

Compensation for Fraud (Gambling) Operations Under The Guise of Investment–Restitution as a Complex or Easy Way Out Mechanism? (Learning from Various Restitution and Law Cases in Indonesia)

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ABSTRACT: The phenomenon of Foreign Exchange (Forex) that runs in the investment sector and can help the development of Indonesia. Currently, forex has become an endemic trend and has attracted the attention of many parties, both investors and the public in general. Foreign exchange or forex is a type of trade or transaction that trades the currency of a country against the currencies of other countries involving the main money markets in the world for 24 hours continuously, so in this case a legal protection is needed. Lately, it turns out that there are many cases of fake investments in the form of gambling under the guise of investment that have claimed many victims. The purpose of this study is to find out how to guarantee legal protection for the rights of victims of criminal acts and how to provide compensation and restitution mechanisms for victims of criminal acts of fraud (gambling under the guise of investment). Through normative legal research, it is concluded: 1. Legal protection guarantees for the rights of victims of criminal acts are very important considering that the consequences of criminal acts can cause a person to experience physical, psychological and property losses and suffering. Through the legislation guaranteeing the protection of the rights of victims, it is necessary to obtain legal certainty and justice as a result of the occurrence of a crime. 2. The mechanism for providing compensation and restitution to victims of criminal acts has been regulated in Government regulations no. 44 of 2008 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims, which is the implementation of Law no. 13 of 2006. 3. Another alternative to the provision of restitution and compensation that can bridge the two sides, namely the victim and the state, is to provide compensation through the issuance of State Securities which can make the victim receive compensation, and the state gets an injection of funds in terms of development without hurt both sides

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INTRODUCTION

In the era of rapid globalization, its progress has forced the transition of a previously traditional society to finally change towards modernity to neo-modernity. The economic sector is one aspect that is experiencing very fast development as a result of the globalization era. The changes that occur make it easier for economic movements in one country to become interrelated. (Agus & Zulfahmi, 2021; Azkia, 2019; Budiarto, 2020)

All kinds of activities are generally now shifting from the real world to the digital realm, especially in the case of buying and selling trade and leasing transactions which are now dominated by digital online. In the application of the law, there is also a repositioning of the old legal provisions that have undergone renewal. In the view of Islamic law, when a new case emerges, it is necessary to have a basis that is able to determine new legal certainty. On the other hand, with the advancement of technology, in the contemporary business world, currency exchange between countries is no longer carried out directly. In the problem raised by the author, which is a trading system in binary options, especially on the Binomo platform. Fluctuating foreign exchange or foreign currency transactions are dependent on economic conditions and political conditions in the relevant country. Three parties are interested in conducting transactions, namely investors, exporters, importers and speculators based on the need for currency conversion. This transaction can be done in various ways, one of the foreign currency buying and selling transactions that are currently popular and becoming a trend is binary-option. (Haidar, 2015; Islamy, 2021; Mukarromah, 2020; Mutiari et al., 2019; Pradipto et al., 2019; Suroyya Naili, 2013)

One of the services trade that is widely carried out today is investing. Investment is a business activity that can provide benefits (return), but also has risks. The higher the risk of an investment, the higher the potential profit. The phenomenon of Foreign Exchange (Forex) that runs in the investment sector and can help Indonesia's development. Currently, forex has become an endemic trend and has attracted the attention of many parties, both investors and the public in general. Foreign exchange or forex is a type of trade or transaction that trades the currency of a country against the currencies of other countries involving the main money markets in the world for 24 hours continuously. Forex trading is the largest financial market in the world, with daily trading volume exceeding USD 4 trillion so there is no doubt about it. (Azmi, 2020; I Made Aswin Ksamawantara et al., 2021; Imano & Budiyanto, 2019; Prakash, 2019; Reddy, 2016; Seth, 2019)

