

Reformulation of Criminal Sanctions for Perpetrators of Online Fraud Based on Justice

Erfan Nurcahyo¹⁾ & Andri Winjaya Laksana²⁾

¹⁾Faculty of Law, Universitas Islam Sultan Agung, Semarang, Email: erfannurcahyo572@gmail.com

²⁾Faculty of Law, Universitas Islam Sultan Agung, Semarang, Email: Andriwinjayalaksana@unissula.ac.id

Abstract. *The current regulation of criminal sanctions for online fraud perpetrators remains focused on imprisonment and fines without mandating restitution, resulting in the victim's right to recover losses being unfulfilled and creating an imbalance between the interests of perpetrators and victims. This study emphasizes the need to reformulate the ITE Law and related provisions by incorporating restitution as a mandatory additional punishment so that the criminal justice system becomes more equitable, responsive to victims' needs, and aligned with the principles of restorative justice. The purpose of this research is to identify and analyze the current regulation of criminal sanctions for online fraud perpetrators, the weaknesses within these regulations, and the justice-based reformulation of criminal sanctions for online fraud perpetrators. The methodological approach used in the preparation of this thesis is Normative Legal Research. The research specification is descriptive-analytical. The theories employed include the Theory of Punishment, the Legal System Theory, and the Theory of Justice. The findings of this research are: (1) The current regulation of criminal sanctions for online fraud perpetrators remains focused on imprisonment and fines without providing an automatic restitution mechanism for victims, resulting in unfulfilled recovery of losses and an imbalance between the rights of offenders and victims. The DS case at the Bale Bandung District Court demonstrates that the regulatory orientation is still retributive and has not reflected justice nor the objectives of punishment aimed at protecting and restoring society. (2) The weaknesses of the current criminal sanction regulations for online fraud perpetrators appear in the aspects of legal substance, structure, and legal culture, where the ITE Law and the Criminal Code focus solely on imprisonment and fines without mandating restitution and do not regulate the liability of digital platforms. Combined with limited digital investigative capabilities, the absence of obligations for prosecutors and judges to ensure victim recovery, and the low legal literacy of society, the criminal justice system has not been able to provide effective protection*

for victims of online fraud. (3) Reformulating criminal sanction regulations for online fraud perpetrators based on justice requires changes to the criminal justice system by shifting the orientation of punishment from merely retributive toward restoring victim rights through mandatory restitution. Amending the ITE Law to include restitution as an additional criminal sanction is necessary to create a balanced sense of justice between offenders, victims, and society, while strengthening public confidence in the criminal justice system.

Keywords: Criminal; Offense; Online. Restitution.

1. Introduction

The 1945 Constitution not only establishes the principle of *rechtsstaat*, but also affirms the principle of equality before the law in Article 27 Paragraph (1) of the 1945 Constitution. This provision demands that everyone, without exception, is subject to the same law (generality of law) and has the right to receive equal legal protection. In the context of criminal fraud, this constitutional mandate affirms the state's obligation to provide a transparent, accountable, and effective law enforcement mechanism, so that victims' rights can be restored through legal instruments.¹

Criminal sanctions for perpetrators of fraud in Indonesia are expressly regulated in the Criminal Code (KUHP). Article 378 of the KUHP states that:² Anyone who, with the intention of unlawfully benefiting himself or another person, by using a false name, false dignity, trickery, or a series of lies, induces another person to hand over something to him, or to grant a loan or write off a debt, is threatened with a maximum prison sentence of four years. Fraud as regulated in Article 378 of the Criminal Code is an implementation of the state's obligation to protect citizens from fraudulent acts that cause material or immaterial losses.³

In the new Criminal Code, fraud is regulated in Article 492, which states that anyone who with the intention of unlawfully benefiting himself or another person, uses a false name or position, uses trickery or a series of lies, so that another person hands over goods, gives credit, makes a debt acknowledgement, or writes off receivables, shall be punished for fraud with a maximum prison sentence of 4

¹Sunarjo Sunarjo, *Judiciary as a Pillar of the Rule of Law in the Perspective of Pancasila*, Jurnal Cakrawala Hukum, Vol. 19, No. 1, 2014, pp. 71-81.

²I. Gusti Made Jaya Kesuma et al., *Law Enforcement against Fraud Through Electronic Media*, Journal of Legal Preferences, Vol. 1, No. 2, 2020, pp. 72-77.

³Erik Erlangga and Luthy Yustika, "The Application of Restorative Justice in Money Laundering Crimes Originating from Fraud," JCA of Law, Vol. 1, No. 1, 2020, p. 6

(four) years or a maximum fine of category V.⁴This substance is essentially in line with Article 378 of the old Criminal Code, but the new Criminal Code clarifies the wording to avoid ambiguity. The term "whoever" is replaced with "every person" without changing the meaning, while the phrase "gives a loan" is emphasized to "makes a debt acknowledgment" to make the norm's intent clearer. Another difference lies in the sanctions, the old Criminal Code only contained a maximum prison sentence of 4 (four) years, while the new Criminal Code provides alternative sanctions in the form of a maximum prison sentence of 4 (four) years or a maximum fine of category V. This provision is the general basis for ensnaring perpetrators of fraud in Indonesia, both conventional fraud and modern fraud that has developed in line with the development of information technology.⁵

