

## **Disparity in Restitution Calculations from LPSK and Judge's Decisions on Crime Victims**

**Nuraisya Rachmaratri<sup>1)</sup> & Denny Suwondo<sup>2)</sup>**

<sup>1)</sup>Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: [NuraisyaR@gmail.com](mailto:NuraisyaR@gmail.com)

<sup>2)</sup>Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: [dhewonr@yahoo.com](mailto:dhewonr@yahoo.com)

**Abstract.** *Restitution is the provision of compensation for losses imposed on the perpetrator based on a court decision which has permanent legal force for losses suffered by the victim, both material and/or immaterial. Restitution is a right that can be applied to all types of criminal acts that cause harm to the victim. The purpose of this research is to find out and analyze the implementation of restitution calculations from LPSK and Judge's Decisions for victims of criminal acts, to find out and analyze the implementation of calculations of restitution from judge's decisions for victims of criminal acts, to find out and analyze Restitution for victims of criminal acts in the future based on comparison with other countries. This research is included in the socio-legal research tradition. Socio legal is research that examines the application of legal rules or norms using legal science and social science approaches. Provisions in Article 1 number 11 of Law no. 31 of 2014 concerning Witness and Victim Protection explains the definition of restitution, namely: "Restitution is compensation given to the victim or their family by the perpetrator or a third party." Furthermore, in Article 7A paragraph (1) Law no. 31 of 2014 concerning Witness and Victim Protection explains the forms of restitution that victims are entitled to receive, namely in the form of: (a) compensation for loss of wealth or income; (b) compensation for losses incurred as a result of directly related suffering as a result of criminal acts; and/or (c) reimbursement for medical and/or psychological treatment costs. This disparity in the calculation of LPSK restitution and the judge's decision occurs because LPSK only calculates material losses, whereas in the judge's decision, immaterial losses are added based on considerations. Restitution in the future, there must be confirmation in the material criminal law that restitution is part of the form of punishment (criminal) and is grouped as a main crime or additional crime, so that all offenses that cause loss and suffering can be subject to restitution. In this way, the criminal restitution will be parallel to the criminal fine.*

**Keywords:** *Criminal; LPSK; Restitution.*

## 1. Introduction

The Unitary State of the Republic of Indonesia is a state based on law (Rechtsstaat) not power (machstaat).<sup>1</sup>As stipulated in the 1945 Constitution of the Republic of Indonesia, Article 1 paragraph (3) states that: "The State of Indonesia is a State of Law".<sup>2</sup>The logical consequence of a state of law is that every action taken by both society and law enforcement officers must be in accordance with the essential norms contained therein. The norms in question are the legal norms applicable in Indonesia.

The Republic of Indonesia is a country based on law, meaning all actions are regulated by law.<sup>3</sup>The law does not look at a person's social strata in determining justice. Equality before the law is part of the principles adopted by the law.<sup>4</sup>As is the case with the principle of equality before the law, namely that every citizen has the same position before the law with no exceptions. Thus, if citizens make mistakes they should be punished. Law is a rule that is coercive and there are sanctions for not obeying it.<sup>5</sup>

The Indonesian criminal justice system has currently undergone many changes that lead to a balance in the orientation of fulfilling rights, both for the rights of the accused and the rights of victims of criminal acts.<sup>6</sup>Observing the Criminal Procedure Code (KUHAP), in general it is more oriented towards protecting the rights and interests of suspects/defendants, but along with the advancement of the fulfillment of human rights in Indonesia, the rights of victims of criminal acts are now gradually becoming a concern and being accommodated in many laws. This has an impact on the criminal justice system which now better reflects justice. One proof of the balance in the orientation of the fulfillment of the rights in question is the birth of the Witness and Victim Protection Law in 2006. The Law on the Protection of Witnesses and Victims regulates a number of witness and victim rights that must be the concern of all elements of law enforcement, therefore the birth of Law Number 13 of 2006 in conjunction with Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the

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<sup>1</sup>Khunthi Dyah Wardani, *Impeachment in the Indonesian Constitution*, Yogyakarta: UII Press, 2007, p. 1.

<sup>2</sup>Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

<sup>3</sup>Haposan Siallagan, *Implementation of the Principles of the Legal State in Indonesia*, *Sosiohumaniora*, Vol 18, no. 2 (2016), pp. 122–28.

