

*Research Article***Regulatory Framework on Compensation in the Restoration of Victims of Sexual Violence**

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ABSTRACT

Compensation for victims of criminal acts under Law Number 12 of 2022 on Sexual Violence Crimes has the potential for distortion due to regulatory frameworks and enforcement processes. This article aims to examine whether the regulatory framework ensures compensation as a restorative instrument, serving as a supplement or a substitute for restitution. The research employs an upstream and downstream process model, emphasizing regulatory design and the feasibility of payment processes, to establish compensation as a mechanism for victim recovery. The findings reveal that compensation is formally a substitute for restitution. Compensation is not the primary objective, despite being a state obligation. Law Number 12 of 2022 on Sexual Violence Crimes emphasizes direct restitution for victim restoration and offender rehabilitation. The concept of compensation loses its independent significance as a state responsibility. Data from various court decisions indicate that if the defendant fails to pay restitution, their assets are seized and auctioned by prosecutors to fulfill the restitution payment. If the assets are insufficient, imprisonment substitutes for the unpaid restitution. Courts do not mandate the state to pay compensation in such cases.

Keywords: Compensation; Crime Victims; Restoration; Restitution; Sexual Violence

A. INTRODUCTION

The primary objective of this article is to examine the challenges of granting victims of sexual violence the right to compensation and restitution, focusing on the perspectives of regulatory design, government strategies, and the criminal justice system. In this context, the regulation of such rights can be evaluated through the lenses of restorative justice, procedural justice outcomes for victims, reparative justice, and compensation (Miers, 2014). Historically, the right to compensation and restitution for victims of sexual violence has not been effectively

implemented. The ratification of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (hereinafter referred to as the Anti-Sexual Violence Law) does not automatically ensure the effective realization of the right to compensation and restitution in influencing the social realities of the legal community (Hahn, 2022). These social realities can be categorized into three aspects: the purpose of regulation, the target audience of the regulation, and the legislative approach along with its intended outcomes (Koomans, 2020).

The enactment of the Anti-Sexual Violence Law marks a significant shift in Indonesia's legal framework and policy-making approach to addressing sexual violence. It represents a success for the decade-long anti-sexual violence movement, despite its challenges (Dewi, Fathana, & Rohma, 2023). This reform parallels the recognition of victims' rights, moving the criminal justice system towards a more victim-centric approach and fostering several victim-focused initiatives (Long, 2021). One of the most notable rights afforded to victims of sexual violence under this law is the provision of compensation and restitution. This framework reflects an innovative mechanism for restorative justice (Smith, 2006; Rochaeti, Prasetyo, & Park, 2023). The Anti-Sexual Violence Law empowers marginalized groups through progressive legal reforms (Aldashev, Platteau, & Wahhaj, 2011), shifting the legal paradigm away from a purely punitive model towards one that balances social control with reparations for crime victims.

However, several studies indicate that reforms to the conventional criminal justice system often fail to adequately address the needs of victims of sexual violence, necessitating alternative or supplementary mechanisms (Hadar & Gal, 2023). For example, Iceland offers alternative mechanisms to ensure the state provides compensation for crime victims, such as filing compensation claims in criminal cases, applying to the Criminal Injuries Compensation Authority (CICA), and pursuing civil lawsuits against offenders (Antonsdóttir, 2020; Makaminan

& Soponyono, 2021). In Indonesia, however, court rulings often mandate offenders to pay restitution without addressing the possibility of state-funded compensation when offenders are unable or unwilling to fulfill restitution obligations or when the restitution amount is insufficient.

As a regulatory comparison to Indonesia, several Southeast Asian countries have implemented laws to address sexual violence and harassment. In Malaysia, the Anti-Sexual Harassment Act was first tabled in Parliament in December 2021 ("Malaysia's Anti-Sexual Harassment Bill tabled in Parliament"), passed by the Dewan Rakyat (House of Representatives) in July 2022 ("Malaysia passes Anti-Sexual Harassment Bill with minor amendments, despite widespread criticism"), and officially gazetted in October 2022. This Act provides a right to redress for victims of sexual harassment, establishes a Tribunal for anti-sexual harassment, and aims to raise awareness and prevent sexual harassment.

In Vietnam, the "New Labor Code" (NLC), effective January 1, 2021, ensures the prosecution of workplace sexual harassment. While the NLC does not specify which actions constitute sexual harassment, employers are tasked with defining such specifics (Uyen, 2022). The Philippines enacted the Anti-Sexual Harassment Act of 1995, or Republic Act (RA) 7877, which was later supplemented by RA 11313 (the Safe Spaces Act of 2019). This newer Act broadens the scope to guarantee personal space and public safety (Buyco, 2021) and aims to minimize sexual advances made by individuals

in positions of moral influence over students, apprentices, and employees in workplaces, educational institutions, and training centers (Gabriel & Panohan, 2017).

Singapore introduced the "Protection from Harassment Act 2014" (POHA), while Laos enacted the "Law on the Development and Protection of Women" on October 22, 2004, which remains in effect. In Thailand, despite being a signatory to the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), the government has yet to take sufficient action to combat sexual harassment. Thai law does not precisely define sexual harassment, leaving complainants to fit their experiences into the limited legislative framework available (Soonthornpasuch, 2008). While the effects of sexual harassment in Thailand are evident, they are often overlooked (Puchakanit & Rhein, 2022).