For fraud with certain methods, criminal sanctions can be regulated in special laws, such as Law Number 1 of 2024 concerning the Second Amendment to Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law), which provides a heavier criminal threat for technology-based or online fraud. Online fraud can be prosecuted under Article 28 Paragraph (1) in conjunction with Article 45A Paragraph (1). This shows that criminal sanctions for fraud do not only come from the Criminal Code, but also from sectoral laws that adapt to developments in crime methods.⁶

Criminal penalties for fraudsters in Indonesia can also be increased if the fraud is committed by an organized group or results in significant losses. Prosecutors can add aggravating provisions, such as Articles 55 and 56 of the Criminal Code concerning involvement, or Article 64 of the Criminal Code concerning continued acts, if the fraud is committed repeatedly. In certain cases involving multiple victims or significant losses, judges can consider aggravating factors to impose sentences approaching the maximum.⁷

Legal protection of human rights has been expressly regulated in laws and regulations, and in the Indonesian criminal law system, both materially and formally, this protection is attempted to be balanced between the rights of perpetrators of criminal acts and the rights of victims. Through legal provisions in Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP), the rights of perpetrators of criminal acts are given special regulations, namely in Chapter VI which contains Articles 50 to 68 concerning the rights of Suspects and Defendants. Meanwhile, the rights of victims as the injured party are only

⁴Dina Elisa Putri et al., Criminal Acts of Fraud Through Digital Applications (Ideas of Accountability by Banks), *PAMPAS: Journal of Criminal Law*, Vol. 5, No. 1, 2024, pp. 72-87.

⁵Bambang Antariksa, Comparison of Criminal Fines in Two Regimes of the Indonesian Criminal Code, *Journal Recht (JR)*, Vol. 3, No. 1, 2024, pp. 1-15.

⁶Winda Fitri and Tantimin, Analysis of Substantive Justice in Court Decisions Regarding Fraud Cases Through Social Media, *Ius Civile: Reflections on Law Enforcement and Justice*, Vol. 9, No. 1, 2025, pp. 24-38.

⁷Moch Choirul Rizal, *Criminal Law Textbook*, Criminal Law Study Institute Book, Kediri, 2021, p. 17

accommodated to a limited extent in Chapter VIII which contains Articles 98 to 101, concerning the Consolidation of Compensation Claims.⁸

Another form of protection for the rights of witnesses and victims is the provision of compensation and restitution as regulated in Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, which is then followed up with several derivative regulations including Government Regulation (PP) Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution, and Assistance to Witnesses and Victims.⁹

An example of a case that occurred on December 1, 2022, the Bale Bandung District Court sentenced DS through Decision Number 576/Pid.Sus/2022/PN BLB because he was legally proven to have committed fraud by spreading false and misleading information to consumers (Article 45A Paragraph (1) in conjunction with Article 28 Paragraph (1) of the ITE Law), with the threat of a prison sentence of 4 years and a fine of IDR 1 billion, subsidiary to 6 (six) months imprisonment. The judge acquitted him of the charge of money laundering, ignored the element of the predicate crime, and ruled that there was no obligation of restitution to the victim, even though the confiscated assets were partially returned to the defendant. This decision drew criticism because it was considered not to fulfill the principle of justice for victims and ignored consumer protection. On this basis, the Prosecutor filed an appeal, and in February 2023 the Bandung High Court increased the sentence to 8 (eight) years in prison and added a decision to confiscate assets for the state, including billions of rupiah in cash and luxury vehicles. At the cassation level, the Supreme Court rejected all appeals and cassation requests, so that the objection decision remains in effect and has permanent legal force.¹⁰

The first instance verdict, which did not require DS to pay restitution, highlights a serious gap in victim protection within the Indonesian criminal justice system. Although the defendant was found guilty of fraud and obtained substantial profits, the victims who suffered losses did not receive direct redress through the criminal process. This undermines the principle of protecting victims' rights as stipulated in Law Number 31 of 2014 concerning Witness and Victim Protection. The failure to provide restitution in the verdict also has the potential to create the perception that the criminal process focuses more on punishing the perpetrator (retributive justice) than on recovering the victim's losses (restorative justice). This indicates a weak mechanism for recovering victims' losses. Without clear regulations, victims

⁸Ila Fatilina, Legal Protection of Human Rights, *Dinamika*, Vol. 25, No. 14, 2019, p. 165

⁹Irawan Adi Wijaya and Hari Purwadi, "Provision of Restitution as Legal Protection for Victims of Crime," *Journal of Law and Economic Development*, Vol. 6, No. 2, 2018, p. 89

¹⁰Adilah Rahman et al., Analysis of Legal Certainty for Fraud Victims of Doni Salmanan Reviewed from the Decision of the Bale Bandung District Court Number 576/Pid. Sus/2022/PN BLB, *Journal of Law, Politics and Social Sciences*, Vol. 2, No. 3, 2023, pp. 140-155.

risk remaining without compensation even if the perpetrator's assets are successfully confiscated by the state.¹¹

Although laws and regulations have established strict sanctions, they are considered to have no deterrent effect on fraud perpetrators, considering that many cases only end with imprisonment and/or fines, even conditional sentences. This has drawn criticism because it is considered disproportionate to the magnitude of the losses suffered by victims. The lengthy judicial process is also an obstacle that actually worsens the situation, because proving the elements of deception and the existence of intent from the beginning requires a complex and time-consuming process, while assets obtained from the crime are often used up or transferred, making it difficult to recover, resulting in judges' decisions that punish perpetrators often not accompanied by restitution of victims' losses.¹²

