





Reformulation of Law Decision Bias on Restitution Payments in Sexual Violence Crimes (Comparison of Indonesia and The Netherlands)

**Panusunan Panusunan ^a , Anis Widyawati ^a ,
Dewi Sulistianingsih ^a , R. Kemala Nababan ^b **

^a Faculty of Law, Universitas Negeri Semarang, Indonesia

^b Faculty of Law, University of Oslo, Norwegia

✉ Corresponding email: panusunanjc@gmail.com

Abstract

Sexual violence is an increasingly prevalent crime in Indonesia. Article 16 of Law Number 12 of 2022 on Criminal Acts of Sexual Violence states that, in addition to imprisonment, fines, or other criminal penalties as outlined in the Law, the judge is required to determine the amount of restitution for criminal acts of sexual violence that carry a sentence of four years in prison or more. One form of compensation available to victims of the criminal acts of sexual violence is restitution payments made by the defendant. However, many Panels of Judges still deny cases of the criminal acts of sexual violence restitution, particularly in verdicts where the defendant faces a four-year sentence or more. Several reasons explain why judges do not determine restitution payments by the defendant to the victim: the first is bias regarding the amount of compensation for victims in the judge's decision; the second is that the request for payment restitution must be formally submitted; and the third concerns how to reformulate the determination of restitution in sexual violence cases (a comparison of Indonesia and the Netherlands).

Keywords

Bias, Restitution, Violence Sexual.

Introduction

Law Number 12 of 2022 on the criminal acts of sexual violence states that everyone has the right to protection from violence and has the right to be free from torture or treatment that degrades human dignity, as guaranteed in the Constitution of the Republic of Indonesia. The law should provide the police, legal authorities, and specialists who study the complexity of law enforcement with clarity and precision by simply classifying violations.¹

When delivering a decision regarding perpetrators who commit sexual violence, which the Constitution sanctions, the criminal acts of sexual violence should carry a penalty of four years in prison or more, as outlined in Article 16 of Law Number 12 of 2022 on Sexual Violence Crimes.

The Judicial Power Law No. 4 of 2004 established the judicial institution as one of the subsystems of the criminal justice system. Such a law emphasized that judicial power is separate from legislative and executive power. Regarding maintaining Indonesia's rule of law, the judiciary must conduct its duty according to Pancasila and the law.²

One of the facts that occurred in the decision case is criminal acts of sexual violence that occurred in the jurisdiction of the Bobong District Court, North Maluku Province, with registered case number: 4/Pid.B/2024/PN Bbg, on behalf of the defendant La Ali Haeri, with primary indictment. The acts of the defendant as regulated and threatened with criminal penalties in Article 6 letter b Juncto Article 15 paragraph (1) letter h of the Republic of Indonesia, which has Law Number 12 of 2022 about Criminal Acts of Sexual Violence, the threat of which is 12 (twelve) years and/or a maximum fine of three hundred million rupiah and subsidiary threats in the case. Article 6 letter a Juncto Article 15 paragraph (1) letter h of the Republic of Indonesia Law Number 12 of 2022 on Criminal Acts of Sexual Violence threatens the crime 4 (four) years and/or criminal a maximum fine of IDR 50,000,000.00 (fifty million rupiah).

In this case, the Panel of Judges has decided to sentence the Defendant to a maximum of six years in prison and a maximum fine of IDR 200,000,000.00 (two hundred million rupiah), with the provision

¹ 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 (April 2024), <https://doi.org/10.15294/jllr.vol5i2.3886>.

² 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. 01 (January 2025): 127–51, <https://doi.org/10.33756/jlr.v7i1.27595>.

that if the fine is not paid, it will be replaced by imprisonment for a maximum of 1 (one) month.

In the verdict, the Panel of Judges did not determine the amount of restitution that the defendant must pay to the victim as mandated by Article 16 of Law Number 12 of 2022 regarding sexual violence crimes. This article states that it is mandatory to establish the amount of restitution for criminal acts of sexual violence punishable by four years in prison or more.

The judiciary plays a vital role in addressing sexual violence. This type of criminal act often garners significant public attention due to its severity and impact on the victims. Victims of sexual violence may suffer from devastating physical, psychological, and emotional consequences. In essence, sexual violence can be defined as any act that violates a person's human dignity and worth, carried out by exploiting vulnerability, gender discrimination, or power imbalances, targeting a person's body and sexuality, which can result in suffering for the victim, whether in the form of physical or psychological distress in addition to sexual, financial, social, and cultural, and politics.³

Sexual violence can also be defined as any sexual activity, an effort to forcefully engage in sexual activity, or any other act that targets someone's sexuality in any circumstance, regardless of the relationship between the perpetrators and the victims.⁴ As it has been mentioned earlier, sexual violence brings not only physical impact to the victims, but also mental, psychological, and emotional problems.⁵

Sexual violence may occur in rural areas and involves children, both directly and indirectly.⁶ Rape, as one of sexual violence, occurs as a result of the objectification of women's bodies, misogynistic mind,

³ Ninik Rahayu, *Politik Hukum Penghapusan Kekerasan Seksual Di Indonesia* (Jakarta: Bhuana Ilmu, 2021).

⁴ Yuni Priskila Ginting and Franciscus Xaverius Wartoyo, "Pencegahan Dan Penanganan Kekerasan Seksual (PPKS) Dalam Rangka Penyelenggaraan Orientasi Karyawan Baru," *Jurnal Pengabdian West Science* 2, no. 01 (2023): 60–74, <https://doi.org/10.58812/jpws.v2i01.155>.

⁵ Dwi Wulan Sari, "Peran UKM Pusat Informasi Dan Konseling (PIK) Sahabat Dalam Upaya Preventif Kekerasan Seksual Di UIN Raden Intan Lampung," *Jurnal Mahasiawa BK An.Nur: Berbeda, Bermakna, Mulia* 8, no. 3 (2022): 112–20, <http://dx.doi.org/10.31602/jmbkan.v8i3.8638>.

⁶ Rida Madyana and Safik Faozi, "Pemulihan Korban Melalui Restitusi Bagi Korban Kekerasan Seksual (Studi Putusan Nomor: 989, PID.SUS/2021/PN BDG)" 6, no. 1 (2023), <https://doi.org/10.31933/unesrev>.

and the reluctance to protect women's right. Moreover, the media also contributes a lot to justifying the objectification of women.⁷

According to Article 28 G, everyone has the right to be free from torture and other cruel, inhuman, or degrading treatment and to apply for political asylum abroad. In line with paragraph (2) of the Indonesian Constitution," the protection in question is objective nationally and must be given to all citizens without exception.⁸

The victim's stance in the criminal legal system as the party that seeks justice in this system is overlooked. If under review from positive and objective criminalization in law, such as rehabilitation, correctional, and other programs, criminal perpetrators of crime get more attention. This is a form of injustice for the victims because, as the injured party, they are only put into operation as a means of proof, and their fundamental rights are often neglected. The law enforcers working in criminal justice, namely police, prosecutors, and judges, handle a criminal case full of various interests, usually in conflict of interest. The interests of the victim are just one of them. Considering various interests, we may encounter other prevailing status quo interests, such that law enforcement becomes ineffective, and the law, though intended to be democratic and accommodating, fails to uphold justice and fundamental human rights.

In the Indonesian Sexual Violence Act, someone who uses power to threaten, intimidate, or embarrass somebody, regardless of the aim, will be punished with a maximum of 12-15 years in prison.⁹

The challenges in handling sexual violence well are the absence of a reporting platform, the system is not clear enough to handle such cases, and the lack of strong evidence documentation.¹⁰

To address criminal violence, sexuality is very important for law enforcement and parties related to law enforcement, and to protect

⁷ Nikmatullah, "Demi Nama Baik Kampus VS Perlindungan Korban: Kasus Kekerasan Seksual Di Kampus," *Qawwam: Journal for Gender Mainstreaming* 14, no. 2 (2020): 40–41, <https://doi.org/10.20414/qawwam.v14i2.2875>.

⁸ Erinca Febrianti et al., "Analisis Kebijakan Permendikbud Ristek Nomor 30 Tahun 2021 dalam Upaya Pencegahan dan Penanganan Kekerasan Seksual di Universitas Muhammadiyah Ponorogo," *Jurnal Ilmu Pemerintahan Suara Khatulistiwa (JIPSK)* 7, no. 1 (2022): 52–62, <https://eprints.umpo.ac.id/id/eprint/10142>.