<sup>4</sup>Julita Melissa Walukow, *The Realization of the Principle of Equality Before the Law for Prisoners in Correctional Institutions in Indonesia*, *Lex et Societatis*, Vol 1, no. 1 (2013), pp. 163–172.

<sup>5</sup>HSB Ali Marwan, *Criticizing the Implementation of the Theory of Legal Fiction*, *De Jure Legal Research Journal*, Vol 16, no. 3 (2016), pp. 251–264

<sup>6</sup>Lies Sulistiani, *Problems of Victims' Restitution Rights in Criminal Acts Regulated by the Criminal Code and Outside the Criminal Code*, *Jurnal Bina Mulia Hukum* Vol 7, No 1, September 2022, pp 81-102

Protection of Witnesses and Victims, became the point of revival of a more humane criminal justice system. However, in its journey, the implementation of the law encountered several obstacles that still require support and legal certainty. The obstacles in question are related to the implementation of the right to restitution for victims of criminal acts which is not easy to file. The difficulty in submitting it is mainly because not all law enforcement officers understand that restitution is a right that can be submitted for all types of crimes that cause losses to victims. In addition, law enforcers who tend to be legalistic positivists only look at what is written textually in the Criminal Procedure Code and do not see the context of its protection. In several laws such as Law Number 21 of 2007 concerning the crime of human trafficking and Law Number 12 of 2022 concerning the Crime of Sexual Violence, there are restitution regulations that victims can use to file for their rights. However, outside of these crimes, restitution cannot be filed, although there is Law Number 31 of 2014 concerning amendments to Law Number 13 of 2006 concerning the protection of witnesses and victims, which states that victims of criminal acts have the right to receive restitution. The weakness of this law is that it does not explain further for what crimes restitution can be filed, so that law enforcers do not immediately facilitate victims in filing their rights to restitution. Therefore, the submission of the victim's right to restitution becomes an uncertainty, which results in the uncertainty of the type or qualification of the criminal act as a condition.

The implementation of the right to restitution can be seen in the data at the Witness and Victim Protection Agency (hereinafter referred to as LPSK). The data at LPSK found that the most cases in restitution applications, each year are still dominated by certain cases, namely human trafficking, sexual violence and several other crimes related to the safety of a person's life or body. Based on the achievement of restitution fulfillment implemented and facilitated by LPSK, especially since LPSK's authority to assess compensation for restitution was explicitly stated in Law Number 31 of 2014 until the end of 2019, the most restitution applications were submitted in cases of human trafficking and domestic violence. In the following years, it was followed by cases of sexual violence.

Restitution is the provision of compensation imposed on the perpetrator based on a court decision that has permanent legal force for losses suffered by the victim, whether material and/or immaterial.<sup>7</sup>The mechanism for granting restitution to victims of criminal acts is regulated in Government Regulation (PP) Number 7 of 2018 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims. One of the important points in the government regulation is that the request for restitution for victims of criminal

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<sup>7</sup>Miszuary, Implementation of Restitution for Children Who Are Victims of Crime as a Form of Criminal Law Reform Based on Government Regulation Number 43 of 2017, *Soumatara Law Review*, Vol 2 No. 1, 2019, pp. 115-135

acts is a request for restitution can be submitted either through the prosecutor's office or through the Witness and Victim Protection Agency (LPSK).

However, in reality, not all judges who try a case impose restitution sanctions or provide light restitution to the perpetrator, resulting in disparities in the results of restitution calculations between LPSK and judges.

## **2. Research Methods**

This research is included in the socio-legal research tradition. Socio-legal is research that examines the application of legal rules or norms using the approach of legal science and social sciences. The socio-legal research method is a combination of doctrinal legal research methods and empirical legal research methods, so what is done by the researcher is a document study accompanied by a field study. The document study in this study is a literature study using laws and regulations.<sup>8</sup>

