



## Analysis of Legislation and Regulations on the Fulfillment of Restitution Rights for Sexual Violence Victims in Indonesia

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Histori Artikel	Abstrak
Masuk: 22 Jun 2024 Diulas: 26 Feb 2025 Diterima: 26 Apr 2025 Terbit: 26 Apr 2025	Kekerasan seksual dianggap sebagai tindak pidana yang sangat merugikan korban, sejalan dengan itu pemerintah Indonesia mengatur pemberian hak dalam beberapa ketentuan perundang-undangan bagi korban, salah satunya adalah restitusi. Namun pada kenyataannya, restitusi belum dilaksanakan secara efektif, terbukti dengan beberapa putusan pengadilan yang belum mencantumkan restitusi bagi korban kekerasan seksual. Oleh karena itu tujuan dari penelitian ini adalah untuk mengetahui bagaimana ketentuan perundang-undangan mengatur mekanisme pemberian restitusi dan menemukan ketentuan perundang-undangan yang dapat memberikan kepastian pemenuhan hak restitusi bagi korban kekerasan seksual. Metode penelitian yang digunakan dalam penelitian ini adalah normatif, dengan pendekatan perundang-undangan yang kemudian dianalisis dengan mendeskripsikan data yang telah diperoleh. Teknik pengumpulan data yang digunakan dalam penelitian ini adalah menganalisis pasal-pasal dalam ketentuan perundang-undangan tentang restitusi. Hasil penelitian ini menunjukkan bahwa ketentuan perundang-undangan yang paling ideal untuk memberikan hak restitusi kepada korban kekerasan seksual adalah Undang-Undang Nomor 12 Tahun 2022 tentang Kekerasan Seksual, di mana ketentuan ini memberikan kepastian dan keadilan yang menyeluruh kepada korban dalam memperoleh hak restitusinya.



	<b>Kata Kunci:</b> Restitusi; Kekerasan; Seksual; Hak; Korban
<b>Article's History</b>	<b>Abstract</b>
Received: 22 Jun 2024 Reviewed: 26 Apr 2025 Accepted: 26 Apr 2025 Published: 26 Apr 2020	<p><i>Sexual violence considers as criminal acts that harm the victim tremendously, in line with that Indonesian government regulates the granting of rights in several legislative provisions for the victims, one form of which is restitution. However, restitution has not been effectively implemented, as evidenced by several court decisions that have not yet included restitution for victims of sexual violence. Therefore, the purpose of this research is to determine how legislative provisions regulate the mechanism for granting restitution and to find a legislative provision that can provide certainty for the fulfillment of restitution rights for victims of sexual violence. The research method used in this study is normative, with a legislative approach that is then analyzed by describing the data that has been obtained. The data collection technique used in this study is to analyze the articles in the legislative provisions regarding restitution. The results of this study indicate that the most ideal legislative provision to grant restitution rights to victims of sexual violence is Law Number 12 of 2022 concerning Sexual Violence, in which this provision provides certainty and overall justice to victims in obtaining their restitution rights.</i></p> <p><b>Keywords:</b> Restitution; Sexual; Violence; Rights; Victims</p>
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## Introduction

The high number of cases of sexual violence in Indonesia have impacted its victims to experience both material and immaterial losses (Budi Utami & Prabowo, 2020; Hadiati et al., 2022; Indah & Dwiyatmi, 2024; Susilowati et al., 2022). Therefore, strong actions from the state are necessary to address this problem, as part of the government's responsibility to protect and restore the rights of its citizens. If we look at the ideal goal of protecting and restoring victims, there is a need for a rule that specifically regulates the protection of victims, especially the restoration of victims of sexual violence. In this regard, attention must be paid to the essence of the losses suffered by the victims, and one of the ways to address this is through restitution (Ardiansyah et al., 2025; Musyafa'ah et al., 2023; Saputra et al., 2023). Restitution is a form of effort to



restore victims by providing compensation for the suffering experienced by the victim caused by the perpetrator of the criminal act (Rosmalinda et al., 2021; Wemmers, 2020). Looking at the many regulations that govern restitution rights, it can be concluded that the guarantee of restitution rights is something that needs to be provided to victims of criminal acts, especially those who have suffered losses and require restoration to return to their original condition (Apriyani, 2021).

