

Executorial Power of Restitution against Actors as a Form of Crime Victims in Indonesia

Lusia Sulastr^{1,*} and Bahtiyar Efendi²

¹ Faculty of Law, Universitas Bhayangkara Jakarta Raya, Jakarta, Indonesia

² Fakultas Hukum, Universitas Islam Sultan Agung, Semarang, Indonesia

* Corresponding author:
lusia.sulastr@dsn.ubharajaya.ac.id

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Abstract

The existence of Supreme Court Regulation Number 1 of 2022 Concerning Procedures for Completion of Applications and Granting Restitution and Compensation to Victims of Criminal Acts has, in fact, postponed the right of victims to ask for compensation from the perpetrators, but the perpetrators in this case alone cannot carry out the compensation that has been decided. Based on this, this study aims to examine the power of implementing restitution for perpetrators as a form of recovery for victims of criminal acts in Indonesia and the concept of effective restitution for perpetrators as a form of recovery for victims of criminal acts normatively. The research results show that restitution for perpetrators as a form of recovery for victims of criminal acts in Indonesia has weak executive power. The concept of effective restitution for perpetrators as a form of recovery for victims of criminal acts in Indonesia requires the concept of reward in return for good faith and punishment in the form of resolving certain rights, the concept of tracing assets and confiscation, and the authority of judges to calculate the victim's losses themselves.

Keywords

Executive power, Restitution, Victims, Criminal act, Indonesia

1. Introduction

No one wants to become a victim of a criminal act. This is because victims suffer physically and mentally due to the actions of others who seek their own interests and violate the violated fundamental rights (Gosita, 1993). It is not just physical and mental suffering. Muladi explains that victims are individuals or groups who have suffered losses, including physical or mental

harm, emotional distress, economic losses, or substantial disruption of their fundamental rights through acts or commissions that violate criminal law in each country, including abuses of power (Muladi, 2005).

Someone who becomes a crime victim must face crucial legal issues. Victims, as the party that suffers and is harmed due to criminal violations, are usually only involved to the extent of providing testimony as a victim witness. As a result, victims often feel dissatisfied with the criminal demands presented by the Public Prosecutor and/or the judgments handed down by the Judge because they are deemed unfair to the victim's sense of justice (Marasabessy, 2016).

The existence of the criminal justice system is intended for the interests of the state and society, not for the personal interests of individuals (Reiman & Leighton, 2015). As a consequence, the losses suffered by crime victims are misfortunes that victims themselves must bear because it is not the function of the criminal justice system to bear them. According to Muladi, in the context of the concept of regulating the protection of crime victims, the first thing to consider is the essence of the losses suffered by the victim.

Restitution is the payment of compensation imposed on the perpetrator based on a legally binding court decision for material and/or immaterial losses suffered by the victim or their heirs. The forms of material and immaterial compensation for children who are victims of criminal acts, as regulated in Article 3 of Government Regulation No. 43 of 2017, are as follows: a. compensation for the loss of wealth; b. compensation for suffering as a result of the criminal act; and/or c. reimbursement of medical and/or psychological treatment expenses (Alya, 2021).

The Witness and Victim Protection Agency (LPSK) calculated the amount of compensation or restitution that Mario Dandy Satriyo had to pay to Cristalino David Ozora, amounting to Rp 120 billion. The prosecutor then asked what would happen if Mario Dandy could not afford to pay. The LPSK witness then answered that there is indeed no regulation that forces a defendant not to be able to pay. In practice, what is often done is to impose a subsidiary penalty (Nufus, 2023).

The context of the restitution fine amounting to Rp 120 billion claimed through the LPSK is certainly interesting to examine because the LPSK also stated that if the restitution of Rp 120 billion cannot be paid, there is currently no regulation that forces a defendant not to be able to pay. This is important as it raises questions about the legal certainty of recovery for a crime victim if the restitution does not have enforceable power.

As a legal breakthrough, the Supreme Court has actually issued Regulation Number 1 of 2022 regarding the Procedure for Handling Requests and Granting Restitution and Compensation to Crime Victims. This regulation emphasizes that the development of the criminal justice system is not only oriented towards the interests of the perpetrators but also towards the protection of victims. Therefore, every specific crime victim has the right not only to protection but also to restitution and compensation. This reflects the collective desire that victims are not merely treated as additional sufferers but also deserve to be restored, as this is the essence of establishing a justice system.

