

Research Article

The Urgency of Enforcing Retitution Obligations for Victims of Sexual Violence in the Indonesian Criminal Legal System

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ORCIDBayu Novrian: <https://orcid.org/0009-0001-2412-9621>**Abstract.**

Restitution is a form of restoration of victims' rights that is starting to receive serious attention in the Indonesian criminal law system, especially in cases of sexual violence. So far, legal attention has focused more on perpetrators of crimes, while the restoration of victims' rights has not been fully accommodated optimally. This research aims to analyze the procedures for implementing restitution and its urgency for victims of sexual violence based on Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS). The research method used is normative juridical with a statutory approach and legal literature as the main data sources. The research results show that the TPKS Law clearly stipulates the obligation of restitution as part of criminal decisions, both against individuals and corporations. Restitution includes compensation for the victim's material and immaterial losses, as well as medical and psychological treatment costs. The security confiscation and asset auction mechanisms are regulated to ensure legal certainty regarding the implementation of restitution. If the perpetrator is unable to pay, the state is obliged to provide compensation according to the verdict. However, in practice, law enforcement officials often ignore the inclusion of restitution in demands or decisions. Fulfilling restitution in the future requires the active role of prosecutors in demanding restitution, as well as full support from the justice system to make restitution an inseparable part of substantive justice for victims of sexual violence.

Keywords: restitution, sexual, victim, violence

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1. Introduction

Crime victims are basically the parties who suffer the most in a criminal act. The protection of crime victims in the national legal system does not appear to have received serious attention, and is not as much protection as is given to criminals. This can be seen from the lack of regulation of the rights of crime victims in national legislation. The imbalance between protection for crime victims and protection for perpetrators is a deviation from Article 27 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia which reads; All citizens in the same position under the law and government



are obliged to uphold the law and government without exception (Ni Putu Rai Yulianti, 2015).”

Crime victims are the parties who experience the most real and direct suffering as a result of a criminal act. This suffering does not only include physical or material losses, but also immaterial ones such as psychological trauma, emotional disturbances, and loss of sense of security. Unfortunately, the criminal justice system focuses more attention on the perpetrator than on the victim. Perpetrators of crimes are given various legal protections such as the presumption of innocence, the right to legal aid, and the right to humane treatment. On the contrary, victims are often sidelined, and are not even actively involved in the justice process involving the suffering they experience (Mahrus Ali dan Ari Wibowo. 2018).

Imposing sanctions against the perpetrator does not automatically bring recovery to the victim. The state tends to focus on aspects of deterring and rehabilitating criminals, but ignores its responsibility for the suffering of victims. As a result, the victim must bear the burden of suffering caused by the criminal act himself. The losses experienced by victims are not only in the form of loss of property or income, but also emotional stress, fear and loss of trust in the justice system. This imbalance shows the existence of structural inequality in law enforcement, where perpetrators actually receive more rights and protection than victims (Leony Sondang Suryani & Ahmad Khozi, 2023).

According to Muladi, the importance of legal protection for victims can be explained through two argumentative approaches, namely social contracts and social solidarity. The social contract argument states that the state has the sole authority to respond to crime and is therefore obliged to provide protection to victims. With a monopoly on legal countermeasures against crime, the state should not only punish perpetrators, but also ensure victims receive adequate redress for the harm they suffer. This is a form of state responsibility that must not be ignored (Siswanto Sunarso, 2022).

Social solidarity as another basis emphasizes that society represented by the state has a collective responsibility to help individuals who are disadvantaged or in difficult situations. The state must be present as a protector and facilitator to fulfill victims' needs, either through legal mechanisms, psychological assistance or social recovery. These efforts reflect the state's role as a guardian of justice who not only punishes but also restores social balance disturbed by criminal acts.

Sexual violence is an issue that should ideally receive prompt and comprehensive treatment in the legal system, in order to provide justice and adequate protection for

victims. Ideally, the criminal justice system in Indonesia should be able to accommodate victims' needs through restitution, which includes not only material compensation but also immaterial compensation, such as psychological trauma and loss of honor. However, in reality, many victims of sexual violence do not receive adequate restitution or do not even receive restitution at all. This is caused by various factors, including a lack of understanding of the law by victims, complicated legal processes, and limitations in implementing policies related to restitution (Vina Mustika, 2024).

