



The Lack of Regulations on Restitution and Compensation for Victims of Sexual Violence Against Women and Children As A Basis for Just Legal Reformulation

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Abstract

This study aims to analyze legal regulations and gaps in norms, and to formulate legal reforms related to restitution and compensation for victims of sexual violence against women and children in the Indonesian legal system. The research method used is normative juridical with a statutory and conceptual approach. The results of the study indicate that although victims' rights to restitution and compensation have been recognized in various laws and regulations, such as the Sexual Violence Crime Law, the Child Protection Law, and the Witness and Victim Protection Law, the regulations are still partial and not comprehensively integrated. There are gaps in norms and legal issues, including unclear restitution execution mechanisms, the absence of standards for calculating victim losses, weak state compensation schemes, and disharmony between regulations. These conditions create a gap between normative regulations and implementation in the field, such that victims' rights are not optimally fulfilled. Therefore, a victim-oriented legal reformulation is needed through strengthening restitution execution mechanisms, establishing a state compensation fund, developing victim loss standards, and harmonizing laws and regulations to achieve substantive justice for victims of sexual violence against women and children.

INTRODUCTION

The urgency of legal protection for victims of sexual violence against women and children cannot be separated from the increasing trend of cases and the complexity of the resulting impacts (Brockstedt et al., 2025; Firdaus et al., 2023; Jamaludin, 2025; Krismawati et al., 2023; Li et al., 2023). Women and children are in a structurally more vulnerable position due to unequal power relations, economic dependency, and social constructs that often silence victims (Paradiaz, 2022). The impact of sexual violence is not only physical, but also long-term psychological, social, and economic, thus requiring a legal approach that is not solely oriented toward punishing the perpetrator, but also toward the victim's recovery (Wadjo, 2020). Within the constitutional framework, the state has an obligation to protect every citizen, as stipulated in Article 28G paragraph (1) and Article 28H paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which affirm the right to a sense of security and protection from the threat of fear, as well as the right to receive facilities and special treatment to achieve equality and justice (Saefudin, 2023). Therefore, a victim-oriented justice approach is an urgent

need in the Indonesian legal system (Ardiansyah et al., 2025; Christianty et al., 2026; Dewi¹ et al., 2023; Wicaksono, 2025; Widiyanti et al., 2026).

Concurrently, the development of legal regulations related to sexual violence in Indonesia indicates a significant paradigm shift (Putri, 2021). Initially regulated in a limited manner in the Criminal Code, which tended to be perpetrator-oriented, this was further developed through Law Number 23 of 2002 concerning Child Protection, as most recently amended by Law Number 35 of 2014, and finally Law Number 12 of 2022 concerning Crimes of Sexual Violence, which explicitly recognizes victims' rights (Risal, 2022). In the TPKS Law, provisions regarding victims' rights to treatment, protection, and recovery are regulated, among other things, in Articles 67 and 68, reflecting a shift from a perpetrator-centric to a victim-centric approach. However, these normative developments have not fully addressed the need for comprehensive protection, particularly in terms of reparation for victims (Sistha, 2025).

In this regard, the concepts of restitution and compensation are crucial instruments in victim recovery. Restitution essentially constitutes compensation imposed on the perpetrator, while compensation is the responsibility of the state when the perpetrator is unable to fulfill their obligations (Kusyandi, 2024). Regulations regarding restitution have been accommodated in Article 71D of the Child Protection Law and Articles 30 and 31 of the TPKS Law, while compensation is regulated in Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Witness and Victim Protection, specifically Articles 7A and 7B (Beremanda, 2023). Philosophically, these regulations are rooted in the principles of restorative justice, substantive justice, and respect for human rights, in which victim recovery is seen as an integral part of just law enforcement (Alexandra, 2021).

However, at the normative level, significant regulatory gaps and ambiguities remain regarding the mechanisms for restitution and compensation. Unclear procedures for submitting and implementing restitution, obstacles in the execution of court decisions, and the absence of an effective state compensation scheme indicate weaknesses in the existing legal framework (Jamaludin, 2021). Furthermore, disharmony among laws and regulations, including the TPKS Law, the Child Protection Law, and the Witness and Victim Protection Law, creates legal uncertainty (Bagenda, 2024). The absence of a standard for calculating victims' losses also exacerbates this situation, often resulting in victims' rights to restitution and compensation not being optimally fulfilled (Maulida, 2024). This indicates a normative vacuum that directly impacts the ineffectiveness of legal protection for victims.