2. Research Methods

The type of research that the researcher used in this study is Normative Legal Research, namely a method used by examining the rules, norms, or legal regulations related to the problems discussed, focusing on examining written norms so as to produce secondary data sourced from primary, secondary, and tertiary legal materials.¹³ This research is descriptive analytical in nature, namely by describing the applicable laws and regulations in relation to legal theories and the practice of implementing positive law related to the problem.¹⁴ The data used for this study is secondary data obtained from library research. The data analysis method employed is qualitative analysis, which involves assigning meaning to each piece of data and interpreting it in depth. The data is presented in systematically structured sentences, facilitating the drawing of conclusions relevant to the research objectives.¹⁵

3. Results and Discussion

3.1. Current Criminal Sanction Regulations for Perpetrators of Online Fraud

Fraud is classified as a criminal offense, or a delict, that is, an act that can result in punishment for the perpetrator due to the presence of intent or negligence that harms another person. Fraud is a general offense, so anyone can report it to law

¹¹Rachmat Harijanto and Timbo Mangaranap Sirait, Protection of the Restitution Rights of Victims of Fraud Related to Disparities in the Application of Restitution by the Courts, *The Juris*, Vol. 7, No. 2, 2023, pp. 338-344.

¹²Devi Trisnawati, "Juridical Review of Online Fraud Crimes Based on Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions." *Jisos: Journal of Social Sciences*, Vol. 2, No. 9, 2023, pp. 1991-2006.

¹³Nanda Dwi Rizkia and Hardi Fardiansyah, *Legal Research Methods (Normative and Empirical)*, Widina Publisher, Bandung, 2023, p. 32

¹⁴Nur Solikin, *Introduction to Legal Research Methodology*, Qiara Media, Pasuruan, 2021, p. 30

¹⁵*Ibid*, p. 20

enforcement. After receiving a report, the police conduct an initial investigation to ensure the elements of a crime are met before escalating the case to the investigation stage. Essentially, a delict is an unlawful act, whether committed intentionally or not, by a person who can be held accountable, and is declared as an act prohibited by criminal provisions or laws.¹⁶

The provisions regarding fraud have been regulated in the *Wetboek van Strafrecht* or the Criminal Code (old Criminal Code). Article 378 of the old Criminal Code states that, "Anyone who with the intention of unlawfully benefiting himself or another person, by using a false name or false dignity, by trickery, or a series of lies, induces another person to hand over something to him, or to give a loan or write off a debt is threatened for fraud with a maximum imprisonment of four years". The crime of fraud is also regulated in Law Number 1 of 2023 concerning the Criminal Code (new Criminal Code), Article 492 Chapter XXVII concerning the Crime of Fraudulent Acts, states that, "Anyone who with the intention of unlawfully benefiting himself or another person by using a false name or false position, using trickery or a series of lies, induces someone to hand over an item, give a loan, make a debt confession, or write off a debt, is punished for fraud, with a maximum imprisonment of 4 (four) years or a maximum fine of category V".¹⁷

The development of information technology has brought about major changes in people's behavioral patterns. This progress makes the world feel borderless, as if all spaces are seamlessly connected. Information technology has even created a new environment for humans, where territorial boundaries are no longer felt, and everything that once seemed far away now feels so close, while things previously only imagined can seem almost real. Behind these advances, new concerns have emerged due to the emergence of increasingly sophisticated forms of modern crime, namely cybercrime.¹⁸

Even though cybercrime occurs in cyberspace, it is still considered a real legal act. From a legal perspective, cyberspace can no longer be treated using the criteria used in conventional legal systems to determine objects or actions, as such an approach creates numerous obstacles and opens up opportunities for perpetrators to escape accountability. While cybercrime is virtual, its impact is clearly felt in the real world, even if the evidence used is electronic. Perpetrators

¹⁶Isnu Gunadi, *Quick and Easy Understanding of Criminal Law*, Fajar Interpratama Mandiri, Jakarta, 2014, p. 37

¹⁷Rania Chaerunnisaand and Aryo Fadlian, *Legal Analysis of the Criminal Act of Fraud for Deception Against Commercial Sex Workers Based on Article 378 of the Criminal Code Concerning the Criminal Act of Fraud*, *Wahana Pendidikan Scientific Journal*, Vol. 8, No. 15, 2022, pp. 487-498.

¹⁸Andri Winjaya, *Criminalization of Cybercrime in the Perspective of Positive Criminal Law*, *Unissula Law Journal*, Vol. 35, No. 1, 2019, pp. 52-76.

must also be viewed as individuals committing real legal acts, even if their actions occur in the digital realm.¹⁹

Indonesia has had specific regulations regarding the cyber world as stipulated in the Electronic Information and Transactions Law (ITE Law). This regulation was first introduced in April 2008 after being ratified by the House of Representatives through Law Number 11 of 2008, concerning various aspects of activities in the digital space, including patterns of interaction and transactions that occur on the Internet. These provisions were then adjusted through Law Number 19 of 2016 and subsequent amendments in Law Number 1 of 2024 as the second amendment to the ITE Law, in order to adapt legal needs to the rapid development of technology. The legal regulation for online fraud crimes, perpetrators are charged with Article 28 Paragraph (1) of the ITE Law, which states that, "Any person who intentionally and/or transmits Electronic Information and/or Electronic Documents containing false notifications or misleading information that results in material losses for consumers in Electronic Transactions." The criminal provisions refer to Article 45A Paragraph 1 of the ITE Law which stipulates that, "Any person who intentionally distributes and/or transmits Electronic Information and/or Electronic Documents containing false notifications or misleading information that results in material losses for consumers in Electronic Transactions as referred to in Article 28 Paragraph (1) shall be punished with imprisonment of up to 6 (six) years and/or a maximum fine of IDR 1,000,000,000.00 (one billion rupiah).

