

# INCONSISTENCY IN THE PROVISION OF RESTITUTION FOR VICTIMS OF SEXUAL VIOLENCE CRIMES IN LIGHT OF JUDICIAL DECISIONS IN INDONESIA

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## Abstract

Indonesia, as a state governed by the rule of law, is committed to protecting human rights through the Criminal Justice System. One of the main challenges is the handling of sexual violence crimes. To this end, Law No. 12 of 2022 on Sexual Violence Crimes (UU TPKS) affirms the right to restitution for victims as part of their recovery. However, implementation in practice shows differences in judicial considerations and attitudes in determining restitution, despite its clear regulation in the law. This study aims to analyze the factors hindering the implementation of restitution for victims of sexual violence crimes, with a focus on cases carrying penalties exceeding four years. This research is expected to provide recommendations to enhance law enforcement compliance in fulfilling the obligation to provide restitution, thereby better protecting victims' rights.

**Keywords:** *Sexual Violence, Restitution, Implementation*

## INTRODUCTION

Along with the development of time, the forms of criminal acts committed by individuals have also evolved. The increasing prevalence of crimes accompanied by violence in society strengthens public belief in the seriousness and urgency of certain criminal acts.<sup>1</sup> Over time, this phenomenon shapes a distinctive pattern of societal perception toward specific types of crimes. One issue that has garnered attention in recent years is sexual violence crimes. The Online Information System for the Protection of Women and Children (Simfoni-PPA) under the Ministry of Women's Empowerment and Child Protection (KemenPPPA) reports that in 2024, 18,192 (eighteen thousand one hundred ninety-two) cases of sexual violence were reported, of which 15,794 (fifteen thousand seven hundred ninety-four) cases were predominantly female victims, with the majority occurring within the domestic sphere. These figures reflect cases reported by victims, their companions, or families.<sup>2</sup> Meanwhile, unreported cases of violence against women may be significantly higher. Behind these numbers, we also recognize that victims' experiences in obtaining protection and recovery remain far from expectations, despite the availability of various policies to protect women from criminal acts. The characteristics of victims and perpetrators continue to show the same trend, with victims being younger and less educated than perpetrators.

Sexual violence crimes themselves can be defined as unwanted sexual advances by one individual toward another. These advances may take various forms, whether physical or verbal. Patriarchal culture also contributes to the emergence of sexual violence crimes.<sup>3</sup> These crimes often go undetected due to societal stigma against victims of sexual violence, causing many victims to feel reluctant and ashamed to report them. Assertiveness training is urgently needed to help victims of sexual violence crimes empower themselves to refuse and express their feelings. Additionally, mutual respect and maintaining boundaries between men and women are pressing needs.<sup>4</sup>

<sup>1</sup> Erniwati, *Kejahatan Kekerasan Dalam Perspektif Kriminologi*, Mizani Vol. 25, No. 2, 2015, hlm. 236

<sup>2</sup> <https://www.nu.or.id/nasional/kasus-kekerasan-didominasi-rumah-tangga-jumlahnya-capai-11-ribu-kasus-di-tahun-2024-1F66k?> diakses tanggal 17 Februari 2025 pukul 19.45 WIB

<sup>3</sup> Rosania Paradias dan Eko Soponyono, *Perlindungan hukum Terhadap Korban Pelecehan Seksua*, Jurnal Pembangunan Hukum Indonesia, Vol. 4, No. 1, 2022, hlm. 62

<sup>4</sup> Noviani P et al., *Mengatasi Dan Mencegah Tindak Kekerasan Seksual Pada Perempuan Dengan Pelatihan Asertif*, (Jawa Barat: Universitas Padjadjaran, 2018) hlm. 31

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Prior to 2022, to address forms of sexual violence crimes, the Government of the Republic of Indonesia had issued several laws, namely Law No. 23 of 2002 on Child Protection, Law No. 21 of 2007 on the Eradication of Human Trafficking (UU PTTP), Law No. 44 of 2008 on Pornography (UU Pornografi), Law No. 23 of 2004 on the Elimination of Domestic Violence, and several general provisions still included in the Penal Code. The laws enacted by the Government of the Republic of Indonesia have not been able to effectively address sexual violence crimes. Therefore, in 2022, the Government of the Republic of Indonesia enacted Law No. 12 of 2022 on Sexual Violence Crimes.