This situation is further exacerbated by the gap between *das sollen* and *das sein* in law enforcement practices. Although the right to restitution and compensation is recognized normatively, in practice, its realization remains very limited (Sudarmaji, 2023). Many court decisions include restitution but cannot be effectively enforced, either because the perpetrators lack the financial capacity or because of weak state enforcement mechanisms (Sari, 2023). Furthermore, victims often lack adequate information about their rights and face administrative and psychological barriers in accessing available mechanisms (Antoni, 2024). This phenomenon demonstrates that existing regulations have not been able to bridge the gap between victims' real needs and implementation on the ground.

The research gap addressed by this study lies in the fragmented and partial nature of existing legal analysis regarding restitution and compensation for victims of sexual violence against women and children. While previous studies have examined specific aspects of legal

protection, few have comprehensively analyzed the normative gaps, inconsistencies, and disharmony across multiple legal instruments, nor have they proposed integrated reformulation strategies. This research addresses this gap by systematically examining the legal framework governing restitution and compensation, identifying regulatory weaknesses, and formulating comprehensive recommendations for legal reform. The novelty of this research lies in its integrated approach to analyzing normative gaps across multiple legal instruments and its formulation of concrete, implementable reform measures.

From a comparative perspective, various countries have developed more effective victim compensation mechanisms through the establishment of state-managed victim compensation funds, thus ensuring victims' recovery without relying solely on the perpetrator's capabilities. These best practices demonstrate the strategic role of the state in ensuring that victims' rights are effectively fulfilled. Therefore, the need for equitable legal reformation is increasingly pressing, whether through improving norms, strengthening institutions, or improving implementation mechanisms. This reformulation needs to be based on a gender-based justice approach and oriented toward victim recovery, thereby filling existing legal gaps and creating a more responsive, inclusive, and equitable legal system.

METHOD

The research method employed in this study is the normative juridical method, namely legal research that places law as a norm or rule that applies in the statutory regulatory system, with the aim of examining the lack of norms, inconsistencies, and unclear regulations related to restitution and compensation for victims of sexual violence against women and children. This study uses a statutory approach, which is carried out by examining various relevant laws and regulations, including the 1945 Constitution of the Republic of Indonesia, Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, Law Number 35 of 2014 concerning Child Protection, and Law Number 31 of 2014 concerning Protection of Witnesses and Victims, to find conformity, disharmony, and gaps in regulations. In addition, this research also uses a conceptual approach, which is carried out by examining legal concepts, doctrines, and theories that have developed in legal science, such as restorative justice, substantive justice, and protection of human rights, as a basis for analysis in formulating legal arguments and providing recommendations for just legal reform.

RESULTS AND DISCUSSION

Legal Provisions for Restitution and Compensation for Victims of Sexual Violence against Women and Children in the Indonesian Legal System

Legal provisions regarding restitution and compensation for victims of sexual violence against women and children in the Indonesian legal system are rooted in constitutional guarantees that place the protection of human rights as a state obligation. Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia affirms that everyone has the right to protection of themselves, their families, their honor, and their dignity, and to a sense of security from the threat of fear, while Article 28H paragraph (2) provides the basis for special treatment to achieve equality and justice. In this context, victims of sexual violence against women and children are a group entitled to special protection, including in the form of restitution and compensation mechanisms. Therefore, provisions regarding restitution and compensation are

not merely ordinary legal policies, but rather part of the fulfillment of citizens' constitutional rights.

In the development of positive law, provisions regarding restitution are explicitly accommodated in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence. Article 30 of the law states that victims have the right to restitution for losses suffered as a result of sexual violence, including material and/or immaterial losses. Furthermore, Article 31 stipulates that restitution can be requested from the investigation stage until the court's decision becomes final and binding, and is included in the court's decision. This provision demonstrates the strengthening of victims' positions in the criminal justice process, in which victim recovery is considered an integral part of law enforcement, not merely an additional aspect.

In addition to the TPKS Law, restitution provisions are also contained in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Article 71D paragraph (1) states that every child victim of a crime has the right to request restitution, which is the responsibility of the perpetrator. This provision emphasizes that, in the context of children, the state places special emphasis on victim recovery. However, these provisions are still general in nature and do not specifically regulate the mechanism for implementing restitution, which in practice often creates obstacles in realizing victims' rights.

