

## **Legal Analysis of Restitution Granting as an Effort to Restore the Rights of Victims of Sexual Violence in the Perspective of Indonesian Positive Law Based on Justice Values**

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**Abstract.** *Sexual violence is a violation of human rights that injures the dignity and honor of the victim, and requires recovery through restitution. Even though it has been regulated in Indonesian positive law, the implementation of providing restitution for victims of sexual violence still faces various challenges. The aim of this research is to analyze the current arrangements for providing restitution as an effort to restore the rights of victims of sexual violence, to analyze the weaknesses of the system of providing restitution as an effort to restore the rights of victims of sexual violence in the perspective of positive Indonesian law, and to analyze the ideal arrangements for providing restitution as an effort to restore the rights of victims of sexual violence in the perspective of positive law in Indonesia in the future based on justice. The approach method used in preparing the thesis is normative juridical research. The specifications in this research are descriptive analysis. The theories used include legal certainty theory, legal system theory, justice theory. The results of this research are (1) Regulations regarding the provision of restitution in cases of criminal acts of sexual violence have been regulated in Law Number 12 of 2022 and Supreme Court Regulation Number 1 of 2022. Restitution is recognized as a victim's right which must be exercised by the perpetrator or a third party. (2) Weaknesses in the substance of current regulatory law are that they are unable to provide protection for victims because they still place victims as objects in the criminal justice system. Weaknesses in legal culture which is still influenced by patriarchy and negative stereotypes towards women. (3) The ideal arrangement for providing restitution as an effort to restore the rights of victims of sexual violence requires the presence of a legal system that is not only based on normative justice as regulated in the TPKS Law and its derivative regulations, but is also realized substantively through real fulfillment of the victims' rights, including when the perpetrator is unable to pay. The imbalance between norms and implementation shows the need for improvement, especially in the state's role in ensuring the recovery of victims through compensation mechanisms, in order to achieve complete justice as described by Hans Kelsen, that the law must apply generally and regularly, where the state needs to ensure that victims' rights can be realized in real terms as a form of the state's responsibility in protecting its citizens.*

**Keywords:** *Restitution; Sexual Violence; Victim.*

## 1. Introduction

Writing bodynote is similar to the Bibliography/Reference List, only for books the pages are deleted in the order of the Author's Name. Year. *Title Italics*. City: Publisher. page. For journals with italics, the name of the journal is not the title. Meanwhile, the rest of the Bibliography/Reference List is the same as above. Let's give an example bodynote no. 1 example of a reference from a journal, then from a book, then the internet, then regulations, interview, etc.

## 2. Research Methods

The research method used in this writing is a normative legal method conducted through a literature study that examines secondary data in the form of laws and regulations relating to sexual violence laws as well as research results and other references. This study uses a normative legal research type because the provisions regarding the provision of restitution as an effort to restore the rights of victims of sexual violence are based on the value of justice. Secondary data is data obtained from library materials. Secondary data in this study were obtained from primary legal materials and tertiary legal materials. The three legal materials referred to in this study include books (including dictionaries) and various other sources such as: basic regulations and laws and regulations relating to the provision of restitution to victims of sexual violence, articles, scientific magazines, newspapers, and unpublished data/sources, materials from the internet, and other materials related to the title of this study.<sup>1</sup>

## 3. Results and Discussion

### 3.1. Regulations on the Granting of Restitution as an Effort to Restore the Rights of Victims of Sexual Violence Today

The right of every Indonesian citizen to be free from persecution and bullying and bad actions such as degrading someone's self-esteem, this is a constitutional right which is protected by the 1945 Constitution. Sexual violence is a form of violence and treatment that hurts the level of human dignity. This tarnishes the values of divinity and humanity and attacks the security and peace of citizens.<sup>2</sup>

Violence against women can be simply defined as any form of behavior committed against women that results in psychological consequences in the form of feelings of fear or physical injury. This definition is so broad that it includes everything from sexual harassment in the form of whistling or teasing women, to the state's neglect of the condition of its female citizens who are victims of violence.

