

Is Criminal Fine in Economic Legislations Effective? Evidence from Indonesia

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LAW, CRIMINOLOGY & CRIMINAL JUSTICE | RESEARCH ARTICLE

1 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: 1 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

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

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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 1 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 Aprilianti, Imawati, 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.

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