Therefore, considering the importance of this right, almost all the regulations that exist in Indonesia place restitution as a form of recovery for victims of criminal acts, including victims of sexual violence (Ali et al., 2022; Iksan et al., 2023). In the positive legal system that exists in Indonesia, as time goes by, several laws and regulations related to restitution have also emerged, which have been regulated in several laws and regulations. In Indonesia, there are several laws and regulations that regulate sexual offenses also provide for restitution to victims, including the Law on Child Protection, the Law on Witnesses and Victims, the Law on the Criminal Act of Trafficking in Persons, and the Law on Sexual Violence (Publikasi dan Media Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, 2017).

However, victims of sexual violence often struggle to fully exercise their rights (Syahri & Putri, 2022), as expressed by Professor Sudarto, who stated that victims of sexual violence are often only positioned as witness victims, resulting in the victim's suffering being ignored (Mangindaan, 2023). In addition, the weakness of victims in fulfilling their right to restitution is also evident in several first-instance court decisions, such as in the case of sexual violence with case number No. 29/Pid.B/2011/PN.Sri in the Siak Sri Indrapura District Court, where the judge only imposed imprisonment on the perpetrator without requiring the perpetrator to pay compensation to the victim. Furthermore, in another case with case number No. 416/Pid.B/2019/PN.Smr in the Samarinda District Court, the court also rendered a similar decision, which only focused on punishing the perpetrator. In addition, another case can be found in the verdict with case number No. 48/Pid.B/2019/PN.Prn at the District Court of Paringin, which decided a verdict that only focused on how the perpetrator was given a prison sentence without imposing the responsibility of providing compensation to the victim who suffered as a result of the criminal act committed by the perpetrator. Meanwhile, in another verdict with case number No. 65/Pid.Sus/2018/PN at the District Court of Wates, the Judge granted restitution rights to the child victim of violence, thus it can be seen that restitution can be given to the victim during the trial process



and can also be decided in the court's verdict. However, despite these four verdicts, it can be noted that only one case of sexual violence contained an order for restitution to be granted to the victim of the criminal act, while the other three verdicts did not include any provision for restitution to be granted to the victim. Therefore, based on this, it is necessary to conduct an analysis of several laws and regulations, considering that in addition to the many obstacles in implementing this right, this restitution right is also one form of accountability for perpetrators of criminal acts to their victims in order facilitate the recovery of victims of sexual violence. In addition, this study is also expected to find a regulation that can fully fulfill the restitution rights of victims of sexual violence.

### **Method**

This article was written using the normative juridical research method. The normative juridical research method is a library-based legal research method that examines materials, literature, or secondary data where normative legal research focuses on positive legal norms such as legislation. Additionally, this article also employs the statutory approach method by examining the relevant legislation to the issue at hand.

### **Results and Discussion**

The provisions regarding the fulfillment of restitution for victims of sexual violence as regulated in Law Number 12 of 2022 concerning Sexual Violence Crimes are stipulated in several articles, including Article 30 paragraph (2) which divides the forms of compensation into several forms including compensation for loss of wealth or income, compensation for suffering directly related to the sexual violence crime, compensation for suffering directly related to the sexual violence crime, reimbursement of medical and/or psychological treatment costs, and other damages suffered by the victim as a result of sexual violence crimes

According to the provision of restitution, as regulated in Article 35 of the aforementioned Law No. 12 of 2022 on Sexual Violence Crimes, if the perpetrator fails to fulfill the restitution or the seized assets are insufficient to fulfill the restitution, this provision stipulates that the restitution shall be carried out by the state by providing compensation in the form of restitution to the victim of sexual violence and imposing additional imprisonment as a substitute punishment on the perpetrator. As for the procedure for submitting a restitution request, it is mentioned in Article 38 of this legislation. However, since this rule has not yet had implementing regulations, this study uses other regulations based on this article, namely Supreme Court Regulation No. 1 of



