

Development of a Restitution Model Based on Justice and Legal Certainty for Crime Victims in Indonesia

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Abstract

This research aims not only to explore the mechanisms of restitution implementation, the assessment benchmarks for determining the amount and form of restitution, and the execution of restitution decisions but also to devise a comprehensive model ensuring fair and legally certain restitution for crime victims. Through qualitative empirical research and employing legal, conceptual, and comparative law approaches, it has been identified that the restitution mechanism has faced issues from its inception, both in terms of regulation and implementation, resulting in failures in restitution claims. Furthermore, the benchmarks for assessing restitution have accumulated future losses for victims without being action-oriented. Numerous failures in the execution of restitution decisions have also been uncovered. Therefore, it is recommended to develop a restitution model based on justice and legal certainty. Among these recommendations are: eliminating limitations on victim types for restitution claims, establishing a mechanism that refers to diversion requests to compel law enforcement agencies to pursue restitution, developing restitution in actionable forms, seizing the perpetrator's assets from the investigation stage, executing restitution without waiting for inkraht, adjusting subsidiary sanctions, implementing installment payments, revoking the convicted individual's rights, and integrating a restitution and compensation scheme through the development of a victim assistance fund. Additionally, the establishment of oversight for the implementation of restitution is proposed.

Keywords: Model, Restitution, Crime Victims, Justice, Legal Certainty

Introduction

The interpretation of restitution as the right of victims to compensation from perpetrators of crimes (Anderson, 2017) appears to necessitate a stringent

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understanding if restitution is considered a part of the perpetrator's obligation. Artificially, restitution can elevate the expectations of victims, where the losses suffered might be recuperated. Furthermore, the evolution of restitution extends beyond the restoration of unlawfully acquired economic damages from the victims; it also encompasses recompense for physical, psychological, and emotional injuries (Lollar, 2013). If aligned consistently with the philosophical direction of restitution as an effort for victim recovery and the accountability of the perpetrator (Durkin, 2021), restitution ought to be mandatory and payable by the perpetrator. However, in practice, the criminal justice system overlooks the position of the victim as the suffering party (Dube, 2018). The position of the Public Prosecutor as the representation of the state's presence and the advocate for the victim's interests, in reality, cannot be relied upon (Wijaya, 2021), as the orientation remains fixated on proving the perpetrator's guilt. It seems as if the submission of restitution is entirely attached to the sole desire of the victim and stands as a separate component from the responsibilities of law enforcement authorities.

The presence of various legislative regulations governing restitution seems to have not yet provided a concrete solution. Acts such as the Human Rights Court Act of 2000, the Anti-Terrorism Act of 2003 later revised in 2018, the Witness and Victim Protection Act of 2006 revised in 2014, the Anti-Trafficking in Persons Act of 2007, Government Regulation No. 43 of 2017 concerning Restitution for Child Victims of Crimes, and Government Regulation No. 7 of 2018 subsequently revised in 2020, have not yielded a definitive resolution (Ali et al., 2022).

Despite restitution claims being submitted, numerous failures in restitution payments occur due to perpetrators' inability (Capers, 2020), thereby failing to provide both justice and legal certainty for the victims. Even the existence of Supreme Court Regulation No. 1 of 2022 and the Sexual Violence Law mandating investigators, prosecutors, and judges to inform victims of their restitution rights, in reality, does not significantly stimulate the submission of restitution claims in Indonesia.

In accordance with the data from the Indonesian Central Bureau of Statistics, the statistical figures for criminal activity in Indonesia over a five-year period from 2018 to 2022 totaled 1,128,988 cases (Badan Pusat Statistik Indonesia, 2023). However, the number of victims facilitated for restitution amounted to only 4,578 individuals (Lembaga Perlindungan Saksi dan Korban, 2022). It is important to note that the actual extent of criminality is often unknown, constituting what is commonly referred to as the "dark number" or unreported and unknown aspects of criminal activity (Asiama & Zhong, 2022). This obscured picture underscores that there exists a considerably larger realm of unenforced justice compared to that which is enforced (Laufer & Hughes, 2020). The aforementioned crime figures

represent only recorded incidents; in reality, the number of victims seeking justice could be significantly higher. This directly indicates that over the past five years, the number of victims seeking restitution is disproportionately lower compared to the recorded statistical figures of criminal activity, let alone the actuality of the situation.

