# CRIMINAL LAW POLICY CONCERNING PROVIDING RESTITUTION TO VICTIMS OF CRIMES OF SERIOUS PERSECUTION

Fahrizal S.Siagian[1], Mahmud Mulyadi[2], Rosmalinda[3]
[1,2,3]Magister Ilmu Hukum Universitas Sumatera Utara
fahrizalsiagian@students.usu.ac.id, mahmud_mulyadi@usu.ac.id, rosmalinda@usu.ac.id

**ABSTRAK**

Tindak pidana penganiayaan berat merupakan penyiksaan terhadap fisik manusia. Sehingga setiap orang berhak untuk mengajukan hak restitusi. Kurangnya dukungan dari berbagai elemen sehingga kondisi ini menjadi kendala yang dialami oleh aparat penegak hukum dalam implementasi restitusi bagi korban tindak pidana penganiayaan berat. Belum diaturnya upaya paksa bagi pelaku tindak pidana penganiayaan berat untuk membayar restitusi yang diputus di Pengadilan. Hal ini menjadi sebuah kendala dalam penerapan restitusi dalam sistem peradilan pidana Indonesia. Permasalahan penelitian ini yaitu Bagaimana Kedudukan Restitusi Terhadap Korban Tindak Pidana di dalam Sistem Peradilan Pidana di Indonesia ? Bagaimana Implementasi Pemberian Restitusi Terhadap Pemenuhan Hak-hak Korban Tindak Pidana Penganiayaan Berat ? Bagaimana Kebijakan Hukum Pidana Tentang Pemberian Restitusi Terhadap Korban Tindak Pidana Penganiayaan Berat dalam Sistem Peradilan Pidana Indonesia pada Masa yang Akan Datang ? Tujuan penelitian yakni menjawab beberapa permasalahan pada penelitian ini. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan kasus, konsep, dan perundang-undangan. Penelitian ini memperoleh hasil berupa Kedudukan Restitusi Terhadap Korban Tindak Pidana di dalam Sistem Peradilan Pidana di Indonesia belum sempurna diatur sehingga dinilai belum mengakomodir keadilan terhadap korban. Implementasi Pemberian Restitusi Terhadap Korban Tindak Pidana Penganiayaan Berat belum maksimal yang ditandai dengan banyaknya kendala teknis maupun non-teknis yang menghambat restitusi. Kebijakan Hukum Pidana terkait restitusi bagi korban kedepannya adalah dengan memformulasi suatu kebijakan agar restitusi memiliki intensitas kewajiban bagi pelaku untuk membayarnya serta harus ada lembaga yang pro-aktif mengawasi pemberian restitusi ini. Penelitian menggagas adanya reformulasi substansi hukum terkait penguatan esensi upaya paksa dan pengawasan ketat dalam pemberian restitusi terhadap korban tindak pidana penganiayaan berat dalam sistem peradilan pidana di Indonesia.

**Kata Kunci :** Restitusi, Tindak Pidana, Penganiayaan Berat.

***ABSTRACT***

*The crime of serious maltreatment is a form of physical abuse. Therefore, everyone has the right to apply for restitution. Lack of support from various elements makes this condition an obstacle experienced by law enforcement officials in the implementation of restitution for victims of serious maltreatment. There is no provision to force perpetrators of serious maltreatment to pay restitution decided by the court. This is an obstacle in the implementation of restitution in the Indonesian criminal justice system. The problems of this research are How is the Position of Restitution for Victims of Crime in the Indonesian Criminal Justice System? How is the Implementation of Restitution towards the Fulfilment of the Rights of Victims of Serious Offences? What is the Criminal Law Policy on the Provision of Restitution to Victims of Serious Offences in the Indonesian Criminal Justice System in the Future? The purpose of the research is to answer several problems in this study. This research uses normative juridical method with case, concept, and legislation approach. This research obtained results in the form of the*

*Position of Restitution for Victims of Crime in the Criminal Justice System in Indonesia has not been perfectly regulated so that it is considered not to accommodate justice for victims. Implementation of Restitution for Victims of Serious Offences has not been maximised, marked by many technical and non-technical obstacles that hinder restitution. Criminal Law Policy related to restitution for victims in the future is to formulate a policy so that restitution has the intensity of an obligation for the perpetrator to pay it and there must be an institution that pro-actively supervises the provision of restitution. The research initiated a reformulation of legal substance related to strengthening the essence of coercion and strict supervision in the provision of restitution to victims of serious maltreatment in the criminal justice system in Indonesia.*

***Keywords: Crime, Restitution, Serious Offences***

## A. Introduction

A victim of a criminal offence is a person who suffers physical, mental, and/or economic loss caused by a criminal offence regulated within or outside the Criminal Code, which causes material loss, especially economic loss and immaterial loss. Immaterial loss is a loss that is actually difficult to measure with nominal money.[1] This loss can cause prolonged trauma and it is difficult to restore the psychological condition of a victim of a criminal offence. For example, it is difficult to restore the psychological condition of victims of serious maltreatment. These losses include psychological aspects such as trauma, mental suffering, and loss of confidence to carry out daily activities, especially for victims of serious maltreatment.

The occurrence of the crime of serious maltreatment causes instability in the victim, which leads to the destruction of the victim's belief system and the community. Therefore, it is necessary to restore the victim's belief system and restore the balance in the society. This can be done by providing compensation for the suffering of victims of serious maltreatment.

The current Indonesian criminal justice system has undergone many changes that lead to a balance in the orientation of fulfilling rights, related to the rights of the defendant and the rights of victims of crime. Looking at the Criminal Procedure Code (KUHAP), in general, it is still orientated towards protecting the rights and interests of the suspect/defendant. For example, an adage in the Indonesian criminal justice system is known as the In dubio pro reo principle, which means that if there is doubt about a matter, the judge must decide with juridical considerations that alleviate the defendant.[2] This is contained in Article 183 of the Criminal Procedure Code. This provision is an indicator that the criminal justice system in Indonesia is still inclined to pay attention to the interests of the defendant.

[1] Wardatul Fitri, FX Djoko Priyono, and Bambang Eko Turisno, "Aspek Hukum Keperdataan Terhadap Pemenuhan Hak Restitusi Dalam Perkara Tindak Pidana," *JPPI (Jurnal Penelitian Pendidikan Indonesia)* 9, no. 1 (2023): 87, https://doi.org/10.29210/020221801.

[2] Tri Nugroho, "Penerapan Asas in Dubio Pro Reo Pada Putusan Mahkamah Agung Republik Indonesia Dalam Perkara Pidana," *Repertorium Jurnal Ilmiah Hukum Kenotariatan* 10, no. 1 (2021): 86–98, https://doi.org/10.28946/rpt.v10i1.1189.

The development of the criminal justice system in Indonesia has experienced significant progress. In recent years, the position of victims of criminal offences has begun to be considered. The doer-victims relationship approach is applied through efforts to provide compensation to victims of criminal acts and/or their families, known as restitution. This effort is part of the transformation of the interpretation of crime, which is no longer absolutely conceptualised as an offence against the interests of the state. However, it has violated the rights of a victim of a criminal offence. This indicates that restitution has an impact on the criminal justice system that reflects justice.[3]

This development can be seen from several laws that have included in their substance the protection of victims of criminal offences. These include Law No. 26/2000 on Human Rights Courts, Law No. 5/2018 on the Amendment to Law No. 15/2003 on the Stipulation of Government Regulation in Lieu of Law No. 1/2002 on the Eradication of the Criminal Act of Terrorism into Law. In addition to these laws, the substance of restitution is also explained in Law No. 23/2004 on the Elimination of Domestic Violence (PKDRT), Law No. 21/2007 on the Eradication of the Crime of Trafficking in Persons (TPPO), Law No. 8/2010 on the Prevention and Eradication of the Crime of Money Laundering (TPPU), and Law No. 31/2014 on the Amendment to Law No. 13/2006 on Witness and Victim Protection.

