

## LEGAL PROGRESSIVENESS TOWARDS THE RIGHTS OF VICTIMS OF SEXUAL VIOLENCE

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### Abstract

Legal protection for victims of sexual violence is a crucial element in a modern criminal justice system focused on substantive justice and victim recovery. Law Number 12 of 2022 concerning Sexual Violence Crimes has introduced the strengthening of victims' rights through restitution mechanisms and the Victim Assistance Fund as a form of accountability for perpetrators and the state. However, in criminal justice practice, problems persist when requests for restitution are not submitted by investigators or public prosecutors, thus limiting judges' ability to fulfill victims' rights. This study aims to analyze the rights and authorities of law enforcement officers in submitting restitution requests and to examine the mechanisms and procedural law for fulfilling victims' restitution rights that are not submitted in court. The research method used is normative legal research with a statutory and conceptual approach. The results show that although the normative framework for restitution is regulated in the TPKS Law and Government Regulation Number 29 of 2025, the procedural law is still not comprehensive. However, Supreme Court Regulation Number 1 of 2022 provides space for an active and progressive role for judges in ensuring the fulfillment of victims' restitution rights. This research emphasizes the urgency of harmonizing regulations and strengthening the role of the state in the recovery of victims of sexual violence.

**Keywords:** *Sexual Violence, Restitution, Victims' Rights, Criminal Procedure Law, Restorative Justice*

### I. INTRODUCTION

Legal protection for victims of sexual violence is an essential part of the modern criminal justice system, which focuses not only on punishing the perpetrator but also on restoring the victim's rights. Sexual violence has serious physical and psychological impacts on victims, thus requiring an effective legal mechanism to mitigate these impacts by fulfilling the victims' rights<sup>1</sup>. Legal developments in Indonesia provide a form of guaranteed protection, further reinforced by various regulations governing restitution and compensation as a form of accountability for the perpetrator and the state for the losses suffered by the victim<sup>2</sup>.

Historically, traditional criminal law has tended to focus on punishing perpetrators without paying proportionate attention to victims' rights. However, modern legal theory emphasizes that the criminal justice system should be oriented toward restorative justice, where victims are involved in a fair and meaningful healing process. This concept of victim restoration, which encompasses restitution and compensation, stems from the idea that punishment alone is insufficient to address victims' needs<sup>3</sup>. The development of criminal law, particularly regarding the fulfillment of the rights of victims of sexual violence, has evolved over time and with a shift in mindset from criminalizing perpetrators to providing reparation for victims. Various legal and regulatory literature states that perpetrators not only receive punishment for their crimes but also have the right to reparation for

<sup>1</sup>Mahmud Mulyadi et al., *Restitution: An Absolute Right for Victims of Crime*, Usu Press, Medan, 2024, pp. 1-12.

<sup>2</sup>*Ibid*, pp. 18-30.

<sup>3</sup>Satjipto Rahajo, *Law and Society*, Angkasa, Bandung, 1980, p. 15.

victims of sexual violence in the form of restitution and compensation. The considerations regarding letter c of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence have provided a philosophical objective for its formation which refers to its regulations, namely:

"that the laws and regulations relating to sexual violence are not yet optimal in providing prevention, protection, access to justice, and recovery, do not yet fulfill the rights of victims of sexual violence crimes, and are not yet comprehensive in regulating procedural law."

The formation of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence has led to appropriate legal developments, but has not been fully accommodated in the derivative literature of the laws and regulations governing the Implementation of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, for example in Government Regulation Number 29 of 2025 concerning Assistance Funds for Victims of Criminal Acts of Sexual Violence which is a derivative of the provisions of Article 35 paragraph (4) of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, which regulates various rights and obligations, institutional authority and including procedural law, but the authority regarding the implementation of legal authority in implementing and fulfilling the right to Restitution for Victims of Criminal Acts of Sexual Violence is not yet perfect.