Forex business actors are referred to as traders. Traders sell and buy currencies continuously, regularly with relatively small and consistent amounts to earn profits. In forex, business actors/customers can make transactions, either from home or from anywhere, if there is an internet network. Forex profits can be seen from two directions, both when prices fall and prices rise. This is what makes forex trading the current trend of investment choices in addition to the lucrative capital market because of its high liquidity and high return on investment. The alleged case of fraudulent investment fraud under the guise of forex trading involves an illegal broker from the Guardian Capital Group (GCG) Asia. The total number of victims in this case reached up to 34,000 people with a

total loss of Rp. 1.8 trillion. There is also a fraud case from Binary Options amounting to Rp 44 billion with the main suspect in the form of Indra Kusuma. And another case with losses reaching tens of billions is the case from the Quotex platform with the main suspect in the form of Doni Salmanan (Azmi, 2020; I Made Aswin Ksamawantara et al., 2021; Imano & Budiyo, 2019; Prakash, 2019; Reddy, 2016; Seth, 2019)

The Consumer Protection Law that has been set by the government is the legal basis that is accurate and full of optimism in protecting consumer rights. Consumer Protection Law is a branch of Economic Law. The reason is that the problems regulated in consumer law are closely related to meeting the needs of goods and/or services. With the enactment of the issue of consumer protection, it is possible to do reverse verification in the event of a dispute between consumers and business actors. Consumers who feel that their rights have been violated can file a complaint and process their case legally at the Consumer Dispute Resolution Agency. In addition, the government issued a legal regulation in the form of Law No. 32 of 1997 concerning Commodity Futures Trading which has been amended to become Law no. 10 of 2011. With the rule of law above, in the future the public can be protected from harmful trading practices. (Azmi, 2020; I Made Aswin Ksamawantara et al., 2021; Imano & Budiyo, 2019; Prakash, 2019; Reddy, 2016; Seth, 2019)

In practice, many customers are found who experience losses in Forex because futures brokers violate laws and regulations or futures brokers fail. If the futures broker commits a violation, it is subject to a minimum imprisonment of 5 (five) years and a maximum of 10 (ten) years and a minimum fine of Rp. 10,000,000,000, - (ten billion rupiah) and a maximum of Rp. 20,000,000,000,- (twenty billion rupiah) as stipulated in Article 71 paragraph (1) of the Commodity Futures Trading Law. However, this can be minimized because BAPPEBTI (Supervisor in futures trading) has a position under the Minister of Trade but is formed by law which has the authority to make regulations; issue business licenses for stock exchanges, clearing houses, and brokers; supervising exchanges and clearing houses; carry out examinations, investigations as well as actions and sanctions needed for the protection of the community. (Azmi, 2020; I Made Aswin Ksamawantara et al., 2021; Imano & Budiyo, 2019; Natanael et al., 2021; Prakash, 2019; Reddy, 2016; Seth, 2019)

Fraud cases like this are very concerning, especially with the number of victims and losses that are very large. Although cases of fraud in the name of this investment business have repeatedly occurred and have been broadcast/reported by various media, to this day the fraudulent events managed by these savvy still continue, and the number of victims is unmitigated. This can happen due to a lack of information in the community about investment businesses, they are only trapped by promises of big profits that are trumpeted by irresponsible elements. Reflecting on the cases mentioned above, the public should be more careful with companies that offer investment businesses. (I Made Aswin Ksamawantara et al., 2021; Natanael et al., 2021; Puspitasari & Aulia, 2021; Surahmi, 2019; Wijaya, 2016)

Incidents like this should not be allowed to continue, in addition to harming investors/consumers who in this case are the public, also greatly affect the financial industry and the country's economic growth. In order to eradicate these illegal activities, it is necessary to take law enforcement steps by the authorities against the criminals and what is equally important is how the government protects the community from the snares of irresponsible people so that they do not fall into illegal investments and how the protection is provided by the government for people who have become victims of businesses under the guise of investment, considering the number of victims who have fallen is very large and suffered enormous losses.