Meanwhile, provisions regarding compensation are stipulated in Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Witness and Victim Protection. Article 7A paragraph (1) states that victims of gross human rights violations and victims of certain crimes are entitled to compensation, namely compensation provided by the state if the perpetrator is unable to provide full restitution. Furthermore, Article 7B stipulates that compensation is provided through a mechanism facilitated by the Witness and Victim Protection Agency (LPSK). In the context of sexual violence, this provision serves as the basis for the state to assume responsibility for victim recovery when the perpetrator is unable to fulfill their restitution obligations.

The LPSK's role as the authorized institution to provide protection and facilitate compensation and restitution is regulated in Article 12 of Law Number 31 of 2014, which authorizes the LPSK to assist victims in obtaining their rights, including filing for restitution and compensation. Furthermore, in criminal justice practice, restitution is also accommodated as part of a judge's decision, thus having binding legal force. However, the interconnectedness of these various laws and regulations indicates that the provisions on restitution and compensation are still scattered across different legal instruments, potentially leading to legal inconsistencies and uncertainty.

Thus, it can be concluded that, normatively, the Indonesian legal system has recognized and regulated the rights of victims of sexual violence against women and children to receive restitution and compensation through various laws and regulations, from the constitutional level to sectoral laws. However, these regulations remain partial and have not been comprehensively integrated, either in terms of substance or implementation mechanisms. This indicates that, despite a strong legal basis, existing regulations still require strengthening and harmonization to provide effective and equitable protection for victims.

Normative Gaps and Legal Issues in the Implementation of Restitution and Compensation for Victims of Sexual Violence

The normative gap in the implementation of restitution and compensation for victims of sexual violence against women and children is fundamentally rooted in the lack of a comprehensive and operational legal framework within the Indonesian legal system. Although various laws and regulations recognize victims' rights to restitution and compensation, these provisions remain general in nature and lack adequate technical clarity. Consequently, legal uncertainty exists in implementation, particularly regarding filing procedures, loss assessment mechanisms, and the enforcement of decisions mandating restitution. This gap demonstrates that positive law has not fully addressed victims' real needs for effective redress.

One of the most prominent forms of normative gaps is the lack of clear and binding regulations regarding the enforcement mechanism for restitution. In practice, even when courts have issued decisions mandating restitution against perpetrators, the implementation of these decisions often faces obstacles due to the lack of effective enforcement instruments. Unlike principal criminal penalties, which have enforcement mechanisms through law enforcement, restitution tends to depend on the perpetrator's good faith and financial capacity. This raises serious issues, as the legally recognized rights of victims cannot be effectively realized, thus diminishing the meaning of justice itself.

Furthermore, legal issues are also evident in the lack of a standard for determining the amount of restitution that must be provided to victims. Laws and regulations do not yet specifically regulate the methods or parameters that can be used to calculate the material and immaterial losses experienced by victims of sexual violence. Consequently, there is a disparity in court decisions, in which the amount of restitution can vary significantly in similar cases. This lack of uniformity not only creates legal uncertainty but also has the potential to create injustice for victims who should receive proportional compensation.

The lack of norms is also evident in compensation regulations, which do not fully guarantee an active role for the state in victim recovery. Although the state is recognized as having a responsibility to provide compensation, particularly when the perpetrator is unable to fulfill its restitution obligations, the implementation mechanism remains limited and not automatic. Victims must go through complex and often inaccessible administrative procedures, hampering the realization of this right. Furthermore, the absence of a robust and sustainable funding scheme for victim compensation indicates that the state's commitment to victim recovery is still suboptimal.

Another problem is the disharmony between laws and regulations governing restitution and compensation. Provisions scattered across various laws, such as those on sexual violence, child protection, and witness and victim protection, are not fully integrated systematically. Differences in regulations regarding procedures, legal subjects, and the scope of victims' rights create confusion in their implementation by law enforcement officials and related institutions. This situation demonstrates a legal inconsistency that has the potential to undermine the effectiveness of legal protection for victims.

These various normative gaps and legal issues reflect a significant gap between the normative recognition of victims' rights and the reality of their implementation. The law, which should be an instrument of protection, has failed to provide certainty, justice, and optimal benefits for victims of sexual violence. Therefore, legal reform efforts are needed that focus

not only on adding norms but also on formulating clearer, more integrated, and more implementable mechanisms so that victims' rights to restitution and compensation can be fulfilled effectively and fairly.

