
Submission received for Cogent Social Sciences (Submission ID: 226010215)

rpsupport@tandf.co.uk <rpsupport@tandf.co.uk>
Kepada: mahrus_ali@uii.ac.id

6 Maret 2022 14.45



Dear Mahrus Ali,

Thank you for your submission.

Submission ID	226010215
Manuscript Title	Victim's Compensation and Restitution in Indonesia; Regulatory Flaws, Judicial Response, and Proposed Solution
Journal	Cogent Social Sciences

You can check the progress of your submission, and make any requested revisions, on the Author Portal.

Thank you for submitting your work to our journal.
If you have any queries, please get in touch with OASS-peerreview@journals.tandf.co.uk.

Kind Regards,
Cogent Social Sciences Editorial Office

Taylor & Francis is a trading name of Informa UK Limited, registered in England under no. 1072954.

Registered office: [5 Howick Place, London, SW1P 1W](#).

226010215 (Cogent Social Sciences) A revise decision has been made on your submission

Cogent Social Sciences <em@editorialmanager.com>

29 Maret 2022 13.53

Balas Ke: Cogent Social Sciences <oass-peerreview@journals.tandf.co.uk>

Kepada: Mahrus Ali <mahrus_ali@uii.ac.id>

Ref: COGENTSOCSOCI-2022-0268

226010215

Victim's Compensation and Restitution in Indonesia; Regulatory Flaws, Judicial Response, and Proposed Solution
Cogent Social Sciences

Dear Mahrus Ali,

Your manuscript entitled "Victim's Compensation and Restitution in Indonesia; Regulatory Flaws, Judicial Response, and Proposed Solution", which you submitted to Cogent Social Sciences, has now been reviewed.

The reviews, included at the bottom of the letter, indicate that your manuscript could be suitable for publication following revision. We hope that you will consider these suggestions, and revise your manuscript.

Please submit your revision by Apr 28, 2022, if you need additional time then please contact the Editorial Office.

To submit your revised manuscript please go to <https://rp.tandfonline.com/submission/flow?submissionId=226010215&step=1> and log in. You will see an option to revise alongside your submission record.

If you are unsure how to submit your revision, please contact us on OASS-peerreview@journals.tandf.co.uk

Please ensure that you include the following elements in your revised submission:

- * public interest statement - a description of your paper of NO MORE THAN 150 words suitable for a non-specialist reader, highlighting/explaining anything which will be of interest to the general public (to find about more about how to write a good Public Interest Statement, and how it can benefit your research, you can take a look at this short article: <http://explore.cogentoa.com/author-tool-kit/public-interest-statement>)
- * about the author - a short summary of NO MORE THAN 150 WORDS, detailing either your own or your group's key research activities, including a note on how the research reported in this paper relates to wider projects or issues.

You also have the option of including the following:

- * photo of the author(s), including details of who is in the photograph - please note that we can only publish one photo
- * cover image - you are able to create a cover page for your article by supplying an image for this purpose, or nominating a figure from your article. If you supply a new image, please obtain relevant permissions to reproduce the image if you do not own the copyright

If you require advice on language editing for your manuscript or assistance with arranging translation, please do consider using the Taylor & Francis Editing Services.

Please ensure that you clearly highlight changes made to your manuscript, as well as submitting a thorough response to reviewers.

We look forward to receiving your revised article.

Best wishes,

Heng Choon (Oliver) Chan, Ph.D.

Senior Editor

Cogent Social Sciences

Comments from the Editors and Reviewers:

Title, Abstract and Introduction – overall evaluation
Reviewer 1: Sound with minor or moderate revisions

Methodology / Materials and Methods – overall evaluation
Reviewer 1: Sound with minor or moderate revisions

Objective / Hypothesis – overall evaluation
Reviewer 1: Sound

Figures and Tables – overall evaluation

Reviewer 1: Not applicable

Results / Data Analysis – overall evaluation

Reviewer 1: Sound with minor or moderate revisions

Interpretation / Discussion – overall evaluation

Reviewer 1: Sound with minor or moderate revisions

Conclusions – overall evaluation

Reviewer 1: Sound with minor or moderate revisions

References – overall evaluation

Reviewer 1: Sound

Compliance with Ethical Standards – overall evaluation

Reviewer 1: Sound with minor or moderate revisions

Writing – overall evaluation

Reviewer 1: Sound with minor or moderate revisions

Supplemental Information and Data – overall evaluation

Reviewer 1: Not applicable

Comments to the author

Reviewer 1: 1. Methodology needs to be worked on; some minor errors are there.

2. Conclusion is construed very easily and need proper interpretation with main body of the research paper.

Title, Abstract and Introduction – overall evaluation

Reviewer 2: Sound with minor or moderate revisions

Methodology / Materials and Methods – overall evaluation

Reviewer 2: Sound

Objective / Hypothesis – overall evaluation

Reviewer 2: Sound

Figures and Tables – overall evaluation

Reviewer 2: Sound with minor or moderate revisions

Results / Data Analysis – overall evaluation

Reviewer 2: Sound with minor or moderate revisions

Interpretation / Discussion – overall evaluation

Reviewer 2: Sound with minor or moderate revisions

Conclusions – overall evaluation

Reviewer 2: Sound with minor or moderate revisions

References – overall evaluation

Reviewer 2: Sound with minor or moderate revisions

Compliance with Ethical Standards – overall evaluation

Reviewer 2: Sound

Writing – overall evaluation

Reviewer 2: Sound with minor or moderate revisions

Supplemental Information and Data – overall evaluation

Reviewer 2: Not applicable

Comments to the author

Reviewer 2: Overall, the paper provides insightful information about Indonesia's practices concerning victims assistance and compensation. It provides detailed legal analysis, with technical knowledge (domestic legislation), which can be challenging for general audience to comprehend without some background knowledge and proper organization. However, it raises important an issue in the criminal justice system, namely social justice. There are several areas of improvement that the paper needs as follows;

- The abstract needs to be more precise, and capture only the primary objectives, the main argument, or new

knowledge. Details on legislation should be omitted as they can be confusing to general audience

- The introduction: the primary objective should be placed in the last paragraph after describing the significance of this study. Also, the paragraph about the Declaration of Basic Principles can be better incorporated by showing how the Principles have been adopted within Indonesian laws.
- Methodology offers two primary sources of information, namely legislation concerning crime victim compensation and restitution laws, and court decisions. The authors should justify the methodology by providing reasons for criteria for selecting these court cases.
- The theory section is well-written and well-organized. Chokprajakchat et al., 2017 (Developing Thailand's comprehensive crime victim assistance model through a comparative perspective of the Swedish and Norwegian systems) can be a good source of information for enforcement mechanisms established in the Scandinavian countries.
- The analysis section (The Regulatory Framework of Victim's Compensation and Restitution): there are some parts that need clarifications such as "...Other types of protection, such as criminal damage, which are extremely valuable to victims, are not covered by the Criminal Code." (P.6, para 1) "Because to these flaws, the fusion of indemnity cases is no longer exclusively focused on victim protection..." (P.6, last para) "a restitution application can be filed before or after a court ruling that has been granted permanent legal effect..." (P.9, para 1)
- There are issues of grammatical errors, word choice, word repetition throughout the paper such as the word "privilege" should be replaced with "right" when referring to victim compensation and restitution "In the Criminal Procedure Code, victims' rights are limited to file compensation claims under Article 98..." (P.6, para.3). This paragraph seems contradictory as the law allows victims to merge claims in criminal and civil suits making it more convenient for the victims to access to remedy.
- The proposed solution about certain practices such as how victim funds can be generate seem to mismatch with the legal issues presented in the paper (i.e. limited scope of protection under the law, the issue of inconsistency and equality of legal protection over different types of victims).
- The conclusion should summarize the legal loopholes found in the law, how they do not adequately provide victims with protection and assistance pursuant to the international standards or theories discussed in the paper, and how these suggestions can better fulfill state obligations.
- In-text citations are not in accordance with the APA style.
- The currency used in the paper should be converted in a more recognizable currency such as USD to provide a better frame of reference. Overall, this is an interesting paper.

In compliance with data protection regulations, you may request that we remove your personal registration details at any time. (Use the following URL: <https://www.editorialmanager.com/cogentsocsci/login.asp?a=r>). Please contact the publication office if you have any questions.

Revised submission received for Cogent Social Sciences (Submission ID: 226010215.R1)

rpsupport@tandf.co.uk <rpsupport@tandf.co.uk>
Kepada: mahrus_ali@uii.ac.id

7 April 2022 09.25



Dear Mahrus Ali,

Thank you for submitting your revised manuscript.

Submission ID	226010215
Manuscript Title	Compensation and Restitution for Victims of Crime in Indonesia: Regulatory Flaws, Judicial Response, and Proposed Solution
Journal	Cogent Social Sciences

You can check the progress of your submission, and make any requested revisions, on the Author Portal.

Thank you for submitting your work to our journal.
If you have any queries, please get in touch with OASS-peerreview@journals.tandf.co.uk.

Kind Regards,
Cogent Social Sciences Editorial Office

Taylor & Francis is a trading name of Informa UK Limited, registered in England under no. 1072954.
Registered office: [5 Howick Place, London, SW1P 1W](#).

Compensation and Restitution for Victims of Crime in Indonesia: Regulatory Flaws, Judicial Response, and Proposed Solution

Mahrus Ali

Universitas Islam Indonesia

Andi Mulyono

Sekolah Tinggi Ilmu Hukum Manokwari, Papua Barat, Indonesia

Wawan Sanjaya

Universitas Balikpapan, Indonesia

Ari Wibowo

Universitas Islam Indonesia

Corresponding Author

mahrus_ali@uii.ac.id

Abstract

The study aims to find flaws in the Indonesian legislation in regard to the compensation and restitution for the victims of crime, to review the court rulings, and to create the compensation and restitution arrangements that would protect the victims. By employing the doctrinal legal research, this study identifies that the victims' rights to compensation and restitution in various legislations is contingent upon the perpetrator's conviction, excluding the victims of crime from obtaining their rights. In court decisions, the perpetrator's resuscitation is frequently accompanied with a sentence of criminal detention for a short period of time. Victims have a tough time obtaining restitution since the perpetrator prefers to serve time in prison rather than to pay compensation to the victim. Compensation is an obligation of the state. Hence, its existence is not contingent upon judicial decisions. It is awarded to victims whose offender dies before the trial was completed or unlawfully arrested victim by law enforcement authorities. Meanwhile, restorative justice is referred to as restitution. The prerequisite of a legally binding court ruling is only enforced if the perpetrator refuses to pay the restitution. Even before the verdict, the culprit might provide restitution to the victim, which can be used to mitigate the sanction or to obtain judicial pardon. Restitution is required for all crimes that directly harm the victim, and it can be paid in installments.

Keywords: victims of crime, compensation, restitution, judicial response

Introduction

It is not an exaggeration to argue that the existence of victims of crime does not receive much attention in the criminal justice process. The central focus of criminal law is more often on criminal perpetrators than on victims (Sánchez, 2008) (Capers, 2020). The victim is simply positioned as a witness or a whistleblower to a criminal conduct. The victim is an object who is subjected to criminal activities, both physical and psychological (Polito, 1990). When a criminal conduct was committed and the

perpetrator is convicted, the victim is abstracted into the public interest, and it is thought that the victim has received protection. Since it does not concern with the recovery of the losses resulted from a criminal act, criminal law appears as if it abandons the victim (Rodriguez, 1992).

More features of criminal offenders are regulated under the Criminal Code which is based on a neoclassical school of thought that accepts circumstances which benefit the criminals, while victims are neglected (Hong, 2002) . The Criminal Procedural Law is also dominated by provisions on the rights of the criminal offenders, with only a few provisions mentioning the rights of the victims. These provisions which govern matters regarding the victims including their rights can only be found in Chapter XII which incorporates the damages in lawsuits. The right to report or complain about criminal acts is regulated in Article 108, while the right of the victim's family to be informed if the victim dies is promulgated in Article 134 paragraph (1). In addition, the right of the victim as a witness to be reimbursed when answering the call to submit information is found in Article 299 paragraph (1) (Angkasa, 2016).

In recent years, the criminal justice system has begun to pay closer attention to victims. Crime is no longer viewed as the violation of the interests of state, but rather as a violation of or injury to the victim (Cardenas, 1986) (Levanon, 2015) (Hughes, 2021). The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of 1985 emphasized the necessity for compensation and restitution in providing protection to victims. Article 8 states that ‘offenders or third parties responsible for their behavior should, where appropriate, make fair restitution to victims or their families. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights. Article 12 also mentions that ‘when compensation is not fully available from the offender or other sources, States should endeavor to provide financial compensation to: (a) victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes; (b) the family, in particular dependent of persons who have dies or become physically or mentally incapacitated as a result of such victimization’. This indicates that the perpetrator of a criminal act or other accountable party must make restitution to the victim or their family, including compensation for damaged or lost property, recovery of suffering, and other rights of the victim. Failure of the perpetrator to fulfill these rights subsequently hold the state liable for paying to the victims (Ezioni, 2013).

The principles of victim protection in the Declaration have been incorporated into the Indonesian legislations. The Human Rights Court Law of 2000 was the first piece of law to recognize the victims' rights to physical and mental protection from threats, disturbances, terror, and violence by any party, as well as the right to compensation and restitution as outlined in Articles 34 and 35. Three years later, Indonesia passed an Anti-Terrorism Law that includes provisions on the equivalent rights of the victims. The Witness and Victim Protection Law of 2006, which was revised in 2014, lays out the principles of protection for the victims and their rights in greater detail. Article 1 section (2) of the Law defines victim as ‘a person who suffers physical, mental, or economic harm as a result of a criminal act’. This definition is similar to the definition of victim found in the Declaration's as ‘persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss, or

substantial impairment of their fundamental rights, as a result of acts or omissions that are in violation of criminal laws...'. Several further regulations, such as the Human Trafficking Law of 2007 and the Government Regulation of 2018 on Compensation, Restitution, and Assistance to Witnesses and Victims, have regulated a number of rights of the victim, including compensation and restitution. Although these two rights have been governed by various laws, there are still regulatory flaws in their implementation. This affects their effectiveness in providing protection to victims of crime such as the necessity of judicial decision.

This present study aims to explore and analyze the flaws of compensation and restitution in the Indonesian legislations and court decisions that have resulted in the victims not being fully protected, and the idea of how to safeguard the victims of crime through comprehensive compensation and restitution arrangements. The authors argue that compensation and restitution provisions in various laws have not been sufficiently tailored to protect the victims of crime. Our argument is presented in six distinct sections. The first section presents the introduction, and the subsequent section presents the methodology guiding the study and the sources of data. The third section is theoretical bases on compensation and restitution. It is argued that both right of victims of crime have differences in nature and philosophical foundation. The fourth section highlights the flaws of compensation and restitution in various legislations in Indonesia. Victims of crime are entitled on the compensation and/or restitution only after the court ruling and request of the victims. The fifth section discusses the judicial response on the imposition of paying compensation and restitution to the victims by the perpetrator or state. It is found that the court judgment obliging the accused to pay restitution is invariably accompanied with a brief prison sentence. The last section analyzes the proposed solution to protect the victim of crime through compensation and restitution.

Methodology

This doctrinal legal research mainly relies on the Indonesian legislations promulgating compensation and restitution for victims of crime as the primary source of data. At least 5 laws regulate the compensation and restitution in criminal matters, namely Criminal Procedural Code, Human Rights Court Law, Anti-Terrorism Law, Human Trafficking Law, as well as Witness and Victim Protection Law. The analysis on these laws focuses on the requirement for victims to be entitled to compensation and/or restitution. In addition, the court rulings on the imposition of compensation and restitution were highlighted to identify whether the court decisions provide enough safeguard for the victims to obtain their two rights. Six judicial decisions were examined on the basis that those verdicts which order compensation and/or restitution for the defendant or the state were rarely carried out by the judge. Only a few victims ask for compensation or restitution in the criminal proceeding. It was also supported by the fact that there were few regulations limiting the victims' rights to receive compensation from the state or restitution of the crime. These data play an important aspect to propose a comprehensive mechanism for victims of crime to get compensation and/or restitution.

Theories on Compensation and Restitution for Victims of Crime

Unlike restitution, compensation takes the form of monetary payment and it is a state obligation. The “failure to protect” theory underpins the state obligation to

compensate victims of crime. This theory dictates that an individual who become the victim of a crime is primarily caused by the failure of the society to eliminate crime and by extension, the failure of the law enforcement to prevent offenses (Goldscheid, 2004). In addition, there are two considerations as to why victims are entitled to state-provided compensation First, compensation is based on equity and social solidarity. The victim of crime is a victim of society who should be reimbursed by the community for the damages incurred. In a larger sense, the theory holds that the government owes compensation to the victims since law enforcement officers have failed to prevent crime from occurring. Second, other forms of compensation have been proven to be insufficient to proportionately compensate the victims (Katsoris, 1990/1991).

Compensation is a program that provides public fund to those who have been the victims of crime. The fund is a public resource that can be streamlined from the external sources of the crime and is used to meet the particular needs of the victim (Mégret, 2010). Compensation for victims primarily aims to improve the responsiveness of the criminal justice system to the victims (Foote, 1992). Medical expenses, mental health counselling, funeral expenses, lost wages, cost of glasses, contact lenses, dental care, purchase of prosthetic devices, cost of moving or relocating, transportation costs to obtain medical care, job rehabilitation, replacement services for infant or children care, and domestic assistance should all covered by the compensation provided to victims (Minarcik, 2012/2013).

The movement supporting the rights of the victims is raised by the concerns that the criminal justice system is excessively focused on the criminal offenders and frequently fails to address the interests and needs of the victims (Asner., 2013). Subsequently, more people become aware of the needs and concerns of victims in the criminal justice system. Victims of crime are frequently treated unfairly and ignored in the criminal justice system (Frank., 1992). In this context, restitution is only a small fraction of the effort to ensure that victims' rights are respected. The perpetrator of the crime is made responsible for the victim's losses through restitution (Anderson, 2017). Restitution refers to efforts to return a victim's right to what it was before they suffered a series of losses due to the crime. A criminal sentencing court can utilize restitution to recompense a victim for their injuries (Birney, 2012).

Restitution is a procedure usually utilized in the courtroom to compensate the victim for the loss or damage (Lollar, 2014). Restitution is defined as 'the act of doing good things or giving the amount equivalent to the victim's loss, harm, or injury'. The perpetrator of the crime is the one to make restitution to the victim. When a victim suffers a loss and the culprit is discovered, the criminal is legally obligated to pay the victim a sum of money. Restitution might involve the restoration of a quantity of money or the value of an object taken by the criminal, burial expenses, salary loss, support and payment for medical bills, counselling, therapy, or finding the victim new employment (Shephard, 2014) (Monachino, 2008). Restitution is paid by the perpetrator or a third party only after a permanent court decision. The perpetrator of the crime must be found guilty of a criminal violation in order for the victim to get reparation. Restitution encompasses a number of objectives. First, restitution is used to recompense victims for their losses as well as to financially support the victims. Second, the facility of restitution to track losses made by the criminal acts as a deterrent since it sends warning to potential criminals that they will be held responsible for any incurred losses. Third, by forcing the perpetrator of the crime to pay a quantity of money to the victim,

restitution forces the culprit to admit the harm caused by his acts. The criminal bears sole responsibility for the crime. Unlike fines paid to the state, restitution is more personal as it is delivered directly by the perpetrator to the victim and is linked to the actual suffering of the victim. Hence, there is a causal relationship between crime and the losses sustained by victims in restitution (DiBari, 2011).

The fact that restitution may carefully trace the harm caused by a criminal becomes a strong deterrent, as it notifies potential offenders that they will be held accountable for every penny of harm. By requiring the perpetrator to make a payment to the victim, restitution also forces the criminal to acknowledge the genuine harm of his actions. Restitution poses several benefits; a) the court can avoid bringing severe criminal charges by requiring restitution as a condition of punishment (González, 2016); b) by holding the offender accountable for his actions, restitution orders serve to restore the offender's self-respect; c) restitution as a criminal consequence and alternatives to prison that are less expensive; and d) victims might receive both material and psychological gratification through restitution (Morris, 2012).