In cases of fraud occurring through online transactions, the ITE Law only imposes prison sentences and fines without requiring perpetrators to compensate victims for their losses. Yet the number of fraud cases in online sales continues to increase every year. One reason is the public's growing interest in the convenience and variety of products offered digitally, making online shopping more convenient. The prison sentences and fines imposed on perpetrators are often deemed inadequate in protecting and fulfilling victims' rights, particularly in recovering material losses.

The DS case at the Bale Bandung District Court demonstrates that despite being found guilty of online fraud involving significant losses, the first instance court failed to award restitution to the victim. Although the perpetrator's sentence was increased on appeal and cassation, the verdict still failed to establish a direct restitution mechanism for the victim. The judge's considerations focused solely on the aggravation of the crime, without ordering restitution. This ruling demonstrates that victim protection in cyber fraud has not been a priority in criminal justice. This has drawn criticism because it is considered to ignore the

¹⁹Muhammad Anthony Aldriano and Mas Agus Priyambodo, *Cyber Crime from a Criminal Law Perspective*, Jurnal Kewarganegaraan, Vol. 6, No. 1, 2022, p. 69

principle of justice, which places victims' rights as a crucial part of the legal process.²⁰

Considering all these issues, it is clear that current regulations on criminal sanctions for online fraud perpetrators do not fully align with the principle of a state based on the rule of law, which demands equal protection for all citizens. Sanction provisions that focus solely on criminal penalties without a redress mechanism deprive victims of their rights, which is one reason why current regulations are considered to not fully reflect the principle of justice.

Viewed from the perspective of Wirjono Prodjodikoro's Theory of Criminal Justice, current regulations on criminal sanctions for online fraud perpetrators tend to focus on imprisonment and fines, without fully addressing the purpose of criminal punishment. Wirjono emphasized that criminal punishment is not only intended to retaliate against the act and deter the public (general prevention), but also to protect social order, prevent recurrence (special prevention), and reform the perpetrator so that he or she can return to being a responsible member of society. Victims of online fraud experience economic losses, and public trust in digital transactions is undermined. When the law only emphasizes imprisonment and fines without ensuring restitution for victims, the goal of public protection, which is at the heart of Wirjono's idea, becomes lopsided. The state appears to only "punish" but has not truly remediated the social and economic damage caused by a crime. Criminal punishment should uphold the authority of the law and a sense of justice, including the recovery of assets or material losses suffered by victims. The absence of restitution obligations indicates a lopsided sanction system: perpetrators are punished, but victims are left to bear the losses or face lengthy and expensive civil litigation. This contradicts Wirjono's view that punishment should have a deterrent effect and restore social order. As long as the victim's losses are not redressed through criminal mechanisms, the goal of punishment is deemed unfulfilled.

3.2. Weaknesses in Criminal Sanction Regulations for Perpetrators of Online Fraud

1) Weaknesses of Legal Substance

One of the weaknesses in legal substance in handling online fraud is the absence of restitution obligations in the formulation of crimes in the ITE Law and the Criminal Code, because both regulations only stipulate the threat of imprisonment and fines without any recovery instruments for victims.

²⁰Rachmat Harijanto and Timbo Mangaranap Sirait, Protection of the Restitution Rights of Victims of Fraud Related to Disparities in the Application of Restitution by the Courts, *The Juris*, Vol. 7, No. 2, 2023, pp. 338-344.

Criminal provisions within the purely punitive paradigm result in victims' material losses not being considered part of the punishment, so the state focuses solely on imposing sanctions on perpetrators without redressing the economic damage caused. Victims of online fraud often lose savings, digital assets, and income, and even if the perpetrator is found guilty, the victim still receives no compensation except for a lengthy and expensive civil lawsuit. The absence of a formulation regarding restitution obligations also causes law enforcement officials to prioritize the elements of the crime over the victim's losses, so that victim recovery is never part of the outcome of the criminal process. This condition shows that the substance of law in Indonesia has not placed the interests of victims as an integral part of the objectives of punishment, even though modern punishment theory emphasizes that punishment must restore social order, repair the damage caused, and restore balance between the perpetrator, the victim, and society.²¹

Legal regulations relating to online fraud are scattered across various unrelated legal instruments, namely the Electronic Information and Transactions (ITE) Law, the Criminal Code (KUHP), the Criminal Procedure Code (KUHP), and the Consumer Protection Law. This lack of integration between regulations means that victim protection does not operate within a single system, but is instead fragmented into several distinct, non-supportive mechanisms. In criminal cases, prosecutors focus solely on proving the elements of the offense under the ITE Law or the Criminal Code, while victims' rights to compensation do not automatically arise from criminal decisions but are instead placed in other mechanisms such as civil lawsuits or compensation requests through the Witness and Victim Protection Agency (LPSK). This creates multiple procedural burdens for victims, ultimately increasing the risk of injustice because not all victims have the financial capacity, access to legal aid, or time to pursue these additional mechanisms. This situation demonstrates that existing regulations have not been developed as an integrated criminal law system, as criminal procedures, consumer protection, and victim protection are not integrated. As a result, the criminal process loses its social function as a means of restoring justice for society, because punishment of perpetrators is not automatically followed by restitution of victims' losses. Consequently, law enforcement against online fraud is suboptimal, unresponsive to victims' needs, and does not provide a strong deterrent effect on cybercriminals.

