

Application of Restitution for Criminal Acts Victims: Between Rules and Reality

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Abstract

Restitution is compensation provided to victims of a crime or their families by the perpetrator or a third party to cover losses from damage to property or income, suffering caused by the crime, and costs for medical or psychological care. Restitution serves as a critical mechanism for ensuring legal protection by aiding in the recovery of victims affected by criminal acts. This is regulated under Law Number 31 of 2014 on the Protection of Witnesses and Victims. However, challenges arise in its implementation, as seen in cases like Decision 1/PID.SUS/2023/PT Bdg, along with various issues in the application of restitution in court rulings, which will be analyzed in this study. This research examines these issues using normative legal research, employing both a legal and case study approach.

Keywords

Restitution; Rules; Reality.



Introduction

Culpa Poena Par Esto is a postulate meaning that the punishment must be commensurate with the crime¹. This postulate implies that any penalty or punishment imposed should correspond to the criminal act committed. However, this postulate developed in the criminal teachings of the classical era which primarily emphasized retaliation. According to Sudarto, the classical school of thought regards that criminal law is retributive and repressive towards criminal acts².

Punishment or suffering is part of the discipline of criminal law study, as stated by Moeljatno, who explains that criminal law is part of the overall legal system in force within a country, providing the basis and rules for:³

- a. Determining which actions may not be carried out and which are prohibited, accompanied by threats or sanctions in the form of certain criminal penalties for anyone who violates the prohibition.
- b. Determining when and in what cases those who have violated these prohibitions can be subject to or sentenced to the penalties that have been threatened.
- c. Determining how criminal penalties can be imposed if someone is suspected of violating the prohibition.

In simple terms, criminal law addresses acts deemed to be criminal offense essentially, criminal acts and the associated criminal liability and forms of punishment/suffering to be imposed. In the context of criminal law in Indonesia, criminal acts are outlined in General criminal law, specifically the Criminal Code and special criminal laws, such as Law

¹ Zainal Arifin Mochtar and Eddy OS Hiariej, *Dasar-Dasar Ilmu Hukum : Memahami Kaidah, Teori, Asas Dan Filsafat Hukum* (Jakarta Selatan: Red & White Publishing, 2021), 126.

² Eddy O S Hiariej, *Prinsip-Prinsip Hukum Pidana: Edisi Penyesuaian KUHP Nasional, Rajawali Pers* (Jakarta: Rajawali Pers, 2024), 27.

³ Ali Masyhar Mursyid, *Hukum Pidana : Kajian Berdasar UU No 1 Tahun 2023* (Semarang: Unnes Press, 2024), 7-8.

Number 21 of 2007 on the Eradication of Criminal Acts of Human Trafficking and various other laws that regulate more specific criminal acts and their corresponding punishment.

Discussing criminal law is also inseparable from considering the parties involved in a crime. In this case, the perpetrator, the victim, and even the community that may be impacted by the crime's effects. In the context of Indonesian criminal procedure law, protection for suspects or defendants is more emphasized, as can be viewed in articles 50 to 68 of Law Number 1 of 1981 on Criminal Procedure Law, commonly referred to as the Criminal Procedure Code.

This emphasis is rooted in the concept of a state of law as regulated in the 1945 Constitution as the constitution of the Republic of Indonesia in Article 1 paragraph (3), which states that Indonesia is a state of law. This means that Indonesia is a state governed by laws, not by power (*Machstaats*). Regardless of how powerful the ruler is or how strong the government may be, they must still adhere to the established laws that has been made and agreed upon⁴. Therefore, every person, both individuals and legal entities suspected of committing a crime must be presumed innocent until proven guilty through a court decision that decides that their actions are guilty and the court decision has permanent legal force. This principle is known as the presumption of innocence⁵.

Then the question arises, what is the position of the victim in the criminal justice system? The Criminal Procedure Code offers minimal regulations regarding the rights of victims of criminal acts. However, Law Number 13 of 2006 on Protection of Witnesses and Victims, as amended by Law Number 31 of 2014 on Amendments to Law Number 13 of 2006 on Protection of Witnesses and Victims, provides legal certainty on

⁴ 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>.