The Swedish model can be utilized as a model for maximizing compensation and restitution to victims. This country has a leading agency called 'Crime Victim Compensation and Support Authority' consists of other public and private organizations acting in collaborating with the agency in providing assistance to victims of crime. Within the organization, the agency has three areas of duties, namely (1) assessing and providing criminal injuries compensation, (2) administering Crime Victim Fund which is designated for supporting research and non-governmental organization's activities, and (3) administration Centre of Competence to provide capacity building and training as well as dissemination of information and researchers for the public. In addition, it also important to argue that Sweden has established a single integrated support and assistance system for victims involving executives, private organization, Non-Governmental Organization, and judiciary. (Chokprajakchat, 2017)

The Regulatory Framework of Compensation and Restitution to the Victim: Mapping Out the Flaws

The Criminal Code limits victim protection to assessing the form and weight of criminal sanction based on the circumstances surrounding the victim, such as the crime of assault as promulgated in Article 351. Ordinary assault is sentenced by a maximum penalty of two years in prison and eight months or a maximum fine of IDR. 4,500. If the act causes serious injury, the penalty is aggravated into five years of imprisonment. If it causes death, the sentenced is aggravated into seven years of imprisonment. Other types of protection, such as compensation and/or restitution, which are extremely valuable to victims, are not covered by the Code since the types of punishment are limited to capital punishment, imprisonment, short imprisonment, and fine (Article 10). None of these criminal sanctions are directed toward the rights of the victims to get compensation. The notion of criminal conduct under the retributive view, which is a violation of public interest, cannot be separated from the abstraction of victims' interests in criminal law (Wenzel, 2007).

The protection of criminal offenders is also found in the provisions of the criminal procedure. The Code does not include a definition of a victim of crime which situates them as the forgotten party in the criminal justice system. The lack of arrangement for

victim protection is acceptable, given that the enactment's background concerns the necessity for human rights protection for perpetrators of criminal crimes who are frequently violated by the law enforcement personnel. The primary purpose of the Code is to improve human rights protection for criminals, both as suspects and defendants, when interacting with law enforcement agents with specific powers. This law seeks to place the perpetrator in a dignified position within his entity (Erdianto, 2020).

Victims' rights are limited to file compensation claims merged with the civil lawsuit under Article 98 following particular legal procedures. If an act that is the basis for an indictment in a criminal case examined by a district court causes harm to a victim, the presiding judge of the hearing may decide to combine the cases for damages to the criminal case at that person's request for civil lawsuit. Such requests can be made only the day before the public prosecutor files the criminal charges. If the public prosecutor fails to appear, the request must be made no later than the day before the judge overturns the judgement. It is also stipulated that compensation cases are to be merged in line with the principle of proportionality, namely the protection of the rights of perpetrator, the victims and other parties. The goal of this merging is to create a judicial concept that is simple, quick, and low-cost (Harahap, 2008). This approach allows a victim to file a damages case without having to go through a standard civil lawsuit or to wait for the criminal proceedings to be completed. However, the provisions on the incorporation of cases are still flawed in several points. It primarily depends on the criminal case. In a case where the defendant is not found guilty of the offense, the victim's claim for damages will not be granted. Even if the court decides to rule the defendant guilty, it still requires the permanent court decision, hence taking a longer period of time. Filing for damages must be done before the prosecution. Failing to meet this period of time will seal the opportunity of the victims to get compensation. Finally, compensation is limited only to material losses of the victim.

Other pieces of legislation similarly govern compensation and restitution. As indicated in Article 35 section (2) of Law on the Court of Human Rights of 2000, compensation and restitution paid to victims of genocide and crimes against humanity shall be included in the court decision. Government Regulation No. 3 of 2002 on Compensation, Restitution, and Rehabilitation of Victims of Gross Human Rights Violations contains further regulations pertaining to compensation and restitution for gross human rights violations. Compensation is defined as recompense granted by the state since the perpetrator is unable to provide full compensation. Restitution is money paid by the criminal or a third party to the victim or his family. It could be the return of property, the payment of damages for loss or suffering, or the payment for specific actions.

The victim or their family can receive compensation and/or restitution. The Ministry of Finance is specifically listed in the verdict as a government agency responsible with carrying out compensation based on the decision of the Human Rights Court, which has achieved its permanent legal binding power. The Ministry of Finance is in charge of compensation for the financing and calculating of public finances. The perpetrator or a third party is responsible for making restitution based on the orders mentioned in the decision of the Human Rights Court. Only if the criminal is unable to pay restitution to the victim will the state provide compensation. If the defendant is terminated by prosecution, restitution will be considered in the court decision. In the event of serious human rights violations, compensation and restitution cannot be

offered to the victim if the defendant is not prosecuted. When many victims have clearly suffered losses in the event of severe human rights violations, especially in the past (before the enactment of the Human Rights Court Law), but it is difficult to prove the perpetrator because many evidences are no longer available. This provision, of course, can prevent victims from receiving compensation.

The Law of the Human Rights Court also lacks the precise guidelines for assessing the amount of restitution or compensation that can be awarded to victims. Article 2 section (2) stipulates that the compensation must be granted appropriately and immediately, while the amount is to be set by the judge. It is also stated that the victim is given compensation for losses and/or the restoration of other rights as soon as feasible in order to alleviate the victim's suffering. This provision will be difficult since the relevant Government Agencies entrusted with compensating and rehabilitating victims must be based on the permanent court decision. In fact, it takes years from the time an inquiry begins to the time a formal judgement is rendered in the *ad hoc* Human Rights Court (Abidin., 2014).

Compensation and restitution are particularly defined in Chapter IV on Compensation, Restitution, and Rehabilitation, which consists of Articles 36 to 42 of Law on Combating Crimes of Terrorism, 2003. Any victim or heir to the victim who has been harmed as a result of terrorism offences is entitled to restitution or compensation. Compensation is financed by the government and charged to the state, while restitution is paid by the culprit to the victim or their heir(s). In the court's judgement, compensation and/or restitution are awarded and specified all at once. The reliance on the criminal case verdict for compensation and restitution is a serious flaw. Compensation and restitution cannot be awarded if the defendant is not charged with a crime. This clause does not reflect the orientation to the victim's protection because even if terrorist actions occur and the victim suffers losses, no compensation or restitution will be offered if no defendant is prosecuted. Compensation should not be based on the criminal case, but it can be awarded if there is a terrorism-related criminal occurrence and the victim has suffered damages (Sujatmoko, 2019).

The Law on Combating Human Trafficking of 2007 solely regulates restitution as 'the payment of damages to the perpetrator based on a permanent legal judgement for material and/or immaterial losses sustained by the victim or his heirs' (Article 1 section 13). The restitution requirements are included in Articles 48 through 50. It is stated that any victim of a human trafficking crime, as well as their heirs, is entitled to restitution which include recompensing for victims' loss of money or income, suffering, medical and/or psychiatric treatment costs, and/or other losses as a result of trafficking. The restitution is given and listed in the court decision on the criminal case of human trafficking at the same time. Since the first-tier court decision, the supply of restitution has been carried out, and might be placed first in the court that decides the case. The provision of restitution must be completed within 14 (fourteen) days of the verdict's entry into permanent legal effect. If the culprit is found not guilty by a court of appeal or cassation, then the judge may direct in their judgement that the restitution money can be restored to the parties involved. If the victim's request for restitution is not satisfied within the given period of time, the victim or their heirs should contact the court. The court issued a written warning to the defendant, directing them to fulfill their commitment to give restitution to the victim or their heirs as soon as possible. The court instructed the public prosecutor to collect the convict's properties and place them on

auction for restitution payments if the warning letter is not responded within 14 (fourteen) days. If the perpetrator is unable to make reparation, then the perpetrator is subject to a maximum sentence of one year in prison.

The provision of restitution to victims of human trafficking has a variety of flaws based on the foregoing arrangements. First, repayment is contingent upon the outcome of the criminal case. If the accused is found not guilty by the court, the victim will not get the restitution. Although a victim of a criminal act suffers both monetary and immaterial damages, he will not be compensated if the culprit is released. Second, if the perpetrator does not comply with the court's order to provide restitution and also does not have sufficient property, the victim will not be compensated since the culprit will only be sentenced to a maximum of one (1) year of imprisonment as the criminal sanction replacement.

Compensation and restitution are also governed by Law on the Protection of Witnesses and Victims of 2006, which was revised in 2014. Compensation is defined 'as recompense paid by the state since the perpetrator and his or her family are unable to provide the full compensation'. Restitution is paid by the culprit or a third party to the victim or his family in the form of: a) indemnity for lost wealth or income; b) reparation for suffering directly related to illegal activities; and/or c) reimbursement of medical and/or psychiatric treatment costs. Not all victims are eligible for restitution. According to Article 7A paragraph (2) of the Law, not all victims who suffer losses as a result of criminal activities will be eligible for reparation since it will be confined to victims of specific criminal acts, as determined by the Witness and Victim Protection Agency. The statute also lacks the criteria that could serve as guidance for the Witness and Victim Protection Agency in determining what types of criminal conduct a victim is eligible for restitution. **According to the Government Regulation of 2018 on the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims, a restitution application can be filed by the agency before or after a permanent court decision.** This agency may request for restitution to the public prosecutor for inclusion in the claim if the restitution application is made before permanent court decision.

Based on the above description, it is argued that the Witness and Victims' Protection Law does not specify how long judges must decide restitution application. Furthermore, there is no "coercive measure" for the offender to pay the court-ordered restitution, either because of the perpetrator's reluctance or unable to pay it. Compensation in the Act is limited to victims of genocide, crimes against humanity, and victims of terrorism offences, reimbursement of restitution with compensation is also impossible.

Judicial Response

In the practice of court judgements, the resuscitation of restitution to the defendant is uncommon. There are just a few court decisions in which one of the defendants was ordered to pay restitution to the victim, as shown in table 1 below:

Table 1. Restitution in Court Ruling

No	Court	Court Order
1	1633/PID.B/2008/PNTK	The defendant was compelled to pay USD. 672 in reparation to Maidiana. If restitution is not

		paid, it will be substituted by a one-month sentence of incarceration.
2	396/Pid.B/2012/PN.Cbd	The defendant was ordered to pay restitution to Desti Fitriyani, Desi Aprillianti, Irmawati, Mutia Yulyanti, Siti Nurani, and Wiwin of USD. 672 each as the victims. If the restitution is not paid, it is replaced with a three-months sentence of incarceration.
3	1155/K/Pid.Sus/2013	The restitution request by the victims was not granted because the public prosecutor failed to identify the nature and quantity of the victim's damages.

Table 1 shows that the court's judgment requiring the accused to pay restitution is invariably accompanied with a brief prison sentence. The existence of criminal detention for one month or three months consequently allows the defendant to avoid paying the judge-ordered restitution. The perpetrator would rationally choose to serve a one-month prison sentence rather than to pay a very substantial amount of restitution. To ensure that victims' rights to restitution are not violated, criminal detention in lieu of restitution should be substituted with confiscation of the perpetrator's assets/properties or instalment payment aimed at repairing the harm caused by criminal behavior (Waterman, 2020). Furthermore, the lack of information about the amount of restitution sought does not prevent judges from imposing it. The court should be able to determine how much restitution is suitable for the victim's needs, suffering, and recovery.

Despite the fact that the application for compensation was limited to victims of terrorism offences, the court allowed it, in contrast to the restitution verdict. The judge denied the application for compensation for victims of genocide and crimes against humanity. The public prosecutor demanded that the state pay the amount of USD.99,564 to compensate the victims of terrorism due to a bomb explosion in one of the houses of worship in Samarinda several years ago. Only a portion of the compensation claim of USD. 16,007 was granted by the judge. The South Jakarta District Court also awarded USD. 68,445 in compensation for the expense of treating victims of the bombing on MH Thamrin in Central Jakarta, as well as victims of suicide bombs at Kampung Melayu Terminal in East Jakarta. In this lawsuit, 16 persons obtained their compensation, including 13 victims of the Thamrin bombing and three victims of the Kampung Melayu explosion.

Bombing victims in Surabaya were awarded USD 79,407 in compensation by the West Jakarta District Court, which comprised the cost of rescuing victims not covered by the government, operational reimbursement costs, and lost income reimbursement. There are 17 bombing victims in this case who are eligible for compensation. The court also awarded USD. 27,859 in compensation to three terrorism victims. The amount was calculated based on the Witness and Victim Protection Agency consideration filed through the public prosecutor's demands. The three victims were protected by Agency. The victim's wife received the deceased victim's compensation, thus entitled to USD. 19,272 in compensation. The other two victims are entitled to USD.3,479 and USD. 5,106 in compensation respectively.

Protecting Victims of Crime through Compensation and Restitution: A Proposed Solution

Indonesian legislations nonetheless equate the methods of compensation and restitution even if these two rights of the victims have different philosophical and characteristic grounds. The fact that the state compensated the victim demonstrates that the state has failed to safeguard and guarantee security to the victim. Law enforcement personnel acting on behalf of the state has also failed to prevent the commission of a criminal conduct that harms the victim (Katsoris, 1990/1991). As a form of failure and accountability to the citizen, the state is compelled to compensate the victim. Restitution, on the other hand, is a result of the paradigm shift in prosecution from retributive to restorative justice. Restitution is one way to address the needs and interests of victims who have been overlooked by the criminal justice system (Hancock, 2020). Restitution is only a small fraction of the effort to ensure that the rights of the victims are respected. The perpetrator of the crime is made responsible for the victim's losses through restitution (Bickford, 2019) (Durkin, 2021).

The renewal of compensation and restitution arrangements in the Indonesian legal system should be based on their philosophical differences and characteristics. The compensation paradigm should adhere to the fulfillment of citizens' rights. It should be viewed as a form of the state pleading "guilty" for failing to protect and give security to its citizens. Compensation must be linked to human rights abuses, which are almost invariably committed by governmental actors (Rutherford, 2018). Because there is no link between compensation and the defendant's guilt as detailed in the court's judgement, the state's compensation does not have to be contingent upon the judicial decision. Any person who is the victim of a criminal offense is entitled to compensation from the state (Pearl, 2019). As a result, only particular types of crimes for which victims are entitled to compensation from a state are no longer needed to be perpetuated. Compensation is also paid to the victim of a criminal conduct whose perpetrator dies before the judicial process was completed, and this does not have to be contingent upon the court decision. Victims of unlawful arrest by law enforcement officials are also compensated as a form of state responsibility to urge law enforcement officers to be cautious when detaining someone as a suspect of a crime (Okpaluba, 2020).

What are the costs that the state should pay and provide to the victims? The solution to this question is contingent upon the state's capabilities and availability of funding. Material and immaterial losses, medical expenses, mental health counseling, funeral expenses, lost salaries, eyeglass purchase costs, contact lenses, dental care, purchase of prosthetic devices, moving or relocation costs, transportation costs for medical treatment, occupational rehabilitation, replacement services for infant and child-care, and domestic assistance are all the examples of compensation. At the very least, the state compensates victims for losses incurred directly as a result of a criminal conduct. The state must cover all costs for victims of trauma or stress in order for them to recuperate (Loller, 2014).

In the event that the state is unable to provide immediate compensation to the victim, the state may pay it monthly or annually. If this is too onerous, compensation can be converted into tax deduction, specific cost deductions that the victim should have paid, or the provision of certain educational or health services (Rutledge, 2011).

States must develop a state-subsidized or state-funded compensation scheme known as public money to ensure that compensation programs work efficient and that victims' rights are respected (Anonymous, 2010). Fines, confiscation of convicted assets, some tax income, and non-binding donations from people or private institutions that are provided for the unique needs of victims are all possible sources of funds. This private scheme funding is derived from the social solidarity theory as mentioned earlier. The funds are administered by specific institutions that are required to report them to the public and are audited annually by independent auditors. The compensation application process is nevertheless hampered by a lengthy and cumbersome bureaucracy. This procedure should be made as straightforward as possible such as by delegating new responsibilities to the Witness and Victim Protection Agency, one door of online or off-line compensation application. The agency is given authority to handle matters by making a coordination with relevant agencies.

The renewal of restitution arrangements must refer to the restorative justice principle by focusing on the perpetrator's responsibility to compensate the victim for criminal acts committed, and the victim's willingness to forgive the perpetrator's guilt (Teninbaum, 2007) (James, 2021). Before the perpetrator pays the victim restitution, the two parties must meet with the goal of restoring the victim's damage or loss (Reimund, 2003). The provisions in various laws and regulations requiring restitution payments to permanent judicial decision demonstrate that the underlying concept of restorative justice has yet to be implemented. Such rules should not apply unconditionally, in the sense that a legally binding court does not have to be an absolute requirement for the perpetrator to pay restitution to the victim. The clause should only be enforced if the perpetrator refuses to accept guilt and to be held liable for giving restitution to the victim in the absence of a permanent court order.

The defendant can still make restitution to the victim if he admits his guilt and is willing to pay reparation to the victim before the judicial process is completed or before the court decision has achieved its permanent legal force. The giving of restitution in this manner can be used to relieve the defendant or even as a foundation for judges to forgive the culprit (judicial pardon) (Weisbuch, 2019) (Maurer, 2021). The judge may find the defendant guilty of a criminal offense but not criminally charge him for certain offenses if the offender has given restitution to the victim. Judges and public prosecutors play a crucial role in getting the accused to agree to pay restitution. Even if the victim does not request restitution, the judge and prosecution may ask the defendant if they are willing to pay for it. Furthermore, according to the concept of restorative justice, the defendant should be morally compelled to compensate the harms of the victim. The fundamental goal is to repair the positive relationship between the victim and the offender (Kim, 2021) since healing and peace are the main goals of this justice (Bloch, 2021). As a result, the administration of a rigid criminal justice system was transformed into a humanistic criminal law (Weinstein, 1996).

In the case that the defendant does not have enough property to pay restitution to the victim, reimbursement with a maximum sentence of one or three months indicates that the provision is still in retributive justice. The clause should be revised to include provisions such as the seizure of the perpetrator's assets and their distribution to the victim in accordance with the amount of restitution determined by the court. This asset forfeiture also applies to perpetrators who dies before having the opportunity to pay restitution to victims following a permanent court order. Furthermore, the perpetrator

may also be forced to find victim a new work if he is fired from his employment for being a victim of a criminal conduct, or if he works for the victim for an extended period of time without being paid. Restitution does not have to be restricted to monetary compensation which can involve work or other benefits that are directly beneficial to the victim.

The perpetrator's payment of restitution to the victim should likewise be limited in time. For example, one month after the court's judgment, the perpetrator is obligated to compensate the victim, and if that period of time has expired, the perpetrator's assets are seized. If the perpetrator does not have enough property to pay the victim restitution right away, the court may compel the offender to pay the victim restitution in installments for a set period of time. This rule applies only if the defendant has demonstrated to the court that he does not have enough property to pay reparation to the victim all at once. In addition, the scope of criminal acts that compel perpetrators to make restitution to victims has been broadened to encompass all forms of criminal acts as long as the victim suffers direct losses as a result of the perpetrator's unlawful conduct. All unlawful acts that produce direct injury to the victim should be subject to restitution. This is because the major goal of restorative justice is to bring perpetrators and victims back together (Massey, 2018).

Conclusion

There have been legal loopholes concerning regulation of compensation and restitution for victims of crimes in Indonesia. The victims have no right to compensation and/or restitution when the court release the defendant's guilty of committing an offense. In the case that the culprit does not have enough property to pay restitution by the court's order, the victim will not be compensated because the perpetrator will only be sentenced to a maximum of one year of criminal replacement imprisonment. All court orders that impose repayment on the culprit are dispensed with criminal incarceration in a short period of time which therefore prevents the victim from obtaining their right to restitution.

