



## **Restorative Justice-Based Criminal Justice System: Integration of Victim Trust Funds in the Criminal Code Procedure**

**Apriliani Kusumawati**

Faculty of Law, Universitas Negeri Surabaya, [aprilianikusumawati@unesa.ac.id](mailto:aprilianikusumawati@unesa.ac.id)

### ***Abstract***

*The concept of restorative justice in the criminal justice system places the victim as the main subject who has the right to obtain reparation for the suffering experienced, including restitution and compensation. However, in practice, applicable laws and regulations, such as the Code of Criminal Procedure and Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, still show weakness in accommodating the rights of victims comprehensively. The Victim's Trust Fund, as stipulated in Law Number 12 of 2022 on the Crime of Sexual Violence, along with its implementation regulations, is an important instrument to ensure the fulfillment of the victim's right to compensation and other forms of recovery. It is important to integrate the regulations regarding the Victim Trust Fund in the Code of Criminal Procedure to ensure equal handling, protection, and recovery for victims. This research uses normative legal research methods. The approach methods applied are the statute approach and the concept approach. As a result, the Integration of the Victim Trust Fund in the Code of Criminal Procedure becomes crucial to ensure that there is a recovery mechanism that can be accessed by victims of criminal offences as a concept in restorative justice. First, the Victim Trust Fund regulation needs to be accommodated by the Code of Criminal Procedure Law so that the provisions on the Victim Trust Fund become broader in scope and scope, which is not limited to the criminal act of sexual violence only. Second, if the provisions regarding the Victim Trust Fund for victims of criminal offences are regulated in the Code of Criminal Procedure, then there will be a similarity in the implementation mechanism by law enforcement officers. Furthermore, Victim Trust Fund integration needs to be done by paying attention to the various weaknesses that are still present in the Government Regulation Number 29 of 2025 on the Victim Trust Fund for Victims of Sexual Violence Crimes. First, a more detailed explanation is needed regarding the scope of the utilisation of the Victim Trust Fund for victim recovery. Second, there needs to be a firm arrangement regarding the portion and responsibility of the state in the allocation of the DBK budget through the State Revenue and Expenditure Budget/Regional Revenue and Expenditure Budget, by placing the state budget as the main sustainable source.*

**Keywords:** *Code of Criminal Procedure Law; Restorative Justice; Victim Trust Fund*

### **A. Introduction**

Restorative Justice is about the idea that because crime hurts, justice must heal.<sup>1</sup> John Braithwaite's view reflects the goal that Restorative Justice wants to achieve. The basic postulate of Restorative Justice is in the identification of crime as something that harms others, and therefore justice is realized in the form of healing or restoration according to its value.<sup>2</sup> This Restorative Justice presentation marks a paradigm shift in the criminal justice system that originally only focused on the conviction of perpetrators, towards attention to the recovery of the suffering experienced by victims and the social balance that was disturbed due to criminal acts.

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<sup>1</sup> John Braithwaite, 2022, *Restorative Justice and Responsive Regulation*, Oxford University Press: New York, 2022, p. 3.

<sup>2</sup> Budi Suhariyanto, dkk, 2021, *Kajian Restorative Justice Dari Perspektif Filosofis, Normatif, Praktik, dan Persepsi Hakim*, Kencana: Jakarta, p. 28.



Victims, as the aggrieved party from criminal acts, occupy a central position in the criminal justice system that is oriented towards Restorative Justice. Stanciu stated that there are two fundamental characteristics inherent in crime victims, namely suffering and injustice.<sup>3</sup> The burden places the victim's role as an important aspect that must be heard and considered by law enforcement officers in the process of resolving the case. This was conveyed by Barb Toews, who saw that caring for victims is the core value of Restorative Justice.<sup>4</sup>

Various forms of recovery are victims' rights that must be fulfilled, one of which is restitution. Restitution is compensation given to the victim or their family by the perpetrator of the criminal act.<sup>5</sup> Restitution is a form of responsibility of the perpetrator in restoring the victim's welfare as before. Restitution is regulated in various laws and regulations, including Law Number 26 of 2000 on the Human Rights Court, Law Number 23 of 2004 on the Elimination of Domestic Violence, Law Number 21 of 2007 on Human Trafficking Crimes, Law Number 11 of 2012 on the Juvenile Criminal Justice System, Law Number 13 of 2016 on the Protection of Witnesses and Victims, Law Number 5 of 2018 on Terrorism, and Law Number 12 of 2022 on the Crime of Sexual Violence.

