



Limits on the Value of Restitution for Victims of Crime A Form of Restorative Justice System

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Abstract. The purpose of this paper is to determine the limitations of the value of compensation (restitution) for victims of criminal offenses and to find out what criminal offenses can be given restitution and compensation. Restorative justice is a settlement process that is carried out outside the criminal justice system by involving victims, perpetrators, families of victims and perpetrators, the community, and parties with an interest in a criminal offense that occurred to reach an agreement and settlement. This research uses normative legal research, namely studying rules from an internal perspective by using the object of research as a legal norm. The analysis given to examine this research is the analysis of legal interpretation, namely tracing the rules carried out on how the rules used in victimology studies should be for restitution of compensation for victims of crime. The phenomenon of resolving criminal cases through alternative dispute resolution, which leads to a win-win solution in America, is philosophically adopted to resolve criminal cases committed by corporations, considering that corporations have qualified organs and funds. So that the possibility of granting dispensation to victims can be realized with the principle of a rational win-win solution.

Keywords: Restitution, Restorative Justice, and Victims

1. Introduction

The Indonesian state is a state of law (*rechtsstaat*), confirmation of this can be seen in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. According to Daniel S. Lev, the juridical-constitutional confirmation by the launching fathers as above is very appropriate, because sociologically various groups of Indonesian society also support/approve of the rule of law for various reasons. This means that all subsystems of the administration of the Indonesian state and its constitutional system, social order system must be regulated by law, and also all elements of state power tools and citizens must comply with the laws created for the Indonesian rule of law. This is also called understanding constitutionalism. adopted in a legal state. Because reserve law regulates and guarantees the maintenance of peace, all preparation of legal strategies, use of law, legal institutions and law enforcement are very important in realizing the ideals of a rule of law.

The orientation of punishment in the criminal justice system, which previously emphasized a retributive approach, has now been shifted towards a restorative approach. The restorative justice approach in the criminal justice system was first

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explicitly regulated in Law No. 12 of 2011 concerning the Juvenile Criminal Justice System (UU SPPA). Restorative justice based on the Juvenile Criminal Justice System Law is the resolution of criminal cases involving the perpetrator, victim, family of the perpetrator/victim, and other related parties to jointly seek a fair resolution with the pressure of returning them to their original condition, and not retaliation. One of the principles emphasized in restorative justice in the criminal justice system is the existence of restoration efforts for all parties, including victims, perpetrators and the community who witnessed the crime. This approach to the criminal punishment system is also stated in the objectives of punishment in the Draft Criminal Code, namely to resolve conflicts arising from criminal acts, restore balance, and bring a sense of security and peace in society.[1]

Based on Article 8 paragraph (1) of the Supreme Court Number 1 of 2020 concerning Procedures for Handling Applications and Providing Restitution and Compensation to Victims of Crime (hereinafter referred to as Number 1 of 2022), parties who apply for compensation are submitted to the Court, addressed to the Protection Office Witnesses and Victims (hereinafter referred to as "LPSK"), investigators, public prosecutors and victims. Furthermore, according to Article 5 paragraph (3) of Perma 1 January 2022, if the victim is a child, then those claiming compensation are parents, family members, guardians, heirs or representatives, or LPSK. Meanwhile, based on Article 18 letter c Perma no. Starting January 1 2022, compensation claims must be made through LPSK.

So far, legal protection for victims has relied on the Criminal Code (KUHP) as a source of substantive law and the Criminal Procedure Code (KUHP) as procedural law. If you pay attention, the Criminal Code regulates more provisions regarding suspects than victims. Compared with the status of criminals, the status of victims in the Criminal Code does not appear to be optimal. Legal protection for victims should be clearly regulated in criminal law. For example, when a criminal act is committed against the perpetrator, the losses experienced by the victim or the victim's family also need to be taken into account. In this way, the perpetrator can obtain criminal compensation which may be more beneficial for the victim.

The Restorative Justice Program Manual, published by the United Nations, states: "Restorative justice is a problem-solving approach that involves, in various forms, victims, perpetrators, their social networks, justice institutions, and communities." Restorative justice is a method for overcoming criminal problems involving victims, perpetrators and all levels of society to achieve justice.[2]

Restorative efforts and the right to obtain recovery for victims are further regulated in various other statutory regulations including Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Law Number 13 of 2016 concerning Protection of Witnesses and Victims, Law Number 5 of 2018 concerning Terrorism, Law Number 21 of 2007 concerning the Crime of Human Trafficking, and Law Number 12 of 2021 concerning the Crime of Sexual Violence. Then, a restorative justice approach and efforts to restore the original balance as a result of a criminal act are also the objectives of punishment in Law no. 1 of 2023 concerning

the Criminal Code. There are forms of recovery which are the rights of victims which must be fulfilled either through compensation for losses borne by the perpetrator or by the State, such as medical and social rehabilitation, psychosocial services, and so on.