Compensation focuses on restoring victims' rights which have been violated by the government. The payment does not rely on the court decision, granted to the victim of a criminal act whose perpetrator dies before the judicial procedure was, or given to unlawfully arrested victim by law enforcement agents. Compensation is limited to material losses, trauma or stress recovery expenditures, and it can be paid in cash, monthly, or annually, as well as converted into other currencies. Restitution should correspond to the restorative justice principle. Provisions requiring a legally binding court order are nevertheless only executed if the criminal refuses to make the restitution. The payment can be done by the offender prior to the court's ruling and can be used to mitigate the weight of the sentence or to pardon the convict. All crimes that directly cause victim harm are subject to restitution and could be paid in installments. Hence, it is suggested that the legislatures need to issue a specific and comprehensive law by eliminating the technical barriers for victims to get compensation and restitution and to establish an integrated agency for victim assistance. It is also recommended that the government should provide sufficient budgets to cover all victims of crime to obtain compensation.

References

- Abidin., S. W. (2014). *Memastikan Pemenuhan Hak atas Reparasi Korban Pelanggaran HAM Yang Berat*. Jakarta: Institute for Criminal Justice Reform (Google Scholar).
- Anderson, R. (2017). Criminal Law: The System is Rigged: Criminal Restitution is Blind to the Victim's Fault-State v. Riggs. *Mitchell Hamline Law Review*, 43(1), p. 142 <https://open.mitchellhamline.edu/mhhr/vol43/iss1/4>
- Angkasa. (2016). *Kedudukan Korban dan Sistem Peradilan Pidana*. Purwokerto: Fakultas Hukum Universitas Jenderal Sudirman (Google Scholar).
- Anonymous. (2010). *Compensation of victims of trafficking in persons National Approaches to Compensation of Victims of Trafficking in Persons*. Vienna: Working Group on Trafficking in Persons (Google Scholar)
- Asner, M.A. (2013). Restitution From the Victim Perspective-Recent Developments And Future Trends. *Federal Sentencing Reporter*, 26(1), p. 59 <https://doi.org/10.1525/fsr.2013.26.1.59>.
- Bickford, A. W. (2019). Transferring Forfeited Assets to Victims through Remission, Restoration, and Restitution . *Department of Justice Journal of Federal Law and Practice*, 67 (Google Scholar).
- Birney, B. M. (2012). What Can the Feds and the French Teach Us about Criminal Restitution in Maine? *Maine Law Review*, 65(1), p. 251 (Google Scholar)
- Bloch, K. E. (2021). Virtual Reality: Prospective Catalyst for Restorative Justice. *American Criminal Law Review*, 58(2), p. 293 <https://doi.org/10.2139/ssrn.3672807>.
- Capers, I. B. (2020). Against Prosecutors. *Cornell Law Review*, 105(6), p. 1598 (Web of Science).
- Cardenas, J. (1986). The Crime Victim in the Prosecutorial Process. 9, *Harvard Journal of Law & Public Policy*, 9, pp. 359-360 (Web of Science).
- Chokprajakchat, S. Techagaisiyavanit, W. & Iyavarakul, T. (2017). Developing Thailand's Comprehensive Crime Victim Assistance Model through a Comparative Perspective of the Swedish and Norwegian Systems. *International Journal of Criminal Justice Science*, 12(2), pp. 240-241 (Web of Science).
- DiBari, D. F. (2011). Restoring Restitution: The Role of Proximate Causation in Child Pornography Possession Cases Where Restitution Is Sought. *Cardozo Law Review*, p. 298 (Google Scholar).
- Durkin, M. (2021). Restitution for Child Pornography: Reframing a System for Victims Harmed by Too Many. 52, *Loyola University Chicago Law Journal*, 52(2), p. 557 <https://lawecommons.luc.edu/luc/lj/vol52/iss2/9>
- Erdianto. (2020). Relevansi Pemeriksaan Calon Tersangka sebelum Penetapan Tersangka. 3, 2, *Undang*, 239 <https://doi.org/10.22437/ujh.3.2.267-288>.
- Ezioni, L. (2013). Compensating the Adult Victim of Childhood Incest: From Criminal to Constitutional Compensation. *Women's Rights Law Reporter*, 34, p. 337 (Googel Scholar).

- Foote, L. C. (1992). State Compensation for Victims of Crime. *Army Lawyer.*, p. 51. (Thomson Reuters)
- Frank, L. F. (1992). The Collection of Restitution: An often Overlooked Service to Crime Victims. *Saint John's Journal of Legal Commentary*, 8(1), p. 111: <https://scholarship.law.stjohns.edu/jcred>.
- Goldscheid, J. (2004). Crime Victim Compensation in a Post-9/11 World'. *Tulane Law Review*, 79, p. 184. https://academicworks.cuny.edu/cl_pubs/225
- González, T. (2016). Restorative Justice from the Margin to the Center: The Emergence of a New Norm in School Discipline. *Howard Law Journal*, 60(1), p. 276 (Thomson Reuters).
- Harahap, Y. (2008). *Pembahasan Permasalahan dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali*. Sinar Grafika: Jakarta (Google Scholar).
- Hong, R. K. (2002). Nothing to Fear: Establishing an Equality of Rights for Crime Victim through. *Notre Dame Journal of Law, Ethics & Public Policy*, 16(1), p. 208 <https://scholarship.law.nd.edu/ndjlepp/vol16/iss1/10>.
- Hughes, W. S. (2021). Justice Undone. *American Criminal Law Review*, 58(1), p. 156 (Web of Science).
- James, B. (2021). Restorative Justice Liability: Scholl Discipline Reform and the Right to Safe Schools. *University of Memphis Law Review*, 51, p. 700 https://www.memphis.edu/law/documents/book3_james_all.pdf.
- Katsoris, N. C. (1990). The European Convention on the Compensation of Victims of Violent Crimes: A Decade of Frustration. *Fordham International Law Journal*, p. 189 <https://ir.lawnet.fordham.edu/ilj/vol14/iss1/9>.
- Kim, M. D. (2021). Redesigning Restorative Justice for Criminal Justice Reform. 88, *Tennessee Law Review*, 88, p. 953 (Thomson Reuters).
- Lauren, N. H. (2020). Another Collateral Consequence: Kicking the Victim When She's Down. *Washington and Lee Law Review*, 77(3), pp. 1324-1325 <https://scholarlycommons.law.wlu.edu/wlulr/vol77/iss3/8>
- Levanon, L. (2015). Criminal Punishment as a Restorative Practise. *New Criminal Law Review*, 18(4), p. 545 <https://doi.org/10.1525/nclr.2015.18.4.537>.
- Lollar, C. E. (2014). What Is Criminal Restitution? *Iowa Law Review*, 100, pp. 99-100 <https://ilr.law.uiowa.edu/assets/Uploads/ILR-100-1-Lollar.pdf>.
- Maurer, D. (2021). War Crime Pardon and Presidential (Self-) Restraint. *Federal Sentencing Reporter*, 33(5), pp. 314-315 <https://doi.org/10.1525/fsr.2021.33.5.313>.
- Massey, A. (2018). An Eye for an Eye will Make the Whole World Blind: Who Restorative Justice will Help Florida See Again. *Nova Law Review*, 43(1). pp 79-80, <https://nsuworks.nova.edu/nlr/vol43/iss1/5>
- Mégret, F. (2010). Justifying Compensation By The International Criminal Court's Victims Trust Fund: Lessons From Domestic Compensation Schemes. *Brooklyn Journal of International Law*, 36(1), pp. 130-131 <https://doi.org/10.2139/ssrn.1501295>
- Michael, W. (2007). Retributive and Restorative Justice. *Law and Human Behavior*, 32(5), pp. 376-380 <https://doi.org/10.1007/s10979-007-9116-6>.
- Minarcik, M. (2012/2013). The Proper Remedy for Possession of Child Pornography: Shifting from Restitution to a Victim Compensation Program. *New York Law*

- School Law Review*, 57(4) p. 949:
https://digitalcommons.nyls.edu/nyls_law_review
- Monachino, B. J. (2008). Enhancing Victims' Rights Crime Victims Compensation. *New York State Bar Journal*, p. 37 (Thomson Reuters).
- Morris, T. (2012). Perverted Justice: Why Courts are Ruling against Restitution in Child Pornography Possession Cases, and How a Victim Compensation Fund can Fix the Broken Restitution Framework. *Villanova Law Review*, 57(2), p. 400 at: <https://digitalcommons.law.villanova.edu/vlr/vol57/iss2/5>
- Okpaluba, C. (2020). Quantification of damages for unlawful arrest and detention : South Africa, Namibia and Eswatini/Swaziland. *South African Journal of Criminal Justice*, 33(2), pp. 25-27 <https://doi.org/10.47348/SACJ/v33/i3a6>.
- Polito, K. E. (1990). The Rights of Crime Victims in the Criminal Justice System: Is Justice Blind to the Victims of Crime? *New England Journal on Criminal and Civil Confinement*, 16(2), pp. 242-243 (Thomson Reuters).
- Reimund, M. E. (2003). Mediation in Criminal Justice: A Restorative Approach . *Advocate*, 46, p. 22 (Thomson Reuters).
- Rutherford, D. (2018). *States' Obligations Under International Human Rights Conventions*. New Zealand: The Commonwealth (Google Scholar)
- Rutledge, N. M. (2011). Looking a Gift Horse in the Mouth-The Underutilization of Crime Victim Compensation Funds by Domestic Violence Victims. *Duke Journal of Gender Law & Policy*, 19(1), p. 232 <https://scholarship.law.duke.edu/djglp/vol19/iss1/6>
- Rodriguez, S. E. (1992). Victims' Roles in the Criminal Justice System: A Fallacy of Victim Empowerment? *Saint John's Journal of Legal Commentary*, 8(1), p. 230 at: <https://scholarship.law.stjohns.edu/jcred>
- Sánchez, J.-M. S. (2008). Doctrines Regarding "The Fight against Impunity" and "The Victim's Right for the Perpetrator to be Punished". *Pace Law Review*, 28(4), pp. 877-871 <https://digitalcommons.pace.edu/plr/vol28/iss4/11>
- Shephard, B. N. (2014). Classifying Crime Victim Restitution: The Theoretical Arguments and Practical Consequences of Labeling Restitution As Either A Criminal or Civil Law Concept . *Lewis & Clark Law Review*, 18(3), p. 804 (Thomson Reuters).
- Sujatmoko, A. (2019). State Responsibility and Victim's Reparations in Indonesia. *Teras Law Review*, 1(1), 2-22
- Teninbaum, G. H. (2007). Easing The Burden: Mediating Misdemeanor Criminal Matters . *Dispute Resolution Journal*, 62(2), p. 64 (Thomson Reuters).
- Tracy H. P. (2019). Compensation at the Crossroads: Autonomous Vehicle & Alternative Victim Compensation Schemes . *William and Mary Law Review*, 60(5), pp. 1849-1850 (<https://scholarship.law.wm.edu/wmlr/vol60/iss5/5>)
- Waterman, D. A. (2020). A Defendant's Ability to Pay: The Key to Unlocking the Door of Restitution Debt. *Iowa Law Review*, 106, p. 462 (Thomson Reuters)..
- Weisbuch, M. (2019). Pardoning Contempt-Reconsidering the Criminal-Civil Divide . *Virginia Law Review*, 105(4), pp. 952-953 <https://www.jstor.org/stable/26842257>.
- Weinstein, J. B. (1996). Some Benefit and Risks of Privatization of Justice Though Alternative Dispute Resolution. *Ohio State Journal on Dispute Resolution*, 11(2), p. 292 (Thomson Reuters).

226010215 (Cogent Social Sciences) A revise decision has been made on your submission

Cogent Social Sciences <em@editorialmanager.com>

19 April 2022 14.05

Balas Ke: Cogent Social Sciences <oass-peerreview@journals.tandf.co.uk>

Kepada: Mahrus Ali <mahrus_ali@uii.ac.id>

Ref: COGENTSOCSOCI-2022-0268R1

226010215

Compensation and Restitution for Victims of Crime in Indonesia: Regulatory Flaws, Judicial Response, and Proposed Solution

Cogent Social Sciences

Dear Mahrus Ali,

Your manuscript entitled "Compensation and Restitution for Victims of Crime in Indonesia: Regulatory Flaws, Judicial Response, and Proposed Solution", which you submitted to Cogent Social Sciences, has now been reviewed.

The reviews, included at the bottom of the letter, indicate that your manuscript could be suitable for publication following revision. We hope that you will consider these suggestions, and revise your manuscript.

Please submit your revision by May 19, 2022, if you need additional time then please contact the Editorial Office.

To submit your revised manuscript please go to <https://rp.tandfonline.com/submission/flow?submissionId=226010215&step=1> and log in. You will see an option to revise alongside your submission record.

If you are unsure how to submit your revision, please contact us on OASS-peerreview@journals.tandf.co.uk

Please ensure that you include the following elements in your revised submission:

- * public interest statement - a description of your paper of NO MORE THAN 150 words suitable for a non-specialist reader, highlighting/explaining anything which will be of interest to the general public (to find about more about how to write a good Public Interest Statement, and how it can benefit your research, you can take a look at this short article: <http://explore.cogentoa.com/author-tool-kit/public-interest-statement>)
- * about the author - a short summary of NO MORE THAN 150 WORDS, detailing either your own or your group's key research activities, including a note on how the research reported in this paper relates to wider projects or issues.

You also have the option of including the following:

- * photo of the author(s), including details of who is in the photograph - please note that we can only publish one photo
- * cover image - you are able to create a cover page for your article by supplying an image for this purpose, or nominating a figure from your article. If you supply a new image, please obtain relevant permissions to reproduce the image if you do not own the copyright

If you require advice on language editing for your manuscript or assistance with arranging translation, please do consider using the Taylor & Francis Editing Services.

Please ensure that you clearly highlight changes made to your manuscript, as well as submitting a thorough response to reviewers.

We look forward to receiving your revised article.

Best wishes,

Heng Choon (Oliver) Chan, Ph.D.

Senior Editor

Cogent Social Sciences

Comments from the Editors and Reviewers:

Title, Abstract and Introduction – overall evaluation

Reviewer 1: Sound

Methodology / Materials and Methods – overall evaluation

Reviewer 1: Sound

Objective / Hypothesis – overall evaluation

Reviewer 1: Sound

Figures and Tables – overall evaluation

Reviewer 1: Sound

Results / Data Analysis – overall evaluation

Reviewer 1: Sound

Interpretation / Discussion – overall evaluation

Reviewer 1: Sound

Conclusions – overall evaluation

Reviewer 1: Sound

References – overall evaluation

Reviewer 1: Sound

Compliance with Ethical Standards – overall evaluation

Reviewer 1: Sound

Writing – overall evaluation

Reviewer 1: Sound

Supplemental Information and Data – overall evaluation

Reviewer 1: Sound

Comments to the author

Reviewer 1: Good work

Title, Abstract and Introduction – overall evaluation

Reviewer 2: Sound with minor or moderate revisions

Methodology / Materials and Methods – overall evaluation

Reviewer 2: Sound with minor or moderate revisions

Objective / Hypothesis – overall evaluation

Reviewer 2: Sound

Figures and Tables – overall evaluation

Reviewer 2: Sound

Results / Data Analysis – overall evaluation

Reviewer 2: Sound

Interpretation / Discussion – overall evaluation

Reviewer 2: Sound

Conclusions – overall evaluation

Reviewer 2: Sound

References – overall evaluation

Reviewer 2: Sound

Compliance with Ethical Standards – overall evaluation

Reviewer 2: Sound

Writing – overall evaluation

Reviewer 2: Sound with minor or moderate revisions

Supplemental Information and Data – overall evaluation

Reviewer 2: Not applicable

Comments to the author

Reviewer 2: The authors have sufficiently revised the manuscript according to the recommendation. However, minor areas of improvement are still required.

For the abstract, the sentence structure may begin with "The study aims at examining the limitations of the Indonesian legislation...by reviewing court cases and the implementation of the laws" The first half of the abstract makes perfect sense up until "... to pay compensation to the victim." Then, the following sentence seems to be disconnected from

the first half, and doesn't have a smooth transition. If the authors' intention is to suggest that victims aren't also adequately accorded compensation, the authors should consider adjusting the sentences in the second half of the abstract. The last sentence of the abstract seems unnecessary unless the authors can explain why it is there, and whether it is relevant to the limitation of the legislation.

For the methodology, the authors still haven't clarified why 6 court rulings were picked (out of how many cases?) and the period of the court cases also haven't been specified (i.e. between 2012-2022).

The authors may consider a different word for "permanent" court decision (such as final court decisions) unless the term has a specific meaning in the Indonesian legal context, then the authors should further explain it.

Overall, the paper addresses an important issue on the victims' legal rights, which is a common issue faced by ASEAN member countries. The authors argued that further legislative development, and more effective implementation by a competent agency are required. The paper, thus, provides a comparative perspective on victim protection and assistance.

In compliance with data protection regulations, you may request that we remove your personal registration details at any time. (Use the following URL: <https://www.editorialmanager.com/cogentsocsci/login.asp?a=r>). Please contact the publication office if you have any questions.

Compensation and Restitution for Victims of Crime in Indonesia: Regulatory Flaws, Judicial Response, and Proposed Solution

Mahrus Ali

Universitas Islam Indonesia

Andi Mulyono

Sekolah Tinggi Ilmu Hukum Manokwari, Papua Barat, Indonesia

Wawan Sanjaya

Universitas Balikpapan, Indonesia

Ari Wibowo

Universitas Islam Indonesia

Corresponding Author

mahrus_ali@uii.ac.id

Abstract

The study aims at examining the limitations of the Indonesian legislation concerning the compensation and restitution for the victims of crime by reviewing court cases and the implementation of the laws. By employing the doctrinal legal research, this study identifies that the victims' rights to compensation and restitution in various legislations is contingent upon the perpetrator's conviction, excluding the victims of crime from obtaining their rights. In court decisions, the perpetrator's resuscitation is frequently accompanied with a sentence of criminal detention for a short period of time. Victims have a tough time obtaining restitution since the perpetrator prefers to serve time in prison rather than to pay compensation to the victim. Therefore, to provide victim protection and assistance, it is necessary to comprehensively understand the distinguished natures between compensation and restitution that have direct impact to the promulgation of the laws and the imposition of such victim rights by the courts.

Keywords: victims of crime, compensation, restitution, judicial response

About the Authors

Mahrus Ali is a faculty member in the criminal law department at Universitas Islam Indonesia. His research interests include environmental crimes, criminal law and human rights, economic crimes, victim of crime, and penal policy. Andi Mulyono is a senior lecturer at Sekolah Tinggi Ilmu Hukum Manokwari, West Papua. His research interests are covering criminal law, law of criminal procedure, and victims of crime. Wawan Sanjaya is a lecturer at the Faculty of Law, Universitas Balikpapan, East Kalimantan. His expertise includes criminal law and law of criminal procedure. Ari Wibowo is a senior lecturer in the criminal law department, Universitas Islam Indonesia. His research interests include criminal law, victimology, and economic crimes. This study is the project to enhance the victim protection and assistance through legislations and judicial decisions.

Public Interest Statement

This study highlights the regulatory flaws concerning compensation and/or restitution for victim of crimes, review the judicial decisions, and explore the arrangements of compensation and restitution that protect the victims in Indonesia. Both rights of victims are only obtained by depending on the defendant's guilty of committing an offense in the final court decision. All court orders that impose repayment on the culprit are dispensed with short imprisonment that prevents the victims from obtaining their right to restitution. Protecting the victims to get their rights is through comprehensive understanding of different philosophical and characteristic grounds between compensation and restitution that have direct impact to the victim protection and assistance.

Introduction

It is not an exaggeration to argue that the existence of victims of crime does not receive much attention in the criminal justice process. The central focus of criminal law is more often on criminal perpetrators than on victims (Sánchez, 2008) (Capers, 2020). The victim is simply positioned as a witness or a whistleblower to a criminal conduct. The victim is an object who is subjected to criminal activities, both physical and psychological (Polito, 1990). When a criminal conduct was committed and the perpetrator is convicted, the victim is abstracted into the public interest, and it is thought that the victim has received protection. Since it does not concern with the recovery of the losses resulted from a criminal act, criminal law appears as if it abandons the victim (Rodriguez, 1992).