⁵ M. Zainuddin, "Eksistensi Hak-Hak Tersangka Dan Terdakwa Dalam Sistem Peradilan Pidana Di Indonesia," *Journal Ilmiah Rinjani : Media Informasi Ilmiah Universitas Gunung Rinjani* 3, no. 1 (2016): 172-80, <https://doi.org/https://doi.org/10.53952/jir.v3i1.186>.

protection for victims of criminal acts⁶. One form of protection for victims of criminal acts is the restitution mechanism as outlined in Article 7A, which states: “*Victims of criminal acts have the right to receive Restitution in the form of:*

- a. *Compensation for loss of wealth or income*
- b. *Compensation for losses incurred due to suffering directly related to the criminal act. and/or*
- c. *Reimbursement of medical and/or psychological care costs”.*

The implementation of restitution fulfillment is specified in the court's decision. If the court's decision on a crime has obtained permanent legal force, an application for restitution must still be submitted to the court for a determination.

This mechanism indicates that restitution can only be implemented if it is included in the court's decision or ruling. However, in practice, the implementation of the Restitution still has obstacles and challenges, which will be reviewed in the discussion section.

Method

The method used in this study is the normative legal approach method (Juridical-Normative), which involves research through Library materials (library data) or secondary data, making it a form of normative legal research or library legal research⁷. Additionally, this study also employs the Legislation approach, which involves an approach based on laws and regulations⁸. Another approach used to deepen the discussion of this study is by using the Case approach (case study). According to Peter

⁶ Articles 5 through 10 of Law No. 31 of 2014 discuss the rights and protections that witnesses and/or victims are entitled to, with a focus on the rights and protections that victims have, read on Septhian Eka Adiyatma, “Legal Paradox: Protection of Victims Taking the Law into Vigilantism,” *Ius Poenale* 4, no. 2 (2023): 102, <https://doi.org/10.25041/ip.v4i2.3004>.

⁷ Soerjono Soekamto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat [Normative Legal Research: A Brief Overview]*, Jakarta: Rajawali Pers, 2015, 15.

⁸ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2005), 97.

Mahmud, the case approach emphasizes ratio decidendi, the case approach emphasizes the legal reasoning used by the judge to reach a decision⁹.

Result and Discussion

A. The Position of Victims in the Criminal Justice System

Before further discussing the Restitution Regulation and their Implementation, it is also essential to examine the position of victims in the Indonesian Criminal Justice System. For example, when an act regulated in the provisions of criminal law is violated by anyone, the victim files a report or complaint to the authorities. This report or complaint allows the Police to carry out investigative actions. Thus, the position of the victim at the investigation stage is limited to that of a reporter or complainant.

If, during the investigation, the investigator finds evidence of a Criminal Incident, the status escalates to a full investigation. At the investigation stage when the victim's report or complaint gets a response from the investigator by taking investigative action. At this stage, the victim's involvement continues as the investigator may need provide the victim's account as a witness (victim witness). Although passive and limited to providing information when asked, the victim's information is very much needed by the investigator to strengthen the suspicion that a criminal act has been committed by the alleged perpetrator. Therefore, at the investigation stage, the victim serves as a source of information to clarify a criminal act.

The position and role of the victim here becomes even more important, especially when the crime involved has very minimal evidence. In such cases, whether or not the criminal process continues will largely depend on the victim's willingness to provide testimony to the investigator. The position and role of the victim at the investigation level will continue when the criminal process continues to the prosecution and

⁹ *Ibid*, 158

examination of the case in court.

At the prosecution stage, the prosecutor and the judge's examination of criminal cases in the trial is basically inseparable from Article 183 and Article 184 of the Criminal Procedure Code, which pertain to proof and evidence. Article 183 of the Criminal Procedure Code requires at least two valid pieces of evidence and obtains the judge's conviction that a crime actually occurred and that the defendant is guilty of committing it. The application of Article 183 cannot be separated from Article 184, which outlines the types of valid evidence that apply in determining whether an act is criminal.

From the description above, it can be viewed that the position and role of the victim is no more than just a provider of information to clarify a criminal event. At this level, the victim remains passive and is even obliged to recount the tragic incident that happened to him/her if requested by the parties involved in the trial. Once the information provided by the victim is considered sufficient, the position and role of the victim in the judicial mechanism also ends. After the trial process is complete and the judge sentences the defendant, the victim begins to experience the suffering caused by the incident, yet does not have the right influence what punishment is imposed on the perpetrator. This responsibility falls solely within the judiciary's task and authority. Even when sanctions have been imposed and must be carried out by the perpetrator¹⁰, the authority to determine how the sanctions are implemented without the need to ask the victim's opinion. However, the fulfillment of restitution can only be obtained through the mechanism of the criminal justice system, meaning the victim must endure the process, whether they like it or not¹¹.