Reformulation of Restitution and Compensation Regulations as an Effort to Achieve Justice for Victims of Sexual Violence Against Women and Children

Reformulation of restitution and compensation regulations for victims of sexual violence against women and children is an urgent need to achieve justice that is not only formal but also substantive. Although the existing legal framework recognizes victims' rights to restitution, weaknesses in normative and implementation aspects demand more comprehensive reform. This reform must be aimed at strengthening the position of victims in the criminal justice system by prioritizing restitution as a primary goal, parallel to punishing perpetrators. Therefore, changes are needed not only at the normative level but also in operational mechanisms that can guarantee the effective realization of victims' rights.

One concrete step that needs to be taken is to formulate clear regulations regarding the restitution execution mechanism in legislation. The state needs to stipulate that restitution decided by the court has the same enforceable power as other criminal decisions, so that it can be enforced through clear legal instruments, such as confiscation of the perpetrator's assets or replacement with additional penalties if not complied with. Furthermore, it is necessary to establish a special institution or unit under the prosecutor's office or court tasked with ensuring the implementation of restitution, so that it no longer relies solely on the victim's initiative or the perpetrator's good faith.

Reforms must also include the development of national standards for calculating victim losses. The government, along with relevant institutions such as the Witness and Victim Protection Agency, needs to establish comprehensive guidelines regarding the components of quantifiable losses, both material and immaterial, including the costs of medical recovery, psychological rehabilitation, lost income, and the suffering experienced by victims. These standards must be binding on law enforcement officials and judges, thereby minimizing disparities in decisions and ensuring legal certainty and justice for victims.

Regarding compensation, a crucial concrete step is the establishment of a victim compensation fund scheme managed centrally and sustainably by the state. The state needs to allocate a special budget within the State Budget to ensure compensation is provided to victims, especially in situations where the perpetrator is unable to fulfill their restitution obligations. This mechanism must be designed to be easily accessible to victims, with simple, expeditious procedures, and without administrative or psychological burden. Thus, the state plays not only a regulatory role but also that of a party directly responsible for victim recovery.

Reformulation also needs to be directed at harmonizing laws and regulations governing restitution and compensation. Integration between various relevant laws must be carried out to eliminate overlapping and inconsistent regulations. Concrete steps that can be taken include the development of comprehensive implementing regulations or even re-codification into a single legal instrument that comprehensively regulates victims' rights, restitution mechanisms, and compensation. Furthermore, increasing the capacity of law enforcement officials through victim-oriented and gender-sensitive training is also crucial to ensuring effective implementation.

Reformulation of restitution and compensation regulations must be based on a victim-centered justice approach, including restorative justice and gender equity. Other concrete steps include strengthening the role of victims in the judicial process, providing comprehensive legal and psychological assistance, and ensuring adequate access to information regarding victims' rights. Furthermore, a continuous monitoring and evaluation mechanism for the implementation of restitution and compensation is needed so that any obstacles that arise can be promptly addressed. With comprehensive and implementable reformulation, it is envisioned that the Indonesian legal system will be able to provide real and just protection for victims of sexual violence against women and children.

CONCLUSION

Based on the discussion, it can be concluded that the legal provisions regarding restitution and compensation for victims of sexual violence against women and children in the Indonesian legal system have a fairly strong legal basis, both in the constitution and in various laws and regulations such as the Law on Sexual Violence Crimes, the Child Protection Law, and the Law on Witness and Victim Protection. However, these regulations remain partial, unintegrated, and do not fully clarify effective implementation mechanisms. This creates a normative vacuum and various legal issues, such as the lack of a clear restitution enforcement mechanism, the absence of standards for calculating victim losses, a weak state compensation scheme, and disharmony between regulations. This situation has implications for the gap between *das sollen* and *das sein*, whereby victims' normatively recognized rights cannot be optimally realized in practice, thus preventing the goal of equitable legal protection from being fully achieved.

In this regard, it is recommended that a more comprehensive and implementable reformulation of legal regulations be undertaken to ensure the actual fulfillment of victims' rights. The state needs to establish a coercive and effective restitution enforcement mechanism, establish national standards for calculating victim losses, and establish a compensation fund scheme that is managed sustainably and is easily accessible. Furthermore, harmonization between laws and regulations is a crucial step to create legal certainty and avoid overlapping regulations. Strengthening the role of institutions such as the LPSK (Lembaga Perlindungan Saksi dan Korban), increasing the capacity of victim-centered law enforcement officers, and providing comprehensive assistance to victims also need to be priorities. With these steps, it is expected that the Indonesian legal system will be more responsive, fair, and able to provide optimal protection and recovery for victims of sexual violence against women and children.

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