⁹ Rohmatul Anam et al., "Hukuman Bagi Pelaku Tindak Pidana Kekerasan Seksual Di Kampus Dalam Perspektif Hukum Positif Dan Hukum Islam," *Ma'mal: Jurnal Laboratorium Syariah dan Hukum* 3, no. 6 (December 31, 2022): 549–70, <https://doi.org/10.15642/mal.v3i6.153>.

¹⁰ Usfiyatul Marfu'ah, Siti Rofi'ah, and Maksun Maksun, "Sistem Pencegahan dan Penanganan Kekerasan Seksual di Kampus UIN Walisongo Semarang," *Kafa'ah: Journal of Gender Studies* 11, no. 1 (June 29, 2021): 95, <https://doi.org/10.15548/jk.v11i1.379>.

victims' rights. Legal protection for victims of criminal activity, sexual assault, and criminal violence is set up in Articles 68 to 70 of Law Number 12 of 2022 on Action Against the Crime of Sexual Violence. It means that the victim has the appropriate recuperation, protection, and handling until the victim recovers from the suffering experienced as a consequence of sexual violence.¹¹

This effort aims to build a sense of security and empower victims to continue living with more confidence and dignity.¹²

The victim's place in the legal system as the party pursuing justice is often overlooked. When reviewing objective criminalization in law, positive criminals, such as those involved in rehabilitation, correctional, and other programs, receive more attention. This represents a form of injustice for victims because, as the injured party, they are treated merely as a means of proof rather than as holders of rights; the fundamental rights of victims are routinely neglected.

Victims' protection in criminal justice is connected to the victims' safety as part of policy protection, society, and policy welfare as part of social welfare. Integrating policy, crime, and social policy results in the need for attention to the victims and law enforcement, making an effective deterrent for the perpetrators.¹³

While using it as a formal regulation, Rule 8 of 1981 about the Criminal Procedural Code (KUHAP), protection laws for victims during this time align with KUHP, the Criminal Code, as a legal material; there are more suspect-related laws compared to those about victims in the Criminal Procedure Code. The victim's position in the Criminal Procedure Code does not seem optimal compared to the perpetrator's position. In the Criminal Code, Prosecutors execute court orders in criminal prosecutions.¹⁴

¹¹ Hasanuddin Muhammad, "Implikasi Yuridis Pengaturan Hak Korban Tindak Pidana Kekerasan Seksual Dalam Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual," *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum dan Keadilan* 9, no. 1 (July 15, 2022), <https://doi.org/10.32493/SKD.v9i1.y2022.22495>.

¹² Ika Agustini, Rofiqur Rachman, and Ruly Haryandra, "Perlindungan Hukum Terhadap Korban Kekerasan Seksual: Kajian Kebijakan Hukum Pidana Indonesia Dan Hukum Pidana Islam," *Rechtenstudent* 2, no. 3 (December 28, 2021): 342–55, <https://doi.org/10.35719/rch.v2i3.89>.

¹³ Sartini Sartini, Baso Madiong, and Zulkifli Makkawaru, "Perlindungan Hukum Terhadap Anak Sebagai Korban Kekerasan Seksual," *Indonesian Journal of Legality of Law* 4, no. 1 (December 24, 2021): 18–25, <https://doi.org/10.35965/ijlf.v4i1.1196>.

¹⁴ Anis Widyawati et al., "Urgency of the Legal Structure Reformation for Law in Execution of Criminal Sanctions," *Lex Scientia Law Review* 6, no. 2 (December 19, 2022): 327–58, <https://doi.org/10.15294/lesrev.v6i2.58131>.

By Law Number 12 of 2022, which pertains to criminal violence, someone who experienced physical, mental, financial, or social repercussions is considered a sexual victim. Crimes involving sexual violence, and victims' rights are own right on handling, protection, and recovery that is obtained, used, and enjoyed by the victim, in addition to the fact that the victim also has the right to recovery. In this matter, all efforts are made to ensure the victim's physical, mental, spiritual, and social well-being is restored. Restitution can be one of the breakers of the chain of suffering for the victims.¹⁵

One of the forms of recovery that the victim of sexual violence can receive is restitution given by the defendant to the victim of the criminal acts of sexual violence. The law provides for implementing sanctions and actions to punish individuals for criminal actions.¹⁶

However, there is a bias in the judge's decision to give a determination of payment and restitution in a sexual violence case.

The author is very interested in the problems described above, discussing how judges are biased in making decisions regarding restitution payments for criminal acts of sexual violence, and how to reformulate the ideal determination of restitution payments compared to the Netherlands law.

Several previous journal studies have discussed restitution payments, the first from Fauzy Marabessy entitled *Restitution for Victims of Crime: A New Mechanism Offering*, which discusses restitution payments submitted by the Witness and Victim Protection Agency.¹⁷ The second journal from Leony Sondang Suryani, entitled *Provisions on Sexual Violence Crimes in the New Criminal Code*, compares the laws on sexual violence crimes and Law Number 1 of 2023 on the Criminal Code.¹⁸ The third journal from Bogi Yuliawan et al. is *Effectiveness of Restitution Policy in Protecting the Rights of Child Victims of Sexual Crimes: Case Study of Decision Number 112/Pid.Sus/2022/PN.Bnr* discusses the restitution payment policy in

¹⁵ Siti Mazumah, "Terobosan Restitusi Sebagai Kewajiban Pelaku Dalam Undang-Undang Tindak Pidana Kekerasan Seksual" 6, no. 4 (2024), <https://doi.org/10.31933/unesrev.v6i4>.

¹⁶ Anis Widyawati et al., "The Regulation of Integrity Zone and the Corruption-Free Zone in Indonesia and Rusia," *BESTUUR* 11, no. 2 (December 19, 2023): 253, <https://doi.org/10.20961/bestuur.v11i2.76306>.

¹⁷ Fauzy Marasabessy, "Restitusi Bagi Korban Tindak Pidana: Sebuah Tawaran Baru," *Jurnal Hukum & Pembangunan*, vol. 45, 2015, <https://scholarhub.ui.ac.id/jhp/vol45/iss1/3>.

¹⁸ Leony Sondang Suryani and Ahmad Khozi, "Ketentuan TPKS Dalam KUHP Baru," *Jurnal Hukum & Pembangunan* 53, no. 2 (June 30, 2023), <https://doi.org/10.21143/jhp.vol53.no2.1561>.

child protection crimes.¹⁹ The fourth journal from Rozzyana Nyndhya et al., entitled *Additional Criminal Restitution in the Handling of General Criminal Cases by the Prosecutor's Office* discusses the compensation requested by the public prosecutor for the victim.²⁰ The fifth journal from Dave Nicholson entitled 'Giving Back' By 'Paying Back': Recasting Community Payback As 'Mutual Restitution' Through Financial Payback – Making A Restorative Criminal Justice System A Reality Through Co-Operatives And Values-Based Purposeful Companies? "Giving back" is a central principle of restorative justice.²¹

The novelty that the author explains in this article is how to enforce the law on restitution payments in cases of sexual violence, and the legal reformulation in the comparison of restitution payments in the Netherlands.

Methods

The research method used by the researcher is descriptive analysis with a non-doctrinal or sociological juridical type of research, which is carried out directly by looking at current field practices and is based on a study of how the law functions in society. The effectiveness of the law can be used to assess how the law functions in society. This study will investigate the restitution payment process regulated by Law Number 12 of 2022 on Criminal Acts of Sexual Violence in force in Indonesia. The purpose of this study is to help restore the losses experienced by victims of criminal acts of sexual violence. This study will also investigate the obstacles faced by defendants in paying restitution given by the Panel of Judges in cases of criminal acts of sexual violence that occurred in Indonesia.

¹⁹ Bogi Yuliawan, Hartanto Hartanto, and Teguh Satya Bhakti, "Efektivitas Kebijakan Restitusi Dalam Perlindungan Hak Anak Korban Kejahatan Seksual," *Binamulia Hukum* 14, no. 1 (February 23, 2025): 33–42, <https://doi.org/10.37893/jbh.v14i1.1006>.

²⁰ Rozzyana Nyndhya, Handoyo Prasetyo, and Universitas Pembangunan Nasional Veteran Jakarta, "Additional Criminal Restitution in the Handling of General Criminal Cases by the Prosecutor's Office," n.d., <https://doi.org/10.46799/ijssr.v4i6.785>.

²¹ Dave Nicholson and Manchester Metropolitan University, "'Giving Back' by 'Paying Back': Recasting Community as 'Mutual Restitution' Through Financial-Making a Restorative Criminal Justice System a Reality Through Co-operatives and Values-Based Companies," VLex United Kingdom, accessed April 26, 2025, <https://app.vlex.com/vid/884306807>.