This indicates that restitution entails a complex set of issues that cannot solely be measured by regulatory weaknesses. This research aims to explore various aspects of regulatory issues, the implementation of restitution, and viable solutions. The first section will delve into the mechanisms of restitution implementation an essential aspect as it serves as a benchmark for the success of restitution claims. The second section will explore the criteria for assessing the amount and form of restitution, thereby determining the extent to which the needs of victims can be justly addressed. The third section focuses on the execution of restitution orders, a crucial element that serves as a yardstick for legal certainty in the successful execution of restitution. It has been found that significant differences exist in the assessment of restitution amounts between the Witness and Victim Protection Agency, the Prosecutor's demands, the Judge's verdict, and what the perpetrator actually pays. The final section will present proposed solutions in the form of a justice-based and legally certain model for the development of restitution for crime victims.

Method

This research employs empirical legal research focusing on disclosing various factors influencing the implementation of restitution, encompassing its mechanisms, assessment of the amount of restitution, and the execution of restitution orders. The aim is to offer recommendations for an appropriate and comprehensive model for developing restitution. This method relies on primary data obtained from interviews and observations conducted at institutions responsible for handling restitution, namely the Witness and Victim Protection Agency, Banyumas Resort Police, Purwokerto District Attorney Offices in Banyumas and Cilacap, as well as Purwokerto and Banyumas District Courts. Prior to this research, approval for the study was obtained from these locations, including verbal consent from research informants. Before conducting interviews, all participants were informed about the nature and purpose of the research, as well as the intended use of the information they provided. Informants were assured confidentiality and anonymity, agreeing that the information they shared could be used for publication without disclosing their identities. Additionally, secondary data is utilized through literature review employing legislative, conceptual, and comparative legal approaches. The legislative approach is used to analyze

weaknesses in substantive aspects, while the conceptual and comparative legal approaches aim to identify a restitution model that ensures justice and legal certainty for crime victims.

Restitution Mechanism in Indonesia

Based on the Witness and Victim Protection Act and Government Regulation No. 7 of 2018, amended by Government Regulation No. 35 of 2020, and further reaffirmed in the Supreme Court Regulation No. 1 of 2022, the restitution mechanism can be applied for either before or after *inkracht* (Angkasa et al., 2023). This signifies that victims have ample opportunity to seek restitution. Prior to *inkracht*, restitution claims can be made during the stages of investigation, prosecution, and court hearings. Both the victim and their legal representatives or law enforcement officials have the authority to file requests for restitution assessment with the Witness and Victim Protection Agency (LPSK).

However, in the application mechanism, not all victims can request restitution. Both the Witness and Victim Protection Act, the Sexual Violence Act, government regulations, and Supreme Court Regulation No. 1 of 2022 have set limitations on the eligible victims entitled to request restitution, namely victims of severe human rights violations, terrorism, human trafficking, racial and ethnic discrimination, crimes related to children, and sexual violence. Nevertheless, on the other hand, there are provisions that can accommodate victims of other crimes as long as they are determined by the decision of the LPSK.

The authority vested in LPSK to determine other types of victims has led to a surge in restitution facilitation in 2022. The primary driving factor behind this surge is the high incidence of protected Money Laundering Crimes, notably arising from cases involving illegal digital investments such as Fahrenheit, Viral Blast, Binomo, Quotex, Olymtrade, DNA Pro, KSP Indosurya, Fikasa, Sunmod Alkes, Evotrade, Yagoal, ATG, FIN888, NET 89. A total of 2,465 victims of money laundering crimes received restitution calculations from LPSK, amounting to Rp. 1,867,306,335,900.52 (121,064,565.52 USD). Additionally, 63 victims of other criminal activities received restitution calculations from LPSK, totaling Rp. 4,107,876,989.79 (26,632,927.52 USD) (Lembaga Perlindungan Saksi dan Korban, 2022).

However, there are no normative benchmarks that serve as the foundation for LPSK in determining the types of victims of the aforementioned criminal acts. According to statements from sources within LPSK, it is mentioned that there are several considerations made by LPSK in facilitating restitution. These include instances where crimes occur due to the negligence of the state in granting permission and monitoring, cases where the victims are of a massive scale and

affect public interests. Therefore, in cases involving other types of criminal victims such as fraud, embezzlement, individual-based online loans, and non-massive victims, the LPSK has not been able to make a conclusive decision regarding the facilitation of restitution calculation.