## **3. Results and Discussion**

### **3.1. Implementation of Restitution Calculations from LPSK and Judges' Decisions Against Victims of Criminal Acts**

The provisions in Article 1 number 11 of Law No. 31 of 2014 concerning Protection of Witnesses and Victims explain the definition of restitution, namely: "Restitution is compensation given to the victim or his family by the perpetrator or a third party." Furthermore, Article 7A paragraph (1) of Law No. 31 of 2014 concerning Protection of Witnesses and Victims explains the form of restitution that the victim is entitled to receive, namely: (a) compensation for loss of wealth or income; (b) compensation for losses caused by suffering directly related to the result of a crime; and/or (c) reimbursement of medical and/or psychological care costs. The Law on Protection of Witnesses and Victims further strengthens and expands the authority of the LPSK in fighting for the rights of victims, one of which is the right to restitution. This can be seen in Article 7A paragraph (2) which states that the granting of the right to restitution to victims of criminal acts is determined by a decision of the Witness and Victim Protection Agency (LPSK) (Ananda, Deliana, & Erdiansyah, 2020).<sup>9</sup> Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection ("Child Protection Law") explains in Article 71 D paragraph (1) that: "every child who is a victim as referred to in Article 59 paragraph (2) letter b, letter d, letter f, letter h, letter i, letter j has the right to submit to the court the right to

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<sup>8</sup>Ronny Hanitijo Soemitro, 1990, *Legal Research Methodology and Jurisprudence*, Ghalia Indonesia, Jakarta, p.56

<sup>9</sup>Ananda, TSGN, Deliana, E., & Erdiansyah, Provision of Restitution for Victims of Human Trafficking Crimes Based on Government Regulation Number 7 of 2018 Concerning Provision of Compensation, Restitution and Assistance to Witnesses and Victims. *Online Journal of Law Faculty Students*, Vol 7 No (2) 2020, p.87

restitution which is the responsibility of the perpetrator of the crime.<sup>10</sup> Protection of children as victims of criminal acts in this case is restitution, namely in the form of direct protection for victims in the form of compensation provided by the perpetrator of the crime to the victim, or it can be called compensation provided by the state to the victim.

With the existence of Law Number 13 of 2006 concerning Protection of Witnesses and Victims and Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, the Indonesian state has taken a step towards providing protection to victims of crime. One form of protection for victims of crime in the Law on Protection of Witnesses and Victims is in the form of compensation to the victim given by the perpetrator. The compensation included is in the form of Restitution.

The law enforcement process through criminal justice is not only focused on giving criminal sanctions to the perpetrators. In addition to giving criminal sanctions to the perpetrators, criminal justice also accommodates the interests and rights of the victims, one of which is through providing compensation to the victims.<sup>11</sup> In criminal procedure law, compensation for victims is divided into 2 (two) types, namely restitution and compensation.

Basically, both restitution and compensation are aimed at the victim, only there are some differences between restitution and compensation. According to Article 8 paragraph (1) of Supreme Court Regulation Number 1 of 2020 concerning Procedures for Settlement of Applications and Granting of Restitution and Compensation to Victims of Criminal Acts (hereinafter referred to as Perma No. 1 of 2022), the party submitting a restitution application to the Court is the Witness and Victim Protection Agency, investigator, public prosecutor, or victim. Furthermore, according to Article 5 paragraph (3) of Perma No. 1 of 2022, if the victim is a child, then the party submitting the restitution is the parent, family, guardian, heir or attorney, or LPSK. Meanwhile, according to Article 18 letter c of Perma No. 1 of 2022, the application for compensation must be submitted through LPSK.

The party providing compensation in the form of compensation according to Article 1 number 4 of Government Regulation Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution, and Assistance to Witnesses and Victims (hereinafter referred to as PP No. 35 of 2020) in conjunction with Article 1 number 2 of Perma No. 1 of 2022 states that: "Compensation is compensation provided by the state because the perpetrator of a crime is unable to provide full compensation for the losses that are his responsibility."

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<sup>10</sup>Pratiwi, AD, & DJ, AH, Regulation of the Right of Restitution for Children as Victims of Criminal Acts. *Journal of Scientific, Research, Education, and Technology*, Vol 1 No (2) 2020. pp.465-471

<sup>11</sup>Rena Yulia, Reexamining the Position of Crime Victims in the Criminal Justice System, *Mimbar Hukum*, Volume 28-Number 1, February 2016, p.41.

Meanwhile, Article 1 number 5 of PP No. 35 of 2020 in conjunction with Article 1 number 1 of Perma No. 1 of 2022 defines the party providing restitution as: "Restitution is compensation given to the victim or his/her family by the perpetrator of a crime or a third party."

