

## Effectiveness of the Implementation of Restitution Payment Decisions for Victims of Criminal Acts of Fraud

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**Abstract:** *This study aims to determine and analyze the effectiveness and obstacles in the implementation of restitution payment decisions for victims of fraud in decision Number 343/Pid.Sus/2022/PN.Bjm. This study uses a sociological legal approach method, analytical descriptive research specifications, the data used are primary data and secondary data. Data collection methods include field studies and literature studies, while the data analysis method is qualitative. The theories used in this study are the theory of legal effectiveness and the theory of legal certainty. Based on the results of the study, it can be concluded that the implementation of restitution payment decisions for victims of fraud at the Banjarmasin District Attorney's Office in decision Number 343/Pid.Sus/2022/PN.Bjm has not been effective. This is because it is constrained by the limitations of the law in regulating the technical implementation of restitution payments by the prosecutor's office, the convict's assets are insufficient to pay restitution, and difficulties in tracing assets. The solution to overcome these obstacles is that it is necessary to immediately create regulations related to technical guidelines for the prosecutor's office in managing the assets of convicts as restitution payments, the prosecutor's office coordinates with LPSK, KPKNL to hold FGD meetings with victims to reach an agreement, cooperation with the Financial Services Authority (OJK) or other related institutions to accelerate the asset identification process.*

**Keywords:** *Effectiveness; Fraud; Restitution.*

### 1. Introduction

The Republic of Indonesia is a country based on law,<sup>1</sup> Therefore, all aspects of life in society, nation and state, including government, must be based on laws that are

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<sup>1</sup>Wahyu Budi Andrianto and Sri Endah Wahyuningsih, The Implementation of Investigation of Persons of Crime of Corruption at Rembang Polres, Ratio Legis Journal, Volume 1 No. 4, December 2022, p.499

in accordance with the national legal system.<sup>2</sup>In the legal field, the Indonesian state also guarantees human rights, namely guaranteeing citizens equal standing before the law and government.<sup>3</sup>The law that applies in a country is called positive law.<sup>4</sup>, one of which is criminal law regulated in the Criminal Code, Criminal Procedure Code and other laws and regulations. Law as a social institution was created by humans to create order.<sup>5</sup>

Legal developments have an impact on law enforcement in Indonesia, where in resolving a criminal case, law enforcement officers are guided by applicable positive law.<sup>6</sup>Since the reform era, reform efforts have also emerged regarding law enforcement, one of which is protection of the rights of victims of criminal acts.<sup>7</sup>namely granting rights to victims in the form of compensation and restitution.

Fulfillment of victims' restitution rights is highly dependent on the proactive attitude of investigators, public prosecutors and judges in providing information on restitution rights.<sup>8</sup>In law enforcement practice, a request for restitution through LPSK will be submitted in the indictment by the Public Prosecutor as a consideration for the judge in making a decision, where the executor of the judge's decision is the prosecutor.<sup>9</sup>The Public Prosecutor is responsible for the implementation of the decision. In practice, until now there have been no technical guidelines for handling the granting of restitution rights for victims of criminal acts, especially for making further efforts such as confiscating, estimating the price, selling or auctioning in order to manage the convict's property to fulfill the convict's legal obligation to pay restitution to the victim who has been harmed.

Guidelines for prosecutors to take action against goods resulting from a crime are regulated in the Republic of Indonesia Attorney General's Regulation Number 10 of 2019 concerning Amendments to the Attorney General's Regulation Number PER-002/A/Ja/05/2017 concerning Auction and Direct Sale of Confiscated Objects or State Confiscated Objects or Execution Confiscated Objects in conjunction with

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<sup>2</sup>Widayati, Implementation of Legal Principles in the Formation of Participatory and Fair Legislation, Unissula Law Journal, Volume 36 No. 2, September 2020, p. 60.

