
RESTITUTION RIGHT FOR VICTIMS OF SEXUAL VIOLENCE

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pujirahayu007@gmail.com^{1*}, adriano@gmail.com², budipramono@gmail.com³**Abstract**

The legal protection for victims of sexual violence has been addressed in statutory regulations, but its implementation remains inadequate. This is evident in the lack of competence and training among law enforcers in handling victims of sexual violence, as well as the absence of psychologists/psychiatrists who can provide assistance in explaining mental conditions. The objective of this study is to examine the legal safeguards available to victims of sexual assault crimes and evaluate the compensation options provided to these victims. This study was conducted utilizing a normative juridical research methodology, which specifically involves analyzing the implementation of legal laws or norms. This research employs both a statutory approach and a conceptual approach. The government has not adequately fulfilled its responsibilities in providing the necessary facilities and equipment to handle, protect, and support victims of sexual abuse. Statutory regulations have established compensation in the form of restitution, but the victim must still take initiative by submitting a request to secure the right to reparation. Restitution should be mandatory for the perpetrator/defendant to compensate the victim, irrespective of whether the victim initiates a request or not.

Keywords: Restitution, Sexual Violence, Crime

INTRODUCTION

Crimes today are not limited to offenses against life and property; moral and decency crimes are also increasingly prevalent. Crime or criminal acts represent a form of deviant behavior that is inherent in every society. This deviant behavior poses a tangible threat to the social norms that underpin societal order, creating both individual and social tensions and threatening the continuity of social order. Rena Yulia states: Children and women are particularly vulnerable to becoming victims of crime. Numerous studies and discussions have aimed to actualize, reconstruct, interpret, and empower the rights of children and women specifically. The rights of these groups have become focal points in discussions due to the various sensitive issues they face.

The Ministry of Women's Empowerment and Child Protection (PPPA) recorded 5,035 cases of violence from January 1, 2024, to March 31, 2024. Of these cases, women comprised 80.2% of the victims, the highest age group affected was 13-17 years old at 34.6%, and the highest status group was children at 64.1%. The most common type of violence experienced was sexual violence, with around 2,351 cases reported (Dworkin et al., 2021; Sadati, 2021). Cases of violence against women and children represent the tip of the iceberg, indicating that the actual number of cases may be more severe and complex than what is currently known.

Crimes such as sexual violence are social pathologies, not only legal issues but also social problems. These crimes have significant impacts not just on the perpetrators and victims but on society as a whole. It becomes even more distressing when the victims are minors, as children are the future of the nation, and experiencing sexual violence can severely hinder their normal growth and development. Victims of child sexual violence suffer from both physical and psychological trauma, causing high stress levels within families who often do not know how to report the incident or finance the victim's physical and mental treatment (Rosmalinda et al., 2021; Wardhani, 2023). Notably, health costs for victims of sexual violence are not covered by the National Health Insurance (BPJS) as stipulated in Article 52 of Presidential Regulation No. 82 of 2018 on Health Insurance.

Sexual violence remains a pervasive and deeply troubling issue worldwide, causing profound and long-lasting physical, psychological, and social harm to victims. Despite significant legal advancements aimed at addressing this form of violence, the pursuit of justice and adequate compensation for victims continues to be fraught with challenges. Restitution, as a legal remedy, seeks to provide victims with compensation for the losses and suffering incurred due to the criminal actions of perpetrators (De Brouwer, 2007; Utami & Prabowo, 2020a; Valenti, 2021). This concept is rooted in the broader framework of restorative justice, which aims to restore victims to their pre-crime status as much as possible and acknowledge their suffering.

In Indonesia, the legal framework surrounding restitution for victims of sexual violence has been progressively evolving. The enactment of Law Number 48 of 2009 concerning Judicial Power and the more recent Law Number 12 of 2022 concerning Sexual Violence Crimes underscore the nation's commitment to ensuring justice for victims (Khatami et al., 2023a; Kusdarini et al., 2022; Syahrin & Din, 2020). These laws stipulate that restitution should cover various forms of losses, including loss of income, medical and psychological treatment costs, and other direct consequences of the crime. However, the implementation of these provisions often encounters practical hurdles, leading to disparities in the restitution awarded to victims.