This regulation does not cover all criminal offenses, but based on Article 2 of the Regulation of the Supreme Court Number 1 of 2022, it is stated that requests for restitution apply to cases of serious human rights violations, terrorism, human trafficking, racial and ethnic discrimination, crimes related to children, and other criminal acts determined by the decision of the Witness and

Victim Protection Agency (LPSK) as referred to in the provisions of the legislation. Therefore, because Cristalino David Ozora is still a child, restitution for children as crime victims is indeed a crucial aspect that needs to be implemented. This is not only due to the considerable medical expenses but also for the future of the child who is a victim of a criminal act and has experienced disability.

According to Article 30 paragraph (9) of the Regulation of the Supreme Court Number 1 of 2022, in cases where the perpetrators and/or Third Parties have not fulfilled the restitution payment, the Attorney General/Prosecutors/Examining Magistrates order the perpetrators and/or Third Parties to fulfill the restitution payment within 14 (fourteen) days from the date of receipt of the order letter. Then, paragraph (10) of the same regulation also states that if the restitution to the Victim is not fulfilled within the specified period in paragraph (9), the Applicant or the LPSK will inform the Attorney General/Prosecutors/Examining Magistrates.

For a moment, we can find satisfaction in knowing that the Attorney General can seize the defendant's assets. However, according to Article 30 paragraph (9) of the Regulation of the Supreme Court Number 1 of 2022, after receiving the notification as referred to in paragraph (10), the Attorney General/Prosecutors/Examining Magistrates shall seize the wealth of the perpetrators and/or Third Parties and auction the assets to fulfill the restitution payment within 30 (thirty) days or 14 (fourteen) days in cases of restitution related to human trafficking. In cases where the wealth of the perpetrators and/or Third Parties is insufficient to fulfill the restitution payment and the defendant is sentenced to imprisonment or substitute imprisonment as referred to in Article 8 paragraphs (13) and (14), the Attorney General/Prosecutors/Examining Magistrates shall carry out the sentence of imprisonment or substitute imprisonment. It is essential to emphasize the phrase "in cases of restitution related to human trafficking." The question is whether asset auctioning applies to cases involving children.

In the case of Mario Dandy Satriyo, it is a legal fact that the defendant is already an adult but has not yet lived independently, and his wealth is still not separated from his parents. In this context, can the parents be considered as a Third Party, and what if the parents refuse to pay the restitution, especially considering that Mario Dandy Satriyo's father is currently involved in a corruption case?

Article 1 number 15 of the Regulation of the Supreme Court Number 1 of 2022 states that a Third Party is a party other than the perpetrator of the criminal act who is willing to pay the restitution. This implies that a Third Party is someone who is willing to pay the restitution, but what if the parents are unwilling to pay the restitution? This situation is different from civil law concepts according to Article 1367 of the Civil Code (KUHPdata), where parents have responsibilities for their child's actions. However, in criminal law, the responsibility lies with the individual and cannot be transferred to someone else.

Based on the series of normative weaknesses of the Regulation of the Supreme Court Number 1 of 2022 regarding the Procedure for Handling Requests and Granting Restitution and Compensation to Crime Victims, the big question arises about how effective the restitution enforcement is against the perpetrators as a means of victim recovery in Indonesia. Will restitution only result in substitute imprisonment, or are there other efforts that can be made to build legal protection for victims through fair restitution in Indonesia.

1.1. Problems

Based on the introduction, it can be taken a formulation of the problem, namely:

1. What is the executive power of restitution for perpetrators as a form of recovery for victims of criminal acts in Indonesia?
2. What is the concept of effective restitution for perpetrators as a form of recovery for victims of criminal acts in Indonesia?