The juridical provisions on restitution are also regulated in Government Regulation Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution, and Assistance to Witnesses and Victims, Supreme Court Regulation of the Republic of Indonesia Number 1 of 2022 concerning Copies of Procedures for Settling Applications and Providing Restitution and Compensation to Victims of Crime, that in both regulations both define Restitution as compensation given to victims or their families by perpetrators or third parties.

The implementation of laws regulating the provision of restitution by perpetrators of criminal offences to victims of criminal offences or their families in practice in the field has encountered several obstacles. These include the position of restitution, the implementation of restitution as an effort to fulfil the rights of victims of crime, and the urgency of reforming criminal law policies related to the provision of restitution to victims of crime.

The first problem concerns the position of restitution in law enforcement officials (legal structure), which is related to the implementation of the right to restitution for victims of criminal offences. The difficulty of filing is mainly due to the fact that not all law enforcement officers understand restitution as a right that can be filed by all victims in all types of criminal offences that cause harm to victims. In addition, law enforcers think more of legal positivism, which only sees the textual substance of the Criminal Procedure Code, without seeing the context of fulfilling a sense of

[3] Lies Sulistiani, "Problematika Hak Restitusi Korban Pada Tindak Pidana Yang Diatur Kuhp Dan Di Luar Kuhp," *Jurnal Bina Mulia Hukum* 7, no. 1 (2022): 81–101, https://doi.org/10.23920/jbmh.v7i1.948.

justice for victims of crime. Whereas the position of restitution is very important in realising a sense of justice for victims of criminal offences.

An important consideration related to the protection of victims of criminal offences is related to the losses suffered. A very essential form of victim recovery is carried out through the recovery of losses suffered by victims as a result of a criminal offence. Restitution as a form of protection for victims has been included in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. The next obstacle is related to the legal culture of the community. The level of public knowledge related to restitution is still not well known by the public and the return of losses to victims of criminal offences is still an obstacle.

Restitution requests are still limited in number due to the fact that not all types of criminal offences can apply for restitution. Public knowledge about restitution is still limited in that requests for restitution can only be submitted through the Witness and Victim Protection Agency (LPSK), although under applicable regulations, applications can be submitted individually. As explained in Article 8 of the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2022 concerning Copies of Procedures for Settling Requests and Providing Restitution and Compensation to Victims of Crime that Restitution Requests to the Court, apart from being submitted through the Witness and Victim Protection Agency (LPSK), Investigators, or Public Prosecutors, can be submitted by victims of criminal acts. The Witness and Victim Protection Agency (LPSK) is only reactive, meaning that it reacts to fight for the restitution rights of victims of criminal offences if preceded by a request from the victim and/or their family.[4] If no one applies, then this institution is passive in fighting for the rights of victims of criminal offences.

Several laws, such as Law 21/2007 on the Crime of Trafficking in Persons (TPPO) and Law 12/2022 on the Crime of Sexual Violence, contain provisions related to restitution that victims can use to claim their rights. However, outside the realm of these criminal offences, restitution cannot be sought. Although Law No. 31/2014 on the Amendment to Law No. 13/2006 on Witness and Victim Protection explains that victims of criminal offences are entitled to restitution. The weakness of this law is that it does not further explain what criminal offences restitution can be applied for. Therefore, law enforcers cannot necessarily be a facilitator for victims to apply for the right to restitution. Therefore, the submission of the victim's right to restitution becomes an uncertainty, which is oriented towards the uncertainty of the type or qualification of the criminal offence as an absolute requirement.

The weakness of this restitution policy is that the provisions related to the provision of restitution are regulated in Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Witness and Victim Protection, which is related to the implementation of the provision of restitution as an effort to fulfil the rights of victims of criminal acts, the provisions of restitution

[4] Fadillah Sabri, "Perlindungan Hukum Dengan Restitusi Terhadap Anak Yang Menjadi Korban Tindak Pidana," *UNES Journal of Swara Justisia* 6, no. 4 (2023): 398, https://doi.org/10.31933/ujsj.v6i4.293.

should be regulated in a special law that is regulating and binding. Although there is a juridical provision in the Law on Witness and Victim Protection, the provision of restitution is still constrained by regulations that have a less than optimal impact on victim protection, such as the need for court decisions and their execution.

Other obstacles show that restitution arrangements in various laws are not fully orientated towards the protection of victims of criminal offences. There is no obligation for perpetrators of criminal offences or third parties to pay restitution to victims of criminal offences. There are no specific rules governing the legal consequences of not paying restitution, which is replaced with imprisonment or confinement. Likewise, if the restitution is not paid to the victim of a criminal offence, the assets of the perpetrator of the criminal offence will be confiscated. The execution of restitution does not run optimally because the convict does not have the money to pay it, there is no subside or substitute punishment if restitution is not paid and there is no implementing regulation.

The weakness of the policy of providing restitution to victims of crime, especially victims of serious maltreatment, is the absence of a specific law that explicitly regulates the legal consequences if restitution is not paid by the perpetrator of the crime. Meanwhile, the perpetrator of the crime is eligible to provide restitution to victims of crime. This is the background of the urgency of legal policy reform related to restitution in Indonesia. The reform of criminal law policy by prioritising the achievement of legal objectives in the form of achieving a sense of justice for all parties and upholding the spirit of the law to create security, order and peace in life.[5]

Restitution has a very significant role in realising a sense of justice for the parties, especially for victims of criminal offences.[6] Efforts to improve the quality of the policy of providing restitution to victims of criminal offences must be carried out by improving legislation. In relation to strengthening the position of the provision of restitution to victims of criminal offences can be done through efforts to reform criminal law through national legal development policies.

The nature of Indonesia's national development is development that aims to realise the Indonesian people as a whole and the Indonesian people as a whole to achieve a just, prosperous and equitable society in material and spiritual aspects based on Pancasila and the 1945 Constitution. One of the national development programmes in the field of law is known as the national law reform. Criminal law policy is a series of processes that include three stages, namely the legislative/formulative policy stage, the judicial/applicative policy stage, and the executive/administrative policy stage. Based on the three descriptions of the stages of criminal law enforcement policy, it contains power, namely formulative power owned by the legislature authorised to formulate laws and regulations. In relation

[5] Cecep Cahya Supena, "Suatu Tinjauan Tentang Alasan Manusia Mentaati Hukum," *MODERAT: Jurnal Ilmiah Ilmu Pemerintahan* 7, no. 4 (2021): 856–63.

[6] Bennaris Kaban, Mahmud Mulyadi, and Adi Mansar, "Ganti Rugi Sebagai Upaya Perlindungan Hak Korban Kejahatan Perspektif Politik Hukum Pidana," *Jurnal Ilmiah Advokasi* 11, no. 1 (2023): 76–92, https://doi.org/10.36987/jiad.v11i1.3698.

to punishable acts that are oriented towards the main problems in criminal law include unlawful acts, mistakes with criminal liability, and sanctions imposed by lawmakers. Judicial or applicative power is the power in terms of applying criminal law by the criminal execution apparatus. Based on the three stages of law enforcement policy mentioned above, crime prevention is always oriented towards efforts to achieve social welfare. Criminal policy is essentially an integral part of various efforts to protect the community (social defence) and efforts to achieve community welfare.

A breakthrough or idea for renewing the policy of providing restitution is to have legal regulations at the level of law that emphasize the essence of crime victims who are categorized as minors so that their rights can be obtained.[7] The novelthy of this research is a need for regulatory substance in a special law on restitution, namely efforts to confiscate assets if the perpetrator of a crime cannot pay compensation to the victim of a crime, especially a crime of serious abuse, who is seriously harmed materially and immaterially (psychically). In principle, restitution must provide a sense of justice, certainty and benefit to victims of criminal acts. This is because efforts to imprison perpetrators of criminal acts do not necessarily guarantee the achievement of a sense of justice for victims of serious criminal acts of abuse.