Results and Discussion

A. Law Enforcement Bias in Restitution Payments in Sexual Violence Cases

1. Bias on Judges' Decisions in Determining the amount of Restitution

Based on the author's research, the judge's decision has formal and substantive dimensions that cannot be separated. Formally, it must fulfill the rules of procedural law, and substantively, it must contain divine values as the theological basis for human justice.²² The judge may be negligent, may be lazy to think, may be careless, or may not be honest. Judges are required to have broad enough knowledge to understand and comprehend cases correctly. The judge must have a clean conscience to enforce the law calmly and deliver a fair verdict.

A judge should uphold the law and justice impartially. In delivering justice, the judges must examine thoroughly beyond the law and the facts presented to them in court.²³ An evaluation of the incident will then be given, and it will be connected with the applicable law. After that, the new judge can decide on the incident. Life in public moments is increasingly complex, and law enforcement and justice are needed to satisfy the sense of justice in society. A judge is very decisive in their decisions because, in essence, the judge carries out the power of the law to carry out their job, which is justice. The judge's decision results from a current affairs check.

From the perspective of legal positivism, the statute or overall regulation legislation is regarded as something that completely contains law so that the judge's job remains applying the provisions of the Constitution mechanically and linearly for a complete problem society, according to a sound Constitution.²⁴ According to the Criminal Procedure Code's Article 191, a judge's decision to retrieve evidence is based on the letter charges and all the evidence presented in the hearing

²² Sekretariat Jenderal Komisi Yudisial Republik Indonesia, *Bunga Rampai Memotret Pertimbangan Putusan Hakim dari Berbagai Perspektif* (Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2024).

²³ I Putu Agus Adi Pratama Yasa, A.A. Sagung Laksmi Dewi, and I Made Minggu Widyantara, "Analisis Putusan Hakim terhadap Anak Pelaku Tindak Pidana Ancaman Kejahatan Seksual (Putusan Pengadilan Negeri Semarang Nomor: 2/Pid.Sus-Anak/2021/PN.Srp)," *JURNAL INTERPRETASI HUKUM* 3 (December 2022), <https://doi.org/10.55637/juinhum.3.3.5791.429-434>.

²⁴ Yunanto, "Menerjemahkan Keadilan dalam Putusan Hakim," *Jurnal Hukum Progresif* 7 (2020): 193, <https://doi.org/10.14710/hp.7.2.192-205>.

court.²⁵ Thus, a letter indictment from the prosecutor general is basic. Because it is based on the charges, the examination in court is done. In a trial in court, a judge does not have the power to drop a criminal beyond the bounds of the indictment.

According to Leden Marpaung, a decision is the result or conclusion from something considered and assessed as much as possible in written form.²⁶

Moreover, based on vision, theory, and practicality, decision court is a judgment rendered by a judge due to his involvement in an open criminal case during the trial or general after carrying out processes and procedures criminal procedure law in general, which contains love criminalization or free or off from all demands law made in a way written with objective for finish matter.

Judges cannot be biased in determining the points of punishment in the verdict, whether imprisonment, detention, fines, compensation, or restitution payments.

According to *Oxford Dictionary*, prejudice can be interpreted as support or opposition to one thing, person, or group compared to others, usually with a method considered unfair. One of the impacts of bias is prejudice. It is the belief formed previously, an opinion, or an evaluation of a group of people or someone.

In theory, the structure of law from Lawrence M. Friedman applies to all law enforcers, the law, and all authority and power from the law enforcer itself. Structure also means how the law enforcement agency's law is arranged and has laid out rules, what is allowed and what is not may be carried out by the president, the procedure followed by the police, and so on. The structure (legal structure) consists of the institution, existing law, and the operating device that implements existing laws. Thus, in discussing the Indonesian legal system, we need to include institutions that handle law enforcement, including judges, prosecutors, and police.

The structure also presents how the law is operated according to formal terms and conditions. It shows how the court, lawmakers, legal bodies, and processes operate.

Judge in this matter as a law enforcer in handling cases of the crime of sexual violence, reluctant to guess the cost magnitude of payment restitution by the defendant to a victim of the crime of sexual

²⁵ Raden Muhammad Arvy Ilyasa, "Legal and Victimological Perspective on Sexual Violence against Children Cases in Indonesia," *The Indonesian Journal of International Clinical Legal Education* 3, no. 3 (September 30, 2021): 281–300, <https://doi.org/10.15294/ijicle.v3i3.48269>.

²⁶ Leden Marpaung, *Peristiwa Hukum Dalam Praktek* (Jakarta: Kejaksaan RI, 1985).

violence, because the judge did not have standards and estimates the exact amount how much significant losses experienced by victims. In more profound matters, the judge handling cases of the criminal act of sexual violence often does not want to assign an amount that does not align with the expectations and losses experienced by the victim. On the other hand, the judge, in handling such cases, may also be reluctant to determine a restitution amount for the accused that is too high, as it may result in the defendant being unwilling or unable to pay, leading to the confiscation and auctioning of the defendant's assets as compensation for victims of sexual assault and other crimes.

One of the reasons the judge did not want to assign an amount of restitution payment to the defendant is that there is a bias in the amount of losses experienced by the victim if there is no application through the Witness and Victim Protection Agency, payment restitution, the victim, or the investigator. Because if there is no application for restitution payment by the victim, then there is no proof of the losses experienced by the victim—whether in the form of loss of wealth or income, losses incurred as a direct consequence of the act of sexual violence or resulting from it, reimbursement for other damages suffered by the victim as a consequence of the criminal act of sexual violence, and/or the costs of care, medical treatment, and/or psychological support—thus, no valid evidence can be presented.

It aligns with Marjono Reksodiputro's statement: In cases where the victim suffers or incurs material losses due to a criminal act committed by another person, it is appropriate for the perpetrator to provide compensation for those losses.²⁷

The procedures for requesting restitution filed after the final decision of the law are fixed and governed by Supreme Court Regulation Number 1 of 2022, Articles 11 to 15.²⁸

In discussing how bias in determining the amount of restitution the defendant must pay to the victim, it is essential to elaborate on the victim's right to receive compensation, as outlined in Law Number 12 of 2022 on the Crime of Sexual Violence, Supreme Court Regulation Number 1 of 2022, and the Rules of Procedure for handling applications and providing compensation and restitution to victims.

²⁷ Hery Firmansyah and Lisyah Sun Lisyah, "Pertanggungjawaban Hukum Terhadap Korban Atas Biaya Restitusi Yang Tidak Terpenuhi Pada Putusan Pengadilan Negeri Tangerang Nomor 1712/Pid.Sus/2021/Pn.Tng," *Unes Law Review* 6, no. 1 (2023), <https://doi.org/10.31933/unesrev.v6i1>.

²⁸ Indah Permatasari, Thea Farina, and Nuraliah Ali, "Restitusi dan Perlindungan Hak Korban Tindak Pidana: Kebijakan, Tantangan, dan Praktiknya di Pengadilan Negeri Kapuas," *Syntax Literate: Jurnal Ilmiah Indonesia*, no. 10. No.2 (2025), <https://doi.org/10.36418/syntax-literate.v10i2.55559>.

Under these regulations, victims are entitled to compensation in the form of:

1. reimbursement for income or wealth losses;
2. reimbursement for both tangible and intangible losses, which are caused by direct consequences of criminal acts;
3. reimbursement of medical and psychological costs, and
4. additional damages incurred by the victim due to the crime, such as basic transportation expenses, legal fees, or other expenses associated with the legal process.

This is very detrimental to the victim, considering that a victim of a sexual violence crime will experience losses both materially and especially immaterial losses that sometimes cannot be proven with financial notes or just witness statements, so that the judge as a law enforcer must be able to estimate or firmly determine how much loss must be paid by the victim to the defendant in an attempt to repair the victim's condition both materially and immaterial losses.

Evidence in Regulation Number 1 of 2022 of the Supreme Court about the Processes for Resolving Applications and Giving Victims Restitution and Compensation are contrary to the mandate Regarding Sexual Violence, Law Number 12 of 2022, Article 16 Crimes which requires the judge to determine the amount of restitution costs to the defendant which must be given to the victim if the defendant is charged with an article that carries a sentence of 4 years or more, either with an application or not, with evidence from the victim or without evidence from the victim.

Judges as law enforcers on Sexual Violence Crimes, Article 60, are obliged under Article 60 to examine the victim to investigate and consider the specific background of the acts of sexual violence and/or their impact on the victim. These impacts are physical and psychological and involve material and immaterial losses. However, law enforcers still often overlook this obligation when assessing the extent of the victim's suffering. As a result, court decisions frequently fail to include a determination of restitution payments that the defendant should make to the victim.