The complexities inherent in adjudicating cases of sexual violence necessitate a thorough examination of how restitution is determined and enforced. Judges, in their application of legal principles such as "ratio decidendi," must balance statutory requirements with sociological, philosophical, and moral considerations to ensure fair and just outcomes.

The discretion afforded to judges in interpreting these laws can result in varied restitution outcomes, highlighting the need for clearer guidelines and comprehensive support mechanisms for victims (Mahmud, 2020)

Furthermore, the procedural aspects of claiming restitution, as outlined in Government Regulation Number 43 of 2017 on the Implementation of Restitution for Child Victims of Crime, illustrate the administrative challenges victims face. The regulation places the responsibility of determining restitution amounts on the Witness and Victim Protection Agency (LPSK), often leading to delays and inconsistencies. Additionally, the legal provisions for enforcing restitution, particularly in cases where perpetrators are unable or unwilling to pay, necessitate a more robust and victim-centered approach.

The position of sexual violence victims in the criminal justice system as seekers of justice is often neglected, as the focus of positive law is on the perpetrators, including rehabilitation. This treatment is unjust to the victims, who are often merely seen as tools for evidence, with their human rights frequently overlooked. Victims of sexual violence have the right to justice and protection, as stated in Article 28D(1) of the 1945 Constitution: "Every person has the right to recognition, guarantees, protection, and fair legal certainty and equal treatment before the law." Protection for victims includes medical assistance, psychosocial, and psychological rehabilitation, which they must apply for; otherwise, they do not receive the necessary support despite their suffering (Organization, 2003)

Muladi emphasizes that in addressing victim protection, the essence of the victim's suffering, both material and psychological, must be considered. Compensation for crimes in Indonesia's criminal justice system is divided into restitution and compensation. Restitution is claimed by the victim through a court decision and paid by the perpetrator, while compensation is claimed by the victim and paid by the state or society. Compensation is only available for victims of severe human rights violations and terrorism.

Restitution has significant benefits for victims of sexual violence. Sexual violence can cause severe psychological impacts, including silence, trauma, low self-esteem, and disturbing memories. Attention to victim recovery and punishment for offenders should be balanced with efforts to prevent recurrence. The trauma and stress caused can lead victims to severe depression, other illnesses, and even suicide.

The Witness and Victim Protection Agency (LPSK) was founded on August 8, 2008, with the purpose of offering protection and aid to witnesses and victims, as outlined in Law No. 13 of 2006 on the Protection of Witnesses and Victims. One type of support provided by LPSK is compensation for victims. The regulation of restitution is governed by Law No. 31 of 2014, which modifies Law No. 13 of 2006. According to Article 7A(1), individuals who have been victimized by a crime have the right to receive compensation for financial and income losses, as well as for the direct suffering caused by the crime, and the expenses related to medical and psychiatric treatment. Nevertheless, Article 7A(2) effectively restricts the entitlement of victims to get compensation by mandating a decision from LPSK. Restitution is defined as compensation provided by the perpetrator or a third party to the victim or their family, according to Government Regulation No. 44 of 2008, Government Regulation No. 43 of 2017, and Supreme Court Regulation No. 1 of 2022. The passage of Law No. 12 of 2022 on Sexual Violence Crimes (UU TPKS) is a result of the government's heightened focus on sexual violence victims. This law particularly addresses and controls sexual violence crimes and the corresponding penalties. This legislation instills optimism for victims of sexual violence, specifically with the issue of restitution. This essay seeks to examine the process of providing compensation to victims of sexual violence crimes in light of the aforementioned concerns.