2. Methods

The research method used is normative juridical. In normative legal research, library materials are basic data that are classified as secondary data, namely data that is in a ready-made state, its form and content have been compiled by previous researchers and can be obtained without being bound by time and place (Soekanto and Mamudji, 2001). The author conducts a study of legislation regarding the politics of criminal law in carrying out criminal act asset confiscation in Indonesia by reviewing laws and regulations both through the statutory approach (Statute approach), conceptual approach (Conceptual approach), and comparative approach (Comparative approach).

3. Results and Discussion

3.1. The Executorial Power of Restitution Against Perpetrators as a Form of Recovery for Victims of Crime in Indonesia

The urgency of victim protection is based on the idea that in society, all citizens must fully participate, as society is considered a system of trust that is institutionalized. Without this trust, social life cannot function well because there is no definite reference for behavior (Muladi and Nawawi, 1998). In the concept of legal protection for crime victims, various forms of protection can be provided in different ways, depending on the suffering/loss experienced by the victim. Therefore, the law must grant rights to the victim. The general rights possessed by victims include (Didik, et al. 2007):

- a. The right to obtain compensation for the suffering endured, and this compensation can be provided by the perpetrator or other parties, including the State or specialized institutions dealing with victim compensation for crimes.
- b. The right to receive guidance and rehabilitation.
- c. The right to receive protection from the threats posed by the perpetrator.
- d. The right to receive legal assistance.
- e. The right to reclaim their property.
- f. The right to access medical services.
- g. The right to be informed when the perpetrator will be released from temporary detention or when the perpetrator is a fugitive from detention.
- h. The right to receive information about the police investigation related to the crime against the victim.
- i. The right to personal freedom or privacy, such as keeping the victim's phone number or other personal information confidential.

The protection of crime victims in the criminal case resolution process is not only important for the victims and their families but also for broader interests, namely, for the purpose of crime prevention on the one hand and for the interests of the perpetrators of crime on the other hand. As J.E. Sahetapy (1987) stated:

Criminals who have shown kindness to their victims will be more amenable to rehabilitation because, in doing so, they have taken concrete steps to rectify the harm caused by their actions. The imposition of a penalty in the form of compensating the victim will develop a sense of responsibility in the perpetrator since it requires active participation on their part (Sahetapy, 1987).

The concept of restitution is generally defined as an act of doing good or providing an equivalent amount for the loss or harm experienced by the victim (Lollar, 2014). In the application of restitution in law, several objectives are expected to be achieved, including:

- a. Restitution serves both to compensate the victim for their losses and to penalize the perpetrator of the criminal act.
- b. Restitution's ability to trace the losses caused by the perpetrator acts as a preventive measure by warning potential offenders that they will be held accountable for the damages they cause.
- c. Restitution forces the perpetrator to acknowledge the harm caused by their actions by ordering them to pay a sum of money to the victim, thereby compelling the offender to take responsibility for their deeds (Frank, 1992).

In the positive law of Indonesia, there are several provisions related to restitution in general, indicating the existence of restitution in Indonesia. The first regulation regarding restitution is stipulated in Article 98 of the Criminal Procedure Code (further referred to as KUHAP) which states as follows:

If an act that forms the basis of an indictment in an examination of a criminal case by a district court causes harm to another person, then the head judge at trial at the request of that person may decide to combine the case for compensation to that criminal case. With the description above, it is clear that restitution is known in criminal procedural law where the judge can ask for compensation by combining cases of claims for compensation at the request of the person. This applies if in an examination of a criminal case by the court it causes harm to other people.

Then the second, Article 35 of Law Number 26 of 2000 concerning the Human Rights Court which reads "every victim of gross human rights violations and/or their heirs can obtain compensation, restitution and rehabilitation". This article explains the granting of restitution to victims of gross human rights violations which are included in the verdicts of the Human Rights Court.

Article 36A of Law Number 5 of 2018 states that "the victim has the right to receive restitution, the intended restitution is compensation given by the perpetrator to the victim or their heirs". Furthermore, the third, in Article 7 of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims it is explained that "victims through the LPSK have the right to apply to court in the form of the right to restitution or compensation which is the responsibility of the perpetrator "criminal act".