In terms of compensation, Malaysia's Section 426 of the Criminal Procedure Code (CPC) poses challenges. First, compensation is not guaranteed, as it requires a court verdict against the perpetrator and a formal application by the prosecutor (Section 426(1A) of the CPC). Second, as stipulated in Section 426(1D) of the CPC, a conviction is required, and the court may conduct additional examinations to determine the compensation amount (Rosli, Zubaidi, & Dusuki, 2019).

In Indonesia, sexual violence is considered a serious legal issue due to its high number of reported cases compared to other Southeast

Asian nations, despite the relatively low percentage of women affected. The National Commission on Violence Against Women reported 14,719 cases of violence against women in 2019, encompassing physical, psychological, sexual, and economic violence across personal, community, and state domains. Of these, 4,898 were cases of sexual violence, with 2,807 occurring in personal spheres and 2,092 in community settings. Although sexual violence cases were fewer than physical violence cases (5,548 vs. 2,123), they far outnumbered psychological violence (2,123 cases) and economic violence (610 cases) (Komnas Perempuan, 2020).

In 2021, 338,496 gender-based offenses against women were reported, including 335,399 in personal domains, 3,045 in public domains, and 52 in state institutions (Komnas Perempuan, 2020). Data from 2023 showed sexual violence accounting for the highest number of cases (2,363 cases or 34.80%) compared to psychological violence (1,930 cases or 28.50%), physical violence (1,840 cases or 27.20%), and economic violence (640 cases or 9.50%). Further data from the National Commission on Violence Against Women indicated that psychological violence dominated (3,498 cases or 41.55%), followed by physical violence (2,081 cases or 24.71%), sexual violence (2,078 cases or 24.69%), and economic violence (762 cases or 9.05%) (Komnas Perempuan, 2024).

Data released by the National Commission on Violence Against Women in August 2024,

derived from SintasPuan and Titian Perempuan, revealed that throughout 2023, sexual violence cases reached 15,621, the highest number recorded, followed by psychological violence (12,878 cases), physical violence (11,099 cases), and other forms of violence (6,807 cases) (Komnas Perempuan, 2024).

In comparison, Philippine statistics for 2022 indicate that 1.7% of women experience sexual violence, while 3.5% endure both physical and sexual violence, out of a total of 17,968 women surveyed (Philippine Statistics Authority, 2022). Malaysia recorded 1,218 cases of sexual harassment between 2013 and 2017, with 267 cases reported in 2017. In a recent survey of 1,002 individuals, 36% of women and 17% of men reported experiencing sexual harassment (Pitchford, 2021; The ASEAN Post Team, 2022). In contrast, Indonesia, with a population of 275,361,267 people, including 190,827,224 in the productive age group (15–64 years) (Direktorat Jenderal Kependudukan dan Pencatatan Sipil, 2022), reports an incidence of sexual violence affecting 0.000077% of the total population or 0.00011% of the female population of 136,364.

Changes in criminal justice policies concerning sexual violence significantly influence the development of both restorative and retributive approaches. Secondary objectives include addressing gender inequality, reducing high rates of victimization against women, and shifting perceptions of sexual violence in Indonesia and Southeast Asia. The Anti-Sexual Violence Law expands compensation schemes,

whose scope and principles have been widely debated from the victim's perspective. A legal framework – referring to the structures in which laws are organized, such as regulatory systems (Lee, 2017) – requires the implementation of policies and strategies that demonstrate institutional effectiveness in deterrence, retribution for offenders, and recognition of internationally recognized victims' rights, even if their scope and application remain controversial or incomplete (Miers, 2014).

Addressing sexual violence also necessitates an organizational structure symbolizing rational governance and compliance (Edelman et al., 2011). Victims of sexual violence often feel alienated from the legal system, leading to negative associations between victims and the criminal justice process. The law and legal system frequently create conflicts of interest between victims, offenders, and even the government. Effective laws must prevent societal conflicts of interest, which can escalate into disputes and social unrest (Zulyadi & Hossain, 2022).

Legal reforms at the upstream level must address persistent issues of system effectiveness, transparency, and accountability that emerge during the downstream process (Dandurand, 2014). Experimental and empirical studies reveal that uncertainties in prevailing social norms and legal frameworks influence societal perceptions and reflect underlying social values. These factors affect how social norms evolve through information channels, demonstrating the interplay between laws and

societal standards. Understanding this interaction is critical to evaluating whether a policy is effective (Galbiati et al., 2021). While societal perceptions of norms regarding sexual violence may shift, the downstream impact of the law is not yet fully apparent.

Several previous articles have discussed topics relevant to this research, including those addressing sexual violence as a widespread human rights issue. Survivors of sexual violence often endure profound dehumanization and adverse health outcomes when their trauma is not adequately addressed. This underscores the importance of honoring and empowering survivors during their healing and justice-seeking processes. Given that adjudication through the criminal legal system is often underutilized due to retraumatization, scrutiny from law enforcement, and high rates of case closures, restorative justice has emerged as a promising alternative for survivors to repair harm and achieve accountability (Burns & Sinko, 2023).