Although various legal frameworks have been available to guarantee the right to restitution for victims, the implementation of restitution still faces various challenges. One of them is the low fulfillment of the cost of recovery for the victim, which should be paid through the restitution mechanism by the perpetrators of the crime. Throughout 2024, the Witness and Victim Protection Agency received 7,450 restitution requests. This number increased significantly compared to 4,264 applications in 2023.<sup>6</sup> Furthermore, the restitution assessment that has been carried out by the Witness and Victim Protection Agency during 2024 is as many as 3,685 restitution assessments<sup>7</sup> with a total loss of Rp 473,804,695,123. However, the realization of the restitution value paid by the perpetrator is only 6% or Rp 28,917,714,239.<sup>8</sup> The figure shows a very significant gap between the victim's rights and the implementation of the recovery.

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<sup>3</sup> Trias Saputra, dkk, 2022, *Pemenuhan Hak Restitusi: Upaya Pemulihan Korban Tindak Pidana*, Jurnal Krtha Bhayangkara, Vol. 16 No. 1, 2022, p. 72.

<sup>4</sup> Andri Setya Nugraha, dkk, 2023, *Gagasan Dana Khusus Pemulihan dalam Penegakan Hukum*, Bappenas Working Papers, Vol. 6 No. 1, March 2023, p. 82.

<sup>5</sup> Youfan Alyafedri, dkk, 2024, *Kebijakan Hukum terhadap Problematika Pemberian Pemenuhan Hak Restitusi Korban Tindak Pidana yang diatur KUHAP dan Luar KUHAP*, UNNES Law Review, Vol. 6 No. 4, Juny 2024, p. 11644.

<sup>6</sup> LPSK, 2024, *Ringkasan Eksekutif Laporan Tahunan LPSK 2024*, LPSK: Jakarta, p. 11.

<sup>7</sup> *Ibid.*, p. 27.

<sup>8</sup> *Ibid.*, p. 30.



To fill the shortage or inability of the perpetrator to pay restitution to the victim, Law Number 12 of 2022 on the Crime of Sexual Violence regulates the novelty of the compensation mechanism with the Victim Trust Fund scheme. Article 1, number 21, Law Number 12 of 2022 on the Crime of Sexual Violence defines the Victim Trust Fund as a state compensation fund for victims of sexual assault crimes. The Victim Trust Fund will be channeled to pay restitution based on the court decision if the confiscated convict's property is insufficient for the restitution fee, as stipulated in Article 35, paragraph (1) of Law Number 12 of 2022 on the Crime of Sexual Violence. Furthermore, Article 35 paragraph (2) Law Number 12 of 2022 on the Crime of Sexual Violence explains that the source of Victim Trust Fund funding can be obtained from philanthropy, community, individuals, corporate social responsibility and environment, and other legitimate and non-binding sources, as well as state budget in accordance with the provisions of laws and regulations. Implementing regulations related to the Victim Trust Fund have been set through Government Regulation Number 29 of 2025 on the Victim Trust Fund for Victims of Sexual Violence Crimes.

The Victim Trust Fund mechanism, which is in line with the principle of Restorative Justice, shows the state's commitment to ensuring the treatment, protection, and recovery of victims' rights. However, because the regulations regarding the Victim Trust Fund are currently only contained in Law Number 12 of 2022 on the Crime of Sexual Violence, its applicability is limited to victims of sexual violence only. So, it is important to integrate the regulations regarding the Victim Trust Fund in the Code of Criminal Procedure to ensure equal handling, protection, and recovery for all victims of criminal acts.

Moreover, the criminal justice system in Indonesia today, especially through the provisions in the Code of Criminal Procedure, has not provided a balanced space for the interests of the parties in it. In general, the Code of Criminal Procedure is more oriented towards protecting the rights of suspects and defendants, while the interests of victims have not been adequately accommodated. Furthermore, the arrangement of the Victim Trust Fund in the Code of Criminal Procedure will strengthen the legal legitimacy and the sustainability of the compensation scheme for victims in the national legal system. This will also ensure that victim recovery is not only a temporary sectoral policy, but a permanent part of the Indonesian criminal procedure law architecture, oriented towards Restorative Justice. The main issue discussed in this article is the position of the Victim Trust Fund in the Right to Recovery Framework for Victims, and how the urgency of the Integration of the Victim



Assistance Fund in the Criminal Procedure Code as an Effort to Realise Restorative Justice. That is, the main contribution of this article is to offer a model of strengthening the Victim Trust Fund in the Code of Criminal Procedure to realise restorative justice in the criminal justice system.

## **B. Research Method**

This research uses normative legal research methods. The approach methods applied are the statute approach and the concept approach. Statute Approach focuses on the analysis of laws, regulations, and related legal issues that are being researched. Researchers will examine and analyse the existing legal provisions to understand how the law is regulated within the applicable regulatory framework. The concept approach focuses on the understanding and interpretation of legal concepts as well as the views and doctrines that develop in legal science. Researchers will analyse these concepts from various points of view to understand the core of the law being researched. Conceptual approaches help in building a deeper framework of understanding of the theoretical aspects of law.