Another weakness of the substance of the ITE Law related to handling online fraud lies in the absence of clear regulations regarding the accountability of Electronic System Providers (PSEs) such as marketplaces, social media, and messaging applications that are the main means of digital fraud, because the regulation only focuses on sanctions for individual perpetrators without establishing platform

²¹Henny Saida Flora, *Restorative Justice as an Alternative in Resolving Criminal Acts and Its Influence on the Criminal Justice System in Indonesia*, University of Bengkulu Law Journal, Vol. 3, No. 2, 2018, pp. 142-158

obligations to carry out identity verification, transaction monitoring, mandatory notice and take down, or system security standards that prevent service abuse. Article 15 of the ITE Law does regulate general obligations for Electronic System Providers (PSEs), but this provision cannot be considered as an adequate accountability regulation regarding online fraud. Article 15 Paragraph (1) only orders PSEs to organize electronic systems reliably, safely, and responsibly, while Paragraph (2) requires PSEs to provide security procedures, maintain data confidentiality, and ensure the system can operate according to standards. These provisions are more technical-operational regarding system security and data management, rather than regulating platform liability for consumer losses arising from fraud that occurs within their services.²²

This lack of substance makes it easy for perpetrators to exploit loopholes by switching accounts or using fake identities without adequate oversight, while victims are left unprotected due to the lack of loss recovery mechanisms, transaction verification, or consumer protection obligations under the ITE Law. Consequently, the digital ecosystem remains vulnerable to fraud, and the law's function of providing security and certainty for internet users is not being achieved, as regulations have not yet positioned platforms as part of the chain of legal accountability in preventing and addressing online fraud.

2) Weaknesses of Legal Structure

The failure of online fraud victims to obtain restitution is not solely due to weaknesses in legal norms, but also due to the unpreparedness and inability of law enforcement institutions to implement victim recovery mechanisms. Indonesia's legal structure lacks the operational mandate, standard procedures, or coordination that would allow restitution to be implemented as part of the criminal justice process.

a. At the Investigation Level

Police investigations into online fraud are particularly conspicuous by their limited ability to handle and prove cybercrimes that rely on digital evidence. Investigators often encounter obstacles when the targeted digital data is easily altered, deleted, or hidden by the perpetrator. The lack of digital forensic laboratories, a shortage of experts, and the unequal distribution of digital forensic facilities make it difficult for investigators to secure, recover, and analyze vital digital evidence. Consequently, many cases fail to meet evidentiary standards, risking prosecutions

²²Devi Anjheli, Digital Privacy and Phishing Crimes in Indonesia: A Critical Evaluation of the Effectiveness of the ITE Law and the PDP Law, *Staatsrecht: Journal of Islamic State and Political Law*, Vol. 4, No. 1, 2024, pp. 165-189

declaring the case incomplete or leading to the defendant being acquitted at trial due to invalid or inadequate evidence.²³

b. At the Prosecution Level

Prosecutors are not obligated to pursue restitution for victims of online fraud. They focus more on proving the elements of the crime and imposing a sentence, rather than rehabilitating the victim. The right to consolidate claims for compensation, while provided under Articles 98-101 of the Criminal Procedure Code (KUHP), serves as the legal basis for restitution in criminal cases, is optional and depends entirely on the victim's request. This mechanism is almost never used, as prosecutors are not required to notify or facilitate victims.

c. At the Court Level

There is no standard procedure requiring judges to assess the victim's losses and award restitution in online fraud cases. Judges simply follow the criminal provisions in the Electronic Information and Transactions Law (UU ITE) and the Criminal Code. Because the restitution mechanism is only available if the victim files for a consolidated lawsuit (which is not facilitated by the court), victim restitution is not a standard decision. This leads judges to prefer imposing imprisonment and fines as the standard procedure, without assessing the victim's losses, as this is not part of the performance indicators or procedural obligations.

d. From the perspective of the Witness and Victim Protection Agency (LPSK)

Currently, regarding online fraud, the LPSK only handles certain cases, specifically cases such as illegal investment fraud and human trafficking (TPPO) committed through online scams. Some of the disadvantages of submitting restitution through the LPSK include:²⁴

a) Complicated Restitution Procedures

Victims often struggle to understand the restitution application process because the mechanisms are scattered across various regulations and implementing bylaws. The lack of a simple, integrated standard procedure forces victims to seek information on their own. This complexity discourages many victims from applying for restitution at all.

b) There is a Deadline for Submission

²³Riston and Basoddin Basoddin, *The Function of Digital Forensics in Proving Cyber Crimes (Case Study at the Southeast Sulawesi Regional Police)*, *Southeast Sulawesi Law Review*, Vol. 7, No. 1, 2025, pp. 3744-3756.

²⁴Fauzy Marasabessy, *Restitution for Crime Victims: A New Mechanism Offered*, *Journal of Law & Development*, Vol. 45, No. 1, 2016, pp. 53-75.