2022 concerning the Procedures for Resolving Requests and Granting Restitution and Compensation to Victims of Criminal Acts. Thus, based on the provisions of this legislation, the fulfillment of restitution rights can be carried out in three steps:

1. The restitution application is submitted before the trial. This is in accordance with the provisions of Law No. 12 of 2022 concerning Sexual Violence, which states that the investigator, public prosecutor, and judge are obliged to inform the victim of sexual violence of their right to apply for restitution. Therefore, during the pre-trial stage, the restitution application can be submitted through the investigator or public prosecutor when the case file has not yet been transferred to the court.
2. The restitution application is submitted during the trial. If the restitution application is submitted during the trial, and it is known that the victim has not submitted a restitution request before the trial, the judge is obliged to inform the victim of their right to restitution, which is announced by the judge in front of the court when the victim is present as a witness, provided that the prosecutor has not yet filed their demand.
3. The restitution application is submitted after the trial. The final stage is when the trial has ended, and the judge has decided, but the victim has not yet submitted a restitution request during the pre-trial or trial stages. In this case, the victim of sexual violence can submit a restitution application to the court through the LPSK (Indonesian Legal Aid Foundation), but the application must be submitted within 90 days of the applicant knowing about the court's decision.

### **Restitution based on Law Number 12 of 2022 concerning Sexual Violence Criminal Acts**

As it is known, sexual violence is a criminal act that greatly harms the victim, causing physical, social, economic, and psychological suffering (Chynoweth et al., 2022; Spytska, 2023). Due to the high number of cases of sexual violence and the weak handling of victim's rights (Hairi, 2015), one of the government's efforts to improve the situation is by introducing a new legal regulation specifically addressing sexual violence, namely Law No. 12 of 2022 on Sexual Violence. In this regulation, sexual violence is classified into 9 different types, which is different from the previous law that only categorized sexual violence as a criminal offense against morality (Kurniawan, 2023; T. Santoso & Satria, 2023). Another difference is the provision that cases of sexual violence cannot be resolved outside the judicial process regarding sexual violence offenses.



As mandated by the legislation, restitution in this legal provision requires all law enforcement officials such as investigators, public prosecutors, and judges to actively participate in ensuring the fulfillment of sexual violence victims' restitution rights. Additionally, this provision also establishes the Regional Technical Implementation Unit or UPTD PPA to monitor victims in terms of the fulfillment of all rights that belong to sexual violence victims. Furthermore, this provision includes the seizure of wealth during the investigation stage carried out by investigators, as well as the auctioning of seized assets if the perpetrator fails to comply with the order to provide restitution to the sexual violence victim.

Therefore, this regulation contains provisions that are highly attentive to the protection of victims of sexual violence. In addition to what has been explained earlier, this regulation focuses on emphasizing the responsibility of the perpetrator, which can be seen from the requirement for the perpetrator to pay compensation, third-party liability, seizure of the perpetrator's assets, additional punishment if the perpetrator is unable to pay, the presence of the state providing compensation to the victim if the perpetrator is unable to do so, and giving additional punishment to the perpetrator as a consequence of their inability to fulfill restitution by imposing a substitute punishment in the form of imprisonment (Apriyani, 2021).

The restitution, as explained in Article 1 number 20 of Law No. 12 of 2022 on Criminal Acts of Sexual Violence (TPKS), is the payment of compensation for material and/or immaterial losses suffered by the victim or their heirs, which is charged to the offender, or third party based on a court decision or ruling. Furthermore, restitution is regulated in Article 16 of the same law, which explains the types of penalties that must be imposed by the judge, where one of them is that the judge must determine the amount of restitution for sexual violence offenses punishable by imprisonment for 4 years.