The source of legal materials in this study consists of primary, secondary, and tertiary legal materials. Primary legal materials include the Code of Criminal Procedure, Law Number 12 of 2022 on the Crime of Sexual Violence, Law Number 31 of 2014 on Amendments to Law Number 13 of 2006 on the Protection of Witnesses and Victims, Government Regulation Number 29 of 2025 on the Victim Trust Fund for Victims of Sexual Violence Crimes and the international legal instrument, namely the United Nations Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power. Secondary legal materials include scientific journals, books, and research reports that are relevant to the discussion of victim protection in the criminal justice system.

The technique of collecting legal materials is carried out with the study of literature, which includes tracing laws and regulations, international legal documents, and academic publications. The obtained legal material is analyzed qualitatively with the content analysis method (content analysis) to assess the applicable legal provisions and identify weaknesses that require reform. As an effort to understand how the national legal system accommodates the rights of victims, especially regarding the right to compensation. This is important to provide an overview of the extent to which the judicial system in Indonesia can increase access to justice and protection for victims who are oriented towards the principle of restorative justice.



## C. Results and Discussion

### 1. Victim Trust Fund in the Framework of the Right to Recovery for Victims

The Victim Trust Fund is one of the mechanisms to guarantee the fulfillment of the rights of victims of sexual violence, which is specifically regulated in Law Number 12 of 2022 on the Crime of Sexual Violence. Article 1, number 16 of the Law Number 12 of 2022 on the Crime of Sexual Violence formulates the rights of victims, consisting of the right to treatment, protection, and recovery. Furthermore, the same article gives a definition related to the three rights. Handling is an action taken to provide complaint services, health services, social rehabilitation, law enforcement, legal services, repatriation, and social reintegration.<sup>9</sup> Protection is all efforts to fulfill rights and provide assistance to provide a sense of security to Witnesses and/or victims that must be carried out by the Witness and Victim Protection Agency or other institutions in accordance with the provisions of laws and regulations.<sup>10</sup> Recovery is the effort to restore the physical, mental, spiritual, and social condition of the victim.<sup>11</sup> Article 66 paragraph (1) Law Number 12 of 2022 on the Crime of Sexual Violence states that victims are entitled to treatment, protection, and rehabilitation since the occurrence of the criminal act of sexual violence. Furthermore, Article 70 of Law Number 12 of 2022 on the Crime of Sexual Violence emphasizes that the implementation of recovery can be carried out before, during, or after the judicial process.

The attention of Law Number 12 of 2022 on the Crime of Sexual Violence to the rights of victims is in line with the United Nations Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power. This declaration contains principles related to the recognition of victims' rights, including the right to access to justice and fair treatment, the right to restitution, the right to compensation, and the right to assistance.<sup>12</sup> If observed closely, Law Number 12 of 2022 on the Crime of Sexual Violence enshrines the principles of the declaration through provisions related to restitution, compensation, and the Victim Trust Fund.

Article 1, number 20 Law Number 12 of 2022 on the Crime of Sexual Violence defines restitution as the payment of compensation charged to the perpetrator or a third party based

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<sup>9</sup> Article 1 Number 17 of Law Number 12 of 2022 on the Crime of Sexual Violence

<sup>10</sup> Article 1 Number 18 of Law Number 12 of 2022 on the Crime of Sexual Violence

<sup>11</sup> Article 1 Number 19 of Law Number 12 of 2022 on the Crime of Sexual Violence

