations," *Scientific Reports* 9, no. 13219 (2019): 1–13, <https://doi.org/https://doi.org/10.1038/s41598-019-49680-2>.

⁴⁶ Kotryna Stupnianeck and Manfred Schmitt, "Crime Victims' Belief in a Just World: Moderating Effects of Perceived Fair Treatment in the Criminal Justice Process," *Victims & Offenders* 19, no. 2 (2022): 256–79, <https://doi.org/https://doi.org/10.1080/15564886.2022.2141934>.

⁴⁷ Daye Gang, Maggie Kirkman, and Bebe Loff, "'Obviously It's for the Victim to Decide': Restorative Justice for Sexual and Family Violence From the Perspective of Second-Wave Anti-Rape Activists," *Violence Against Women* 30, no. 12–13 (2024): 3187–3210, <https://doi.org/https://doi.org/10.1177/10778012231174353>.

⁴⁸ Giuseppe Maglione, "Restorative Justice And The State. Untimely Objections Against The Institutionalisation Of Restorative Justice," *British Journal of Community Justice* 17, no. 1 (2021): 4–22.

⁴⁹ Balawyn Jones, "Bureaucratic Violence: State Neglect of Domestic and Family Violence Victims in Aceh, Indonesia," in *The Criminalization of Violence Against Women: Comparative Perspectives*, ed. Heather Douglas et al. (New York: Oxford Academic, 2023), 285–98, <https://doi.org/https://doi.org/10.1093/oso/9780197651841.003.0016>.

⁵⁰ Andi Misbahul Pratiwi et al., "'Kami Butuh Dukungan Melampaui Kebijakan': Tantangan Pelayanan Terpadu Kekerasan Seksual Di Provinsi Kalimantan Barat Dan Sulawesi Tengah," *Jurnal Perempuan* 29, no. 1 (2024): 1–16, <https://doi.org/https://doi.org/10.34309/jp.v29i1.971>.

a secondary position, and, more dramatically, their testimony as witnesses often serves merely to fulfill a formal procedural requirement in court.⁵¹ What is the underlying issue? In her analysis, Rebecca Banwell-Moore highlights the complex dynamics between formality and bureaucracy within the legal system, which frequently hinder the pursuit of justice for victims. She identifies systemic challenges, including occupational pressures, differing views on the efficacy of restorative justice, and a lack of structured guidance within criminal justice organizations, as key factors preventing victims from accessing restorative justice.⁵² Furthermore, even in cases where restorative justice practices are implemented, these initiatives often prioritize offender rehabilitation over addressing the needs of victims.⁵³ This practice stands in stark contrast to the field of juvenile justice, where law enforcement officials play an active role throughout the entire criminal justice process, with the aim of implementing diversion for juveniles involved in the system. According to Rani Hendriana et al., the effectiveness of enforcing restitution for victims depends on the adoption of the diversion model in juvenile justice by law enforcement officials at all levels of the criminal justice system.⁵⁴

In the context of the Kaimana District Court, Judge Syafruddin explained that the prevailing structural deficiencies and legal culture among law enforcement officials have not yet reached a level of

⁵¹ S. Andrade and C. Martins, "The Possibility of Inclusion of Restorative Justice in São-Tomense Law," in *Restorative Justice in Portuguese-Speaking Countries and Regions. Proceedings of the 2020 International Seminar*, ed. M. Monte, N. Santiago, and C. Demarchi (JusGov, 2023), 94–105.

⁵² Rebecca Banwell-Moore, "Just an 'Optional Extra' in the 'Victim Toolkit'? The Culture, Mechanisms and Approaches of Criminal Justice Organisations Delivering Restorative Justice in England and Wales," *International Review of Victimology* 29, no. 2 (2023): 217–35, <https://doi.org/10.1177/02697580221079993>.

⁵³ Kelly Richards, "Taking Victims Seriously? The Role of Victims' Rights Movements in the Emergence of Restorative Justice," *Current Issues in Criminal Justice* 21, no. 2 (2009): 302–20, <https://doi.org/10.1080/10345329.2009.12035847>.