A restitution application can only be submitted within a certain timeframe, namely before the court decision becomes final and binding. If the victim fails to file within this timeframe, the restitution application may be rejected. This time limit further limits the victim's chances of recovering losses through criminal channels.

c) Very Low Restitution Execution

Restitution enforcement is considered ineffective because it relies heavily on the perpetrator's compliance. Although courts impose restitution obligations, many online fraudsters lack assets that can be seized to compensate victims for their losses. As a result, restitution decisions are merely declaratory and provide no remedy. This situation leaves victims still suffering losses even after the perpetrator has been punished.

d) No Guarantee of Payment from the State

Restitution differs from state compensation. In online fraud, the state has no legal obligation to cover the victim's losses if the perpetrator is unable to pay. The absence of a guarantee mechanism leaves victims with no alternative means of restitution, especially when the perpetrator's assets are zero or insufficient. Victims ultimately remain at a disadvantage even after the criminal process has concluded.

3) Weaknesses of Legal Culture

The weakness of criminal sanctions regulations for online fraudsters lies not only in the formulation of written norms, but is closely related to the legal culture of law enforcement officials and the public, concerning the mindset, habits, values, and attitudes of legal system actors and citizens towards the law. Law enforcement officials are still dominated by a retributive perspective, where the legal culture developing in Indonesia is still heavily oriented towards punishing perpetrators, while restoring victims' rights is not considered a priority. The success of case handling is measured by how often perpetrators are sentenced to prison and how long the sentences are imposed, not by the extent to which victims' losses are successfully recovered.²⁵

Law enforcement bureaucracies remain burdened with workload and administrative burdens. Filing for restitution is seen as additional work that can prolong the process and potentially create new problems. This attitude encourages a tendency to "play it safe" by simply demanding imprisonment and fines, without formulating a request for compensation. The legal process, which essentially allows for victim recovery, is suboptimal because it is not supported by the habits and willingness of officials to maximize it.

²⁵Hafrida and Usman, *Restorative Justice in the Criminal Justice System*. Deepublish, Yogyakarta, 2024, p. 28

In society, many victims view losses resulting from fraud as a "disaster" or "carelessness," making them reluctant to report or pursue their rights seriously. Low levels of legal and digital literacy prevent victims from knowing they have the right to seek restitution or take advantage of victim protection schemes. Concerns arise about the cost, time, and complexity of the legal process if they pursue compensation through civil proceedings or consolidate their claims into criminal cases.

3.2. Justice-Based Reformulation of Criminal Sanction Regulations for Perpetrators of Online Fraud

Law enforcement against fraud committed through technology requires comprehensive reform and strengthening of the criminal justice system, encompassing the development of the culture, structure, and substance of criminal law. In this regard, criminal law policy occupies a strategic position in the development of modern criminal law. In the Great Indonesian Dictionary, the term "penegak" is defined as a party that carries out or enforces something. Law enforcement is defined as a party tasked with enforcing legal regulations. In the narrow sense, the term usually refers to police and prosecutors. However, in Indonesia, the scope has been expanded to include judges, advocates, and correctional officers as elements that play a role in maintaining the continuity of the legal system.²⁶

According to Soerjono Soekanto, law enforcement is the activity of harmonizing the relationships between values embodied in rules and attitudes to achieve peace in society. Law enforcement involves more than simply applying rules rigidly, but also ensuring that the values of justice, utility, and legal certainty are realized in a balanced manner.²⁷ Sudarto explained that law enforcement encompasses efforts to address not only acts that are actually unlawful (*onrecht in actu*) but also actions that have the potential to lead to future violations (*onrecht in potentie*). Law enforcement encompasses both responses to violations that have already occurred and anticipatory measures against potential violations.²⁸

As part of social policy, law enforcement policy encompasses a series of processes known as criminal policy. The concept of law enforcement policy is then implemented institutionally through a system called the Criminal Justice System. There is a close relationship between law enforcement policy and the criminal justice system, as it is the subsystems within the criminal justice system that implement these policies in the form of crime prevention and response efforts.

²⁶Laurensius Arliman, "Achieving Good Law Enforcement in the Indonesian Legal State," *Dialogia Iuridica: Journal of Business and Investment Law*, Vol. 11, No. 1, 2019, pp. 1-20.

²⁷Soerjono Soekanto, *Factors Influencing Law Enforcement*, Raja Grafindo Persada, 2005, p. 5

²⁸Sudarto, *Selected Chapters on Criminal Law*, Alumni, Bandung, 1986, p. 32

The role of each subsystem will be more effective if supported by public participation as a vital part of the law enforcement process.²⁹

Problems in law enforcement essentially lie in various factors that can influence the process. According to Soerjono Soekanto, these factors are neutral, so their positive or negative impact depends heavily on the content and quality of each factor. These factors include the legal regulations themselves, law enforcement officers as the parties who formulate and implement the law, supporting facilities or infrastructure, the conditions of the society in which the law applies, and the legal culture that is the result of human creativity, work, and feelings in social life. These five factors are closely interrelated and are a crucial part in determining the success of law enforcement. Of all these factors, Soerjono Soekanto emphasized that law enforcement officers play a primary role as a measure of the extent to which law enforcement can benefit the welfare of society.³⁰

The need to provide adequate legal protection for crime victims is not only a national concern but has also become an international issue. This issue deserves serious attention. The seriousness of the international community in fighting for victims' rights can be seen in the birth of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by the United Nations (UN), as a result of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Milan, Italy, in September 1985. The document demonstrates global recognition that crime victims have the right to protection, recovery, and access to justice.³¹

Restitution emerged as a consequence of a shift in perspectives on criminal justice, from previously emphasizing retribution to a more restorative approach to victims. This mechanism serves as a crucial tool for accommodating victims' needs. When understood through a restorative justice approach, which views criminal acts as disputes between individuals, the perpetrator's obligation to compensate the victim becomes an integral part. This occurs because criminal acts primarily violate the victim's personal rights, while simultaneously disrupting public order, the interests of the state, and even harming the perpetrator. Restitution, therefore, is a form of restitution that affirms the victim's position as the party whose rights must be restored in every criminal case resolution process.³²