Victims as parties who continue to suffer the disaster due to violations of criminal regulations are generally only involved in providing information as victim witnesses. Therefore, victims

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<sup>1</sup> Fradhana Putra Disantara, The Integralistic State Idea: Reconstruction of Administrative Efforts Perspective, Institute of Technology and Business, Jurnal Daulat Hukum, Vol. 6 Issue 2, 2023

<sup>2</sup>Nazaruddin Lathif, et. al., "Policy Reform for Handling Sexual Violence Crimes According to the Tpk's Law to Achieve a Civilized Indonesian Society." PALAR (Pakuan Law Review) Vol. 8, No. 4, 2022, p. 91-105.

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often feel disappointed with accusations of violations of the law submitted by the prosecutor or perhaps also the verdict given by the judge because it is considered not in accordance with the losses experienced by the victim. In fact, victims of sexual violence who experience losses can use the restitution mechanism in combining cases in an effort to sue for damages as regulated in the Criminal Procedure Code.<sup>3</sup>

Compensation is a form of direct protection for victims, but in practice, both restitution and compensation as forms of compensation are not yet known and understood by law enforcement officers or the Indonesian people. The difference between restitution and compensation can be seen from two things. First, compensation is a demand for compensation made by the victim through an application paid by the community or the state. Compensation does not require punishment of the perpetrator of the crime. Second, in restitution, the demand for compensation is made through a court decision and paid by the perpetrator of the crime.

Regulations regarding restitution for victims of sexual violence in Indonesia are regulated in various laws and regulations, which complement each other. Provisions regarding restitution in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence are regulated in Article 1 number 20, namely restitution is defined as payment of compensation imposed on the perpetrator or third party based on a court decision or ruling that has permanent legal force, for material and immaterial losses experienced by the victim or his heirs. Article 30 (1) explains that victims of criminal acts of sexual violence have the right to receive restitution and recovery services, then Article 30 (2) states that this restitution includes:

1. Compensation for loss of wealth or income;
2. Compensation for suffering resulting from directly related criminal acts of sexual violence;
3. Reimbursement of medical expenses, both medical and psychological;
4. Compensation for other losses suffered by victims due to sexual violence crimes.

Article 31 (1) states that investigators, public prosecutors and judges are required to notify victims and LPSK of their right to restitution.

Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence expressly states that restitution is the right of victims of sexual violence, not only that, this law can be said to be better than previous laws and regulations in fulfilling the rights of victims of criminal acts of sexual violence. This law guarantees the fulfillment of the rights of victims of sexual violence, not limited to restitution alone. Regulations regarding the rights of victims are stated in Articles 68 to 70, namely, the rights regarding handling, protection, and recovery.

Law No. 12 of 2022 also regulates the procedure for submitting restitution to victims, where restitution must be given to victims within a maximum of 30 days after a copy of the verdict or court ruling is received. The prosecutor is responsible for submitting a copy of the verdict to the convict, victim, and LPSK within 7 (seven) days from the time the copy is received. If

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<sup>3</sup>Gita Kiki Septia and Suhartini Suhartini. "The Interest of Restitution in the Criminal Justice System as a Means of Recovery for Victims of Sexual Violence: (Case Study of Decision No: 382/Pid. sus/2020/PN Jkt. Sel)." SYNTAX IMPERATIVE JOURNAL: Journal of Social Sciences and Education Vol. 4, No. 6, 2024, p. 916-928.

restitution is not given within the specified time limit, the victim or his/her heirs can notify the court, which will then issue a written warning letter to the perpetrator to immediately fulfill his/her obligations. In situations where restitution is still not carried out, the court can order the prosecutor to auction off the perpetrator's assets that have been confiscated as collateral to meet the payment of the restitution. If the auction proceeds exceed the amount of restitution set, the excess is returned to the perpetrator. However, if the auction proceeds are insufficient, the perpetrator may be subject to a substitute sentence in the form of imprisonment, with a sentence that does not exceed the principal criminal penalty. If the perpetrator is a corporation, a substitute sentence in the form of closing part of the corporation's business premises or business activities can be applied for up to one year.<sup>4</sup>

The forms of restitution rights that can be obtained, as regulated in Article 4, include compensation for lost income or assets; compensation for both material and immaterial losses arising from criminal acts; medical and psychological treatment costs; and other losses experienced by victims due to criminal acts, including basic transportation costs and other costs related to the legal process.

