



Compensation (“*Ganti Rugi*”) : Regulatory Laws and Their Problems in Diversion, Restorative Justice, and Restitution Verdicts in Indonesia

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Abstract. Victims of criminal acts are often the most adversely affected, while frequently experiencing a domino effect due to the crime committed against them. Compensation or “*ganti rugi*” in this context is seen as a solution, but there's a gap between the ideal and the actual implementation. This study uses an empirical juridical research method and undergoes qualitative analysis. The findings highlight that “*ganti rugi*” is only partially regulated within Indonesian legislation. The concept where perpetrators offer “*ganti rugi*” to their victims is termed as “restitution”, but achieving such restitution necessitates a court process. Conversely, “*ganti rugi*” can also be established based on a peace agreement either in diversion or restorative justice procedures. Reality shows numerous challenges associated with “*ganti rugi*”, whether achieved through diversion, restorative justice, or court-ordered restitution. These include the absence of a solid mechanism to enforce “*ganti rugi*” in diversion and restorative justice, a pervasive low level of legal awareness among law enforcement and victims, leading to few restitution requests. The often high demands for “*ganti rugi*” from crime victims and the perpetrator's inability to fulfill them become central concerns. Addressing these issues demands regulations that ensure the execution of “*ganti rugi*” in all settings, whether in diversion, restorative justice, or through court-mandated restitution.

Keywords: “*ganti rugi*”, diversion, restorative justice, restitution.

1. Introduction

Victims and their associated losses are aspects that have not garnered adequate attention from the state.[1] In this context, victims emerge as the most aggrieved parties. Their suffering isn't confined to the aftermath of the crime perpetrated against them; a more profound issue is their deep-seated disappointment due to a lack of information on case developments, the protracted handling of cases, and the frequent expectation that they proactively assist the police in evidence gathering. It's not uncommon for the Public Prosecutor, representing the victim, to only meet them for

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the first time during the trial. Studies on the perspectives of crime victims have shown that several aspects of the first contact can influence subsequent steps such as finding the strength to proceed within in criminal justice system and cope with daily life after a traumatic experience.[2] In such scenarios, victims find themselves caught in a relentless domino effect of crime repercussions.

This oversight seems predictable given the evident regulatory shortcomings concerning victims. The Code of Criminal Procedure (*Kitab Undang-Undang Hukum Acara Pidana* or *KUHAP*), which guides law enforcement, appears to have been originally designed to prioritize the rights of offenders,[3] This legislation seemingly confers and positions offenders with a certain dignity,[4] while conversely, provisions addressing victims' rights are minimal, often relegating victims to mere witness status. [5] Recognizing this, it's imperative to reposition victims as the genuinely aggrieved parties, thus warranting their rightful rehabilitation and “*ganti rugi*”.

The momentum behind the rights of victims has become unstoppable, largely perceived as a repercussion of the judiciary system's failure to address the myriad interests of victims.[6] The idea that criminal law incorporates a restorative dimension isn't novel.[7] Article 98 of the Code of Criminal Procedure (*KUHAP*) inherently provides victims the opportunity to file for “*ganti rugi*” by consolidating it with their criminal cases. However, this provision is not without its limitations [8]. “*ganti rugi*”, viewed as a form of offender accountability, seems to remain largely a desideratum [9]. There is previous research conducted by Mahrus Ali and his colleagues entitled “Compensation and restitution for victims of crime in Indonesia: Regulatory flaws, judicial response, and proposed solution”. However, the research only discusses the regulation, court response, and the rights of victims. Meanwhile, this study further discusses the provision of “*ganti rugi*” in the mechanism of diversion, restorative justice, and restitution.

The term of “*ganti rugi*” in English can be stated with the term compensation. However, in Indonesia the term “*ganti rugi*” has a broader meaning than compensation, namely not only in the form of compensation but also restitution, and various forms of perpetrator's responsibility for victim recovery. In this study, the term compensation is hereinafter referred to as “*ganti rugi*”, and the compensation or “*ganti rugi*” referred to in this study is not compensation given by the state but compensation from perpetrators with various mechanisms.