More specifically, restitution is regulated in Part Four, which is stipulated in Articles 30 through 38 of the law. In Article 30, it is stated that the victim has the right to receive restitution, and in the following paragraph, details are provided regarding the losses suffered by the victim, which would allow restitution to be granted to the victim of the criminal act. Furthermore, Article 31 stipulates which parties are authorized to ensure the fulfillment of this restitution right, such as investigators, public prosecutors, and judges who are obliged to provide information to the victim regarding their restitution rights, as well as investigators who can seize the assets and public prosecutors who can auction off the wealth based on the order of the judge. In the following



provision, namely Article 32, restitution is regulated for cases where the prosecution is not pursued, and the restitution is returned to the perpetrator. In the subsequent provision, Article 33, the time limit for the restitution payment is stipulated, which must be made within 30 days of receiving a copy of the court ruling, along with an explanation of how the restitution payment is to be carried out. The next paragraph also explains what actions can be taken by the victim or their family if the restitution payment is not properly executed. Additionally, Article 34 regulates the creation of an oath affidavit made by the prosecutor and delivered to the victim, investigator, and court. Then, in the next provision, namely Article 35, the seizure of the perpetrator's assets is regulated as a decisive effort to enforce the law regarding the perpetrator's responsibility for sexual violence offenses. Furthermore, in Article 36, it is stipulated that in cases that are terminated for legal purposes, the seized restitution is deposited. Article 37 regulates the payment of restitution by child offenders, which must be carried out by the offender's parent or legal guardian. Finally, in Article 38, it is stated that the procedures for submitting restitution claims must be carried out in accordance with the provisions of applicable laws and regulations.

Then, in Article 56 paragraph (6), it is stated that during the preliminary meeting, the prosecutor conveys and explains information regarding the rights of the victim, including the right to file for restitution and the procedure for doing so, which is conveyed by the prosecutor to the victim and their family in cases of sexual violence. Therefore, based on all the provisions in the Law Number 12 of 2022 concerning Sexual Violence, which regulates restitution, the fulfillment of restitution can be requested from the initial stage of investigation, which is informed by the investigator or prosecutor to the victim and their family of sexual violence. Additionally, the initial stage of seizure of the offender's assets is carried out by the investigator during the investigation stage. This restitution can certainly be received by the victim who has suffered losses due to a criminal act, and subsequently, the request can be submitted concurrently during the trial process and can also be included in the prosecutor's demand. Then, the fulfillment of restitution can be carried out within a period of no later than 30 days from the final and binding court decision.

### **Analysis of the Comparison of Restitution Mechanisms according to Other Laws that Regulate Sexual Crimes**

If we look at the theory of justice, which is the reason for the presence of a legal regulation, then such a rule must certainly have justice that provides



satisfaction to all parties (Santoso, 2014). As expressed by John Stuart Mill, justice is not only about what is right or wrong to do, but also something that allows others to claim something from us as a moral right or claim something as a moral right (Lebacqz, 1986). Therefore, in this case, moral rights mean that others can do something but not arbitrarily, and what others do will be adjusted to the needs, so that others do not feel disadvantaged, so that both parties can feel what is rightfully theirs.

When looking at the legal regulations that address sexual offenses and contain policies on restitution for victims of criminal acts, particularly victims of sexual violence, it can be seen in the provisions of Law Number 12 of 2022 concerning Sexual Offenses that several regulations have been included which focus not only on the perpetrator but also on the victim. Therefore, this can be said because a comparison has been made between this law and other laws. Under the provisions of the Sexual Offenses Law, it is known that the submission of restitution requests can be made through three stages, as well as other provisions such as the seizure and auction of assets for the sake of ensuring the provision of restitution, and the imposition of additional penalties if the perpetrator is unable to provide restitution in the form of imprisonment. Meanwhile, in other regulations, namely Law No. 21 of 2007 regarding the Criminal Procedure Code (TPPO), although it has fulfilled the elements of justice, when compared to Law No. 12 of 2022 regarding TPKS, there are differences.