In the absence of standardized and comprehensive benchmarks in LPSK policy to determine other crime victims, not all victims are afforded an equal opportunity to claim restitution. This misalignment contradicts the purpose and philosophy of restitution, which functions to compensate the losses suffered by victims, restore them, and serve as a form of accountability for the perpetrator (Novika et al., 2020). Restitution is not merely about reinstating the original state but also fulfilling the emotional needs of the victim by recognizing them as the aggrieved party deserving of recovery (Haynes et al., 2015). Consequently, no one has the right to diminish or impede victims from obtaining their rights and prevent perpetrators from being accountable to their victims.

The resource person from LPSK also explained that there are approximately 45 restitution and compensation assessors. Once the assessment team is appointed, an evaluation of the restitution amount in the case will be conducted. The assessment of the restitution amount is reported to the leadership of LPSK and discussed in a session during the LPSK leadership's court hearing. The assessed amount is recommended to be provided to the restitution applicant as the LPSK's restitution assessment, which can be included in the attachment to the investigation report, prosecutor's indictment, and prosecutor's demand. It is not uncommon for LPSK to be examined as a witness or expert called upon to provide information regarding the assessment of the restitution amount. Based on Supreme Court Regulation No. 1 of 2022, if the judge's decision grants restitution, the restitution will be entrusted to the court's clerk, and the Prosecutor, as the executor, will provide the restitution to the victim after the final and binding court decision ('inkracht').

Considering the above mechanism, there is a risk where the victim must wait a long time to receive restitution. However, LPSK maintains the view that to avoid potential issues if the perpetrator is subsequently acquitted in a higher-level decision, it is better to await the inkraacht decision for restitution execution. This is also reinforced in interviews with the Purwokerto and Banyumas district prosecutors and judges, who, in their perspective, emphasize the need to await the inkraacht decision for legal certainty.

In response to the above matter, it appears that the legal culture of law enforcement agencies still persists in the nuances of rigidity and stiffness in restitution mechanisms. Allowing victims to hang their hopes on awaiting an uncertain inkraacht decision contradicts the philosophical essence of restitution, as it only prolongs the suffering of the victims.

The mechanism of applying for restitution according to Supreme Court Regulation No. 1 of 2022 can also be initiated through the LPSK, investigators, or the Public Prosecutor. Article 8, paragraph (4), specifically asserts that if a victim does not file for restitution and appears in court as a witness, the Judge must inform the victim of their right to seek restitution, which can be done before the Public Prosecutor presents charges. However, in practice, the majority of victims are unaware of their restitution rights. Among the three judges from the Purwokerto and Banyumas District Courts who were interviewed, two of them stated that at times they inform and at other times they do not inform about restitution rights, as their focus is on proving the case, and the remaining judges forget to inform the victims. This condition indicates a lack of commitment among law enforcement officials, as well as a weakness in regulations that do not specify legal consequences if judges fail to inform victims about their restitution rights.

The Public Prosecutor, as a representation of victims' interests, bears the duty and authority to present evidence in court to substantiate restitution claims. However, in practice, based on information from the LPSK, it has been observed that Public Prosecutors seldom meet with victims, whereas the standard procedure dictates that they should conduct preliminary meetings with victims in preparation for presenting evidence for restitution in court. This observation aligns with the stance of the Cilacap District Attorney's Office, indicating that they usually only encounter victims during court sessions and do not engage in preliminary meetings to discuss restitution.

At the investigative level, it has been observed that based on interviews and observations, several police officers at the Banyumas Police Resort still exhibit confusion in distinguishing between restitution and compensation. Compensation represents the state's accountability for its failure in safeguarding its citizens (Goldscheid, 2004), hence the state bears the cost of victims' losses (Davis et al., 2021). The insufficient legal awareness among law enforcement officials regarding the mechanism of restitution ultimately leads to a domino effect: the absence of restitution claims during the investigation and prosecution stages, culminating in the absence of any restitution verdicts in the Purwokerto or Banyumas district courts.