Legal protection for victims of sexual violence is not only a national issue but has become an international issue that is crucial for resolving these cases. Providing protection for victims is a way to fulfill a sense of justice in society. In practice, cases of sexual violence often present difficulties in resolving them, both during the investigation, prosecution, and sentencing stages. In addition to the difficulties outlined above, there are also difficulties in proving the case, for example, sexual harassment or indecent acts, which are generally committed without the presence of others at the scene<sup>4</sup>.

Legal responsibility is a further consequence of the performance of a role, whether that role is a matter of rights and obligations or authority. In general, the responsibility to do something or behave in a certain way does not deviate from existing regulations<sup>5</sup>. At a time like this, the state should be able to take an important role by formulating and providing a clear form of responsibility, both in the prevention period *and* during the recovery period for women who are victims. As a country that actively participates in the international community, Indonesia has ratified a number of International Human Rights Instruments, including those concerning respect and protection of the rights of women who are victims of crime. For this reason, the Indonesian Government has ratified the Convention on the Elimination of All Forms of Discrimination against Women (*Convention of the Elimination of All Forms of Discrimination against Women*) or often referred to as CEDAW with the issuance of Law of the Republic of Indonesia Number 7 of 1984, by making a reservation on Article 29 paragraph (1) regarding the obligation to resolve disputes regarding the interpretation and application of the provisions in this convention. As a State Party to this convention, Indonesia has the obligation and responsibility to implement the provisions contained in this convention and submit periodic reports to the UN CEDAW Committee<sup>6</sup>. The implementation of criminal procedure law in Indonesia regarding cases of sexual violence tends to favor certain authorities in submitting, seeking, and granting victims of sexual violence their rights, including the Victim Assistance Fund (DBK) or restitution. For example, Article 31 of Law Number 12 of 2022 concerning Sexual Violence stipulates: "Investigators, public prosecutors, and judges are required to inform victims and the LPSK of their right to restitution."

The above provisions are not accompanied by legal mechanisms or procedural law in implementing these provisions, whereas in Article 13 paragraph (1) of Government Regulation

<sup>4</sup>Leden Marpaung, *Crimes Against Morality and the Problem of Prevention*, Sinar Grafika, Jakarta, 1996, p. 18.

<sup>5</sup>Khairrunisa, *Position, Role and Legal Responsibilities of the Board of Directors*, Medan, 2008, p. 4.

<sup>6</sup>M Nur Rasyid, *Human Rights Law*, Second Edition, Bandar Publishing, Banda Aceh, 2023, p. 273.

Number 29 of 2025 concerning Special Assistance Funds for Victims of Sexual Violence Crimes, it states: "Recovery Funding through the Victim Assistance Fund as referred to in Article 7 paragraph (2) is provided based on a request from the Victim, the Victim's family or their attorney." These two regulations are not sufficient to provide procedural legal literacy regarding the process or mechanism of procedural law in court, because if the one who submits Restitution is the Investigator and Public Prosecutor, the Judge in his authority in making legal considerations follows the applicable procedural law because the Judge has been faced with evidence of alleged criminal acts committed by the Defendant plus the results of considerations or determinations of the LPSK in assessing the rights of Restitution that are entitled to be obtained by Victims of Sexual Violence Crimes. However, if the Restitution is not submitted by the Investigator and Public Prosecutor, then the Government Regulation above, gives the right to the Victim, the victim's family or their attorney in writing to the LPSK. However, it also remains a problem if the Victim or the Victim's family does not understand the procedures for submitting it and the Victim himself is not accompanied by his Attorney.

## II. FORMULATION OF THE PROBLEM

That after making a description that will be the subject of discussion in this writing, the author then summarizes the problem formulation to answer the various problems formulated in this writing, namely as follows:

1. What are the rights and authorities of law enforcement officers in submitting requests for restitution to victims of sexual violence crimes?
2. What are the mechanisms and procedural laws for fulfilling the rights of victims of criminal acts that are not submitted by investigators and public prosecutors in court?

## III. RESEARCH METHODS

This research uses a normative research method. Normative legal research *is* usually only a documentary study, using legal sources such as laws and regulations, court decisions/rules, contracts/agreements/contracts, legal theories, and scholarly opinions. Another name for normative legal research is doctrinal legal research, also referred to as library research or document study <sup>7</sup>.