Other articles have examined the use of regression analysis to predict compensation and the role of victim labels in judicial decision-making. This empirical approach is informed by the notion of the "ideal victim," demonstrating that compensation for pain and suffering damages can be predicted and that including victim labels significantly improves the accuracy of these predictions. Although victim labels of blamelessness are not the predominant predictors, they do influence the compensation awarded. The primary factor in judges' decisions,

however, remains the claims presented by the victim (Augusteijn, Pemberton, & Bosma, 2024).

Another article explores alternative means of providing compensation due to the limitations of criminal law in delivering justice for cases of sexual violence. Survivors and feminist scholars have increasingly turned to non-traditional justice mechanisms. While civil claims cannot be considered entirely non-traditional, tort law has received limited attention as a potential avenue for addressing the harm caused by sexual violence. Specifically, little is known about how tort law aligns with survivors' understandings of justice (Antonsdóttir, 2020).

The novelty of this article lies in its focus on the right of sexual violence survivors to receive direct compensation, specifically restitution. It proposes that if a defendant is unable to pay restitution, their property should be confiscated and auctioned by the public prosecutor to fulfill the restitution obligation.

Recent studies in Indonesia suggest that the Anti-Sexual Violence Law requires preconditions and gradual enforcement (Rahayu et al., 2022). However, enforcing the law remains imperative as it directly impacts the rate of violations (Rofingi, Rozah, & Asga, 2022). Therefore, analyzing the challenges of implementing the Anti-Sexual Violence Law from a regulatory perspective is crucial.

B. RESEARCH METHODS

The research employs a regulatory testing model to evaluate whether policymakers ensure

that compensation is implemented in alignment with its objectives. To construct robust arguments, the study incorporates non-legal materials, such as data on sexual violence rates. In examining the feasibility of establishing compensation for victims of sexual violence, this paper refers to procedural and substantive categories—commonly known as "upstream" and "downstream" processes. The upstream process focuses on the application of laws and regulations, while the downstream process addresses claim settlements and the payment of compensation (Ackerman, 2005).

C. RESULTS AND DISCUSSION

1. Compensation as a Form of Protection for Crime Victims

Compensation serves various purposes, including assisting victims in recovering from crimes (Wemmers, 2021), though its relevance in reducing the social costs incurred by victims remains a topic of debate (Raj & Wiltermuth, 2022). Sexual violence often causes physical, psychological, or material suffering for victims, negatively affecting their quality of life (Hanson et al., 2010) and resulting in unpleasant outcomes or consequences (Diaz, 2022). Victims frequently express dissatisfaction with the criminal justice system's ability to bring offenders to justice and uphold their rights, such as restitution or compensation. Consequently, victims value effective communication and comprehensive information about criminal justice procedures, their rights as victims, and available support services (Healy, 2019).

Beyond their involvement in the criminal justice system, which often centers on the offenders, victims of sexual violence require compensation for the suffering or losses they have endured. The development of Indonesia's criminal justice system mirrors that of Western nations adopting an inquisitorial system, where judges dominate fact-finding and trial processes, with attorneys playing a more limited role (Tonry, 2018). The success of victims in attaining their rights, particularly restitution and compensation, depends on the system's responsiveness. This responsiveness is reflected in how written regulations are implemented, how police and public prosecutors prioritize victims' interests, and how judges base their decisions on requests made by public prosecutors, including the administrative processes involved.

Historically, and as of the end of 2022, compensation in Indonesia has been largely limited to victims of gross human rights violations and terrorism. The Witness and Victim Protection Law (Law Number 13 of 2006, as amended by Law Number 31 of 2014) stipulates that victims of these crimes must meet eligibility requirements to receive compensation. This restrictive penal policy, which narrowly defines eligibility criteria, has sparked controversy due to its lack of inclusivity for other crime victims, such as those of human trafficking, torture, maltreatment, theft, embezzlement, fraud, and traffic accidents. Such restrictions raise questions about the criteria for determining victim eligibility for compensation.

Under Indonesia's legal framework, the eligibility of victims based on the nature of the crime remains a subject of debate. Miers (2019) outlines three general eligibility requirements for victims: the victim's delinquent behavior, criminal history, and poor character. While these criteria define an "ideal victim" entitled to compensation, they fail to specify the types of offenses that guarantee compensation, leaving room for interpretation and ambiguity.

Based on taxonomic hierarchy, compensation is a specific element (the species) of the broader concept of protection (the genus) under Indonesian law. The Protection of Witnesses and Victims Law defines protection as "all efforts to fulfill rights and provide assistance to give witnesses and/or victims a sense of security" (Article 1, Number 8), highlighting an expansive commitment to supporting testimony. However, this interpretation diverges from the United Nations Office on Drugs and Crime (UNODC) classification, which distinguishes between "victim assistance" and "witness protection." Victim assistance aims to address psychological and practical barriers to testifying, thereby preventing further harm. Witness protection, on the other hand, focuses on safeguarding witnesses deemed "at risk" before, during, and after legal proceedings (United Nations, n.d.). Both initiatives aim to enhance victims' participation in the justice system and secure essential testimony to uphold the rule of law.

Singapore's *Protection from Harassment Act of 2014 (POHA)* illustrates a nuanced application of "protection," encompassing both broad and narrow interpretations. Section 12(2) of POHA defines a "protection order" as a court-issued mandate intended to prevent undesirable situations for the victim and restore social order (Singapore Statutes Online, 2023).