More features of criminal offenders are regulated under the Criminal Code which is based on a neoclassical school of thought that accepts circumstances which benefit the criminals, while victims are neglected (Hong, 2002) . The Criminal Procedural Law is also dominated by provisions on the rights of the criminal offenders, with only a few provisions mentioning the rights of the victims. These provisions which govern matters regarding the victims including their rights can only be found in Chapter XII which incorporates the damages in lawsuits. The right to report or complain about criminal acts is regulated in Article 108, while the right of the victim's family to be informed if the victim dies is promulgated in Article 134 paragraph (1). In addition, the right of the victim as a witness to be reimbursed when answering the call to submit information is found in Article 299 paragraph (1) (Angkasa, 2016).

In recent years, the criminal justice system has begun to pay closer attention to victims. Crime is no longer viewed as the violation of the interests of state, but rather as a violation of or injury to the victim (Cardenas, 1986) (Levanon, 2015) (Hughes, 2021). The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of 1985 emphasized the necessity for compensation and restitution in providing protection to victims. Article 8 states that 'offenders or third parties responsible for their behavior should, where appropriate, make fair restitution to victims or their families. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights. Article 12 also mentions that 'when compensation is not fully available from the offender or other sources, States should endeavor to provide financial compensation to: (a) victims who have sustained significant bodily injury or impairment of physical or mental health as

a result of serious crimes; (b) the family, in particular dependent of persons who have dies or become physically or mentally incapacitated as a result of such victimization'. This indicates that the perpetrator of a criminal act or other accountable party must make restitution to the victim or their family, including compensation for damaged or lost property, recovery of suffering, and other rights of the victim. Failure of the perpetrator to fulfill these rights subsequently hold the state liable for paying to the victims (Ezioni, 2013).

The principles of victim protection in the Declaration have been incorporated into the Indonesian legislations. The Human Rights Court Law of 2000 was the first piece of law to recognize the victims' rights to physical and mental protection from threats, disturbances, terror, and violence by any party, as well as the right to compensation and restitution as outlined in Articles 34 and 35. Three years later, Indonesia passed an Anti-Terrorism Law that includes provisions on the equivalent rights of the victims. The Witness and Victim Protection Law of 2006, which was revised in 2014, lays out the principles of protection for the victims and their rights in greater detail. Article 1 section (2) of the Law defines victim as 'a person who suffers physical, mental, or economic harm as a result of a criminal act'. This definition is similar to the definition of victim found in the Declaration's as 'persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, as a result of acts or omissions that are in violation of criminal laws...'. Several further regulations, such as the Human Trafficking Law of 2007 and the Government Regulation of 2018 on Compensation, Restitution, and Assistance to Witnesses and Victims, have regulated a number of rights of the victim, including compensation and restitution. Although these two rights have been governed by various laws, there are still regulatory flaws in their implementation. This affects their effectiveness in providing protection to victims of crime such as the necessity of judicial decision.

This present study aims to explore and analyze the flaws of compensation and restitution in the Indonesian legislations and court decisions that have resulted in the victims not being fully protected, and the idea of how to safeguard the victims of crime through comprehensive compensation and restitution arrangements. The authors argue that compensation and restitution provisions in various laws have not been sufficiently tailored to protect the victims of crime. Our argument is presented in six distinct sections. The first section presents the introduction, and the subsequent section presents the methodology guiding the study and the sources of data. The third section is theoretical bases on compensation and restitution. It is argued that both right of victims of crime have differences in nature and philosophical foundation. The fourth section highlights the flaws of compensation and restitution in various legislations in Indonesia. Victims of crime are entitled on the compensation and/or restitution only after the court ruling and request of the victims. The fifth section discusses the judicial response on the imposition of paying compensation and restitution to the victims by the perpetrator or state. It is found that the court judgment obliging the accused to pay restitution is invariably accompanied with a brief prison sentence. The last section analyzes the proposed solution to protect the victim of crime through compensation and restitution.

Methodology

This doctrinal legal research mainly relies on the Indonesian legislations promulgating compensation and restitution for victims of crime as the primary source of data. At least 5 laws regulate the compensation and restitution in criminal matters, namely Criminal Procedural Code, Human Rights Court Law, Anti-Terrorism Law, Human Trafficking Law, as well as Witness and Victim Protection Law. The analysis on these laws focuses on the requirement for victims to be entitled to compensation and/or restitution. In addition, the court rulings on the imposition of compensation and restitution were highlighted to identify whether the court decisions provide enough safeguard for the victims to obtain their two rights. Those verdicts which order compensation and/or restitution for the defendant or the state were rarely carried out by the judge. Based on the directory of judicial decisions issued by Supreme Court, there were only six court rulings on the imposition of restitution and compensation for victims of genocide, crime against humanity, terrorism, and human trafficking between 2008-2022. It was also supported by the fact that there were few regulations limiting the victims' rights to receive compensation from the state or restitution of the crime. These data play an important aspect to propose a comprehensive mechanism for victims of crime to get compensation and/or restitution.

Theories on Compensation and Restitution for Victims of Crime

Unlike restitution, compensation takes the form of monetary payment and it is a state obligation. The 'failure to protect' theory underpins the state obligation to compensate victims of crime. This theory dictates that an individual who become the victim of a crime is primarily caused by the failure of the society to eliminate crime and by extension, the failure of the law enforcement to prevent offenses (Goldscheid, 2004). In addition, there are two considerations as to why victims are entitled to state-provided compensation First, compensation is based on equity and social solidarity. The victim of crime is a victim of society who should be reimbursed by the community for the damages incurred. In a larger sense, the theory holds that the government owes compensation to the victims since law enforcement officers have failed to prevent crime from occurring. Second, other forms of compensation have been proven to be insufficient to proportionately compensate the victims (Katsoris, 1990/1991).

Compensation is a program that provides public fund to those who have been the victims of crime. The fund is a public resource that can be streamlined from the external sources of the crime and is used to meet the particular needs of the victim (Mégret, 2010). Compensation for victims primarily aims to improve the responsiveness of the criminal justice system to the victims (Foote, 1992). Medical expenses, mental health counselling, funeral expenses, lost wages, cost of glasses, contact lenses, dental care, purchase of prosthetic devices, cost of moving or relocating, transportation costs to obtain medical care, job rehabilitation, replacement services for infant or children care, and domestic assistance should all covered by the compensation provided to victims (Minarcik, 2012/2013).

The movement supporting the rights of the victims is raised by the concerns that the criminal justice system is excessively focused on the criminal offenders and frequently fails to address the interests and needs of the victims (Asner., 2013). Subsequently, more people become aware of the needs and concerns of victims in the criminal justice system. Victims of crime are frequently treated unfairly and ignored in

the criminal justice system (Frank., 1992). In this context, restitution is only a small fraction of the effort to ensure that victims' rights are respected. The perpetrator of the crime is made responsible for the victim's losses through restitution (Anderson, 2017). Restitution refers to efforts to return a victim's right to what it was before they suffered a series of losses due to the crime. A criminal sentencing court can utilize restitution to recompense a victim for their injuries (Birney, 2012).

Restitution is a procedure usually utilized in the courtroom to compensate the victim for the loss or damage (Lollar, 2014). Restitution is defined as 'the act of doing good things or giving the amount equivalent to the victim's loss, harm, or injury'. The perpetrator of the crime is the one to make restitution to the victim. When a victim suffers a loss and the culprit is discovered, the criminal is legally obligated to pay the victim a sum of money. Restitution might involve the restoration of a quantity of money or the value of an object taken by the criminal, burial expenses, salary loss, support and payment for medical bills, counselling, therapy, or finding the victim new employment (Shephard, 2014) (Monachino, 2008). Restitution is paid by the perpetrator or a third party before or after a **final court decision**. The perpetrator of the crime must be found guilty of a criminal violation in order for the victim to get reparation. Restitution encompasses a number of objectives. First, restitution is used to recompense victims for their losses as well as to financially support the victims. Second, the facility of restitution to track losses made by the criminal acts as a deterrent since it sends warning to potential criminals that they will be held responsible for any incurred losses. Third, by forcing the perpetrator of the crime to pay a quantity of money to the victim, restitution forces the culprit to admit the harm caused by his acts. The criminal bears sole responsibility for the crime. Unlike fines paid to the state, restitution is more personal as it is delivered directly by the perpetrator to the victim and is linked to the actual suffering of the victim. Hence, there is a causal relationship between crime and the losses sustained by victims in restitution (DiBari, 2011).

The fact that restitution may carefully trace the harm caused by a criminal becomes a strong deterrent, as it notifies potential offenders that they will be held accountable for every penny of harm. By requiring the perpetrator to make a payment to the victim, restitution also forces the criminal to acknowledge the genuine harm of his actions. Restitution poses several benefits; a) the court can avoid bringing severe criminal charges by requiring restitution as a condition of punishment (González, 2016); b) by holding the offender accountable for his actions, restitution orders serve to restore the offender's self-respect; c) restitution as a criminal consequence and alternatives to prison that are less expensive; and d) victims might receive both material and psychological gratification through restitution (Morris, 2012).

The Swedish model can be utilized as a model for maximizing compensation and restitution to victims. This country has a leading agency called 'Crime Victim Compensation and Support Authority' consists of other public and private organizations acting in collaborating with the agency in providing assistance to victims of crime. Within the organization, the agency has three areas of duties, namely (1) assessing and providing criminal injuries compensation, (2) administering Crime Victim Fund which is designated for supporting research and non-governmental organization's activities, and (3) administration Centre of Competence to provide capacity building and training as well as dissemination of information and researchers for the public. In addition, it also important to argue that Sweden has established a

single integrated support and assistance system for victims involving executives, private organization, Non-Governmental Organization, and judiciary. (Chokprajakchat, 2017)

The Regulatory Framework of Compensation and Restitution to the Victim: Mapping Out the Flaws

The Criminal Code limits victim protection to assessing the form and weight of criminal sanction based on the circumstances surrounding the victim, such as the crime of assault as promulgated in Article 351. Ordinary assault is sentenced by a maximum penalty of two years in prison and eight months or a maximum fine of IDR. 4,500. If the act causes serious injury, the penalty is aggravated into five years of imprisonment. If it causes death, the sentenced is aggravated into seven years of imprisonment. Other types of protection, such as compensation and/or restitution, which are extremely valuable to victims, are not covered by the Code since the types of punishment are limited to capital punishment, imprisonment, short imprisonment, and fine (Article 10). None of these criminal sanctions are directed toward the rights of the victims to get compensation. The notion of criminal conduct under the retributive view, which is a violation of public interest, cannot be separated from the abstraction of victims' interests in criminal law (Wenzel, 2007).

The protection of criminal offenders is also found in the provisions of the criminal procedure. The Code does not include a definition of a victim of crime which situates them as the forgotten party in the criminal justice system. The lack of arrangement for victim protection is acceptable, given that the enactment's background concerns the necessity for human rights protection for perpetrators of criminal crimes who are frequently violated by the law enforcement personnel. The primary purpose of the Code is to improve human rights protection for criminals, both as suspects and defendants, when interacting with law enforcement agents with specific powers. This law seeks to place the perpetrator in a dignified position within his entity (Erdianto, 2020).

Victims' rights are limited to file compensation claims merged with the civil lawsuit under Article 98 following particular legal procedures. If an act that is the basis for an indictment in a criminal case examined by a district court causes harm to a victim, the presiding judge of the hearing may decide to combine the cases for damages to the criminal case at that person's request for civil lawsuit. Such requests can be made only the day before the public prosecutor files the criminal charges. If the public prosecutor fails to appear, the request must be made no later than the day before the judge overturns the judgement. It is also stipulated that compensation cases are to be merged in line with the principle of proportionality, namely the protection of the rights of perpetrator, the victims and other parties. The goal of this merging is to create a judicial concept that is simple, quick, and low-cost (Harahap, 2008). This approach allows a victim to file a damages case without having to go through a standard civil lawsuit or to wait for the criminal proceedings to be completed. However, the provisions on the incorporation of cases are still flawed in several points. It primarily depends on the criminal case. In a case where the defendant is not found guilty of the offense, the victim's claim for damages will not be granted. Even if the court decides to rule the defendant guilty, it still requires the **final court decision**, hence taking a longer period of time. Filing for damages must be done before the prosecution. Failing to meet this period of time will

seal the opportunity of the victims to get compensation. Finally, compensation is limited only to material losses of the victim.

Other pieces of legislation similarly govern compensation and restitution. As indicated in Article 35 section (2) of Law on the Court of Human Rights of 2000, compensation and restitution paid to victims of genocide and crimes against humanity shall be included in the court decision. Government Regulation No. 3 of 2002 on Compensation, Restitution, and Rehabilitation of Victims of Gross Human Rights Violations contains further regulations pertaining to compensation and restitution for gross human rights violations. Compensation is defined as recompense granted by the state since the perpetrator is unable to provide full compensation. Restitution is money paid by the criminal or a third party to the victim or his family. It could be the return of property, the payment of damages for loss or suffering, or the payment for specific actions.

The victim or their family can receive compensation and/or restitution. The Ministry of Finance is specifically listed in the verdict as a government agency responsible with carrying out compensation based on the decision of the Human Rights Court, which has achieved its legal binding power. The Ministry of Finance is in charge of compensation for the financing and calculating of public finances. The perpetrator or a third party is responsible for making restitution based on the orders mentioned in the decision of the Human Rights Court. Only if the criminal is unable to pay restitution to the victim will the state provide compensation. If the defendant is terminated by prosecution, restitution will be considered in the court decision. In the event of serious human rights violations, compensation and restitution cannot be offered to the victim if the defendant is not prosecuted. When many victims have clearly suffered losses in the event of severe human rights violations, especially in the past (before the enactment of the Human Rights Court Law), but it is difficult to prove the perpetrator because many evidences are no longer available. This provision, of course, can prevent victims from receiving compensation.

The Law of the Human Rights Court also lacks the precise guidelines for assessing the amount of restitution or compensation that can be awarded to victims. Article 2 section (2) stipulates that the compensation must be granted appropriately and immediately, while the amount is to be set by the judge. It is also stated that the victim is given compensation for losses and/or the restoration of other rights as soon as feasible in order to alleviate the victim's suffering. This provision will be difficult since the relevant Government Agencies entrusted with compensating and rehabilitating victims must be based on the **final court decision**. In fact, it takes years from the time an inquiry begins to the time a formal judgement is rendered in the *ad hoc* Human Rights Court (Abidin., 2014).

Compensation and restitution are particularly defined in Chapter IV on Compensation, Restitution, and Rehabilitation, which consists of Articles 36 to 42 of Law on Combating Crimes of Terrorism, 2003. Any victim or heir to the victim who has been harmed as a result of terrorism offences is entitled to restitution or compensation. Compensation is financed by the government and charged to the state, while restitution is paid by the culprit to the victim or their heir(s). In the court's judgement, compensation and/or restitution are awarded and specified all at once. The reliance on the criminal case verdict for compensation and restitution is a serious flaw. Compensation and restitution cannot be awarded if the defendant is not charged with a

crime. This clause does not reflect the orientation to the victim's protection because even if terrorist actions occur and the victim suffers losses, no compensation or restitution will be offered if no defendant is prosecuted. Compensation should not be based on the criminal case, but it can be awarded if there is a terrorism-related criminal occurrence and the victim has suffered damages (Sujatmoko, 2019).

The Law on Combating Human Trafficking of 2007 solely regulates restitution as 'the payment of damages to the perpetrator based on a permanent legal judgement for material and/or immaterial losses sustained by the victim or his heirs' (Article 1 section 13). The restitution requirements are included in Articles 48 through 50. It is stated that any victim of a human trafficking crime, as well as their heirs, is entitled to restitution which include recompensing for victims' loss of money or income, suffering, medical and/or psychiatric treatment costs, and/or other losses as a result of trafficking. The restitution is given and listed in the court decision on the criminal case of human trafficking at the same time. Since the first-tier court decision, the supply of restitution has been carried out, and might be placed first in the court that decides the case. The provision of restitution must be completed within 14 (fourteen) days of the verdict's entry into **final and binding legal effect**. If the culprit is found not guilty by a court of appeal or cassation, then the judge may direct in their judgement that the restitution money can be restored to the parties involved. If the victim's request for restitution is not satisfied within the given period of time, the victim or their heirs should contact the court. The court issued a written warning to the defendant, directing them to fulfill their commitment to give restitution to the victim or their heirs as soon as possible. The court instructed the public prosecutor to collect the convict's properties and place them on auction for restitution payments if the warning letter is not responded within 14 (fourteen) days. If the perpetrator is unable to make reparation, then the perpetrator is subject to a maximum sentence of one year in prison.

The provision of restitution to victims of human trafficking has a variety of flaws based on the foregoing arrangements. First, repayment is contingent upon the outcome of the criminal case. If the accused is found not guilty by the court, the victim will not get the restitution. Although a victim of a criminal act suffers both monetary and immaterial damages, he will not be compensated if the culprit is released. Second, if the perpetrator does not comply with the court's order to provide restitution and also does not have sufficient property, the victim will not be compensated since the culprit will only be sentenced to a maximum of one (1) year of imprisonment as the criminal sanction replacement.

Compensation and restitution are also governed by Law on the Protection of Witnesses and Victims of 2006, which was revised in 2014. Compensation is defined 'as recompense paid by the state since the perpetrator and his or her family are unable to provide the full compensation'. Restitution is paid by the culprit or a third party to the victim or his family in the form of: a) indemnity for lost wealth or income; b) reparation for suffering directly related to illegal activities; and/or c) reimbursement of medical and/or psychiatric treatment costs. Not all victims are eligible for restitution. According to Article 7A paragraph (2) of the Law, not all victims who suffer losses as a result of criminal activities will be eligible for reparation since it will be confined to victims of specific criminal acts, as determined by the Witness and Victim Protection Agency. The statute also lacks the criteria that could serve as guidance for the Witness and Victim Protection Agency in determining what types of criminal

conduct a victim is eligible for restitution. According to the Government Regulation of 2018 on the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims, a restitution application can be filed by the agency before or after a **final court decision**. This agency may request for restitution to the public prosecutor for inclusion in the claim if the restitution application is made before permanent court decision.

Based on the above description, it is argued that the Witness and Victims' Protection Law does not specify how long judges must decide restitution application. Furthermore, there is no 'coercive measure' for the offender to pay the court-ordered restitution, either because of the perpetrator's reluctance or unable to pay it. Compensation in the Act is limited to victims of genocide, crimes against humanity, and victims of terrorism offences, reimbursement of restitution with compensation is also impossible.

Judicial Response

In the practice of court judgements, the resuscitation of restitution to the defendant is uncommon. There are just a few court decisions in which one of the defendants was ordered to pay restitution to the victim, as shown in table 1 below:

Table 1. Restitution in Court Ruling

No	Court	Court Order
1	1633/PID.B/2008/PNTK	The defendant was compelled to pay USD. 672 in reparation to Maidiana. If restitution is not paid, it will be substituted by a one-month sentence of incarceration.
2	396/Pid.B/2012/PN.Cbd	The defendant was ordered to pay restitution to Desti Fitriyani, Desi Aprillianti, Irmawati, Mutia Yulyanti, Siti Nurani, and Wiwin of USD. 672 each as the victims. If the restitution is not paid, it is replaced with a three-months sentence of incarceration.
3	1155/K/Pid.Sus/2013	The restitution request by the victims was not granted because the public prosecutor failed to identify the nature and quantity of the victim's damages.

Table 1 shows that the court's judgment requiring the accused to pay restitution is invariably accompanied with a brief prison sentence. The existence of criminal detention for one month or three months consequently allows the defendant to avoid paying the judge-ordered restitution. The perpetrator would rationally choose to serve a one-month prison sentence rather than to pay a very substantial amount of restitution. To ensure that victims' rights to restitution are not violated, criminal detention in lieu of restitution should be substituted with confiscation of the perpetrator's assets/properties or instalment payment aimed at repairing the harm caused by criminal behavior (Waterman, 2020). Furthermore, the lack of information about the amount of restitution sought does not prevent judges from imposing it. The court should be able to determine how much restitution is suitable for the victim's needs, suffering, and recovery.