Restorative justice is a resolution process carried out outside the criminal justice system by involving victims, perpetrators, families of victims and perpetrators, the community and parties with an interest in a criminal act that occurred to reach an agreement and resolution. Restorative justice is a fair resolution that involves perpetrators, victims, their families and other parties involved in a criminal act, jointly seeking a resolution to the criminal act and obligating it, with the threat of restoration and not retribution.

The basic idea of having alternative case resolutions in criminal cases is related to the nature of criminal law itself. Van Bemmelen put forward the opinion that criminal law is an *ultimum remedium*, it should be based, meaning that if other parts of the law do not sufficiently state the norms recognized by law, then criminal law can be applied. Criminal threats must remain an *ultimum remedium* (last remedy). This does not mean that criminal threats will be eliminated, but we must always consider the pros and cons of criminal threats, and we must ensure that the medicine given is not worse than the disease.[3]

In principle, criminal cases cannot be resolved through a restorative justice process, but in practice criminal cases are often resolved through a mediation process which is a lawyer's initiative as part of case resolution. Thus, in reality mediation can actually be carried out in the Criminal Justice System. Countries that have implemented restorative justice include Austria, Germany, Belgium, France, Poland, the United States, Sweden, England and Wales, Italy, Finland and the Netherlands. This mediation is known as Penal Mediation.[4]

Victims as parties who suffer and suffer losses due to violations of criminal law are usually only involved to the extent of providing evidence as victim witnesses. As a result, victims often feel dissatisfied with the criminal charges imposed by the Public Prosecutor and/or the decisions handed down by the Judge because they are deemed not to be in accordance with the victim's values of justice. This is because the criminal system is implemented to prosecute perpetrators of criminal acts, not to serve the interests of victims of criminal acts, because criminal acts are acts of the perpetrator against the state. The existence of a criminal system is aimed at the interests of the state and society, not for the personal interests of citizens.

According to Muladi, within the framework of the regulatory concept for the protection of victims of criminal acts, the first thing that must be considered is the essence of the losses suffered by the victim. The essence of the loss is not only material or physical suffering but also psychological. This is in the form of "the trauma of losing trust in society and general downloading". Symptoms of this syndrome can include anxiety, suspicion, cynicism, depression, loneliness and other avoidance behavior.[5]

The low level of fulfillment of victims' rights of restitution in the judicial process is caused by:

- a. reporting restitution is not included in the demands of the Public Prosecutor (JPU) on the grounds that there is no legal basis for demanding restitution from the defense and the defense's refusal to pay restitution to the victim or defense;
- b. the judge did not grant restitution because the judge did not understand the losses experienced by the victim, did not have the victim's perspective and assessed that the judge did not have the ability to pay restitution; And
- c. the legal process has stopped or been cancelled, but the compensation claim file has been submitted to the investigator/prosecutor. There are still challenges in efforts to increase the understanding of Law Enforcement Officials (APH) regarding the importance of recovery efforts for victims of criminal acts, regardless of the perpetrator/defendant's reasons for paying restitution. These conditions should not invalidate the victim's right to receive appropriate compensation and the right to obtain recovery.[1]

Special recovery funds or victim assistance funds are an important breakthrough in the development of the criminal system with a restorative justice approach. The establishment of a victim assistance fund is mandated through Law no. 12 of 2021 concerning Crimes of Sexual Violence. The Victim Assistance Fund is a means of providing compensation to victims in the event that the convict's confiscated assets do not cover the cost of restitution. The state then compensates the amount of underpaid restitution to the victim according to the court execution. Through the establishment of a victim assistance fund, it is hoped that recovery efforts for victims can be more optimal and sufficient in accordance with the LPSK's calculation of losses.