The Anti-Sexual Violence Law in Indonesia distinguishes between restitution and compensation, providing a framework for understanding compensation for crime victims. This distinction is based on two principles: first, that offenders causing harm to individuals or property should compensate for the losses, and second, that states failing to protect crime victims are obligated to provide financial compensation (Okosa, 2022). Under the law, compensation has a specific meaning, while restitution is treated as a broader concept, encompassing civil litigation, social welfare programs, private insurance, and victim compensation programs (Smith, 2006).

Article 1, Number 20 of the Anti-Sexual Violence Law defines restitution as compensation charged to the offender or a third party, as determined by the court, for material and immaterial losses sustained by the victim or their heirs. In contrast, "compensation" is state-provided financial assistance for victims when offenders fail to pay restitution (Article 1, Number 21; Article 35). However, the law does not clearly address scenarios where offenders partially or entirely fail to pay restitution, leaving gaps in its regulatory framework.

The government's moral obligation to provide financial support aims to enhance public safety, foster cooperation with the justice system, and assist victims in recovering costs related to victimization (Evans, 2014). Before the advent of compensation programs, victims often faced significant barriers to financial restitution, particularly when offenders were not apprehended, lacked resources, or refused to pay.

Despite its progress, the Anti-Sexual Violence Law has notable shortcomings. On the one hand, the introduction of "confiscation guarantees for restitution" (Article 31) marks a regulatory advancement to address offenders' noncompliance with restitution orders. On the other hand, the law lacks clarity regarding the state's obligation to compensate victims when offenders fail to pay restitution. These gaps underscore the need for further refinement to ensure comprehensive victim protection and support.

The **Anti-Sexual Violence Law** does not explicitly regulate compensation for cases in which offenders are not apprehended. As a result, there are no procedures or court rulings governing such compensation. Implicitly, this suggests that being recognized as a "worthy and legitimate victim" is a prerequisite for receiving compensation or related services (Long, 2021). However, this limitation can have severe and long-lasting effects on victims, particularly in transitioning from silence to speaking out about their experiences (Berrend, 2020).

In the Netherlands, two legal avenues exist for victim compensation:

1. **The Criminal Injuries Compensation Fund (Schadefonds Geweldsmisdrijven):** This provides standardized compensation to victims of severe violence and sexual harassment, covering only part of their losses.
2. **Insurance:** Victims can claim compensation through personal insurance policies.

Both options are independent of the offender's status. A third route—**restitution from the offender**—requires the offender to be identified and held accountable (Hebly, van Dongen, & Lindenberger, 2014). In Indonesia, however, insurance for crime victims, including those of sexual violence, is neither widely known nor utilized.

In addition to the **Anti-Sexual Violence Law**, there are **Government Regulations** on the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims. These regulations distinguish restitution as an absolute right for victims, while compensation is reserved for victims of specific crimes, such as human rights violations and terrorism. However, these regulations do not yet address compensation for victims of sexual violence.

The legal framework for providing restitution and compensation has been in place since the promulgation of the **Witness and Victim Protection Law** 16 years ago and the **Government Regulation** four years ago. Nevertheless, the **Supreme Court Regulation on Restitution and Compensation** fails to

address the specific needs of sexual violence victims. This gap arose because the Anti-Sexual Violence Law was enacted two months after the Supreme Court Regulation, leaving the latter unable to accommodate the interests of sexual violence victims seeking compensation.

The **Anti-Sexual Violence Law** also does not specify the source, allocation, or use of the Victim Assistance Fund (compensation), as these details are pending further government regulations. Implementation of such regulations is expected no later than 2023, depending on the government's administrative responsiveness. However, ongoing court proceedings in sexual violence cases make it challenging to determine potential compensation, particularly for reimbursing social costs. The economic costs of compensating sexual violence victims remain difficult to estimate. Consequently, social costs—whether internal or external to victimization—are considered when evaluating whether the state bears responsibility.

Indonesian law takes a **restrictive approach to compensation**, in contrast to restitution, which applies to a broader range of crimes. For example, **Law Number 21 of 2007 on the Eradication of Human Trafficking** provides restitution to all trafficking victims, while eligibility for other crimes is subject to decisions by the **Witness and Victim Protection Agency (LPSK)**, as stipulated in Article 7A, paragraphs (1) and (2) of the Witness and Victim Protection Law.

Restitution for victims is limited to:

- Loss of property or income,
- Losses related to suffering directly caused by the crime, and/or
- Reimbursement for medical and psychological treatment costs.

In these cases, the **LPSK** facilitates the process for victims to obtain court rulings on restitution. Its function ensures that losses are rationally and feasibly calculated, preventing courts from recalculating losses economically. This role extends to ensuring compensation for crime victims, underscoring the need for a more inclusive regulatory framework to address the needs of victims of sexual violence effectively.

2. Factors in Compensation Implementation

The implementation of compensation for victims of sexual violence faces several obstacles. These challenges can be categorized into three main issues: (1) the design of regulations, (2) budgetary decisions, and (3) court rulings that determine and justify the amount of compensation.

Historically, providing compensation to victims of gross human rights violations and terrorism required the establishment of implementing regulations, comprehensive planning, and political decisions to allocate compensation funds. These efforts also necessitated adherence to formal criminal justice procedures (procedural law).