Law No. 12 of 2022 on Sexual Violence Crimes explicitly mandates the provision of restitution rights for sexual violence crimes carrying a penalty of imprisonment of 4 (four) years or more. However, in reality, based on the authors' research, several judicial decisions by District Courts following the issuance of Law No. 12 of 2022 on Sexual Violence Crimes reveal differences in the considerations and attitudes of the Judicial Panel in addressing restitution in their rulings. Judicial decisions are deemed to focus more on imposing penalties on defendants, while victim recovery, which should be an integral part of the justice system, is often neglected. This discrepancy results in disparities in judicial decisions, as some rulings entirely fail to consider the provision of restitution to victims of sexual violence crimes, while others grant restitution to victims of sexual violence crimes. The importance of providing restitution as a right for victims of sexual violence crimes demands serious attention. Restitution is not merely a legal obligation but also a part of the recovery process for victims. Therefore, an examination is needed to determine whether judicial decisions have effectively provided restitution to victims of sexual violence crimes and what the ideal provisions are for granting restitution to victims of sexual violence crimes.

## A. RESEARCH METHOD

This study falls within the category of normative juridical research, which examines issues based on an analysis of literature sources as the primary data. This approach involves a review of legal principles, legal theories, and statutory provisions related to the research topic.<sup>5</sup>

The problem approach employs two types of approaches: first, a statutory approach, which serves to analyze and examine legal issues and their consistency and compliance with applicable regulations and laws.<sup>6</sup> The second approach is a conceptual approach, derived from legal theories, perspectives, and doctrines, which serves to identify definitions, concepts, and legal principles relevant to the issues faced and to construct legal arguments useful for addressing the legal problems encountered.<sup>7</sup>

## B. DATA COLLECTION METHOD

Data collection was conducted through a literature review, involving the analysis of statutory regulations, official documents, legal journals, and relevant literature. Primary legal materials include applicable regulations such as Law No. 12 of 2022 on Sexual Violence Crimes, laws related to the justice system, and Supreme Court Regulation (PERMA) No. 1 of 2022. Secondary legal materials consist of journals, books, and scholarly articles discussing sexual violence crimes, restitution, and the criminal justice system. Tertiary legal materials include legal dictionaries and legal encyclopedias. Data analysis was conducted using a qualitative approach, describing research findings in an analytical-descriptive format. This study aims to identify the causes of disparities in the provision of restitution rights for victims of sexual violence crimes.

## C. RESULTS AND DISCUSSION

### Inconsistency in the Provision of Restitution for Victims of Sexual Violence Crimes Based on Judicial Decisions in Indonesia

The definition of sexual violence crimes is regulated in Article 1, Paragraph (1) of Law No. 12 of 2022 on Sexual Violence Crimes, which states that sexual violence crimes are any acts fulfilling the elements of crimes as regulated in this Law and other sexual violence acts as regulated in other Laws as specified in this Law. Based on this definition, sexual violence crimes are divided into two types: sexual violence crimes explicitly regulated in Law No. 12 of 2022 and other crimes fulfilling the elements of sexual violence regulated in other regulations outside Law No. 12 of 2022. Several other regulations cover sexual violence, such as Law No. 23 of 2004 on the Elimination of Domestic Violence, Law No. 35 of 2014 on Child Protection, and other general provisions contained in the Penal

<sup>5</sup> Amiruddin, H. Zainal Asikin, *Pengantar Metode Penelitian Hukum*, (Depok : PT RadjaGrafindo Persada, 2020), hlm. 166

<sup>6</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, (Jakarta : Kencana Prenada Media Group, 2016), hlm. 133

<sup>7</sup> *Ibid*, hlm. 135-136

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Code (KUHP). However, the distinguishing factor is that, among all these regulations, only Law No. 12 of 2022 on Sexual Violence specifically accommodates and mandates the provision of restitution to victims as a form of protection and recovery.