Based on this description, it shows that the existence of restitution in the form of compensation by perpetrators of criminal acts is known in witness and victim protection institutions. Then in Article 71D of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection it is stated that every child who is a victim of a crime has the right to apply to court in the form of the right to restitution which is the responsibility of the perpetrator of the crime. The law on child protection also recognizes compensation in the form of restitution for children who are victims of criminal acts. This indicates that the existence of the right to restitution is also recognized in the law on child protection.

Article 48 of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons (hereinafter abbreviated as UURI PTPPO) states that:

Every victim of the crime of trafficking in persons or their heirs has the right to obtain restitution. Restitution in question is in the form of compensation for loss of wealth or income, suffering, costs for medical or psychological treatment measures, other losses suffered by victims as a result of trafficking in persons.

The policy in criminal law regarding restitution for crime victims, especially victims of human trafficking, as regulated in Law Number 21 of 2007 on the Eradication of Human Trafficking Crimes (UURI PTPPO), provides formal and material legal basis. The granting of restitution rights stipulated in Article 48 of the UU PTPPO is a concrete manifestation of the state's attention and protection of the interests of every victim, especially victims of human trafficking crimes.

Restitution, in essence, has been recognized in positive law in Indonesia, not only in the Criminal Procedure Code, Law No. 26 of 2000 on Human Rights Courts, Law No. 5 of 2018 on Child Protection, and Law on the Eradication of Human Trafficking Crimes, but is also technically supported by the Supreme Court Regulation Number 1 of 2022 concerning Procedures for Settlement of Requests and Provision of Restitution and Compensation to Crime Victims. The essential question is whether these laws and regulations have achieved their goal of implementing restitution as a means of victim recovery.

The Supreme Court Regulation Number 1 of 2022 concerning Procedures for Settlement of Requests and Provision of Restitution and Compensation to Crime Victims is essentially an internal norm. Jimly Asshiddiqie categorizes Supreme Court regulations as specific regulations, thus subject to the principle of "lex specialis derogat legi generalis" (special law derogates general law). However, Jimly criticizes the use of a circular format that contains regulatory substance. If the substance contains regulations, it should be in the form of a regulation (Asshiddiqie, 2004). On the other hand, HAS Natabaya states that the formulation of Article 7 paragraph (4) and the explanation of Law 10/2004 (old law) imply that there is no longer a distinction between pure and pseudo legal regulations (Natabaya, 2008). This means that the Supreme Court Regulation is only an internal regulation of the Supreme Court, specifically within the scope of the courts. Therefore, it is unlikely to cover matters such as asset tracing and seizure, which would eventually need to be implemented.

The power of execution essentially refers to the power to carry out a court's decision. The power of execution in legally binding court decisions means that with this power, judges can enforce (execute) the judgment (Pamudji, 2023). In civil cases, execution is carried out by the District Court, while the prosecutor acts as the executor in criminal cases. Based on Supreme Court Circular No. 10 of 2020 on the Implementation of the Formulation of the Results of Plenary

Meeting of the Supreme Court Chamber as Guidelines for Carrying Out Duties for Courts, it is stated that in criminal cases where the court's decision decrees the confiscation of evidence for the state, execution is still carried out by the prosecutor as the executor in accordance with the provisions of the applicable laws and regulations.

Therefore, even though the Public Prosecutor acts as the executor in restitution based on the Supreme Court Regulation Number 1 of 2022 concerning Procedures for Settlement of Requests and Provision of Restitution and Compensation to Crime Victims, its implementation will not be easy as restitution execution involves not only criminal law but also civil law aspects related to compensation for damages. Schafer states that there are five systems for providing restitution and compensation to crime victims, as follows:

- a. Compensation that is civil in nature, is given through a civil process. This system separates claims for compensation from victims from criminal proceedings.
- b. Compensation that is civil in nature is given through criminal proceedings.
- c. Restitution that is civil and mixed with a criminal nature is given through the criminal process.
- d. Compensation is civil in nature, provided through criminal proceedings and supported by State revenue sources. Here compensation does not have any criminal aspects, even though it is given in the criminal process (Educate, et al. 2007).