From the perspective of procedural and substantive categories, often referred to as the "upstream" process, the 12-year period (2006–2018) required to achieve procedural and

substantive certainty highlights the influence of political decisions and preferences that make restitution and compensation difficult to implement.

Regulatory design serves as both a cause of and a challenge to these difficulties. The government has not prioritized policies that fulfill compensation obligations effectively. Regulatory design plays a crucial role in evaluating the development of legal impacts and consists of three key sub-criteria:

1. **Expected Outcomes:** The anticipated policy outcomes that the law seeks to implement.
2. **Structural Dynamics:** The organization and dynamics of laws, legal frameworks, and institutions.
3. **Adaptability:** The law's ability to respond to socioeconomic conditions on the ground (Lee, 2017).

The current regulatory design has proven insufficient in achieving its intended policy outcomes (regulatory objectives). For example, the **Witness and Victim Protection Law**, passed over twelve years ago, has failed to deliver its promised results due to these regulatory design shortcomings.

From the perspective of government financial management, the issue of compensation for victims of sexual violence is closely tied to political decisions regarding budget allocation. Efficient financial transactions, supported by the rule of law and good governance, are essential for fostering economic growth. Such governance includes provisions for personal safety, property

rights, contract enforcement, and mechanisms to combat corruption and private exploitation (Haggard & Tiede, 2011; Nairobi & Kenita, 2021). Ensuring the payment of compensation to victims of sexual violence under current socioeconomic conditions can be feasible if fiscal policies improve, with a notable increase in state revenues despite higher expenditures.

The high prevalence of sexual violence necessitates substantial government funding. Without sufficient budget reserves to address restitution shortfalls, it becomes challenging to provide compensation to victims. The availability of budget reserves directly influences victims' access to compensation. For instance, the **LPSK (Witness and Victim Protection Agency)** budget ceiling for early 2022 was IDR 152,595,374,000.00, a 92.14% increase from the initial 2021 ceiling of IDR 79,417,515,000.00 (Haqiqi, 2022). Moving forward, the budget for 2023 and beyond must reflect further increases to adequately compensate victims of sexual violence.

Research indicates that despite available funds, only a small proportion of violent crime victims utilize the compensation system, with submissions representing less than 5% of total victimization. While not all victims qualify for financial compensation, this low application rate highlights the underutilization of the system (Alvidrez et al., 2008). Victimological studies also reveal that many crime victims fail to apply for compensation simply because they are unaware of the program's existence. This underscores the

importance of ensuring victims have access to information about their rights to compensation.

Nevertheless, access to compensation mechanisms is heavily influenced by the public administration system, which can either facilitate or hinder its utilization. This is true regardless of whether compensation is ultimately paid (Davis et al., 2021).

The formulation of **Law Number 12 of 2022 on Crimes of Sexual Violence** reveals significant weaknesses, particularly regarding victims' rights to compensation and restitution. These shortcomings become evident in the processes of assessing and determining restitution amounts, as only the **LPSK (Witness and Victim Protection Agency)** currently holds the authority to address these matters. This article identifies key challenges in the implementation of compensation provisions as follows:

1. **Lack of Awareness:** Many victims of sexual violence are unaware of their right to seek restitution.
2. **Complex Procedures:** The process for submitting claims and implementing compensation is overly complicated.
3. **Limited Role of the LPSK:** The LPSK's involvement in assisting victims is insufficiently proactive.
4. **Punishment-Oriented Focus:** Law enforcement remains primarily focused on punishing offenders rather than ensuring victims' rights.

From a legal tradition perspective, Indonesia operates under a "mixed legal system," where the **civil law system** predominates, making statutory regulations the primary source of law. As such, ensuring crime victims' rights requires explicit legal justification. Prior to 2018, the **Law on the Protection of Witnesses and Victims** was more focused on obtaining victims' testimonies than on safeguarding their rights.

The situation improved with the promulgation of **Government Regulation Number 7 of 2018**, later amended by **Government Regulation Number 35 of 2020**, which provides legal certainty for compensation and restitution. These regulations clarify the administrative processes necessary for victims to exercise their procedural and substantive rights. The regulations also underscore the LPSK's role in ensuring victims receive compensation.

However, the effectiveness of the LPSK depends heavily on the cooperation of other state institutions, particularly the **House of Representatives (DPR)**, which is responsible for approving the budget allocated for compensation payments. This reliance highlights that the provision of funds for compensation reserves is inherently a **political decision**, determined at both national and state levels.

Additionally, regional governments lack sufficient experience in supporting compensation programs for victims of severe human rights violations and terrorism. This gap places a disproportionate burden on the central government under the current legal framework.

Consequently, implementing effective compensation policies remains a significant challenge.

Thirdly, the success of granting compensation in Indonesia, in the context of regulatory design, depends on the effective implementation of administrative (government) regulations and the response of the courts. This judicial response encompasses both substantive and procedural aspects to determine compensation. **Supreme Court Regulation Number 1 of 2022 concerning Procedures for Completing Applications and Granting Restitution and Compensation to Crime Victims** (referred to as the **Supreme Court Regulation on Restitution and Compensation**) outlines the court procedures for handling restitution and compensation claims. This demonstrates that the Supreme Court has not yet adopted a policy to implement compensation for victims of crimes other than gross human rights violations and terrorism in court proceedings.