It took a significant amount of time, culminating in the collapse of the New Order regime, for the year 2000 to emerge as a watershed moment. This is when compensation in the form of restitution was first introduced in the Human Rights Court Law of 2000, which was subsequently followed by other legislative enactments. Ryan Anderson,[10] posits that restitution serves as a mode of offender accountability rendered to victims. Notably, the character of restitution in Indonesia necessitates processing via a court decision or judicial determination.[11]

There exists a progressive step wherein “*ganti rugi*” from the offender to the victim can also be facilitated through mechanisms of diversion and restorative justice. Diversion is an effort made by the government and law enforcers with the aim of inviting the public to obey and uphold the law while still considering the sense of

justice as a top priority in addition to providing opportunities for perpetrators to improve themselves.[12] This aims to reduce formal intervention and offer solutions more attuned to the needs of both victims and offenders. Fundamentally, diversion can be viewed as a manifestation of restorative justice principles.[11] Restorative justice embodies a collaborative engagement among parties affected by a crime or violation, seeking to address the harm, needs, and obligations of all stakeholders, including both victims and offenders. The ultimate goals are to facilitate healing and/or atonement for the transgressions that have occurred. Restorative justice emphasizes the involvement of diverse community members and law enforcement agencies, with its underlying values often rooted in local wisdom.[13]

In reality, the above situation engenders ambivalent perceptions not only within the general public but also among law enforcement officials. A portion of them remains unfamiliar with the concept of restitution as it stands in Indonesia, especially given the introduction of various “*ganti rugi*” mechanisms through alternative avenues like restorative justice and diversion. Normatively, these are not termed as restitution but rather referred to as “*ganti rugi*”. It is, therefore, understandable if there's a pervasive ambivalence within the society, not only regarding the classification of “*ganti rugi*” in the contexts of diversion, restorative justice, and restitution but also concerning its implications on the associated criminal cases. Ultimately, the public seems more acquainted and comfortable with the terminology and mechanisms of *santunan* or compassionate assistance from the offender.

There's a pressing need for a comprehensive review of the regulations that accommodate “*ganti rugi*” within diversion, restorative justice, and restitution to clearly delineate their conceptual boundaries. This includes addressing the challenges in its implementation, ensuring that this discourse contributes to the reformulation and advancement of future penal practices.

2. Problems

Based on the interdocution above, this study has two objectives problems. The first objective relates to the culture in Indonesia society is more familiar with *santunan* or compassionate assistance mechanism rather than other forms and modalities of “*ganti rugi*”. The second objective relates to the challenges of “*ganti rugi*” in diversion, restorative justice, and restitution. The research questions addressed are:

- a. How the regulatory framework of “*ganti rugi*” in Diversion, Restorative Justice, and Restution and its Bounderies?
- b. How about the challenges of “*ganti rugi*” in diversion, restorative justice, and restituaion?

3. Method

This study aims not only to analyze the conceptual boundaries of “*ganti rugi*” within diversion, restorative justice, and restitution but also to examine the challenges faced

in its implementation. Research data collection through interviews, observations, literature reviews, and document analysis, conducted at locations such as Banyumas Police Precinct (Polres Banyumas), the Prosecutor's Office and District Court of Banyumas, the Prosecutor's Office and District Court of Purwokerto, the Prosecutor's Office of Cilacap, various legal advocates, and the Witness and Victim Protection Agency (LPSK). The collected data were subsequently processed through data reduction and categorization. This research employed an empirical approach with a descriptive specification, and the processed data was analyzed using the Content Analysis and Comparative Analysis methods.

4. Discussion

4.1. Regulatory Framework of “*ganti rugi*” within Diversion, Restorative Justice, and Restitution and its Boundaries

The first objective relates to the culture in Indonesia society is more familiar with *santunan* or compassionate assistance mechanism rather than other forms and modalities of “*ganti rugi*”. At a glance, they might appear similar, but the concept of “*ganti rugi*” within diversion, restorative justice, and court restitution distinctly varies. A significant portion of the population is uncertain and lacks understanding of the differences in the “*ganti rugi*” concept across these three mechanisms.