In relation to restitution newly requested after *inkracht*, it can be filed directly with the Court or through LPSK to obtain a restitution decision from the court. Based on the provisions of Supreme Court Regulation No. 1 of 2022, the application must be submitted no later than 90 days after the Applicant becomes aware that the Court's decision has become final (*'inkracht'*). The convicted party becomes the Respondent, while the prosecutor becomes the related party. The clerk is obliged to examine the application. If incomplete, the clerk returns the

application documents and they must be completed within 7 days from the date of receipt of the notification. The court examination includes a. reading of the Applicant's application; b. reading of the Respondent's response; c. examination of evidence; and d. reading of the decision. Legal remedies against the determination can only be filed through an appeal, and the appellate court's determination is final and binding.

In practice, some judges examine the applicant's power of attorney to the LPSK, while others do not, as they perceive the LPSK's profession similar to that of prosecutors, representing the victims, thus deeming a letter of assignment sufficient. This includes the provision for submitting an application within a maximum of 90 days since the applicant became aware of the inkracht, which practically generates multiple interpretations, such as whether it starts from the decision being published in SIPP (Case Tracking Information System), or from when the prosecutor is informed, or after the applicant receives a copy of the decision. This uncertainty has implications for delays in submitting restitution claims. This condition undoubtedly becomes one of the contributing factors to the low rate of restitution determination, where since the establishment of the new restitution regulations, there have only been three restitution determinations filed after the inkracht, namely in the district courts of Trenggalek, Purwakarta, and Lampung.

Benchmarks for Assessing the Amount of Restitution and Form of Restitution

LPSK, as an institution tasked with evaluating the magnitude of restitution, utilizes benchmarks for the components of restitution in accordance with the governing laws and regulations, as illustrated in the Table 1.

Table 1. The restitution component assessed related to the restitution request.

No.	Regulation	Restitution Component
1	Human Rights Court Act (Government Regulation No. 3 of 2002)	a. Restitution of Property; b. Compensation Payment for Loss or Suffering; c. Reimbursement of Costs for Specific Actions.
2	The Anti-Trafficking in Persons Act (Act No. 21 of 2007)	a. Loss of wealth/income; b. Suffering; c. Costs for medical and/or psychological care actions; d. Other losses suffered as a result of human trafficking.

3	The Witness and Victim Protection Act (Act No. 31 of 2014/Presidential Regulation No. 7 of 2018 amended by Regulation No. 35 of 2020)	<ul style="list-style-type: none"> a. Loss of wealth/income; b. Suffering as a direct consequence of the crime; c. Reimbursement for medical and psychological care expenses;
4	The Child Protection Act (Act No. 35 of 2014/Presidential Regulation No. 43 of 2017)	<ul style="list-style-type: none"> a. Loss of wealth; b. Suffering as a direct result of the criminal act; c. Reimbursement for medical and psychological care expenses.
5	Sexual Violence Act (Act No. 12 of 2022)	<ul style="list-style-type: none"> a. Loss of wealth/income; b. Suffering as a direct consequence of the crime; c. Reimbursement for medical and/or psychological treatment expenses. and/or d. Other losses suffered by the victim.
6	Supreme Court Regulation No.1 of 2022	<ul style="list-style-type: none"> a. Loss of wealth/income; b. Material and immaterial losses arising directly from the suffering directly related to the crime; c. Costs of medical and/or psychological treatment; d. Other losses incurred as a consequence of the crime, including basic transportation costs, lawyer fees, or expenses related to legal proceedings.

The benchmark above aligns with a document study on the form, components, and description of losses in a restitution application in a case, comprising: a component (e.g., wealth loss, other losses resulting from the criminal act); b the amount submitted by the applicant (description of calculations and claims); c supporting evidence. These indicators will form the basis for assessment by LPSK.

The form of restitution above indicates that restitution in Indonesia not only measures actual losses but also accounts for future suffering. As seen in the case of Mario Dandy, where the restitution amount granted by LPSK reached Rp.120,388,911,030 (7,805,270.58 USD), benchmarked against the cost of one year of hospitalization multiplied by 54 years as a projection in the event of a victim

experiencing a lifelong disability. The figure of 54 years represents the projected lifespan in Jakarta, estimated at 71 years, subtracting the victim's current age. Furthermore, this calculation includes components for wealth loss, psychological and medical care (Oktavia, 2023). This indicates that there are no fixed or definitive benchmarks; the assessment benchmarks are casuistic, aligned with the level of the victim's suffering, while the components are adjusted according to existing regulations, as outlined in the Table 1. The actions taken by LPSK merit appreciation for fairly accommodating the needs of the victims.