<sup>3</sup>Setiyawati and Achmad Arifullah, Legal Protection for Child Victims of the Crime of Rape in Decision Number 239/PID.SUS/2022/PN.Clp, Ratio Legis Journal, Volume 2 No. 3, September 2023, p.1409

<sup>4</sup>Hartono Hadisoeparto, 2001, Introduction to Legal System, Liberty, Yogyakarta, p.3.

<sup>5</sup>Pujiono, 2007, Collection of Criminal Law Writings, Mandar Maju, Bandung, p. 66

<sup>6</sup>Laras Yudari, Ismansyah, Yoserwan, Application of Restitution in Public Prosecutor's Demands Against Victims of Murder in the Jurisdiction of the Bungo District Attorney's Office, Unes Law Review, Volume 5 Issue 4, June 2023, p. 3971

<sup>7</sup>Andreas Lucky Lukwira, Restitution as Additional Punishment that is Beneficial for Perpetrators and Victims of Crime, Deviance Journal of Criminology, Volume 1 Number 1, 2017, p. 57.

<sup>8</sup>Adiba Alya and Setia Budi, Implementation of Restitution for Children Who Are Victims of Criminal Acts, Jurnal Hukum, Vol. 3 No. 4, 2021, p. 706.

<sup>9</sup>I Wayan Edi Kurniawan, Anak Agung Sagung Laksmi Dewi, I Made Minggu Widyantara, Prosecutor as Executor in the Court Decision for the Crime of Murder, Journal of Legal Preferences, Vol. 1, No. 2, 2020, p. 154.

the Attorney General's Guidelines Number 24 of 2021 concerning Handling of General Criminal Cases, however, these regulations only regulate the auction and direct sale of confiscated objects or state confiscated objects or execution confiscated objects against evidence to be returned or handed over to the state and do not further regulate the mechanism for handling evidence in the context of managing the convict's assets in order to make restitution payments to victims.

This condition causes the Public Prosecutor to experience difficulties in implementing restitution payments to victims of criminal acts. This is as happened in Decision No. 343/Pid.Sus/2022/PN.Bjm, where the judge in his decision required the perpetrator to pay restitution to the victim of the crime of fraud. In his decision, the defendant was required to pay restitution to the victims with a total of IDR 634,500,000. In practice, the Public Prosecutor cannot implement the decision to pay restitution to the victim, because the perpetrator is unable to pay restitution in accordance with the judge's decision. The Public Prosecutor also does not yet have technical guidelines in the mechanism for handling evidence in the context of managing the convict's property for restitution payments to the victim.

This study aims to determine and analyzing the effectiveness of the implementation of restitution payment decisions for victims of fraud at the Banjarmasin District Attorney's Office in decision Number 343/Pid.Sus/2022/PN.Bjm and its obstacles.

## **2. Research methods**

This research uses a sociological legal approach method, namely research based on normative legal science and how the law works in society.<sup>10</sup> The research specification is descriptive analytical. The type of data used is primary data and secondary data with data collection methods being field studies and literature studies. The data analysis method uses qualitative analysis.

## **3. Results and Discussion**

### **3.1. The effectiveness of the implementation of the decision on payment of restitution to victims of fraud at the Banjarmasin District Attorney's Office in Decision Number 343/Pid.Sus/2022/PN.Bjm**

on the verdict Number 343/Pid.Sus/2022/Pn.Bjm, regarding the implementation of the first court decision, namely the criminal sentence, the criminal sentence has been implemented. Regarding the payment of restitution in fraud, the Banjarmasin District Attorney's Office does not yet have special regulations governing the payment of restitution in fraud. In this case, the prosecutor is guided by the PP on the Provision of Compensation, Restitution and Assistance to Witnesses and Victims and Perma Number 1 of 2022 concerning Procedures for Settling Applications and Granting Restitution and Compensation to Victims of

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<sup>10</sup>Mukti Fajar ND and Yulianto Achmad, 2013, Dualism of Normative and Empirical Legal Research, Pustaka Pelajar, Yogyakarta, p.47.