RESEARCH METHOD

This research employs a normative juridical method that focuses on the application of rules and norms in positive law through literature study. This method involves statutory and conceptual approaches to analyze the consistency and relevance of legislation and the underlying legal concepts. The statutory approach is used to examine and evaluate deficiencies in legal norms, while the conceptual approach analyzes legal issues based on existing legal concepts and values (Adiyanta, 2019; Marzuki, 2021; Syahrudin, 2022). The research employs primary legal resources, including laws and government regulations, as well as secondary legal resources, such as court rulings and pertinent literature. Legal materials are acquired by a comprehensive examination of several literary sources and legal documents. The analysis of legal materials is performed through a normative approach, which involves evaluating and discussing legal documents using legal definitions, norms, theories, and doctrines. This process aims to arrive at findings that are pertinent to the topics under study.

RESULT AND DISCUSSION

Implementation of Restitution for Perpetrators of Sexual Violence Crimes

The enforcement of criminal law serves as a form of protection for society, safeguarding individuals from becoming victims of crime. As part of this protection, the criminal justice process can include various forms of victim protection. One such form is the provision of restitution. Restitution is a form of compensation given to victims of crimes such as rape, aiming to restore the victim to their original state (*restitutio in integrum*), despite acknowledging that a complete return to the original state is often impossible (Utami & Prabowo, 2020b). Restitution seeks to restore the victim's legal rights and social status. This concept of restitution is widely developed and applied in many countries to compensate victims for their suffering due to criminal acts. Victims or their families are entitled to fair and adequate compensation from the perpetrator or a responsible third party. This compensation includes the right to the return of property, redress for damage and losses, compensation for the consequences of the crime, and services to restore the victim's rights.

Restitution involves payments imposed on the perpetrator by a court ruling with permanent legal force, covering both material and immaterial losses suffered by the victim or their heirs. This financial responsibility is directed at the perpetrator to address the totality of the victim's losses. The amount of restitution often depends on the social status of the perpetrator and the victim, with wealthier perpetrators expected to pay higher restitution amounts to ensure a deterrent effect and prevent repeat offenses (Khatami et al., 2023b; Kurniawan, 2023). Various forms of legal protection for victims include compensation or restitution, with five main objectives according to Getaway:

- a. Alleviating the victim's suffering;
- b. Serving as a mitigating factor for the perpetrator's punishment;
- c. Aiding the rehabilitation of the convicted individual;
- d. Facilitating the judicial process;
- e. Reducing the threat or possibility of societal retribution.

The legal basis for restitution in Indonesia is found in Articles 98 to 101 of Law No. 8 of 1981 on the Criminal Procedure Code, which grants victims the right to claim compensation by merging their civil claim with the criminal case. Article 98(1) states that if an act underlying a criminal charge causes loss to another person, the presiding judge may, at the person's request, combine the civil claim with the criminal case, provided the request is made before the public prosecutor presents the criminal charges.

However, there are notable shortcomings in the Criminal Procedure Code regarding compensation. Firstly, the process for filing compensation claims is complex, as it requires combining the civil claim with the primary criminal case examination. Additionally, victims

must be proactive in ensuring their compensation claims are included in the prosecution's demands, often resulting in a time-consuming and costly process for the victim. Secondly, Article 99(1) limits compensation to actual expenses incurred by the victim, excluding immaterial damages, which must be pursued through a separate civil lawsuit.

According to Wirjono Prodjodikoro's retributive theory in criminal law, punitive measures against perpetrators do not adequately address the victim's suffering and losses. Andi Hamzah argues that the criminal procedure law often focuses on the suspect's human rights, neglecting the rights of victims, who are not actively involved in the investigation and trial process, thereby losing the opportunity to advocate for their rights and seek redress for their losses.

Dikdik M. Arief asserts that the misconception that punishing the perpetrator alone provides justice for the victim leads to the erroneous belief that victims' demands for compensation are excessive. Punishment alone does not correlate significantly with victim protection, as it fails to restore the violated rights and provide comprehensive recovery for the victim.

Providing restitution and compensation aims to protect victims, helping them and their families recover from the trauma of violence. Material losses may include property loss, basic transportation costs, legal fees, or other expenses related to the legal process, while immaterial losses encompass suffering due to torture, exploitation, stigmatization, and psychological trauma. If the perpetrator cannot fulfill their restitution obligations, the state assumes responsibility, aligning with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which stipulates that the state should provide financial compensation to victims suffering severe physical or mental harm and to the dependents of deceased or incapacitated victims.