¹⁰ Vikardin Waruwu, Ojak Nainggolan, and Jusnizar Sinaga, "Pertanggungjawaban Pidana Pelaku Orderan Fiktif Ojek Online Yang Mengakibatkan Kerugian PT. Grab Indonesia (Studi Putusan Nomor 1507/Pid.Sus/2018/Pn.Mdn)," *Jurnal Hukum PATIK* 9, no. 3 (2020), <https://doi.org/10.51622/patik.v9i3.247>.

¹¹ According to a different viewpoint, interviewing the victim is essential in addition to referring the case to the court in order to decide on the appropriate punishment. However, getting reliable

B. Witness and Victim Protection Agency in Indonesia

The Witness and Victim Protection Agency, later abbreviated as LPSK, was established as an urgency for the birth of Law Number 13 of 2006 on Witness and Victim Protection, which was enacted on August 8, 2008¹². The agency is an independent institution based in the capital city of the Republic of Indonesia, with representatives in all regions as needed. The establishment of representative institutions is crucial, given the vast geographical area of Indonesia and the limited access to information in certain areas. LPSK is responsible for handling the provision of protection and assistance to witnesses and victims based on the duties and authorities as stipulated in the Law. In its implementation, LPSK is responsible to the President¹³.

Protection refers to all efforts to fulfill rights and provide assistance to ensure a sense of security for witnesses and/or victims¹⁴. The protection spans all stages of the criminal justice process. The purpose of this Law is to create a sense of security for witnesses and victims, encouraging them to provide information during the criminal justice process. In carrying out its duties, LPSK consists of leadership elements and members. The leadership elements includes the Chairperson and Deputy Chairperson, who are also selected from and by LPSK members.

The activities of LPSK are carried out by several members responsible for various sectors: Protection, Assistance, Compensation and

statements from witnesses and victims is particularly challenging, particularly when those remarks could be used as evidence. Objectively determining the victim's statement's credibility is crucial, and this can change depending on the forensic interviewer's questioning style. Forensic interviewers must thus have extensive training in interviewing techniques that eliminate subjective opinions. It is crucial to objectively analyze remarks in order to decrease high-risk subjective interviews. The judge's opinion is the best course of action since he has the power to consider all relevant legal facts based on the information that was submitted to him throughout the trial, read on Junho Shin et al., "A System for Interviewing and Collecting Statements Based on Intent Classification and Named Entity Recognition Using Augmentation," *Applied Sciences (Switzerland)* 13, no. 20 (2023), <https://doi.org/10.3390/app132011545>.

¹² Agus Takariawan, *Perlindungan Saksi Dan Korban* (Bandung: Pustaka Reka Cipta, 2016), 136.

¹³ Siswanto Sunarso, *Viktimologi Dalam Sistem Peradilan Pidana* (Jakarta: Sinar Grafika, 2022), 263.

¹⁴ Mamay Komariah, "Perlindungan Hukum Saksi Dan Korban Oleh Lembaga Perlindungan Saksi Dan Korban (LPSK)," *Jurnal Ilmiah Galuh Justisi* 3, no. 2 (2015), <https://doi.org/10.25157/jjgi.v3i2.421>.

Restitution, Cooperation, Institutional Development, and Legal Dissemination and Public Relations. Structurally, the LPSK Commissioner institution consists of seven professionals with experience in areas like advancement, fulfillment, protection, law enforcement, and human rights. These members come from various backgrounds, including the Police, the Prosecutor's Office, the Ministry of Law and Human Rights, academics, legal advocacy, or non-governmental organizations.

The establishment of LPSK regional representatives, as noted above, can be interpreted broadly. Representatives may be set up at a specific regional level, such as in certain regions across eastern or western Indonesia. Additionally, LPSK representatives could be established in each province or even at the district or city level. In special circumstances particularly in areas with high incidences of intimidation and threats against witnesses and victims LPSK may establish ad hoc representative offices to address urgent needs. These representative offices may be set up permanently or temporarily, depending on the situation.