Another interesting point is that the LPSK also confirmed during an interview that the assessment of the reasonableness of the restitution amount does not always depend on the variable of the perpetrator's ability level, but rather on the victim's loss. Therefore, the consideration of the perpetrator's ability is left to the judge. In this case, the reverse burden of proof is used, where the perpetrator must prove their level of financial ability and their assets. It is not uncommon for perpetrators to use a Certificate of Poverty, yet this evidence is still examined by the judge.

Even though restitution can take the form of actions, in practice, it is more commonly replaced with monetary compensation. This, undoubtedly, poses difficulties for victims who are permanently disabled or elderly individuals with a high level of dependency on others for care. It does not rule out the possibility that victims might require opportunities for employment, education, or even an apology from the perpetrator. Even if the perpetrator is capable of paying restitution, it does not necessarily mean admitting fault. Forgiveness encompasses considering the wrongdoing, releasing the resentment towards the perpetrator causing the distressing injustice. Forgiveness can be fostered when the perpetrator is willing to take responsibility for their actions (Witvliet et al., 2020).

Execution of Restitution Decision

Article 30 of Supreme Court Regulation No.1 of 2022 explicitly stipulates that the provision of restitution shall be executed within a maximum period of 30 days from the moment the perpetrator and/or Third Party receive a copy of the legally binding court decision (*inkracht*) or within 30 days from the pronouncement or notification of the court's ruling. Should this period be exceeded, the Prosecutor instructs the perpetrator to effectuate the restitution within 14 days from the date of receipt of the written directive. Should the stipulated timeframe still be surpassed, the Attorney General/Prosecutor/Auditor seizes the assets of the perpetrator and/or Third Party and auctions off said assets within a maximum period of 30 days or 14 days in cases pertaining to restitution related to human trafficking offenses. The Attorney General/Prosecutor/Auditor reports the execution of the restitution to the court and LPSK accompanied by evidence of compliance.

In several practices in other countries, differences in court decisions are evident, ranging from full restitution, partial restitution, to outright denial of restitution requests (Cassell et al., 2013). The fundamental issue in executing restitution orders lies in cases where the perpetrator is in a bankrupt state (Ortlieb, 2016). This situation also occurs in Indonesia, where the majority of perpetrators lack assets or the financial capability to fulfill the restitution. This condition is shown in Table 2.

Table. 2 Restitution in 2021 and 2022 in Indonesia.

No.	Restitution Process	2021	2022
1	Assessed by LPSK	Rp. 11,908,265,512.00 (772,058.10 USD)	Rp. 1,883,422,521,054.43 (122,109,439.05 USD)
2	Enter the Public Prosecutor	Rp 5,590,528,058.00 (362.455.18 USD)	Rp 1,373,980,247,841.13 (89,080,360.59 USD)
3	Judge's Verdict	Rp 3,718,591,408.00 (241,090.41 USD)	Rp 121.779.291.993,12 (7,895,414.26 USD)
4	Perpetrator's Payment Made	Rp 259,533,330.00 (16,826.53 USD)	Rp 975,024,921.12 (63,214.57 USD)

There is a significant difference observed in the restitution assessment between the amounts determined by the LPSK, the restitution amounts filed in the prosecutor's demand, those determined by the judge, and the payments made by the perpetrator. The Anti-Trafficking in Persons Act specifies imprisonment as an alternative to restitution for a duration of 1 year, whereas the Anti-Terrorism Act stipulates a term of 1 year and 4 months. These subsidiary sanctions are notably low, leading convicted individuals in practice to prefer the alternative of imprisonment over paying restitution. Conversely, for other types of criminal offenses, there exists no legal certainty due to the absence of regulations governing imprisonment as an alternative to restitution. Consequently, if the perpetrator is unable to pay, they do not face additional punishment, leaving victims who have waited long for a verdict ultimately on the losing end.

This indicates that the victims merely attain symbolic victories as their losses are acknowledged, yet these triumphs become futile due to their unenforceability (Haynes et al., 2015). Despite provisions regulating asset forfeiture in cases of sexual violence from the investigative stage onwards, which can be auctioned, in practice, this has not been implemented. To date, there are also no internal regulations within the prosecution regarding guidelines for asset seizure and auction. This reverts to an issue wherein successful restitution execution is not

reported to the LPSK by either the petitioner or the prosecutor. Injustice and legal uncertainty have become evident, highlighting the necessity for restitution regulations to not differentiate among types of criminal acts. Hence, it is imperative to adopt the most applicable formulation, including the courage of prosecutors and judges to take a progressive stance in applying subsidiary sanctions if the offender is unable to pay.