Although restitution mechanisms have been regulated in various regulations, their fulfillment still depends on the victim's initiative and is not automatically ordered

²⁹Indriyanto Seno Adji, *Systematic Corruption and Obstacles to Law Enforcement in Indonesia*, Police Studies, Police Science College, Restu Agung, Jakarta, 2005, p. 9

³⁰Soerjono Soekanto, *Op. Cit.*, p. 69

³¹Rena Yulia, *Victimology of Legal Protection for Crime Victims*, Graha Ilmu, Yogyakarta, 2010, p. 170

³²Marcus A. Asner, *Victim-Oriented Compensation and Restitution for Criminal Act Victims*, *Jurnal Yuridika*, Vol. 33 No. 2, 2018, p. 280

in criminal decisions. This contradicts the principle of restorative justice, which places the restoration of victims' rights at the heart of case resolution, as crime is essentially a conflict between individuals demanding compensation as part of justice. Many victims of online fraud cases do not understand their right to compensation, so this right is often not fulfilled even though the perpetrator has been punished. Criminal decisions that do not include restitution are often considered not to provide true justice for victims. In fact, Article 19 Paragraph (1) of Law 8 of 1999 concerning Consumer Protection stipulates that business actors are obliged to provide compensation for consumer losses, including in electronic transactions, so that compensation for losses should be an obligation, not just an option.

The DS case at the Bale Bandung District Court demonstrates that an online fraud victim did not receive restitution even though the perpetrator was proven to have committed fraud and reaped significant profits through the dissemination of false information. In the first instance decision, the judge only imposed a prison sentence and a fine without requiring restitution of the victim's losses. In fact, some of the confiscated assets were returned to the defendant. This decision drew criticism for ignoring the principle of victim protection as stipulated in the Witness and Victim Protection Law, demonstrating a focus on punishing the perpetrator rather than restitution of the victim's losses. Although the sentence was increased on appeal and assets were confiscated for the state, the victim still did not receive restitution, making this case a clear example of the weak restitution mechanism for online fraud victims in the Indonesian criminal justice system.

Making compensation an additional penalty is a very rational and strategic step to ensure the fulfillment of victims' rights, which have often been neglected even though legal proceedings against perpetrators have been carried out. By including restitution as part of the additional penalty in the revised ITE Law, the state not only provides a deterrent effect on perpetrators but also guarantees real recovery for victims, especially those who experience losses in online buying and selling transactions. This regulation will provide legal certainty because every victim has the right to receive compensation without having to go through a complicated and time-consuming civil process. The affirmation of restitution as an additional penalty reflects the political direction of criminal law that emphasizes legal reform, namely laws that not only punish but also restore, in line with the modern paradigm that prioritizes victim protection as an integral part of the criminal justice system.

Viewed through the Theory of Justice, criminal sanctions for online fraud perpetrators demonstrate the need for alignment between legal norms and law enforcement practices. The provisions in the Criminal Code and the Electronic Information and Transactions Law only emphasize criminal punishment through imprisonment and fines without ensuring restitution for victims' losses, thus failing

to achieve justice. The imbalance between punishment for perpetrators and the lack of mandatory restitution causes the law to fail to create substantial social order. Reformulating the Electronic Information and Transactions Law by including restitution as an additional penalty would address this gap because victim restitution is part of the criminal decision. The law is not only repressive but also restorative, thus more in line with Hans Kelsen's concept of justice, which demands harmony, order, and the rational and consistent application of norms.

4. Conclusion

Current criminal sanctions regulations for online fraud perpetrators are still oriented towards imprisonment and fines without providing adequate space for victim recovery, thus creating an imbalance between the rights of perpetrators and victims. Weaknesses in the substance, structure, and legal culture, ranging from the lack of mandatory restitution, limited digital evidence capabilities, to a still retributive perspective, mean that victims often do not receive compensation even though the perpetrator is sentenced, as seen in the DS case at the Bale Bandung District Court. Therefore, regulatory reform is urgently needed by shifting the orientation of punishment towards recovery through the regulation of restitution as a mandatory part of criminal decisions, so that protection for victims is more optimal and the criminal justice system can better fulfill the principle of balanced justice.

5. References

Journals:

- Adilah Rahman et al., Analisis Kepastian Hukum Terhadap Korban Penipuan Doni Salmanan Ditinjau Dari Putusan Pengadilan Negeri Bale Bandung Nomor 576/Pid. Sus/2022/PN BLB, *Jurnal Hukum, Politik Dan Ilmu Sosial*, Vol. 2, No. 3, 2023
- Andri Winjaya Laksana Pemidanaan Cybercrime Dalam Perspektif Hukum Pidana Positif, *Jurnal Hukum Unissula*, Vol. 35, No. 1, 2019
- Bambang Antariksa, Perbandingan Pidana Denda Dalam Dua Rezim KUHP Indonesia, *Journal Recht (JR)*, Vol. 3, No. 1, 2024
- Devi Anjheli, Privasi Digital dan Kejahatan Phishing di Indonesia: Evaluasi Kritis terhadap Efektivitas UU ITE dan UU PDP, *Staatsrecht: Jurnal Hukum Kenegaraan dan Politik Islam*, Vol. 4, No. 1, 2024
- Devi Trisnawati, Tinjauan Yuridis Terhadap Tindak Pidana Penipuan Secara Online Berdasarkan Undang-Undang Nomor 11 Tahun 2008 Jo Undang-Undang Nomor 19 Tahun 2016 Tentang Informasi Dan Transaksi Elektronik." *Jisos: Jurnal Ilmu Sosial*, Vol. 2, No. 9, 2023