## IV. RESULTS AND DISCUSSION

### A. Submission of Restitution Application for Victims of Sexual Violence Crimes.

The relationship between law and justice is often linked to one another, leading to the emergence of the famous legal adage "*iustitia fundamentum regnorum*," which means justice is the highest, fundamental, or absolute value in law <sup>8</sup>. For Plato, justice is the emancipation and participation of citizens in the polis/state in providing ideas about the good of the state. This then became a philosophical consideration for a law <sup>9</sup>. Aristotle provided a clearer explanation of justice. He defined justice as balance. Aristotle's measure of balance is numerical equality and proportional equality <sup>10</sup>. This contrasts with Immanuel Kant, who viewed justice as a universal and objective principle, where justice is achieved when individuals are treated as ends in themselves, not as means to achieve others' goals <sup>11</sup>. Law enforcement activities in the area of sexual violence crimes certainly require a swift and appropriate response, as well as balanced and consistent enforcement. Many victims are reluctant to report crimes to law enforcement due to "shame" or "fear," based on various perspectives and paradigms of how to resolve their problems.

<sup>7</sup>Bambang Waluyo, *Legal Research in Practice*, Sinar Grafika, Jakarta, 1996, p. 13.

<sup>8</sup>Hyronimus Rhiti, *Philosophy of Law*, Yogyakarta: Atma Jaya University, Yogyakarta, 2011, p. 239.

<sup>9</sup> *Ibid*, pp. 240-241.

<sup>10</sup> *Ibid*, p. 241.

<sup>11</sup> Maksum Rangkuti, *What is Justice in Law ?*, <https://fahum.umsu.ac.id/apa-itu-keadilan-dalam-hukum/>, accessed on November 15, 2025.

The Police and the Prosecutor's Office in handling cases of sexual violence have clear regulations in carrying out their duties in the field of investigation and prosecution, as stated in Article 31 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence which states: "Investigators, public prosecutors, and judges are required to inform victims and the LPSK of their right to restitution." Article 33 of Law Number 12 of 2022 concerning TPKS stipulates: "Restitution shall be provided within a maximum period of 30 (thirty) days from the date a copy of the court decision or ruling is received." The two articles above have provided a sufficient mechanism for submitting the Right of Restitution by Law Enforcement Officers, but the question is what happens if the Right of Restitution is not presented by the Public Prosecutor in the courtroom, while what has happened so far is that there has been a lot of debate regarding *the ultra petita* which then becomes the judge's limit in deciding a case, for example as quoted from Derry Yusuf Hendriana's writing, which states <sup>12</sup>:

"In criminal procedural law, this principle is translated into a number of provisions of the Criminal Procedure Code, above which is Article 143 paragraph (2) which regulates the clarity of the indictment, Article 182 paragraph (4) which emphasizes that the judge may only decide based on the indictment and evidence in court, and Article 193 paragraph (1) which states that a sentence can only be imposed if the defendant's guilt is proven legally and convincingly. This means that the prosecutor's indictment becomes the limit of the judge's jurisdiction. The judge may not impose a sentence based on actions not mentioned in the indictment, even if the trial facts indicate otherwise."

Based on facts quoted from an article which states:

"From various cases of sexual crimes against children that occurred in L Regency (disguised), from 2020 to 2023 there were cases of sexual violence against children who were victims, both children and adults, but no restitution stage has been carried out at each stage (starting from investigation to prosecution in court), one of which is a case of sexual violence against children with Case Number: (disguised) in the name of Defendant ADBS which occurred in L Regency in 2021. The child victim in this case has not received his right to restitution, because the demands of the Public Prosecutor and the Court Decision do not at all burden the defendant to pay restitution."

Thus, the problem of not submitting a Request for Restitution Rights to the Victim by the Investigator or Public Prosecutor makes the judge limited in fulfilling all the provisions governing the Right to Restitution.