Representatives in other areas, as mentioned above, can be broadly interpreted. For instance, they may cover broader regional level (between provinces) by selecting key areas across eastern or western Indonesia. Representatives of the Witness and Victim Protection Agency can also be established in each province or even at the district/city level. In special cases where conditions are urgent, the agency may set up representative offices in locations with high incidences of intimidation and threats against witnesses and victims. Furthermore, these LPSK representative offices may be established on a permanent or ad hoc basis, depending on the situational needs.

Recognizing the crucial role of witnesses and victims in the success of LPSK's mission to protect them highlights the importance of support from law enforcement agencies (Police, Prosecutors, Supreme Court and Advocates). The close connection between LPSK's performance as an

institution upholding the rights of witnesses and victims within the criminal justice system and the backing of law enforcement officers requires a close and synergistic relationship. LPSK appears to understand this, prioritizing institutional development (capacity building) in establishing an ideal cooperative relationship with law enforcement officers.

C. Implementation of Restitution: Between Rules and Reality

Before delving further into the application of Restitution in court decisions, it is important to first outline the provisions related to Restitution in the Legislation literature. The provision of Restitution was initially introduced in Law Number 26 of 2000 on Human Rights Courts, specifically in Article 35 paragraph (1), which states that every victim of serious human rights violations and/or their heirs is entitled to receive compensation, restitution, and rehabilitation. The explanation of this article clarifies that restitution, as described in Article 35 (1) of Law 26 of 2000, refers to compensation given to the victim or their family by the perpetrator or a third party, which may take the form of:

- a. return of property
- b. payment of compensation for loss or suffering
- c. reimbursement for certain actions.

Restitution as regulated in Law Number 26 of 2000, is limited to victims of serious human rights violations, specifically genocide and crimes against humanity. Therefore, the scope of restitution is restricted to these two categories of crimes, and restitution as referred to in Article 35 (1) of the Law cannot be applied beyond these cases.

Provisions related to Restitution are also regulated in Law Number 21 of 2007 on the Eradication of the Crime of Human Trafficking. Under this law, the provisions regarding restitution have developed, which initially it was intended solely for victims of serious Human Rights

violations but now also extends to victims of the Crime of Human Trafficking. Restitution under Article 48 paragraph (1) of Law Number 21 of 2007 includes compensation for:

- a. loss of wealth or income
- b. suffering
- c. costs for medical and/or psychological care
- d. other losses suffered by victims as a result of human trafficking.

In the author's view, the restitution provisions have seen considerable improvement in Law Number 21 of 2007 compared to those in Law Number 26 of 2000. This law accommodates most of the essential needs of human trafficking victims. However, these restitution provisions remain limited to victims of the Crime of Human Trafficking and do not extend to victims of other types of crime.

Due to the many demands from academics and the public regarding the fulfillment of justice for victims of criminal acts in 2014 through Law Number 31 of 2014 on Amendments to Law Number 13 of 2006 on Protection of Witnesses and Victims, introduced renewed support and significant advancements to victims of criminal acts. Article 7A of this law states that victims of criminal acts are entitled to receive Restitution in the form of:

- a. compensation for loss of wealth or income
- b. compensation for losses incurred as a result of suffering directly related to a criminal act, and/or
- c. reimbursement for medical and/or psychological care costs

The restitution provision regulated in Article 7A of Law Number 31 of 2014 represents a significant advancement in justice for victims of criminal acts. Why is that? Because Article 7A expands the range of victims entitled to Restitution, unlike previous regulations. For instance, the restitution provision in Article 35 (1) of Law Number 26 of 2000

limits eligibility to victims of serious Human Rights violations, and Article 48 (1) of Law Number 21 of 2007 restricts restitution to victims of human trafficking. Through Article 7A of Law 31 of 2014, all victims of criminal acts are now granted access to fair legal certainty in the form of fulfillment of Restitution, ensuring that their suffering is addressed and compensated accordingly.

Restitution Regulations are also outlined in the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2022 on Procedures for Settlement of Applications and Granting of Restitution and Compensation to Victims of Criminal Acts. This regulation by the Supreme Court even expanded the forms of Restitution available to victims, beyond what is stipulated in Law 26/2000, Law 21/2007 and Law 31 of 2014. Article 4 of Supreme Court Regulation 1/2022 provide that victims are entitled to receive restitution in the form of:

- a. compensation for loss of wealth and/or income
- b. compensation for losses, both material and immaterial, arising from suffering directly related to the consequences of a criminal act
- c. reimbursement for medical and/or psychological care costs
- d. other losses suffered by the victim as a result of the crime, including basic transportation costs, attorney's fees, or other costs related to the legal process.