⁵⁴ Hendriana et al., "Development of a Restitution Model Based on Justice and Legal Certainty for Crime Victims in Indonesia."

understanding and implementation sufficient to guarantee victims' entitlement to restitution. Investigators, prosecutors, victim advocates, and potentially judges, have demonstrated a lack of advocacy for victims' rights. According to Aida Dewi et al., law enforcement officials play a pivotal role in advocating for victims' rights through restorative justice approaches, responsive law, and a transcendental perspective.⁵⁵ According to Article 71 D of Law No. 17/2016 on the Stipulation of Government Regulation in Lieu of Law No. 1/2016, which amended Law No. 23/2002 on Child Protection, victims have the right to claim restitution, which is the responsibility of the perpetrator. Government Regulation No. 43/2017 on the Implementation of Restitution for Children Who Are Victims of Crimes stipulates that the right to claim restitution can be exercised from the investigation stage to the prosecution stage. Similarly, Article 8 of the Restitution Regulation states that restitution claims may be submitted during the investigation stage. Despite the existence of these regulations, however, the process often does not function as intended in practice. According to William Chambliss and Robert B. Seidman⁵⁶, The operation of law in society is influenced by various social forces, law-making institutions, and law-enforcement agencies. Muladi further asserts that legal culture and feedback from the law's practical application also play a significant role.⁵⁷ The operation of the law cannot be viewed as a monolithic entity; rather, it is subject to influence from a multitude of factors, including social background, education, economy, religion or belief, family, politics, and other forces.⁵⁸ Furthermore, Dian Ekawaty et al. have

⁵⁵ Aida Dewi et al., "Legal Protection for Rape Victims in Indonesia: Seeking an Ideal Concept," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 21, no. 1 (2021): 121–30, <https://doi.org/https://doi.org/10.30631/alrisalah.v21i1.791>.

⁵⁶ William J. Chambliss and Robert B. Seidman, *Law, Order and Power* (Philippines: Addison Wesley publishing Company, 1971).

⁵⁷ Muladi Muladi, *Demokratisasi, Hukum Dan Hak Asasi Manusia, Dan Reformasi Hukum Di Indonesia* (Jakarta: The Habibie Centre, 2002).

⁵⁸ Suteki Suteki, *Desain Hukum Di Ruang Sosial* (Yogyakarta: Penerbit Thafa Media, 2013).

emphasized the incompatibility between criminal law and human rights, which hinders law enforcement officials' acceptance of restorative justice processes.⁵⁹ The complex interplay of these factors has been shown to have a detrimental impact on the victims of sexual violence in the Kaimana District Court.

To address this issue, three key steps must be taken: first, training on victim-oriented approaches to handling cases of sexual violence must be conducted; second, law enforcement agencies must collaborate with other institutions, such as the LPSK, advocates, paralegals, professional social workers, community centers, and other relevant organizations, to develop joint policies or guidelines for the effective implementation of restitution claims; and third, if institutional mechanisms fail, investigators and prosecutors must be willing to exercise discretion to prioritize the best interests of victims, even if it requires deviating from strict legal norms.

C. Challenges Encountered in Accessing the LPSK

The promulgation of Law No. 31/2014, which amends Law No. 13/2006 on Witness and Victim Protection, significantly strengthens the legitimacy of the LPSK as an institution crucial for facilitating access to justice and ensuring the protection of victims' rights within the criminal justice system.⁶⁰ In accordance with Article 7A, this provision establishes the framework for victims of criminal acts to obtain restitution in the form of compensation. With respect to the financial losses, suffering, and reimbursement of medical and/or

⁵⁹ Dian Ekawaty Ismail et al., "Collocation of Restorative Justice with Human Rights in Indonesia," *Legality: Jurnal Ilmiah Hukum* 32, no. 2 (2024): 394–417, <https://doi.org/https://doi.org/10.22219/ljih.v32i2.35374>.