In this case, the judge, as a law enforcer, should actively seek and explore the victim's losses when the judge examines the victim's testimony in court, and not vice versa; the victim proves the losses experienced by the victim himself. The judge as a law enforcer must also understand that in society there are still many legal cultures that do not understand or comprehend the law, especially if a member of the lower middle class is the victim of sexual assault, these people tend not to want to ask for restitution compensation because of the administrative process and the burden of proof that must be borne by

the victim, which is a weakness in the legal culture in Lawrence M. Friedman's theory.

Restitution is more focused on accountability, holding the criminal accountable for the repercussions of their actions; hence, the primary goal is to compensate the victim for all their losses. The standard by which the amount of restitution is determined isn't easy to formulate. Depending on the social status of the perpetrator and the victim. In the case of victims with a lower social status than the perpetrator, they will prioritize the loss in material form. However, if the victim's status is higher than that of the perpetrator, then dignity and good name recovery will be prioritized.²⁹

According to Burt Galaway, there are four advantages of restitution, namely:

- a. Restitution as a condition, a dropped criminal test allows the court to drop serious criminal offences;
- b. Order restitution help to renew the honor of the perpetrator by asking for a responsible answer on what has been done;
- c. Restitution as a criminal sanction and alternative to criminal prison is inexpensive;
- d. Restitution capable of giving the victims material and psychological satisfaction.

Giving restitution and compensation for victims of crimes, according to Stephen Schafer, there are five systems:³⁰

- a. Compensation (damages) of a civil nature, given through a civil process. This system separates the demands and changes losses to victims of criminal proceedings;
- b. Compensation civil in character and obtained through criminal actions;
- c. Restitution through the criminal process that is civil but combines elements of criminal behavior. Although restitution here is still a civil matter, the characteristic of the punishment (*punitive*) is not doubtful. One of the forms of restitution is according to the system. This is a fine compensation (*compensatory fine*). This fine is a monetary obligation imposed on the convict as a form of giving change to compensate for the loss to the victim and the crime committed;

²⁹ Yuda Prasetya, "Legal Analysis of Human Trafficking Case as A Transnational Organized Crime That Is Threatening State Security," *Lex Scientia Law Review* 4, no. 1 (May 9, 2020): 143–50, <https://doi.org/10.15294/lesrev.v4i1.38635>.

³⁰ Beniharmon Harefa and Salma Agustina, "The Urgency for the Establishing a Victim Trust Fund in Sexual Violence Crimes in Indonesia," *Kanun Jurnal Ilmu Hukum* 24, no. 2 (2022): 259–82, <https://doi.org/10.24815/kanun.v24i2.35645>.

- d. Compensation in nature civil, given through criminal proceedings and with funding from state sources. Despite being provided during the criminal process, this compensation has no criminal component. Thus, compensation still is an institutional civil right, but fulfilling the country or bearing the obligation changes the loss charged to the perpetrator. This is a confession that the country has failed to perform its job to protect the victim and prevent the occurrence of crime.

One example of a case in a sexual violence crime case and explaining how the judge usually decides how much restitution must be paid by the defendant to the victim is in case Number 87/Pid.B/2023/PN Smp on behalf of the Defendant Mohammed Solihin, who was tried at the Sumenep District Court, on charges prosecutor prosecutor general begging Panel of Judges for:

1. State defendant Mohammed Solihin Bin Sumo Guilty Do Action Criminal “*With On purpose do action sexual in a way physical target to body, with Meaning to humble dignity and honor a person as specified and threatened in Law No. 12 of 2022’s First Article 6 letter a on Sexual Violence;*
2. Dropping criminal to defendant Mohammed Solihin Bin Sumo with one year and six months in a criminal jail, according to Article 7A Paragraph (1) letter a B C The victim, RA Erina Adiniza, claims restitution under Constitution No. 13 of 2006 is amended by Law No. 31 of 2014 to protect victims and witnesses. Amounting to IDR 28,470,000 (Two tens eight million four hundred and seven ten thousand rupiah) is borne by the defendant, if the defendant cannot pay Restitution, so the defendant was charged with criminal confinement replacement for 3 (three) months confinement.

In the lawsuit, based on a letter from the Agency for Witness and Victim Protection, the victim asked for restitution from the victim R. A. Erina Adinisa. Based on a victim’s request, IDR 28,470,000 (twenty-eight million four hundred and seventy thousand rupiah), calculated through the Agency for Witness and Victim Protection calculation process. However, the decision given by the panel of judges is based on the considerations in the trial that led the judge to decide on the verdict:

1. The State Defendant Mohammed Solihin Sumo Bin, proven in a way valid and convincing guilty of criminal action sexual in a way physical targeting the body to humiliate and dishonor somebody, as in the indictment, as an alternative first.

2. Dropping the criminal to the accused because of that, with criminal prison for 10 (ten) months;
3. Punish Defendant Mohammed Solihin Bin Sumo to pay restitution to RA Erina Adinisa an amount approximately Rp 5,430,000.00, or (five million rupiah four hundred and three ten thousand rupiah), with provision that if the defendant does not pay restitution, it shall be substituted with a month of criminal imprisonment.

Based on the fact, the Witness and Victim Protection Agency requests a decision from the prosecutor general and A panel of judges during the trial. To cut off the defendant's pay, restitution to the victim in IDR The defendant bears IDR 28,470,000 (Twenty-eight million four hundred and seventy thousand rupiah) if the defendant cannot pay Restitution. Thus, the defendant was charged with criminal confinement replacement for 3 (three) months confinement, but the panel of judges decided that the defendant pay restitution amounting to IDR 5,430,000.00 (five million four hundred and thirty thousand rupiah) with the provision that if the defendant does not pay restitution, it will be substituted with a month of criminal imprisonment.

Based on the matter, there is a difference in the calculation between the panel of judges, the prosecutor general, and the Witness and Victim Protection Agency in evaluating the payment of restitution given to the defendant. This happens due to a difference in opinion between one enforcer of law in structure and the other laws with others.

According to the facts in the trial, the treatment between one judge and another is contradictory. On one side, a judge is handling a case involving criminal acts of sexual violence. The judge does not want to set the amount of restitution payment if there is no application from the victim or for any other reason, because there is no precise measure to determine the amount that must be charged to the accused. On the other hand, there is a judge in a deep matter, the trial that handles cases involving criminal violence and sexual violence, for which there has been a submission of an application for good restitution from the victim, plus the Agency for Witness and Victim Protection, the amount of which is calculated already through the calculation process. The Agency for Witness and Victim Protection will have a panel of judges as enforcers of the law in the verdict, still giving other considerations and judgments regarding the magnitude of losses experienced by the victim.

In the case of one, the judge is active in evaluating mark losses and impacts from criminal and sexual violence. Based on this example, we can conclude that all judges can play an active role in determining

and providing the magnitude of payment restitution to be paid by the defendant to the good victims in consideration and by the judge's decision.

2. Mandatory Restitution Payment Bias Through the restitution application

As one of the subsystems of criminal justice, the court has become a formal legal institution for settling conflicts.³¹ The arrangement model fulfills the victim's legislative rights to reparations and compensation, which typically requires the victim's initiative to be implemented through submission to the court.³² The bias on the judge's decision in determining restitution payments to victims of sexual assault is the existence of discrimination that the verdict of restitution payments to victims must be made with a request, in Article 16 on Sexual Violence in Law Number 12 of 2022, it states that in addition to criminal prison, criminal fine, or criminal other according to provision Law, judges are required set the magnitude restitution to Criminal Act of Sexual Violence threatened with criminal 4 (four) years in prison or more. During this application for restitution in case of sexual violence in the jurisdiction, the District Courts are still minimal.³³

The stages of submission restitution are divided into two ways: submission restitution made before the court's decision, which is still powerful law, and submission restitution made after the court's decision, which is still powerful law.³⁴

Regarding the procedures for resolving applications and providing victims with restitution and compensation, the Supreme Court's 2022 Regulation No. 1 application restitution requires that the applicant provide their identity, the victim's identity, a description of

³¹ Rufinus Hotmaulana Hutauruk et al., "Legal Accountability for Verbal Sexual Harassment Perpetrators on Dating Apps," *Jurnal Etika Demokrasi* 8, no. 4 (2023), <https://doi.org/10.26618/jed.v%ovi%oi.12876>.

³² Halomoan Freddy Sitinjak Alexandra, "Pemberian Restitusi Dan Kompensasi Bagi Korban Tindak Pidana Berdasarkan Nilai Keadilan," *Jurnal Pendidikan Dan Konseling* 4 (2022), <https://doi.org/10.31004/jpdk.v4i5.7637>.