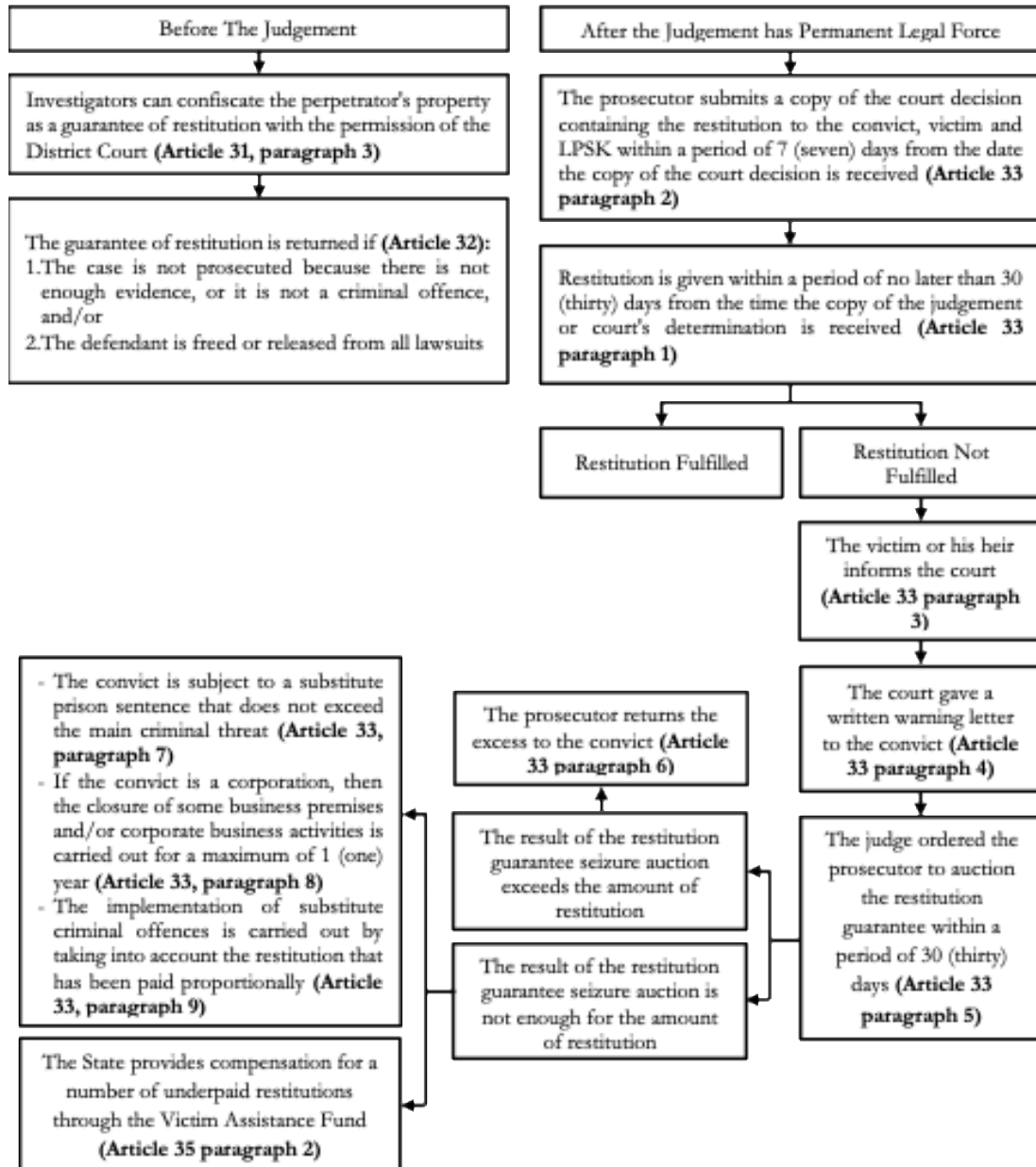
<sup>12</sup> *United Nation Declaration of Basic Principles of Justice for Victims of Crime and Abuse Power Adopted by General Assembly Resolution 40/34 of 29 November 1985.*



on the determination or decision of the court with permanent legal force for material and/or moral losses suffered by the victim or his heirs. Article 30 paragraph (2) Law Number 12 of 2022 on the Crime of Sexual Violence stipulates that the form of restitution in question includes: (1) compensation for loss of wealth or income; (2) compensation for damages caused by suffering directly related to the result of the criminal act of sexual violence; (3) reimbursement of medical and/or psychological treatment costs; and/or (4) compensation for other losses suffered by the victim as a result of the criminal act of sexual violence. In fact, Article 31 paragraph (1) of Law Number 12 of 2022 on the Crime of Sexual Violence states that investigators, public prosecutors, and judges are obliged to inform victims and the Witness and Victim Protection Agency of the right to restitution. Furthermore, Article 16, paragraph (1) of the Law Number 12 of 2022 on the Crime of Sexual Violence limits the obligation of the Judge to determine the amount of restitution for sexual assault, which is punishable by imprisonment of 4 (four) years or more.

If the restitution is still not given within the specified time limit, then the Judge in the decision orders the Prosecutor to auction the restitution bail. If there is a shortage, the convict gets a replacement prison sentence, and the victim gets compensation for several underpaid restitutions through the Victim Trust Fund. Article 1, number 21, Law Number 12 of 2022 on the Crime of Sexual Violence defines the Victim Trust Fund as a state compensation fund for victims of sexual assault crimes. The Victim Trust Fund Scheme in Law Number 12 of 2022 on the Crime of Sexual Violence is described as follows:

Chart 1. Victim Trust Fund Scheme in Law Number 12 of 2022 on the Crime of Sexual Violence





Philosophically, the presence of compensation starts from the paradigm that an arrangement that only focuses on the restitution charge on the perpetrator will only make the victim depend on the perpetrator's ability, and the state is absent in an effort to recover the victim.<sup>13</sup> Compensation is considered a form of state presence for the state's inability to present, guarantee, and fulfill the right to security of every citizen from every criminal act. Provisions regarding the source, allocation, and utilization of the Victim Trust Fund are regulated by Government Regulation Number 29 of 2025 on the Victim Trust Fund for Victims of Sexual Violence Crimes. Referring to a quo rules, at least there are some problems found.