⁶⁰ Dien Kalpika Kasih, "Efektifitas Pemberian Restitusi Terhadap Korban Tindak Pidana Berdasarkan Undang-Undang Nomor 31 Tahun 2014 Tentang Perlindungan Saksi Dan Korban," *Jurnal Idea Hukum* 4, no. 1 (2018): 836–45, <https://doi.org/https://doi.org/10.20884/1.jih.2018.4.1.92>.

psychosocial care costs resulting from criminal acts, this right is facilitated through the LPSK. Furthermore, Article 20, paragraph (1) of Government Regulation No. 35 of 2020, which amends Government Regulation No. 7 of 2018 on the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims, states that an application for restitution may be submitted either before or after a court decision that has gained permanent legal force through the LPSK. The LPSK's role is to calculate the amount of loss as a reference for the restitution amount submitted to the court. As a subsystem of the criminal justice system, the LPSK must actively lead efforts to seek restitution for victims, advocate for victims' rights, and strengthen coordination with other law enforcement officials. Ideologically, the LPSK serves as a counterbalance to the victim-centered structure of the criminal justice system.⁶¹

However, subsequent findings in the field revealed that the failure to apply for restitution in 60 (sixty) cases at the Kaimana District Court was due to victims' difficulty in reaching the LPSK and a lack of coordination between law enforcement officials and the LPSK. In practice, when sexual violence cases involving children arise in Kaimana Regency, neither the police, prosecutors, nor victim advocates provide clear advocacy regarding the victim's right to assistance from the LPSK. Law enforcement officials view the resolution of sexual violence cases as complete through criminalization alone, thus impeding victims' access to justice.⁶² In the criminal justice system, victims are unable to intervene in the process due to the rigid formalization of the legal framework. This framework is based on the notion that violations of

⁶¹ I Putu Angga Feriyana, Anis Mashdurohatun, and Arpangi Arpangi, "Development Of The Criminal Justice System: Initiating LPSK As A Criminal Justice Subsystem In Indonesia," *Jurnal Daulat Hukum* 3, no. 1 (2020): 123–30, <https://doi.org/http://dx.doi.org/10.30659/jdh.v3i1.8386>.

⁶² Sri Endah Wahyuningsih, "Legal Protection of Children as Victims of Pedofilia in Indonesia," *Man in India* 97, no. 24 (2017): 71–84.

criminal law are violations of state authority. Consequently, the primary objective of the criminal justice system is the protection of the state's legal sovereignty, with victim protection being a secondary concern.

The prevailing paradigm within the criminal justice system must evolve to move beyond the current perspective. While the fulfillment of victims' interests does not hold a central position in the process, it is crucial to recognize that victims have a legitimate interest in the realization of justice through reparations.⁶³ The approach of imposing criminal sanctions fosters a sense of psychological gratification through the pursuit of retribution. However, it fails to address the harm inflicted upon the victim. It is evident that justice does not align with the interests of victims, as the courts remain entrenched in rigid legal formalism rather than delivering substantive justice.⁶⁴ Trias Saputra et al. have identified two deficiencies in the institutionalization of restitution: First, the absence of a robust restitution policy framework, which is cumbersome for law enforcement officials to implement; second, the procedural challenges that require victims to undergo arduous and protracted judicial processes to access restitution, which are not consistently executed in a satisfactory manner.⁶⁵ This observation underscores the fact that the criminal justice system has been unsuccessful in propagating the restorative justice paradigm. A more skeptical view was expressed by Jennifer L. Lanterman, who

⁶³ Antunes, "Restorative Justice: A Differentiated and Innovative Response to Victim Reparation."

⁶⁴ Abdul Jalil, "Penegakan Hukum Di Pengadilan Dan Dimensi Spiritualitasnya (Aspek Yang Sering Terlupakan)," *Administrative Law and Governance Journal* 4, no. 2 (2021): 313–25, <https://doi.org/https://doi.org/10.14710/alj.v4i2.313-325>.

⁶⁵ Trias Saputra et al., "Application of Restitution for Criminal Acts Victims: Between Rules and Reality," *Indonesian Journal of Criminal Law Studies* 9, no. 2 (2024): 333–56, <https://doi.org/https://doi.org/10.15294/ijcls.v9i2.50320>.

likened the restorative justice paradigm to a "pearl locked in a black box," difficult to access and solve.⁶⁶