Article 91 paragraph (1) of Law Number 12 of 2022 also states that all implementing regulations of this law must be stipulated no later than two years from the date of its enactment. However, until now there has not been a single implementing regulation issued after the TPKS Law was passed. Therefore, even though Perma Number 1 of 2022 was issued before the TPKS Law was enacted, the provisions therein still apply in terms of providing restitution to victims of sexual violence crimes.

Supreme Court Regulation (Perma) Number 1 of 2022 on Procedures for Settlement of Applications and Granting of Restitution and Compensation to Victims of Criminal Acts regulates that applications for restitution can be submitted either before or after a court decision has permanent legal force. Before submitting an application, the victim or applicant must meet a number of requirements as stipulated in Article 5 of the Perma.

The restitution application must include a number of information, namely: the applicant's identity, the victim's identity (if different), a description of the criminal incident, the identity of the defendant or respondent, a description of the losses suffered, and the amount of restitution requested. In addition, the applicant must also attach supporting documents, such as a photocopy of the identity, proof of material losses, proof of treatment or medical expenses, a description of immaterial losses, a photocopy of the death certificate if the victim has died, a certificate of family relationship or attorney (if representing), and a copy of the court decision if it has permanent legal force. In cases where the victim is a child, the application can be submitted by parents, guardians, heirs, or the Witness and Victim Protection Agency (LPSK).

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<sup>4</sup>Meisyifa Yosaliza, Implementation of Restitution in Sexual Violence Crimes Based on District Court Decision No. 101/Pid.sus/2024/PN Pyh, Contribution 12 Journal, Vol. 3, No. 2, 2025, p. 1-14

The application must be made in writing, signed by the applicant or his/her attorney, and submitted to the Chairman or Head of the District Court, either directly or through the LPSK, investigator, or public prosecutor. The further mechanism when the application for restitution is submitted through the LPSK is regulated in the LPSK Regulation concerning the Application Procedure and Implementation of Restitution. If the victim has met the administrative requirements as referred to in Perma No. 1 of 2022, the LPSK will continue by conducting a feasibility examination. This examination consists of two stages: a formal examination of the completeness of the documents, and a substantive examination of the truth of the incident, the victim's identity, and the amount of loss. This substantive examination is important to assess the truth of the criminal incident and the validity of the losses experienced by the victim. After the entire examination is complete, the LPSK determines the appropriate amount of restitution and will then be submitted to the court to be legally decided.<sup>5</sup>

The mechanism for submitting a restitution application before a final and binding court decision is regulated in Article 8 to Article 10 of Perma Number 1 of 2022 concerning Procedures for Settling Applications and Granting Restitution and Compensation to Victims of Criminal Acts. If the application is submitted through an investigator or LPSK, the restitution application file must be submitted by the investigator or LPSK to the public prosecutor, including the LPSK's decision regarding the amount of restitution, before the case file is submitted to the court or at the latest before the public prosecutor reads out the criminal charges. If the restitution application is submitted before the case file is submitted, the public prosecutor is required to include the application in the indictment, combine it with the case file, and immediately submit a copy to the defendant or his legal counsel.

Based on Article 8 paragraph (12) of the Supreme Court Regulation (Perma) Number 1 of 2022 concerning Procedures for Settlement of Applications and Granting of Restitution and Compensation to Victims of Criminal Acts, the judge is required to include in the verdict the acceptance or rejection of the restitution application. The verdict must explicitly contain the reasons underlying the acceptance or rejection of the application, either in whole or in part. In addition, the judge must also state the amount of restitution that must be paid by the defendant, the defendant's parents (if the defendant is a child), and/or a third party. Furthermore, Article 9 of Perma Number 1 of 2022 emphasizes that submitting a restitution application through a criminal mechanism does not eliminate the rights of the victim, family, heirs, or guardians to file a civil lawsuit. The right to sue remains open under two conditions:

1. The restitution application was rejected because the defendant was declared free or discharged from all legal charges by the court;
2. The restitution application was granted, but there were still losses that were not listed in the application or were not considered by the judge in his decision.<sup>6</sup>

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<sup>5</sup> Fauzy Marasabessy. "Restitution for Victims of Crime: A New Mechanism Offered." *Journal of Law & Development* Vol. 45, No. 1, 2016, p. 53-75.