Restitution as regulated in the Supreme Court Regulation Number 1 of 2022 concerning Procedures for Settlement of Requests and Provision of Restitution and Compensation to Crime Victims can be implemented through several avenues, including:

Restitution requests submitted through law enforcement agencies such as LPSK (The Witness and Victim Protection Agency), investigators, or public prosecutors, by victims before the case is brought to court (Article 8 paragraph (1)). b. Restitution requests submitted by victims (Article 8 paragraph (1)). c. Submission and Examination of Requests after Legally Binding Court Decisions submitted by victims (Article 11). d. Submission and Examination of Requests after Legally Binding Court Decisions submitted by LPSK (Article 12).

Restitution governed by the Supreme Court Regulation Number 1 of 2022 is essentially a criminal matter. Article 13 states that the Clerk of the Court handling criminal cases must examine the completeness of the request within a maximum of 2 (two) days after the request is submitted. Thus, the procedure used is the criminal case route, not civil.

If a restitution request is submitted before the case files are transferred, the public prosecutor must include the request in the indictment and include the request in the case files, providing a copy to the defendant or their legal counsel. The public prosecutor presents evidence in the trial to prove the restitution request. The judge grants the petitioner and/or LPSK the opportunity to present additional testimony and evidence upon their request, and the public prosecutor is also given the opportunity to present a response to the restitution request and submit evidence. The public prosecutor is required to include the restitution request in the criminal demand. The judge examines the restitution request and evaluates the evidence presented in the trial to consider it in the final verdict.

Regarding restitution requests made after the legally binding court decision, the convict becomes the respondent. Meanwhile, the Attorney General/Public Prosecutor in Military Court

becomes the related party in the restitution request. The trial examination includes reading the petitioner's request, reading the respondent's response, examining the evidence, and reading the court's ruling.

The implementation of the judge's decision or ruling regarding restitution can be carried out voluntarily or by coercion. Voluntarily, according to Article 30 paragraph (2), is done by depositing the restitution amount in the Court, and then the Attorney General/Public Prosecutor hands over the money to the petitioner. The restitution must be given no later than 30 (thirty) days after the perpetrator and/or third parties receive a copy of the legally binding court decision or 30 (thirty) days after the court's ruling is pronounced or notified, in case the restitution request is made after the final ruling in the main case.

When the court's decision or ruling is not implemented voluntarily and has exceeded the time limit as stated in Article 30 paragraph (5), LPSK/the petitioner reports this matter to the Attorney General/Public Prosecutor with a copy to the Chairperson/Head of the Court. If the perpetrator and/or third parties have not implemented the restitution, the Attorney General/Public Prosecutor orders them to implement the restitution within 14 (fourteen) days from the date the order is received.

The Supreme Court Regulation Number 1 of 2022 concerning Procedures for Settlement of Requests and Provision of Restitution and Compensation to Crime Victims partially adopts the concept of asset confiscation. Article 30 paragraph (11) grants the Attorney General/Public Prosecutor the authority to seize the wealth of the perpetrator and/or third parties and auction it to fulfill the restitution payment within 30 (thirty) days or 14 (fourteen) days. However, this restitution is specific and only applies to restitution related to human trafficking crimes.

Article 30 paragraph (12) also states that, if the wealth of the perpetrator and/or third parties is insufficient to fulfill the restitution payment, and the defendant is sentenced to imprisonment or alternative imprisonment according to Article 8 paragraph (13) and paragraph (14), the Attorney General/Public Prosecutor will implement the sentence of imprisonment or alternative imprisonment. The confusion lies in whether the provision of alternative imprisonment is only related to human trafficking and terrorism crimes, or if it also applies to other crimes, including crimes against children.

If Article 30 paragraph (12) refers only to human trafficking and terrorism crimes, the question is, what about crimes against children? On the other hand, if Article 30 paragraph (12) regarding alternative imprisonment also applies to other crimes, including crimes against children, why is the phrase "if the wealth of the perpetrator and/or third parties is insufficient to fulfill the restitution payment and the defendant is sentenced to imprisonment or alternative imprisonment" included? When does the process of calculating the wealth of the perpetrator take place? Isn't that process referred to as the auction process? However, there is no asset tracing and seizure process, especially before the trial in the restitution request for crimes as per Supreme Court Regulation Number 1 of 2022. Consequently, can the perpetrator who refuses to implement the restitution according to the court's decision be replaced with imprisonment or alternative imprisonment?