³³ Ali Rizky, Oheo Kaimuddin Haris, and Fuad Nur, "Penyitaan Harta Benda Pelaku Tindak Pidana Sebagai Sarana Restitusi Dalam Rangka Perlindungan Anak Confiscation of Property of Criminal Offenders as A Means of Restitution in the Context of Child Protection," *Halu Oleo Legal Research* | 6, no. 2 (2024): 299–311, <https://journal.uho.ac.id/index.php/holresch/>.

³⁴ Benget Hasudungan Simatupang et al., "Hak Restitusi Bagi Anak Yang Menjadi Korban Tindak Pidana Kekerasan Seksual," *University of Bengkulu Law Journal* 8 (April 2023), <https://ejournal.unib.ac.id/ubelaj/article/download/28848/12939/86563>.

the criminal act, the identity of the accused, and a description of the losses suffered. The last is a restitution requested by the applicant.

Other than that, the application of restitution must be equipped with:

- a. Photocopy the identity of the victim and/or the applicant;
- b. An authorized authority provides proof of loss material incurred by the victim or the applicant, or it might be based on other reliable proof;
- c. Proof of the victim's costs during care and/or treatment that has been authorized by the organization or the person providing maintenance or treatment, or that is supported by other reliable sources;
- d. Description of the insignificant damages incurred by the victim or applicant;
- e. If the victim passes away, a photocopy of the death certificate;
- f. Certificate connection family, expert inheritance, or protector. If a guardian, expert, inheritance, or family applies;
- g. Power of attorney special, if the application for Restitution is submitted through power;
- h. Copy or excerpt decision Court, if the matter has disconnected and powerful law still.

After the application is submitted, the judges' panel examines the evidence submitted by the applicant, which includes good proof, such as witness statements or letters, and other documents. The panel of judges considers the application and the evidence presented and makes a verdict.

This matter has become a new issue in the usual determination of the amount of restitution to be paid by the defendant to the victim. The existence of the Regulation Regarding the Processes for Resolving Applications and Providing Restitution and Compensation to Victims, as outlined in Supreme Court Regulation Number 1 of 2022, has introduced additional challenges that victims of sexual assault-related crimes must now face. The first point of discussion regarding restitution payments must be made through an application, even though Law Number 12 of 2022 on Crimes Associated with Sexual Violence requires judges to determine restitution payments if the threat is more than 4 years or with or without a restitution application.

The victim is thus currently faced with a new problem: the burden of proof after submitting an application. The Supreme Court's Rule Number 1 of 2022, which deals with the procedures for deciding applications and providing victims with compensation and restitution, requires presenting evidence in letters, witnesses, or other evidence to

prove that the victim has experienced a loss. If the evidence in the view and belief of the judge does not show any loss, then the judges' panel has the authority to deny the application. It does not need to determine the amount of restitution payment made by the defendant to the victim.

Because the judges differed on whether payment restitution was mandatory, the judge decided to impose a sentence of four years or more if the prisoner was charged with a threatening offense.

Decision courts in Indonesia, including the decision on criminal violence and sexual violence, still show the existence of disparity in criminalization. Disparity criminalization is interpreted as a difference in punishment in cases with similar characteristics.³⁵

The difference in the decision was also based on the existence of a provision in the Constitution empowering the judiciary to impose sanctions on perpetrators based on the Constitution.³⁶

In theory, Gustav Radbruch's law has three marks: justice, certainty, and utility. Justice is the most fundamental aspect of law. Justice must treat the subject law equally. Consistency is essential for guarding order and social order and ensuring consistent enforcement. Benefits law is a law for fulfilling more goals widely in society, such as welfare in general.

Form is implementing or enforcing a law without looking at who did it. With the existence of certainty law, everyone can estimate what will be experienced if a specific action is taken. Justice, certainty, and benefit are required to realize principle equality before the law without discrimination.³⁷

Justice, certainty, and benefit will ensure that somebody behaves according to the applicable law; otherwise, somebody has no standard of operating behavior without certainty. So, it's not wrong for Gustav Radbruch to propose certainty as one of the law's objectives.³⁸

³⁵ Matheus Nathanael and Siti Ismaya, "Disparitas Pemidanaan: Menyoroti Konsistensi Putusan Pengadilan Dalam Tindak Pidana Kekerasan Seksual," Indonesia Judicial Research Society, April 2024, <https://ijrs.or.id/2024/04/01/disparitas-pemidanaan-menyoroti-konsistensi-putusan-pengadilan-dalam-tindak-pidana-kekerasan-seksual/>.

³⁶ Sandy Doyoba Alexsander and Yeni Widowaty, "Faktor Penyebab Timbulnya Disparitas dalam Putusan Hakim terhadap Anak Pelaku Tindak Pidana Pencurian dengan Pemberatan," *Indonesian Journal of Criminal Law and Criminology (IJCLC)* 1, no. 2 (August 29, 2020): 72–78, <https://doi.org/10.18196/ijclc.v1i2.9610>.

³⁷ Ridwan et al., "Penerapan Prinsip Persamaan di Depan Hukum dalam Perkara Tindak Pidana Korupsi Pengadilan Negeri Serang," *JURNAL MASALAH-MASALAH HUKUM*, no. 51. No.2 (April 2022), <https://doi.org/10.14710/mmh.51.2.2022.171-178>.

³⁸ Stanly Muaja and Roy Ronny Lembong, "Efektivitas Ketentuan Tentang Hak Restitusi Sebagai Bentuk Hukum Bagi Anak Korban Tindak Pidana," *Jurnal*

Justice, certainty, and normative benefit occur when a rule is created and promulgated clearly and logically. It is reasonable and precise, avoiding ambiguity or multiple interpretations. It also functions as an integrated norm system aligned with other standards to prevent inconvenience or normative conflict. Legal certainty requires laws to be unambiguous, enduring, consistent, and enforceable, with consequences not subject to personal interpretation. Justice and certainty are qualities of the law itself, not merely aspects of morality. A law is not inherently bad simply because it is perceived as unfair.³⁹

In realizing justice, certainty, and benefit, Jan Michiel Otto describes it as the potentiality that, in a particular situation:

1. Available because of the state's power, clear, uniform, and simple regulations were acquired, published, and accepted.
2. Agencies: The ruler (government) consistently implements rules and laws, and is submissive and obedient to him.
3. Citizens, in general, adapt their behavior to the rules.
4. Independent judges (courts) do not apply the law inconsistently when they resolve a dispute.
5. Judicial decision is implemented concretely.

Based on research data on the verdict of the sexual violence crime case number XX/Pid.Sus-Anak/2024/PN Sos (Name disguised based on the Decree No. 2-144/KMA/SK/VIII/2022 of the Republic of Indonesia's Chief Justice about Public Information Service Standards in Court) in the name of MH with the charge, on Saturday, June 8, 2024 at around 02.00 WIT or at least at another time in June 2024 or at least in 2024, located behind the house of Sdra. M in East Halmahera Regency, North Maluku Province, or at the at least, somewhere that is still under the Soasio District Court's jurisdiction, which has the power to investigate and try this case. "committing Physical sexual actions, both within and beyond a marriage that target the body, sexual desire, and/or reproductive functions intending to subjugate someone illegally".

The actions of Child MH are regulated and threatened with criminal penalties in Article Law Number 12 of 2022, Republic of Indonesia, Article 6 letter b about Sexual Violence Crimes. Article 6 of the Criminal Acts of Sexual Violence Law, Republic of Indonesia Law

Nuansa Akademik 9, no. 2 (2024): 385–98,
<https://doi.org/10.47200/jnajpm.v9i2.2511>.

³⁹ Rhaniya Silmi et al., "Legal Protections for Victims of Sexual Violence and the Rights of Victims," *Jurnal Dinamika Hukum* 24, no. 1 (March 4, 2024): 1, <https://doi.org/10.20884/1.jdh.2024.24.1.3884>.

Number 12 of 2022, letter b, stipulates a maximum fine of IDR 300,000,000.00 (three hundred million rupiah) or a maximum imprisonment term of 12 (twelve) years.

In the decision, the judges' panel reached the following conclusion:

1. Declaring that the child as mentioned earlier MH, has been found lawfully and credibly guilty of the offense of committing physical acts of sexual assault that target the reproductive organs, sexual desire, and/or physique intending to unlawfully control someone outside of marriage, as stated in the Public Prosecutor's single indictment;
2. Sentencing the child to Five years in prison in the Ternate Class II Special Child Development Institution (LPKA) and one year of work training at the Ternate Sentra Wasana Bahagia LPKS located at Jalan Santo Pedro Number 1, Kalumata, South Ternate District, Ternate City, North Maluku;
3. Ascertain that the entire amount of the child's detention is subtracted from the sentence of imprisonment.