<sup>6</sup>Afriandi, Angga, Fahmi Fahmi, and Rudi Pardede. "Implementation of Material Loss Restitution for Victims of Fraud in the Jurisdiction of the Rokan Hulu Police Based on Law Number 31 of 2014 Concerning Protection of Witnesses and Victims." *Innovative: Journal Of Social Science Research*, Vol. 4, No. 5, 2024, p. 5524-5535.



After the judge has made a decision regarding the restitution application, there are administrative obligations that must be immediately implemented by law enforcement officers. Based on the provisions of Supreme Court Regulation Number 1 of 2022 concerning Procedures for Settlement of Applications and Granting of Restitution and Compensation to Victims of Criminal Acts, the public prosecutor is obliged to submit a copy of the court decision to the defendant, third parties (if any are also burdened with the obligation to pay restitution), and the Witness and Victim Protection Agency (LPSK), no later than 7 (seven) days from the date of receipt of the copy of the decision from the court.

LPSK is obliged to forward a copy of the decision to the victim or to the family, guardian, heir, or attorney according to the legal status of the victim concerned. This provision emphasizes the principle of participation and protection of victim rights by ensuring that the victim or the party representing him/her obtains legal information quickly and on time. Regarding the mechanism for submitting a restitution application after a court decision that has permanent legal force (*inkracht van gewijsde*), it is specifically regulated in Articles 11 to 15 of Perma Number 1 of 2022. Article 11 emphasizes that if the victim does not submit a restitution application during the trial process against the perpetrator of the crime, the victim is still given the right to submit a restitution application after the court decision has permanent legal force. The provisions regarding the provision of restitution to victims of sexual violence as stated in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence and Supreme Court Regulation Number 1 of 2022 indicate the protection of victims' rights. From the perspective of the theory of legal certainty put forward by Gustav Radbruch, legal certainty is one of the three fundamental elements in law besides justice and utility, which requires that the law must be predictable, generally applicable, and implemented consistently. The provisions regarding restitution have led to the fulfillment of the principle of legal certainty because they have provided detailed, structured, and normative legal procedures in an effort to restore victims' losses.

However, in its implementation, the theory of legal certainty has not been fully realized in the practice of providing restitution to victims of sexual violence. Although normatively there are clear rules, such as the obligation of investigators and prosecutors to notify the right to restitution, the time limit for providing restitution, and administrative obligations after the verdict, there is still a discrepancy between written norms and the reality in the field. One real manifestation of this failure is the non-issuance of all implementing regulations mandated by Article 91 paragraph (1) of Law No. 12 of 2022. As a result, there is a legal vacuum that reduces the power of the law and creates uncertainty for victims, law enforcers, and supporting institutions such as LPSK.

### **3.2. Weaknesses of the Restitution System as an Effort to Restore the Rights of Victims of Sexual Violence in the Perspective of Indonesian Positive Law**

National law cannot guarantee that justice is realized, but there are other factors that can influence the law in order to achieve certainty, justice, and benefits. In accordance with what

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Lawrence M. Friedman said that the law that works is influenced by 3 components, namely legal substance, legal structure, legal culture.<sup>7</sup>

#### 1. Weaknesses of Legal Substance

Law and justice are two things that cannot be separated. Legal rules are a set of rules that regulate the behavior of citizens which at a certain time and place are felt as demands of justice in order to realize justice that can open up opportunities for everyone to achieve happiness in living life in the world. The law aims to realize justice that guarantees the implementation of certainty and predictability in society. Its compliance is not entirely left to the free will of each citizen, but can be enforced by society in an organized manner in accordance with the legal rules that regulate law enforcement.<sup>8</sup>

According to Jo-Anne Wemmers criminal law usually views victims as witnesses to a crime or violation of state law only, thus closing them off from the criminal justice process and only allowing them in when they are required to testify. This is a major source of dissatisfaction for victims who seek validation in the criminal justice system. It is further stated that victims are persons with rights and privileges. A crime is a violation of their rights and an act against society or the state. While human rights instruments, such as the Universal Declaration of Human Rights, do not specifically mention victims of crime, a number of rights are identified, which can be viewed from the victim's perspective.