Efforts to provide restitution to victims of criminal acts of serious ill-treatment are considered very important for formulating actual criminal law policies, especially legislative policies, namely how to formulate an act that is considered a criminal act of serious ill-treatment, what are the conditions for blaming someone who commits an act. the crime of serious ill-treatment and whether or not the policy of providing restitution to victims of criminal acts of serious ill-treatment is appropriate in the perspective of justice provided by the judicial power.[8]

Implementation of restitution for victims of violence under Indonesian Criminal Law, by Tubagus Alandaru Adamullah, Journal Bengkoelen Justice: Journal of Legal Science, Volume 14 Number 1 Year 2024.[9] The discussion is about the issue of implementation efforts related to restitution for victims of violence. In addition, it only discusses aspects of violence in general, and the research does not discuss criminal law policy. Meanwhile, this research discusses criminal law policies that are considered appropriate to fight for aspects of justice for all parties, especially for victims and perpetrators of criminal acts.

Previous research written by Irawan Adi Wijaya and Hari Purwadi relating to the Provision of Restitution as Legal Protection for Victims of Crime with Volume 6 Number 2 of the Journal of Law

[7] Satriadjie Abdee Yossafa, "Pengaturan Pembebanan Restitusi Terhadap Pelaku Anak Sebagai Bentuk Pertanggungjawaban Kerugian Terhadap Korban Tindak Pidana," *Verstek*, 2023, https://doi.org/10.20961/jv.v10i3.70430.

[8] Trias Saputra and Yudha Adi Nugraha, "Pemenuhan Hak Restitusi : Upaya Pemulihan Korban Tindak Pidana," *Krtha Bhayangkara* 16, no. 1 (2022): 65–80, https://ejurnal.ubharajaya.ac.id/index.php/KRTHA.

[9] Tubagus Alandaru Adamullah, "Implementation of Restitution For Victims of Abuse According to Indonesian Criminal Law," *Bengkoelen Justice : Jurnal Ilmu Hukum* 14, no. 1 (2024), https://doi.org/10.33369/j_bengkoelenjust.v12i1.33714.

and Economic Development in July 2018. The research explains that criminal justice has not provided certainty over the fulfilment of restitution. The purpose of the research is to analyse the nature of restitution and formulate ideal restitution to fulfil justice for victims of crime. Unlike this research, which focuses on specific and concrete efforts related to policy reformulation in the form of strengthening forced efforts and supervision of the implementation of restitution for victims of serious maltreatment.

Research written by Youfan Alyafedri and Ismail Koto on Legal Policy on Problematics of Providing Restitution Rights for Victims of Crime regulated by KUHAP and outside KUHAP. This article was published in the Unnes Law Review Volume 6 Number 4 June 2024. This research aims to analyse the regulation of restitution for victims of crime. To find out the implementation of restitution as a fulfilment of the rights of victims of crime according to the Criminal Procedure Code and outside the Criminal Procedure Code, and to find out the problems of restitution for victims of crime regulated in and outside the Criminal Procedure Code.

Based on the description above, the author wishes to conduct more in-depth research on Criminal Law Policy Regarding Providing Restitution to Victims of Serious Persecution Crimes. Based on the research background, it is necessary to have a formulation of the problem to be researched with the aim of being used as a research reference in achieving the research targets in writing this thesis. The problems used as a reference in the research are as follows about What is the Position of Restitution for Victims of Crime in the Indonesian Criminal Justice System? What is the Criminal Law Policy towards the Provision of Restitution for Victims of Serious Maltreatment in the Indonesian Criminal Justice System in the Future?

## B. Method

The essence of research is the process of searching for and discovering legal norms, legal principles, or legal opinions related to answering a legal problem that occurs. This research was completed to create a legal opinion or theory of law, or to produce a renewable concept as a guide to solving the problem being researched. Research methods are efforts made in order to discover, develop and test the truth of a science, where these efforts are carried out using scientific methods. Research methods are also known as the process of systematizing and structuring or formulating a number of legal rules and their meanings. The legal research method places the position of law which can be studied in a legal concept approach in law to enable or facilitate the management of legal material.[10]

This research is a normative juridical research, namely by reviewing or analyzing secondary data which includes secondary legal materials by understanding the law as a set of positive regulations or

[10] Ani Purwati, *Metode Penelitian Hukum Teori Dan Praktek* (Surabaya: Jakad Media Publishing, 2020).

norms that are within the system of statutory regulations that regulate the lives of the people man. This research is understood as library research, namely research on secondary data. The focus of the research lies in the legal aspects regarding criminal law policies regarding the provision of restitution to victims of criminal acts of serious abuse through studying and analyzing legal rules, doctrines and theories that support this research. The targets in this research can be achieved if secondary data is used and supported by primary data.

This normative research is research on various principles, legal history, and comparative legal research. This research is descriptive in nature, namely legal research that explains or describes completely the legal situation in a certain place and time within the social sphere. An approach in research (research approach) is a research strategy and method that expands decisions from general assumptions so that comprehensive data collection and reasoning methods can be implemented optimally. The associated approach usually consists of a combination of theoretical, strategic assumptions and appropriate methods. Approaches in legal research involve other scientific disciplines that support the research.[11]

Primary legal materials are material thats describe about the regulations such as Indonesian Criminal Law Code, Government Regulations about Restitution, and decision of the court about Restitution. Secondary legal materials are legal materials that explain the essence and existence of primary legal materials. Tertiary legal materials are legal materials that function to explain primary and secondary legal materials. This legal material includes legal study books, legal articles, research results, opinions of scholars (doctrine), and so on.

This research focuses on criminal law policy issues, especially those related to providing restitution to victims of criminal acts of serious abuse, namely an approach related to examining juridical provisions or norms with legal principles and theories at the same time. This research uses the statue approach, case approach, and conceptual approach.

This research focuses on positive law, namely statutory regulations and criminal law policies related to the Criminal Law Policy Concerning Providing Restitution to Victims of Crimes of Serious Persecution. Furthermore, it is about to concrete events that occurred based on court decisions with the case register decision Number 297/Pid.B/2023/PN Jkt.Sel and several other relevant decisions. After that, a better criminal law policy concept will be found to prioritize achieving aspects of legal justice for victims of criminal acts of serious abuse in the Indonesian criminal justice system.

This research focuses on criminal law policy issues, especially those related to providing restitution to victims of criminal acts of serious abuse, an approach that is related to studying juridical provisions with principles and at the same time as legal theory. This approach is a normative juridical approach which aims to solve existing problems by referring to available statutory regulations,

[11] Muhammad Siddiq Armia, *Penentuan Metode Dan Pendekatan Penelitian Hukum* (Banda Aceh: LEMBAGA KAJIAN KONSTITUSI INDONESIA, 2022).

including doctrine, and various legal theories.[12] This approach is carried out by collecting and analyzing data through reading sources that are relevant to the research topic, including legal principles, legal sources and laws, which will later analyze the problem being researched. This information is obtained through scientific books, scientific research, statutes, encyclopedias and other sources. Data collection was carried out by taking an inventory of laws and other legal materials related to the research object which was supported based on library research which was followed by analyzing the data obtained to answer the existing problems of this research object.

Efforts to collect accurate and complete data with the consideration that this research is focused on secondary data, data collection was carried out using library research techniques, or literature studies (Literate Study), and documentation studies. Such studies are very useful in this aspect of research in general to gain knowledge related to the symptoms being studied. Apart from that, this study is a form of effort carried out by a researcher to obtain information related to the problem being researched. Data collection is the most important step in research. This is because the main aim of research is to obtain data. Without knowing about data collection techniques, researchers are unable to obtain data that meets the specified data standard criteria.[13] This data analysis is an activity of providing analysis in the form of opposing, criticizing, supporting, adding or providing comments to then make a conclusion on the research results with one's own thoughts or with the help of theories that have been mastered.

## C. Result and Discussion

### 1. The Position of Restitution for Victims of Crime in the Indonesian Criminal Justice System

Criminal law in principle must be able to protect the human rights of both perpetrators and victims of crime as well as protect the interests of society and the state with consideration of a wise balance. Ideally, the law should be able to accommodate the rights of all parties in the criminal justice system. Efforts can be made by fighting for the rights of all parties in the material and formal law. However, this effort is still at a dead end, because the criminal procedure law does not provide good and adequate protection to victims of criminal offences. The concept used in Indonesian criminal procedure law only pursues the interests of perpetrators through legal certainty. However, this condition ignores the fundamental rights of victims of criminal offences. Legal certainty applied to perpetrators of criminal offences is not necessarily able to provide a sense of justice for victims of

[12] Muhammad hendri Yanova, Parman Komarudin, and Hendra Hadi, "Metode Penelitian Hukum: Analisis Problematika Hukum Dengan Metode Penelitian Normatif Dan Empiris," *Badamai Law Journal* 8, no. 2 (2023): 394–408.