One form of compensation for victims of criminal acts is restitution. Restitution in accordance with the Principle of Restoration to its Original Condition (*restitutio in integrum*) is an effort that ensures that crime victims must be returned to their original condition before the crime occurred, even though it is based on the fact that it is impossible for the victim to return to their original condition. This principle is expressed that the form of recovery for victims must be as complete as possible and cover the various aspects resulting from the crime. With restitution, victims can feel free, with legal rights, social status, family life and citizenship, return to their place of residence, restore their job, and color their assets. In practice, in almost all countries, the concept of restitution has been developed and given to crime victims for their suffering as victims of criminal acts. In this concept, the victim and his family must receive fair and appropriate compensation from the person at fault or the third party responsible. This compensation will cover the return of property or payment for damage or losses incurred, compensation for costs incurred as a result of casualties, provision of services and rights of recovery.[6]

Based on Article 1365 of the Civil Code, people who suffer losses caused by other people's unlawful actions have the right to claim compensation. If the person suffers losses as a result of a criminal act, to make it easier for the person, the state

provides a way to obtain compensation without having to go through the normal civil lawsuit process by connecting the compensation lawsuit case to the criminal case regulated in the Criminal Procedure Code. Furthermore, the state increasingly provides space for victims of criminal acts to obtain their rights to obtain compensation with a wider scope by issuing Law Number 13 of 2006 concerning Protection of Witnesses and Victims.[6]

2. Problems

Based on the background of the problems stated above, the problems raised in this thesis are:

- a. How do you apply the value of restitution to crime victims?
- b. Can all criminal acts be resolved by restorative justice?

3. Method

This research uses normative legal research, namely examining rules from an internal perspective using legal norms as the research object. Primary legal materials consist of laws that have the force of binding rules that are authoritative. Secondary legal materials are legal materials that present primary legal data, which includes books, opinions from experts, legal scientific literature and scientific works in the related legal field using problems in research. Tertiary legal materials are supporting legal materials, including dictionary rules, lay dictionaries, and internet sources by including site addresses or related links. The collection of materials uses an inventory method which includes statutory regulations, with techniques that refer to bibliographic recording carried out by linking it to a file system using a type of normative legal research. The analysis intended to examine this research analysis is a legal interpretation, namely the interpretation of the rules carried out regarding what the arrangements used in victimology studies regarding compensation restitution for crime victims should be.

4. Discussion

The commission of a criminal act in the form of an obligation to provide compensation to the victim will give rise to responsibility on the part of the perpetrator, because carrying it out requires an active role on the part of the perpetrator. When a judge imposes criminal sanctions, the judge often gives criminal sanctions that are too light for defendants who are proven to have committed a criminal act. Of course, this is not comparable to the losses experienced by victims who have suffered significant losses as a result of the crimes they have committed. Criminal sanctions that are too light mean that the objectives of special deterrence and general deterrence have not achieved the best expected results. Based on the background above, the author believes that conducting research is necessary and

important. Therefore, what we want to discuss in writing this research is what are the legal provisions regarding compensation or restitution for crime victims, and what is the mechanism for providing compensation for crime victims and what are the standard limits for the value of restitution or compensation for crime victims.

The development of the criminal justice system is not only oriented towards the interests of the perpetrator, but is also oriented towards protecting the victim. Every victim of certain criminal acts, apart from having the right to protection, is also entitled to restitution and compensation. The law has regulated these rights, but has not regulated the technicalities of resolving applications to obtain restitution of these rights and compensation. Therefore, the Supreme Court has issued Perma Number 1 of 2022 concerning Procedures for Settlement of Applications and Providing Restitution and Compensation to Victims of Crime;

Among the laws and regulations that regulate restitution and compensation are Government Regulation Number 43 of 2017 concerning Implementation of Restitution for Children Who Are Victims of Crime and Government Regulation Number 7 of 2018 as amended by Government Regulation Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning Providing Compensation, Restitution and Assistance to Witnesses and Victims. Based on government regulations, further provisions regarding the technical implementation of examinations of restitution applications are regulated by Supreme Court Regulations. Following up on this, on February 25 2022, Perma 1 of 2022 was published which was promulgated in the State Gazette on March 1 2022.

This regulation applies to requests for restitution and compensation for certain criminal acts. According to Article 2 of the Perma, criminal acts that can be requested for restitution are criminal acts of serious human rights violations, terrorism, human trafficking, racial and ethnic discrimination, criminal acts related to children, as well as other criminal acts determined by the LPSK Decree as intended in the provisions statutory regulations. Meanwhile, the criminal offenses for which sanctions can be applied are criminal acts of serious human rights violations and terrorism as intended in the provisions of statutory regulations. In relation to compensation regulated in Qanun Number 7 of 2013 concerning the Jinayat Procedural Law, by Perma 1 of 2022 this compensation is equated with Restitution.