Restitution, as defined in the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, adopted at the Milan conference, is recognized as a fundamental right. This declaration states that restitution includes compensation for losses, including the return of assets or payment as compensation for damages suffered by victims. Additionally, restitution encompasses the restoration of victims' rights, which is the responsibility of the perpetrator or a third party to provide compensation to victims, their families, or those dependent on them.<sup>8</sup> Restitution is one form of victim recovery regulated in Indonesia's legal system as part of the restorative justice approach. Generally, restitution is defined as compensation provided to victims or their families by the perpetrator or a third party.<sup>9</sup> The provision of restitution aims to restore the condition of victims, whether physically, mentally, or socially, affected by the crime.

Restitution is also provided with the primary goal of improving victims' mental conditions by focusing on recovery, which includes various efforts to restore their mental, physical, and social states. In implementing the right to protection, Law Enforcement Agencies (APH) play a role in the judicial process, including religious courts, while victims may also seek protection through the Witness and Victim Protection Agency (LPSK). Victim recovery encompasses various aspects, such as physical, psychological, economic, social, and cultural recovery, as well as the provision of compensation. Restitution aims to restore victims' rights or provide compensation, whether material or immaterial, to ensure comprehensive recovery in physical, psychological, social, and economic aspects.<sup>10</sup>

Law No. 12 of 2022 on Sexual Violence Crimes (UU TPKS) provides specific and more detailed regulations regarding the provision of restitution for victims of sexual violence. Several key provisions in UU TPKS related to restitution include:

## 1. Judicial Obligation to Determine Restitution

Article 16, Paragraph (1) of UU TPKS states that judges are obligated to determine the amount of restitution in cases of sexual violence crimes carrying a penalty of imprisonment of four years or more.<sup>11</sup> In other words, restitution is no longer optional but a legal obligation in certain cases, namely sexual violence crimes with a penalty of 4 (four) years or more.

## 2. Scope of Restitution

The provision of restitution may include:<sup>12</sup>

- Compensation for loss of wealth or income;
- Compensation for suffering directly resulting from the Sexual Violence Crime;
- Reimbursement of medical and/or psychological treatment costs; and/or
- Compensation for other losses suffered by victims as a result of the Sexual Violence Crime.

## 3. Victim Empowerment

To ensure comprehensive victim recovery, UU TPKS also provides room to establish mechanisms for victim empowerment through enhanced access to healthcare services, counseling, and legal support.<sup>13</sup>

Law No. 12 of 2022 on Sexual Violence Crimes not only regulates victims' rights but also assigns responsibilities to law enforcement agencies to ensure the fulfillment of restitution rights. The provision of restitution in sexual violence cases is not only a legal obligation but also reflects respect for victims' dignity. Restitution is viewed as a concrete form of the state's presence in protecting victims from the adverse impacts of crimes. With the existence of provisions mandating restitution, it is hoped that Indonesia's criminal justice system can be more oriented toward victim recovery as part of restorative justice.

In the criminal justice system, the right to restitution for victims of sexual violence crimes is one form of recovery guaranteed by law. Restitution includes compensation for material and immaterial losses suffered by victims, but in various judicial decisions, the amount and mechanism of restitution remain inconsistent. This raises questions about the extent to which justice can be realized for victims of sexual violence in Indonesia.