*First*, there is a difference in the allocation of the Victim Trust Fund between Law Number 12 of 2022 on the Crime of Sexual Violence and Government Regulation Number 29 of 2025 on the Victim Trust Fund for Victims of Sexual Violence Crimes. If in Law Number 12 of 2022 on the Crime of Sexual Violence Victim Trust Fund is only used to provide compensation for underpaid restitution, Article 7 paragraph (2) Government Regulation Number 29 of 2025 on the Victim Trust Fund for Victims of Sexual Violence Crimes expands the scope by regulating that the Victim Trust Fund can also be used to fund recovery for victims. This expansion opens a new mechanism for victims to obtain relief beyond the right to restitution. However, the expansion was not followed by clarity on when victims could access this funding. In addition, the type of recovery that can be submitted is also not described in detail. So there needs to be clarity on which these recovery funds can be used, whether for the type of recovery as in Law Number 12 of 2022 on the Crime of Sexual Violence and Government Regulation Number 30 of 2025 concerning the Prevention of Sexual Violence and the Handling, Protection, and Recovery of Victims of Sexual Violence, or more broadly.

In addition, the lack of regulations related to the recovery funding mechanism, as referred to in Article 7 paragraph (2) of Government Regulation Number 29 of 2025 on the Victim Trust Fund for Victims of Sexual Violence Crimes, causes victims to be unable to access comprehensive treatment, protection, and recovery services. The Victim Trust Fund mechanism itself can only be accessed after a long and time-consuming restitution process, while the victim's need for access is often urgent and must be met immediately. Whereas, in

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<sup>13</sup> ICJR, 2025, *Kajian Peluang Kontribusi Negara terhadap Pendanaan Dana Bantuan Korban: Penggunaan Penerimaan Negara Bukan Pajak (PNBP) bagi Dana Bantuan Korban*, ICJR: Jakarta, p. 7.



principle, Article 66 paragraph (1) of Law Number 12 of 2022 on the Crime of Sexual Violence affirms that victims are entitled to treatment, protection, and recovery since the occurrence of sexual violence. Furthermore, Article 70 of Law Number 12 of 2022 on the Crime of Sexual Violence emphasizes that the implementation of recovery can be carried out before, during, or after the judicial process.

*Second*, the source of Victim Trust Fund funding from the state budget has not been clearly regulated in Government Regulation Number 29 of 2025 on the Victim Trust Fund for Victims of Sexual Violence Crimes. Article 2 paragraph (1) Government Regulation Number 29 of 2025 on the Victim Trust Fund for Victims of Sexual Violence Crimes - which has the same formula as Article 35 paragraph (3) Law Number 12 of 2022 on the Crime of Sexual Violence - explains that the source of Victim Trust Fund funding can be obtained from philanthropy, community, individuals, social responsibility and corporate environment, and other legitimate and non-binding sources and state budgets in accordance with the provisions of laws and regulations. After that, Government Regulation Number 29 of 2025 on the Victim Trust Fund for Victims of Sexual Violence Crimes did not provide further explanation of the state's contribution and responsibility, especially regarding the allocation of the state budget for Victim Trust Fund funding. In the articles of Government Regulation Number 29 of 2025 on the Victim Trust Fund for Victims of Sexual Violence Crimes, only limitedly regulates the management of the Victim Trust Fund which consists of collection, as well as the allocation and utilization carried out by The Witness and Victim Protection Agency as stipulated in Chapter III Government Regulation Number 29 of 2025 on the Victim Trust Fund for Victims of Sexual Violence Crimes. The collection in question is the collection of funding sources obtained from philanthropy, community, individuals, social responsibility, and corporate environment, and other legitimate and non-binding sources in accordance with the grant mechanism.

The absence of provisions that expressly mandate the allocation of funding from the state budget creates uncertainty for The Witness and Victim Protection Agency, considering that Article 4 paragraph (3) of Government Regulation Number 29 of 2025 on the Victim Trust Fund for Victims of Sexual Violence Crimes gives a mandate to this institution to draft a general policy for the management of victim assistance funds. This condition has the potential to hinder the effectiveness of the implementation of aid funding for victims of sexual violence, so that the victims' rights at risk are not fulfilled to the maximum. In this



context, the results of a study conducted by the Institute for Criminal Justice regarding the Study of State Contribution Opportunities to the Funding of Victim Aid Funds through the use of non-tax state revenue for victim assistance funds can be a consideration for strengthening the Victim Trust Fund legal framework.