To provide benefits to crime victims, compensation is a kindness received by taking into account the damage suffered. If the problem is related to a crime then compensation becomes commensurate with covering the damage suffered by the victim. There are two aspects to compensation for losses, namely the past and the future. Compensation for events that occurred in the past is called compensation (compensation); compensation for the future is achieved by stopping the crime.

According to Tony F. Marshall, "restorative justice is a process in which all parties with an interest in a crime come together to discuss how to deal with the consequences of the crime and its application in the future." (Restorative justice is a process in which all parties with a stake in a particular violation come together to consider how to address the consequences of that violation for the benefit of the future). From this definition it can be seen that the first thing that must be considered

when using restorative justice to resolve crimes is the agreement of the parties, as well as future interests. Punishment can cause problems, *Fiat justisia ruat coelum*, this Latin proverb means "even if the sky falls, justice must be upheld".

In the United States, the phenomenon of resolving criminal cases through ADR (Alternative Dispute Resolution) is a win-win solution that is philosophically adopted to resolve corporate criminal cases because of the quality of the institutions and establishment of the corporation. Therefore, in line with the rational win-win principle, immunity for victims can be achieved.

Covey believes that a win-win solution, or win-win solution, can satisfy all parties in a lawsuit and achieve a win-win situation because philosophically it is:

Win-win means understanding that we live in an interdependent world, and therefore must work together in it. This means that in most areas of life, we must work together with others to achieve success. If we understand this interdependence, we will be willing to dedicate ourselves to working together with others in ways that guarantee mutual success, and enable everyone to become winners. That is the essence of a win-win attitude. It will facilitate our interactions with each other, and will produce agreements and problem solving that enable all parties to get what they want.[7]

More clearly, Covey says that:

Win-win is a framework of thinking and feeling that always seeks mutual benefits in all interactions between humans. Win-win means everyone benefits, because the agreement or problem solving is profitable and satisfying for both parties. With a win-win solution, all parties feel happy with the decision taken and are bound to participate in implementing the agreed action plan.[7]

The amount of compensation (Restitution) for crime victims can vary depending on several factors, namely:

- a. The agreement between the perpetrator and the victim at the time of mediation, this has not yet regulated the limit of the amount of restitution received by the victim because there are no provisions yet. This will lead to victimization for the perpetrator to pay restitution to the victim according to the victim's wishes because he is in a stressful situation. Restitution is an effort to compensate for losses suffered by crime victims. Forms of compensation can be in the form of recovery of losses, replacement of lost or damaged property, reimbursement of medical expenses, compensation for psychological or emotional financial losses, and so on. The goal of restitution is to provide as much punishment to victims as possible so they can recover from the disaster of the crimes they experienced.
- b. To determine the amount of restitution, the presentation system usually evaluates the losses experienced by the victim. This may involve investigating and assessing the value of lost or damaged property, medical costs and necessary care, wages lost due to absence from work, and so on. The court may also consider non-economic losses, such as emotional trauma, anxiety or fear experienced by the victim.

Both restitution and compensation have different forms of compensation. Not in Article 4 of Perma. Regulation Number 1 of 2022 is as follows: "Victims have the right to receive compensation in the form of:

- a. Compensation for loss of wealth and/or income;
- b. Compensation for material and immaterial losses resulting from suffering and pain directly related to criminal acts;
- c. Reimbursement of medical and/or psychological care costs; and
- d. Other losses suffered by the victim as a result of the criminal act include basic transportation costs, attorney's fees, or other costs related to the legal process. "

Therefore, it can be seen that restitution compensation includes compensation for losses outside of the crime experienced by the victim, for example costs related to the legal process. Meanwhile, compensation in compensation is only returned for losses directly related to a criminal act experienced.

In some cases, state laws or specific permits may set maximum limits or guidelines for restitution that can be provided to victims. There are also programs or charities that provide financial assistance to crime victims.