Despite the fact that the application for compensation was limited to victims of terrorism offences, the court allowed it, in contrast to the restitution verdict. The judge denied the application for compensation for victims of genocide and crimes against humanity. The public prosecutor demanded that the state pay the amount of USD.99,564 to compensate the victims of terrorism due to a bomb explosion in one of the houses of worship in Samarinda several years ago. Only a portion of the compensation claim of USD. 16,007 was granted by the judge. The South Jakarta District Court also awarded USD. 68,445 in compensation for the expense of treating victims of the bombing on MH Thamrin in Central Jakarta, as well as victims of suicide bombs at Kampung Melayu Terminal in East Jakarta. In this lawsuit, 16 persons obtained their compensation, including 13 victims of the Thamrin bombing and three victims of the Kampung Melayu explosion.

Bombing victims in Surabaya were awarded USD 79,407 in compensation by the West Jakarta District Court, which comprised the cost of rescuing victims not covered by the government, operational reimbursement costs, and lost income reimbursement. There are 17 bombing victims in this case who are eligible for compensation. The court also awarded USD. 27,859 in compensation to three terrorism victims. The amount was calculated based on the Witness and Victim Protection Agency consideration filed through the public prosecutor's demands. The three victims were protected by Agency. The victim's wife received the deceased victim's compensation, thus entitled to USD. 19,272 in compensation. The other two victims are entitled to USD.3,479 and USD. 5,106 in compensation respectively.

Protecting Victims of Crime through Compensation and Restitution: A Proposed Solution

Indonesian legislations nonetheless equate the methods of compensation and restitution even if these two rights of the victims have different philosophical and characteristic grounds. The fact that the state compensated the victim demonstrates that the state has failed to safeguard and guarantee security to the victim. Law enforcement personnel acting on behalf of the state has also failed to prevent the commission of a criminal conduct that harms the victim (Katsoris, 1990/1991). As a form of failure and accountability to the citizen, the state is compelled to compensate the victim. Restitution, on the other hand, is a result of the paradigm shift in prosecution from retributive to restorative justice. Restitution is one way to address the needs and interests of victims who have been overlooked by the criminal justice system (Hancock, 2020). Restitution is only a small fraction of the effort to ensure that the rights of the victims are respected. The perpetrator of the crime is made responsible for the victim's losses through restitution (Bickford, 2019) (Durkin, 2021).

The renewal of compensation and restitution arrangements in the Indonesian legal system should be based on their philosophical differences and characteristics. The compensation paradigm should adhere to the fulfillment of citizens' rights. It should be viewed as a form of the state pleading 'guilty' for failing to protect and give security to its citizens. Compensation must be linked to human rights abuses, which are almost invariably committed by governmental actors (Rutherford, 2018). Because there is no link between compensation and the defendant's guilt as detailed in the court's judgement, the state's compensation does not have to be contingent upon the judicial decision. Any person who is the victim of a criminal offense is entitled to compensation

from the state (Pearl, 2019). As a result, only particular types of crimes for which victims are entitled to compensation from a state are no longer needed to be perpetuated. Compensation is also paid to the victim of a criminal conduct whose perpetrator dies before the judicial process was completed, and this does not have to be contingent upon the court decision. Victims of unlawful arrest by law enforcement officials are also compensated as a form of state responsibility to urge law enforcement officers to be cautious when detaining someone as a suspect of a crime (Okpaluba, 2020).

What are the costs that the state should pay and provide to the victims? The solution to this question is contingent upon the state's capabilities and availability of funding. Material and immaterial losses, medical expenses, mental health counseling, funeral expenses, lost salaries, eyeglass purchase costs, contact lenses, dental care, purchase of prosthetic devices, moving or relocation costs, transportation costs for medical treatment, occupational rehabilitation, replacement services for infant and child-care, and domestic assistance are all the examples of compensation. At the very least, the state compensates victims for losses incurred directly as a result of a criminal conduct. The state must cover all costs for victims of trauma or stress in order for them to recuperate (Loller, 2014).

In the event that the state is unable to provide immediate compensation to the victim, the state may pay it monthly or annually. If this is too onerous, compensation can be converted into tax deduction, specific cost deductions that the victim should have paid, or the provision of certain educational or health services (Rutledge, 2011). States must develop a state-subsidized or state-funded compensation scheme known as public money to ensure that compensation programs work efficient and that victims' rights are respected (Anonymous, 2010). Fines, confiscation of convicted assets, some tax income, and non-binding donations from people or private institutions that are provided for the unique needs of victims are all possible sources of funds. This private scheme funding is derived from the social solidarity theory as mentioned earlier. The funds are administered by specific institutions that are required to report them to the public and are audited annually by independent auditors. The compensation application process is nevertheless hampered by a lengthy and cumbersome bureaucracy. This procedure should be made as straightforward as possible such as by delegating new responsibilities to the Witness and Victim Protection Agency, one door of online or off-line compensation application. The agency is given authority to handle matters by making a coordination with relevant agencies.

The renewal of restitution arrangements must refer to the restorative justice principle by focusing on the perpetrator's responsibility to compensate the victim for criminal acts committed, and the victim's willingness to forgive the perpetrator's guilt (Teninbaum, 2007) (James, 2021). Before the perpetrator pays the victim restitution, the two parties must meet with the goal of restoring the victim's damage or loss (Reimund, 2003). The provisions in various laws and regulations requiring restitution payments to **the final judicial decision** demonstrate that the underlying concept of restorative justice has yet to be implemented. Such rules should not apply unconditionally, in the sense that a legally binding court does not have to be an absolute requirement for the perpetrator to pay restitution to the victim. The clause should only be enforced if the perpetrator refuses to accept guilt and to be held liable for giving restitution to the victim in the absence of **a final court order**.

The defendant can still make restitution to the victim if he admits his guilt and is willing to pay reparation to the victim before the judicial process is completed or before the court decision has achieved its **final and binding legal force**. The giving of restitution in this manner can be used to relieve the defendant or even as a foundation for judges to forgive the culprit (judicial pardon) (Weisbuch, 2019) (Maurer, 2021). The judge may find the defendant guilty of a criminal offense but not criminally charge him for certain offenses if the offender has given restitution to the victim. Judges and public prosecutors play a crucial role in getting the accused to agree to pay restitution. Even if the victim does not request restitution, the judge and prosecution may ask the defendant if they are willing to pay for it. Furthermore, according to the concept of restorative justice, the defendant should be morally compelled to compensate the harms of the victim. The fundamental goal is to repair the positive relationship between the victim and the offender (Kim, 2021) since healing and peace are the main goals of this justice (Bloch, 2021). As a result, the administration of a rigid criminal justice system was transformed into a humanistic criminal law (Weinstein, 1996).

In the case that the defendant does not have enough property to pay restitution to the victim, reimbursement with a maximum sentence of one or three months indicates that the provision is still in retributive justice. The clause should be revised to include provisions such as the seizure of the perpetrator's assets and their distribution to the victim in accordance with the amount of restitution determined by the court. This asset forfeiture also applies to perpetrators who dies before having the opportunity to pay restitution to victims following **a final court order**. Furthermore, the perpetrator may also be forced to find victim a new work if he is fired from his employment for being a victim of a criminal conduct, or if he works for the victim for an extended period of time without being paid. Restitution does not have to be restricted to monetary compensation which can involve work or other benefits that are directly beneficial to the victim.

The perpetrator's payment of restitution to the victim should likewise be limited in time. For example, one month after the court's judgment, the perpetrator is obligated to compensate the victim, and if that period of time has expired, the perpetrator's assets are seized. If the perpetrator does not have enough property to pay the victim restitution right away, the court may compel the offender to pay the victim restitution in installments for a set period of time. This rule applies only if the defendant has demonstrated to the court that he does not have enough property to pay reparation to the victim all at once. In addition, the scope of criminal acts that compel perpetrators to make restitution to victims has been broadened to encompass all forms of criminal acts as long as the victim suffers direct losses as a result of the perpetrator's unlawful conduct. All unlawful acts that produce direct injury to the victim should be subject to restitution. This is because the major goal of restorative justice is to bring perpetrators and victims back together (Massey, 2018).

Conclusion

There have been legal loopholes concerning regulation of compensation and restitution for victims of crimes in Indonesia. The victims have no right to compensation and/or restitution when the court release the defendant's guilty of committing an offense. In the case that the culprit does not have enough property to pay restitution by the court's order, the victim will not be compensated because the

perpetrator will only be sentenced to a maximum of one year of criminal replacement imprisonment. All court orders that impose repayment on the culprit are dispensed with criminal incarceration in a short period of time which therefore prevents the victim from obtaining their right to restitution.

Compensation focuses on restoring victims' rights which have been violated by the government. The payment does not rely on the court decision, granted to the victim of a criminal act whose perpetrator dies before the judicial procedure was, or given to unlawfully arrested victim by law enforcement agents. Compensation is limited to material losses, trauma or stress recovery expenditures, and it can be paid in cash, monthly, or annually, as well as converted into other currencies. Restitution should correspond to the restorative justice principle. Provisions requiring a legally binding court order are nevertheless only executed if the criminal refuses to make the restitution. The payment can be done by the offender prior to the court's ruling and can be used to mitigate the weight of the sentence or to pardon the convict. All crimes that directly cause victim harm are subject to restitution and could be paid in installments. Hence, it is suggested that the legislatures need to issue a specific and comprehensive law by eliminating the technical barriers for victims to get compensation and/or restitution and to establish an integrated agency for victim assistance. It is also recommended that the government should provide sufficient budgets to cover all victims of crime to obtain compensation.

References

- Abidin., S. W. (2014). *Memastikan Pemenuhan Hak atas Reparasi Korban Pelanggaran HAM Yang Berat*. Jakarta: Institute for Criminal Justice Reform (Google Scholar).
- Anderson, R. (2017). Criminal Law: The System is Rigged: Criminal Restitution is Blind to the Victim's Fault-State v. Riggs. *Mitchell Hamline Law Review*, 43(1), p. 142 <https://open.mitchellhamline.edu/mhhr/vol43/iss1/4>
- Angkasa. (2016). *Kedudukan Korban dana Sistem Peradilan Pidana*. Purwokerto: Fakultas Hukum Universitas Jenderal Sudirman (Google Scholar).
- Anonymous. (2010). *Compensation of victims of trafficking in persons National Approaches to Compensation of Victims of Trafficking in Persons*. Vienna: Working Group on Trafficking in Persons (Google Scholar)
- Asner, M.A. (2013). Restitution From the Victim Perspective-Recent Developments And Future Trends. *Federal Sentencing Reporter*, 26(1), p. 59 <https://doi.org/10.1525/fsr.2013.26.1.59>.
- Bickford, A. W. (2019). Transferring Forfeited Assets to Victims through Remission, Restoration, and Restitution . *Department of Justice Journal of Federal Law and Practice*, 67 (Google Scholar).
- Birney, B. M. (2012). What Can the Feds and the French Teach Us about Criminal Restitution in Maine? *Maine Law Review*, 65(1), p. 251 (Google Scholar)

- Bloch, K. E. (2021). Virtual Reality: Prospective Catalyst for Restorative Justice. *American Criminal Law Review*, 58(2), p. 293 <https://doi.org/10.2139/ssrn.3672807>.
- Capers, I. B. (2020). Against Prosecutors. *Cornell Law Review*, 105(6), p. 1598 (Web of Science).
- Cardenas, J. (1986). The Crime Victim in the Prosecutorial Process. 9, *Harvard Journal of Law & Public Policy*, 9, pp. 359-360 (Web of Science).
- Chokprajakchat, S. Techagaisiyavanit, W. & Iyavarakul, T. (2017). Developing Thailand's Comprehensive Crime Victim Assistance Model through a Comparative Perspective of the Swedish and Norwegian Systems. *International Journal of Criminal Justice Science*, 12(2), pp. 240-241 (Web of Science).
- DiBari, D. F. (2011). Restoring Restitution: The Role of Proximate Causation in Child Pornography Possession Cases Where Restitution Is Sought. *Cardozo Law Review*, p. 298 (Google Scholar).
- Durkin, M. (2021). Restitution for Child Pornography: Reframing a System for Victims Harmed by Too Many. 52, *Loyola University Chicago Law Journal*, 52(2), p. 557 <https://lawecommons.luc.edu/luc/lj/vol52/iss2/9>
- Erdianto. (2020). Relevansi Pemeriksaan Calon Tersangka sebelum Penetapan Tersangka. 3, 2, *Undang*, 239 <https://doi.org/10.22437/ujh.3.2.267-288>.
- Ezioni, L. (2013). Compensating the Adult Victim of Childhood Incest: From Criminal to Constitutional Compensation. *Women's Rights Law Reporter*, 34, p. 337 (Googel Scholar).
- Foote, L. C. (1992). State Compensation for Victims of Crime. *Army Lawyer.*, p. 51. (Thomson Rueters)
- Frank, L. F. (1992). The Collection of Restitution: An often Overlooked Service to Crime Victims. *Saint John's Journal of Legal Commentary*, 8(1), p. 111: <https://scholarship.law.stjohns.edu/jcred>.
- Goldscheid, J. (2004). Crime Victim Compensation in a Post-9/11 World'. *Tulane Law Review*, 79, p. 184. https://academicworks.cuny.edu/cl_pubs/225
- González, T. (2016). Restorative Justice from the Margin to the Center: The Emergence of a New Norm in School Discipline. *Howard Law Journal*, 60(1), p. 276 (Thomson Reuters).
- Harahap, Y. (2008). *Pembahasan Permasalahan dan Penerapan KUHAP: Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali*. Sinar Grafika: Jakarta (Google Scholar).
- Hong, R. K. (2002). Nothing to Fear: Establishing an Equality of Rights for Crime Victim through. *Notre Dame Journal of Law, Ethics & Public Policy*, 16(1), p. 208 <https://scholarship.law.nd.edu/ndjlepp/vol16/iss1/10>.
- Hughes, W. S. (2021). Justice Undone. *American Criminal Law Review*, 58(1), p. 156 (Web of Science).
- James, B. (2021). Restorative Justice Liability: Scholl Discipline Reform and the Right to Safe Schools. *University of Memphis Law Review*, 51, p. 700 https://www.memphis.edu/law/documents/book3_james_all.pdf.
- Katsoris, N. C. (1990). The European Convention on the Compensation of Victims of Violent Crimes: A Decade of Frustration. *Fordham International Law Journal*, p. 189 <https://ir.lawnet.fordham.edu/ilj/vol14/iss1/9>.

- Kim, M. D. (2021). Redesigning Restorative Justice for Criminal Justice Reform. 88, *Tennessee Law Review*, 88, p. 953 (Thomson Reuters).
- Lauren, N. H. (2020). Another Collateral Consequence: Kicking the Victim When She's Down. *Washington and Lee Law Review*, 77(3), pp. 1324-1325 <https://scholarlycommons.law.wlu.edu/wlulr/vol77/iss3/8>
- Levanon, L. (2015). Criminal Punishment as a Restorative Practise. *New Criminal Law Review*, 18(4), p. 545 <https://doi.org/10.1525/nclr.2015.18.4.537>.
- Lollar, C. E. (2014). What Is Criminal Restitution? *Iowa Law Review*, 100, pp. 99-100 <https://ilr.law.uiowa.edu/assets/Uploads/ILR-100-1-Lollar.pdf>.
- Maurer, D. (2021). War Crime Pardon and Presidential (Self-) Restraint. *Federal Sentencing Reporter*, 33(5), pp. 314-315 <https://doi.org/10.1525/fsr.2021.33.5.313>.
- Massey, A. (2018). An Eye for an Eye will Make the Whole World Blind: Who Restorative Justice will Help Florida See Again. *Nova Law Review*, 43(1). pp 79-80, <https://nsuworks.nova.edu/nlr/vol43/iss1/5>
- Mégret, F. (2010). Justifying Compensation By The International Criminal Court's Victims Trust Fund: Lessons From Domestic Compensation Schemes. *Brooklyn Journal of International Law*, 36(1), pp. 130-131 <https://doi.org/10.2139/ssrn.1501295>
- Michael, W. (2007). Retributive and Restorative Justice. *Law and Human Behavior*, 32(5), pp. 376-380 <https://doi.org/10.1007/s10979-007-9116-6>.
- Minarcik, M. (2012/2013). The Proper Remedy for Possession of Child Pornography: Shifting from Restitution to a Victim Compensation Program. *New York Law School Law Review*, 57(4) p. 949: https://digitalcommons.nyls.edu/nyls_law_review
- Monachino, B. J. (2008). Enhancing Victims' Rights Crime Victims Compensation. *New York State Bar Journal*, p. 37 (Thomson Reuters).
- Morris, T. (2012). Perverted Justice: Why Courts are Ruling against Restitution in Child Pornography Possession Cases, and How a Victim Compensation Fund can Fix the Broken Restitution Framework. *Villanova Law Review*, 57(2), p. 400 at: <https://digitalcommons.law.villanova.edu/vlr/vol57/iss2/5>
- Okpaluba, C. (2020). Quantification of damages for unlawful arrest and detention : South Africa, Namibia and Eswatini/Swaziland. *South African Journal of Criminal Justice*, 33(2), pp. 25-27 <https://doi.org/10.47348/SACJ/v33/i3a6>.
- Polito, K. E. (1990). The Rights of Crime Victims in the Criminal Justice System: Is Justice Blind to the Victims of Crime? *New England Journal on Criminal and Civil Confinement*, 16(2), pp. 242-243 (Thomson Reuters).
- Reimund, M. E. (2003). Mediation in Criminal Justice: A Restorative Approach . *Advocate*, 46, p. 22 (Thomson Reuters).
- Rutherford, D. (2018). *States' Obligations Under International Human Rights Conventions*. New Zealand: The Commonwealth (Google Scholar)
- Rutledge, N. M. (2011). Looking a Gift Horse in the Mouth-The Underutilization of Crime Victim Compensation Funds by Domestic Violence Victims. *Duke Journal of Gender Law & Policy*, 19(1), p. 232 <https://scholarship.law.duke.edu/djglp/vol19/iss1/6>

- Rodriguez, S. E. (1992). Victims' Roles in the Criminal Justice System: A Fallacy of Victim Empowerment? *Saint John's Journal of Legal Commentary*, 8(1), p. 230 at: <https://scholarship.law.stjohns.edu/jcred>
- Sánchez, J.-M. S. (2008). Doctrines Regarding "The Fight against Impunity" and "The Victim's Right for the Perpetrator to be Punished". *Pace Law Review*, 28(4), pp. 877-871 <https://digitalcommons.pace.edu/plr/vol28/iss4/11>
- Shephard, B. N. (2014). Classifying Crime Victim Restitution: The Theoretical Arguments and Practical Consequences of Labeling Restitution As Either A Criminal or Civil Law Concept . *Lewis & Clark Law Review*, 18(3), p. 804 (Thomson Reuters).
- Sujatmoko, A. (2019). State Responsibility and Victim's Reparations in Indonesia. *Teras Law Review*, 1(1), 2-22
- Teninbaum, G. H. (2007). Easing The Burden: Mediating Misdemeanor Criminal Matters . *Dispute Resolution Journal*, 62(2), p. 64 (Thomson Reuters).
- Tracy H. P. (2019). Compensation at the Crossroads: Autonomous Vehicle & Alternative Victim Compensation Schemes . *William and Mary Law Review*, 60(5), pp. 1849-1850 (<https://scholarship.law.wm.edu/wmlr/vol60/iss5/5>)
- Waterman, D. A. (2020). A Defendant's Ability to Pay: The Key to Unlocking the Door of Restitution Debt. *Iowa Law Review*, 106, p. 462 (Thomson Reuters)..
- Weisbuch, M. (2019). Pardoning Contempt-Reconsidering the Criminal-Civil Divide . *Virginia Law Review*, 105(4), pp. 952-953 <https://www.jstor.org/stable/26842257>.
- Weinstein, J. B. (1996). Some Benefit and Risks of Privatization of Justice Through Alternative Dispute Resolution. *Ohio State Journal on Dispute Resolution*, 11(2), p. 292 (Thomson Reuters).