The restitution regulation outlined in the Supreme Court Regulation (Perma) provides an expanded scope of restitution forms available to victims of criminal acts. This development offers renewed support for law enforcement and, most importantly, for victims, helping to alleviate their suffering and establishing fair legal certainty to protect every victim of criminal acts¹⁵.

¹⁵ In this historical analysis and opinion post, I contend that financial restitution is not only the most traditional type of restorative justice but also a means of bringing about a modern restorative criminal justice system that fosters desistance. However, if the offender is unable to make the necessary financial repayment, neither desistance nor restorative justice can ever be accomplished, read on

The evolution of restitution has been detailed, beginning with Law 26/2000, Law 21/2007, Law 31/2013 and Supreme Court Regulation Number 1 of 2022. From a legal standpoint, these Laws and Regulations related to Restitution appear sufficient to ensure fair legal certainty solely for victims. Through these regulation provisions, justice for victims is recognized as essential.

Why is this the case? In order for restitution to be granted to victims of crime, it must be included in a court decision or ruling. To examine the application of Restitution in court decisions, this study will review several cases involving victims of crime who have suffered actual material losses to ensure whether Restitution is being applied as mandated in the relevant Laws and Regulations.

The First Case involves the decision of the Bandung District Court Number 898/Pid.Sus/2021/PN Bdg, dated February 15, 2022. This case concerned a defendant named Herry Wirawan, who was charged with molestation involving 12 of his female students. The verdict of the Bandung District Court reads:

- a. Declaring that the Defendant Herry Wirawan alias Heri bin Dede mentioned above, has been proven legally and convincingly guilty of committing the crime of "Intentionally committing violence by forcing a child to have sexual intercourse with him, which was carried out by an educator, causing more than 1 (one) victim several times" as stated in the primary indictment;
- b. Sentencing the Defendant to life imprisonment;
- c. Determine that the Defendant remains in detention;
- d. Charge restitution to the Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia, with the following details:

Dave Nicholson, "‘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," *British Journal of Community Justice* 17, no. 1 (2021).

- 1) The child of the victim, Nina Marlina, was represented by her biological mother, Ms. Karwasih, in the amount of Rp. 75,770,000.00 (seventy-five million seven hundred and seventy thousand rupiah) with consideration of the restitution assessment and details and calculation of the victim's losses from LPSK.
- 2) The child of the victim, Sabila Soviah, was represented by her biological grandfather, Mr. Endang, in the amount of Rp. 22,535,000.00 (twenty-two million five hundred and thirty-five thousand rupiah) with consideration of the restitution assessment and details and calculation of the victim's losses from LPSK;
- 3) The victim's child, Febiola Putri Ningsih, was represented by her biological father, Mr. Amirudin, in the amount of Rp. 20,523,000.00 (twenty million five hundred and twenty-three thousand rupiah) with consideration of the restitution assessment and details and calculation of the victim's losses from LPSK;
- 4) The victim's child, Rosi Alfiah, was represented by her biological father, Mr. Wahyu, in the amount of Rp. 29,497,000.00 (twenty-nine million four hundred and ninety-seven thousand rupiah) with consideration of the restitution assessment and details and calculation of the victim's losses from LPSK.
- 5) The child of the victim, Gebi Lisa Stiara Putri, was represented by her biological father, Mr. Aep Saepul, in the amount of Rp. 8,604,064.00 (eight million six hundred and four thousand sixty-four rupiah) with consideration of the restitution assessment and details of the calculation of the victim's losses from LPSK;
- 6) The victim's child Nuriani was represented by her biological father named Mr. Yayan Ruslandi in the amount of Rp. 14,139,000.00 (fourteen million one hundred thirty-nine thousand rupiah) with consideration of the restitution assessment as well as details and calculations of the victim's losses from LPSK;
- 7) The child of the victim Fuji Nurul Laili was represented by his

biological mother named Ms. Lilis in the amount of Rp. 9,872,368.00 (nine million eight hundred seventy-two thousand three hundred sixty-eight rupiah) with consideration of the restitution assessment and details of the calculation of the victim's losses from LPSK;