Based on the above, it can be seen that even though the defendant was charged with four years or more under Indonesian Republic Law No. 12 of 2022, Article 16, concerning Criminal Acts of Sexual Violence, the mandatory restitution amount should have been imposed. However, the judge did not fulfill this obligation.

This happens because many judges determine the verdict for sexual violence offenses under the procedures for restitution and compensation to victims of criminal acts, as outlined in Supreme Court Regulation No. 1 of 2022 and the Settlement of Applications in Chapter Three, Article 5 on the requirements for restitution applications. Point 4, which declares that the Restitution Application as referred to in paragraph (1) and (2) must be submitted in writing in Indonesian, signed by the applicant or their proxy, and addressed to the Chief Judge—either directly or through investigators, the Witness and Victim Protection Agency, or the Public Prosecutor. This means that all reimbursement must comply with the requirements outlined in the procedures for Restitution and Compensation to Victims and the Settlement of Applications, Supreme Court Regulation No. 1 of 2022, addressed to the Chief Justice.

The requirements for a restitution application, as outlined in Article 5 of the Procedures for Restitution and Compensation to Victims of Criminal Acts, are covered under Supreme Court Regulation Number 1 of 2022. and the Settlement of Applications. According to

this, the restitution application mentioned in paragraph (1) and (2) must be written in Indonesian, signed by the applicant or an authorized representative, and submitted to the Head of the Court or the Chairman, either directly or through the Public Prosecutor, the Witness and Victim Protection Agency, or law enforcement investigators. As a result, all restitution payments must comply with the requirements set in Supreme Court Regulation Number 1 of 2022 submitted to the Chief Justice. If no written application is submitted by the victim or their legal representative, the panel of judges may consider it unnecessary to determine the defendant's obligation to pay restitution to the victim.

The researcher disagrees with the panel of judges' decision that the determination of restitution payments by the defendant to the victim must only be considered if there is a prior written application submitted by the victim or their legal representative. The rule in this Supreme Court Regulation contradicts the spirit and essence of Law Number 12 of 2022 of the Republic of Indonesia concerning Sexual Violence Crimes, which clearly mandates that restitution payments must be determined by the panel of judges if the defendant is sentenced to four years or more. This issue needs further explanation or interpretation, as it reveals inconsistencies and contradictions between overlapping regulations. If judges insist that restitution must only be granted upon application, following Supreme Court Regulation Number 1 of 2022 on the Procedures for Restitution and Compensation to Victims and the Settlement of Applications, then such an interpretation conflicts with the Law on Sexual Violence Crimes, which obligates the determination of restitution payments by the defendant regardless of whether the victim or their attorney has submitted a written application to the Chief Justice. In principle, no regulation below the level of a law should contradict a higher law under the theory of the hierarchy of statutory regulations.

Supreme Court Regulation No. 1 of 2022 on the Procedures for Resolving Applications and Providing Victims with Restitution and Compensation places judges in a dilemma and leads to differing opinions among them. Due to the existence of two conflicting rules, each judge relies on their own legal basis for either granting or denying the determination of restitution payments by the defendant to the victim. This inconsistency results in a lack of legal certainty in the procedural handling of sexual violence cases and ultimately causes injustice and further harm to victims of such crimes.

3. Reformulation of Restitution Payment Amount Category

One form of reformulation of the obligation to pay restitution made by the defendant to the victim in the Law on Sexual Violence Crimes is to add a category of the amount of restitution so that there are no more judges who do not want to determine restitution payments because there is no standard amount of restitution that must be given to the victim. To provide a comparison of how to reformulate the category of the amount of restitution that needs to be added to the Law on Sexual Violence Crimes, the researcher will provide a comparison in the category of restitution fines that apply in the Netherlands, as well as a comparison of the category of fines in Law Number 1 of 2023 on the Criminal Code, as a basis and comparison in reformulating the article on the category of the amount of restitution.

The Netherlands has regulated compensation for victims of sexual violence crimes since 2019. The Netherlands provides categories for the amount of compensation given to victims based on the physical or mental damage that the victim experienced due to the crime or sexual violence. Dutch law refers to this loss as “injury”. The more serious the injury, the higher the injury category and the higher the payment. This category of injury compensation is regulated in “*Letsellijst Schadefonds Geweldsmisdrijven*”, which in Indonesian means a list of funds for victims of crime and violence injuries.⁴⁰

Table 1. Categories of compensation amounts for victims in the Netherlands

Category 1	€ 1.000,00 = IDR 17.983.209,00
Category 2	€2.500,00 = IDR 44.958.023,00
Category 3	€5.000,00 = IDR 89.885.935,00
Category 4	€ 10.000,00 = IDR 179.771.869,00
Category 5	20.000,00 = IDR 359.543.738,00
Category 6	€35.000,00 = IDR 629.201.542,00

Source:Regulations on compensation to be paid to victims of crime in the Netherlands.

⁴⁰ Schadefonds Gewelds-misdrijven, “Letsellijst Schadefonds Geweldsmisdrijven,” 2024, <https://www.schadefonds.nl/schadefonds/letsellijst/>.

Determining the injury category is divided into two parts: physical and psychological. To determine which category is appropriate for the injury, the Netherlands explains:

1. Part 1A provides guidelines for classifying physical injuries into injury categories. Part 1B lists physical injuries and the associated injury categories. If no physical injury was sustained in a violent or sexual crime, part 1 of the injury list is skipped.
2. Section 2A indicates in which cases serious psychological injury is assumed. Section 2B shows how the Compensation Fund assesses psychological injury and when psychological injury is considered serious.

1A. General principles for classifying physical injuries into injury categories

The Compensation Fund uses the following general principles to explain how a physical injury can be considered serious enough to qualify for payment. The idea behind these principles is that an injury is considered more serious as the limitations and dependencies caused by the injury increase and last longer. These principles cannot be read in isolation; further details are provided in section 1B of the list of injuries.

Table 2. Injury Category 1A in “*Letsellijst Schadefonds Geweldsmisdrijven*” in the Netherlands

Injury Category 0	<ul style="list-style-type: none">- Physical injury with full recovery, without further medical consequences, or with few or no medical consequences.- Limitations and/or dependencies, lasting a maximum of six weeks.
Injury Category 1	<ul style="list-style-type: none">- Physical injuries requiring treatment, with temporary limitations and/or dependencies for more than six months.- Physical injuries requiring hospitalization for more than 24 hours.
Injury Category 2	<ul style="list-style-type: none">- Physical injury with permanent limitation in daily professional or business function (or equivalent activity).- Physical injury requiring surgical intervention or measures that can be considered equivalent, to prevent immediate danger to life.

Injury Category 3	<ul style="list-style-type: none"> - Physical injury with permanent limitation in daily professional or business function (or equivalent activity). - Physical injury requiring surgical intervention or measures that can be considered equivalent, to prevent immediate danger to life.
Injury Category 4	- Physical injury with permanent impairment, the nature and consequences of which are more serious than a category three injury (e.g., long-term partial dependency).
Injury Category 5	- Physical injury with severe permanent limitations in daily professional or business functioning (or equivalent activity) and/or ongoing partial dependency.
Injury Category 6	- Physical injury with profound or complete and permanent dependency.

Source: Regulations on compensation to be paid to victims of crime in the Netherlands.

In addition to physical injuries, the regulations regarding the provision of restitution or compensation in force in the Netherlands also regulate the provision of restitution or compensation for psychological injuries, which are explained in essence as follows:

Table 3. Psychological Injury Category 2A in “*Letsellijst Schadefonds Geweldsmisdrijven*” in the Netherlands

Injury Category 1	<ul style="list-style-type: none"> - Home robbery - Direct threat with a knife - Arson or explosion
Injury Category 2	<ul style="list-style-type: none"> - Sexual offences without sexual penetration, committed multiple times - Human trafficking - Systematic domestic violence - Stalking - Domestic violence committed by/towards minors

Injury Category 3	<ul style="list-style-type: none">- Families of victims who died as a result of violent or sexual crimes or murder- Families of victims who suffered severe and permanent injuries as a result of deliberate acts of violence or sexual crimes- Aggravated sexual offences- Penetration sexual offences- Systematic human trafficking
Injury Category 4	<ul style="list-style-type: none">- Loss of two or more loved ones due to violent or sexual crimes or murder- Families of two or more victims who have suffered severe and permanent injuries due to a single act of violence committed intentionally
Injury Category 5	<ul style="list-style-type: none">- Sexual offense with sexual penetration under aggravating circumstances
Injury Category 6	<ul style="list-style-type: none">- Physical injury with profound or complete and permanent dependency.