Therefore, compensation in the form of compensation is given by the state and restitution is given by the perpetrator of the crime or a third party. Furthermore, there are 2 (two) mechanisms for submitting compensation in the form of restitution for victims and their families, namely through the submission and examination of a restitution application before or after the court decision has permanent legal force.<sup>12</sup> This is different from the method for obtaining compensation which according to Article 19 paragraph (1) of Perma No. 1 of 2022 is regulated as follows: "A request for compensation can only be submitted before a court decision has permanent legal force except in the case of: The victim is a victim of a criminal act of terrorism whose perpetrator is unknown or has died; and The victim is a victim of a criminal act of terrorism that occurred outside the territory of the Republic of Indonesia."

Restitution compensation includes compensation outside the criminal act experienced by the victim, for example costs related to the legal process. Meanwhile, compensation compensation is only intended for losses directly related to a criminal act experienced. In addition to the differences in the form of losses, the courts that try compensation and restitution compensation issues are also different. According to Article 3 of Perma No. 1 of 2022, it is regulated as follows: "The court that has the authority to try a restitution application is the court that tried the perpetrator of the crime." Then, Article 16 paragraph (1) of Perma No. 1 of 2022 formulates: "The court that has the authority to try a compensation application for serious human rights violations is the Human Rights Court that tries the perpetrator of the crime."

The formulation of Article 3 and Article 16 paragraphs (1) and (2) of Perma No. 1 of 2022, it appears that the courts authorized to handle compensation for a crime are different. However, in addition to explaining the authorized court, the article also explains the form of the crime that affects the type of compensation provided. Therefore, it can be concluded that both restitution and compensation are compensation provided to victims of a crime. However, there are differences between restitution and compensation, namely in terms of the party submitting the claim, the party providing the compensation, and the mechanism. Furthermore, other differences between restitution and compensation can also be seen from the form of compensation provided, the court that adjudicates the compensation issue, and the crime that distinguishes the type of compensation obtained by the victim.

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<sup>12</sup>Alvianto RV Ransun, Mechanism for Providing Compensation and Restitution for Victims of Criminal Acts, *Lex Crimen*, Volume 1-Number 1, January 2012, p.68

Reimbursement of Medical and/or Psychological Treatment Costs according to LPSK calculations;

- a. Application Letter addressed to LPSK regarding Submission of Application for Restitution Facilitation from Ms. Anis Full Rofingah as the parent of the victim named Azizah Azahra with a stamp of Rp1 0,000.00 dated April 17, 2023;
- b. Restitution Application Form made and signed by Ms. Anis Full Rofingah as the parent of the victim named Azizah Azahra with a stamp of Rp. 10,000.00 dated April 17, 2023;
- c. Wonosari Regional Hospital Payment Note Invoice No.: 2503202300722822 in the name of Patient Azizah Azahra AN
- d. Psychological Examination Results Number: 440.7/038/III/2023 issued by Wonosari Regional Hospital on March 25, 2023 in the name of Azizah Azahra;
- e. Based on the supporting evidence and references submitted, LPSK assesses that the claim for reimbursement of examination costs of Rp. 163,000.00 is reasonable and can be submitted.

Total fair value of restitution according to LPSK: Rp. 15,213,000.00

In the event that the restitution application is submitted before the Court's decision has obtained permanent legal force, LPSK submits the restitution to the Panel of Judges through the Public Prosecutor to be included in its charges. We hope that the Head of the Gunungkidul District Attorney's Office up to the Public Prosecutor handling the case in question can include the restitution application in the letter of charge (requisitoir) as per the applicable laws and regulations.<sup>13</sup>

It is a problem in the practice of implementing restitution, namely there is no clear regulation on how restitution that cannot be paid by the perpetrator of the crime, of course this will be a legal problem in the implementation of the sentence which will later involve the imposition of restitution, therefore by taking a comparison of norms, namely Law of the Republic of Indonesia Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking in Article 50 paragraph (1) In the event that the implementation of restitution to the victim is not fulfilled until it exceeds the time limit as referred to in Article 48 paragraph (6), the victim or his heirs shall notify the court of this, then paragraph (2) The court as referred to in paragraph (1) shall provide a written warning letter to the restitution giver, to immediately fulfill the obligation to provide restitution to the victim or his heirs. Furthermore, paragraph (3) In the event that the warning letter as referred to in paragraph (2) is not implemented within 14 (fourteen) days, the court shall order the public prosecutor to confiscate the convict's assets and auction the assets for payment of restitution. And Article (4) If the perpetrator is unable to pay restitution, then the perpetrator is subject to a substitute imprisonment sentence of a maximum of 1 (one) year, in the