- 8) The child of the victim, Neng Ratna Dewi, was represented by her biological mother, Ms. Lela Susilawati, in the amount of Rp. 85,830,000.00 (eighty-five million eight hundred and thirty thousand rupiah) with consideration of the restitution assessment and details and calculation of the victim's losses from LPSK;
- 9) The victim's child, Lisna, was represented by her biological mother, Ms. Rohaya, in the amount of Rp. 11,378,000.00 (eleven million three hundred and seventy-eight thousand rupiah) with consideration of the restitution assessment and details and calculation of the victim's losses from LPSK;
- 10) The victim's child, Melin Widia Rahayu, was represented by her biological father, Mr. Herman, in the amount of Rp. 17,724,377.00 (seventeen million seven hundred twenty-four thousand three hundred and seventy-seven rupiah) with consideration of the restitution assessment and details and calculation of the victim's losses from LPSK;
- 11) The child of the victim, N. Salsa Selpiasari, was represented by her biological mother, Ms. Ade Yayah, in the amount of Rp. 19,663,000.00 (nineteen million six hundred and sixty-three thousand rupiah) with consideration of the restitution assessment and details and calculation of the victim's losses from LPSK;
- 12) Child of victim Intan Regita Putri Cahyani in the amount of Rp. 15,991,377.00 (fifteen million nine hundred ninety-one thousand three hundred and seventy-seven rupiah) with consideration of restitution assessment as well as details and calculation of the victim's losses from LPSK;

In point 4, the verdict states that Restitution is charged to the Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia. However, according to the Laws and Regulations, restitution becomes the responsibility of the perpetrator or third party, rather than the state. Despite this, an appeal was made against the decision of the Bandung District Court Number 898/Pid.Sus/2021/PN Bdg, dated February 15, 2022, to the Bandung High Court, resulting in Decision Number 86/PID.SUS/2022/PT BDG on March 24, 2022. The verdict is as follows:

- Receive appeal requests from the Prosecutor/Public Prosecutor;
- Correcting the decision of the Bandung District Court Number: 989/
- Pid.Sus/2021/PN.Bdg., dated February 15, 2022, merely regarding the criminal penalty imposed on the Defendant, the imposition of restitution payments, care for 9 (nine) children of the victims and the victims' children and the confiscation of the Defendant's assets, so that the order reads as follows:
 - Sentencing the Defendant to the penalty of "DEATH";
 - Determine that the Defendant remains in detention
 - Charging restitution to the Defendant HERRY WIRAWAN alias HERI bin DEDE, with the following details:
 - 1) The victim's child NM was represented by his biological mother named Ms. K in the amount of Rp. 75,770,000.00 (seventy-five million seven hundred and seventy thousand rupiah) with consideration of the restitution assessment as well as details and calculations of the victim's losses from LPSK;
 - 2) The 6th Victim's Child was represented by his biological grandfather named Mr. E in the amount of Rp. 22,535,000.00 (twenty-two million five hundred thirty-five thousand rupiah) with consideration of the restitution assessment and details and

- calculation of the victim's losses from LPSK;
- 3) The 9th Victim's Child was represented by his biological father named Mr. A in the amount of Rp. 20,523,000.00 (twenty million five hundred and twenty-three thousand rupiah) with consideration of the restitution assessment as well as details and calculations of the victim's losses from LPSK;
 - 4) The 5th Victim's Child was represented by his biological father named Mr. W in the amount of Rp. 29,497,000.00 (twenty-nine million four hundred and ninety-seven thousand rupiah) with consideration of the restitution assessment as well as details and calculations of the victim's losses from LPSK;
 - 5) The 6th Victim's Child was represented by his biological father named Mr. AS in the amount of Rp. 8,604,064.00 (eight million six hundred and four thousand sixty-four rupiah) with consideration of the restitution assessment and details of the calculation of the victim's losses from LPSK;
 - 6) The 2nd Victim's Child was represented by his biological father named Mr. YR in the amount of Rp. 14,139,000.00 (fourteen million one hundred thirty-nine thousand rupiah) with consideration of the restitution assessment as well as details and calculations of the victim's losses from LPSK;
 - 7) The 12th Victim's Child was represented by his biological mother named Ms. L in the amount of Rp. 9,872,368.00 (nine million eight hundred seventy-two thousand three hundred sixty-eight rupiah) with consideration of the restitution assessment and details of the calculation of the victim's losses from LPSK;
 - 8) The 10th victim's child was represented by his biological mother, Ms. LS, in the amount of Rp. 85,830,000.00 (eighty-five million eight hundred and thirty thousand rupiah) with consideration of the restitution assessment and details and calculation of the victim's losses from LPSK.