Revised submission received for Cogent Social Sciences (Submission ID: 226010215.R2)

rpsupport@tandf.co.uk <rpsupport@tandf.co.uk>
Kepada: mahrus_ali@uii.ac.id

19 April 2022 18.48



Dear Mahrus Ali,

Thank you for submitting your revised manuscript.

Submission ID	226010215
Manuscript Title	Compensation and Restitution for Victims of Crime in Indonesia: Regulatory Flaws, Judicial Response, and Proposed Solution
Journal	Cogent Social Sciences

You can check the progress of your submission, and make any requested revisions, on the Author Portal.

Thank you for submitting your work to our journal.
If you have any queries, please get in touch with OASS-peerreview@journals.tandf.co.uk.

Kind Regards,
Cogent Social Sciences Editorial Office

Taylor & Francis is a trading name of Informa UK Limited, registered in England under no. 1072954.
Registered office: [5 Howick Place, London, SW1P 1W](#).

226010215 (Cogent Social Sciences) Your submission has been accepted

Cogent Social Sciences <em@editorialmanager.com>

20 April 2022 12.55

Balas Ke: Cogent Social Sciences <oass-peerreview@journals.tandf.co.uk>

Kepada: Mahrus Ali <mahrus_ali@uii.ac.id>

Ref: COGENTSOCSOCI-2022-0268R2

226010215

Compensation and Restitution for Victims of Crime in Indonesia: Regulatory Flaws, Judicial Response, and Proposed Solution

Cogent Social Sciences

Dear Mahrus Ali,

I am pleased to tell you that your work was accepted for publication in Cogent Social Sciences on Apr 20, 2022.

Please note: only minor, or typographical changes can be introduced during typesetting and proofing of your manuscript. Major changes to your manuscript will not be permitted.

For your information, comments from the Editor and Reviewers can be found below if available, and you will have an opportunity to make minor changes at proof stage.

Your article will be published under the Creative Commons Attribution license (CC-BY 4.0), ensuring that your work will be freely accessible by all. Your article will also be shareable and adaptable by anyone as long as the user gives appropriate credit, provides a link to the license, and indicates if changes were made.

Once the version of record (VoR) of your article has been published in Cogent Social Sciences, please feel free to deposit a copy in your institutional repository.

Thank you for submitting your work to this journal, and we hope that you will consider us for your future submissions.

Best wishes

Heng Choon (Oliver) Chan, Ph.D.

Senior Editor

Cogent Social Sciences

Comments from the Editors and Reviewers:

In compliance with data protection regulations, you may request that we remove your personal registration details at any time. (Use the following URL: <https://www.editorialmanager.com/cogentsocsci/login.asp?a=r>). Please contact the publication office if you have any questions.



Mahrus Ali <094100102@uii.ac.id>

Invoice-953175076

T&F Subscriptions <OrderSupport@tandf.co.uk>
Kepada: mahrus_ali@uii.ac.id

21 April 2022 19.56

Please find your invoice attached for your recent purchase with Taylor & Francis.

Taylor & Francis provide several payment methods to suit our customers, a short description for each payment method can be found below:

Credit/Debit Card - Taylor & Francis provide secure Credit/Debit Card payments via phone using the contact details listed at the bottom of this page, or to pay online through our secure website please [click here](#)

Please note that Taylor & Francis is a division of Informa, all payments by credit/debit card will reflect as "Informa" on your bank/card statement.

Wire/Bacs transfer - details on our bank account and how to submit payment can be found on the attached invoice. Please ensure your bank notes your invoice number when submitting your payment or alternatively you can email your payment details to our receipts team on ReceiptsRemittances@informa.com

Pay by Cheque - Please make cheques payable to Informa UK Ltd. Please return a copy of this invoice and your cheque to the address provided

Customer Services Global Contacts

The Taylor & Francis Global Customer Services team would be happy to assist with any questions you may have.

You can email us at OrderSupport@tandf.co.uk or alternatively telephone one of our teams listed below:

United Kingdom: +44 (0)20 7017 6590

United States: +1 800 354 1420 (Ext 4) or 215 625 8900 (Ext 4)

Singapore: +65 6508 2862

Australia: +61 3 8842 2413

Taylor & Francis Customer Services

 **Invoice.PDF**
36K

Welcome to Taylor & Francis Production: Cogent Social Sciences 2069910

OASS-production@journals.tandf.co.uk <cats@taylorandfrancis.com>

21 April 2022 19.38

Balas Ke: OASS-production@journals.tandf.co.uk

Kepada: mahrus_ali@uii.ac.id

Any copyrighted material reproduced in your paper must include an accompanying attribution. Brief extracts of third-party material may be cleared for use under the fair use / fair dealing policy, and don't require full copyright clearance from the Rightsholder. For further information and to access a template form for requesting permission, please see <https://authorservices.taylorandfrancis.com/using-third-party-material-in-your-article/>. Please keep copies of all correspondence.

Article: Compensation and Restitution for Victims of Crime in Indonesia: Regulatory Flaws, Judicial Response, and Proposed Solution

Journal: *Cogent Social Sciences* OASS

Article ID: OASS 2069910

Dear Mahrus Ali,

We are delighted that you have chosen to publish your article in *Cogent Social Sciences*. I will be your Production Editor and will work with you to oversee the production of your article through to publication. My contact details are given at the end of this email.

• Please log in to CATS to complete your Author Publishing Agreement. Your user name and password are given below. If you have any questions on the process of completing your agreement, please contact me.

Proofs will be ready for you to check in approximately 5 working days and we would like you to return your corrections within 2 days. Please let me know if there will be any difficulty in meeting this schedule.

We will be sending proofs to you through our online proofing system. You will receive notification when your proofs are available and the link to access them from the email address: iproof@integra.co.in.

• You can check the status of your paper online through the CATS system at: <https://cats.informa.com/PTS/in?ut=C90120A9349146E29BE3FCDB766266C8>

• Your User Name is: ALIM475

• Your Password is: Alim4876#\$ (You will be required to change this first time you log in)

• The DOI of your paper is: 10.1080/23311886.2022.2069910. Once your article has published online, it will be available at the following permanent link: <https://doi.org/10.1080/23311886.2022.2069910> .

Yours sincerely,

Suriyanarayanan Murugaiyan

Email: OASS-production@journals.tandf.co.uk

Your completed Author Publishing Agreement for "Compensation and Restitution for Victims of Crime in Indonesia: Regulatory Flaws, Judicial Response, and Proposed Solution"

authoragreement@taylorandfrancis.com <authoragreement@taylorandfrancis.com>

21 April 2022 20.30

Kepada: mahrus_ali@uii.ac.id



Your completed Author Publishing Agreement (APA) with Taylor and Francis

Attention: Mahrus Ali

Hello,

Your Author Publishing Agreement for "Compensation and Restitution for Victims of Crime in Indonesia: Regulatory Flaws, Judicial Response, and Proposed Solution" has been completed. Please click the link below (or copy the URL into your browser) to access the system and download your signed agreement.

Should you have any question on this, you may contact OASS-production@journals.tandf.co.uk.

Thank you.

[Summary »](#)

<https://authoragreement.taylorandfrancisgroup.com/LicenseSummary/Index/12d3e988-28a9-4eb5-ad12-333de7ccc577>

© 2015 - Informa UK Limited, an Informa Group Company

Your article proofs for review (Manuscript ID: OASS A 2069910)

iauthorsupport@integra.co.in <iauthorsupport@integra.co.in>

23 April 2022 04.59

Kepada: mahrus_ali@uii.ac.id

Cc: OASS-production@journals.tandf.co.uk

Manuscript Title: OASS - (Compensation and Restitution for Victims of Crime in Indonesia: Regulatory Flaws, Judicial Response, and Proposed Solution)

Manuscript DOI: 10.1080/23311886.2022.2069910

Journal: OASS-Cogent Social Sciences

Dear Mahrus Ali,

I am pleased to inform you that your proofs are now available for review using the Taylor & Francis online proofing system: [Click here](#)

Please submit your corrections by 27 April 2022, to avoid delay to publication.

Corrections must be limited to answers to the Author Queries, typographical and essential corrections only.

After we have received your corrections and Author Publishing Agreement, your article will be corrected and published online following a thorough quality check.

The DOI of your paper is 10.1080/23311886.2022.2069910. Once your article has published online, it will be available at the following permanent link: <http://dx.doi.org/10.1080/23311886.2022.2069910>.

If you have any questions, please contact me using the details below and I will be pleased to assist.

Thank you,

Suriyanarayanan Murugaiyan

On behalf of the OASS production team

Taylor and Francis

4 Park Square, Milton Park, Abingdon, Oxfordshire, OX14 4RN, United Kingdom

Email: OASS-production@journals.tandf.co.uk

"In accordance with the requirement of any applicable Data Protection Laws, "By including any personal data in your response to this email, you are freely consenting to this being used and stored by the company for the purpose of service delivery. This email and any accompanying attachments is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, distribution, or copying is strictly prohibited. If you are not the intended recipient of this communication or received the email by mistake, please notify the sender and destroy all copies. Integra Software Services Pvt Ltd. reserves the right, subject to applicable local law, to monitor and review the content of any electronic message or information sent to or from its company allotted employee email address/ID without informing the sender or recipient of the message."

Author corrections submitted for Manuscript ID: OASS A 2069910

iauthorsupport@integra.co.in <iauthorsupport@integra.co.in>

23 April 2022 15.33

Kepada: mahrus_ali@uii.ac.id

Cc: suriyanarayanan.murugaiyan@integra.co.in

Manuscript Title: OASS - (Compensation and Restitution for Victims of Crime in Indonesia: Regulatory Flaws, Judicial Response, and Proposed Solution)

Manuscript DOI: 10.1080/23311886.2022.2069910

Journal: OASS-Cogent Social Sciences

Date proof corrections submitted: 23 April 2022

Dear Mahrus Ali,

This email confirms that you have submitted corrections to your proofs via the Taylor & Francis online proofing system. Your record of corrections are now available using the Taylor & Francis online proofing system.

[Click here](#)

If any of this information is incorrect, please contact the Production Editor: Suriyanarayanan Murugaiyan

Email: OASS-production@journals.tandf.co.uk

We would be grateful if you could answer this very short questionnaire to provide feedback on how you found the online proofing process. It should take about 1-2 minutes to complete:

<http://www.surveygizmo.eu/s3/90026339/Taylor-Francis-Online-Correction-Tool-I>

Thank you.

Yours sincerely,

Taylor & Francis Online Proofing Team

"In accordance with the requirement of any applicable Data Protection Laws, "By including any personal data in your response to this email, you are freely consenting to this being used and stored by the company for the purpose of service delivery. This email and any accompanying attachments is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, distribution, or copying is strictly prohibited. If you are not the intended recipient of this communication or received the email by mistake, please notify the sender and destroy all copies. Integra Software Services Pvt Ltd. reserves the right, subject to applicable local law, to monitor and review the content of any electronic message or information sent to or from its company allotted employee email address/ID without informing the sender or recipient of the message."

Cogent OA author update: access to your article published in an issue of Cogent Social Sciences

Taylor & Francis <noreply@tandfonline.com>

27 April 2022 14.58

Balas Ke: support@tandfonline.com

Kepada: mahrus_ali@uii.ac.id



The online platform for Taylor & Francis Group content

[Author Services](#) | [FAQ](#) | [Twitter](#) | [Facebook](#) | [LinkedIn](#)

Dear Mahrus Ali,

Your Open Access article, [Compensation and restitution for victims of crime in indonesia: Regulatory flaws, judicial response, and proposed solution](#), published in Cogent Social Sciences, Volume 8 Issue 1, is now available to access via tandfonline.com.

Share your article now

You'll hopefully want to share your article with friends or colleagues (and then check its downloads, citations and Altmetric data on [Authoring Works](#), our dedicated center for all Cogent OA published authors). Publishing Open Access means your article can be read by anyone, anywhere, and we want to work with you to ensure it reaches as wide (and as appropriate) an audience as possible.



Author feedback tells us that something as simple as posting about your article's publication on social media is a highly effective way of highlighting your research. Find out more about how you can work with us to [promote your work](#).

Not sure how to access your Authoring Works?

If you haven't yet registered, you can do so using mahrus_ali@uii.ac.id (this is the email you used whilst your manuscript was going through production).

Once you've completed the quick registration you'll be sent an email asking you to confirm. Click on the verification link and you can then login (using the above email address) whenever you want to by going to [Taylor & Francis Online](#). Once you have logged in, click on "[Your Account](#)" at the top of the page to see the latest updates on your article.

If you have any problems accessing your Taylor & Francis Online account please [contact us](#). Thank you for publishing Open Access with us.

Kind regards,

Stewart Gardiner
Global Production Director, Journals
Taylor & Francis Group

Interested in insights, tips, and updates for Taylor & Francis authors? Be part of our researcher community on:

[Twitter](#)

[Facebook](#)

[LinkedIn](#)

[Taylor & Francis Author Services](#)

Please do not reply to this email. To ensure that you receive your alerts and information from Taylor & Francis Online, please add "alerts@tandfonline.com" and "info@tandfonline.com" to your safe senders list.

Taylor & Francis, an Informa business.

Taylor & Francis is a trading name of Informa UK Limited, registered in England under no. 1072954. Registered office: [5 Howick Place, London, SW1P 1WG](#).



Cogent OA



Compensation and restitution for victims of crime in indonesia: Regulatory flaws, judicial response, and proposed solution

Mahrus Ali, Andi Mulyono, Wawan Sanjaya & Ari Wibowo |

To cite this article: Mahrus Ali, Andi Mulyono, Wawan Sanjaya & Ari Wibowo | (2022) Compensation and restitution for victims of crime in indonesia: Regulatory flaws, judicial response, and proposed solution, Cogent Social Sciences, 8:1, 2069910, DOI: [10.1080/23311886.2022.2069910](https://doi.org/10.1080/23311886.2022.2069910)

To link to this article: <https://doi.org/10.1080/23311886.2022.2069910>



© 2022 The Author(s). This open access article is distributed under a Creative Commons Attribution (CC-BY) 4.0 license.



Published online: 27 Apr 2022.



Submit your article to this journal [↗](#)



Article views: 139



View related articles [↗](#)



View Crossmark data [↗](#)



Received: 06 March 2022
Accepted: 20 April 2022

*Corresponding author: Mahrus Ali
Universitas Islam Indonesia;
Universitas Islam, Papua Barat;
Universitas Islam; Universitas Islam
E-mail: mahrus_ali@uii.ac.id

Reviewing editor:
Heng Choon (Oliver) Chan,
Department of Social and Behavioral
Sciences, City University of Hong
Kong, Hong Kong

Additional information is available at
the end of the article

LAW, CRIMINOLOGY & CRIMINAL JUSTICE | RESEARCH ARTICLE

Compensation and restitution for victims of crime in indonesia: Regulatory flaws, judicial response, and proposed solution

Mahrus Ali^{1*}, Andi Mulyono², Wawan Sanjaya³ and Ari Wibowo¹

Abstract: The study aims at examining the limitations of the Indonesian legislation concerning the compensation and restitution for the victims of crime by reviewing court cases and the implementation of the laws. By employing the doctrinal legal research, this study identifies that the victims' rights to compensation and restitution in various legislations are contingent upon the perpetrator's conviction, excluding the victims of crime from obtaining their rights. In court decisions, the perpetrator's resuscitation is frequently accompanied with a sentence of criminal detention for a short period of time. Victims have a tough time obtaining restitution since the perpetrator prefers to serve time in prison rather than to pay compensation to the victim. Therefore, to provide victim protection and assistance, it is necessary to comprehensively understand the distinguished natures between compensation and restitution that have direct impact on the promulgation of the laws and the imposition of such victim rights by the courts.

Subjects: Criminal Law & Practice; Criminology - Law; Regulation

Keywords: victims of crime; compensation; restitution; judicial response

ABOUT THE AUTHOR

Mahrus Ali is a faculty member in the criminal law department at Universitas Islam Indonesia. His research interests include environmental crimes, criminal law and human rights, economic crimes, victim of crime, and penal policy. Andi Mulyono is a senior lecturer at Sekolah Tinggi Ilmu Hukum Manokwari, West Papua. His research interests are covering criminal law, law of criminal procedure, and victims of crime. Wawan Sanjaya is a lecturer at the Faculty of Law, Universitas Balikpapan, East Kalimantan. His expertise includes criminal law and law of criminal procedure. Ari Wibowo is a senior lecturer in the criminal law department, Universitas Islam Indonesia. His research interests include criminal law, victimology, and economic crimes. This study is part of a project to enhance the victim protection and assistance through legislations and judicial decisions.

PUBLIC INTEREST STATEMENT

This study highlights the regulatory flaws concerning compensation and/or restitution for victim of crimes, review the judicial decisions, and explore the arrangements of compensation and restitution that protect the victims in Indonesia. Both rights of victims are only obtained by depending on the defendant's guilty of committing an offense in the final court decision. All court orders that impose repayment on the culprit are dispensed with short imprisonment that prevents the victims from obtaining their right to restitution. Protecting the victims to get their rights is through comprehensive understanding of different philosophical and characteristic grounds between compensation and restitution that have direct impact to the victim protection and assistance.

1. Introduction

It is not an exaggeration to argue that the existence of victims of crime does not receive much attention in the criminal justice process. The central focus of criminal law is more often on criminal perpetrators than on victims (Sánchez, 2008; Capers, 2020). The victim is simply positioned as a witness or a whistleblower to a criminal conduct. The victim is an object who is subjected to criminal activities, both physical and psychological (Polito, 1990). When a criminal conduct was committed and the perpetrator is convicted, the victim is abstracted into the public interest, and it is thought that the victim has received protection. Since it is not concerned with the recovery of the losses resulting from a criminal act, criminal law appears as if it abandons the victim (Rodriguez, 1992).

More features of criminal offenders are regulated under the Criminal Code, which is based on a neoclassical school of thought that accepts circumstances that benefit the criminals, while victims are neglected (Hong, 2002). The Criminal Procedural Law is also dominated by provisions on the rights of the criminal offenders, with only a few provisions mentioning the rights of the victims. These provisions that govern matters regarding the victims including their rights can only be found in Chapter XII that incorporates the damages in lawsuits. The right to report or complain about criminal acts is regulated in Article 108, while the right of the victim's family to be informed if the victim dies is promulgated in Article 134 paragraph (1). In addition, the right of the victim as a witness to be reimbursed when answering the call to submit information is found in Article 299 paragraph (1; Angkasa, 2016).

In recent years, the criminal justice system has begun to pay closer attention to victims. Crime is no longer viewed as the violation of the interests of the state, but rather as a violation of or injury to the victim (Cardenas, 1986; Levanon, 2015; Hughes, 2021). The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of 1985 emphasized the necessity for compensation and restitution in providing protection to victims. Article 8 states that offenders or third parties responsible for their behavior should, where appropriate, make fair restitution to victims or their families. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights. Article 12 also mentions that "when compensation is not fully available from the offender or other sources, States should endeavor to provide financial compensation to: (a) victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes; (b) the family in particular, dependent upon persons who have died or become physically or mentally incapacitated as a result of such victimization". This indicates that the perpetrator of a criminal act or other accountable party must make restitution to the victim or their family, including compensation for damaged or lost property, recovery of suffering, and other rights of the victim. Failure of the perpetrator to fulfill these rights subsequently hold the state liable for paying to the victims (Ezioni, 2013).