Restitution for crime victims is a form of financial compensation given by the perpetrator of the crime to the victim as a way to compensate for the losses suffered by the victim due to the perpetrator's actions. Restitution is usually given as part of the legal process as a form of restoration and return to the victim. The following is how to apply the value of restitution to crime victims:

- a. Loss Identification is identifying and documenting the losses suffered by the victim. This includes physical damage, financial loss, medical costs, or other measurable losses.
- b. Determination of Restitution Amount: The judge will determine the amount of restitution that must be paid by the perpetrator of the crime. This can be based on the victim's proven losses or the value of lost assets.
- c. Monitoring and Collection: The criminal justice system usually has mechanisms to ensure that criminals pay restitution to victims. This may include collection through court regulations or the specifically responsible agency.
- d. Implementation and Monitoring: Once the amount of restitution is determined, the criminal must comply with payment obligations. The judicial system or responsible body will monitor the implementation of this restitution.
- e. Storage and Distribution: Restitution paid by criminals is usually deposited in a special account and distributed to victims according to terms established by the court or restitution agreement;
- f. Victim Recovery: Restitution aims to help victims recover their losses, but often cannot fully compensate for those losses. Victims may also need

emotional support, counseling, or other services to help them recover from the effects of the crime.

Implementing the value of restitution for crime victims involves cooperation between the justice system, victims, and perpetrators of crime to ensure that victims receive compensation commensurate with the losses they have suffered.

There are several steps in implementing Restorative Justice, including:

- a. Meeting between the perpetrator, victim, and mediator: In many cases, the perpetrator and victim are given the opportunity to meet face to face with the help of a mediator. This allows them to talk about their feelings, losses and the impact of criminal acts in private;
- b. Agreement to recover losses: In some cases, the perpetrator and victim can reach an agreement on how the perpetrator can recover the losses that have been caused to the victim, either financially or through other actions approved by both parties; and
- c. Community participation: Restorative Justice also involves the community in the recovery process, as criminal acts often have a broader impact on society. Communities can participate in supporting the recovery of perpetrators and victims. Oversight and monitoring: Once an agreement is reached, implementation of the agreement must be monitored to ensure that the perpetrator complies with the agreement and recovers losses as agreed.

Restorative Justice has several benefits, including reducing the rate of reoffending, restoring victims, and strengthening relationships between perpetrators and the community. However, not all criminal cases are suitable for this approach, and there are limitations and criticisms that should be noted. The Restorative Justice approach is often used in cases of minor crimes, such as vandalism, minor fights, or petty theft. For more serious criminal cases, the traditional criminal justice system may still be necessary. The decision to use Restorative Justice or another approach will depend on factors such as the seriousness of the crime, the interests of the victim, and the legal policies in force in a country or jurisdiction.

5. Conclusion

Determining the amount of restitution for crime victims is a process that can vary depending on the legal jurisdiction, type of crime, and applicable legal framework. However, there are several general principles that are usually applied in the process of determining the amount of restitution:

- a. Losses Suffered by the Victim: The amount of restitution is usually based on the real or actual losses suffered by the victim as a result of the crime.
- b. Documentation and Evidence: Those who determine the amount of restitution usually need supporting documents and evidence to calculate the victim's losses.

- c. Perpetrator's Ability to Pay: In addition to considering the losses suffered by the victim, parties determining restitution can also consider the perpetrator's financial ability to pay. Restitution that is too high and unrealistic can result in the perpetrator's inability to pay it.
- d. Legal Guidelines: In many jurisdictions, there are legal guidelines or guidelines used by courts or authorities to help determine the amount of restitution in various types of criminal cases.
- e. Consultation with Interested Parties: Sometimes, parties determining the amount of restitution may consult with the victim, prosecutors, and attorneys on both sides to reach an agreement on a reasonable amount of restitution.
- f. Court Decision: In most cases, the court will decide the amount of restitution based on the arguments and evidence presented by the parties involved in the case.

It is important to remember that the process for determining the amount of restitution can vary based on legal jurisdiction and type of crime. Additionally, the laws that apply where you live will influence how restitution is determined in a particular case. For more specific information, always consult a lawyer or competent legal authority.

A restorative legal system is an alternative approach to law enforcement that focuses on restoring and repairing relationships between offenders, victims, and society, while considering the accountability required. Many criminal acts can be resolved through restorative justice, especially those involving social interactions and disagreements. Some criminal acts that can be resolved through restorative justice include: Property Damage, Minor Violence, Petty Theft, Cyberbullying and Online Harassment, Traffic Violations, Conflict within the Family.

It is important to remember that each case is unique, and the restorative justice approach must be adapted to the case in question. More serious crimes or cases involving serious violence may not be appropriate for a restorative approach and may require more traditional law enforcement. Additionally, the involvement of all parties, including victims, perpetrators, and authorities, is critical to implementing a restorative approach successfully.

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