The principle of Diversion is intrinsically linked to the restorative justice policy, with diversion serving as a manifestation of restorative justice. Diversion is governed by Law No. 11 of 2012 concerning the Juvenile Justice System, which is further reinforced by Supreme Court Regulation (Perma) No. 4 of 2014 and Government Regulation No. 65 of 2015. These provisions serve as guidelines for implementing Diversion for children under 12 years of age. Through these regulations, the resolution of Diversion cases utilizes a restorative justice approach at all legal stages, from investigation and prosecution to court adjudication.[14] This non-judicial resolution aims to provide a sense of justice for children in conflict with the law by prioritizing the child's best interests.[15] The stipulation for diversion is that the offense committed by the child carries a maximum imprisonment of 7 years and is not a repeat offense.[16] However, the introduction of Perma No. 4 of 2014 accommodates children who face charges with potential imprisonment of 7 years or more, allowing for charges to be made in the form of subsidiary, alternative, cumulative, or combined indictments.[14]

The regulatory framework for “*ganti rugi*” within diversion can be observed in Article 10, Paragraph 2, Clause (a) of Law No. 11 of 2012. It states that if there is a victim, the Diversion Agreement can take the form of reimbursement for losses.[17] However, not all cases can be resolved through Diversion. According to the provision in paragraph (1), it is restricted only to violations, minor offenses, offenses without victims, or where the loss value to the victim does not exceed the provincial minimum wage. The process of reaching a diversion agreement involves investigators, the victim's party, the perpetrator's party, community guidance officers, and community

leaders. If an agreement is reached, its implications are that the investigator issues a decree to stop the investigation or, if the Diversion is at the prosecution stage, the Public Prosecutor issues a decree to terminate the prosecution.

This aligns with the actual practice, as elaborated by a research informant from Banyumas Police Precinct: "The mechanism for *"ganti rugi"*, in practice, undergoes several processes, one of which is through the diversion process. This diversion brings together all relevant parties and involves institutions such as the Correctional Institution (BAPAS), the Regional Technical Implementation Unit for Women and Children Services (UPTD PPA), attorneys, and/or school authorities when necessary, aiming to address the interests of the victim.. Here, diversion applies to actions punishable by imprisonment under 7 years, such as theft or minor assault. Based on this diversion process, *"ganti rugi"* is determined from the victim. If the perpetrator agrees and a settlement is reached, the Banyumas Police Precinct will submit a stipulation to the court and issue a Command Letter to Terminate Investigation (SP3) based on the results of the diversion process"

There are parallels with restorative justice in that it doesn't apply to recidivists. However, a distinction lies in the fact that restorative justice doesn't constrain the offender's age, but rather it's limited based on the nature of the offense. This is as stipulated in Article 5 of the Police Regulation No. 8 of 2021 which excludes restorative justice for cases involving national security, corruption, and crimes against a person's life. Another criterion is that restorative justice doesn't apply if the act is separatist or radical in nature, leads to public rejection, has the potential to spark social conflict, or threatens national unity. Ensuring the victim's rights, one of which being *"ganti rugi"* for damages, is a formal requirement of restorative justice. This is evidenced by an agreement signed by the victim.

As conveyed by a research informant from Polres Banyumas, "Not only through the diversion process, *"ganti rugi"* can also be provided through the restorative justice process. In this context, the victim decides on the *"ganti rugi"* amount and ensures the offender agrees to the proposed restitution. Upon agreement, the offender immediately provides *"ganti rugi"* to the victim. If restorative justice is successful, it is followed by an Order of Termination of Investigation (SP3) based on the outcome of that process."

Contrastingly, at the prosecution stage, as per the Prosecutor's Regulation No. 15 of 2020, restorative justice cannot be applied to crimes with a penalty exceeding five years, damages surpassing two million five hundred thousand rupiah, corporate crimes, narcotics-related crimes, and environmental crimes. Meanwhile, one of the conditions for Prosecution Termination through the restorative justice mechanism is that there has been a restoration to the original state by compensating the victim.