- 9) The 8th Victim's Child was represented by his biological mother named Ms. R in the amount of Rp. 11,378,000.00 (eleven million three hundred and seventy-eight thousand rupiah) with consideration of the restitution assessment as well as details and calculation of the victim's losses from LPSK;
- 10) The 7th Victim's Child was represented by his biological father named Mr. H in the amount of Rp. 17,724,377.00 (seventeen million seven hundred twenty-four thousand three hundred and seventy-seven rupiah) with consideration of the restitution assessment as well as details and calculation of the victim's losses from LPSK;
- 11) The first victim's child was represented by his biological mother named Ms. AY in the amount of Rp. 19,663,000.00 (nineteen million six hundred and sixty-three thousand rupiah) with consideration of the restitution assessment as well as details and calculations of the victim's losses from LPSK;
- 12) Child Victim 3 in the amount of Rp. 15,991,377.00 (fifteen million nine hundred ninety-one thousand three hundred seventy-seven rupiah) with consideration of restitution assessment as well as details and calculation of the victim's losses from LPSK;

The Bandung High Court's decision amends the Bandung District Court's ruling. The amendments made by the Bandung High Court include:

- a. Criminal sanctions for the accused from life imprisonment to the death penalty
- b. Charging restitution which was originally by the Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia to be the responsibility of the Defendant
- c. Changing the spelling of the victim's child's full name to initials

The differences in the court decisions illustrate that there are still judges who are unable to correctly interpret how restitution should be applied.

The Second Case: In the widely discussed verdict in Bandung with the defendant Doni Muhammad Taufik alias Doni Salmanan, the defendant was declared legally and convincingly guilty of committing a crime "intentionally and without the right to spread false and misleading news resulting in consumer losses in electronic transactions", as regulated in Article 45A paragraph (1) in conjunction with Article 28 Paragraph (1) of the Republic of Indonesia Law Number 11 of 2008 concerning Information and Electronic Transactions, as amended and supplemented by Law of the Republic of Indonesia Number 19 of 2016 on amendments to Law of the Republic of Indonesia Number 11 of 2008 on Information and Electronic Transactions. He was sentenced to 4 years in prison and was released from the money laundering charges as stated in the verdict of the district court 576/Pid.Sus/2022/PN Blb Thursday, December 15, 2022. In the verdict, several confiscated assets were returned to the defendant, while others were confiscated by the state.

Against the decision of the district court, case number 576/Pid.Sus/2022/PN Blb, an appeal was filed. The appellate court, with case number 1/PID.SUS/2023/PT BDG dated Tuesday, February 21, 2023, annulled the district court's decision and retried the case. The verdict stated that the defendant was legally and convincingly proven to have committed the crime by intentionally and without the right to spread false and misleading news, resulting in consumer losses in electronic transactions and Money Laundering. As a result, the High Court increased the sentence from 4 years to 8 years. Additionally, the appeal decision ordered the confiscation of all the defendant's assets, which were to be turned over to the state.

From the chronology of the Doni Muhammad Taufik alias Doni

Salmanan case, it is clear that the criminal act committed by the defendant resulted in consumer losses, with material victims suffering as a result of the defendant's actions. Surprisingly, instead of the assets obtained from the defendant's criminal act being used to compensate the victims for their losses, they were confiscated by the State. The victims did not receive any restitution. This is highly inconsistent with the regulations surrounding restitution.

The Third Case, as a closing case, is one that went viral to the point that the Minister of Finance of the Republic of Indonesia, Mrs. Sri Mulyani, intervened in resolving it. The case involves the defendant Mario Dandy, son of Rafael Alun, a former employee of the Ministry of Finance. The decision of the South Jakarta District Court Number 297/Pid.B/2023/PN Jkt.Sel dated September 5, 2023, of which verdict reads: "Declaring that the Defendant Mario Dandy Satriyo alias Dandy has been proven legally and convincingly guilty of committing the Criminal Act of Serious Assault with prior planning" as regulated in Article 355 Paragraph (1) of the Criminal Code, and sentenced him to 12 years in prison.