As a dignified individual, the victim has the right to recognition as a person before the law. However, these rights are only meaningful if they can be enforced. The issue of fulfilling restitution as a right of victims of criminal acts, in fact, does not stop at the question of the clarity of the law, but also how restitution is understood as a right of the victim. The victim is a legal subject whose rights have been violated and who has suffered or suffered losses due to the perpetrator's actions. In this understanding, the perpetrator's actions not only violate state law, but also violate the victim's personal rights.

Settlement by imposing a criminal sentence on the perpetrator is not enough to restore the belief system or restore the disturbed condition of the victim, as long as the perpetrator does not fulfill the victim's right to restitution.

Sexual violence is a problem that has long been in the spotlight in Indonesian society. Currently, cases of sexual violence against adult women and children are still rampant. Sexual violence not only has physical impacts, but also leaves deep psychological wounds for its victims. The psychological impacts caused are often much more difficult to heal than physical wounds, because it takes a long time for victims to truly recover from the trauma they experience.

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<sup>7</sup>Rahmat Raka Winata. "Implementation of Restitution for Child Victims of Crime in Polestabas Palembang." *Darma Agung Journal*, Vol. 32, No. 2, 2024, p. 677-685.

<sup>8</sup>I NyomanAdika, et. al., "The Role of Investigators in Providing Restitution for Victims of Sexual Violence Crimes Based on Law Number 12 of 2022 Concerning Sexual Violence Crimes at the Buleleng Police Resort." *Kertha Widya*, Vol. 11. No. 2, 2024, p. 31-58.

Through the Law on Sexual Violence (UU TPKS), the government is taking legal reform steps as an effort to address the issue of sexual violence in Indonesia in order to create a civil Indonesian society—a peaceful, prosperous, open to differences, advanced, and modern society. Indonesia as a country based on law places the law as the highest authority that must be respected by all citizens. Human rights are an important element of a country based on law, where the existence of legal certainty is very much needed to guarantee justice in society. These elements are characteristics of a civil society, one of which is evident from the presence of legal certainty through special regulations regarding criminal acts of sexual violence, which previously had not been specifically regulated in a separate regulation, namely now through Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence. This provision is also in line with the theory of criminal law policy, which states that the state has the authority to take legal policies, including in the form of criminal regulations, such as the enactment of the TPKS Law. The purpose of this policy is to tackle crimes of sexual violence, which is also part of criminal law reform in order to realize a civil Indonesian society.

Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS) is considered an improvement compared to previous laws and regulations. This law provides stronger protection for the rights of victims of sexual violence. Provisions regarding victim rights are stated in Articles 68 to 70, which include the right to treatment, protection, and recovery. Deconstruction of the provisions on victim rights in the TPKS Law aims to complement and strengthen the provisions regarding victim rights that have previously been regulated in other laws and regulations, in order to ensure respect for the constitutional rights of victims. In these articles, victims receive guaranteed treatment, including access to information and health services, legal assistance, and the removal of content containing sexual violence in electronic media. For guaranteed protection, the scope includes access to information and protection services, confidentiality of victim identity, rights to education, employment, protection from lawsuits, threats of violence, and actions that degrade the dignity of victims. Meanwhile, in terms of recovery, mental and medical rehabilitation, social empowerment, compensation, and restitution are guaranteed.<sup>9</sup>

Based on Article 33 of Law Number 12 of 2022 concerning Sexual Violence Crimes, if the Convict does not pay restitution, the Judge will order the Prosecutor to auction the assets that have been confiscated as collateral belonging to the Defendant. If the value of the assets is insufficient to cover the amount of restitution, the Convict will be sentenced to a substitute prison sentence that does not exceed the main criminal threat. The TPKS Law stipulates that confiscation of collateral against the Defendant's assets is a must. However, until now there have been no government regulations or internal provisions from the Prosecutor's Office and the Supreme Court that specifically regulate the technical procedures for confiscation of collateral in cases of Sexual Violence Crimes.