Restitution Development Model based on Justice and Legal Certainty

In various regions of Indonesia, customary laws fundamentally recognize a system where offenders are held accountable to victims by compensating them or their families. This practice is evident in the Dayak Customary Laws of East Waringin City, Tolaki Customary Law, and Kaili Palu Customary Law (Atura Nu Ada Ante Givu Nu Ada TO KAILI Ri Livuto Nu Palu) (Iksan et al., 2023). However, this principle applies only within specific communities and for certain types of criminal acts, and the procedural systems are comparatively simpler. Generally, victims of criminal acts in Indonesia seeking restitution are bound by national regulations. Nevertheless, numerous issues arise concerning the restitution application process, assessment of restitution amounts and forms, as well as the execution of restitution decisions. Therefore, several developmental models can be considered for implementation.

To ensure justice for the victims, the mechanism for restitution claims should not limit the types of victims, as in principle, every victim of crime is entitled to recovery. Consequently, the LPSK does not possess the authority to determine whether a victim is deserving or not of making a restitution claim. This aligns with the reference to Article 16 of the Canadian Bill of Rights, which stipulates that “Every victim has the right to seek court consideration for restitution orders against the perpetrator” (Wemmers et al., 2017).

The model of restitution mechanisms needs to refer to the diversion submission mechanism in cases involving juvenile offenders, where diversion must be pursued at the investigative, prosecutorial, and judicial levels (Hiola et al., 2021). The objective of diversion is solely to prioritize the best interests of the child (Smith, 2021), showcasing the state's intervention in safeguarding the child (Donnelly, 2023). Therefore, it is not excessive to emphasize that the goal of restitution also prioritizes the interests of victim recovery, and the state is justified in intervening. This serves as an effort to establish the responsibility of law enforcement agencies in informing victims of their restitution rights and endeavoring to initiate restitution claims from the investigative phase onward.

The criterion for assessing restitution, which is case-specific, depending on the victim's loss, needs to be maintained. However, the form of restitution in the form

of actions should be developed, such as apologies from the perpetrator, service and care for the victim, providing employment opportunities, job training, and scholarships from the perpetrator to the victim or their heirs. In essence, restitution does not always have to take the form of monetary compensation (Ali et al., 2022). The court can order the perpetrator to participate in a work program where a portion of their wages is paid to the victim or provide services to the victim (Al-Eifan & Alayash, 2015). Considering that restoring the victim to their original condition cannot always be measured and compensated in monetary terms. Perpetrators of crimes are not only individuals but can also consist of several people, corporations, government agencies, NGOs, and others.

To drive the execution of restitution rulings with legal certainty for victims, several stages need to be developed. Firstly, the auctioning of assets from offenders unable to fulfill restitution is crucial (Waterman, 2020). In this regard, the restitution application and seizure of the offender's wealth should align with the Sexual Violence Act, commencing from the investigation phase, thereby minimizing the perpetrator's opportunities to obscure or transfer assets and wealth. Secondly, restitution should be applied in cases of conditional sentences. This is in reference to Canadian regulations wherein restitution can be applied in conditional sentences (Wemmers et al., 2017).

Thirdly, the implementation of restitution does not necessarily have to wait for inkracht; it can be carried out during the stages of investigation and prosecution through an agreement between the victim and the perpetrator. This can be taken into legal consideration by the judge to mitigate the perpetrator's sentence. The court can evade severe penalties by stipulating restitution as a punishment (Gonzalez, 2016). This concept resembles restorative justice mechanisms; however, the difference lies in the output. Restorative justice aims at seeking collective solutions, restoring the victim, repairing the relationship between the victim and the perpetrator (Massey, 2019), and achieving reconciliation (Bloch, 2018). Conversely, restitution serves as a form of punishment for the perpetrator aimed at the victim's recovery. The objective of restitution, aside from reinstating the victim's original state to the fullest extent possible, is also to mend the damaged relationship between the victim and the perpetrator (Martin & Fowle, 2020).

Fourthly, in cases where the offender is unable to pay, several schemes exist as potential solutions. These include the implementation of substitute imprisonment for restitution, aligning with the primary criminal penalty applicable to all types of offenses, or the revocation of the convict's rights (such as parole, remission, assimilation), or installment-based payments.