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<sup>13</sup>Interview with Widha Sinuligga, SH, MH Public Prosecutor, Wonogiri District Attorney's Office

provisions if the perpetrator of the crime or the person giving restitution is unable to pay restitution there are 2 (two) options, namely 1. The confiscation of the convict's assets and auctioning the proceeds to pay restitution, and 2. A maximum imprisonment sentence of 1 (one) year is imposed, then based on the comparison for the sake of justice and to meet the needs of criminal procedure law practice, the Panel will use option 1 as an option if the Defendant does not fulfill the obligation to pay restitution, why choose option 1, because restitution is talking about material compensation that provides material rights to the victim for the crime that occurred to the victim, and is no longer talking about the physical restraint of the defendant through imprisonment, therefore talking about restitution is talking about material rights that the victim is entitled to receive, there is no appropriate substitute punishment other than the material that the victim must receive.

The disparity between the calculation of LPSK restitution and the judge's decision occurred because LPSK only calculated material losses, while in the judge's decision, immaterial losses were added based on considerations, and taking into account the material conditions that were still considered adequately owned by the Defendant, so that the obligation to impose restitution on the Defendant was appropriate and fair.

### **3.2. Disparity in the calculation of restitution from LPSK and judge's decisions for victims of criminal acts**

The Witness and Victim Protection Agency (LPSK) received a request for Restitution calculation from Ms. Anis Full Rofingah representing Ms. Azizah Azahra. The applicant is a victim of alleged child molestation with the defendant Mr. Heru Purwanto (Case Number: 26/Pid.Sus/2023/PN Wno). The case is being handled by the Gunungkidul District Attorney's Office.

Brief description of the crime, the victim of the alleged crime of child molestation as referred to in Article 82 paragraph (1) in conjunction with Article 76E of Law Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law.

The victim experienced sexual intercourse by the perpetrator named Heru Purwanto. The incident occurred around mid-2022 when the victim was still in 5th grade of elementary school, initially when the victim was walking in front of the perpetrator's house, the perpetrator called her and told her to enter the perpetrator's house. At that time the house was empty, the perpetrator then asked the victim to move the red chair in the living room and face the longer chair. Then the perpetrator immediately took a lying position on the long red chair and told the victim to sit on the chair he had moved earlier, then told the victim to shake the perpetrator's genitals. The perpetrator's actions were carried out more than once. The perpetrator once inserted his finger into the victim's genitals and asked the victim to suck the perpetrator's genitals. These actions



were carried out every time he saw the victim passing in front of the perpetrator's house and when the perpetrator was alone at home. Every time he carried out his actions, the perpetrator always told the victim not to tell anyone, because the perpetrator could be arrested and imprisoned.

Based on this, LPSK has conducted an in-depth examination of the information and assessment of the amount of losses suffered by the Victim due to the criminal incident he experienced amounting to Rp. 15,213,000.00 (Fifteen Million Two Hundred and Thirteen Thousand Rupiah), with consideration of the restitution assessment and details and calculation of the Victim's losses attached.

The following is the restitution request data from the applicant and LPSK:

Compensation for transportation costs in the form of purchasing fuel (Pertalite ±3 liters/activity) for the Honda Supra X 125 Motorcycle used by the Applicant together with his family and consumption costs incurred by the Applicant and Family (amounting to @Rp300,000.00/activity) during the legal process since making the report and examination at the Gunungkidul Police, post-mortem examination at the Wonosari Hospital, psychological examination at the Gunungkidul UPTD PPA, examination and coordination at the Gunungkidul District Attorney's Office, with details:

- a. Legal process at Gunungkidul Police, 5 (five) times where the family spent @Rp. 300,000.00/activity for transportation and consumption, with the following details:
  - 1) September 16, 2022 to make a report on spending on fuel ± 3 liters (PP) for 1 motorbike (Honda Supra X 125) and consumption for 3 people (Applicant, Father and Mother).
  - 2) On December 7, 2022, to undergo examination and provide information (BAP), the Applicant spent ± 3 liters of fuel (PP) for 1 motorbike (Honda Supra X 125) and consumption for 3 people (Applicant, Father and Mother);
  - 3) December 8, 2022 to submit evidence of spending on fuel ± 3 liters (PP) for 1 motorbike (Honda Supra X 125) and consumption for 3 people (Applicant, Father and Mother);
  - 4) December 20, 2022 to conduct consultation and coordination regarding the handling of reports of spending on fuel costs of ± 3 liters (PP) for 1 motorbike (Honda Supra X 125) and consumption for 3 people (Applicant, Father and Mother);
  - 5) January 24, 2023 for consultation and coordination related to the process of handling the report, the cost of fuel ± 3 liters (PP) for 1 motorbike (Honda Supra X 125) and consumption for 3 people (Applicant, Father and Mother). So that the expenses during the legal process at the Gunungkidul Police amounted to (@Rp300,000.00 x 5 times) = Rp1.500,000.00

- b. Health checks at Wonosari Regional Hospital were carried out 2 (two) times, with the following details:
- 1) On September 17, 2022 for the visum et repertum examination, a fee of IDR 300,000.00 was incurred for fuel  $\pm$  3 liters (PP) for 1 motorbike (Honda Supra X 125) and consumption for 3 people (Applicant, Father and Mother).
  - 2) March 25, 2023 to undergo a psychological examination, spending Rp150,000.00 for fuel for 1 motorbike @Rp300,000.00/activity for transportation for fuel  $\pm$  3 liters (PP) for 1 Honda Supra X 125 motorbike and consumption for (Applicant, Father with the following details:
    - a) March 21, 2023 to the Gunungkidul District Attorney's Office to carry out coordination and consultation.
    - b) April 11, 2023 to the Gunungkidul District Attorney's Office to undergo an online trial examination.
    - c) April 17, 2023 to the Gunungkidul District Attorney's Office to carry out the restitution application process.

So that the expenses during the legal process at the Gunungkidul Police are (@Rp300,000.00 x 3 times) = Rp900,000.00 So that the total costs incurred by the Applicant and Family during the legal process for transportation and consumption are (Rp1,500,000.00 + Rp450,000.00 + Rp300,000.00 + Rp900,000.00), with a total of Rp3,150,000.00.

Compensation for suffering as a result of a criminal act, Due to the criminal incident experienced, the Applicant became a victim who experienced suffering due to forced sexual abuse and trauma related to his psychological condition. A request for compensation for suffering due to the incident of sexual abuse against a child was submitted in the amount of Rp10,000,000.00.

Reimbursement of medical and/or psychological treatment costs, Reimbursement of psychological examination costs incurred by the Applicant and Family at the Clinical Psychology Clinic of Wonosari Hospital on March 25, 2023 amounting to Rp163,000.00. The amount of loss submitted by the Applicant is Rp13,313,000.00

Reimbursement of transportation and consumption costs by LPSK:

- a. Application Letter addressed to LPSK regarding Submission of Application for Restitution Facilitation from Ms. Anis Full Rofingah as the parent of the victim named Azizah Azahra with a Rp10,000.00 stamp dated April 17, 2023;
- b. Restitution Application Form made and signed by Ms. Anis Full Rofingah as the parent of the victim named Azizah Azahra with a Rp. 10,000.00 stamp dated April 17, 2023;
- c. Photocopy of LPB/667/IX/2022/SPKT/Gunungkidul Police/DI.Yogyakarta Regional Police;