Source: Regulations on compensation to be paid to victims of crime in the Netherlands.

In determining the explanation of restitution categories, the Indonesian government should conduct further studies or consider adopting the explanation of the compensation and restitution provisions used in the Netherlands as a reference, adapting them to the current needs and conditions of Indonesian society. By reformulating and adding a clear categorization for the amount of restitution in the Law on Sexual Violence Crimes, this could address the issue of judges being reluctant to determine the amount of restitution payments. It would also resolve the hesitation judges often face in estimating the amount of restitution the defendant must pay to the victim of sexual violence. This reluctance stems from the absence of a standard or clear estimate of the victim's losses. Judges may fear that setting an amount might either fall short of the victim's expectations or, conversely, impose an amount too high for the defendant, potentially leading to the defendant's refusal to pay, forced asset seizure, or auctioning for restitution payment to the victim of sexual violence. Therefore, it is crucial to further develop and clarify the calculation of losses based on

an additional category of restitution in the reformulation of Article 16 of Law Number 12 of 2022 concerning Sexual Violence Crimes, which governs restitution payments by the defendant to the victim.

Conclusion

Based on the discussion regarding the Regulation of restitution payments in Law No. 12 of 2022 on Criminal Act of Sexual Violence in Article 1, number 16, Law enforcement of restitution payments in criminal cases still has weaknesses. To address these weaknesses, two methods are carried out, which is conducting a judicial review of Supreme Court Regulation Number 1 of 2022 on Procedures for Settlement of Applications and Granting of Restitution and Compensation to Victims, and the second is to reformulate Article 16 of Law Number 12 of 2022 on Criminal Acts of Sexual Violence. However, its enforcement is a complex challenge that cannot be overcome by relying on just one factor. Its success requires synergy between various elements that complement and support each other. One of the primary keys is the involvement of all interested parties, from the regulatory, law enforcement, community, and supervisory system aspects. Each factor is vital in ensuring that weaknesses in law enforcement regarding restitution payments can be eliminated.

The second is the reformulation of the restitution payment regulations in Law Number 12 of 2022 on the Crime of Sexual Violence, which is ideal in Indonesia. There are two ways: the first is to conduct a judicial review of the Supreme Court so that Article 5 number (4) of the Supreme Court Regulation No. 1 of 2022 on Procedures for Settlement of Applications and Granting of Restitution and Compensation to Victims is declared to be in conflict with Law Number 12 of 2022 on the Crime of Sexual Violence. The reformulation of restitution payments, which can adopt one of them from the Acehnese criminal law regulations or the Islamic criminal law system enforced in Aceh, and the regulations for the payment of compensation funds to victims of criminal acts (*Letsellijst Schadefonds Geweldsmisdrijven*), which are currently in force in the Netherlands.

References

- Agustini, Ika, Rofiqur Rachman, and Ruly Haryandra. "Perlindungan Hukum Terhadap Korban Kekerasan Seksual: Kajian Kebijakan Hukum Pidana Indonesia Dan Hukum Pidana Islam." *Rechtenstudent* 2, no. 3 (December 28, 2021): 342–55. <https://doi.org/10.35719/rch.v2i3.89>.

- Alexsander, Sandy Doyoba, and Yeni Widowaty. "Faktor Penyebab Timbulnya Disparitas dalam Putusan Hakim terhadap Anak Pelaku Tindak Pidana Pencurian dengan Pemberatan." *Indonesian Journal of Criminal Law and Criminology (IJCLC)* 1, no. 2 (August 29, 2020): 72–78. <https://doi.org/10.18196/ijclc.v1i2.9610>.
- Anam, Rohmatul, Tazkia Amelia Fauzi, Tutut Dwi Setyorini, and Elva Imeldatur Rohmah. "Hukuman Bagi Pelaku Tindak Pidana Kekerasan Seksual Di Kampus Dalam Perspektif Hukum Positif Dan Hukum Islam." *Ma'mal: Jurnal Laboratorium Syariah Dan Hukum* 3, no. 6 (December 31, 2022): 549–70. <https://doi.org/10.15642/mal.v3i6.153>.
- Febrianti, Erinca, Bambang Widiyehseno, Robby Darwis Nasution, dan Yusuf Adam Hilman. "Analisis Kebijakan Permendikbud Ristek Nomor 30 Tahun 2021 dalam Upaya Pencegahan dan Penanganan Kekerasan Seksual di Universitas Muhammadiyah Ponorogo." *Jurnal Ilmu Pemerintahan Suara Khatulistiwa (JIPSK)* 7, no. 1 (2022): 52–62. <https://eprints.umpo.ac.id/id/eprint/10142>.
- Firmansyah, Hery, and Lisyah Sun Lisyah. "Pertanggungjawaban Hukum Terhadap Korban Atas Biaya Restitusi Yang Tidak Terpenuhi Pada Putusan Pengadilan Negeri Tangerang Nomor 1712/Pid.Sus/2021/Pn.Tng." *Unes Law Review* 6, no. 1 (2023). <https://doi.org/10.31933/unesrev.v6i1>.
- Ginting, Yuni Priskila, and Franciscus Xaverius Wartoyo. "Pencegahan dan Penanganan Kekerasan Seksual (PPKS) dalam Rangka Penyelenggaraan Orientasi Karyawan Baru." *Jurnal Pengabdian West Science* 2, no. 01 (2023): 60–74. <https://doi.org/10.58812/jpws.v2i01.155>.
- Harefa, Beniharmoni, and Salma Agustina. "The Urgency for Establishing a Victim Trust Fund in Sexual Violence Crimes in Indonesia." *Kanun Jurnal Ilmu Hukum* 24, no. 2 (2022): 259–82. <https://doi.org/10.24815/kanun.v24i2.35645>.
- Hutauruk, Hotmaulana, Rufinus, Abdurrakhman Alhakim, Salma Rayani Rosniar, dan M. Baloi-Sei Ladi. "Legal Accountability for Verbal Sexual Harassment Perpetrators on Dating Apps." *Jurnal Etika Demokrasi* 8, no. 4 (2023). <https://doi.org/10.26618/jed.v8i4.12876>.
- Ilyasa, Raden Muhammad Arvy. "Legal and Victimological Perspective on Sexual Violence against Children Cases in Indonesia." *The Indonesian Journal of International Clinical Legal Education* 3, no. 3 (September 30, 2021): 281–300. <https://doi.org/10.15294/ijicle.v3i3.48269>.
- Leden Marpaung. *Peristiwa Hukum Dalam Praktek*. Jakarta: Kejaksaan RI, 1985.

- Madyana, Rida, and Safik Faozi. "Pemulihan Korban Melalui Restitusi Bagi Korban Kekerasan Seksual (Studi Putusan Nomor : 989, PID.SUS/2021/PN BDG)" 6, no. 1 (2023). <https://doi.org/10.31933/unesrev>.
- Marfu'ah, Usfiyatul, Siti Rofi'ah, and Maksun Maksun. "Sistem Pencegahan dan Penanganan Kekerasan Seksual di Kampus UIN Walisongo Semarang." *Kafa'ah: Journal of Gender Studies* 11, no. 1 (June 29, 2021): 95. <https://doi.org/10.15548/jk.v11i1.379>.
- Marasabessy, Fauzy. "Restitusi bagi Korban Tindak Pidana: Sebuah Tawaran Baru." *Jurnal Hukum & Pembangunan* 45 (2015). <https://scholarhub.ui.ac.id/jhp/vol45/iss1/3>.
- Mazumah, Siti. "Terobosan Restitusi Sebagai Kewajiban Pelaku Dalam Undang-Undang Tindak Pidana Kekerasan Seksual" 6, no. 4 (2024). <https://doi.org/10.31933/unesrev.v6i4>.
- Muaja, Stanly, and Roy Ronny Lembong. "Efektivitas Ketentuan Tentang Hak Restitusi Sebagai Bentuk Hukum Bagi Anak Korban Tindak Pidana." *Jurnal Nuansa Akademik* 9, no. 2 (2024): 385–98. <https://doi.org/10.47200/jnajpm.v9i2.2511>.
- Muhammad, Hasanuddin. "Implikasi Yuridis Pengaturan Hak Korban Tindak Pidana Kekerasan Seksual Dalam Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual." *Jurnal Surya Kencana Dua : Dinamika Masalah Hukum Dan Keadilan* 9, no. 1 (July 15, 2022). <https://doi.org/10.32493/SKD.v9i1.y2022.22495>.
- Nathanael, Matheus, and Siti Ismaya. "Disparitas Pemidanaan: Menyoroti Konsistensi Putusan Pengadilan dalam Tindak Pidana Kekerasan Seksual." *Indonesia Judicial Research Society*, April 1, 2024. <https://ijrs.or.id/2024/04/01/disparitas-pemidanaan-menyoroti-konsistensi-putusan-pengadilan-dalam-tindak-pidana-kekerasan-seksual/>.
- Nicholson, Dave. "'Giving Back' by 'Paying Back': Recasting Community as 'Mutual Restitution' Through Financial – Making a Restorative Criminal Justice System a Reality Through Co-operatives and Values-Based Companies?" *VLex United Kingdom*. Accessed April 26, 2025. <https://app.vlex.com/vid/884306807>
- Nikmatullah. "Demi Nama Baik Kampus VS Perlindungan Korban : Kasus Kekerasan Seksual Di Kampus." *Qawwam : Journal For Gender Mainstreaming* 14, no. 2 (2020): 40–41. <https://doi.org/10.20414/qawwam.v14i2.2875>.
- Nyndhya, Rozzyana, Handoyo Prasetyo, and Universitas Pembangunan Nasional Veteran Jakarta. "Additional Criminal Restitution in the Handling of General Criminal Cases by the Prosecutor's Office," n.d. <https://doi.org/10.46799/ijssr.v4i6.785>.