However, from both a legal and political standpoint, judicial policies reflect the legal arrangements established by the government to determine how public policies regarding the fulfillment of victims' rights—such as restitution and compensation—are formulated. The court ultimately decides how these policies can affect the public (Fink, 2016). As a matter of policy, court decisions related to compensation may stimulate greater reporting and enhance the implementation of legal regulations.

As a specific law, the **Law on Sexual Violence** expands the types of victims eligible for compensation. The program applies not only to victims of gross human rights violations and terrorism but also to victims of sexual violence, subject to the conditions outlined in **Article 35 of the Law on Sexual Violence**. The category or type of “crime victim” is linked to the category of “crime.” The categories of crimes—such as violence, property, firearms, environmental, and government process crimes—highlight the issue of defining the “victim” category.

Interdisciplinary studies suggest that victims are part of a dyadic relationship, where one party causes harm and the other party is the recipient of that harm (Cassell & Jr, 2023). Compensation for victims of sexual violence incorporates the category of eligibility, specifically “underpaid restitution,” which can be termed “conditional compensation.” This appears to be an “alternative” solution to assist victims in recovering from their suffering. The state's responsibility (state liability) for the payment of compensation depends on the condition that restitution is paid by the perpetrator, thereby justifying the application of the “confiscation guarantee for restitution” institution to address underpaid restitution conditions.

In previous restitution and compensation programs, their efficacy must be measured based on prior adjudication processes, particularly the handling of severe and hypothetical human rights cases. In cases involving grave human rights violations, the management of twelve cases (from

1965 to 2020) remains unresolved as of 2021, and the restitution and compensation program has yet to be implemented. These cases include civil unrest in Panai in 2020, the killing of human rights activist Munir in 2004, the Jambo Keupok Aceh incident in 2003, the Waisor and Wamena events in 2001 and 2003, the Aceh KKA Simpang incident in 1999, the murder of a witch doctor in 1988-1999, the Trisakti – Semanggi 1 and Semanggi 2 tragedies in 1998, the May 1998 riots, and the Rumoh Ge incident.

In contrast to these unresolved cases, following the passage of the Anti-Terrorism Law, the **LPSK** has been able to fulfill its mandate to demand that the government compensate victims of terrorism. Although victims can sue directly in court, the **LPSK** plays a crucial role in mediating the realization of victims' rights and assisting public prosecutors in submitting claims. The **LPSK's** function is to be proactive in overcoming the complex processes and burdens (such as funding and the need for advocates) that victims must bear to sue directly in court. Through an adjudication process facilitated by the **LPSK** and the prosecutor's office, the court has decided to award compensation to 99 victims of terrorism who were affected by events from 2018 to 2020 (Maulana, 2022). A total of 5,178,841,934 rupiahs must be paid to compensate the victims of terrorism. When compensation for victims of sexual violence increases, this amount will likely double, putting pressure on budgetary politics. Although the **Anti-Sexual Violence Law** (Article 35) permits funding from philanthropy, society,

individuals, corporate social and environmental responsibility, and other non-binding sources in addition to the state budget, a regulatory framework is still required to ensure this.

The concept of compensation does not align with the movement focused on mandatory compensation and restitution programs to ensure victims are made whole, as seen in many states in America and the Netherlands. These countries created Victim Compensation Funds (VCF) to directly reimburse losses and expenses related to suffering, including funeral expenses, medical expenses, counseling, and lost income. However, laws limit the amount of money that can be given to an individual victim, and often victims of property crimes are not eligible for assistance (Beety, 2021).

Compensation is only conducted after it is determined that the offender is unable to pay part or all of the restitution amount, as ordered by the court. For the efficacy of restitution to be achieved, the process must be adjudicative and direct, meaning it is bundled with criminal prosecution by the public prosecutor (via the "confiscation guarantee for restitution" institution). The **LPSK** plays a crucial role in assisting victims, ensuring that the public prosecutor can verify the amount of restitution demanded and the legitimacy of the assets to be confiscated from the perpetrator.

The use of indirect restitution guarantees restoration for victims. While the offender may not pay restitution due to insufficient wealth or penal policies, compensation serves as a substitute for

restitution. This demonstrates that the Indonesian criminal law regime combines both direct and indirect restitution (via compensation). If direct restitution aims to provide opportunities for victim recovery and offender rehabilitation, then institutionally mediated indirect restitution in the form of “crime victim assistance costs” is vital for victims (Martin & Fowle, 2020).

In the first step, if an offender has not paid restitution to potential crime victims, they may complain for compensation from the state, which requires a lengthy administrative process. Most judicial decisions indicate that judges rule for the offender to pay restitution. However, if the confiscated assets are insufficient, the offender is sentenced to imprisonment instead. For example, **Sungguminasa District Court Decision Number 201/Pid.B/2024/PNSgm**, **Sukabumi District Court Decision Number 124/Pid.Sus/2023/PN SKB**, and **Rengat District Court Decision Number 107/Pid.Sus/2023/PN Rgt** all contain two approaches: deterrence and prevention, which influence offenders or potential criminals (Adhi & Soponyono, 2021). Although sentencing imprisonment as a substitute for unpaid restitution has positive aspects for deterrence and prevention, in the context of state responsibility, this approach is insufficient.