Law enforcement officials have historically viewed victims' rights as voluntary entitlements, contingent upon the victim's initiative in demanding them.⁶⁷ However, children who are victims of sexual violence often lack both the knowledge and understanding of their rights, as well as the bargaining power to claim them. Moreover, the position of the LPSK within the criminal justice system remains marginal.⁶⁸ The integration of the criminal justice system has reached an impasse, largely due to the sectoral ego of each law enforcement agency.⁶⁹ Waliadin and Liza Nofianti discussed the idea that, despite the strong legal foundation of the LPSK and its critical role in safeguarding witnesses and victims, its effectiveness is hindered by several implementation challenges. These challenges include a lack of socialization, particularly regarding complaint channels, at each stage of the criminal justice process. Furthermore, there is limited access to security for victims and significant geographical barriers to accessing services.⁷⁰ Vina Mustika and Iwan further highlighted that the complex legal procedures and limited resources of LPSK have created

⁶⁶ Jennifer L. Lanterman, "Models Versus Mechanisms: The Need to Crack the Black Box of Restorative Justice," *British Journal of Community Justice* 17, no. 1 (2021): 60–78.

⁶⁷ Fiona Florencia Fevernova and Hery Firmansyah, "Tinjauan Peran LPSK Dalam Proses Penegakan Keadilan Terhadap Korban Inses," *UNES Law Review* 6, no. 2 (2023): 4235–42, <https://doi.org/https://doi.org/10.31933/unesrev.v6i2.1262>.

⁶⁸ Bambang Julianto, "Perlindungan Hukum Terhadap Saksi Dan Korban Dalam Sistem Peradilan Pidana Di Indonesia," *Lex Renaissance* 5, no. 1 (2020): 20–31, <https://doi.org/https://doi.org/10.20885/JLR.vol5.iss1.art2>.

⁶⁹ Anis Widiyawati et al., "Urgency of the Legal Structure Reformation for Law in Execution of Criminal Sanctions," *Lex Scientia Law Review* 6, no. 2 (2022): 339, <https://doi.org/10.15294/lesrev.v6i2.58131>.

⁷⁰ Waliadin Waliadin and Liza Nofianti, "Juridical Analysis Of Legal Protection From The Witness And Victim Protection Agency (LPSK)," *Riwayat: Educational of History and Humanities* 4, no. 2 (2021): 183–87, <https://doi.org/https://doi.org/10.24815/jr.v4i2.31444>.

accessibility disparities for victims, undermining the agency's ability to provide adequate protection.⁷¹

To address the barriers that arise in this context, several technical proposals must be considered for implementation, including the reform of restitution policy. First, the calculation of the restitution amount should not require the involvement of LPSK. According to Article 27, paragraph 3, of Law Number 11 of 2012 on the Juvenile Criminal Justice System, "In conducting an examination of Child Victims and Child Witnesses, Investigators are required to request a social report from professional social workers or social welfare workers after a criminal offense is reported or complained about." In line with this provision, every case involving children as victims of criminal acts must include a report from a professional social worker. This report should be submitted along with the case file. The term "professional social worker" refers to an individual employed by either government or private institutions, who possesses the qualifications and expertise in social work, as demonstrated by education, training, and/or practical experience in the field.

This individual is responsible for addressing the social challenges faced by children.⁷² The social report from a professional social worker is significant, serving as a form of evidence (known as "letter evidence") considered by the Panel of Judges. In Kaimana District, the social worker entrusted with this responsibility is from the Kaimana District Women's Empowerment and Child Protection Office, specifically the child protection section. This section is directly involved in conducting

⁷¹ Vina Mustika and Iwan Iwan, "Restitusi Terhadap Korban Kekerasan Seksual Di LPSK Medan; Analisis Hukum Pidana Dan Hukum Pidana Islam," *Legalite : Jurnal Perundang Undangan Dan Hukum Pidana Islam* 9, no. 2 (2024): 117–31, <https://doi.org/https://doi.org/10.32505/legalite.v9i2.9224>.