This regulation only explains that the restitution request is made at the initial stage, which means during the investigation stage. Furthermore, it is not explained in this regulation when the restitution request can be submitted again if it is missed at the initial stage. Regarding the seizure of the perpetrator's assets, in Law No. 12 of 2022 regarding TPKS, seizure is carried out at the initial stage, namely during the investigation as a form of collateral to ensure the restitution payment. Whereas in the TPPO Law, the seizure of the perpetrator's assets is carried out when the perpetrator fails to fulfill the obligation to provide restitution. Therefore, based on this, the difference between the two is the guarantee of restitution payment. Law No. 12 of 2022 regarding TPKS provides a guarantee for the implementation of restitution, while the TPPO Law does not provide a guarantee at the initial stage.

When comparing the Law on the Eradication of Sexual Crimes (TPKS) with Law No. 31 of 2014 on the Protection of Witnesses and Victims (PSK), the PSK Law still has shortcomings in terms of providing certainty for victims to receive restitution. The PSK Law does not provide provisions regarding the





seizure of assets or coercive measures in case the restitution is not executed by the perpetrator, causing neglect of the victim's rights, lack of certainty, and no recourse available to the victim to enforce their rights. Meanwhile, looking at the TPKS Law, it guarantees the fulfillment of restitution, as this regulation governs the auction of seized assets as collateral and prescribes additional penalties in the form of imprisonment for perpetrators who fail to carry out the restitution. Thus, restitution under the TPKS Law is much more just and guarantees the implementation of restitution compared to previous regulations.

Furthermore, another relevant regulation to be compared with the TPKS Law is the Child Protection Law or the PA Law No. 35 of 2014. In this case, the PA Law has regulated several provisions regarding the provision of restitution and has fulfilled several indicators of justice for victims who have the right to restitution. However, the PA Law still does not regulate the seizure of the perpetrator's assets as a form of collateral for the fulfillment of restitution. Additionally, the PA Law has yet to address the measures that can be taken if the perpetrator is unable to be held responsible for fulfilling the restitution, and lastly, there is no provision for additional or substitute penalties if the perpetrator fails to provide restitution to the victim.

Therefore, in this regard, by comparing one law with another, the provisions in the TPKS Law are the ones that provide the most justice and certainty in providing restitution for victims of sexual violence.

### **Analysis of Comparative Mechanisms for Restitution under Other Laws Governing Sexual Offenses**

The rules regarding sexual crimes often pose complex problems that frequently occur in society (Paramuditha, 2022; Wibowo, 2023). These crimes cause significant harm to their victims and often attack their sexuality. The high incidence rate and the difficulty of combating this crime has led to government efforts to bring a set of rules that are expected to address this criminal activity. In Indonesia, there are several regulations that govern sexual offenses, including Law Number 21 of 2007 on the eradication of human trafficking, Law Number 31 of 2013 on the protection of witnesses and victims, Law Number 35 of 2014 on the protection of children, and Law Number 12 of 2022 on sexual violence crimes.

### ***The Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking (The Human Trafficking Law)***



Based on the provisions of Law No. 21 of 2007 on TPPO, this law defines the victim as a person who experiences psychological, mental, physical, sexual, economic, and/or social suffering caused by the crime of human trafficking. As for restitution, this law provides a definition that restitution is compensation paid to every victim of human trafficking or their heirs, which is charged to the perpetrator based on a legally binding court decision. Regarding the mechanism for the provision of restitution under this law, it has also been explained in several articles that state that restitution can be requested from the initial stages, namely during the investigation stage, which is submitted to the investigator. The request can also be submitted to the public prosecutor based on information provided by the public prosecutor to the victim of human trafficking. In this case, restitution can be given and included in the court's decision, and then the restitution is implemented from the first level court's decision within a period of 14 days. If the perpetrator who has been charged with paying restitution does not comply with the decision and does not fulfill the victim's right to restitution, then under this regulation, the victim or their heirs can report this to the court, which then gives a written warning to the perpetrator. However, if the warning letter is still not complied with, then the court in this case can order the prosecutor to seize the perpetrator's assets and conduct an auction of the assets for payment of the restitution.