<sup>8</sup> Rena Yulia, *Viktimologi Perlindungan Hukum terhadap Korban Kejahatan*, (Yogyakarta: Graha Ilmu, 2013), hlm. 119

<sup>9</sup> Pasal 1 Ayat (20) Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual

<sup>10</sup> Sabri, Fadillah, *Perlindungan Hukum Dengan Restitusi Terhadap Anak Yang Menjadi Korban Tindak Pidana*, *UNES Journal of Swara Justisia*, Vol. 6, No.4, 2023, hlm. 213

<sup>11</sup> *Ibid*, Pasal 16 Ayat (1)

<sup>12</sup> *Ibid* Pasal 30 Ayat (2)

<sup>13</sup> *Ibid* Pasal 70 Ayat (3)

Article 16, Paragraph (1) of Law No. 12 of 2022 on Sexual Violence Crimes explicitly regulates that for sexual violence crimes carrying a penalty of imprisonment of 4 (four) years or more, judges “are obligated” to calculate the amount of restitution. This article imposes an obligation on judges to provide restitution, but in reality, many judges hold differing views in their legal considerations regarding the provision of restitution for victims of sexual violence crimes.

Judges, as guardians of justice, are required to deliver justice for all parties in their rulings. In issuing decisions, judges must be guided by the Law, as they serve as enforcers of the law and the basis for resolving disputes brought before them.<sup>14</sup> In addition to adhering to statutory provisions, judges also consider humanitarian values, principles of utility, and the effectiveness of sentencing for defendants, including behavioral changes to create a deterrent effect after serving their sentence. Without considering these aspects, the decisions issued risk creating legal uncertainty and injustice in the application of criminal sanctions.<sup>15</sup>

The authors have conducted a literature review of several judicial decisions related to sexual violence crimes and found differences in the attitudes and perspectives of each Judicial Panel in considering the provision of restitution in their rulings. In the decision with Case No. 255/Pid.B/2024/PN Ktg, the Judicial Panel considered restitution but, due to the absence of a restitution request from the victim, the Judicial Panel did not include the provision of restitution in the operative part of its decision. Furthermore, in decisions with Case Nos. 23/Pid.B/2024/PN Sng and 117/Pid.B/2022/PN Sng, the Judicial Panel did not consider restitution at all, despite the maximum penalty for the defendant in each case being 12 (twelve) years. In another decision, Case No. 64/Pid.B/2023/PN Blp, the Judicial Panel considered restitution and determined the amount of restitution in the operative part of its decision, even though there was no restitution request from the victim, the prosecutor, or the Witness and Victim Protection Agency (LPSK).

From the judicial decisions compiled by the authors, it can be observed that, broadly speaking, there are 3 (three) types of judicial attitudes in deciding cases of sexual violence crimes, namely:

1. Judges who do not consider restitution at all in their decisions due to the absence of a restitution request from the victim, the prosecutor, or Witness and Victim Protection Agency (LPSK);
2. Judges who consider restitution in their decisions but, due to the absence of a restitution request from the victim, the prosecutor, or Witness and Victim Protection Agency (LPSK), do not determine the amount of restitution in the operative part of their decisions;
3. Judges who consider the provision of restitution even though, in practice, during the trial, neither the victim, the prosecutor, nor Witness and Victim Protection Agency (LPSK) ever submitted a restitution request.

Based on the analysis of several judicial decisions, it can be concluded that the application of restitution in cases of sexual violence crimes is still not implemented consistently. Several main indicators of this inconsistency include:

## 1. Judges Not Considering Restitution

In some decisions, judges entirely fail to consider restitution due to the absence of a request from the victim, the prosecutor, or LPSK. This attitude contradicts the mandate of Article 16, Paragraph (1) of UU TPKS, which emphasizes that restitution is an obligation, not an option.

## 2. Judges Considering but Not Determining Restitution

In other decisions, judges consider the aspect of restitution but do not include it in the operative part of the decision due to the absence of a request. Although this is better than decisions that completely ignore restitution, this approach still indicates that the legal obligation regulated in UU TPKS has not been fully implemented.

## 3. Judges Determining Restitution Ex Officio

Some decisions demonstrate a proactive attitude by judges who determine the amount of restitution even though there is no explicit request. This attitude reflects a more progressive and victim-recovery-oriented understanding. However, because this approach is not uniformly applied by all judges, there remains legal uncertainty for victims in obtaining their rights.