Restitution is compensation given to victims or their families by perpetrators or third parties, which can be in the form of returning property, paying compensation for loss or suffering, or reimbursement of costs for certain actions) and rehabilitation (efforts to restore victims), as regulated in Article 1 number 11 of Law Number 31 of 2014 concerning Protection of Witnesses and Victims. Apart from that, through Government Regulation Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning Providing Compensation, Restitution and assistance to Witnesses and Victims as one of the supporting regulations to strengthen efforts to protect witnesses and fulfill victims' rights. Restitution has also been regulated in Supreme Court Regulation (PERMA) Number 1 of 2022, which is then regulated more specifically in Law Number 12 of 2022 concerning Crimes of Sexual Violence (UU TPKS).

Implementing restitution can have great benefits for victims of sexual violence crimes. As we know, sexual violence can have various negative impacts on victims, including psychological impacts such as victims tending to remain silent, traumatized, low self-esteem, and the emergence of disturbing memories. Attention to the recovery of victims of sexual violence and the punishment of perpetrators needs to be commensurate with our attention to preventing recurrence. The actions received by the victim can change their life drastically with various impacts experienced, including stress that leads to depression, trauma, and other illnesses until the victim can end their own life (Nugroho Ahadi, et. al., 2023).

The aim of this research is to analyze the procedures for applying for restitution for victims of criminal acts of sexual violence in the TPKS Law and to analyze the urgency of restitution for victims of sexual violence in the Indonesian criminal law system.

2. Methods

This research is normative or normative juridical research, and is based on references to laws, principles, rules and doctrines. This research was carried out by determining the sources of primary and secondary library materials. This research is called instructional or library research because this research focuses on library sources.

3. Results and Discussion

3.1. Procedures for Implementing Restitution Applications for Victims of Crimes of Sexual Violence in the TPKS Law

The concepts of compensation known in Indonesia include restitution and compensation. Compensation is a form of direct protection for victims, but in practice both restitution and compensation as a form of compensation are not yet known and understood by law enforcement officials and Indonesian society as a whole. The difference between restitution and compensation can be seen from two things. First, compensation is a claim for fulfillment of compensation made by the victim through an application that is paid by the community or the state. Compensation does not require punishment of the perpetrator of the crime. Second, in restitution the claim for compensation is made through a court decision and paid by the perpetrator of the crime (Maya Indah, 2014).

The implementation of restitution must be in accordance with the principle of Restoration in its Original Condition (*restitutio in integrum*), this is an effort that can be made so that crime victims must be returned to their original condition before the crime occurred. Although it is based on the fact that it is impossible for victims of criminal acts to return to the conditions they were in before experiencing the losses they suffered. This principle also emphasizes that the form of recovery to be carried out for victims must achieve completeness in recovery and cover various aspects resulting from the crime. Through applying for restitution, victims are expected to be able to restore their freedom, legal rights, social status, family life and citizenship, restore their jobs and recover their assets (Kamil Ihsan, et. al., 2023).

Article 16 paragraph (1) of the TPKS Law states that apart from imprisonment, fines, or other crimes according to the provisions of the Law, the Judge is obliged to determine the amount of restitution for criminal acts of sexual violence which are punishable by imprisonment of 4 (four) years or more. Article 18 paragraph (3) of the TPKS Law also

requires judges to determine restitution to corporations as perpetrators of sexual violence crimes in addition to fines as the main crime. Restitution in the TPKS Law includes: a. compensation for loss of wealth or income, b. compensation for losses incurred as a result of suffering directly related to the crime of sexual violence, c. reimbursement for medical and/or psychological treatment costs; and/or d. compensation for other losses suffered by the Victim as a result of the Crime of Sexual Violence. With the existence of these two articles, perpetrators of criminal acts of sexual violence who are threatened with imprisonment of 4 (four) years or more as well as corporations who commit criminal acts of sexual violence will be burdened by the Judge with the obligation to make restitution (M. Chaerul Risal, 2022).