The principles of victim protection in the Declaration have been incorporated into the Indonesian legislations. The Human Rights Court Law of 2000 was the first piece of law to recognize the victims' rights to physical and mental protection from threats, disturbances, terror, and violence by any party, as well as the right to compensation and restitution as outlined in Articles 34 and 35. Three years later, Indonesia passed an Anti-Terrorism Law that includes provisions on the equivalent rights of the victims. The Witness and Victim Protection Law of 2006, which was revised in 2014, lays out the principles of protection for the victims and their rights in greater detail. Article 1 section (2) of the Law defines a victim as "a person who suffers physical, mental, or economic harm as a result of a criminal act". This definition is similar to the definition of victim found in the Declarations as "persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, as a result of acts or omissions that are in violation of criminal laws ...". Several further regulations, such as the Human Trafficking Law of 2007 and the Government Regulation of 2018 on Compensation, Restitution, and Assistance to Witnesses and Victims, have regulated a number

of rights of the victim, including compensation and restitution. Although these two rights have been governed by various laws, there are still regulatory flaws in their implementation. This affects their effectiveness in providing protection to victims of crime, such as the necessity of judicial decision.

This present study aims to explore and analyze the flaws of compensation and restitution in the Indonesian legislations and court decisions that have resulted in the victims not being fully protected, and the idea of how to safeguard the victims of crime through comprehensive compensation and restitution arrangements. The authors argue that compensation and restitution provisions in various laws have not been sufficiently tailored to protect the victims of crime. Our argument is presented in six distinct sections. The first section presents the introduction, and the subsequent section presents the methodology guiding the study and the sources of data. The third section is theoretical bases on compensation and restitution. It is argued that both right of victims of crime have differences in nature and philosophical foundation. The fourth section highlights the flaws of compensation and restitution in various legislations in Indonesia. Victims of crime are entitled on the compensation and/or restitution only after the court ruling and request of the victims. The fifth section discusses the judicial response on the imposition of paying compensation and restitution to the victims by the perpetrator or state. It is found that the court judgment obliging the accused to pay restitution is invariably accompanied with a brief prison sentence. The last section analyzes the proposed solution to protect the victim of crime through compensation and restitution.

2. Methodology

This doctrinal legal research mainly relies on the Indonesian legislations promulgating compensation and restitution for victims of crime as the primary source of data. At least 5 laws regulate the compensation and restitution in criminal matters, namely Criminal Procedural Code, Human Rights Court Law, Anti-Terrorism Law, Human Trafficking Law, as well as Witness and Victim Protection Law. The analysis on these laws focuses on the requirement for victims to be entitled to compensation and/or restitution. In addition, the court rulings on the imposition of compensation and restitution were highlighted to identify whether the court decisions provide enough safeguard for the victims to obtain their two rights. Those verdicts which order compensation and/or restitution for the defendant or the state were rarely carried out by the judge. Based on the directory of judicial decisions issued by Supreme Court, there were only six court rulings on the imposition of restitution and compensation for victims of genocide, crime against humanity, terrorism, and human trafficking between 2008 and 2022. It was also supported by the fact that there were few regulations limiting the victims' rights to receive compensation from the state or restitution of the crime. These data play an important aspect to propose a comprehensive mechanism for victims of crime to get compensation and/or restitution.

3. Theories on compensation and restitution for victims of crime

Unlike restitution, compensation takes the form of monetary payment and it is a state obligation. The "failure to protect" theory underpins the state obligation to compensate victims of crime. This theory dictates that an individual who become the victim of a crime is primarily caused by the failure of the society to eliminate crime and by extension, the failure of the law enforcement to prevent offenses (Goldscheid, 2004). In addition, there are two considerations as to why victims are entitled to state-provided compensation First, compensation is based on equity and social solidarity. The victim of crime is a victim of society who should be reimbursed by the community for the damages incurred. In a larger sense, the theory holds that the government owes compensation to the victims since law enforcement officers have failed to prevent crime from occurring. Second, other forms of compensation have been proven to be insufficient to proportionately compensate the victims (Katsoris, 1990).

Compensation is a program that provides public fund to those who have been the victims of crime. The fund is a public resource that can be streamlined from the external sources of the crime

and is used to meet the particular needs of the victim (Mégret, 2010). Compensation for victims primarily aims to improve the responsiveness of the criminal justice system to the victims (Foote, 1992). Medical expenses, mental health counselling, funeral expenses, lost wages, cost of glasses, contact lenses, dental care, purchase of prosthetic devices, cost of moving or relocating, transportation costs to obtain medical care, job rehabilitation, replacement services for infant or children care, and domestic assistance should all be covered by the compensation provided to victims (Minarcik, 2012/2013).

The movement supporting the rights of the victims is raised by the concerns that the criminal justice system is excessively focused on the criminal offenders and frequently fails to address the interests and needs of the victims (Asner, 2013). Subsequently, more people become aware of the needs and concerns of victims in the criminal justice system. Victims of crime are frequently treated unfairly and ignored in the criminal justice system (Frank, 1992). In this context, restitution is only a small fraction of the effort to ensure that victims' rights are respected. The perpetrator of the crime is made responsible for the victim's losses through restitution (Anderson, 2017). Restitution refers to efforts to return a victim's right to what it was before they suffered a series of losses due to the crime. A criminal sentencing court can utilize restitution to recompense a victim for their injuries (Birney, 2012).

Restitution is a procedure usually utilized in the courtroom to compensate the victim for the loss or damage (Lollar, 2014). Restitution is defined as "the act of doing good things or giving the amount equivalent to the victim's loss, harm, or injury". The perpetrator of the crime is the one to make restitution to the victim. When a victim suffers a loss and the culprit is discovered, the criminal is legally obligated to pay the victim a sum of money. Restitution might involve the restoration of a quantity of money or the value of an object taken by the criminal, burial expenses, salary loss, support and payment for medical bills, counselling, therapy, or finding the victim new employment (Shephard, 2014; Monachino, 2008). Restitution is paid by the perpetrator or a third party before or after a final court decision. The perpetrator of the crime must be found guilty of a criminal violation in order for the victim to get reparation. Restitution encompasses a number of objectives. First, restitution is used to recompense victims for their losses as well as to financially support the victims. Second, the facility of restitution to track losses made by the criminal acts as a deterrent since it sends warning to potential criminals that they will be held responsible for any incurred losses. Third, by forcing the perpetrator of the crime to pay a quantity of money to the victim, restitution forces the culprit to admit the harm caused by his acts. The criminal bears sole responsibility for the crime. Unlike fines paid to the state, restitution is more personal as it is delivered directly by the perpetrator to the victim and is linked to the actual suffering of the victim. Hence, there is a causal relationship between crime and the losses sustained by victims in restitution (DiBari, 2011).

The fact that restitution may carefully trace the harm caused by a criminal becomes a strong deterrent, as it notifies potential offenders that they will be held accountable for every penny of harm. By requiring the perpetrator to make a payment to the victim, restitution also forces the criminal to acknowledge the genuine harm of his actions. Restitution poses several benefits; a) the court can avoid bringing severe criminal charges by requiring restitution as a condition of punishment (González, 2016); b) by holding the offender accountable for his actions, restitution orders serve to restore the offender's self-respect; c) restitution as a criminal consequence and alternatives to prison that are less expensive; and d) victims might receive both material and psychological gratification through restitution (Morris, 2012).

The Swedish model can be utilized as a model for maximizing compensation and restitution to victims. This country has a leading agency called "Crime Victim Compensation and Support Authority" consists of other public and private organizations acting in collaborating with the agency in providing assistance to victims of crime. Within the organization, the agency has three areas of duties, namely (1) assessing and providing criminal injuries compensation, (2)

administering Crime Victim Fund that is designated for supporting research and non-governmental organization's activities, and (3) administration Centre of Competence to provide capacity building and training as well as dissemination of information and researchers for the public. In addition, it also important to argue that Sweden has established a single integrated support and assistance system for victims involving executives, private organizations, non-governmental organizations, and the judiciary (Chokprajakchat et al., 2017).

4. The regulatory framework of compensation and restitution to the victim: Mapping out the flaws

The Criminal Code limits victim protection to assessing the form and weight of criminal sanction based on the circumstances surrounding the victim, such as the crime of assault as promulgated in Article 351. Ordinary assault is sentenced to a maximum penalty of two years in prison and eight months or a maximum fine of IDR. 4,500. If the act causes serious injury, the penalty is aggravated into five years of imprisonment. If it causes death, the sentence is aggravated to seven years of imprisonment. Other types of protection, such as compensation and/or restitution, which are extremely valuable to victims, are not covered by the Code since the types of punishment are limited to capital punishment, imprisonment, short imprisonment, and fine (Article 10). None of these criminal sanctions are directed toward the rights of the victims to get compensation. The notion of criminal conduct under the retributive view, which is a violation of public interest, cannot be separated from the abstraction of victims' interests in criminal law .

The protection of criminal offenders is also found in the provisions of the criminal procedure. The Code does not include a definition of a victim of crime that situates them as the forgotten party in the criminal justice system. The lack of arrangement for victim protection is acceptable, given that the enactment's background concerns the necessity for human rights protection for perpetrators of criminal crimes who are frequently violated by the law enforcement personnel. The primary purpose of the Code is to improve human rights protection for criminals, both as suspects and defendants, when interacting with law enforcement agents with specific powers. This law seeks to place the perpetrator in a dignified position within his entity (Erdianto, 2020).

Victims' rights are limited to file compensation claims merged with the civil lawsuit under Article 98 following particular legal procedures. If an act that is the basis for an indictment in a criminal case examined by a district court causes harm to a victim, the presiding judge of the hearing may decide to combine the cases for damages to the criminal case at that person's request for civil lawsuit. Such requests can be made only the day before the public prosecutor files the criminal charges. If the public prosecutor fails to appear, the request must be made no later than the day before the judge overturns the judgment. It is also stipulated that compensation cases are to be merged in line with the principle of proportionality, namely the protection of the rights of perpetrator, the victims, and other parties. The goal of this merging is to create a judicial concept that is simple, quick, and low-cost (Harahap, 2008). This approach allows a victim to file a damages case without having to go through a standard civil lawsuit or to wait for the criminal proceedings to be completed. However, the provisions on the incorporation of cases are still flawed in several points. It primarily depends on the criminal case. In a case where the defendant is not found guilty of the offense, the victim's claim for damages will not be granted. Even if the court decides to rule the defendant guilty, it still requires the final court decision, hence taking a longer period of time. Filing for damages must be done before the prosecution. Failing to meet this period of time will seal the opportunity of the victims to get compensation. Finally, compensation is limited only to material losses of the victim.

Other pieces of legislation similarly govern compensation and restitution. As indicated in Article 35 section (2) of Law on the Court of Human Rights of 2000, compensation and restitution paid to victims of genocide and crimes against humanity shall be included in the court decision. Government Regulation No. 3 of 2002 on Compensation, Restitution, and Rehabilitation of Victims of Gross Human Rights Violations contains further regulations pertaining to compensation

and restitution for gross human rights violations. Compensation is defined as recompense granted by the state since the perpetrator is unable to provide full compensation. Restitution is money paid by the criminal or a third party to the victim or his family. It could be the return of property, the payment of damages for loss or suffering, or the payment for specific actions.

The victim or their family can receive compensation and/or restitution. The Ministry of Finance is specifically listed in the verdict as a government agency responsible with carrying out compensation based on the decision of the Human Rights Court, which has achieved its legal binding power. The Ministry of Finance is in charge of compensation for the financing and calculating of public finances. The perpetrator or a third party is responsible for making restitution based on the orders mentioned in the decision of the Human Rights Court. Only if the criminal is unable to pay restitution to the victim will the state provide compensation. If the defendant is terminated by prosecution, restitution will be considered in the court decision. In the event of serious human rights violations, compensation, and restitution cannot be offered to the victim if the defendant is not prosecuted. When many victims have clearly suffered losses in the event of severe human rights violations, especially in the past (before the enactment of the Human Rights Court Law), but it is difficult to prove the perpetrator because many evidences are no longer available. This provision, of course, can prevent victims from receiving compensation.

The Law of the Human Rights Court also lacks the precise guidelines for assessing the amount of restitution or compensation that can be awarded to victims. Article 2 section (2) stipulates that the compensation must be granted appropriately and immediately, while the amount is to be set by the judge. It is also stated that the victim is given compensation for losses and/or the restoration of other rights as soon as feasible in order to alleviate the victim's suffering. This provision will be difficult since the relevant Government Agencies entrusted with compensating and rehabilitating victims must be based on the final court decision. In fact, it takes years from the time an inquiry begins to the time a formal judgment is rendered in the *ad hoc* Human Rights Court (Abidin., 2014).

Compensation and restitution are particularly defined in Chapter IV on Compensation, Restitution, and Rehabilitation, which consists of Articles 36 to 42 of Law on Combating Crimes of Terrorism, 2003. Any victim or heir to the victim who has been harmed as a result of terrorism offenses is entitled to restitution or compensation. Compensation is financed by the government and charged to the state, while restitution is paid by the culprit to the victim or their heir(s). In the court's judgment, compensation and/or restitution are awarded and specified all at once. The reliance on the criminal case verdict for compensation and restitution is a serious flaw. Compensation and restitution cannot be awarded if the defendant is not charged with a crime. This clause does not reflect the orientation to the victim's protection because even if terrorist actions occur and the victim suffers losses, no compensation or restitution will be offered if no defendant is prosecuted. Compensation should not be based on the criminal case, but it can be awarded if there is a terrorism-related criminal occurrence and the victim has suffered damages (Sujatmoko, 2019).

The Law on Combating Human Trafficking of 2007 solely regulates restitution as "the payment of damages to the perpetrator based on a permanent legal judgment for material and/or immaterial losses sustained by the victim or his heirs" (Article 1 section 13). The restitution requirements are included in Articles 48 through 50. It is stated that any victim of a human trafficking crime, as well as their heirs, is entitled to restitution that include recompensing for victims' loss of money or income, suffering, medical and/or psychiatric treatment costs, and/or other losses as a result of trafficking. The restitution is given and listed in the court decision on the criminal case of human trafficking at the same time. Since the first-tier court decision, the supply of restitution has been carried out, and might be placed first in the court that decides the case. The provision of restitution must be completed within 14 (fourteen) days of the verdict's entry into final and binding legal effect. If the culprit is found not guilty by a court of appeal or cassation, then the judge may direct in their judgment that the restitution money can be restored to the parties involved. If the victim's request for restitution is not satisfied within the given period of time, the victim or their heirs

should contact the court. The court issued a written warning to the defendant, directing them to fulfill their commitment to give restitution to the victim or their heirs as soon as possible. The court instructed the public prosecutor to collect the convict's properties and place them on auction for restitution payments if the warning letter is not responded within 14 (fourteen) days. If the perpetrator is unable to make reparation, then the perpetrator is subject to a maximum sentence of one year in prison.

The provision of restitution to victims of human trafficking has a variety of flaws based on the foregoing arrangements. First, repayment is contingent upon the outcome of the criminal case. If the accused is found not guilty by the court, the victim will not get the restitution. Although a victim of a criminal act suffers both monetary and immaterial damages, he will not be compensated if the culprit is released. Second, if the perpetrator does not comply with the court's order to provide restitution and also does not have sufficient property, the victim will not be compensated since the culprit will only be sentenced to a maximum of one (1) year of imprisonment as the criminal sanction replacement.

Compensation and restitution are also governed by Law on the Protection of Witnesses and Victims of 2006, which was revised in 2014. Compensation is defined "as recompense paid by the state since the perpetrator and his or her family are unable to provide the full compensation". Restitution is paid by the culprit or a third party to the victim or his family in the form of: (a) indemnity for lost wealth or income; (b) reparation for suffering directly related to illegal activities; and/or (c) reimbursement of medical and/or psychiatric treatment costs. Not all victims are eligible for restitution. According to Article 7A paragraph (2) of the Law, not all victims who suffer losses as a result of criminal activities will be eligible for reparation since it will be confined to victims of specific criminal acts, as determined by the Witness and Victim Protection Agency. The statute also lacks the criteria that could serve as guidance for the Witness and Victim Protection Agency in determining what types of criminal conduct a victim is eligible for restitution. According to the Government Regulation of 2018 on the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims, a restitution application can be filed by the agency before or after a final court decision. This agency may request for restitution to the public prosecutor for inclusion in the claim if the restitution application is made before permanent court decision.

Based on the above description, it is argued that the Witness and Victims' Protection Law does not specify how long judges must decide restitution application. Furthermore, there is no "coercive measure" for the offender to pay the court-ordered restitution, either because of the perpetrator's reluctance or unable to pay it. Compensation in the Act is limited to victims of genocide, crimes against humanity, and victims of terrorism offenses, reimbursement of restitution with compensation is also impossible.

5. Judicial Response

In the practice of court judgements, the resuscitation of restitution to the defendant is uncommon. There are just a few court decisions in which one of the defendants was ordered to pay restitution to the victim, as shown in Table 1 below:

Table 1 shows that the court's judgment requiring the accused to pay restitution is invariably accompanied with a brief prison sentence. The existence of criminal detention for one month or three months consequently allows the defendant to avoid paying the judge-ordered restitution. The perpetrator would rationally choose to serve a one-month prison sentence rather than to pay a very substantial amount of restitution. To ensure that victims' rights to restitution are not violated, criminal detention in lieu of restitution should be substituted with confiscation of the perpetrator's assets/properties or instalment payment aimed at repairing the harm caused by criminal behavior (Waterman, 2020). Furthermore, the lack of information about the amount of restitution sought does not prevent judges from imposing it. The court should be able to determine how much restitution is suitable for the victim's needs, suffering, and recovery.

Table 1. Restitution in Court Ruling		
No	Court	Court Order
1	1633/PID.B/2008/PNTK	The defendant was compelled to pay USD. 672 in reparation to Maidiana. If restitution is not paid, it will be substituted by a one-month sentence of incarceration.
2	396/Pid.B/2012/PN.Cbd	The defendant was ordered to pay restitution to Desti Fitriyani, Desi Aprillianti, Irmawati, Mutia Yulyanti, Siti Nurani, and Wiwin of USD. 672 each as the victims. If the restitution is not paid, it is replaced with a three-months sentence of incarceration.
3	1155/K/Pid.Sus/2013	The restitution request by the victims was not granted because the public prosecutor failed to identify the nature and quantity of the victim's damages.

Despite the fact that the application for compensation was limited to victims of terrorism offenses, the court allowed it, in contrast to the restitution verdict. The judge denied the application for compensation for victims of genocide and crimes against humanity. The public prosecutor demanded that the state pay the amount of USD.99,564 to compensate the victims of terrorism due to a bomb explosion in one of the houses of worship in Samarinda several years ago. Only a portion of the compensation claim of USD. 16,007 was granted by the judge. The South Jakarta District Court also awarded USD. 68,445 in compensation for the expense of treating victims of the bombing on MH Thamrin in Central Jakarta, as well as victims of suicide bombs at Kampung Melayu Terminal in East Jakarta. In this lawsuit, 16 persons obtained their compensation, including 13 victims of the Thamrin bombing and three victims of the Kampung Melayu explosion.

Bombing victims in Surabaya were awarded USD 79,407 in compensation by the West Jakarta District Court, which comprised the cost of rescuing victims not covered by the government, operational reimbursement costs, and lost income reimbursement. There are 17 bombing victims in this case who are eligible for compensation. The court also awarded USD. 27,859 in compensation to three terrorism victims. The amount was calculated based on the Witness and Victim Protection Agency consideration filed through the public prosecutor's demands. The three victims were protected by the Agency. The victim's wife received the deceased victim's compensation, thus entitled to USD. 19,272 in compensation. The other two victims are entitled to USD.3,479 and USD. 5,106 in compensation, respectively.

6. Protecting Victims of Crime through Compensation and Restitution: A Proposed Solution

Indonesian legislations nonetheless equate the methods of compensation and restitution even if these two rights of the victims have different philosophical and characteristic grounds. The fact that the state compensated the victim demonstrates that the state has failed to safeguard and guarantee security to the victim. Law enforcement personnel acting on behalf of the state has also failed to prevent the commission of a criminal conduct that harms the victim (Katsoris, 1990/1991). As a form of failure and accountability to the citizen, the state is compelled to compensate the victim. Restitution, on the other hand, is a result of the paradigm shift in prosecution from retributive to restorative justice. Restitution is one way to address the needs and interests of victims who have been overlooked by the criminal justice system . Restitution is only a small fraction of the effort to ensure that the rights of the victims are respected. The perpetrator of the crime is made responsible for the victim's losses through restitution (Bickford, 2019; Durkin, 2021).