Another problem that arises in the TPKS Law is related to the provisions in Article 33 paragraph (7), which states that if the assets of the Convict that have been confiscated as

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<sup>9</sup> Hamzah, Abu 'Abdul Lathif al-Ghamidi. (Ed). 2010, Stop Domestic Violence (Domestic Violence) Eliminate the Tempest of Violence at Home by Returning to Islamic Guidance, Imam Syafi'i Library. Jakarta,



referred to in paragraph (5) are not sufficient to cover the costs of restitution, then the Convict is subject to a substitute prison sentence that does not exceed the principal sentence. Furthermore, Article 33 paragraph (9) stipulates that the implementation of the substitute sentence as referred to in paragraph (7) and paragraph (8) must consider the restitution that has been paid proportionally. Unfortunately, there are no guidelines yet available for Prosecutors or Judges regarding the standard amount of restitution and the substitute prison sentence that is proportional to the restitution that has not been paid, so that there is no uniformity in its application across all judicial institutions in Indonesia. This condition has led to the emergence of various interpretations among Judges and Prosecutors to date.

## 2. Weaknesses of Legal Structure

The criminal justice system in Indonesia has a primary function in enforcing the law and ensuring justice for all parties involved in the judicial process, including victims of crime. However, in practice, this system focuses more on punishing perpetrators of crimes and does not pay sufficient attention to the rights of victims. This reflects that the judicial approach used is still retributive, which emphasizes revenge on perpetrators without considering the aspect of comprehensive victim recovery.

In Indonesia, the mechanism of restitution and compensation for victims of sexual violence has been regulated in various regulations, including Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence. However, in practice, the implementation of restitution and compensation is still very limited, this creates disparities in decisions that should be a means of recovery for victims. When restitution is not included in the verdict, the victim's right to recovery loses legal legitimacy, even though the crime of sexual violence has been proven legally and convincingly. This disparity reflects the inconsistency in the application of the law, which ultimately harms the victim as the most affected party.

The absence of restitution payment orders in most court decisions also opens up room for injustice. Victims in areas with law enforcement officers who are responsive to restitution are more likely to receive their rights, while victims in other areas where law enforcement officers are less knowledgeable or do not prioritize aspects of victim recovery have the potential to lose their right to restitution entirely. This condition creates an inequality in legal treatment that is contrary to the principle of equality before the law guaranteed by the constitution.

## 3. Weaknesses of Legal Culture

Violence against women is categorized as gender-based violence. According to Niken, this is because violence against women is often caused by gender inequality due to unequal power relations. The root of the problem of violence committed against women is due to gender relations between the perpetrator who controls and the victim as the person who is controlled through the act of violence. Sexual violence is a term that refers to deviant sexual behavior or deviant sexual relations, harming the victim and destroying peace in society. Crimes of sexual violence result in the suffering of victims who require serious attention.<sup>10</sup>

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<sup>10</sup> Dominikus Rato, 2010, *Philosophy of Law Seeking: Understanding and Understanding the Law*, Laksbang Pressindo, Yogyakarta,

Sexual violence experienced by women is a form of lowly position of women towards the sexual interests of men. The sexual image of women who have placed themselves as sexual objects of men can have far-reaching implications in their daily lives, where women are constantly faced with violence, coercion and torture, both physical and psychological. Therefore, sexual violence is not only a reflection of the image of women as sex objects, but as objects of male power.