#### **B. The progressiveness of judges in fulfilling the rights of victims of criminal acts that are not submitted by investigators and public prosecutors in trials.**

By examining various regulations regarding restitution as regulated in laws and regulations, the author found provisions that regulate the provisions of law enforcement officers regarding the right to restitution that must be carried out, namely as stated in Article 31 paragraph (1) of the TPKS Law which stipulates: "investigators, public prosecutors and judges are obliged to inform victims of their right to restitution." However, the provisions in these legal regulations do not make provisions regarding the obligation to submit restitution rights to victims by investigators and public prosecutors in legal documents that will form the basis of charges in the courtroom. Likewise, after tracing the law regarding Restitution as regulated in Government Regulation Number 29 of 2025 concerning Assistance Funds for Victims of Sexual

<sup>12</sup> Hendriana, *Questioning Ultra Petita Decisions in Criminal Cases*, <https://marineews.mahkamahagung.go.id/artikel/menyoal-putusan-ultra-petita-dalam-perkara-pidana-09S>, accessed on January 15, 2026.

Violence Crimes which makes regulations regarding the Procedures for Providing Victim Assistance Funds as regulated in Articles 8 to 14, it only regulates the Provision of Victim Assistance Funds after a court decision but does not provide a complete explanation as an implementing regulation of Law Number 12 of 2025 concerning Criminal Acts of Sexual Violence, regarding the mechanism for submitting and fulfilling Victim Restitution rights in legal documents before the trial, so that it does not provide enough space for judges to decide a case of sexual violence crime by fulfilling the rights of victims of sexual violence crime. Another provision that at least provides this space is contained in Supreme Court Regulation Number 1 of 2022 concerning Procedures for Resolving Applications and Granting Restitution and Compensation to Victims of Crime. Article 8 of Supreme Court Regulation 1 of 2022 states:

- (1) Restitution applications to the Court can be submitted not only through LPSK, investigators or public prosecutors, but also by victims.
- (2) In the case of an application being submitted through an investigator or LPSK, the investigator or LPSK shall submit the Restitution application file as referred to in Article 5 to the Public Prosecutor accompanied by the LPSK Decision regarding the amount of Restitution if there is a LPSK Decision and Considerations 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.

The above mechanism provides a clear mechanism and procedural law for submitting a restitution to the court, but what happens if the victim is not accompanied by his/her attorney and the investigator or LPSK does not submit the restitution. This also includes a mechanism for submitting the restitution to the court even if it is not submitted by the parties, as regulated in Article 8 paragraph (4) of Perma 1 of 2022 which stipulates:

"In the event that the victim does not submit a request for restitution and the victim is present at the trial as a witness, the judge will inform the victim of the right to obtain restitution which can be submitted before the public prosecutor submits the charges or after the court decision has permanent legal force." Based on the aforementioned provisions, even if investigators, public prosecutors, and the LPSK do not file a request for restitution in their legal documents, judges can play an active role in notifying victims of this right, and victims can immediately file a claim before the public prosecutor files their own. Therefore, judges can be categorized as active in upholding progressive justice.

Because even though there are differences of opinion whether the judge can decide other than that submitted by the Public Prosecutor in the courtroom, referring to the judge's activeness in deciding a case in becoming a progressive space to provide justice for the victim. Because basically, in criminal cases the judge must be active because the judge is not solely bound by valid evidence, but must also be bound by his own belief in the defendant's guilt (*beyond reasonable doubt*), because the goal is to achieve material truth, in contrast to civil cases the judge is only passive or the judge is only solely bound by valid evidence (*preponderance of evidence*) with the aim of seeking formal truth<sup>13</sup>. Sexual violence is a violation of human rights, a crime against human dignity, and a form of discrimination that must be eliminated. Sexual violence is increasingly prevalent in society, causing tremendous impacts on victims. These impacts include physical, mental, health, economic, social, and political suffering. The impact of sexual violence also significantly impacts victims' lives<sup>14</sup>. Sexual violence is a serious violation of human rights because it directly violates human dignity and represents a form of

<sup>13</sup>Erizka Permatasari, *Differences between Criminal Procedure Law and Civil Procedure Law*, <https://www.hukumonline.com/klinik/a/perbedaan-hukum-acara-pidana-dan-perdata-lt61822de00a2b8/>, accessed on January 15, 2026.