[13] A Rahmawati and O Yudianto, "Pengaturan Pemberian Restitusi Dalam Suatu Tindak Pidana Pembunuhan (Studi Putusan Nomor 22-K/PMT-II/AD/II/2022)," *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 3, no. 2 (2023): 1677–96, https://bureaucracy.gapenas-publisher.org/index.php/home/article/view/273%250.

criminal offences. Meanwhile, the purpose of law is not only certainty, but must be able to achieve justice and also legal expediency.

Looking at the Criminal Procedure Code (KUHAP), it is generally orientated towards protecting the rights and interests of the suspect/defendant. For example, an adage in the Indonesian criminal justice system is known as the *In dubio pro reo* principle, which means that if there is doubt about a matter, the judge must decide with juridical considerations that alleviate the defendant.[14] This is contained in Article 183 of the Criminal Procedure Code. This provision is an indicator that the criminal justice system in Indonesia is still inclined to pay attention to the interests of the defendant.

The fundamental weakness in criminal law enforcement is the neglect of the rights of victims of crime in the process of handling criminal cases. Article 1 Point 3 of Law Number 31/2014 on the Amendment to Law Number 13/2006 on Witness and Victim Protection explains the definition of a victim of a criminal offence is a person who experiences physical, mental, and/or economic losses caused by a criminal offence. Therefore, victims of criminal offences should get extra attention and receive as much protection as possible provided by the law. This is reinforced by the principle of equality before the law, which means equal rights and position before the law and government mandated in the 1945 Constitution.

The development of the criminal justice system in Indonesia has experienced significant progress. In recent years, the position of victims of criminal offences has begun to be considered. The doer-victims relationship approach is applied through efforts to provide compensation to victims of criminal offences and/or their families, known as restitution.[15] This effort is part of a transformation in the interpretation of crime, which is no longer solely conceptualised as an offence against the interests of the state. However, it has violated the rights of a victim of a criminal offence. This indicates that restitution has an impact on the criminal justice system that reflects justice.[16]

This development can be seen from several laws that have included in their substance the protection of victims of criminal offences. These include Law Number 26/2000 on Human Rights Courts, Law Number 5/2018 on the Amendment to Law Number 15/2003 on the Stipulation of Government Regulation in Lieu of Law Number 1/2002 on the Eradication of the Criminal Act of Terrorism into Law. In addition to these laws, the substance of restitution is also explained in Law Number 23/2004 on the Elimination of Domestic Violence (PKDRT), Law Number 21/2007 on the Eradication of the Crime of Trafficking in Persons (TPPO), Law Number 8/2010 on the Prevention and Eradication of the Crime of Money Laundering (TPPU), and Law Number 31/2014 on the

[14] Meda Desi Kartikasari, "Menelisik Akar Pemikiran Asas In Dubio Pro Natura Dalam Penegakan Hukum," *Jurnal Verstek* 8, no. 3 (2020): 422–29, https://jurnal.uns.ac.id/verstek/article/view/47063/29498.

[15] Vicky Roland Manus, Selviani Sambali, and Yumi Simbala, "Implementasi Dasar Keadilan Dan Perlindungan Terhadap Korban Kejahatan Dalam Sistem Peradilan Pidana," *Lex Crimen* 12, no. 2 (2023): 1–10.

[16] Muchamad Iksan et al., "Fulfilling the Restitution Rights of Crime Victims: The Legal Practice in Indonesia," *Academic Journal of Interdisciplinary Studies* 12, no. 4 (2023): 152–60, https://doi.org/10.36941/ajis-2023-0101.

Amendment to Law Number 13/2006 on Witness and Victim Protection. Several national laws and regulations that legalise the position of restitution for victims of criminal acts in the Indonesian criminal justice system include the following:

**a. Law Number 26/2000 on Human Rights Courts**

Article 35 Paragraph 1 of this law explains that every victim of gross human rights violations and/or their heirs can obtain compensation, restitution and rehabilitation. Based on the explanation of the article, it is explained that restitution is compensation given to victims or their families by perpetrators or third parties. This restitution can be in the form of return of property, payment of compensation for loss or suffering, and reimbursement of costs for certain actions. Meanwhile, what is meant by rehabilitation in accordance with the provisions of Article 35 Paragraph 1 is an effort to restore to its original position, for example honour, good name, position, or other rights.

**b. Law Number 5/2018 on the Amendment to Law Number 15/2003 on the Stipulation of Government Regulation in Lieu of Law Number 1/2002 on the Eradication of the Criminal Offence of Terrorism into Law**

Article 36A Paragraph 1 of this law explains that victims of criminal offences are entitled to restitution. Restitution is a compensation given by the perpetrator to the victim or their heirs. This restitution effort is submitted by the victim or their heirs to the investigator since the investigation stage. The public prosecutor at the prosecution stage submits the amount of restitution based on the loss suffered by victims of terrorism in the prosecution file. In addition, this effort is also given and included at the same time in the court verdict. The provisions in this law also contain rules if the perpetrators of criminal offences do not pay restitution, they will be subject to substitute imprisonment for a minimum of 1 year and a maximum of 4 years.

**c. Law Number 23 Year 2004 on the Elimination of Domestic Violence (PKDRT)**

Article 1 Point 1 of Law Number 23 Year 2004 on the Elimination of Domestic Violence (PKDRT) explains that domestic violence is any act against a person, especially women, which results in physical, sexual, psychological, and/or domestic neglect, including threats to commit acts, coercion, or unlawful deprivation of independence within the scope of the household. Victims of criminal acts of domestic violence can be given the right to restitution as a restoration of the rights of victims of criminal acts. This relates to Article 10 letter a and letter c which explain that special handling relates to the right of victims of criminal acts of domestic violence to obtain special handling related to victim confidentiality.

Protection is provided by family and law enforcement officials, including the police, prosecutors, courts, advocates, social institutions, or other parties either temporarily or based on the stipulation of a protection order from the court. Therefore, based on Article 10 letters a and c, it can be concluded that victims of criminal acts of domestic violence can be given the right to

restitution based on a court decision. This is also in line with the provisions of the implementing regulations contained in Government Regulation Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution, and Assistance to Witnesses and Victims, Article 1 Point 2, victims are people who experience physical, mental, and/or economic losses caused by a criminal offence. So domestic violence is physical and non-physical (psychological) suffering, so restitution must be given to victims who experience these losses.

A victim of a criminal offence is a person who suffers physical, mental, and/or economic loss caused by a criminal offence regulated within or outside the Criminal Code, which causes material loss, especially economic loss and immaterial loss. Immaterial loss is a loss that is actually difficult to measure with nominal money. This loss can cause prolonged trauma and it is difficult to restore the psychological condition of a victim of a criminal offence. For example, it is difficult to restore the psychological condition of victims of serious maltreatment. These losses include psychological aspects such as trauma, mental suffering, and loss of confidence to carry out daily activities, especially for victims of serious maltreatment.

The provision of restitution is a manifestation of justice as well as respect for the human rights of victims of criminal offences.[17] In Law Number 31 of 2014 on the Amendment to Law Number 13 of 2006 on Witness and Victim Protection, Article 1 Point 3 explains that a victim is defined as a person who suffers physical, mental, and/or economic loss as a result of a criminal offence.

**d. Law Number 21/2007 on the Eradication of Trafficking in Persons (TPPO)**

Every person, as a creature of God, has fundamental rights in accordance with the glory of his dignity, which are protected by law based on the provisions contained in Pancasila and the 1945 Constitution of the Republic of Indonesia. The fundamental rights of every human being have often been violated by actions that cause physical, mental and material harm. In addition, violence and restraints on one's freedom have often occurred. One of the acts that violate human nature is human trafficking. The restriction of human freedom in the criminal act of human trafficking has violated the provisions contained in the constitution. Article 28I Paragraph 1 of the 1945 Constitution explains that every person is granted the right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognised as a person before the law, and the right not to be prosecuted on the basis of retroactive laws are human rights that cannot be reduced under any circumstances.