- d. Copy of the Visum Et Repertum Results issued by Wonosari Regional Hospital Number: 370/6256/2022 dated December 13, 2022;
- e. Copy of the Psychological Examination Report of the Victim of the Crime of Indecent Acts in the name of Azizah Azahra issued by the UPTD PPA Gunung Kidul Regency Government Number: 463/001/1/2022;
- f. Photocopy of Psychological Examination Results Number: 440.7/1038/III/2023 issued by Wonosari Regional Hospital;
- g. Letter from the Gunung Kidul District Attorney's Office Number: B-609/M.4.13/Eku.2/03/2023 dated March 27, 2023 regarding the Request for Protection and Assistance for Child Victims along with the Request for Restitution;
- h. Photocopy of the Attendance List for the Public Prosecutor's Submission/Offer of the Right to Restitution dated March 24, 2023; 9. LPSK conducted a reasonable assessment of transportation costs by referring to the reference evidence:
  1. Photocopy of the Letter of the Minister of Finance Number S-856/MK.02/2017 dated 24 October 2017 concerning the Unit Cost of Witness and Victim Protection at the Witness and Victim Protection Agency (LPSK) of the Ministry of State Secretariat (R-01);
  2. Screenshot of the search results for fuel consumption of the Honda Supra X 125 motorbike on the website <https://oto.detik.com/motor/d2509037/honda-konsumsi-bbmsupra-x-125-618-kmliter> regarding fuel consumption of 61.8 km per 1 liter accessed on April 26, 2023 (R-02);
  3. Screenshot of a search on the website page <https://mvpertamina.id/fuelsharga> accessed on April 26, 2023, the price of Peralite fuel in the DIYogyakarta area is IDR 10,000.00/liter (R-03);
  4. Screenshot of a search on the website page <https://iogia.tribunnews.com/2022/09/06/harga-bbm-naik-peniualbensin-eceran-patok-hargapertalite-rp12000-dan-pertamaxrp16000> accessed on April 26, 2023, the retail price of Peralite fuel in DIYogyakarta is IDR 12,000.00/liter (R-04);
  5. Screenshot of the search results for the distance traveled from the Applicant's residence to the Gunungkidul Police with a distance of 12.7 km, to the Wonosari Regional Hospital with a distance of 10.2 km, to the Gunungkidul District Attorney's Office with a distance of 12.7 km and the Gunungkidul UPTD PPA with a distance of 10.1 km, on the Google Maps website page accessed on April 26, 2023 (R-05);
  6. LPSK conducted a fair assessment of transportation and consumption costs with the following details:

- a) Fuel expenditure for legal process purposes at Gunungkidul Police Station as many as 5 (five) times from the Applicant's residence to the Gunungkidul Police Station using 1 (one) Honda Vario XI25 motorcycle covering a distance of 12.7 km with fuel purchase costs for 3 liters (round trip). Referring to the R-02 to 05 references, with the calculation (Rp 12,000.00 x 3 liters) x 5 times the activity is Rp 180,000.00 as a reasonable value and can be submitted.
- b) Expenditure on fuel for medical examination for legal process purposes at Wonosari Regional Hospital as much as 2 (two) times from the Applicant's residence to Wonosari Regional Hospital using 1 (one) Honda Vario XI25 motorcycle covering a distance of 10.2km with fuel purchase cost for 3 liters (round trip). Referring to reference R-02 to 05, with calculation (Rp12,000.00 x 3 liters) x 2 times activity is Rp72,000.00 as a reasonable value and can be submitted;
- c) Expenditure on fuel for psychological examination and counseling for the purposes of the legal process at the Gunungkidul PPA UPTD 1 (one) time from the Applicant's residence to the Gunungkidul PPA UPTD using 1 (one) Honda Vario XI25 motorcycle covering a distance of 10.1 km with a fuel purchase cost of 3 liters (round trip). Referring to the R-02 to 05 references, with the calculation (Rp 12,000.00 x 3 liters) x 1 activity is Rp 36,000.00 as a reasonable value and can be submitted;
- d) The expenditure of fuel for examination, attending the trial and filing for restitution in the context of the legal process at the Gunungkidul District Attorney's Office as many as 3 (three) times from the Applicant's residence to the Gunungkidul District Attorney's Office using 1 (one) Honda Vario XI25 motorcycle covering a distance of 12.7 km with the cost of purchasing fuel for 3 liters (round trip). Referring to the reference R-02 to 05, with the calculation (Rp 12,000.00 x 3 liters) x 3 times the activity is Rp 108,000.00 as a reasonable value and can be submitted.
- e) Consumption expenses submitted by the Applicant and Family during the legal process, health checks and counseling 10 (ten) times at the Gunungkidul Police, Wonosari Hospital, Gunungkidul UPTD PPA and the Gunungkidul District Attorney's Office for 3 people (Applicant, Father and Mother). Referring to the R01 reference, which details the amount of food costs for the applicant/LPSK protected person of Rp 30,000.00/person. As per the reference, with the calculation (@Rp 30,000.00x3 people) x 10 times the activity is Rp 900,000.00 as a reasonable value and can be submitted.