"ganti rugi" from the offender to the crime victim is fundamentally referred to as restitution. The term restitution is also used in various other countries to denote *"ganti rugi"* from the perpetrator. Restitution is generally governed by Law No. 31 of 2014, Government Regulation No. 43 of 2017 in conjunction with No. 7 of 2018 and No. 35 of 2020, and the Supreme Court Regulation No. 1 of 2022. Based on this legal

framework, restitution's character in Indonesia requires a court ruling and should thus be incorporated into the public prosecutor's indictment. However, restitution is only provided to the victim once the judgment is legally binding. Restitution can also be proposed after the court decision is legally enforced. Over time, restitution has evolved into an additional penalty as seen in the new Criminal Code.

Considering the legal framework surrounding “*ganti rugi*” in diversion, restorative justice, and restitution, it's understandable that the public might harbor ambiguity, given the varied terminologies employed across different mechanisms even though they ultimately aim to ensure “*ganti rugi*” from the offender. Nevertheless, one can delineate their specific boundaries. For instance, “*ganti rugi*” via the diversion mechanism is exclusively designed for juvenile offenders aged between 8 and 12 years, and not all criminal cases can be resolved through diversion. Similarly, not all cases are amenable to resolution through restorative justice; however, restorative justice isn't contingent on the offender's age. Naturally, there are implications if the age of the child doesn't qualify for diversion. If the case fits the criteria for restorative justice, then “*ganti rugi*” can be pursued through the restorative justice mechanism.

Another distinction lies in the fact that “*ganti rugi*” in both diversion and restorative justice is a component of an amicable agreement between the offender and the victim, which results in the cessation of prosecution due to the termination of the investigation. This contrasts with restitution, which is not a part of a peace agreement but rather an integral component of the victim's claims that can be introduced as early as the investigation phase. The concept of restitution does not halt the investigation or prosecution. In fact, if the restitution is granted by the judge, it implies that in addition to being sentenced, the offender is also mandated to pay restitution to the victim.

4.2. Challenges of “*ganti rugi*” within Diversion, Restorative Justice, and Restitution.

The second objective relates to the challenges of “*ganti rugi*” in diversion, restorative justice, and restitution. Various regulations outline the mechanisms for “*ganti rugi*” to victims through diversion, restorative justice, and restitution. However, each mechanism for implementing this “*ganti rugi*” seems to carry its own set of challenges.

“*ganti rugi*” through the diversion mechanism, as stipulated in Law No. 11 of 2012, results from a peace agreement that diverts the resolution of child-related cases from the criminal justice process to a non-judicial criminal process. Although provisions for “*ganti rugi*” are not always an absolute condition for achieving peace – as reconciliation can occur without it – this is clarified in Article 11 of Law No. 11 of 2012.

The potential for unsuccessful “*ganti rugi*” is also due to the victim's pivotal role in determining the success of the diversion. It becomes problematic when disagreements arise between the victim and the perpetrator because the victim desires the offending child to still undergo legal proceedings and face sanctions.[14]

Moreover, the strong bargaining position of the victim can lead to inflated “*ganti rugi*” demands, often beyond the perpetrator's means. This can, in turn, jeopardize the reconciliation efforts, resulting in the continuation of the legal process.

Further complicating the matter of “*ganti rugi*” through the diversion mechanism are two implementation prerequisites that must be met. First, the crime committed must carry a sentence of less than 7 years imprisonment. This surely distorts the fundamental essence of the juvenile justice system.[18] As described in the United Nations Administration of Juvenile Justice, the objective of juvenile justice emphasizes the welfare of the child, avoiding the adverse effects of the criminal justice process on them.[16] This requirement implies that some victims won't receive “*ganti rugi*” through the diversion mechanism, thereby compelling them to seek restitution. However, based on perspectives from research informants from both the Purwokerto District Attorney's Office and the Banyumas District Attorney's Office, “in reality, until now, there has never been a restitution request from victims”. This indicates inherent challenges with the restitution mechanism, making the potential for victims to receive “*ganti rugi*” in cases involving child offenders increasingly elusive.

The second prerequisite for applying diversion is that the crime committed is not a repeated offense. This condition conflicts with the principle upheld by the juvenile justice system, which regards penal punishment as a last resort. A child, as defined by UU No. 11 of 2012, is aged 12 but not yet 18. Categorizing individuals within this age range relates to their ability to control emotions and their emotional maturity level.[19] This requirement implies that victims won't receive “*ganti rugi*” through the diversion mechanism for cases involving recidivist children. Directly, this suggests that punishment for juvenile repeat offenders is more retribution-oriented rather than focusing on their accountability for the victim's loss.