Trafficking in persons, especially women and children, is an act that goes against human dignity and violates human rights. Trafficking in persons has become widespread in various

[17] Saputra and Nugraha, "Pemenuhan Hak Restitusi : Upaya Pemulihan Korban Tindak Pidana."

forms of organised and unorganised criminal networks. The threat is both domestic and foreign. Article 1 Point 3 explains that a victim is a person who experiences psychological, mental, physical, sexual, economic, and/or social suffering, caused by the criminal act of trafficking in persons. Article 1 Point 11 explains that any unlawful act, with or without the use of means against physical and psychological that causes danger to life, body, or causes deprivation of one's freedom. Under the provisions of this law, restitution can be imposed on victims of human trafficking offences. Restitution is a payment of compensation imposed on the perpetrator based on a court decision with permanent legal force for material and/or immaterial losses suffered by the victim or their heirs, this provision is explained in Article 1 Number 13.

Article 2 Paragraph 1 of Law No. 21/2007 on the Eradication of the Crime of Trafficking in Persons (TPPO) explains that every person who recruits, transports, harbours, sends, transfers, or receives a person by threat of violence, use of force, abduction, harbouring, falsification, fraud, abuse of power or a position of vulnerability, debt bondage or giving payments, benefits despite obtaining the consent of a person who has control over another person, for the purpose of exploiting that person in the territory of Indonesia, shall be punished with imprisonment for a minimum of 3 years and a maximum of 15 years with a fine of at least 120. 000,000 and a maximum fine of 600,000,000.

Every victim of trafficking offences or their heirs are entitled to restitution in the form of compensation for loss of wealth or income, suffering, costs for medical and/or psychological treatment. Other losses suffered by the victim as a result of trafficking. According to the provisions of this law, restitution as referred to in paragraph 4, may be deposited in advance at the court where the case is decided. The provision of restitution shall be made within 14 days as of the notification of the judgement that has obtained permanent legal force. If the perpetrator of the criminal offence of trafficking in persons is acquitted by the court of appeal or cassation, the judge shall order in his/her decision that the deposited restitution be returned to the person concerned.

**e. Law Number 8/2010 on the Prevention and Eradication of Money Laundering (TPPU)**

Law Number 8/2010 on the Prevention and Eradication of Money Laundering, Article 83 Paragraph 2 explains that violations of the provisions referred to in Paragraph 1, namely that PPATK officials and employees, Investigators, Public Prosecutors, or judges are obliged to keep the confidentiality of the reporting party, shall give the right to the reporter or his heirs to claim compensation through the court.

**f. Law No. 31/2014 on the Amendment to Law No. 13/2006 on Witness and Victim Protection**

Law No. 31/2004 on the Amendment to Law No. 13/2006 on the Protection of Witnesses and Victims in Article 1 Point 11, namely Restitution is compensation given to victims or their families by perpetrators or third parties. Article 7 Paragraph 1 of Law Number 13/2006 on

Witness and Victim Protection, victims through the Witness and Victim Protection Agency (LPSK) are entitled to apply to the court for the right to compensation in cases of gross human rights violations. The right to restitution or compensation is the responsibility of the perpetrator of the criminal offence. Paragraph 2 explains that decisions regarding compensation and restitution are given by the court.

Paragraph 3 explains that further provisions regarding the provision of compensation and restitution are regulated by government regulation. Juridically, this law is the basis for the implementation of restitution for victims of criminal offences. Victims of criminal offences are entitled to restitution in the form of compensation for loss of wealth or income. In addition, victims of criminal offences are also entitled to compensation for losses incurred as a result of suffering directly related to the criminal offence. Reimbursement of medical and/or psychological treatment costs. The criminal offence as referred to in paragraph 1 is determined by a decision of the Witness and Victim Protection Agency. Submission of an application for restitution can be made before or after a court decision that has obtained permanent legal force through LPSK.

The position of restitution in the Indonesian criminal justice system principally serves as an effort to restore the rights of victims of criminal offences. Restitution currently serves as an alternative in the final decision of law enforcement officials. In a court decision stating that the perpetrator must pay compensation to the victim of a criminal offence, however, many people do not comply. This condition does not reflect the principle of legal certainty. Legal certainty that is wisely implemented will provide a sense of justice for others. Therefore, restitution as an effort to restore the rights of victims of crime should be maximised in its essence and existence in the criminal justice system in Indonesia.

This problem is in the aspect of the legal system proposed by Lawrence Meir Friedman, that the three elements that form the legal system include substance, structure, and legal culture. Problems related to the current position of restitution are influenced by these three elements, starting from the position in the legislation that has not been clearly and specifically regulated regarding restitution as an effort to restore the losses of victims of crime. Then in the aspect of legal structure, namely law enforcers who have not mastered the actual restitution mechanism. [18]

Furthermore, there is a vacuum of institutions authorised to supervise the implementation of restitution. This is because in the process of implementing restitution, it is often supervised and results in the implementation being unoptimised. Restitution has also not been optimally implemented due to aspects of legal culture. The level of compliance and knowledge of the

[18] Adi Kusyandi, "Limits on the Value of Restitution for Victims of Crime A Form of Restorative Justice System," in *Proceedings of the 3rd International Conference on Law, Governance, and Social Justice (ICoLGaS 2023)* (Atlantis Press SARL, 2023), 376–86, https://doi.org/10.2991/978-2-38476-164-7_35.

community regarding a legal product and the willingness to comply with statutory orders is the implementation of a good legal culture. But what happens is the opposite condition. Restitution is currently not maximally known by the public and there is also a lack of socialisation to the public and law enforcers as a whole. This is an obstacle related to the effectiveness of the position of restitution in accommodating the rights of victims of criminal offences in the Indonesian criminal justice system.

Therefore, it is necessary to strengthen the position of restitution in the Indonesian criminal justice system and seek the enactment of a special law on restitution. In addition, there should be a task force or institution that monitors the implementation of restitution in the Indonesian criminal justice system.

## 2. Implementation of Restitution for the Fulfilment of the Rights of Victims of Serious Maltreatment

Restitution is a social humanitarian approach in restoring the rights of victims of criminal offences who have been harmed by the suffering caused by the criminal offence they have experienced. Basic rights are given to individuals without discrimination on the basis of skin colour, social status, economy, political views, and so on. The implementation of restitution is needed to accommodate the rights of victims of criminal offences.

Restitution is a criminal law policy in accommodating the rights of marginalised victims. Talking about the concept of policy, of course there must be an implementation of a policy. The implementation in question includes whether or not all the rules that have been determined can be implemented. In the concept of legal policy is an obligation and has a binding nature that must be implemented by all parties without exception. Criminal law policy is one of the solutions to overcome the problems that exist in society. [19]

Efforts in the implementation of restitution for victims of criminal acts, especially serious maltreatment, can be realised with the Legal System theory approach proposed by Lawrence Meir Friedman. The elements in this legal system theory are legal substance, legal structure, and legal culture.[20] Therefore, if a material is related to orders and prohibitions, it must be contained in laws and regulations. This is the substance of law as one of the elements forming the legal system. Legal substance that explains regulations related to the provision of restitution to victims of criminal offences is currently not concretely available. Restitution regulations are only contained in Law

[19] Maroni, "Pengantar Politik Hukum Pidana," *Jurnal Ketha Semaya* 10, no. 3 (2022): 717–26.

[20] Priyo Hutomo and Markus Marselinus Soge, "Perspektif Teori Sistem Hukum Dalam Pembaharuan Pengaturan Sistem Pemasyarakatan Militer," *Legacy: Jurnal Hukum Dan Perundang-Undangan* 1, no. 1 (2021): 46–68, https://doi.org/10.21274/legacy.2021.1.1.46-68.

Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Witness and Victim Protection and several other related laws and regulations.