Thus, LPSK provides a fair value for compensation for transportation and consumption costs of Rp. 1,296,000.00 as a fair value that can be submitted.

Compensation for suffering as a result of a criminal act, according to LPSK calculations:

- a. That regarding the losses in the form of suffering experienced by the victim, there is no specific amount of money that can repair the losses caused by the incident;
- b. That previously LPSK had calculated the suffering in child molestation cases using a calculation pattern that referred to the projected costs of psychological recovery as an effort that could be made to address the suffering of the applicant as a victim who was exposed to forced sexual activity at an early age;
- c. In connection with the PPPA UPT of the PPPA Social Service of Gunungkidul Regency Government and the Clinical Psychology Clinic of Wonosari Hospital not issuing a draft budget that projects the psychological recovery needs of victims, LPSK refers to the psychological recovery costs in similar cases.
- d. In this case, LPSK refers to the Estimated cost of the therapy design for the psychological examination by Psychologist Th. Etvioka Wiantina Putri., S.Psi., M.Psi., Psychologist for the victim with the initials PDS who experienced a similar case (molestation). PDS is a 17-year-old child who was molested by the victim's 55-year-old neighbor. The victim lives in Kulonprogo. The results of the psychological examination and the projected psychological recovery budget for the victim PDS are stated in letter Number: 083/E/RKlinis/IC/III/2022 dated March 7, 2022, with the following projections for handling psychological recovery:
  1. TF-CBT services/therapy consist of 16 sessions with a cost per session of Rp. 400,000, so the total is Rp. 6,400,000.00
  2. Family services/therapy for 12 sessions, with a cost per session of Rp. 500,000.00, so the total cost is Rp. 6,000,000.00
  3. Follow-Up services/therapy for 4 sessions, with a cost per session of Rp. 300,000.00, so the total cost is Rp. 1,200,000.

The total projected cost of psychological recovery is Rp. 13,600,000.00

- e. The calculation pattern to obtain a fair value of compensation for the suffering was used and approved by the Panel of Judges as per the decision of case Number: 37/Pid.Sus/2022/PN Wat which was decided on June 10, 2022.
- f. Based on the considerations referred to, LPSK provides a fair value for compensation for suffering due to criminal acts based on the psychological recovery cost projection approach of IDR 13,600,000.00 as a fair value that can be submitted.

#### 4. Conclusion

The right to restitution regulated in the Criminal Procedure Code ("KUHP") is contained in Chapter XIII, Articles 98 to 101. Overall, the matters regulated in the KUHP regarding restitution prioritize the function of protecting perpetrators of criminal acts rather than protecting victims of criminal acts. The provisions in Article 1 number 11 of Law No. 31 of 2014 concerning Protection of Witnesses and Victims explain the definition of restitution, namely: "Restitution is compensation given to the victim or his/her family by the perpetrator or a third party." Furthermore, Article 7A paragraph (1) of Law No. 31 of 2014 concerning Protection of Witnesses and Victims explains the form of restitution that the victim is entitled to receive, namely: (a) compensation for loss of wealth or income; (b) compensation caused by suffering directly related to the crime; and/or (c) reimbursement of medical and/or psychological care costs. The disparity in the calculation of LPSK restitution and the judge's decision occurs because LPSK only calculates material losses, while in the judge's decision it is added with immaterial losses based on considerations, and taking into account the material conditions that are still considered adequately owned by the Defendant, then the obligation to restitution carried out to be imposed on the Defendant is appropriate and fair. Restitution in the future, there must be an affirmation in material criminal law that restitution is part of the form of punishment (criminal) and is grouped as a principal crime or additional crime, so that all crimes that cause losses, suffering can be subject to restitution. Thus, the criminal restitution will be on par with the criminal fine. Thus, the Public Prosecutor does not hesitate to carry out the execution of a court decision that has permanent legal force (can be linked to Law No. 11/2021)

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