In Indonesia, Law No. 31 of 2014 on the Protection of Witnesses and Victims stipulates that victims of certain crimes are entitled to restitution for losses related to property, suffering directly linked to the crime, and medical or psychological treatment costs, with the Indonesian Witness and Victim Protection Agency (LPSK) determining eligibility. However, this law still requires active pursuit of restitution by the victim or their family through LPSK, which can request prosecutors to include restitution in their demands before a case is decided or apply for court approval if the case has been decided.

Ideally, the law should protect both society and individuals, including crime victims who have suffered personal losses. The criminal justice system should ensure victims' needs are met, not only seeking the punishment of perpetrators but also advocating for victims' rights to compensation for their losses (Mahfud et al., 2021; Organization, 2003)

Despite the provisions of Law No. 31 of 2014, there are limitations, such as specifying which crimes qualify for restitution, potentially restricting access for all crime victims. The goal of LPSK to protect witnesses and victims should encompass all crime victims without such limitations. Government Regulation No. 44 of 2008 and its amendments also govern restitution, allowing victims or their representatives to apply for restitution, either before or after a court decision with permanent legal force.

Law No. 35 of 2014 on Child Protection mandates restitution for child victims of certain crimes, emphasizing the importance of protection and recovery for child victims. Government Regulation No. 43 of 2017 further details restitution for child victims, including compensation for property loss, suffering, and medical or psychological treatment costs, applicable before a court decision through the investigation and prosecution stages.

Law No. 12 of 2022 on Sexual Violence Crimes explicitly states that victims of sexual violence are entitled to restitution and recovery services, with investigators, prosecutors, and judges required to inform victims of their restitution rights and ensure these are addressed through the legal process. Restitution payments must be made within 30 days of receiving the

court decision or order, and the process should be straightforward and prompt to ensure victims' needs are met, including addressing both material and psychological damages.

The Role of Judges in Granting Restitution to Victims of Sexual Violence Crimes

The judiciary is a subsystem of criminal justice regulated by Law No. 48 of 2009 on Judicial Power. Judicial power is an independent state authority to administer justice based on law and justice, as mandated by Pancasila and the 1945 Constitution. This authority must be exercised to uphold justice fairly for all parties involved. Judges' roles in court proceedings are generally passive, particularly if no restitution request is made by the victim through the public prosecutor (Koss et al., 2003). Consequently, judges may not consider the victim's restitution rights without such a request. However, when a restitution request is submitted, judges must carefully consider it to ensure the victim's best interests are served.

Judges are obligated to deliver fair judgments, considering all aspects to find equitable solutions. Law No. 48 of 2009 on Judicial Power requires judges to examine, adjudicate, and decide cases fairly and independently, without external influence. Judges are also expected to innovate and interpret the law to address cases comprehensively. A judgment includes the judge's considerations, forming the basis for the decision. Legal reasoning involves normative thinking, applying legal principles to the specific case. Legal argumentation aims to present clear and rational arguments, guided by criteria for proper legal reasoning (Perelman, 2012; Prakken, 2013).

Judicial reasoning for judges involves deriving legal opinions from concrete cases, referring to the positive legal system. This reasoning process includes both heuristic methods to identify solutions and deductive logic to achieve correct legal conclusions.

Based on the provisions of Article 50 of the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power, the legal considerations of a decision must include:

- 1) Reasons related to the applied law and supporting arguments.
- 2) The legal basis related to the applied law and supporting arguments.
- 3) Articles from relevant legislation or unwritten legal sources used as the basis for adjudication.
- 4) Reasons based on unwritten law, which may include sociological, philosophical, or moral justice arguments.
- 5) The legal reasons and basis must be accurate and correct (Article 53, paragraph (2) of the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power).