⁷² Adi Bustamar and Rizki Bunga Lestari, "The Primary of Social Worker: Eksistensi Pekerja Sosial Sebagai Suatu Profesi," *Indonesian Journal of Social Science Education (IJ SSE)* 1, no. 2 (2019): 213–28, <https://doi.org/http://dx.doi.org/10.29300/ijssse.v1i2.1953>.

research and providing support to children throughout the judicial process, as demonstrated in case number 25/Pid.Sus/2024/PN Kmn. The inclusion of both material and immaterial losses in the social report would provide a stronger foundation for the submission of restitution in court. Although the role of professional social workers in restitution policy has not yet been formally regulated, their presence can serve as a crucial institutional bridge to the LPSK across various regions. To effectively integrate into the criminal justice system, professional social workers must possess a high level of expertise in their field, extensive knowledge of victimology, strong interpersonal and public speaking skills, the ability to manage the emotional needs of victims, and a comprehensive understanding of the criminal justice system. Furthermore, they must be capable of integrating psychological, medical, and other services that victims may require. However, the ability of professional social workers to fulfill these roles is often hindered by insufficient budgets, which limit access to services for victims. This challenge could be mitigated by allocating budgets from local governments as a form of social assistance for victims.

In the short term, we recommend establishing a memorandum of understanding between law enforcement officials and professional social workers or implementing a policy at the Supreme Court level through the issuance of a Supreme Court Regulation on the involvement of professional social workers in the restitution filing process. In the long term, we recommend amending Law No. 31/2014 on Amendments to Law No. 13/2006 on Witness and Victim Protection to strengthen the role of professional social workers as subordinates of the LPSK in the regions.

Secondly, the process of debureaucratizing restitution requests is based on the principle of delivering justice in an expeditious, straightforward, and cost-effective manner. In principle, the

application of restitution should align with the Perma Restitution framework. This framework empowers victims to quantify their losses and submit them directly to the court. In this context, the strategic role of the judge becomes paramount in ensuring the effectiveness of the restitution process. The Perma Restitution also provides flexibility regarding the timing of the restitution application, allowing it to be submitted either during the judicial process or within 90 (ninety) days after the decision with legal force becomes known to the victim. The prosecutor's role encompasses the execution of the verdict or court decision that stipulates restitution to the victim, whether it is incorporated into the main case or issued as a separate determination.⁷³ The efficacy of the Perma Restitution will depend on the extent to which judges promote victims' restitution rights. The Perma Restitution gradually dismantles the rigidity of the Witness and Victim Protection Law, which has traditionally placed significant reliance on the LPSK. This bureaucratic rigidity is mitigated by the active role of judges during the trial process, as they continue to advocate for victims' interests in applying for restitution. Judges also play a key role in encouraging prosecutors to act as representatives of victims in the courtroom and apply for restitution. Whereas the calculation of losses was previously the responsibility of the LPSK, the implementation of the Restitution Regulation allows the victim, in collaboration with the prosecutor, to calculate losses more effectively.

Thirdly, it is imperative to amend the Criminal Procedure Code to regulate the role of law enforcement officials and the position of victims within the criminal justice system. In cases that can be resolved through restorative justice, it is essential to establish the obligation to advocate for and apply restitution rights on behalf of victims. These

⁷³ Anis Widyawati et al., "The Urgency of Supervision Institutions in Implementing Prisoners' Rights as an Effort to Restructure Criminal Execution Laws," *Jambura Law Review* 7, no. 1 (2025): 127–51, <https://doi.org/https://doi.org/10.33756/jlr.v7i1.27595>.

necessary provisions should be supported by institutional evaluations and assessments of law enforcement performance. The enforcement of this responsibility will also encourage perpetrators to actively participate in the restitution process.⁷⁴ The effectiveness of these measures, in turn, will impact the performance of investigators, prosecutors, and judges. Furthermore, the reform of criminal procedural law should aim to strengthen the position of LPSK within the criminal justice system, serving as an institution that plays an active role in advocating for witnesses and victims. The position of victims must also be reinforced from a victim-oriented perspective, ensuring a balance between the focus on punishing the perpetrator and the protection of the victim's best interests.

D. Good Practices in Various Countries

In the United States, the successful implementation of restitution has been shown to significantly impact the emotional and psychological well-being of victims and is likely to foster forgiveness toward the perpetrator.⁷⁵ On a broader scale, research by Uma Dorn et al. highlights the effectiveness of restitution as a form of restorative justice, supported by the central role of schools in promoting ideal conflict resolution. Dorn and colleagues have developed an integrated system involving teachers, educational administrators, perpetrators, victims, parents, and communities to establish a trauma-healing

⁷⁴ Muhtar Hadi Wibowo, Ali Masyhar Mursyid, and Anis Widyawati, "Progressionism Restorative Justice Policies in Achieving Rehabilitative Criminal Justice," *Indonesian Journal of Criminal Law Studies* 9, no. 1 (2024): 117–38, <https://doi.org/https://doi.org/10.15294/ijcls.v9i1.50292>.