The subsequent challenges relate to “*ganti rugi*” implemented through the Restorative Justice mechanism. Similar to diversion in the juvenile justice system, Restorative Justice can essentially be understood as a generalized form of diversion. It places emphasis on the participation of all involved parties - the offender, the victim, and the community - in the criminal case resolution process, ensuring justice for each party.[20] It's worth noting that not all cases can be addressed using Restorative Justice. According to police regulations, criminal cases that are unsuitable for Restorative Justice include state security issues, corruption, and crimes against human life.[21]

Resolving criminal cases through Restorative Justice is typically conducted using penal mediation. “*ganti rugi*” within this mechanism is deeply intertwined with private dimensions, making penal mediation restitution-oriented.[22] Offenders will strive to the utmost to satisfy the victim's demands, which may include “*ganti rugi*” for damages. However, in Restorative Justice, not all offenders are willing to meet the “*ganti rugi*” requirements proposed by victims; they might opt instead to serve a prison sentence.[9] This issue often arises from the offender's financial inability to compensate the victim. When an offender lacks the financial means to deliver “*ganti*

rugi” within the Restorative Justice framework, this invariably implies potential failures in restitution payments should the victim seek restitution in court.

It is not an overstatement to suggest that a prevailing issue both in the contexts of diversion and Restorative Justice is the lack of a codified procedure concerning the fulfillment of “*ganti rugi*”, be it a requirement for lump-sum payments or the option of installment-based “*ganti rugi*” to the victim. The absence of legal certainty in the payment process, whether in diversion or Restorative Justice mechanisms, evidently leaves much discretion to individual investigative institutions or public prosecutors. This could potentially become problematic if oversight lapses occur in monitoring “*ganti rugi*” payments, especially if cessation of prosecution or investigation letters have been issued, yet the offender defaults on their “*ganti rugi*” obligations.

In response to this challenge and to ensure the fulfillment of “*ganti rugi*”, it appears that the Banyumas Police Department has adopted a more cautious approach by stipulating that “*ganti rugi*” within Restorative Justice must be paid in full. This approach was elucidated by an informant from the Banyumas Police Precinct, who stated, “In this regard, the victim determines the “*ganti rugi*” amount and ensures the offender agrees to the proposed sum. If there is mutual agreement, the “*ganti rugi*” is then immediately provided by the offender to the victim.” This interview insight aligns with observational data, suggesting that this method has been employed to guarantee the execution of “*ganti rugi*” and avert potential defaults by offenders.

However, it should be noted that not all police jurisdictions adopt the same policy, as evidenced in several other studies which found instances of reconciliations not being resolved in immediate lump-sum payments.[21] This underscores the absence of a uniform mechanism guaranteeing the execution of “*ganti rugi*” in both diversion and Restorative Justice frameworks. Consequently, this results in disparate policies adopted by different institutions, perpetuating the potential risk of default in “*ganti rugi*” payments.

Another issue pertains to the “*ganti rugi*” mechanism through restitution. In principle, the regulations concerning restitution appear to be comprehensive. The fundamental problem, however, lies in the limited legal awareness of both law enforcement officials and the victims, leading to a scarce number of restitution claims.

This assertion is grounded in the findings from interviews, data analysis, and observations throughout the research. An informant, a representative from the advocacy sector, revealed that they had never handled a restitution case. Furthermore, the prevalent practice among police officers, prosecutors, and judges has been to neglect informing victims about their restitution rights. Such a statement suggests that restitution has not been a significant element in the criminal justice system, leaving victims perpetually sidelined as the “forgotten man of the criminal justice system.”

This observation correlates with the results from interviews and data collection related to restitution submissions at the Purwokerto District Prosecutor's Office, Banyumas District Prosecutor's Office, Purwokerto District Court, and Banyumas

District Court. The findings indicate an almost non-existent presence of restitution requests by prosecutors and restitution verdicts in court.