3. Reliance on Compensation through Confiscation Guarantees for Restitution

Ensuring the payment of restitution is equivalent to ensuring that criminals are held accountable for their actions toward their victims. However, this does not imply that the convict's

responsibility entirely absolves the state of its own responsibilities, including in the form of compensation. In essence, compensation is an effort to alleviate the physical, psychological, and financial suffering of crime victims during a crisis, helping to cover the costs incurred (Alvidrez et al., 2008). In addition to judicial policies, which are distinguished by their legal justification for regulating the implementation procedure, compensation as a supplement to restitution also involves political decisions, particularly budget allocation policies. Legal frameworks represent the greatest obstacle to the effective implementation of compensation policies that ensure victims' rights.

In terms of the systematization of regulations, Indonesia adheres to the Continental European tradition (Civil Law system), distinguishing between statutory regulations (*wettelijk regeling*), policy regulations (*beleidsregels*), and stipulations (*beschikking*) (Soebroto, n.d.). As a result, the implementation of compensation payments requires reference to the level of determination (*beschikking*), which is hierarchically derived from policy regulations and statutory regulations. Consequently, the implementation of compensation payments by the government is insufficiently grounded in the Anti-Sexual Violence Law, which acknowledges the victims' right to compensation. Instead, regulations outlining procedures are needed to facilitate their execution by the government following a court decision.

Non-formal practices of negotiating restitution payments prior to a court decision, particularly during the examination process at the prosecutor's office before prosecution in court, have historically failed (Permatasari, Sawitri, & Maryono, 2019). Payment of compensation requires court decisions and policy regulations (*beleidsregels*) that grant the government the authority to pay it (*beschikking*). As a result, the government has never provided compensation to victims of sexual violence, as the existing legal framework is inadequate. The enactment of the Indonesian Criminal Procedure Code (Law No. 8 of 1981, known as KUHAP) serves as the basis for all processes and procedures in criminal justice. Experience has shown that decisions regarding the payment of restitution or compensation under Article 98 of the Criminal Procedure Law cannot be optimally implemented in every case. In practice, when the perpetrator pays restitution to the victim, the judge only considers it as a mitigating factor. Compensation is limited to material losses incurred by the victim due to victimization (Budiarti et al., 2022). This provision has not provided a strong regulatory foundation for demanding or deciding on the obligation to pay restitution. Rather than serving as a basis for compensatory payments, this provision has not been able to establish the obligation to pay restitution effectively.

The Anti-Sexual Violence Law imposes on the offender the obligation to compensate the victim, explicitly outlining both the rights and obligations related to compensation. From the

investigation stage, it is possible to confiscate the perpetrator's assets as a guarantee of restitution, ensuring that the restitution can be fully paid by the perpetrator. The emphasis of this policy on restitution is evident in the fact that the perpetrator's assets can be "confiscated as a guarantee of restitution." The concept of confiscation as a guarantee for restitution is new in Indonesian criminal law, although "confiscation guarantees" are well-known under the Indonesian Civil Procedure Code (*Het Herziene Indonesisch Reglement/HIR*). It is assumed that this confiscation guarantee for restitution can enhance the likelihood of a successful prosecution and ensure that the payment of restitution is not dependent on the convict's ability to pay. As part of this strategy for ensuring successful restitution, its success begins with the investigator's efforts to detect and secure the perpetrator's assets to prevent concealment or transfer.

This model for fulfilling restitution has the potential to reduce government expenditure on the "Victim Assistance Fund"—monetary compensation. Within this framework, compensation serves more as a substitute for restitution than as the state's "pure" responsibility for victim recovery. The responsibility of the perpetrator and that of the state must be seen as separate entities. Thus, a shift from a need-based to a human rights-based perspective on the relationship between the victim and the state (Milquet, 2019) requires a definition of responsibility distinct from how the perpetrator is held accountable through restitution. State

responsibility for the victim's suffering is deferred based on the proportion of restitution paid by the offender. The question of whether it is essential to compensate victims highlights the fact that the recovery of some or all of the victims' losses may be delayed, while also reflecting the extent and humanity of our civilization. The goal of victim compensation programs is to provide the necessary funds to cover losses and essential services for physical and psychological recovery. Therefore, victim compensation programs are expected to provide access to medical, mental health, and social services that may not be available elsewhere. However, social services and assistance similar to those provided by government institutions may serve as a gateway to victim restitution for disadvantaged crime victims (Alvidrez et al., 2008).

Article 91 of the Anti-Sexual Violence Law states that implementing regulations must be enacted no later than 24 July 2022, two years after the law's promulgation. This provision implies a transitional period and may also suggest a "delay" in the realization of victims' compensation in practical terms. Furthermore, the Law on Sexual Violence allows for a "burden-sharing" financing policy between the central government (state revenue and expenditure budget) and local governments (local revenue and expenditure budgets). This policy is reasonable in order to reduce the financial burden on state revenues, budgets, and expenditures. However, compensation is likely to be paid in 2025 due to local government policies that require

the implementation of government regulations, including local regulations that must be charged to local budgets, revenues, and expenditures. The key concept here is to accelerate the formation of implementing regulations and establish a financing strategy that guarantees the successful payment of compensation to victims, ensuring they do not have to wait until the maximum time for the establishment of a regulatory framework.