The legal substance related to restitution still has several obstacles. In relation to the content of the definition of restitution as compensation provided by the perpetrator or third party to victims of criminal offences, it is interpreted variously by various parties. One of them is in Decision Number 989/Pid.Sus/2021/PN.Bdg, which makes the panel of judges interpret the phrase 'third person' to be biased and target the Ministry of Women's Empowerment and Child Protection (PPA). The ministry is supposed to be a state agency that provides compensation, not restitution. However, due to the substance of the law being too broad, it is interpreted biasedly.

Restitution is not maximally applied in recovering the rights of victims of crime because there is no regulation that explains the mandatory authority for one institution that will play an active role in accommodating the obligation to provide restitution and taking action against those who refuse to pay restitution. In addition, there is no obligation for criminal offenders in special categories to pay restitution to victims.[21] The special category refers to those with a certain economic level who are considered eligible to pay restitution to victims of serious maltreatment.

In addition, this legal structure includes components of implementers, supervisors, and policy makers (law), including law enforcement personnel in it. Problems in providing restitution in accommodating the rights of victims of crime, law enforcers often ignore the urgency of providing restitution to victims of crime. Law enforcers argue that restitution is still premature to apply, even though the case requires special attention and requires the granting of this restitution request. Restitution for victims of criminal offences, especially serious maltreatment, is still considered very low. This is as compiled from data in the Annual Report of the Witness and Victim Protection Agency of the Republic of Indonesia 2020-2024, which is in the following table. [22]

| No. | Tahun | Jumlah Permohonan Restitusi |
|---|---|---|
| 1. | 2020 | 58 |
| 2. | 2021 | 79 |
| 3. | 2022 | 41 |
| 4. | 2023 | 24 |
| 5. | 2024 | 8 |

[21] Jo-anne Wemmers, "Compensating Crime Victims," *The Federal Ombudsman for Victims of Crime*, 2021.

[22] LPSK RI, "Laporan Tahunan Lembaga Perlindungan Saksi Dan Korban 2020-2024," accessed July 27, 2024, https://www.lpsk.go.id/publikasi/clx8evbul0000azuci5h0c4vl.

Based on the informant's statement that restitution has not been very stable as a means of accommodating the rights of victims of criminal acts is due to the fact that the administration requires stages that take up time, energy, and material. So that the community considers it better to keep it quiet while contemplating their fate for the bitter reality of the suffering of victims of criminal acts experienced. Law enforcers, such as the police, rarely apply restitution. This is due to the lack of human resources equipped with knowledge related to restitution for victims of criminal offences. [23]

Law enforcers are currently still faced with unclear definitions of restitution, as well as the basis for calculating the losses of victims of criminal offences. An example of implementation is the trial of Herry Wirawan with Case Register Number 989/Pid.Sus/2021/PN.Bdg. At the first level, in the case of the rape of 13 female students, the suspect or defendant was charged with paying restitution for the victim. [24] In relation to the content of the definition of restitution as compensation provided by the perpetrator or a third party to victims of criminal offences, it is interpreted variously by various parties. The interpretation of the phrase 'third party' is still unclear which parties are called third parties. As a result, the Ministry of Women's Empowerment and Child Protection was charged with restitution payments. Although at the appeal and cassation levels the verdict was overturned by the judges at the appeal and cassation levels.

The third element is the legal culture of the community which is still minimal regarding the rules contained in the legislation. The awareness to obey the law is considered very minimal. For example, the perpetrators of criminal offences, people who commit criminal offences are interpreted as parties who do not respect the nobility of the rules. The culture of Indonesian society, which is very apathetic to law enforcement, is actually the cause of the non-optimal implementation of statutory orders.

Talking about culture will talk about habits that have long existed and are inherent in Indonesia. Legal culture will reflect how the intensity of enforcement and the level of community compliance with the law. The legal culture will describe the social aspects of each person not complying with existing laws. People consider the implementation of statutory law to be an odd act so that people prioritise popularity over compliance with existing rules.

The legal culture in the Indonesian criminal justice system is very chaotic. However, constructive efforts must be made to maximise the implementation of restitution for victims of crime. This condition requires a total reform in criminal law policy to later accommodate the principles of fair criminal justice. As happened in the trial of the case that ensnared TRP with Case Register Number 555/Pid.Sus/2023/PN.Stb. The brief chronology of this case is based on the criminal offence of trafficking in persons accompanied by human exploitation. In addition, there are allegations of

[23] Fahrizal S.Siagian, Hasil Wawancara Dengan Mantan Kabid Wasidik Polda Sumatera Utara (2024).
[24] Rida Madyana and Safik Faozi, "Pemulihan Korban Melalui Restitusi Bagi Korban Kekerasan Seksual (Studi Putusan Nomor: 989, PID. SUS/2021/PN BDG)," *UNES Law Review* 6, no. 1 (2023): 426–39.

human rights violations in this case. To accommodate the rights of victims of criminal offences, restitution was requested. However, so far the criminal offences charged have not been proven. So that TRP was acquitted of all charges. Therefore, the request for restitution is automatically cancelled.

Based on the chronology of the case and information gathered from various sources, political influence will affect the mechanism in the judicial stage. This is in line with the study of legal politics, namely the illustration of a railway carriage and its tracks. The law will always be static, likened to railway tracks. While the moving carriage will direct wherever the law is in favour. This is also what initiated the construction of thinking about the dilemma between justice and legal certainty.

The construction of thinking about the dilemma between justice and legal certainty, in various juridical studies and considerations of the panel of judges in each decision must be based on existing laws and philosophies. Judges, police, prosecutors, and advocates are law enforcers. So if the concept of law enforcement, it will talk in a broad aspect. Because the law is not only the law, and vice versa every law certainly contains legal certainty. Therefore, a law enforcer must be able to explore the values of justice that exist in the midst of society.

Especially for judges as law enforcers is something that must be understood together. The law is not legal only, but includes the hierarchy stipulated in Law Number 12 of 2011 concerning the Formation of Legislation. Therefore, the panel of judges is not the mouthpiece of the law (qui pronounce les paroles delaloi), but is the representative of God on earth. If so, then justice must be prioritised.[25] Reflecting on various controversial verdicts that make the criminal justice system in Indonesia does not contain the morality of law enforcement. Judges assume that their role is only normative. However, the judge's responsibility is not that simple. In fact, the duties and morale of a judge are much heavier. Judges are one of the elements of law enforcement. There are also advocates who defend the interests of the marginalised, prosecutors and the police. All of these components must maintain maximum integrity and morality in law enforcement.

The fundamental rights of every human being should be free from discrimination in all aspects. These rights will apply as long as the individual lives. These individual rights as human rights should be inherent in every individual and thus require recognition and respect for their spatial realisation. In order to achieve optimal functioning, it is imperative that regulations will support all actions deemed necessary. The recognition of human rights is explicitly related to the implementation of restitution for victims of criminal offences, which explicitly requires that these rights be properly safeguarded.

### 3. The Criminal Law Policy towards the Provision of Restitution for Victims of Serious Maltreatment in the Indonesian Criminal Justice System in the Future

[25] Suwitno Yutye Imran, "The Urgency of Regulation of the Ultra Qui Judicat Principle in Criminal Judgments," *Jambura Law Review* 3, no. 2 (2021): 395–410, https://doi.org/10.33756/jlr.v3i2.11154.

Future criminal law policy in relation to the provision of restitution to victims of serious maltreatment in the Indonesian criminal justice system. Before entering the study of criminal law policy, the position of restitution in accommodating the rights of victims of criminal offences, especially crimes of serious maltreatment, is still considered less than optimal. This is based on criminal statistics compiled from the annual report of the Witness and Victim Protection Agency of the Republic of Indonesia (LPSK-RI) from 2020 to mid-2024, showing that the crime rate is always increasing, restitution requests are always changing, and restitution requests for victims of serious maltreatment crimes are still very low.[26] This is due to several driving factors, namely the Legal System. The three elements of the Legal System, namely Legal Substance, Structure, and Legal Culture, are the main causes of the lack of restitution in Indonesia's criminal justice system.