<sup>14</sup>Second paragraph, General Explanation of Government Regulation Number 29 of 2025 concerning Assistance Funds for Victims of Sexual Violence Crimes.

discrimination that contradicts the principle of equality before the law. The increasing phenomenon of sexual violence in society demonstrates that this problem is not only individual but also structural, thus requiring the active presence of the state in providing effective legal protection. The impacts of sexual violence are multidimensional, including physical suffering, psychological trauma, long-term health problems, economic loss, social stigma, and even limited participation of victims in social and political life.

Within the framework of state accountability, the state's failure to prevent, address, and rehabilitate victims of sexual violence can be viewed as a form of negligence in fulfilling its constitutional obligation to protect human rights. The state is not only obligated to punish perpetrators but also responsible for ensuring a legal system capable of providing substantive justice for victims. However, within the context of the National Criminal Code, legal gaps and limited regulations remain, which do not fully accommodate the characteristics of sexual violence, particularly those related to the victim's perspective, recognition of non-physical impacts, and comprehensive redress mechanisms.

These gaps and limitations result in weak legal protection for victims and potentially create legal uncertainty, thus reinforcing the urgency of strengthening regulations beyond the National Criminal Code and harmonizing existing laws and regulations. Therefore, sexual violence must not only be understood as a criminal act but also as a human rights issue that demands comprehensive state accountability, including prevention, law enforcement, and victim recovery. The only mention of the word "restitution" in the National Criminal Code is contained in the Explanation of Article 66 letter d which states "Compensation in this provision is the same as restitution as regulated in the laws and regulations governing the protection of witnesses and victims" which is a regulation regarding additional criminal penalties. Therefore, the judge as an adjudicator must position himself as an adjudicator who actively seeks and finds the material truth and fulfills all the rights of all parties to the case.

## V. CONCLUSION AND SUGGESTIONS

### A. CONCLUSION

Based on the research results and discussion outlined above, it can be concluded that legal protection for victims of sexual violence in Indonesia has undergone significant developments, particularly through the enactment of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence. This law has normatively shifted the paradigm of criminal punishment from solely focusing on the perpetrator to a more equitable approach by placing victim recovery as a key component of the criminal justice system. However, in practice, serious problems remain regarding the fulfillment of victims' rights to restitution, particularly when these rights are not raised by investigators and prosecutors during trials. Procedural law regulations, which expressly require law enforcement officials to include demands for restitution in indictments and criminal charges, place judges in a limited position, particularly due to the *ultra petita principle* in criminal procedure law. The existence of Supreme Court Regulation Number 1 of 2022 actually opens up space for judges to play an active role in ensuring the fulfillment of victims' rights to restitution, even when restitution is not raised by investigators or prosecutors. This demonstrates that judicial progressivity is key to achieving substantive justice for victims of sexual violence. Thus, the fulfillment of victims' rights does not only depend on regulations, but also on the courage and sensitivity of law enforcement officers in placing victims as the main subjects of legal protection and human rights.

### B. SUGGESTION

1. Improvements and harmonization of laws and regulations are needed, particularly by clarifying the legal procedures for submitting and fulfilling restitution in sexual violence

cases. These regulations must explicitly require investigators and prosecutors to submit restitution as an integral part of the prosecution process.

2. *-oriented approach* is needed for law enforcement officials, including investigators, prosecutors, and judges, in handling sexual violence cases. Law enforcement officials must actively inform, seek, and ensure the fulfillment of victims' rights to restitution and recovery without waiting for the initiative of victims, who are often in vulnerable situations. This also requires strengthening the state's role within the framework of constitutional and international accountability, including optimizing the Victim Assistance Fund and strengthening the role of the LPSK (Lembaga Penita Masyarakat Indonesia/LPSK) to be more proactive in assisting victims who lack access to legal assistance or assistance.

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