So far, in the settlement of criminal cases, law enforcement and the government have focused more attention on the perpetrators and sentencing, while the victim is only a witness or source of information in the settlement of criminal cases. This investment fraud case is included in the realm of criminal law. In the settlement of criminal cases, it is found that many crime victims lack adequate legal protection, both immaterial and material protection, as Geis argues: "to much attention has been paid to offenders and their rights, to neglect of the victims". placed as evidence that provides information, namely only as a witness so that it is unlikely for victims to have the freedom to fight for their rights. In fact, Geis argues: "Tend to be treated like pieces of evidence than like human being."

The material in this paper discusses how to guarantee legal protection for the rights of victims of criminal acts and how to provide compensation and restitution mechanisms for victims of criminal acts of fraud (gambling under the guise of investment).

METHODOLOGY

This type of research uses literature research that is juridical normative qualitative whose sources are obtained from library materials and document studies. So that the researcher with this qualitative normative juridical law research intends to find a solution to the problem by using library materials, existing legal theories including the Legislation. So that the problems from this research can be studied so that further conclusions can be drawn on what is obtained. The data sources used are primary data sources and secondary data sources. Primary data sources are research obtained from sources of the Civil Code, the Criminal Code, and the applicable legal regulations in Indonesia. Secondary data sources in this study are reference books, legal journals, and others related to the problem. After the primary legal data and secondary legal data are collected, then the data will be processed and analyzed using a systematic legal data processing method.

RESULTS

A. DEFINITION OF COMPENSATION AND RESTITUTION

In the context of regulating the protection of victims of crime, the first thing that must be considered is the essence of the loss suffered by the victim. It should be noted that what is meant by "restitution" is part of reparation or recovery to the victim in the form of compensation that must be given by the perpetrator of the crime. While "compensation" has almost the same understanding as restitution, only that it is given by the state and not the perpetrator of a crime. (Ali & Wibowo, 2018b; Raharjo, 2020; Rahmi, 2019; Setyowati, 2019)

The definition of compensation is specifically regulated in Government Regulation Number 44 of 2008 concerning the Provision of Compensation, Restitution and Assistance to Witnesses and Victims. Article 1 number 4 stipulates: "Compensation is compensation given by the state because the perpetrator is unable to provide full compensation for which he is responsible. (Ali & Wibowo, 2018a; Devi, 2014; Kamran & Maskun, 2021)

The definition of restitution is regulated separately in Article 1 number 5 which stipulates: "Restitution is compensation given to the victim or her family by the perpetrator or a third party, it can be in the form of returning property, payment of compensation for loss or suffering, or reimbursement of costs for damages. certain actions." Article 2 paragraph (1) stipulates that: "Victims of serious human rights violations are entitled to receive compensation."

Parties who can apply for restitution are regulated in Article 20 paragraphs (1) and (2) which stipulate: "The victim of a crime has the right to obtain restitution; and the application for restitution as referred to in paragraph (1) is submitted by the victim, family, or their proxies with special power of attorney.

If the existing regulations are related to the fulfillment of victims' rights, they still leave some special notes that need attention, including:

1. In the positive law that regulates the fulfillment of victims' rights, it does not differentiate between adult victims and child victims;
2. There is no uniformity in terms of formulation and regulation;
3. Not always followed by Government Regulations as implementing regulations;
4. There is no provision that stipulates that if the defendant cannot fulfill his obligation to pay restitution, then there will be a substitute punishment such as imprisonment in lieu of a fine.

In line with the principle of equality of law which is one of the characteristics of the rule of law, victims in the criminal justice process must be guaranteed legal protection. For this reason, Law Number 13 of 2006 concerning the Protection of Witnesses and Victims determines that based on:

- a. Article 7 paragraph (3) regarding the provision of compensation and restitution is regulated by a Government Regulation
- b. Article 34 paragraph (3) regarding the feasibility of providing assistance to victims and/or witnesses as well as the period and amount of costs are regulated by a Government Regulation. Based on this, the implementation of the two articles is regulated in one Government Regulation, namely

Government Regulation Number 44 of 2008 concerning the Provision of Compensation, Restitution and Assistance to Witnesses and Victims.