Victims of serious maltreatment are not pro-active in reporting and requesting restitution rights to law enforcement, in this case the public prosecutor, the police, the Indonesian Witness and Victim Protection Agency (LPSK-RI), and the Judicial Power. Victims are often traumatised and resigned to the conditions they suffer. On the one hand, this is because the position of restitution has not been maximally regulated in a special law accompanied by a special supervisory institution for the implementation of this restitution.

In addition, the public is not enthusiastic in applying for restitution due to the public's stigma with the law enforcement climate in Indonesia. Law enforcement through normal channels alone has many deviations from the truth. Thus, the public stigma continues on the restitution efforts given to victims of criminal offences. Then, the lack of public awareness to pay restitution is the cause of the public feeling it is useless to apply for restitution, because of the lack of public awareness to pay restitution to victims of crime. This is the main problem that must be researched and developed to the policy-making stage.

Talking about criminal law policy, it will talk about three elements that form it. The three elements include criminal law enforcement policy according to Barda Nawawi Arief is a series of processes consisting of three policy stages, namely the legislative policy stage in determining or formulating what actions can be punished with sanctions that can be imposed, the judicial policy stage with application in applying criminal law, and the executive policy stage with administration in implementing criminal law.

The legislative policy stage is the most strategic initial stage of crime prevention through criminal law. This stage is the formulation stage which becomes the basis, foundation, and guideline for the next stages of functionalisation including application and execution. The formulation stage is a vital stage related to the formulation of a substantial law that will contain sociological, historical, and sense of justice expected by the community. It is important to remember that the ideal law is the law

[26] Dkk Budi Ahmad Djohari, "Laporan Tahunan Perlindungan Saksi Dan Korban Untuk Penegakan Hukum," 2022.

that develops in the midst of society, known as the living law. The law that develops in society is one that provides a sense of security, order and justice.

Laws are constantly changing with the development of society. Therefore, there is a need for criminal law reform at the policy formulation stage (formation of legislation). Criminal law reform is an effort to rejuvenate the substance of the law, replacing the old criminal law with a better criminal law, which is expected to be in accordance with the values that live in society. Criminal law reform includes material and formal aspects. According to Sudarto, the main purpose of legal reform is to tackle crime in society. Therefore, criminal law reform is part of the efforts to protect society (social defence).

Criminal law reform efforts must be carried out with a policy approach, because in principle legal policy is only part of a policy step.[27] Every policy always contains consideration of values that become aspects of the discussion. Therefore, criminal law reform efforts must also be oriented towards a value approach. Therefore, the relationship between the theory of criminal law policy and the provision of restitution to victims of serious maltreatment is considered necessary to be optimised.[28] This is because when talking about the policy aspect of criminal law, it will talk about the idea of legislation formulation in the future.

Restitution is an attempt to compensate for the loss given by the perpetrator (daderplagen) of a criminal offence to the victim and/or the family of the victim of a criminal offence.[29] The material compensation that is usually given is in the form of money with a nominal value that will be determined later. Restitution is actually given to victims and / or families of victims of criminal acts with the aim of obtaining a sense of social justice based on fair and civilised human values. Restitution can also be called a recovery effort for the suffering of victims of criminal offences.[30] This effort is the result of national criminal law reform.

There is a need for a special institution to oversee the implementation of restitution in fulfilling the rights of victims of crime.[31] Particularly in cases of serious maltreatment, the fulfilment of victims' rights must be optimised. This is because serious maltreatment is physical violence, has non-physical consequences, and causes financial losses to the economy of the crime victim. Another criminal law policy that must be implemented to improve the position of restitution is to require all perpetrators of

[27] Joko Setiyono, "Formulation of Restorative Justice Concept in Criminal Law Reform," *International Journal of Social Science Research and Review* 5, no. 11 (2022): 382–93, http://dx.doi.org/10.47814/ijssrr.v5i11.776.

[28] Rosmalinda Rosmalinda et al., "The Right of Restitution for Child Victims of Sexual Violence in Indonesia," *IIUM Law Journal* 29, no. (S2) (2021): 167–97, https://doi.org/10.31436/iiumlj.v29i(s2).684.

[29] R. Sirait, N. N., & Rosmalinda, "Efektifitas Pendanaan Internasional Dalam Pelaksanaan Pemenuhan Hak Anak Di Indonesia (Studi Kasus Provinsi Sumatera Utara).," *Universitas Sumatera Utara*, 2018.

[30] Ahmad Rizal Awwalludin Ramadhani, "Pemenuhan Hak Restitusi Kepada Korban Tindak Pidana," *Bureaucracy Journal : Indonesia Journal of Law and Social-Political Governance* 2, no. 3 (2022): 823–33, https://doi.org/10.53363/bureau.v2i3.65.

[31] Maria Novita Apriyani, "Implementasi Restitusi Bagi Korban Tindak Pidana Kekerasan Seksual," *Risalah Hukum* 17, no. 1 (2021): 1–10, https://lpsk.go.id/berita/detailpersrelease/3269.

criminal offences who meet the criteria to pay restitution. In addition, the phrase "third party" in the definition of restitution contained in various laws and regulations concerning restitution must be immediately concretised.[32] This is because the phrase has caused polemics in the stages of criminal law enforcement in Indonesia.

**D. Conclusion**

The conclusion of this research is first, that the position of restitution for victims of crime in the Indonesian criminal justice system has not been concretely regulated in a stronger and firmer concept of law. Although the provision of restitution for victims of criminal offences has been regulated in several special laws and regulations, such as the Law on Money Laundering, the Law on Witness and Victim Protection, the Law on Human Trafficking, the Law on Human Rights Courts, and several other laws and regulations. However, the position of restitution has not yet provided legal certainty for victims of criminal acts related to the existence of restitution in fulfilling the rights of victims of criminal acts. Therefore, it is recommended that a law regulating restitution policy be formulated and enacted with the aim of achieving legal certainty that brings a sense of social justice for all Indonesian people.

The second conclusion is that the implementation of the provision of restitution towards the fulfilment of the rights of victims of crime, especially the crime of serious maltreatment in Indonesia, has not been running optimally. Many factors inhibit the implementation of restitution in an effort to restore the rights of victims as a manifestation of human rights. These factors include technical and non-technical factors such as the quality of human resources of law enforcers who are sometimes reluctant to grant requests for restitution, the lack of legislation, the lack of supervision of the implementation of restitution, the lack of forced efforts on perpetrators who do not pay restitution, and the lack of public understanding of restitution procedures that can accommodate the rights of victims of crime. The solution to this problem is to strengthen the essence and existence of the three elements of the legal system such as legal substance, legal structure, and legal culture. Provide maximum education to law enforcers, the public, and all components of nationality regarding the urgency of restitution in accommodating the rights of victims of criminal acts that should be maximised by the state.

Third, in relation to criminal law policy on the provision of restitution for victims of serious maltreatment in the future, it is very necessary to restore and maximise the rights of victims of criminal acts. Until now, the intensity of restitution applicants for victims of criminal offences and especially serious maltreatment is still rare. The community does not seem to care about this

[32] Budi A Safari and Fauzan Hakim, "Hak Restitusi Sebagai Perlindungan Terhadap Korban," *Jurnal Ilmu Hukum Prima* 6, no. 1 (2023): 120–29, https://jurnal.unprimdn.ac.id/index.php/IHP/article/download/3227/2425.

restitution effort. In addition to this, law enforcement officials have not been optimal in carrying out education and implementation related to restitution for victims of crime. The existence of criminal law policy, then will talk about legal reform, it will have a positive impact on the provision of restitution as an effort to fulfil the rights of victims of crime. It is suggested that in order to accommodate the rights of victims of criminal offences, it is necessary to have an institution that supervises the implementation of restitution and increases the intensity of the obligation of criminal offenders to pay restitution to victims. It is requested to immediately update the legal policy and strengthen the authority of the institution that oversees the provision of restitution to victims of criminal offences, especially cases of serious maltreatment.