The TPKS Law brings to light the weaknesses of restitution so far, namely the problems that arise when criminals refuse to pay restitution. Article 33 paragraph (5) of the TPKS Law states that the Judge in his decision orders the prosecutor to auction off confiscated Restitution guarantees as long as Restitution payments are not made within 30 (thirty) days after the court decision which has obtained permanent legal force. Furthermore, article 35 paragraph (1) of the TPKS Law adds that in the event that the convict's confiscated assets are not sufficient to cover the cost of restitution as intended in article 33 paragraph 71, the state shall provide compensation for the amount of underpaid restitution to the victim in accordance with the court decision. In the formulation of these two articles, it is clear that the assets of the perpetrator of a criminal act can be confiscated as collateral so that these assets cannot be transferred to other people until the decision is legally binding and if the confiscated assets are not sufficient then the state will provide compensation for the losses suffered by victims of criminal acts of sexual violence.

The TPKS Law also does not rule out the possibility of restitution when the perpetrator and victim of a crime of sexual violence reconcile so that the case at the investigation and prosecution level is stopped. Article 36 paragraph (1) of the TPKS Law regulates that for cases that are set aside in the public interest or stopped by law, for confiscated restitution or restitution that is entrusted in the form of goods, a determination is requested from the head of the district court for an auction. The auction results are then based on article 36 paragraph (6) of the TPKS Law to be used for restitution payments taking into account the LPSK assessment (Bima Mandala Putra dan Selamat Widodo, 2024).

Several principles of criminal law underlie the importance of restitution for victims of sexual violence. The principle of justice demands that apart from the perpetrator being punished, the victim must also receive restoration of their rights. Humanitarian principles

encourage respect for the dignity of victims by providing compensation for the suffering they suffer. The principle of legal certainty is enforced through clear regulations in the law regarding the restitution process. In addition, the principle of equality before the law guarantees that victims are treated equally in obtaining their rights. With these principles, restitution is seen as an integral part of the criminal objective of protecting victims, in line with the concept of victim recovery in restorative justice.

The aim of protecting victims of sexual violence in the national legal system is reflected in the TPKS Law and related regulations. The TPKS Law states that one of its objectives is to handle, protect and restore victims' rights. More specifically, victims have the right to receive:

- a. Guarantee of recovery of the victim's physical, psychological and social condition;
- b. Fulfillment of the rights to substantive justice for victims;
- c. Legal protection that prevents repeated violence;
- d. Access to recovery through mechanisms such as restitution
- e. Restitution itself is the primary means of achieving these goals, as it directly compensates victims for their losses. With restitution, it is hoped that a safer environment will be created (free from sexual violence), and victims will receive appropriate justice.

3.2. The Urgency of Restitution for Victims of Sexual Violence in the Indonesian Criminal Law System

The Unitary State of the Republic of Indonesia upholds the rule of law which is enshrined in the foundation of the Indonesian nation's constitution, as a country that adheres to the welfare state. The state should enter people's lives in order to provide legal protection and legal certainty for its citizens. The concept of the rule of law is to protect the human rights of its people, especially protecting rights against crimes, including providing legal protection for victims of sexual violence. Legal Protection is a legal action in guaranteeing and protecting the rights of every human being with the existence of laws that regulate prohibitions, threats and criminal sanctions, making the law able to move to the forefront of society to live safely and comfortably in carrying out their daily activities (Muchamad Taufiq, 2024).

Law Number 12 of 2022 concerning Crimes of Sexual Violence (UU TPKS) firmly stipulates that perpetrators of sexual violence have a legal obligation to pay restitution to the victim. This provision is a step forward in legal protection for victims, because

it places restitution not as a form of voluntary empathy, but as a form of accountability that has binding legal force. Restitution no longer depends on the good faith of the perpetrator, but is part of the obligations that must be fulfilled as part of the criminal decision handed down by the court.

