

IMPLEMENTATION OF RESTITUTION FOR VICTIMS OF ABUSE ACCORDING TO INDONESIAN CRIMINAL LAW

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ABSTRACT

This research primarily focuses on analyzing the concept of restitution in the context of victims of abuse, as well as identifying the challenges and benefits of implementing restitution in criminal law enforcement in Indonesia. The research employs a normative juridical method. The implementation of restitution for victims of abuse in Indonesia still faces various obstacles, such as a lack of understanding of the concept of restitution among law enforcement officials and a lack of awareness of victims' rights to receive restitution. However, there are also significant benefits from implementing restitution, such as providing compensation to victims for the losses they have suffered and strengthening restorative justice in the criminal justice system. This research provides an overview of the implementation of restitution for victims of abuse under Indonesian criminal law and offers recommendations to enhance the effectiveness and fairness in protecting victims' rights through the mechanism of restitution.

Keywords: Victim, Restitution, Criminal Law in Indonesia

INTRODUCTION

As a rule of law country, Indonesia ensures protection for its citizens by providing independent and impartial judicial institutions. The law has the duty to ensure legal certainty within society, thus every individual has the right to legal defense. Law can be defined as a set of written or unwritten regulations to govern

society and provide sanctions for those who violate the law.

Legal protection is a form of responsibility granted by the government to all citizens aimed at providing security and comfort to society. This is explained in Article 28I paragraph (4) of the 1945 Constitution. One of the efforts in protecting society, which is the

responsibility of the state, is through the provision of legal protection through the judicial process, especially in the context of criminal justice systems. Victims of crime are parties that require crucial protection. The importance of the victim's role in receiving attention and protection stems from the understanding that they suffer losses due to crimes and, therefore, deserve attention and services to protect their interests.

Protection for victims has been regulated in various laws in Indonesia, reflecting human rights in the constitution and victims' rights in the Criminal Procedure Code (KUHAP). For example, Law No. 13 of 2006 concerning Witness and Victim Protection as well as Government Regulation No. 27 of 1983. The implementation of the Criminal Procedure Code stipulates that the state, through the Ministry of Finance, is responsible for paying compensation determined by the court. Law No. 13 of 2006 also allows for restitution to be given to all victims of criminal acts.

The criminal justice system prioritizes the protection of human rights. However, upon closer examination, it can be concluded that the primary focus leans more towards the rights of suspects or defendants, while the rights of crime victims are noted to be minimal. Perpetrators of crimes from the outset

receive various forms of legal protection, such as legal assistance, humane treatment prohibiting torture, notification of the charges faced, the right to seek compensation, and rehabilitation opportunities upon arrest, detention, or trial without clear reasons according to the law.

The resolution of criminal cases in Indonesia today cannot be viewed from one side only, which is related to the fate of the perpetrators of the crime itself, but what also needs to be considered is related to the crime victims who suffer material and immaterial losses, alongside the protection of the victims. The current position of victims in the Criminal Code (KUHP) is considered not optimal because the Criminal Code has not explicitly formulated provisions that directly and concretely provide legal protection to victims. The Criminal Code also does not formulate the types of criminal restitution (compensation) that are actually very beneficial for the victims and/or their families.¹

Restitution is a form of compensation given to the victim or their family by the perpetrator of a crime or another party, which can take the form of returning property, payment for damages

¹ Maria Novita Apriyani, "Implementasi Restitusi Bagi Korban Tindak Pidana Kekerasan Seksual," *Risalah Hukum*, 17.1 (2021), 1–10 <<https://lpsk.go.id/berita/detailpersrelease/3269>>.

or suffering, or reimbursement for specific actions. The concept of restitution is based on the principle of restoration to the original condition, emphasizing that the victim should be returned to the state they were in before the crime, although sometimes this may not be fully achievable. This principle asserts that the recovery given to the victim must be comprehensive and cover all the impacts caused by the crime, such as restoring freedom, legal rights, social status, family life and citizenship, residence, employment, as well as owned assets.²