Criminal Acts which regulates the procedure for payment of restitution. In accordance with Article 8 paragraph (5) of Perma Number 1 of 2022, payment of restitution is carried out no later than 30 days since the perpetrator of the crime and/or Third Party receives a copy of the court decision that has permanent legal force or 30 days since the Court's decision is pronounced or notified in the case where Restitution is filed after the main case decision has permanent legal force.

In the petition of the public prosecutor (JPU) in the indictment, it will be stated that confiscated objects from criminal acts at the investigation level can be used as restitution payments, within 30 days if the convict does not pay, the prosecutor in this case as the executor of the criminal decision will auction off the convict's items.<sup>11</sup>

Thus, related to the restitution payment decision, after the decision has been finalized, the convict is given 30 days to pay, if not paid, the Public Prosecutor as the executor of the court decision and based on applicable legal regulations confiscates evidence belonging to the convict that has economic value and is related to the crime, then the Public Prosecutor conducts an auction through the KPKNL. For objects whose value has been estimated below 30 million which have previously been appraised by the KPKNL, the Public Prosecutor through the Evidence Division auctions/conducts direct sales. Meanwhile, for goods whose value is above 30 million, the auction is conducted by the KPKNL, in this case land and buildings.<sup>12</sup>

The results of the interview with Mr. Dimas stated that the auction of the defendant RA's assets in the form of houses and buildings was carried out by the Banjarmasin District Attorney's Office through the KPKNL. The proceeds from the auction of the assets were used to compensate the victims of the arisan. This is because in the criminal act of fraud there is no element of state loss as in the criminal act of corruption, so the money from the auction was fully used to pay restitution to the victims.<sup>13</sup>

In the implementation of the restitution payment decision to the victims, it is known that the number of victims entitled to restitution is 6 people, namely Witness EN for Rp493,000,000.00; Witness MPE for Rp20,000,000.00; Witness RR for Rp56,000,000.00; Witness CRS for Rp38,500,000.00; Witness NJ for Rp17,000,000.00; and Witness NR for Rp10,000,000.00. The total amount of restitution is Rp634,500,000.00. In the implementation of the restitution payment, it turns out that the payment for the victims was not paid in full, because

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<sup>11</sup>Results of an interview with Mr. Radiyto Wisnu Aji, as Prosecutor/Former Head of Pre-Prosecution Sub-Section at the Banjarmasin District Attorney's Office, November 4, 2024.

<sup>12</sup>Results of an interview with Mr. Radiyto Wisnu Aji, as Prosecutor/Former Head of Pre-Prosecution Sub-Section at the Banjarmasin District Attorney's Office, November 4, 2024.

<sup>13</sup>Results of an interview with Mr. Dimas Purnama Putra, as Head of the Intelligence Section of the Banjarmasin District Attorney's Office, November 4, 2024.

the value of the evidence and assets auctioned was less than the value of the losses experienced by the victims.<sup>14</sup>

In this case, considering that the sale of assets was not sufficient to cover the losses suffered by the victims, before the auction, an FGD meeting was held regarding the implementation of restitution payments with the victims so that an agreement was reached regarding the payment of each victim. After an agreement regarding the payment of restitution for each victim was reached, the auction was held and the proceeds from the auction were paid to the victims according to the previous agreement.<sup>15</sup>

In practice in the field, related to restitution payments are not always fulfilled, depending on the amount of assets owned by the perpetrator whether or not it is sufficient to cover the restitution payments. However, in this case, the Prosecutor as a law enforcement officer has attempted to carry out the decision, because the essence of what the prosecutor does is to provide justice for the related parties, namely the victim and the perpetrator.

The prosecutor is tasked with ensuring that restitution payments are made in accordance with the court's decision. If the perpetrator is unable or uncooperative, the prosecutor can attempt to confiscate or seek other legal solutions. However, if the perpetrator is truly unable to pay and no assets have been seized, then restitution may not be fully paid. In this case, there is still a legal vacuum, because with a joint agreement on restitution payments, it results in the absence of legal certainty in the implementation of court decisions related to restitution payments.