Sexual violence is gender-based violence that cannot be separated from patriarchal culture. Patriarchal culture is a culture and ideology that is centered on men and for the benefit of men and legitimizes men as holders of power and superiority. This ideology gives rise to the idea that women are inherently inferior creatures, thus placing women in a vulnerable position to be conquered and treated according to the wishes of men, including by means of violence. This patriarchal ideology influences the way people think, influences the interpretation of religious texts and also policy makers. This influence passes through human life, both in the private (domestic) and public domains. Inequality based on patriarchal ideology has the potential to create injustice, subordination, stereotypes and domination of women and violence.

The success of the legal system is not enough only in legal drafting (making laws), but must be supported by legal institutions and a supporting legal culture. Restitution, as the right of victims of sexual violence, should not only be a beautiful norm in the law, but must be realized in fair judicial practices throughout Indonesia. The author believes that as long as there is still inequality in the restitution system due to poor synchronization between these three legal components, legal certainty and substantive justice for victims will only be normative discourse without real actualization.<sup>11</sup>

### **3.3. Arrangement Ideal Granting Restitution as an Effort to Restore the Rights of Victims of Sexual Violence Based on Justice**

The right to feel safe and the right to be free from all forms of discrimination is a constitutional right held by every Indonesian citizen, as regulated in Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that: "Everyone has the right to protection of themselves, their families, their honor, their dignity, and their property under their control, and has the right to a sense of security and protection from the threat of fear to do or not do something that is a basic human right." This provision is reinforced in Article 28I paragraph (2) of the 1945 Constitution which states: "Everyone has the right to be free from discriminatory treatment on any basis and has the right to receive protection from such discriminatory treatment." However, the reality on the ground shows that this constitutional guarantee has not been fully felt by all citizens, especially victims of sexual violence.<sup>12</sup>

Justice is essentially born from the meeting between hope and reality in community life. The concept of justice can be used as a guide in behavior, both personally and in social life. Justice

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<sup>11</sup> Andi Hamzah, 1986, "Protection of Human Rights in the Criminal Procedure Code, Binacipta, Bandung,

<sup>12</sup>Kodiyat M, Benito Asdhie. "Ethics in Expressing Opinions on Social Media in the Perspective of Citizens' Constitutional Rights." EduTech: Journal of Education and Social Sciences, Vol. 4, No. 2, 2018, p. 10-21

is not merely something written in the rules, but is a value that is closer to the voice of the heart and a clean conscience, and can only be felt through good intentions. In this perspective, justice is a noble value that underlies social institutions, as truth is the basis of a system of thought. The principle of justice does not justify the suffering or sacrifice experienced by a small number of people for the greater benefit of the majority. Therefore, justice is understood as a condition in which each individual gets his rights according to what is his right.

Everyone has the right to receive protection from the state in every activity of their daily life. There is no distinction or discrimination against anyone to obtain the fulfillment of their rights fairly. As previously mentioned, every child and woman has the right to receive fair treatment before the law (equality before the law) and government without any difference with other groups. This is to ensure that the implementation of the state and government runs fairly without any difference while still paying attention to the protection of human rights for every citizen. Ideal legal protection in protecting victims of sexual violence can be done through efforts to harmonize laws and regulations related to sexual violence, especially in regulating the provision of restitution to victims. This is because the laws and regulations governing sexual violence still have overlapping formulations, multiple interpretations or are not explained in detail so that they have not been able to realize justice for child victims of sexual violence.<sup>13</sup>

A crime victim is a party who directly feels the consequences of a crime committed by someone. Victims who are parties who directly feel the consequences of a crime should receive special attention in the legal system in Indonesia. Criminal law enforcement has the weakness that it places a heavier orientation on the perpetrator of the crime, while the losses, suffering and efforts to restore/restore victims of crime receive less attention. In fact, in the Criminal Procedure Code there are only a few articles that discuss victims and their rights as parties who are harmed by a crime. Article 160 paragraph (1) letter b of the Criminal Procedure Code states that "the first to be heard is the victim as a witness". It can be interpreted that the position of the victim is limited to a witness whose testimony is heard in the interests of investigating a crime. When the perpetrator is sentenced, it is assumed that the interests of the victim have been considered and the value of justice for the victim has been properly accommodated. The reality is that even though the perpetrator has been sentenced to a criminal sentence, the victim still feels suffering due to the crime committed by the perpetrator.<sup>14</sup>