In this context, differences arise when judges consider the law in deciding a case. When judges base their decisions on "ratio decidendi," they will consider all aspects related to the disputed matter and then seek relevant legislation as the legal basis for the decision. The judge's considerations must be based on a clear motivation to uphold the law and provide justice to the parties involved. From this, a legal analysis can be made that when a judge uses their ratio decidendi to determine the amount of restitution in cases of sexual violence against children, they will refer to Government Regulation of the Republic of Indonesia Number 43 of 2017 concerning the Implementation of Restitution for Children Who Are Victims of Crime as the main legal basis for analyzing and deciding the issue.

There exists a legal vacuum regarding the determination of restitution amounts in cases of sexual crimes against children. Government Regulation of the Republic of Indonesia Number 43 of 2017 concerning the Implementation of Restitution for Children Who Are Victims of Crime only outlines the procedure for submitting restitution claims, which is fully handed over to the Witness and Victim Protection Agency (LPSK), considering the losses suffered by the victim. However, the determination of the restitution amount is submitted to the court once the case file is complete, and ultimately, the judge's ratio decidendi either grants or denies the claim.

According to Article 16, paragraph (1) of Law Number 12 of 2022 concerning the Crime of Sexual Violence, "In addition to imprisonment, fines, or other penalties according to statutory provisions, judges must determine the amount of restitution for sexual crimes punishable by imprisonment of 4 (four) years or more." The judge's consideration, based on legislation as a normative basis regulating the restitution amount received by the victim as a form of fulfilling the victim's rights, is not clearly regulated in the legislation. However, judges also have the prerogative right in their legal considerations by using non-legal considerations. This means judges will consider several aspects, including the condition of the child victim of sexual crime and the impact of the perpetrator's actions on the victim, especially if the victim is a child.

Such considerations should be taken into account by judges in determining the restitution amount received by the victim. Essentially, the role of the judge's *ratio decidendi* in fulfilling the restitution rights of victims is crucial to achieve justice for victims of sexual violence. If the perpetrator cannot fulfill the restitution claim, the judge must use a progressive and humanistic legal approach in deciding the length of additional punishment for the perpetrator. This *ratio decidendi* will become jurisprudence for similar cases.

Article 30, paragraph (2) of the Law of the Republic of Indonesia Number 12 of 2022 concerning the Crime of Sexual Violence states that restitution as referred to in paragraph (1) includes:

- 1) Compensation for loss of wealth or income,
- 2) Compensation for suffering directly related to the crime of sexual violence,
- 3) Reimbursement of medical and/or psychological treatment costs, and/or
- 4) Compensation for other losses suffered by the victim as a result of the crime of sexual violence.

With this provision, perpetrators of sexual crimes punishable by imprisonment of 4 (four) years or more will be obliged by the judge to provide restitution. If the perpetrator of the sexual crime is under 18 years old or a child, Article 37 of the Law of the Republic of Indonesia Number 12 of 2022 concerning the Crime of Sexual Violence states that "in the case of a child perpetrator, restitution is provided by the parents or guardians."

The problem arises when the perpetrator refuses to pay restitution. Article 33, paragraph (5) of Law Number 12 of 2022 concerning the Crime of Sexual Violence states that "The judge in the decision orders the prosecutor to auction the restitution guarantee seizure if restitution payment is not made within 30 (thirty) days after the court decision has permanent legal force." Furthermore, paragraph (7) states, "If the convicted person's confiscated assets are insufficient to cover the restitution costs, the convicted person is subjected to substitute imprisonment not exceeding the main penalty." Victims' rights and obligations can be obtained if they (the victims) have sufficient legal awareness. This must also be supported by government socialization efforts.

CONCLUSION

Legislation has established regulations for compensating victims through restitution. However, in reality, victims are still having to actively apply in order to exercise their rights to compensation. Restitution should be mandatory for the perpetrator/defendant to compensate the victim, regardless of whether the victim initiates the process or not. The author suggests amending Article 30, paragraph (1) of the Indonesian Law Number 12 of 2022 about Sexual Violence Crimes to include the provision that victims of such crimes are entitled to obtain Restitution and Recovery services. The term "right" should be substituted with "obligation".

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