The South Jakarta District Court's decision also requires the Defendant, Mario Dandy Satriyo alias Dandy, to pay restitution to the victim's child, Crystalino David Ozora alias Wareng, in the amount of Rp. 25,140,161,900,- (twenty-five billion one hundred forty million one hundred sixty-one thousand nine hundred rupiah). Uniquely, in the decision, the panel of judges at the South Jakarta District Court ordered that 1 (one) unit of a 2013 black Rubicon Wrangler 3.6 at Jeep LCHDTP No.Pol. B-2571-PBP, Frame No. 1C4HJWJG0DL597380, and Engine No. DL597380, belonging to AHMAD SAEFUDIN Address Gg. Jati Mamp Prapatan Rt.1/1 South Jakarta along with the keys and STNK, being sold in public auction. The proceeds from the sale are to be used to partially reduce part of the restitution to the victim's child, David.

Why is it unique? Because the District Court Judge took coercive measures by confiscating the defendant's assets and then auctioning them off, with the proceeds used to pay restitution to the victim. In his legal considerations, the judge cited Article 4 of Supreme Court Regulation Number 1 of 2022 as the legal basis for confiscating the assets as restitution payments to the victim. However, the regulation does not provide for coercive measures against the implementation of Restitution. The only provision for coercive measures regarding the fulfillment of restitution is outlined in Law Number 21 of 2007 on the Eradication of the Crime of Human Trafficking, specifically in Article 50 paragraph (3). However, this article only applies to the crime of human trafficking, rather than the crime of serious abuse committed by the defendant. If categorized, human trafficking is a special crime, while serious abuse as committed by the defendant is a general crime. Therefore, the coercive measures outlined in Article 50, paragraph (3) of Law 21 of 2007 cannot be applied to the defendant. Doesn't this violate the principle in criminal law known as *Nulla Poena Sine Lege* (no crime without law)?

Before going into the conclusion, the author will provide notes on the various applications of Restitution carried out by judges at the court level, including:

- a. Restitution is fundamentally defined as the responsibility of the perpetrator to compensate for the suffering experienced by the victim of a crime.
- b. Restitution is governed by several regulations, including Law Number 26 of 2000, which applies only to serious human rights violations; Law Number 21 of 2007, specific to human trafficking crimes; and Law Number 31 of 2014 and Supreme Court Regulation Number 1 of 2022, which can be applied to all crimes.
- c. The Bandung District Court Decision Number 898/Pid.Sus/2021/PN Bdg. Restitution reflects a misunderstanding of restitution, as it places the responsibility on the State in this case, the

Ministry of Women's Empowerment and Child Protection.

- d. Restitution was not implemented despite the material losses suffered by the victim, and the defendant's assets were instead confiscated as state property, as demonstrated in the High Court decision 1/PID.SUS/2023/PT Bdg.

Restitution is applied progressively, as defined in the decision of the South Jakarta District Court decision Number 297/Pid.B/2023/PN Jkt.Sel., where a conflict arises between justice and legal certainty. In this case, the judge tends to adhere to justice by enforcing Coercive Measure for Asset Confiscation for Restitution Payment. Although the defendant has the right to a legal effort in terms of contesting the judge's decision which involves Coercive Measures by confiscating the defendant's assets for auction and the proceeds of the auction for restitution payments, the judge's approach exemplifies a commitment to victim recovery. The author argues that it is essential to formally incorporate Coercive Measures for Restitution in cases of General Crime as a form of equitable substantive reform. This would ensure that criminal sanctions align with the values of Pancasila, promoting a more just application of the law.¹⁶

Conclusion

In conclusion, restitution is the offender's obligation to compensate for the suffering endured by the victim. Although important, the implementation of restitution varies depending on court rulings and existing regulations. Restitution can be an effective tool for enforcing restorative justice for offenders, victims, and the community to address issues related to criminal activity. Therefore, the regulations on restitution need to be revised, particularly regarding forced efforts to fulfill reparations. For restitution to be successfully implemented and provide

¹⁶ Anis Widyawati, Pujiono, Nur Rochaeti, Genjie Ompoy, Nurul Natasha Binti Muhammad Zaki, *Urgency of the Structur Reformation for Law in Execution of Criminal Sanctions*, *Lex Scientia Law Review* Vol 6 No 2 December 2022, <https://doi.org/10.15294/lesrev.v6i2.58131>

justice for crime victims, law enforcement officials especially prosecutors and judges need to have a deeper understanding of the concept.

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