⁷⁵ Charlotte V. O. Witvliet, Nathaniel G. Wade, and Jo-Ann Tsang, "Apology and Restitution: Offender Accountability Responses Influence Victim Empathy and Forgiveness," *Journal of Psychology and Theology* 48, no. 2 (2020): 88–104, <https://doi.org/https://doi.org/10.1177/0091647120915181>.

mechanism for students who are victims of sexual violence.⁷⁶ The effectiveness observed in the United States, particularly in urban areas, is largely attributable to the success of its social system and institutions outside the criminal justice system. Advanced legal education plays a pivotal role in cultivating a favorable legal culture and facilitating victims' access to justice.

In Europe, the application of restitution has encountered various challenges, particularly in Scotland, where its implementation was initially met with resistance from the criminal justice system. However, it was through the efforts of community organizations that restitution, also known as "reparations," was eventually adopted. Siobhan Butler's research highlights the efficacy of reparations and restorative justice in youth justice, emphasizing that their institutionalization does not necessarily require the involvement of the criminal justice system. She advocates for the "Whole System Approach" (WSA), which places third-party agencies, specifically professional social workers, at the core of intervention.⁷⁷

In the context of Indonesian criminal justice, there is a need to emulate the positive practices and successes of Scotland's WSA, particularly the central role of professional social workers. This system functions effectively by engaging multi-agency partnerships of social work professionals. In practice, these partnerships strengthen the position of victims through a proactive approach to restorative justice,

⁷⁶ Uma Dorn Parameswaran, Jennifer Molloy, and Paul Kuttner, "Healing Schools: A Framework for Joining Trauma-Informed Care, Restorative Justice, and Multicultural Education for Whole School Reform," *Urban Rev* 56, no. 1 (2024): 186–209, <https://doi.org/https://doi.org/10.1007/s11256-023-00666-5>.

⁷⁷ Siobhan Butler, Giuseppe Maglione, and Jamie Buchan, "Institutionalising Restorative Justice for Adults in Scotland: An Empirical Study of Criminal Justice Practitioners' Perspectives," *Criminology & Criminal Justice* 24, no. 1 (2024): 269–90, <https://doi.org/https://doi.org/10.1177/17488958221104229>.

as seen in both Scotland and England and Wales.⁷⁸

In Belgium and Canada, restorative justice service agencies adopt a proactive approach, using techniques such as information marketing and telephone outreach to victims, which enhances awareness and engagement.⁷⁹ In the UK, the Home Office's Crime Reduction Programme allocates funds to restorative justice initiatives, such as victim-offender mediation and conferencing models, which have proven to be more effective than integrating restorative justice with conventional criminal justice procedures, due to their ability to avoid the tensions created by competing priorities.⁸⁰

In the Netherlands, the restorative justice process is firmly embedded within the criminal justice system. Dutch criminal procedural law reinforces the system of checks and balances between prosecutors and investigators. Within this framework, the prosecutor plays a crucial role in ensuring the efficacy of mediation between the perpetrator and the victim. The Dutch government has also enhanced the role of professional social workers and community organizations through the Halt organization, though this is currently limited to Juvenile Justice. The i-RESTORE project in the Netherlands equips professional social workers with the necessary skills to understand the conditions of child victims. These professionals assist in strengthening support networks, ensuring the implementation of remedies, and,

⁷⁸ Rebecca Banwell-Moore, "Restorative Justice: Adopting a Whole System Approach to Address Cultural Barriers in Criminal Justice," *Criminology & Criminal Justice* 24, no. 5 (2024): 1028–46, <https://doi.org/https://doi.org/10.1177/17488958241268005>.

⁷⁹ T Van Camp and Wemmers J-A, "Victims' Reflections on the Protective and Proactive Approaches to the Offer of Restorative Justice: The Importance of Information," *Canadian Journal of Criminology and Criminal Justice* 58, no. 3 (2016): 416–42, <https://doi.org/https://doi.org/10.3138/cjccj.2015.E03>.