According to Mardjono Reksodiputro, restitution rights granted to crime victims are an obligation for perpetrators to provide compensation as a consequence of their criminal actions against the victim. On the other hand, Purwoto S. Gandasubrata states that if a criminal act does not harm or violate someone's rights, then the punishment should only be imprisonment, but if the act causes harm and violates rights, then restitution should be given. On a different note, Romli Atmasasmita expresses that granting restitution rights to victims in the context of the perpetrator-victim relationship is an effort to develop a sense of social responsibility for criminals

² Josephin Mareta, "Penerapan Restorative Justice Melalui Pemenuhan Restitusi Pada Korban Tindak Pidana Anak," *Legislasi Indonesia*, 15.4 (2018), 309–19.

through the process of rehabilitation. This is aimed at instilling a sense of responsibility in the perpetrator as a member of society.³

Victims of assault, who are actually the most affected party in a crime, suffer because they do not receive the same protection as perpetrators of assault do under the law. In the legal system, victims are often considered only as witnesses providing testimony, without the ability to actively advocate for their rights. This results in minimal opportunities for victims to obtain justice and recover from the assault, as they lack the authority or sufficient involvement in the investigation and trial processes.⁴

Based on the background provided, this study aims to deeply understand the legal protection mechanisms and rights of victims of assault, as well as delve into the process and implementation of restitution according to Indonesian criminal law in the context of assault cases.

RESEARCH METHOD

The research method known as juridical-normative refers to a study that focuses on the application of rules or norms in positive law using secondary data

³ Pidana Restitusi, Kurungan Pengganti, dan Pidana Perdagangan, "Rekonstruksi."

⁴ Soejono Soekanto dan Sosiologi Suatu Pengantar, "DALAM PENANGANAN TINDAK PIDANA DI INDONESIA," 2007, 1–25.

from primary, secondary, and tertiary legal materials. This research employs two main approaches: legislative approach and case approach. The legislative approach aims to investigate legal procedures or standards applied in legal practice, while the case approach involves a comprehensive analysis of all laws and regulations related to the legal issue under study. The legal materials used include primary legal materials such as relevant legislative regulations to the research topic, as well as secondary legal materials such as literature, research findings, articles, journals, and readings relevant to the research subject. Additionally, tertiary legal sources such as legal dictionaries and encyclopedias can also be utilized.⁵

DISCUSSION AND ANALYSIS

Legal Protection And Rights For Victims Of Assault

Legal protection is an effort to safeguard individuals or legal subjects based on provisions stated in applicable laws and regulations. Legal protection ensures the rights and obligations of individuals, both for personal interests and in the context of relationships with others. This protection includes handling cases in accordance with the law, both in criminal

⁵ Muhaimin 'Metode Penelitian Hukum' Mataram University Press (2020), Page 63.

and non-criminal matters, as well as efforts aimed at ensuring fair recovery for victims.⁶

According to Satjipto Rahardjo, legal protection involves providing shelter for the human rights of those harmed by others, and this protection is extended to society so they can enjoy all rights granted by the law. The state plays a crucial role in safeguarding its citizens. Legal protection for citizens is the state's responsibility to ensure justice, security, and public safety. The legal protection provided by the state also plays a vital role in maintaining the stability within the country.⁷

According to Philipus M. Hadjon, Indonesia as a rule of law state based on Pancasila must provide legal protection to its citizens in accordance with Pancasila values. Protection for witnesses and victims aims to provide them with a sense of security when giving testimony in criminal proceedings. Efforts to protect the rights of witnesses and victims after a criminal act is part of protecting human rights. Fundamentally, victims refer to individuals, groups, or communities who directly suffer losses as a result of

⁶ Herlyanty, "Perlindungan Hukum Bagi Korban dalam Sistem Peradilan Pidana," *Lex Et Societatis*, 3.3 (2021), 9.