There has been a responsive legal breakthrough where, pursuant to Article 28 of Supreme Court Regulation No. 1 of 2022, applicants are allowed to combine the

submission of Compensation with the submission of Restitution requests. The implementation of providing Compensation occurs after the Attorney General delivers a copy of the Restitution implementation. However, this provision applies solely to victims of Serious Human Rights Violations and Terrorism. This step is also followed by the Sexual Violence Criminal Act, wherein Article 35 of Act No. 12 of 2022 stipulates that “In cases where the convicted person's seized assets are insufficient to cover the cost of Restitution, the state provides compensation equivalent to the unpaid Restitution to the victim in accordance with the court's decision”.

Referring to the principles of justice, responsive law, and the concept of Actual Enforcement, the legislative body needs to expand the incorporation of restitution and compensation to apply to all other criminal acts. Therefore, to ensure the availability of compensation funds due to the inability of perpetrators to fully pay and the critical needs of victims, it is necessary to establish a victim assistance fund that applies to all types of criminal acts, which will be managed by the LPSK.

To achieve the above, it may be necessary to refer to the crime victim assistance model in Sweden, considered one of the highest standards, in line with the Declaration of Basic Principles of Justice for Victims of Crime in 1985. Sweden has an institution called the “Crime Victim Compensation and Support Authority”, which collaborates with other public and private organizations. Victims are first required to initially seek restitution from the perpetrator. If the perpetrator cannot be found or identified, an examination is conducted to determine if the victim has insurance, followed by the completion of a compensation application form. One of the tasks of this institution is to assess and provide compensation (Chokprajakchat et al., 2017).

Referring to the information provided by a resource person from LPSK, it is observed that several countries have institutions tasked with monitoring the implementation of owed restitution. If the perpetrator remains unable to settle, various consequences arise, such as restrictions on international travel and limitations regarding borrowing money from banks. It appears that implementing a similar system in Indonesia is necessary by establishing LPSK branches in every district. Considering that Indonesia currently has only one LPSK responsible for addressing all issues involving witnesses and victims nationwide, the submission of applications, assessment of restitution, and its execution and monitoring could be more effectively managed by placing LPSK offices in different regions. Regional LPSK entities would find it easier to coordinate with relevant parties.

Conclusion

The failure of the majority of restitution cases has occurred since the application mechanism stage. This is not solely due to the rigidity of regulations

that limit the types of victims eligible to apply, but also the lack of juridical consequences for law enforcement agencies' violations of victims' information rights, the requirement for restitution to wait for *inkracht*, and several provisions that are open to multiple interpretations. Law enforcement agencies, in responding to this situation, appear to still maintain a legal culture that is rigid and apathetic, resulting in victims being unaware of their rights and culminating in a minimal number of restitution applications. Unlike the criteria used by the LPSK for assessing the amount of restitution, which accommodates the fair needs of victims by aggregating their future losses, the current form remains oriented toward monetary compensation and has yet to develop tailored actions aligned with future victim needs. Even when restitution claims are successfully filed and assessed, significant disparities exist among the assessed amount of restitution by the LPSK, the amount included in the prosecutor's demands, the judge's ruling, and the amount paid by the offender. The inability of offenders to meet the restitution remains a major issue.

A recommended model for the development of restitution comprises several potential solutions, including: the absence of limitations concerning the types of victims eligible for restitution claims; a restitution mechanism that references diversion, thereby mandating law enforcement officials to actively pursue restitution claims; the expansion of restitution in the form of actions as an alternative choice for victims; the seizure of the perpetrator's assets from the investigative phase onward; simultaneous application of restitution and conditional sentencing; execution of restitution not necessarily awaiting for *inkracht*; facilitation of restitution during the investigative or prosecutorial stages through court determination, which may serve as a judge's consideration in mitigating the penalty. For offenders unable to pay, substitute imprisonment for unpaid restitution can be adjusted according to the remaining unpaid amount of restitution, or through a scheme involving the revocation of the offender's rights, coupled with installment payments. The scheme for merging restitution and compensation also needs to be developed by establishing a victim assistance fund. Therefore, legislators, law enforcement authorities, and relevant institutions must create comprehensive and applicable regulations by removing all technical barriers for victims to obtain restitution.

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