⁸⁰ Gill McIvor, "Joanna Shapland, Gwen Robinson and Angela Sorsby, Restorative Justice in Practice: Evaluating What Works for Victims and Offenders," *Restorative Justice* 1, no. 1 (2013): 154–57, <https://doi.org/http://dx.doi.org/10.5235/20504721.1.1.154>.

crucially, encouraging child victims to articulate their needs.⁸¹ A notable example of victim advocacy can be found in Northern Ireland, through Victim Support NI, a primary charity that provides both emotional and practical support, as well as compensation assistance. This community-based service helps victims navigate the complexities of the criminal justice system.⁸² The EU Victims Directive, a guiding instrument for victims' rights in EU countries, underscores the interconnectedness of European models.⁸³ Victims' advice services are available free of charge to all victims, encompassing support during pre-trial, trial, and post-trial phases, even in instances where no ongoing criminal proceedings exist. These services offer emotional and psychological support, while also addressing financial and other challenges victims face.⁸⁴

From these global perspectives, criminal justice system reform should prioritize the direct involvement of victims in their own repair and recovery, ensuring that access to justice is fulfilled. In Indonesia, the "Whole System Approach" (WSA) model from Europe can serve as a model for strengthening the role of professional social institutions as a "connecting pipe" between the LPSK and victims across various regions. The i-RESTORE project model in the Netherlands exemplifies a victim-offender mediation approach that merits consideration. The i-RESTORE project emphasizes the role of professional social workers and community organizations with specialized skills in victim-offender

⁸¹ Annemieke Wolthuis and Ioanna Stentoumi, "Restorative Justice Practices for Children in Contact with the Law in the Netherlands & Greece" (Netherlands, 2023).

⁸² Geraldine Hanna, "Supporting Victims through the Trial Process," in *Sexual Violence on Trial: Local and Comparative Perspectives*, ed. Rachel Killean, Eithne Dowds, and Anne-Marie McAlinden (Oxfordshire: Routledge, 2021), 59–70.

⁸³ Katrien Lauwaert, "Restorative Justice in the 2012 EU Victims Directive: A Right to Quality Service, but No Right to Equal Access for Victims of Crime," *Restorative Justice* 1, no. 3 (2013): 414–25, <https://doi.org/http://dx.doi.org/10.5235/20504721.1.3.414>.

⁸⁴ Theo Gavrielides, "The Victims' Directive and What Victims Want From Restorative Justice," *Victims & Offenders* 12, no. 1 (2015): 21–42, <https://doi.org/https://doi.org/10.1080/15564886.2014.982778>.

mediation services. By emulating the successful practices observed in Europe, it is recommended that the role of professional social workers in Indonesia be reinforced through amendments to the Criminal Procedure Code and the Law on Witness and Victim Protection.

Conclusion

The legal framework pertaining to restitution as a victim's right has been established in various laws and regulations. However, practical challenges associated with its implementation in the field have been documented. The failure to implement restitution can be attributed to the prevailing paradigm within the criminal justice system, which prioritizes the retribution of perpetrators over the rights of victims. Consequently, the victim's position is often marginalized, secondary to the primary focus on the criminal justice process. This paradigm impedes the victim's ability to access justice through restitution claims. Another institutional challenge is the accessibility of the LPSK, which victims often find difficult to reach. The position of the LPSK within the criminal justice system can be likened to a "silhouette contour in a picture"—acknowledged but marginalized. To address these issues, we recommend several measures. First, we suggest strengthening the role of professional social workers in the regions, positioning them as subordinates of the LPSK. Second, we advocate for the active implementation of the Perma Restitution framework, emphasizing the strategic role of judges in court. Third, we propose a reform of the criminal justice system to strengthen the position of the LPSK. This reform should include the regulation of law enforcement officials' obligation to provide restitution services at every stage of the criminal justice process. Finally, we recommend the establishment of performance indicators through assessment policies or evaluations of law enforcement officials' effectiveness in providing access to justice for victims. A critical requirement for the long-term reform of criminal procedural law is the adoption of a victim-centered needs-rights model. The future of such reform underscores the significant role of professional social workers. Notable examples of these agencies include the "Whole System Approach"

(WSA) model in Scotland, Wales, and England, Victim Support in Northern Ireland, and the i-RESTORE project in the Netherlands.

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