The inconsistency in judges' attitudes toward considering restitution for victims of sexual violence crimes indicates disparities in the implementation of Law No. 12 of 2022 on Sexual Violence Crimes. Yet, the provision in Article 16, Paragraph (1) of UU TPKS explicitly requires judges to determine the amount of restitution in sexual

<sup>14</sup> Sri Dewi Rahayu, *Pertimbangan Hakim dalam Putusan Perkara Tindak Pidana Narkotika*, PAMPAS: Journal Of Criminal Law Vol. 1, No. 1, 2020, hlm. 131

<sup>15</sup> Livia Musfika Santi, *Faktor-Faktor Penyebab Disparitas Pidana dalam Pertimbangan Putusan Hakim Terhadap Pelaku Tindak Pidana Pembunuhan Berencana*, Verstek Jurnal Hukum Acara, Vol. 7, No. 2, 2017, hlm. 437

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violence cases carrying a penalty of four years or more. Disparity constitutes the authority granted by the law to judges to issue decisions based on applicable legal provisions, even though decisions in one case may differ from those in another. This freedom is granted because each case has a different background.<sup>16</sup> This disparity creates legal uncertainty and has the potential to reduce the effectiveness of protecting victims' rights in Indonesia's criminal justice system. Disparities in sentencing can lead to issues such as envy and dissatisfaction from the perspective of the defendant, the victim, and the victim's family, as well as negative public perceptions of the judicial institution.<sup>17</sup>

Regarding the implementation of restitution, the Supreme Court of the Republic of Indonesia has issued an implementing regulation in the form of Supreme Court Regulation (PERMA) No. 1 of 2022 on Procedures for Requesting and Granting Restitution and Compensation for Victims of Criminal Acts. This Supreme Court Regulation governs the provision of restitution for criminal cases involving:<sup>18</sup>

- a. Gross human rights violations;
- b. Terrorism,
- c. Human trafficking,
- d. Racial and ethnic discrimination,
- e. Child-related crimes,
- f. Other crimes designated by LPSK decisions as stipulated in statutory regulations.

The forms of restitution that can be provided to victims of crimes may include:<sup>19</sup>

- a. Compensation for loss of wealth and/or income;
- b. Compensation, whether material or immaterial, resulting from suffering directly caused by the crime;
- c. Reimbursement of medical and/or psychological treatment costs; and/or
- d. Other losses suffered by victims as a result of the crime, including basic transportation costs, legal fees, or other costs related to the legal process.

Furthermore, it can be observed that PERMA No. 1 of 2022 requires a prior request for the submission of restitution. The restitution request must include, among other things, the identity of the applicant, the identity of the victim (if the applicant is not the victim), a description of the crime, the identity of the defendant/respondent, a description of the losses suffered, and the nominal amount of restitution requested.<sup>20</sup> To support the description of losses, the applicant is required to attach, among others:<sup>21</sup>

- a. A photocopy of the applicant's and/or victim's identity;
- b. Evidence of material losses suffered by the applicant and/or victim, prepared or certified by an authorized official, or based on other valid evidence;
- c. Evidence of the victim's treatment and/or medical costs, certified by the institution or party providing the treatment or based on other valid evidence;
- d. A description of immaterial losses suffered by the applicant and/or victim;
- e. A photocopy of the death certificate, in cases where the victim has passed away;
- f. A certificate of family relationship, heir, or guardian if the request is submitted by the family, heir, or guardian;
- g. A special power of attorney, if the restitution request is submitted through a proxy; and
- h. A copy or excerpt of the court decision, if the case has been decided and has attained permanent legal force.