Based on the description above, it can be said that the implementation of the decision regarding the payment of restitution to victims of fraud in case Number 343/Pid.Sus/2022/Pn.Bjm has not been effective. This is because the payment of restitution cannot be carried out in full in accordance with the court's decision regarding the nominal loss. This is because the confiscated assets and auctioned assets are not sufficient to pay restitution to the victim.

### **3.2. Obstacles Faced by Public Prosecutors in Decisions on Restitution Payments to Victims of Fraud at the Banjarmasin District Attorney's Office in Decision Number 343/Pid.Sus/2022/PN.Bjm**

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<sup>14</sup>Results of an interview with Mr. Radiyto Wisnu Aji, as Prosecutor/Former Head of Pre-Prosecution Sub-Section at the Banjarmasin District Attorney's Office, November 4, 2024

<sup>15</sup>Results of an interview with Mr. Radiyto Wisnu Aji, as Prosecutor/Former Head of Pre-Prosecution Sub-Section at the Banjarmasin District Attorney's Office, November 4, 2024

The obstacles faced by the Public Prosecutor in deciding on restitution payments to victims of fraud in this case are as follows:<sup>16</sup>

1. Limitations of the law in regulating the technical implementation of restitution payments by the prosecutor's office

The guidelines for prosecutors to take action on goods resulting from a crime refer to Perja Number Per-002/A/Ja/05/2017 as last amended in Perja Number 24 of 2021 concerning Handling of General Criminal Cases. However, this regulation only regulates the auction and direct sale of confiscated or seized state goods or confiscated execution of evidence to be returned or handed over to the state, and has not regulated further regarding the technical mechanism for handling evidence in the context of managing the property owned by the convict in order to make restitution payments for victims of criminal acts that have been decided by a judge and have permanent legal force. The above laws and regulations also do not regulate the mechanism for paying restitution if the evidence and assets owned by the convict are insufficient to pay restitution to the victim.

2. The convict's assets are insufficient to pay restitution

In the implementation of the restitution payment decision for victims of fraud in case number 343/Pid.Sus/2022/PN.Bjm, the confiscated goods sold directly by the prosecutor's office turned out to be insufficient to pay restitution to the victims as stated in the court decision, as well as the results of the land auction and assistance implemented by the KPKNL, which also took a long time.

3. Difficulty in asset tracing

Prosecutors have difficulty tracing the assets of convicts. This is due to the lack of transparent data, where many assets are hidden by being transferred to third parties such as family or co-workers. In addition, there is no effective system to integrate asset ownership data, such as land certificates, vehicles, bank accounts and digital assets, making tracking difficult.

Based on the description above, it can be seen that prosecutors in implementing restitution payment decisions for victims of fraud face several obstacles, so that the implementation of restitution payments to victims of crime is not yet fully effective. These obstacles affect the effectiveness of implementing restitution payment decisions for victims of fraud.

#### 4. Conclusion

The implementation of the restitution payment decision for victims of fraud at the Banjarmasin District Attorney's Office in decision Number 343/Pid.Sus/2022/PN.Bjm has not been effective due to several obstacles, namely limited laws, the convict's assets are insufficient to pay restitution, and difficulties in tracing assets. Therefore, it is necessary to create technical regulations and

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<sup>16</sup>Results of an interview with Mr. Rادیto Wisnu Aji, as Prosecutor/Former Head of Pre-Prosecution Sub-Section at the Banjarmasin District Attorney's Office, November 4, 2024

utilize technology that is integrated with asset ownership to facilitate asset tracing.

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Law Number 16 of 2004 concerning the Prosecutor's Office as amended by Law Number 11 of 2021

Regulation of the Attorney General of the Republic of Indonesia Number 10 of 2019 concerning Amendments to the Regulation of the Attorney General Number PER-002/A/Ja/05/2017 concerning Auction and Direct Sale of Confiscated Objects or State Confiscated Goods or Execution Confiscated Objects.

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