The reported 338,496 cases of sexual violence against women in 2021—a 52% increase from the 215,694 cases reported in 2020 (Komnas Perempuan, 2020)—poses a challenge for providing compensation funds for 2022–2023, once the criminal justice process confirms the status of the cases and the need for compensation funds. The rising incidence of sexual violence increases the economic costs to society and alters the allocation (categorization) of costs. The economic costs are rising because the victim's right to recovery includes the payment of compensation when the offender fails to pay restitution, in addition to ensuring the fulfillment of other rights that can be legally demanded, both before and after the judicial process. These rights include medical rehabilitation, mental and social rehabilitation, social empowerment, and social reintegration (Article 70, paragraph 2, the Anti-Sexual Violence Law).

Realizing the rights of sexual violence victims has far-reaching effects on the (local) government budget, the effectiveness of institutional structures, and the need for proper procedures and mechanisms. The right to regular

monitoring, examination, and physical and psychological health services for victims (Article 70, paragraph 3, the Anti-Sexual Violence Law) can reduce the state's obligation to reimburse the victim for these costs compared to a situation in which the victim seeks health services independently. However, fulfilling this right requires cooperation from service provider institutions, particularly investigators who initiate the determination of a victim's eligibility to receive the fulfillment of this right (the "ideal victim"). The concept of the "ideal sacrifice" contrasts with the "non-ideal sacrifice." A victim's "ideal" or "non-ideal" status influences perceptions regarding the need for health services. Non-ideal victims (ingenuine victims) are individuals who do not meet the criteria for ideal victims (genuine victims) based on their situation as understood by the police. This includes factors such as race, income, occupation, mental health, gender, age, location, and behavior (Inzunza, 2022). This imperfect victim is conceptually linked to "victim-blaming," which refers to attributing partial or full responsibility to someone for the negative consequences of harmful or hazardous actions or circumstances they have experienced (Dauphinais, 2021).

The models used in Canada can serve as a comparison and alternative for future legal reforms in Indonesia. The Canadian Criminal Code, in its latest amendments on October 26, 2022, specifically in Part XXIII, "Restitution," states the following:

- **Court to Consider Restitution Order**
737.1 (1) If an offender is convicted or is discharged under section 730 of an offense, the court that sentences or discharges the offender, in addition to any other measures imposed on the offender, shall consider making a restitution order under section 738 or 739.
- **Inquiry by Court**
(2) As soon as feasible after a finding of guilt and in any event before imposing the sentence, the court shall inquire of the prosecutor whether reasonable steps have been taken to provide the victims with an opportunity to indicate whether they are seeking restitution for their losses and damages, the amount of which must be readily ascertainable.
- **Adjournment**
(3) On the application of the prosecutor or on its own motion, the court may adjourn the proceedings to allow the victims to indicate whether they are seeking restitution or to establish their losses and damages, if the court is satisfied that the adjournment would not interfere with the proper administration of justice.
- **Form**
(4) Victims and other persons may indicate whether they are seeking restitution by completing Form 34.1 in Part XXVIII or a form approved for that purpose by the lieutenant governor in council of the province in which the court is exercising its jurisdiction, or by

using any other method approved by the court. If they are seeking restitution, they shall establish their losses and damages, the amount of which must be readily ascertainable, in the same manner.

- **Reasons**

(5) If a victim seeks restitution and the court does not make a restitution order, the court shall include a statement of its reasons for not doing so in the record.

It can be said that after the defendant is declared guilty, before sentencing, the court must ask the public prosecutor about the steps taken to provide the victim with compensation for the losses they have suffered, and whether the value of these losses has been determined by the public prosecutor. If the victim, through the public prosecutor, indicates that they will apply for compensation, the court may adjourn the hearing to address the restitution request. Applications for compensation can be made by the victim directly, through the public prosecutor, or the amount can be determined by the court itself.

Canada is very active in protecting victims, as regulated in the Canadian Victims Bill of Rights, as follows:

- **Restitution Order**

16. Every victim has the right to have the court consider making a restitution order against the offender.

- **Enforcement**

17. Every victim in whose favor a restitution order is made has the right, if the order is not paid, to have it entered as a civil court

judgment that is enforceable against the offender.

The Canadian Victims Bill of Rights explains that every victim has the right to have the court consider the compensation to be imposed on the defendant. The provisions outlined include the victim's right to access the court for restitution consideration, rather than the right to apply for restitution, making the court the active party rather than the victim.

Compensation can be submitted by the victim through the public prosecutor or determined by the court. In the Restitution Order, the public prosecutor explains their obligation to assist the victim in exercising their rights regarding restitution. According to this article, the Restitution Order is particularly useful for public prosecutors, as they are required to prepare responses to the court's inquiries about victims' compensation applications.

The formulation of a police (investigator) decision regarding the status of a non-ideal victim has the potential to influence the decision to confiscate restitution guarantees and, consequently, compensation and its implementation. The reform of Indonesian criminal law to address the rights of victims of sexual violence is a policy that still requires the government and the Supreme Court to develop a regulatory framework ensuring that restitution and compensation can be realized, allowing victims of sexual violence to receive their rights.

D. CONCLUSION

The Canadian Victims Bill of Rights explains that every victim has the right to have the court consider the compensation to be imposed on the defendant. The provisions outlined include the victim's right to access the court for restitution consideration, rather than the right to apply for restitution, making the court the active party rather than the victim.

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