Restitution requests may be submitted by the victim or through LPSK (Witness and Victim Protection Agency), investigators, and prosecutors. Restitution requests may be submitted before the decision is read and after the decision is read. Restitution requests submitted before the final decision must be included in the prosecutor's indictment, attached to the case file, and a copy provided to the defendant or their legal counsel.<sup>22</sup> For restitution requests submitted after the decision has attained permanent legal force, they may be submitted directly by the victim

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<sup>16</sup> Frengky Manurung, Alvi Syahrin, Madiasa Ablisar dan Sunarmi, Disparitas Putusan Hakim Terhadap Tindak Pidana Narkotika Di Wilayah Hukum Pengadilan Negeri Rantauprapat (Studi Kasus Putusan No. 159/Pid.Sus/2019/PN.Rap dan Putusan No.: 626/PID.SUS/2020/PN. RAP), Jurnal Ilmiah Penelitian, Law Jurnal, Vol. 2, No. 1, Juli 2021, hlm. 63

<sup>17</sup> Nimerodi Gulo & Ade Kurniawan M, Disparitas dalam Penjatuhan Pidana, Jurnal Masalah-Masalah Hukum, Vol. 47, No. 3, 2018, hlm. 222

<sup>18</sup> Pasal 2 Angka (1) Huruf (a) Peraturan Mahkamah Agung Nomor 1 Tahun 2022 Tentang Tata Cara Penyelesaian Permohonan dan Pemberian Restitusi dan Kompensasi Kepada Korban Tindak Pidana

<sup>19</sup> *Ibid* Pasal 4

<sup>20</sup> *Ibid* Pasal 5 Ayat (1)

<sup>21</sup> *Ibid* Pasal 5 Ayat (2)

<sup>22</sup> *Ibid* Pasal 8 Ayat (3)



or through LPSK, no later than 90 (ninety) days after the court decision attains permanent legal force.<sup>23</sup> Based on the explanation of PERMA No. 1 of 2022 above, it can be seen that this regulation governs which crimes are eligible for restitution under the Supreme Court Regulation. It is noteworthy that sexual violence crimes are not explicitly mentioned in this regulation. The provision that can bridge the provision of restitution for victims of sexual violence crimes is the provision regarding “other crimes designated by LPSK decisions as stipulated in statutory regulations.” Based on this provision, it can be interpreted that the provision of restitution for victims of sexual violence crimes can still be granted as long as it has been designated by an LPSK decision.

The existence of a “restitution request” appears to be the primary gateway for victims of crimes to access their restitution rights. Meanwhile, Article 16, Paragraph (1) of Law No. 12 of 2022 on Sexual Violence Crimes explicitly states that “judges are obligated to determine the amount of restitution for sexual violence crimes carrying a penalty of imprisonment of 4 (four) years or more.” The authors observe a discrepancy in the provisions regarding the provision of restitution because, on one hand, the applicant is required to submit a request, while on the other hand, judges are obligated to determine the amount of restitution for victims. This discrepancy in provisions results in the inconsistent provision of restitution, such that victims’ rights cannot be maximally accommodated.

From the research conducted by the authors, it can be seen that several main causes of differing judicial interpretations of restitution are the lack of a clear mechanism in implementing Article 16, Paragraph (1) of UU TPKS. Several factors contributing to this discrepancy include:

1. **Lack of Judicial Understanding of Restitution Obligations**

Although UU TPKS regulates that judges are obligated to determine restitution, many judges adhere to the passive principle in the criminal justice system, where restitution is considered a right that must be requested by the victim or related parties. In the context of restorative justice, restitution should be a proactive element in efforts to recover victims.

2. **Dependence on Requests from Victims or LPSK**

In some decisions, judges do not determine restitution due to the absence of a request from the victim, the prosecutor, or the Witness and Victim Protection Agency (LPSK). This indicates an interpretation still rooted in a conventional legal system, where restitution must be explicitly requested. However, UU TPKS has emphasized that restitution is an obligation that must be considered automatically by judges in certain cases.

3. **Differences in Interpretation of Article 16, Paragraph (1) of UU TPKS**

Some judges interpret Article 16, Paragraph (1) as a mandatory mandate, while others still consider it a conditional obligation that must be based on a request from interested parties. This difference causes inconsistencies in judicial decisions related to sexual violence.

4. **Lack of Standardization in Restitution Calculation**

The absence of guidelines or standard benchmarks for determining the amount of restitution for victims of sexual violence also contributes to differences in judicial decisions. In some cases, judges determine restitution without a request, while in others, restitution is not considered at all.