- Permatasari, Indah, Thea Farina, and Nuraliah Ali. "Restitusi dan Perlindungan Hak Korban Tindak Pidana: Kebijakan, Tantangan, dan Praktiknya di Pengadilan Negeri Kapuas." *Syntax Literate: Jurnal Ilmiah Indonesia* 10, no. 2 (2025). <https://doi.org/10.36418/syntax-literate.v10i2.55559>.
- Prasetya, Yuda. "Legal Analysis Of Human Trafficking Case As A Transnational Organized Crime That Is Threatening State Security." *Lex Scientia Law Review* 4, no. 1 (May 9, 2020): 143–50. <https://doi.org/10.15294/lesrev.v4i1.38635>.
- Ridwan, Ahmad Lanang Citrawan, Belardo Prasetya Mega Jaya, Amirulloh Ahdad, Ignatius Gita Hernata, and Muyassaroh. "Penerapan Prinsip Persamaan di Depan Hukum dalam Perkara Tindak Pidana Korupsi Pengadilan Negeri Serang." *JURNAL MASALAH-MASALAH HUKUM*, no. 51. No.2 (April 2022). <https://doi.org/10.14710/mmh.51.2.2022.171-178>.
- Rizky, Ali, Oheo Kaimuddin Haris, and Fuad Nur. "Penyitaan Harta Benda Pelaku Tindak Pidana Sebagai Sarana Restitusi Dalam Rangka Perlindungan Anak Confiscation of Property of Criminal Offenders as A Means of Restitution in the Context of Child Protection." *Halu Oleo Legal Research* | 6, no. 2 (2024): 299–311. <https://journal.uho.ac.id/index.php/holresch/>.
- Sari, Dwi Wulan. "Peran UKM Pusat Informasi dan Konseling (PIK) Sahabat dalam Upaya Preventif Kekerasan Seksual di UIN Raden Intan Lampung." *Jurnal Mahasiswa BK An.Nur: Berbeda, Bermakna, Mulia* 8, no. 3 (2022): 112–20. <http://dx.doi.org/10.31602/jmbkan.v8i3.8638>.
- Sartini, Sartini, Baso Madihong, and Zulkifli Makkawaru. "Perlindungan Hukum terhadap Anak sebagai Korban Kekerasan Seksual." *Indonesian Journal of Legality of Law* 4, no. 1 (December 24, 2021): 18–25. <https://doi.org/10.35965/ijlf.v4i1.1196>.
- Schadefonds Geweldsmisdrijven. "Letsellijst Schadefonds Geweldsmisdrijven," 2024. <https://www.schadefonds.nl/schadefonds/letsellijst/>.
- Sekretariat Jenderal Komisi Yudisial Republik Indonesia. *Bunga Rampai Memotret Pertimbangan Putusan Hakim dari Berbagai Perspektif*. Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2024.
- Silmi, Rhaniya, Rani Hendriana, Budiyo Budiyo, Jaco Barkhuizen, and Salman Paris Harahap. "Legal Protections for Victims of Sexual Violence and the Rights of Victims." *Jurnal Dinamika Hukum* 24, no. 1 (March 4, 2024): 1. <https://doi.org/10.20884/1.jdh.2024.24.1.3884>.
- Simatupang, Benget Hasudungan, Clarita William, Sudirman Sitepu, and Pipi Susanti. "Hak Restitusi Bagi Anak Yang Menjadi Korban

- Tindak Pidana Kekerasan Seksual.” University of Bengkulu Law Journal 8 (April 2023). <https://ejournal.unib.ac.id/ubelaj/article/view/28848>.
- Sitinjak, Halomoan Freddy. “Pemberian restitusi dan kompensasi bagi korban tindak pidana berdasarkan nilai keadilan.” *Jurnal Pendidikan dan Konseling* 4, no. 5 (2022). <https://doi.org/10.31004/jpdk.v4i5.7637>.
- Suryani, Leony Sondang, and Ahmad Khozi. “Ketentuan TPKS Dalam KUHP Baru.” *Jurnal Hukum & Pembangunan* 53, no. 2 (June 30, 2023). <https://doi.org/10.21143/jhp.vol53.no2.1561>.
- Widyawati, Anis, Dian Latifiani, Ridwan Arifin, Genjie Ompoy, and Nurul Natasha Binti Muhammad Zaki. “The Regulation of Integrity Zone and the Corruption-Free Zone in Indonesia and Russia.” *BESTUUR* 11, no. 2 (December 19, 2023): 253. <https://doi.org/10.20961/bestuur.v11i2.76306>.
- Widyawati, Anis, Muhammad Azil Maskur, Rohadhatul Aisy, Papontee Teerapan, and Heru Setyanto. “The Urgency of Supervision Institutions in Implementing Prisoners’ Rights as an Effort to Restructure Criminal Execution Laws.” *Jambura Law Review* 7, no. 1 (January 2025): 127–51. <https://doi.org/10.33756/jlr.v7i1.27595>.
- Widyawati, Anis, Pujiyono Pujiyono, Nur Rochaei, Genjie Ompoy, and Nurul Natasha Binti Muhammad Zaki. “Urgency of the Legal Structure Reformation for Law in Execution of Criminal Sanctions.” *Lex Scientia Law Review* 6, no. 2 (December 19, 2022): 327–58. <https://doi.org/10.15294/lesrev.v6i2.58131>.
- Widyawati, Anis, Ridwan Arifin, Rohadhotul Aisy, Shofriya Qonitatin Abidah, and Heru Setyanto. “Supervision in Integrated Justice: Legal Reform and Constructive Enforcement in the Criminal Justice System.” *Journal of Law and Legal Reform* 5, no. 2 (April 2024). <https://doi.org/10.15294/jllr.vol5i2.3886>.
- Yasa, I Putu Agus Adi Pratama, A.A. Sagung Laksmi Dewi, and I Made Minggu Widyantara. “Analisis Putusan Hakim terhadap Anak Pelaku Tindak Pidana Ancaman Kejahatan Seksual...” *Jurnal Interpretasi Hukum* 3 (December 2022). <https://doi.org/10.55637/juinhum.3.3.5791.429-434>.
- Yuliawan, Bogi, Hartanto Hartanto, and Teguh Satya Bhakti. “Efektivitas Kebijakan Restitusi Dalam Perlindungan Hak Anak Korban Kejahatan Seksual.” *Binamulia Hukum* 14, no. 1 (February 23, 2025): 33–42. <https://doi.org/10.37893/jbh.v14i1.1006>.
- Yunanto. “Menerjemahkan Keadilan dalam Putusan Hakim.” *Jurnal Hukum Progresif* 7 (2020): 193. <https://doi.org/10.14710/hp.7.2.192-205>.

Acknowledgement

The author would like to thank all lecturers at Universitas Negeri Semarang (UNNES).

Funding Information

No one funded this article at all.

Conflicting Interest Statement

The authors claim that there is no conflict of interest in the publication of this work.

Publishing Ethical and Originality Statement

All of the writers have declared that this work is original, has never been published in any format or media, and is not being considered for publication in any journal. All of the sources listed in this work meet the basic requirements of scientific citation.