⁷ Daffa Arya Prayoga et al., "Perlindungan Hukum Terhadap Hak Warga Negara Dengan Berlakunya Undang-Undang Nomor 23 Tahun 2019 Tentang Pengelolaan Sumber Daya Nasional," 2 (2023), 188–200.

becoming targets of a crime, such as assault.⁸

Rights are a condition inherent in human life, possessed by individuals, and can be enjoyed freely. When someone has a right, they can use it without pressure or threats from others. To ensure that individuals can truly exercise their rights freely and still receive protection to enjoy their rights, the concept of Human Rights (HAM) was created.⁹

Crime victims are essentially the most materially and immaterially affected subjects. The losses experienced by these victims are not just physical but also psychological, potentially causing long-term trauma. This, of course, brings suffering to the victims and their families, especially if the perpetrators do not provide accountability in the form of compensation or restitution, considering that restitution is a tangible form of legal protection for crime victims provided by the government or the state.¹⁰

⁸ April Yunus Laoly dan Parnington Malau, "Analisis Yuridis Perlindungan Hukum Terhadap Saksi Dan Korban Dalam Perspektif Perkara Pidana," *Yurispudentia: Jurnal Hukum Ekonomi*, 6.2 (2020), 165–88.

⁹ Ahmad Rizal Awwalludin Ramadhani, "Pemenuhan Hak Restitusi Kepada Korban Tindak Pidana," *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance*, 2.3 (2022), 823–33 <<https://doi.org/10.53363/bureau.v2i3.65>>.

¹⁰ Annisa Rahmawati dan Otto Yudianto, "Pengaturan Pemberian Restitusi dalam Suatu Tindak Pidana Pembunuhan (Studi Putusan Nomor 22-K/PMT-II/AD/II/2022)," *Bureaucracy Journal:*

Legal protection for crime victims in the national legal system is still perceived as not receiving serious attention. This is evident from the very minimal rights of crime victims accommodated in national legislation provisions. Crime victims, who are essentially the most affected party in a criminal act, actually do not receive as much protection as perpetrators of crime do under the law. As a result, when perpetrators of crime are convicted by the court, the conditions of crime victims are often entirely overlooked. However, the issues of justice and respect for human rights should not only apply to perpetrators of crime but also to the victims of criminal acts.

The criminal act of assault is an arbitrary act that causes pain and injury to the body, leading someone to feel distressed. In other words, to be considered as committing assault, a person must have intent to cause pain or injury to another person's body in their actions, thereby harming the health of another person.¹¹

Furthermore, in this case, the role of the Witness and Victim Protection Agency in fulfilling the rights of victims of

Indonesia Journal of Law and Social-Political Governance, 3.2 (2023), 1677–96.

¹¹ Joko Setiyono, "Penyelesaian Tindak Pidana Penganiayaan Dengan Pendekatan Keadilan Restoratif," 6 (2024).

criminal acts to obtain justice in the form of restitution is explained in Article 7A paragraph 1 of Law Number 31 of 2014 Amendment to Law Number 13 of 2006 concerning Witness and Victim Protection, which states that:

- (1) Crime victims are entitled to restitution in the form of:
 - a) compensation for loss of wealth or income.
 - b) compensation for suffering directly related to the criminal act and/or.
 - c) reimbursement of medical and/or psychological treatment costs.

One right that crime victims have to seek justice is to receive restitution. Restitution, in line with the concept of restoration to the original condition, is an effort to return crime victims to the state they were in before the crime occurred, although it is acknowledged that crime victims cannot fully return to that original state.

The role of the Witness and Victim Protection Agency in providing protection to victims of criminal acts is crucial because the agency acts as a link between the victims and law enforcement. Collaboration between law enforcement and the Witness and Victim Protection Agency provides a clearer view regarding

restitution. This is because Article 19 paragraph 1 of Government Regulation Number 7 of 2018 concerning Compensation, Restitution, and Assistance to Witnesses and Victims has provided an explanation regarding restitution. Namely, Crime victims are entitled to receive restitution in the form of:

- a) Compensation for loss of wealth or income;
- b) Compensation for suffering directly related to the criminal act; and/or
- c) Reimbursement of medical and/or psychological treatment costs.

In the Criminal Procedure Code, several rights are regulated that can be used by victims of assault in a criminal justice process, namely:¹²

1. The right to exercise control over investigators and public prosecutors. This right is the right to submit requests and/or complaints in its capacity as an interested third party (Article 80 of the Criminal Procedure Code).

¹² Penganiayaan Ditinjau, Dari Undang-undang Perlindungan, dan Nova Ardianti Suryani, "Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana," 2 (2020), 134-45 <<https://doi.org/10.18196/mls.v2i2.11493>>.