There are clear deficiencies and weaknesses in Supreme Court Regulation Number 1 of 2022 concerning Procedures for Completing Applications and Granting Restitution and Compensation to Victims of Crime. On the one hand the Perma distinguishes one type of crime from another,

but on the one hand it forgets to regulate other crimes including crimes against children. Thus, the LPSK's answer regarding the alternative is to be sentenced to imprisonment or a replacement prison sentence is actually still vague, this is because Article 30 paragraph (12) only regulates the crime of trafficking in persons and terrorism, not other crimes, in this case, including crimes against children. . Thus, the purpose of restitution as a form of recovery for victims of criminal acts cannot be carried out according to the purpose.

A regulation must guarantee a legal certainty which thus must also guarantee the implementation of restitution in the context of a court decision. With the ambiguity of the coercive factors for implementing the provisions of this article, it certainly results in the absence of certainty to implement this rule. The presence of Supreme Court Regulation Number 1 of 2022 concerning Procedures for Completing Applications and Providing Restitution and Compensation to Victims of Crime will raise a new issue that must be answered from a juridical perspective, the existence of a Perma has actually put forward the right of the victim to ask for compensation from the perpetrator, but the perpetrator in this case may not carry out the compensation that has been decided. Thus restitution for perpetrators as a form of recovery for victims of criminal acts in Indonesia has weak executive powers.

3.2. The concept of effective restitution for perpetrators as a form of recovery for victims of criminal acts in Indonesia

Restitution is essentially a punishment for the offender, but it also aims at restoration, not only for the victim but also for the benefit of the offender (Gromet & Darley, 2009). However, in reality, Indonesia's criminal justice system has not fully adapted to the interests of victim restoration. The concept of restorative justice is only seen as a win-win solution, emphasizing reconciliation, where through peaceful means, restitution can be voluntarily carried out.

In practice, diversion processes for juveniles, restorative justice, and penal mediation, even though they represent some form of compensation, are merely transactional measures. This means that if the offender wants a lenient punishment, they pay restitution (Strang & Sherman, 2003). Conversely, if the victim wants to be compensated for their losses, they might have to accept a reduction in the offender's punishment. Therefore, the concept of a win-lose solution tends to emerge. Victims who do not want the offender's punishment to be reduced would refuse restitution, while offenders might question the need to pay if their punishment remains severe.

Such transactional justice fails to provide true justice, as the law does not effectively enforce the restoration aspect, since it lacks the ability to compel offenders to fulfill the judgment in good faith. The concept of good faith is essential in evaluating whether the offender will comply with restitution. Efforts to enforce compliance become crucial in the planning and execution of court judgments or rulings.

Law should not only contain sanctions for violations but also rewards (De Quervain et al, 2004). In the process of motivating individuals, the principle of reward and punishment is essential, giving individuals choices regarding their actions or decisions. Similarly, the principle of restitution should include rewards for offenders who comply and severe sanctions for non-compliance.

Severe sanctions are indeed provided in Article 30 paragraph (12), referring to imprisonment or alternative imprisonment. However, whether these penalties also apply to crimes against

children is a question that remains. Besides increasing the duration of imprisonment, the legal provisions should also consider other restrictions on rights. Legislators should think about stronger measures, not just extending prison terms but also imposing specific limitations on certain rights. This approach could serve as a bargaining position to motivate offenders to fulfill restitution to the victims.

As previously mentioned, the law should not be merely punitive but also balanced with rewards for the offender's good faith in paying restitution (Monahan & Walker, 1985). Good faith is crucial in the restitution process. Judges must assess the offender's good faith before rendering a judgment or ruling. For example, if an offender deposits restitution money before the judgment, this good faith gesture could mitigate the case, even if the restitution has not been transferred to the victim. Although Article 30 paragraph (4) already provides for this, it has not been turned into a reward for offenders who comply.

The success of executing a judgment lies in what is to be executed. In civil proceedings, the success of execution also depends on what has been seized by the petitioner. Hence, regarding the concept of restitution, the concept of asset tracing should be introduced to ensure effective execution. In practice, the Supreme Court Regulation Number 1 of 2022 does not address this aspect.