## **2. Integration of Victim Trust Fund in the Criminal Procedure Code as an Effort to Realize Restorative Justice**

The criminal justice system in Indonesia today, especially through the provisions in the Code of Criminal Procedure, has not provided a balanced space for the interests of the parties in it. In general, the Criminal Procedure Law is more oriented towards protecting the rights of suspects and defendants, while the interests of victims have not been adequately accommodated. This is evidenced by the limited articles in the Code of Criminal Procedure that regulate the protection of victims, including:

- a. Article 80 of the Code of Criminal Procedure states, "a request to examine the validity or not of the termination of an investigation or prosecution can be submitted by an investigator or public prosecutor, or a third party who has an interest to the head of the district court by stating the reason."
- b. Article 108 paragraph (1) of the Code of Criminal Procedure, which states, "everyone who experiences, witnesses, and/or becomes a victim of an event that is a criminal act has the right to submit a report or complaint to the investigator or investigator, both orally and in writing."
- c. Article 133 paragraph (1) of the Code of Criminal Procedure which states, "in the case of an investigator for the benefit of the judiciary handling victims of injuries, poisoning, or death, who are suspected of being due to an event that is a criminal act, he is authorized to submit a request for expert information to a judicial medicine expert, or a doctor or other expert.."
- d. Article 134 paragraph (1) of the Code of Criminal Procedure, which states, "in cases where it is very necessary, where, for corpse surgery, it is no longer possible to avoid, the investigator is obliged to inform the victim's family in advance."
- e. Article 160 paragraph (1) letter b of the Code of Criminal Procedure, which states, "the first to be heard is the victim who is a witness."
- f. Article 98 paragraph (1) of the Code of Criminal Procedure, which states, "if an act that becomes the basis of the indictment in a criminal investigation by the district court causes



damage to another person, then the presiding judge, at the request of that person, can determine to combine the compensation case with the criminal case.”

- g. Article 99 paragraph (1) of the Criminal Code, which states, "if the aggrieved party requests to merge his lawsuit into a criminal case as referred to in Article 98, then the district court considers
- h. its authority to prosecute the lawsuit, about the basic truth and about the law of reimbursement of the harmed costs.”
- i. Article 99 paragraph (2) of the Code of Criminal Procedure which states, "except in cases where the district court states that it is not authorized to try the lawsuit as referred to in paragraph (1) or
- j. the lawsuit is declared unacceptable, the judge's decision only contains the determination of the penalty for reimbursement of expenses that have been issued by the aggrieved party.”
- k. Article 99 paragraph (3) of the Code of Criminal Procedure, which states, "the decision on compensation itself has permanent force if the criminal decision also has permanent legal force.”
- l. Article 100 paragraph (1) of the Code of Criminal Procedure, which states, "if there is a merger between a civil case and a criminal case, then this merger itself takes place in an appeal examination.”
- m. Article 100 paragraph (2) of the Code of Criminal Procedure, which states, "if an appeal for a criminal case is not submitted, then an appeal request regarding the compensation decision is not allowed.”
- n. Article 101 of the Code of Criminal Procedure states, "the provisions of the rules of civil procedure apply to claims for damages as long as this law is not regulated otherwise.”

The articles are said to be limited because the regulations are relatively few, and some provisions do not explicitly refer to the victim. This condition implies the weak recognition of the victim's position in the criminal justice system. In the view of Barda Nawawi Arief, as quoted by Amira Paripurna, there are a number of fundamental shortcomings. First, there is no legal recourse that the victim can take if he is not satisfied with a court decision. This is different from the convict, who can make a legal action appeal, cassation, or reconsideration. The victim represented by the Public Prosecutor can only accept the verdict. Second, the protection of crime victims is only regulated in Chapter XII, namely Articles 98-101 of the



Criminal Code of Procedure, which allows the incorporation of compensation cases into criminal cases. Third, the payment charged to the perpetrator in the form of compensation is limited only to the material value. Fourth, Article 99 of the Code of Criminal Procedure confirms that compensation beyond what can be decided by the Judge can only be filed through a civil lawsuit, which takes a long time and requires new procedures. The judge can set a special condition that the convict, within a certain time, which is shorter than the probation period, must compensate for all or the loss caused by the criminal act. In other words, the fulfillment of the victim's right to compensation is only possible if the judge imposes probation. In the case of crimes that cause major or violent crimes, the application of probation is difficult to impose.<sup>14</sup>

In line with this view, especially regarding compensation, Yahya Harahap outlined several shortcomings of the Code of Criminal Procedure that limit the rights of victims. First, the filing procedure is not simple because the submission of compensation can only be done through a compensation lawsuit, combined with the examination of the subject matter of the criminal case. In addition, in the process, those who must be active are the victims of criminal acts. The victim must often contact law enforcement officers to ensure that the process of filing a compensation lawsuit will be accommodated by the public prosecutor in their demands. This will certainly waste time and money for the victims of criminal acts. Second, the form of compensation given turns out to be only for material losses. The judge's decision is limited only to the prosecution that determines the reimbursement of the costs that have been incurred by the aggrieved party. This means that the amount of compensation is only as much as the amount of real loss or material loss. Beyond real losses, such as immaterial losses, cannot be submitted in the consolidation of cases. If there is an immaterial compensation submitted by the aggrieved party, the judge must declare that the lawsuit is unacceptable (*niet onvankelijke*).<sup>15</sup>

Fauzy Marasabessy, in his research, explained that in addition to being regulated in the Code of Criminal Procedure, Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims has also provided

<sup>14</sup> Amira Parpurna, 2021, *Viktimologi dan Sistem Peradilan Pidana*, Jakarta: Deepublish Digital, p. 71.