***The Law Number 31 of 2014 concerning the Protection of Witnesses and Victims (Witness and Victim Protection Law)***

Based on the provisions of Law Number 31 of 2014 concerning the Protection of Witnesses and Victims (PSK), it can be understood that a victim is a person who experiences physical or mental suffering and/or economic loss caused by a criminal act. As for restitution, this law provides the definition that restitution is the right of a crime victim to obtain compensation for loss of property or income, compensation for suffering directly related to the criminal act, and/or reimbursement of medical and/or psychological treatment costs. The mechanism for fulfilling restitution for victims under this law is also explained in several articles, which state that restitution can be requested in two stages: before a court decision is issued and after a legally binding court decision is issued. The application for restitution can also be submitted through the LPSK, where in this case, the application for restitution through the LPSK can be submitted after a final and binding court decision has been obtained. In this regard, the court examines and determines the restitution application no later than 30 days from the date the application is received. The payment of restitution by the perpetrator must be made within a maximum period of 30 days from the date of receipt of a copy of the court decision.



***The Law Number 35 of 2014 concerning Child Protection (Child Protection Law)***

Based on the provisions of Law No. 35 of 2014 on Child Protection, it can be understood that this regulation provides a definition of the victim as a child who is under 18 years old, including a child who is still in the womb. Regarding restitution, this regulation defines restitution as compensation paid by the perpetrator based on a final and binding court decision for material and/or immaterial losses suffered by the victim or their heirs. Regarding the mechanism for granting restitution, according to this regulation, a request for restitution can be submitted by the victim's party, namely parents, family members, guardians, or persons authorized by the parents or guardians of the child victim of a crime. The prosecutor has the authority to deliver a copy of the court decision containing the restitution to the perpetrator and the victim's party within 7 days of the court decision. After the perpetrator has received a copy of the court decision and the record of the court decision, the court is obliged to execute the court decision by providing restitution to the victim within a maximum of 30 days after receiving a copy of the court decision.

***The Law Number 12 of 2022 regarding Sexual Violence Crimes***

Based on the provisions of Law Number 12 of 2022 on Sexual Violence, it can be understood that this provision provides a definition regarding the victim, where the victim is a person who suffers physical or mental suffering, economic loss and/or social loss caused by sexual violence. Regarding restitution, this regulation provides a definition of restitution, which is compensation for the material and immaterial losses suffered by the victim or their heirs, charged to the perpetrator based on a court ruling that has legal force. Then, regarding the provisions for fulfilling restitution set out in several articles of this law, it can be done by submitting a restitution request, which can be done since the investigation phase, where during this phase, the victim is informed by the investigator and the prosecutor about the right to restitution for victims of sexual violence. In addition, the investigator also has other authority, namely, the investigator can seize the wealth of the perpetrator as a guarantee for fulfilling the restitution rights in the investigation stage. In this case, the victim is not only given the opportunity to apply for restitution at the early stage, but the victim can still apply for restitution during the ongoing trial process and even after a legally binding court decision has been made. Then the prosecutor delivers a copy of the court decision that includes the restitution payment to the convicted, the victim, and LPSK within a period of 7 days counted from the receipt of the court decision copy.



## Conclusion

Provisions regarding restitution for victims of sexual violence have been regulated in several articles and are further elaborated in the fourth part concerning restitution. Furthermore, a comparison with other laws that regulate sexual crimes and restitution has been made. There is a new regulation, namely Law Number 12 of 2022 concerning Sexual Violence, in which it is found that this law compared to other laws is the most just regulation in providing certainty for victims of sexual violence in terms of fulfilling their restitution rights.

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