Asset tracing is not recognized in civil law or the Criminal Procedure Code (KUHP). In the context of criminal law procedures, tracing activities are closely related to investigation and inquiry, even though they are not explicitly mentioned. The aim of asset tracing is to lead investigators, prosecutors, and law enforcement agencies to information about assets resulting from criminal activities that are hidden or stored. However, the mere identification of these assets does not guarantee their immediate recovery. If the hidden assets are within Indonesia's jurisdiction, additional legal processes are required to prove ownership and seize them. On the other hand, assets located outside Indonesia present more complex challenges.

Asset tracing serves solely to identify assets, their location, evidence related to asset ownership, and their connection to criminal activities. After asset tracing, another critical process is asset seizure, which is well-known in both criminal and civil law procedures. In criminal law, seizure is defined in Article 1 paragraph 16 of the Criminal Procedure Code as "a series of actions by investigators to take over and/or store movable or immovable property, tangible or intangible, for the purpose of evidence in the investigation, prosecution, and trial."

Seizure emphasizes the disclosure of a criminal offense, while in the context of asset restitution, seizure is intended as part of the process of returning assets to the rightful party. In this regard, asset seizure in restitution has more similarities with the concept of seizure in civil law. The definition of seizure can also be found in Black Law Dictionary, which states that seizure or confiscation is "a penalty or a measure ordered by the court following proceedings in relation to criminal offenses resulting in the final deprivation

of property" (Garner, 1999). In other words, seizure is defined as a step or court order related to the proceeds of crime or criminal activities. Thus, the primary purpose of seizure is solely to ensure the offender's ability to pay restitution.

Justice and legal certainty in a criminal justice system are not only for the victims but also for the offenders. Therefore, even though the claim for restitution has been submitted by the public prosecutor before a judgment or by the victim and LPSK after a legally binding judgment, the

restitution process still undergoes a trial examination. Thus, although Article 8 paragraph (11) grants the judge the authority to examine the restitution application and assess the evidence presented during the trial and consider it in the judgment, it is essential to empower the judge to calculate the victim's losses independently. This is to avoid arbitrariness by the public prosecutor, LPSK, or the victim in determining the restitution amount.

Based on the discourses presented above, an effective concept of restitution for offenders as a form of victim restoration in Indonesian criminal cases can be described as follows:

- a. The effective concept of restitution for offenders as a form of victim restoration in Indonesia is closely related to the motivation for paying restitution. Therefore, a reward concept is needed as a response to the good faith of the offender, while punishment takes the form of certain restrictions of rights.
- b. To achieve effective restitution for offenders as a form of victim restoration in Indonesia, asset tracing and seizure are necessary.
- c. In achieving just restitution, it is essential to grant the judge the authority to independently calculate the victim's losses.

4. Conclusion

The presence of Supreme Court Regulation Number 1 of 2022 Regarding the Procedure for Settlement of Applications and Provision of Restitution and Compensation to Victims of Criminal Acts will create a new issue that needs to be addressed from a juridical perspective. Although this regulation emphasizes the victim's right to claim compensation from the offender, the offender may choose not to comply with the restitution that has been ordered. Consequently, restitution towards offenders as a form of victim restoration in Indonesia has weak enforceability.

An effective concept of restitution for offenders as a form of victim restoration in Indonesia requires a reward concept as a response to good faith and punishment in the form of certain restrictions on rights. It also involves the concept of asset tracing and seizure, as well as granting the judge the authority to independently calculate the victim's losses.

Based on these conclusions, the author suggests that there is a need for a revision of Supreme Court Regulation Number 1 of 2022 Regarding the Procedure for Settlement of Applications and Provision of Restitution and Compensation to Victims of Criminal Acts or, at the very least, the enactment of a Government Regulation regarding the restitution procedure for offenders as a form of victim restoration in Indonesia. This regulation should include the concept of reward as a response to good faith and punishment in the form of certain restrictions on rights, the concept of asset tracing and seizure, and granting the judge the authority to independently calculate the victim's losses.

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