<sup>15</sup> Fauzy Marasabessy, 2015, *Restitusi bagi Korban Tindak Pidana: Sebuah Tawaran Mekanisme Baru*, *Jurnal Hukum dan Pembangunan*, Vol. 45 No. 1 January-March 2015, p. 56.



a way for victims to obtain compensation in the form of restitution from criminal offenders. However, these two provisions have several problems in their implementation, including:<sup>16</sup>

- a. The limited type and amount of damage that can be claimed by the victim of a criminal act when using the mechanism of combining a compensation lawsuit regulated in the Code of Criminal Procedure. Not to mention the submission procedure, which is not simple and requires an active role from the victim himself in the process; and
- b. If the restitution application uses the process regulated in Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, then not all victims of criminal acts can apply for restitution as their right, because not all criminal acts can be filed for restitution. The determination of a criminal act that can be submitted for restitution by the victim is made by the Witness and Victim Protection Agency. In addition, what causes problems is the mechanism and procedure of restitution application and the implementation of restitution, considering that the Witness and Victim Protection Agency is not included in the criminal justice system, and is not a law enforcement officer who has executive authority.

In response to this development, to strengthen the fulfillment of the rights of victims of criminal acts as well as encourage the strengthening of a significant role for crime victims in the criminal justice process, the values of Restorative Justice need to be adopted in the regulation of criminal procedure laws in Indonesia in the future. Mardjono Reksodiputro emphasized that the Restorative Justice approach can be considered as a form of criticism of the criminal justice system in Indonesia today, which tends to lead to retributive goals and ignore the role of the victim to participate in determining the case process.<sup>17</sup>

Mark S. Umbreit and Marilyn Peterson Armour, as quoted by Nur Rochaeti, explained that the conventional criminal justice system generally focuses on three questions. *First*, what laws have been broken?; *the second*, who did it?; and *the third*, what do the perpetrators deserve? Furthermore, from the perspective of restorative justice, the questions are entirely different: who has been hurt; what are their needs; and whose obligations are these?<sup>18</sup> Restorative justice as a paradigm has actually changed the face-to-face pattern between the perpetrator

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<sup>16</sup> Fauzy Marasabessy, 2015, *Restitusi bagi Korban Tindak Pidana: Sebuah Tawaran Mekanisme Baru*, Jurnal Hukum dan Pembangunan, Vol. 45 No. 1 January-March 2015, p. 72.

<sup>17</sup> Budi Suhariyanto, dkk, 2021, *Kajian Restorative Justice Dari Perspektif Filosofis, Normatif, Praktik, dan Persepsi Hakim*, Kencana: Jakarta, p. 53.

<sup>18</sup> Nur Rochaeti, et al., 2023, *A Restorative Justice System in Indonesia: A Close View from the Indigenous People's Practices*, Srinjaya Law Review, Vol. 7 Issue 1 january 2023, p. 94.



and the victim and the state into a cooperative or integration pattern, so that the crime problem is identified as the perpetrator's actions that cause harm to individuals or society and not to the state.<sup>19</sup> MM. Hatta Ali emphasized the need to use the paradigm of Restorative Justice to shift or change several principles of criminal justice that have existed so far, including:<sup>20</sup>

- a. The orientation of justice from the interests of the perpetrator to the interests of the victim;
- b. Criminal acts move from acts that harm the public interest to acts that harm the interests of the victim, which incidentally is the main part of the public interest;
- c. People who become victims are mainly those who are harmed; and
- d. Judicial implementation aims to resolve the conflict between the perpetrator and the victim so that the victim will play an active role.

As a consequence of actions that cause damage to other individuals, the Restorative Justice paradigm emphasizes the importance of compensation efforts for victims of criminal acts. One of the forms of compensation is restitution. Restitution, in accordance with the principle of recovery in its original state (*restitutio in integrum*), is an effort that the victim of the crime must be returned to its original condition before the crime occurred, even though it is acknowledged that it will not be possible for the victim to return to its original condition.