2. The victim's rights related to their position as a witness. This right is the right to withdraw as a witness (Article 168 of the Criminal Procedure Code).
3. The right to demand compensation for damages resulting from an assault through the combination of civil and criminal cases (Articles 98 to 101).
4. The right of the family to permit or deny the police from conducting an autopsy (Articles 134-136 of the Criminal Procedure Code).

The disregard for the rights of victims can be seen in Article 160 paragraph (1), where the position of crime victims here is merely as witnesses in a criminal case solely to prove the guilt of the suspect/defendant. Crime victims are essentially the most affected party in a criminal act, yet they do not receive as much protection as perpetrators of crime do under the law. As a result, when perpetrators of crime are convicted by the court and their legal status becomes binding, the condition of the victims is often entirely overlooked. However, the issues of justice and respect for human rights also apply to crime victims.

As outlined above, there is essentially no doubt that restitution has become part of the rights that victims can obtain through the criminal legal process. However, there is still potential for suboptimal implementation of this, as not all legal regulations explicitly mention the types of crimes that allow for restitution, except in laws regulating specific crimes outside the Criminal Code (KUHP), such as human trafficking, sexual violence, and child protection. Regarding other criminal acts that fall within the scope of the Criminal Code or are not regulated in specific criminal laws, according to Article 12 of Supreme Court Regulation No. 1 of 2022, a Restitution Request as referred to in Article 11 can be submitted by the Applicant directly to the Court or through the LPSK.

Victim protection is related to the goals of punishment and is part of conflict resolution. In resolving conflicts arising from criminal acts, it is important to restore balance that can bring peace to society. In this context of restoration, perpetrators responsible for the victim's suffering must also be accountable in resolving conflicts with the victim. This is because the victim has experienced suffering, losses, and direct disturbances to their security and comfort as a result of

being targeted by the perpetrator's criminal actions.

In facing these various challenges, relevant parties such as law enforcement agencies, non-governmental organizations, and society at large must cooperate to raise awareness about the rights of victims, provide better legal assistance services, and reduce the stigma attached to victims of abuse. Efforts to improve the system of protection for victims of abuse also need to be continuously evaluated and enhanced to ensure that the rights and interests of victims are protected and that they can easily access justice.

The Implementation Of Restitution For Victims Of Abuse According To Indonesian Criminal Law.

Restitution is compensation provided to the victim or their family by the perpetrator or a third party. There are three forms of restitution: returning property, payment for suffering-related losses, or reimbursement of specific costs. Full compensation is not always available from the guilty party or other sources, so the state must strive to provide compensation to (1) victims who have suffered serious physical injuries or experienced a decline in physical or mental health due to serious crimes, and (2) families, especially dependents of

those who have died or suffered physical or mental disabilities due to such crimes.¹³

The implementation of compensation in Indonesia based on Presidential Regulation No. 35 of 2020 on Amendments to Presidential Regulation No. 7 of 2018 consists of two forms, namely restitution and compensation. Compensation is a demand for compensation filed by the victim through an application and paid by the community or the state. This process does not require punishment against the perpetrator of the crime. On the other hand, restitution involves a demand for compensation submitted through a criminal court decision and paid by the perpetrator of the crime. Restitution aligns with the Principle of Restoration to the Original State, which means an effort to return the victim to the state before the crime occurred, although this original condition may not be fully restored.¹⁴

Restitution serves several important purposes. First, it aims to compensate the losses suffered by the victim and also to impose sanctions on the perpetrator of the crime. Second, the ability of restitution to

¹³ Amira Paripurna, *Viktimologi Dan Sistem Peradilan Pidana*, 2018.