Disparities in the application of restitution directly impact victim recovery and public trust in the criminal justice system. Several implications that may arise from these differing interpretations include:

1. **Legal Uncertainty**

Victims of sexual violence crimes cannot ascertain whether they will receive restitution, as judicial decisions heavily depend on individual interpretations of Article 16, Paragraph (1) of UU TPKS.

2. **Lack of Certainty in Victim Recovery**

If restitution is not granted, victims lose the opportunity to receive compensation for the suffering they have endured. This can hinder the psychological and social recovery process for victims.

3. **Inequity in Judicial Decisions**

In a legal system that prioritizes justice, there should be consistency in the application of the law. However, differences in judicial attitudes in determining restitution indicate inconsistencies in the realization of justice for victims of sexual violence.

To ensure comprehensive recovery for victims and legal certainty in the criminal justice process, there is an urgent need for reform of the legal provisions governing the provision of restitution for victims of sexual violence crimes. This reform is pressing given the lack of synchronization between implementing regulations and the norms regulated in substantive laws, particularly regarding the obligation to provide restitution. As is known, Supreme Court Regulation (PERMA) No. 1 of 2022 on Procedures for Requesting and Granting Restitution and Compensation

<sup>23</sup> Ibid Pasal 12

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for Victims of Criminal Acts was enacted earlier, on February 25, 2022. Meanwhile, Law No. 12 of 2022 on Sexual Violence Crimes was enacted later, on May 9, 2022. This lack of synchronization in the timing of enactment creates juridical problems, as the PERMA was not specifically designed to accommodate the new norms regulated in Law No. 12 of 2022.

One of the most crucial issues is the difference in approach between the two regulations regarding the mechanism for providing restitution. Article 16, Paragraph (1) of Law No. 12 of 2022 explicitly imposes an obligation on judges to determine the provision of restitution to victims as part of the criminal decision, without requiring a request from the victim or other parties. This reflects a new paradigm in Indonesia's criminal law that is more oriented toward victim recovery (victim-oriented justice) and no longer relies on the victim's initiative in requesting their rights.

However, in PERMA No. 1 of 2022, the mechanism for providing restitution still requires a request from the victim, the victim's family, legal counsel, or LPSK. This means that judges can only determine the provision of restitution if a request is submitted beforehand. This approach is not aligned with the spirit and norms established in Law No. 12 of 2022. As a result, the implementation of restitution provisions in judicial practice has the potential to cause confusion, legal uncertainty, and, worse, hinder victims' rights to obtain proper recovery. Furthermore, Law No. 12 of 2022 is a legal product that specifically regulates sexual violence crimes and reinforces the state's commitment to victims. Therefore, implementing regulations—including the PERMA governing the procedures for providing restitution—must be reviewed and aligned with the progressive principles established in the law. This is essential to ensure not only normative alignment but also effective implementation in protecting victims' rights in practice.

Thus, reform of existing provisions, particularly through the revision or formulation of a new PERMA specifically regulating the mechanism for providing restitution in the context of sexual violence crimes, is an urgent need. This is critical not only to ensure that victims' rights are not neglected but also to strengthen a just, responsive, and victim-recovery-oriented criminal justice system.

## D. CONCLUSION

The provision of restitution for victims of sexual violence in Indonesia is still implemented inconsistently by judges, despite the existence of clear provisions in Law No. 12 of 2022. This inconsistency is triggered by differences in the interpretation of the obligation to determine restitution, the lack of technical guidelines, and the lack of synchronization between substantive laws and implementing regulations such as PERMA No. 1 of 2022. The lack of uniformity in judicial attitudes causes disparities in decisions that negatively impact legal certainty and victim recovery. Therefore, regulatory reform, intensive training for judges, and the formulation of more comprehensive restitution calculation standards are needed to create a victim-oriented and socially just criminal justice system. Within the framework of restorative justice, restitution must no longer be considered an option but an integral part of restoring victims' rights.

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