In the context of the weakness of protection arrangements for victims of criminal acts, both in the Code of Criminal Procedure and the Code of Criminal Procedure, Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, the integration of Victim Trust Fund in the Code of Criminal Procedure is crucial to ensure that there is a recovery mechanism that can be accessed by victims of criminal acts. There are 2 (two) urgencies behind the importance of this integration. *First*, the arrangement of the Victim Trust Fund needs to be accommodated by the Code of Criminal Procedure so that the provisions regarding the Victim Trust Fund will have a wider scope and scope, which is not limited to the criminal acts of sexual violence only. The Code of Criminal Procedure, as a national criminal procedure law, should be a universal instrument that guarantees the rights of all parties in the judicial process, including the victim's right to obtain compensation when the perpetrator is unable to pay restitution

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<sup>19</sup> Budi Suhariyanto, *Op.Cit.*, p. 29.

<sup>20</sup> Budi Suhariyanto, *Ibid.*



as determined by the court. The Victim Trust Fund scheme provides evidence of how the state is also present to provide protection and recovery to victims. If this is ignored, the lack of Victim Trust Fund regulations in the Code of Criminal Procedure creates inequality in the treatment of victims based on the type of criminal act, which is in principle contrary to equality before the law as mentioned in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that, "everyone has the right to fair recognition, guarantee, protection, and legal certainty as well as equal treatment before the law."

*Second*, if the provisions regarding the Victim Trust Fund for victims of criminal acts are regulated in the Code of Criminal Procedure, then there will be similarities in the implementation mechanism by law enforcement officers. The Code of Criminal Procedure, which is projected as an update on the national criminal procedure law, should have adopted the principles of Restorative Justice and the needs of existing legal development for all Indonesian law enforcement.

Integration is carried out by paying attention to potential gaps in the implementation of the Victim Trust Fund as described earlier, including:

1. Government Regulation Number 29 of 2025 on the Victim Trust Fund for Victims of Sexual Violence needs to provide a more detailed description of the scope of utilisation of the Victim Trust Fund for the recovery of victims as referred to in Article 7 paragraph (2) Government Regulation Number 29 of 2025 on the Victim Trust Fund for Victims of Sexual Violence. This description should be completed with a simple and efficient submission mechanism and access procedure, including an emergency scheme for victims who need immediate recovery without having to wait for the restitution to be completed.
2. Government Regulation Number 29 of 2025 on the Victim Trust Fund for Victims of Sexual Violence needs to strictly regulate the portion and responsibility of the state in the allocation of the Victim Trust Fund budget through the State Revenue and Expenditure Budget/Regional Revenue and Expenditure Budget as referred to in Article 2 paragraph (1) Government Regulation Number 29 of 2025 on the Victim Trust Fund for Victims of Sexual Violence. State budget allocation must be the main and sustainable source, while other sources, such as grants, Corporate Social Responsibility, or philanthropy, can be complementary.



#### **D. Conclusion**

Two concepts of justice affect fundamental changes in the criminal law system, namely, retributive justice and restorative justice. These two concepts have a number of differences in looking at some things about the basic concepts in criminal law, both material and formal, and the implementation of criminal justice. In relation to the victim, the concept of restorative justice in the criminal justice system places the victim as the main subject who is entitled to compensation for the suffering experienced. However, in practice, applicable laws and regulations, such as the Code of Criminal Procedure and Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, still show weakness in accommodating the rights of victims comprehensively. The Victim's Trust Fund, as stipulated in Law Number 12 of 2022 on the Crime of Sexual Violence, along with its implementation regulations, is an important instrument to ensure the fulfillment of the victim's right to compensation and other forms of recovery. It is important to integrate the regulations regarding the Victim Trust Fund in the Code of Criminal Procedure to ensure equal handling, protection, and recovery for victims the Integration of the Victim Trust Fund in the Code of Criminal Procedure becomes crucial to ensure that there is a recovery mechanism that can be accessed by victims of criminal offences as a concept in restorative justice. First, the Victim Trust Fund regulation needs to be accommodated by the Code of Criminal Procedure Law so that the provisions on the Victim Trust Fund become broader in scope and scope, which is not limited to the criminal act of sexual violence only. Second, if the provisions regarding the Victim Trust Fund for victims of criminal offences are regulated in the Code of Criminal Procedure, then there will be a similarity in the implementation mechanism by law enforcement officers. Furthermore, Victim Trust Fund integration needs to be done by paying attention to the various weaknesses that are still present in the Government Regulation Number 29 of 2025 on the Victim Trust Fund for Victims of Sexual Violence Crimes. First, a more detailed explanation is needed regarding the scope of the utilisation of the Victim Trust Fund for victim recovery. Second, there needs to be a firm arrangement regarding the portion and responsibility of the state in the allocation of the DBK budget through the State Revenue and Expenditure Budget/Regional Revenue and Expenditure Budget, by placing the state budget as the main sustainable source.



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