**ACKNOWLEDGEMENT**

The author would like to thank various parties, including the Directorate of Research, Indexed, and Community Service (DRTPM) of the Ministry of Education and Culture of the Republic of Indonesia in 2024. The author also expresses his gratitude to the supervisors of the author's research, namely Mr Mahmud Mulyadi and Mrs Rosmalinda and to the entire academic community of the Master of Laws Faculty of Law, University of North Sumatra. The author would also like to thank the Semarang Law Review of Semarang University for processing and publishing this legal article. The publication of this legal article is intended for the administrative purposes of completing the final study assignment (proposal seminar, results seminar, and thesis examination) at the Master of Law Science, University of North Sumatra.

## REFERENCE

Adamullah, Tubagus Alandaru. “Implementation of Restitution For Victims of Abuse According to Indonesian Criminal Law.” *Bengkoelen Justice : Jurnal Ilmu Hukum* 14, no. 1 (2024). https://doi.org/10.33369/j_bengkoelenjust.v12i1.33714.

Apriyani, Maria Novita. “Implementasi Restitusi Bagi Korban Tindak Pidana Kekerasan Seksual.” *Risalah Hukum* 17, no. 1 (2021): 1–10. https://lpsk.go.id/berita/detailpersrelease/3269.

Armia, Muhammad Siddiq. *Penentuan Metode Dan Pendekatan Penelitian Hukum*. Banda Aceh: LEMBAGA KAJIAN KONSTITUSI INDONESIA, 2022.

Budi Ahmad Djohari, Dkk. “Laporan Tahunan Perlindungan Saksi Dan Korban Untuk Penegakan Hukum,” 2022.

Fitri, Wardatul, FX Djoko Priyono, and Bambang Eko Turisno. “Aspek Hukum Keperdataan Terhadap Pemenuhan Hak Restitusi Dalam Perkara Tindak Pidana.” *JPPI (Jurnal Penelitian Pendidikan Indonesia)* 9, no. 1 (2023): 87. https://doi.org/10.29210/020221801.

Hutomo, Priyo, and Markus Marselinus Soge. “Perspektif Teori Sistem Hukum Dalam Pembaharuan Pengaturan Sistem Pemasyarakatan Militer.” *Legacy: Jurnal Hukum Dan Perundang-Undangan* 1, no. 1 (2021): 46–68. https://doi.org/10.21274/legacy.2021.1.1.46-68.

Iksan, Muchamad, Natangsa Surbakti, Marisa Kurnianingsih, Arief Budiono, Sholahuddin Al-Fatih,

and Tomás Mateo Ramon. "Fulfilling the Restitution Rights of Crime Victims: The Legal Practice in Indonesia." *Academic Journal of Interdisciplinary Studies* 12, no. 4 (2023): 152–60. https://doi.org/10.36941/ajis-2023-0101.

Kaban, Bennaris, Mahmud Mulyadi, and Adi Mansar. "Ganti Rugi Sebagai Upaya Perlindungan Hak Korban Kejahatan Perspektif Politik Hukum Pidana." *Jurnal Ilmiah Advokasi* 11, no. 1 (2023): 76–92. https://doi.org/10.36987/jiad.v11i1.3698.

Kartikasari, Meda Desi. "Menelisik Akar Pemikiran Asas In Dubio Pro Natura Dalam Penegakan Hukum." *Jurnal Verstek* 8, no. 3 (2020): 422–29. https://jurnal.uns.ac.id/verstek/article/view/47063/29498.

Kusyandi, Adi. "Limits on the Value of Restitution for Victims of Crime A Form of Restorative Justice System." In *Proceedings of the 3rd International Conference on Law, Governance, and Social Justice (ICoLGaS 2023)*, 376–86. Atlantis Press SARL, 2023. https://doi.org/10.2991/978-2-38476-164-7_35.

Manus, Vicky Roland, Selviani Sambali, and Yumi Simbala. "Implementasi Dasar Keadilan Dan Perlindungan Terhadap Korban Kejahatan Dalam Sistem Peradilan Pidana." *Lex Crimen* 12, no. 2 (2023): 1–10.

Maroni. "Pengantar Politik Hukum Pidana." *Jurnal Ketha Semaya* 10, no. 3 (2022): 717–26.

Nugroho, Tri. "Penerapan Asas in Dubio Pro Reo Pada Putusan Mahkamah Agung Republik Indonesia Dalam Perkara Pidana." *Repertorium Jurnal Ilmiah Hukum Kenotariatan* 10, no. 1 (2021): 86–98. https://doi.org/10.28946/rpt.v10i1.1189.

Purwati, Ani. *Metode Penelitian Hukum Teori Dan Praktek*. Surabaya: Jakad Media Publishing, 2020.

Rahmawati, A, and O Yudianto. "Pengaturan Pemberian Restitusi Dalam Suatu Tindak Pidana Pembunuhan (Studi Putusan Nomor 22-K/PMT-II/AD/II/2022)." *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 3, no. 2 (2023): 1677–96. https://bureaucracy.gapenas-publisher.org/index.php/home/article/view/273%250.

Ramadhani, Ahmad Rizal Awwalludin. "Pemenuhan Hak Restitusi Kepada Korban Tindak Pidana." *Bureaucracy Journal : Indonesia Journal of Law and Social-Political Governance* 2, no. 3 (2022): 823–33. https://doi.org/10.53363/bureau.v2i3.65.

Rosmalinda, Rosmalinda, Ningrum Natasya Sirait, Suhaidi, and Edy Ikhsan. "The Right of Restitution for Child Victims of Sexual Violence in Indonesia." *IIUM Law Journal* 29, no. (S2) (2021): 167–97. https://doi.org/10.31436/iiumlj.v29i(s2).684.

Sabri, Fadillah. "Perlindungan Hukum Dengan Restitusi Terhadap Anak Yang Menjadi Korban Tindak Pidana." *UNES Journal of Swara Justisia* 6, no. 4 (2023): 398. https://doi.org/10.31933/ujsj.v6i4.293.

Safari, Budi A, and Fauzan Hakim. "Hak Restitusi Sebagai Perlindungan Terhadap Korban." *Jurnal Ilmu Hukum Prima* 6, no. 1 (2023): 120–29. https://jurnal.unprimdn.ac.id/index.php/IHP/article/download/3227/2425.

Saputra, Trias, and Yudha Adi Nugraha. "Pemenuhan Hak Restitusi : Upaya Pemulihan Korban Tindak Pidana." *Krtha Bhayangkara* 16, no. 1 (2022): 65–80.

https://ejurnal.ubharajaya.ac.id/index.php/KRTHA.

Setiyono, Joko. "Formulation of Restorative Justice Concept in Criminal Law Reform." *International Journal of Social Science Research and Review* 5, no. 11 (2022): 382–93. http://dx.doi.org/10.47814/ijssrr.v5i11.776.

Sirait, N. N., & Rosmalinda, R. "Efektifitas Pendanaan Internasional Dalam Pelaksanaan Pemenuhan Hak Anak Di Indonesia (Studi Kasus Provinsi Sumatera Utara)." *Universitas Sumatera Utara*, 2018.

Sulistiani, Lies. "Problematika Hak Restitusi Korban Pada Tindak Pidana Yang Diatur Kuhp Dan Di Luar Kuhp." *Jurnal Bina Mulia Hukum* 7, no. 1 (2022): 81–101. https://doi.org/10.23920/jbmh.v7i1.948.

Supena, Cecep Cahya. "Suatu Tinjauan Tentang Alasan Manusia Mentaati Hukum." *MODERAT: Jurnal Ilmiah Ilmu Pemerintahan* 7, no. 4 (2021): 856–63.

Wemmers, Jo-anne. "Compensating Crime Victims." *The Federal Ombudsman for Victims of Crime*, 2021.

Yanova, Muhammad hendri, Parman Komarudin, and Hendra Hadi. "Metode Penelitian Hukum: Analisis Problematika Hukum Dengan Metode Penelitian Normatif Dan Empiris." *Badamai Law Journal* 8, no. 2 (2023): 394–408.

Yossafa, Satriadjie Abdee. "Pengaturan Pembebanan Restitusi Terhadap Pelaku Anak Sebagai Bentuk Pertanggungjawaban Kerugian Terhadap Korban Tindak Pidana." *Verstek*, 2023. https://doi.org/10.20961/jv.v10i3.70430.