¹⁴ IGAD Bimantara dan I P S Sumadi, "Konsep Restitusi Terhadap Perlindungan Korban Tindak Pidana di Indonesia," *Kertha Wicara: Journal Ilmu Hukum*, 2018, 1–5 <<https://ocs.unud.ac.id/index.php/kerthawicara/article/view/38323>>.

track the losses caused by the crime plays a role as a preventive tool by warning potential offenders that they will be held accountable for any damages they cause. Third, restitution also forces the perpetrator of the crime to acknowledge the negative impact of their actions by requiring payment to the victim. This makes the perpetrator directly responsible for their actions. Unlike fines paid to the state, restitution has a more personal dimension as the payment is made directly from the perpetrator to the victim, and it is specifically linked to the losses suffered by the victim due to the perpetrator's actions. Therefore, restitution creates a causal relationship between the committed crime and the losses suffered by the victim.¹⁵

The criminal act as mentioned above must first be determined by a decision from LPSK. The mechanism for submitting a restitution request can be done before or after a court decision becomes legally binding. In the case where the restitution request is submitted before a legally binding court decision is made, LPSK can submit the restitution to the Prosecutor to be included in their demand. If the restitution request is submitted after a legally binding court decision is made,

LPSK can apply to the court to obtain a determination.

The provision of restitution is regulated by various regulations, including Law No. 13 of 2006 as amended by Law No. 31 of 2014 concerning the Witness and Victim Protection Agency, which aims to provide protection primarily to witnesses and victims, although its benefits have not been fully realized. The implementation of the right to restitution in criminal procedural law is also not yet optimal. In the criminal justice system, witnesses and victims must prove their rights to reveal material truths and obtain their rights. Unfortunately, in Indonesia, criminal procedural law does not specifically protect victims in criminal proceedings, unlike the protection given to suspects or defendants. However, the position of victims and perpetrators is the same, and the rights of victims that have been deprived or disrupted by perpetrators should be restored.

The Indonesian legal system has laws that regulate acts of assault, such as Articles 351 to 362 of the Criminal Code (Kitab Undang-Undang Hukum Pidana). This includes provisions on the types of assaults, the criminal sanctions applicable to perpetrators, and the rights of victims to report acts of assault to law enforcement authorities. Additionally, the law recognizes the right of victims to receive

¹⁵ Mahrus Ali dan Ari Wibowo, "Kompensasi Dan Restitusi Yang Berorientasi Pada Korban Tindak Pidana," *Yuridika*, 33.2 (2018), 260 <<https://doi.org/10.20473/ydk.v33i2.7414>>.

protection and medical care if they suffer physical injuries due to assault.

In this case, Restitution is one form of protection for crime victims, such as victims of assault. Restitution often becomes part of the legal resolution in cases of assault. During legal proceedings, the court may decide to require the perpetrator to pay restitution to the victim as part of the judgment. The issue of fulfilling restitution as a right for crime victims is not only limited to the clarity of legal regulations but also to the understanding of how restitution is considered a right owned by the victim. In the legal context, a victim is an individual who experiences a violation of their rights and suffers losses due to the actions of the perpetrator. In this understanding, the perpetrator's actions not only violate the laws of the state but also infringe upon the victim's personal rights. Therefore, resolving the matter by imposing a criminal sentence on the perpetrator is not enough to restore trust in the legal system or to restore the disrupted conditions of the victim unless the victim's right to restitution is fulfilled by the perpetrator.

CONCLUSION

1. Legal protection for victims of abuse in Indonesia is an important and pressing issue. Although Indonesia's legal system has a framework that includes

regulations to address abuse and provide protection to victims, there are still various challenges that need to be overcome. These challenges include low awareness of victims' rights, issues of accessibility to the legal process, lack of social support, and ineffective law enforcement. To improve the effectiveness of legal protection for victims of abuse, a thorough evaluation of regulations is needed.

2. The provision of compensation through criminal proceedings has been implemented in Indonesia, namely the consolidation of claims for compensation based on the Criminal Procedure Code (KUHAP), compensation (compensation from the state) that can be given to victims of crimes, as regulated in the Witness and Victim Protection Law, and restitution (compensation from the perpetrator of the crime) as regulated in several laws in Indonesia, namely the Witness and Victim Protection Law, especially in the efforts of victims to obtain compensation and restitution. Restitution is the right of every non-criminal victim for losses arising from a criminal act. Restitution can take the form of compensation for loss of wealth or income, compensation for suffering directly related to the criminal act, and reimbursement of medical and/or

psychological treatment costs. The fulfillment of restitution is imposed on the perpetrator as the party responsible for the criminal act and the harm to the victim. Through the mechanism...

493>

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