Restitution in Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence is a form of regulation that provides protection to victims of criminal acts where victims of criminal acts will almost certainly receive restitution from the perpetrator of the criminal act, either through a judge's decision or through mediation between the perpetrator and the victim of the criminal act which is carried out in the form of confiscation of restitution or if the perpetrator of the criminal act of sexual violence cannot pay restitution then this obligation will be borne by the state in the form of compensation.

This strict provision regarding restitution is a turning point in the criminal justice system's approach to victims of sexual crimes, who previously were often ignored or marginalized in the legal process. The court or law enforcement apparatus not only plays the role of imposing criminal sentences, but must also actively calculate, decide and enforce restitution obligations with the support of available legal mechanisms. This enforcement includes the confiscation of the perpetrator's assets as collateral for restitution payments which can be auctioned if the perpetrator does not fulfill his obligations in accordance with Article 33 of the TPKS Law.

The challenges in implementing restitution obligations are certainly not small. In practice, law enforcement officials, including investigators, prosecutors and judges, often ignore or do not include the restitution component explicitly in their demands or decisions. The reasons include the lack of awareness or understanding of the urgency of restitution as a victim's right which is equivalent to punishment for the perpetrator. In fact, the existence of restitution norms in the TPKS Law is strong enough to become the basis for active action by legal authorities to guarantee real recovery for victims.

Mechanisms such as confiscation of collateral assets and provisions regarding the auction of evidence when the perpetrator is unable to pay, are concrete forms of legal guarantees for the realization of restitution. This mechanism shows that the state has thought systemically and structurally to guarantee recovery for victims, not only in the aspect of symbolic justice but also in material recovery. The state, through its apparatus, has the responsibility to ensure that the right to restitution is not only stated in the text of the law, but is actually implemented in the field as part of substantive justice (Jefferson Hakim, et. al., 2023).

Restitution is an instrument to stop the chain of suffering experienced by victims of sexual violence. By providing compensation for the losses experienced, both material and immaterial, victims have a greater opportunity to recover psychologically, economically and socially. This also reflects respect for human dignity as the core objective of criminal law itself. Fulfilling the right to restitution is not only a matter of individual justice, but also shows the extent to which the criminal law system is able to transform towards a just victim protection paradigm. In the future, law enforcement officials are expected to not only focus on the aspect of punishing perpetrators, but also simultaneously fight for the recovery of victims through the implementation of maximum restitution.

Restitution is often not the main focus because the authorities' attention tends to focus solely on the aspect of punishing the perpetrator. This is of course contrary to the spirit of victim protection promoted by the TPKS Law. The awareness of law enforcement officials, especially prosecutors, to include restitution in demand letters is key in bridging the gap between norm formulation and substantive justice. By submitting a demand for restitution, the prosecutor is not only demanding imprisonment or a fine, but also shows a commitment to holistic recovery of the victim, including the psychological, medical or economic losses experienced.

This action requires competence and adequate understanding of the mechanism for calculating losses and legal procedures for restitution. In many cases of sexual violence, victims do not have the capacity or courage to submit requests for restitution themselves. Therefore, prosecutors as representatives of the state must initiate and voice demands for restitution in the prosecution process. The TPKS Law also opens up space for the court to determine restitution even though a request has not been submitted by the victim, as long as real losses are found. This provision must be utilized optimally as a strong legal basis for prioritizing victim recovery.

4. Conclusion

Restitution in the context of criminal acts of sexual violence as regulated in Law no. 12 of 2022 is a progressive step in the Indonesian legal system which places victim recovery as an integral part of the law enforcement process. Restitution is no longer a form of mercy or an optional extra, but rather a legal obligation that must be fulfilled by the perpetrator, and if the perpetrator is unable to pay, the state is obliged to be present to compensate the victim's losses. Legal mechanisms such as asset confiscation, collateral auctions, and state compensation, show that protection for victims has been

structurally designed. However, implementation challenges remain, especially related to the low awareness of law enforcement officials to include restitution in demands or decisions. Fulfilling restitution in the future requires the active role of prosecutors in demanding restitution, as well as full support from the justice system to make restitution an inseparable part of substantive justice for victims of sexual violence.

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