- Dina Elisa Putri et al., Tindak Pidana Penipuan Melalui Aplikasi Digital (Gagasan Pemikiran Pertanggungjawaban Oleh Bank), *PAMPAS: Journal of Criminal Law*, Vol. 5, No. 1, 2024
- Erik Erlangga dan Luthy Yustika, Penerapan Restorative Justice Dalam Tindak Pidana Pencucian Uang Yang Berasal Dari Tindak Pidana Penipuan, *JCA of Law*, Vol. 1, No. 1, 2020
- Fauzy Marasabessy, Restitusi Bagi Korban Tindak Pidana: Sebuah Tawaran Mekanisme Baru, *Jurnal Hukum & Pembangunan*, Vol. 45, No. 1, 2016
- Henny Saida Flora, Keadilan Restoratif Sebagai Alternatif Dalam Penyelesaian Tindak Pidana Dan Pengaruhnya Dalam Sistem Peradilan Pidana di Indonesia, *University of Bengkulu Law Journal*, Vol. 3, No. 2, 2018
- I. Gusti Made Jaya Kesuma et al., Penegakan Hukum terhadap Penipuan Melalui Media Elektronik, *Jurnal Preferensi Hukum*, Vol. 1, No. 2, 2020
- Ila Fatilina, Perlindungan Hukum Terhadap Hak Asasi Manusia, *Dinamika*, Vol. 25, No. 14, 2019
- Irawan Adi Wijaya dan Hari Purwadi, Pemberian Restitusi Sebagai Perlindungan Hukum Korban Tindak Pidana, *Jurnal Hukum Dan Pembangunan Ekonomi*, Vol. 6, No. 2, 2018
- Laurensius Arliman, Mewujudkan Penegakan Hukum Yang Baik Di Negara Hukum Indonesia, *Dialogia Iuridicia: Jurnal Hukum Bisnis dan Investasi*, Vol. 11, No. 1, 2019
- Marcus A. Asner, Kompensasi dan Restitusi Yang Berorientasi Pada Korban Tindak Korban Tindak Pidana, *Jurnal Yuridika*, Vol. 33 No. 2, 2018
- Muhammad Anthony Aldriano and Mas Agus Priyambodo, Cyber Crime Dalam Sudut Pandang Hukum Pidana, *Jurnal Kewarganegaraan*, Vol. 6, No. 1, 2022
- Rachmat Harijanto dan Timbo Mangaranap Sirait, Perlindungan Terhadap Hak Restitusi Korban Tindak Pidana Penipuan Terkait Disparitas Penerapan Restitusi Oleh Pengadilan, *The Juris*, Vol. 7, No. 2, 2023
- Rania Chaerunnisaand dan Aryo Fadlian, Analisis Yuridis Tindak Pidana Penipuan Atas Tipu Muslihat Terhadap Pekerja Seks Komersial Berdasarkan Pasal 378 Kuhp Tentang Tindak Pidana Penipuan, *Jurnal Ilmiah Wahana Pendidikan*, Vol. 8, No. 15, 2022
- Riston dan Basoddin Basoddin, Fungsi Digital Forensik Dalam Pembuktian Tindak Pidana Siber (Studi Kasus di Polda Sultra), *Sultra Law Review*, Vol. 7, No. 1, 2025

Sunarjo Sunarjo, Peradilan Sebagai Pilar Negara Hukum Dalam Perspektif Pancasila, *Jurnal Cakrawala Hukum*, Vol. 19, No. 1, 2014

Winda Fitri dan Tantimin, Analisis Keadilan Substantif Dalam Putusan Pengadilan Mengenai Kasus Penipuan Melalui Media Sosial, *Ius Civile: Refleksi Penegakan Hukum dan Keadilan*, Vol. 9, No. 1, 2025

Books:

Hafrida dan Usman, 2024, *Keadilan Restoratif (Restorative Justice) dalam Sistem Peradilan Pidana*. Deepublish, Yogyakarta

Indriyanto Seno Adji, 2005, *Korupsi Sistematis Dan Kendala Penegak Hukum di Indonesia, Studi Kepolisian Perguruan Tinggi Ilmu Kepolisian*, Restu Agung, Jakarta

Isnu Gunadi, 2014, *Cepat dan Mudah Memahami Hukum Pidana*, Fajar Interpratama Mandiri, Jakarta

Moch Choirul Rizal, 2021, *Buku Ajar Hukum Pidana*, Buku Lembaga Studi Hukum Pidana, Kediri

Nanda Dwi Rizkia dan Hardi Fardiansyah, 2023, *Metode Penelitian Hukum (Normatif dan Empiris)*, Penerbit Widina, Bandung

Nur Solikin, 2021, *Pengantar Metodologi Penelitian Hukum*, Qiara Media, Pasuruan

Rena Yulia, 2010, *Viktimologi Perlindungan Hukum Terhadap Korban Kejahatan*, Graha Ilmu, Yogyakarta

Soerjono Soekanto, 2005, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*, Raja Grafindo Persada

Sudarto, 1986, *Kapita Selekta Hukum Pidana*, Alumni, Bandung