Legal protection for victims of the crimes mentioned above should ideally be regulated in more detail and firmly in laws and regulations to provide guidelines for law enforcement officers in enforcing the law and become the basis for community participation in supporting legal protection for victims of human trafficking. This can be done, among other things, by

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<sup>13</sup>Siti Miyanti Juniar, "Legal Protection for Child Victims of Pornography Crimes from the Perspective of Law Number 44 of 2008 Concerning Pornography." *Lex lata*, Vol. 1, No. 1, 2023, p. 147-159

<sup>14</sup>Yulianti, Swi Wahyuningsih. "Policy for Regulating Compensation and Restitution for Victims of Criminal Acts Based on the Principles of Justice and Humanity from an Inclusive Legal Perspective." *Journal of Political, Legal and Citizenship Education*, Vol. 11, No. 2, 2021, p. 1-21

placing victims as parties who must be given a special place in the law enforcement process. The current legislation (*ius contitutum/ius operatum*), victim protection is more as "abstract protection" or indirect protection. This is because criminal acts according to criminal law are not seen as acts that attack/violate the legal interests of a person (victim) personally and concretely, but can only be seen as a violation of "legal order in abstracto."

Normatively, Law No. 12 of 2022 concerning Sexual Violence Crimes (UU TPKS) explicitly requires restitution to be provided to victims. Article 16 paragraph (1) of the Law states that in addition to the main penalty, the judge is required to determine the amount of restitution for perpetrators of sexual violence whose criminal threat is at least 4 (four) years. In addition, Article 18 paragraph (3) of the TPKS Law also requires companies (corporations) that commit crimes of sexual violence to pay restitution as an additional penalty. Thus, the legislators emphasize that restitution is no longer merely a voluntary gift, but a legal obligation of the convict to fulfill the rights of the victim.<sup>15</sup>

The Indonesian legal system is faced with a dilemma between the principles of normative justice and substantive justice. Normatively, the system has regulated the obligation of restitution; however, substantively, this right cannot be realized if it is not supported by the state's ability to guarantee its fulfillment. Therefore, a long-term solution must be directed at strengthening the restitution funding system, where if the perpetrator is unable to pay restitution, the state must be present to protect victims of sexual violence, by providing compensation as an effort to restore the victim. Without such reform, restitution will continue to be a symbolic legal right, and victims will remain in a vulnerable position and unprotected by the criminal justice system.<sup>16</sup>

#### 4. Conclusion

The regulation regarding the provision of restitution in cases of sexual violence crimes has been regulated in Law Number 12 of 2022 and Supreme Court Regulation Number 1 of 2022, which provides a mechanism for applications before or after a final and binding decision. Restitution is recognized as a victim's right that must be carried out by the perpetrator or a third party, and in the case of a child, the responsibility for restitution is borne by the parent or guardian. In addition to providing guarantees for victims in accessing restitution, this regulation also involves the role of prosecutors, judges, and LPSK in guaranteeing the compensation process. However, the realization of this norm in the field still faces problems due to incomplete implementing regulations and the weak understanding of some law enforcement officers regarding the mechanism and urgency of restitution as a form of restorative justice for victims of sexual violence. The restitution system as an effort to restore the rights of victims of sexual violence in Indonesian positive law still faces various weaknesses in terms of substance, structure, and legal culture. The substance of current regulatory law has not been able to provide concrete protection for victims because it still positions victims as objects in the criminal justice system. The retributive legal structure and

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<sup>15</sup>Wahyu Wagiman et al., *Compensation and Restitution Practices in Indonesia: A Preliminary Study*, Indonesia Corruption Watch, Jakarta, 2007, p. 12

<sup>16</sup> Aan Komariah and Djama'an Satori. 2014, *Qualitative Research Methodology*. Alfabetha. Bandung,

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the lack of awareness of law enforcement officers regarding the urgency of restitution have caused many decisions not to include orders for restitution payments. The weakness of the legal culture is still influenced by patriarchy and negative stereotypes towards women.

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