The renewal of compensation and restitution arrangements in the Indonesian legal system should be based on their philosophical differences and characteristics. The compensation paradigm should adhere to the fulfillment of citizens' rights. It should be viewed as a form of the state pleading "guilty" for failing to protect and give security to its citizens. Compensation must be linked to human rights abuses, which are almost invariably committed by governmental actors (Rutherford, 2018). Because there is no link between compensation and the defendant's guilt as detailed in the court's judgment, the state's compensation does not have to be contingent upon the judicial decision. Any person who is the victim of a criminal offense is entitled to compensation from the state. As a result, only particular types of crimes for which victims are entitled to compensation from a state are no longer needed to be perpetuated. Compensation is also paid to the victim of a criminal conduct whose perpetrator dies before the judicial process was completed, and this does not have to be contingent upon the court decision. Victims of unlawful arrest by law enforcement officials are also compensated as a form of state responsibility to urge law enforcement officers to be cautious when detaining someone as a suspect of a crime (Okpaluba, 2020).

What are the costs that the state should pay and provide to the victims? The solution to this question is contingent upon the state's capabilities and availability of funding. Material and immaterial losses, medical expenses, mental health counseling, funeral expenses, lost salaries, eyeglass purchase costs, contact lenses, dental care, purchase of prosthetic devices, moving or relocation costs, transportation costs for medical treatment, occupational rehabilitation, replacement services for infant and child-care, and domestic assistance are all the examples of compensation. At the very least, the state compensates victims for losses incurred directly as a result of a criminal conduct. The state must cover all costs for victims of trauma or stress in order for them to recuperate (Lollar, 2014).

In the event that the state is unable to provide immediate compensation to the victim, the state may pay it monthly or annually. If this is too onerous, compensation can be converted into tax deduction, specific cost deductions that the victim should have paid, or the provision of certain educational or health services (Rutledge, 2011). States must develop a state-subsidized or state-funded compensation scheme known as public money to ensure that compensation programs work efficient and that victims' rights are respected (Anonymous, 2010). Fines, confiscation of convicted assets, some tax income, and non-binding donations from people or private institutions that are provided for the unique needs of victims are all possible sources of funds. This private scheme funding is derived from the social solidarity theory as mentioned earlier. The funds are administered by specific institutions that are required to report them to the public and are audited annually by independent auditors. The compensation application process is nevertheless hampered by a lengthy and cumbersome bureaucracy. This procedure should be made as straightforward as possible, such as by delegating new responsibilities to the Witness and Victim Protection Agency, one door of online or off-line compensation application. The agency is given authority to handle matters by making a coordination with relevant agencies.

The renewal of restitution arrangements must refer to the restorative justice principle by focusing on the perpetrator's responsibility to compensate the victim for criminal acts committed, and the victim's willingness to forgive the perpetrator's guilt (Teninbaum, 2007; James, 2021). Before the perpetrator pays the victim restitution, the two parties must meet with the goal of restoring the victim's damage or loss (Reimund, 2003). The provisions in various laws and regulations requiring restitution payments to the final judicial decision demonstrate that the underlying concept of restorative justice has yet to be implemented. Such rules should not apply unconditionally, in the sense that a legally binding court does not have to be an absolute requirement for the perpetrator to pay restitution to the victim. The clause should only be enforced if the perpetrator refuses to accept guilt and to be held liable for giving restitution to the victim in the absence of a final court order.

The defendant can still make restitution to the victim if he admits his guilt and is willing to pay reparation to the victim before the judicial process is completed or before the court decision has achieved its final and binding legal force. The giving of restitution in this manner can be used to relieve the defendant or even as a foundation for judges to forgive the culprit (judicial pardon; Weisbuch, 2019; Maurer, 2021). The judge may find the defendant guilty of a criminal offense but not criminally charge him for certain offenses if the offender has given restitution to the victim. Judges and public prosecutors play a crucial role in getting the accused to agree to pay restitution. Even if the victim does not request restitution, the judge and prosecution may ask the defendant if they are willing to pay for it. Furthermore, according to the concept of restorative justice, the defendant should be morally compelled to compensate the harms of the victim. The fundamental goal is to repair the positive relationship between the victim and the offender (Kim, 2021) since healing and peace are the main goals of this justice (Bloch, 2021). As a result, the administration of a rigid criminal justice system was transformed into a humanistic criminal law (Weinstein, 1996).

In the case that the defendant does not have enough property to pay restitution to the victim, reimbursement with a maximum sentence of one or three months indicates that the provision is still in retributive justice. The clause should be revised to include provisions such as the seizure of the perpetrator's assets and their distribution to the victim in accordance with the amount of restitution determined by the court. This asset forfeiture also applies to perpetrators who die before having the opportunity to pay restitution to victims following a final court order. Furthermore, the perpetrator may also be forced to find victim a new work if he is fired from his employment for being a victim of a criminal conduct, or if he works for the victim for an extended period of time without being paid. Restitution does not have to be restricted to monetary compensation which can involve work or other benefits that are directly beneficial to the victim.

The perpetrator's payment of restitution to the victim should likewise be limited in time. For example, one month after the court's judgment, the perpetrator is obligated to compensate the victim, and if that period of time has expired, the perpetrator's assets are seized. If the perpetrator does not have enough property to pay the victim restitution right away, the court may compel the offender to pay the victim restitution in installments for a set period of time. This rule applies only if the defendant has demonstrated to the court that he does not have enough property to pay reparation to the victim all at once. In addition, the scope of criminal acts that compel perpetrators to make restitution to victims has been broadened to encompass all forms of criminal acts as long as the victim suffers direct losses as a result of the perpetrator's unlawful conduct. All unlawful acts that produce direct injury to the victim should be subject to restitution. This is because the major goal of restorative justice is to bring perpetrators and victims back together (Massey, 2018).

7. Conclusion

There have been legal loopholes concerning regulation of compensation and restitution for victims of crimes in Indonesia. The victims have no right to compensation and/or restitution when the court release the defendant's guilty of committing an offense. In the case that the culprit does not have enough property to pay restitution by the court's order, the victim will not be compensated because the perpetrator will only be sentenced to a maximum of one year of criminal replacement imprisonment. All court orders that impose repayment on the culprit are dispensed with criminal incarceration in a short period of time that therefore prevents the victim from obtaining their right to restitution.

Compensation focuses on restoring victims' rights that have been violated by the government. The payment does not rely on the court decision, granted to the victim of a criminal act whose perpetrator dies before the judicial procedure was, or given to unlawfully arrested victim by law enforcement agents. Compensation is limited to material losses, trauma, or stress recovery

expenditures, and it can be paid in cash, monthly, or annually, as well as converted into other currencies. Restitution should correspond to the restorative justice principle. Provisions requiring a legally binding court order are nevertheless only executed if the criminal refuses to make the restitution. The payment can be done by the offender prior to the court's ruling and can be used to mitigate the weight of the sentence or to pardon the convict. All crimes that directly cause victim harm are subject to restitution and could be paid in installments. Hence, it is suggested that the legislatures need to issue a specific and comprehensive law by eliminating the technical barriers for victims to get compensation and/or restitution and to establish an integrated agency for victim assistance. It is also recommended that the government should provide sufficient budgets to cover all victims of crime to obtain compensation.

Funding

The authors received no direct funding for this research.

Author details

Mahrus Ali¹

E-mail: mahrus_ali@uii.ac.id

ORCID ID: <http://orcid.org/0000-0002-5864-1009>

Andi Mulyono²

Wawan Sanjaya³

Ari Wibowo¹

¹ Universitas Islam Indonesia.

² Sekolah Tinggi Ilmu Hukum Manokwari, Papua Barat, Indonesia.

³ Universitas Balikpapan, Balikpapan Indonesia.

Disclosure statement

No potential conflict of interest was reported by the author(s).

Citation information

Cite this article as: Compensation and restitution for victims of crime in Indonesia: Regulatory flaws, judicial response, and proposed solution, Mahrus Ali, Andi Mulyono, Wawan Sanjaya & Ari Wibowo, *Cogent Social Sciences* (2022), 8: 2069910.

References

- Abidin., S. W. (2014). *Memastikan Pemenuhan Hak atas Reparasi Korban Pelanggaran HAM Yang Berat*. Institute for Criminal Justice Reform (Google Scholar).
- Anderson, R. (2017). Criminal law: The system is rigged: criminal restitution is blind to the victim's Fault-State v. Riggs. *Mitchell Hamline Law Review*, 43(1), 142. <https://open.mitchellhamline.edu/mhlr/vol43/iss1/4>
- Angkasa. (2016). *Kedudukan korban dana sistem peradilan pidana*. Fakultas Hukum Universitas Jenderal Sudirman (Google Scholar).
- Anonymous. (2010). *Compensation of victims of trafficking in persons national approaches to compensation of victims of trafficking in persons*. Working Group on Trafficking in Persons (Google Scholar).
- Asner, M. A. (2013). Restitution from the victim perspective-recent developments and future trends. *Federal Sentencing Reporter*, 26(1), 59. <https://doi.org/10.1525/fsr.2013.26.1.59>
- Bickford, A. W. (2019). Transferring forfeited assets to victims through remission, restoration, and restitution. *Department of Justice Journal of Federal Law and Practice*, Google Scholar, 67 (3), 219–230. <https://www.justice.gov/usao/page/file/1205051/download>
- Birney, B. M. (2012). What can the feds and the French teach us about criminal restitution in Maine? *Maine Law Review*, 65 (1), 251. Google Scholar. <https://digitalcommons.maine.edu/mlr/vol65/iss1/11>
- Bloch, K. E. (2021). Virtual reality: Prospective catalyst for restorative justice. *American Criminal Law Review*, 58 (2), 293. <https://doi.org/10.2139/ssrn.3672807>
- Capers, I. B. (2020). Against Prosecutors. *Cornell Law Review*, 105 (6), 1598. Web of Science. <https://cornelllawreview.org/wp-content/uploads/2020/11/Capers-final.pdf>
- Cardenas, J. (1986). The crime victim in the prosecutorial process. In *Harvard Journal of Law & Public Policy* (Vol. 9, pp. 359–360). Web of Science.
- Chokprajakchat, S., Techagaisiyavanit, W., & Iyavarakul, T. (2017). Developing Thailand's comprehensive crime victim assistance model through a comparative perspective of the Swedish and Norwegian systems. *International Journal of Criminal Justice Science*, 12 (2), 240–241. Web of Science. <https://www.sascv.org/ijcjs/pdfs/Chokprajakchatetalijcjs2017vol12issue2.pdf>
- DiBari, D. F. (2011). Restoring restitution: The role of proximate causation in child pornography possession cases where restitution is sought. *Cardozo Law Review*, 33 (1), 298. Google Scholar. <https://ssrn.com/abstract=1761501>
- Durkin, M. (2021). Restitution for child pornography: Reframing a system for victims harmed by too many. 52, *Loyola University Chicago Law Journal*, 52(2), 557. <https://lawcommons.luc.edu/luclj/vol52/iss2/9>
- Erdianto. (2020). *Relevansi Pemeriksaan Calon Tersangka sebelum Penetapan Tersangka*. 3, 2. Undang. <https://doi.org/10.22437/ujh.3.2.267-288>
- Ezioni, L. (2013). Compensating the adult victim of childhood incest: From criminal to constitutional compensation. *Women's Rights Law Reporter*, 34 (3), 337. Google Scholar. <https://1.next.westlaw.com/Document/Ia73da57f51a711e38578f7ccc38dcbee/View/FullText.html?>
- Foote, L. C. (1992). State compensation for victims of crime. *Army Lawyer*, 1, 51. Thomson Reuters. <https://1.next.westlaw.com/Document/Ideb5cfd1228a11dbbab99dfb880c57ae/View/FullText.html?>
- Frank, L. F. (1992). The collection of restitution: an often overlooked service to crime victims. *Saint John's Journal of Legal Commentary*, 8(1), 111. <https://scholarship.law.stjohns.edu/jcred>
- Goldscheid, J. (2004). Crime victim compensation in a post-9/11 world'. *Tulane Law Review*, 79, 184. https://academicworks.cuny.edu/cl_pubs/225
- González, T. (2016). Restorative justice from the margin to the center: The emergence of a new norm in school discipline. *Howard Law Journal*, 60 (1), 276. Thomson Reuters. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2901108
- Harahap, Y. (2008). *Pembahasan permasalahan dan penerapan KUHP: Pemeriksaan sidang pengadilan, banding, kasasi, dan peninjauan kembali*. Jakarta (Google Scholar).
- Hong, R. K. (2002). Nothing to fear: Establishing an equality of rights for crime victim through. *Notre Dame Journal of Law, Ethics & Public Policy*, 16(1),

208. <https://scholarship.law.nd.edu/ndjlepp/vol16/iss1/10>
- Hughes, W. S. (2021). Justice Undone. *American Criminal Law Review*, 58 (1), 156. Web of Science. <https://www.law.georgetown.edu/american-criminal-law-review/wp-content/uploads/sites/15/2021/01/Updated-58-1-Laufer-and-Hughes-Justice-Undone.pdf>
- James, B. (2021). Restorative justice liability: school discipline reform and the right to safe schools. *University of Memphis Law Review*, 51 (3), 700. https://www.memphis.edu/law/documents/book3_james_all.pdf
- Katsoris, N. C. (1990). The European convention on the compensation of victims of violent crimes: A decade of frustration. *Fordham International Law Journal*, 14 (1), 189. <https://ir.lawnet.fordham.edu/ilj/vol14/iss1/9>
- Kim, M. D. (2021). Redesigning restorative justice for criminal justice reform. 88, *Tennessee Law Review*, 88 (4), 953. Thomson Reuters. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3596971
- Levanon, L. (2015). Criminal punishment as a restorative practise. *New Criminal Law Review*, 18(4), 545. <https://doi.org/10.1525/nclr.2015.18.4.537>
- Lollar, C. E. (2014). What is criminal restitution? *Lowa Law Review*, 100 (1), 99–100. <https://ilr.law.uiowa.edu/assets/Uploads/ILR-100-1-Lollar.pdf>
- Massey, A. (2018). An eye for an eye will make the whole world blind: Who restorative justice will help Florida see again. *Nova Law Review*, 43(1), 79–80. <https://nsuworks.nova.edu/nlr/vol43/iss1/5>
- Maurer, D. (2021). War crime pardon and presidential (self-) restraint. *Federal Sentencing Reporter*, 33(5), 314–315. <https://doi.org/10.1525/fsr.2021.33.5.313>
- Mégret, F. (2010). Justifying compensation by the international criminal court's victims trust fund: lessons from domestic compensation schemes. *Brooklyn Journal of International Law*, 36(1), 130–131. <https://doi.org/10.2139/ssrn.1501295>
- Minarcik, M. (2012/2013). The proper remedy for possession of child pornography: Shifting from restitution to a victim compensation program. *New York Law School Law Review*, 57(4), 949. https://digitalcommons.nyls.edu/nyls_law_review
- Monachino, B. J. (2008). Enhancing victims' rights crime victims compensation. *New York State Bar Journal*, 37 (1), Thomson Reuters. <https://1.next.westlaw.com/Document/I24c54b220ba211ddb777ead008c6b935/View/FullText.html>
- Morris, T. (2012). Perverted justice: why courts are ruling against restitution in child pornography possession cases, and how a victim compensation fund can fix the broken restitution framework. *Villanova Law Review*, 57 (2), 400. at <https://digitalcommons.law.villanova.edu/vlr/vol57/iss2/5>
- Okpaluba, C. (2020). Quantification of damages for unlawful arrest and detention: South Africa, Namibia and Eswatini/Swaziland. *South African Journal of Criminal Justice*, 33(3), 25–27. <https://doi.org/10.47348/SACJ/v33/i3a6>
- Polito, K. E. (1990). The rights of crime victims in the criminal justice system: Is justice blind to the victims of crime? *New England Journal on Criminal and Civil Confinement*, 16 (2), 242–243. Thomson Reuters. <https://www.ojp.gov/ncjrs/virtual-library/abstracts/rights-crime-victims-criminal-justice-system-justice-blind-victims>
- Reimund, M. E. (2003). Mediation in criminal justice: A restorative approach. *Advocate*, 46 (2), 22. Thomson Reuters. <https://1.next.westlaw.com/Document/I979f49014a7111db99a18fc28eb0d9ae/View/FullText.html?>
- Rodriguez, S. E. (1992). Victims' roles in the criminal justice system: A Fallacy of victim empowerment? *Saint John's Journal of Legal Commentary*, 8 (1), 230. at <https://scholarship.law.stjohns.edu/jcred>
- Rutherford, D. (2018). *States' obligations under international human rights conventions*. The Commonwealth (Google Scholar).
- Rutledge, N. M. (2011). Looking a gift horse in the mouth—the underutilization of crime victim compensation funds by domestic violence victims. *Duke Journal of Gender Law & Policy*, 19(1), 232. <https://scholarship.law.duke.edu/djglp/vol19/iss1/6>
- Sánchez, J.-M. S. (2008). Doctrines regarding “the fight against impunity” and “the victim's right for the perpetrator to be punished”. *Pace Law Review*, 28(4), 871–877. <https://digitalcommons.pace.edu/plr/vol28/iss4/11>
- Shephard, B. N. (2014). Classifying crime victim restitution: the theoretical arguments and practical consequences of labeling restitution as either a criminal or civil law concept. *Lewis & Clark Law Review*, 18 (3), 804. Thomson Reuters. <https://law.lclark.edu/live/files/18298-lcb183art15shephardfinalpdf>
- Sujatmoko, A. (2019). State responsibility and victim's reparations in Indonesia. *Teras Law Review*, 1(1), 2–22. <https://doi.org/10.25105/teras-lrev.v1i1.5993>
- Teninbaum, G. H. (2007). Easing the burden: Mediating misdemeanor criminal matters. *Dispute Resolution Journal*, 62 (2), 64. Thomson Reuters. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1861284
- Waterman, D. A. (2020). A defendant's ability to pay: The key to unlocking the door of restitution debt. *Lowa Law Review*, Vol. 106 (pp. 462).
- Weinstein, J. B. (1996). Some benefit and risks of privatization of justice through alternative dispute resolution. *Ohio State Journal on Dispute Resolution*, 11 (2), 292. Thomson Reuters. https://kb.osu.edu/bitstream/handle/1811/79744/OSJDR_V11N2_241.pdf?sequence=1
- Weisbuch, M. (2019). Pardoning Contempt-Reconsidering the Criminal-Civil Divide. *Virginia Law Review*, 105(4), 952–953. <https://www.jstor.org/stable/26842257>



© 2022 The Author(s). This open access article is distributed under a Creative Commons Attribution (CC-BY) 4.0 license.

You are free to:

Share — copy and redistribute the material in any medium or format.

Adapt — remix, transform, and build upon the material for any purpose, even commercially.

The licensor cannot revoke these freedoms as long as you follow the license terms.

Under the following terms:

Attribution — You must give appropriate credit, provide a link to the license, and indicate if changes were made.

You may do so in any reasonable manner, but not in any way that suggests the licensor endorses you or your use.

No additional restrictions

You may not apply legal terms or technological measures that legally restrict others from doing anything the license permits.



Cogent Social Sciences (ISSN: 2331-1886) is published by Cogent OA, part of Taylor & Francis Group.

Publishing with Cogent OA ensures:

- Immediate, universal access to your article on publication
- High visibility and discoverability via the Cogent OA website as well as Taylor & Francis Online
- Download and citation statistics for your article
- Rapid online publication
- Input from, and dialog with, expert editors and editorial boards
- Retention of full copyright of your article
- Guaranteed legacy preservation of your article
- Discounts and waivers for authors in developing regions

Submit your manuscript to a Cogent OA journal at www.CogentOA.com