In response to this, an informant from the prosecutor's realm expressed their limited understanding of the restitution application mechanism. Some prosecutors candidly admitted that they have never informed victims about their restitution rights. A similar stance was conveyed by a judicial informant who claimed that they sometimes inform, and at other times, inadvertently omit informing victims about their restitution rights. This practice seems to be echoed by other judges but with the perspective that "they have not formally informed victims of their restitution rights because most victims, having navigated the intricate procedure of case disclosure, feel content with the defendant's prosecution."

Contrastingly, the police force is currently taking progressive measures. There is one ongoing case where a restitution application is being made to the Witness and Victim Protection Agency (LPSK). As conveyed by the police, "the restitution request is initiated by the victim through the investigator, who then contacts the LPSK for the restitution application. This process was established since many victims find it challenging to directly approach the LPSK." However, based on interviews with the LPSK and subsequent observations, this application is yet to be confirmed at the central LPSK. This aligns with the negligible number of restitution submissions at the prosecution office and restitution verdicts in the Purwokerto and Banyumas regions, where the police have just begun making applications.

The diminished legal awareness of law enforcement agencies, such as the police (often the primary investigator), neglecting to include victims' restitution rights in the Official Investigation Report (BAP), results in prosecutors also excluding it from their charges and demands. Consequently, judges are unable to grant restitution rights to victims as they cannot adjudicate beyond what's prosecuted. This low legal consciousness also negatively impacts the support provided by law enforcement in restitution application processes. Furthermore, based on data analysis and observations through the Supreme Court of Indonesia's directory, verdicts mandating offenders to pay restitution to crime victims are scarcely found. This underscores the minimal implementation of "*ganti rugi*" via the restitution mechanism. Research informants from the LPSK perceive that the perspective of law enforcement officials is not victim-centric and tends to be outdated in understanding and studying restitution-related regulations.

Victims, as the most invested parties regarding their rights, seemingly lack comprehension and awareness of their restitution rights. This observation was corroborated by informants from the police, prosecution, and judiciary, who confirmed that the victims' limited knowledge on restitution rights influenced their hesitancy to file for restitution from the outset. This perspective is further reinforced by the Witness and Victim Protection Agency (LPSK) who observed that victims tend to be apathetic in pursuing restitution.

Moreover, the existing restitution regulations present challenges. The restitution process can be prolonged and financially burdensome, often posing

difficulties for victims lacking financial capacity.[23] Another fundamental issue is the inflated restitution demands from victims coupled with the offender's inability to make restitution payments. In response to this, an informant from the prosecution observed that perpetrators often opt for custodial sentences as substitutes rather than fulfill restitution payments.

It appears that a prospective solution could involve the confiscation and auction of the offender's assets from the investigative phase. Although this could provide some redress, it also poses potential complications, especially if the offender lacks tangible assets.

5. Conclusion

The first conclusion in this article is the regulatory framework for “*ganti rugi*” within diversion can be observed in article 10, paragraph 2, clause (a) of Law No. 11 of 2012. Within restorative justice there are parallels with diversion in that it doesn't apply to recidivsts. This is as stipulated in Article 5 of the Police Regulation No. 8 of 2021. Within restitution is generally governed by law No. 31 of 2014, and the supreme court regulation No 1 of 2022. There is no term for recidivist in retitution as likely diversion and restorative justice. The equation of diversion and restoraitive justice regulatory is “*ganti rugi*” as a part of a peace agreement between the offender and the victim, implying that the perpetrator will not be prosecuted. In contrast, restitution, adjudicated by the court, is not a component of this peace agreement but instead arises from the victim's demands. Furthermore, the second conclusion is the current landscape highlights several challenges in “*ganti rugi*”, whether through diversion, restorative justice, or court-ordered restitution. These include the absence of a mechanism to ensure “*ganti rugi*” payments in both diversion and restorative justice contexts, a pervasive low level of legal awareness among law enforcement agents and victims resulting in a scarcity of restitution claims, and the heightened demands for “*ganti rugi*” from crime victims juxtaposed with the offender's inability to meet restitution payments. A potential remedy within the realm of diversion and restorative justice seems to be ensuring full, upfront payments. In the context of restitution, the confiscation and auctioning of the offender's assets during the investigation phase may provide a forward-looking solution. Nonetheless, this strategy might still encounter challenges, especially when the offender lacks tangible assets.

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