B. THEORETICAL PERSPECTIVE OF COMPENSATION AND RESTITUTION

In contrast to the restitution paid by the perpetrator or a third party, compensation is actually paid and becomes an obligation/responsibility of the state. The state's obligation to compensate victims for crimes committed by criminals is based on the theory of failure to protect. This theory states that an individual who becomes a victim of a crime is basically caused by the failure of society to eliminate crime and the failure of law enforcement to prevent a crime. In addition, there are two arguments why victims are entitled to compensation provided by the state. First, compensation is based on fairness and social solidarity. This theory states that victims of crime are actually victims of the community and should be compensated by the community for the losses suffered. In a broader sense, this theory states that the government has a responsibility to compensate victims because law enforcement officials fail to prevent crimes from occurring. Second, other sources of compensation proved inadequate to fully compensate victims. (Ali & Wibowo, 2018a; Devi, 2014; Kamran & Maskun, 2021; Marasabessy, 2016)

Compensation is a scheme related to the provision of public funds to someone who is a victim of a crime. The important thing to note here is that these funds are public funds that can come from external sources of crime and are provided for the specific needs of victims. Compensation given to victims includes medical expenses, mental health counseling, funeral costs, lost salaries, costs for buying glasses, contact lenses, dental care, equipment purchases - prosthetic devices, moving or relocation costs, transportation costs to obtain medical care, occupational rehabilitation, replacement services for infant/child care, and domestic assistance. (Ali & Wibowo, 2018a; Devi, 2014; Kamran & Maskun, 2021; Marasabessy, 2016)

Restitution arises when the movement for the rights of victims raises the sentiment that the criminal justice system focuses too much on the perpetrators of crime, and often fails to meet the interests and needs of the victims of crime. This movement in turn resulted in greater awareness of the needs and concerns of victims in the criminal justice system. Victims of crime are often mistreated and neglected in the criminal justice system which is supposed to provide support, information and assistance. In this context, restitution is actually a small part of efforts to fulfill the rights of victims. Through restitution, the perpetrator of the crime is held accountable for the loss suffered by the victim. (Ali & Wibowo, 2018a; Devi, 2014; Kamran & Maskun, 2021; Marasabessy, 2016)

In criminal law, restitution is related to efforts to restore the victim's condition to the situation before experiencing a number of losses due to being a victim of a crime. This is a mechanism that is commonly used in court proceedings to restore victims to their losses. Restitution is defined as "the act of doing good things or giving the same amount for the loss, damage, or injury suffered by the victim". Restitution is given by the perpetrator to the victim. When the victim suffers a loss and the perpetrator is identified, the perpetrator

is obliged to pay a sum of money to the victim. Restitution may include returning a sum of money or the value of an object taken by the perpetrator, funeral expenses, lost wages, support and payment for medical expenses, counselling, therapy, or finding the victim a new job. Restitution is only paid by the perpetrator or a third party after a court decision has permanent legal force. In other words, the perpetrator of the crime must be found guilty of committing a crime so that restitution can be claimed by the victim. (Ali & Wibowo, 2018a; Devi, 2014; Kamran & Maskun, 2021; Marasabessy, 2016)

Restitution serves several purposes. First, restitution serves both to compensate for the loss suffered by the victim and to convict the perpetrator. Second, the ability of restitution to trace the losses caused by the crime (perpetrators) serves as an instrument of prevention because it warns potential perpetrators that they will also be held accountable for any losses incurred. Third, restitution also forces the perpetrator to admit the loss caused by his actions by ordering him to pay a sum of money to the victim. This condition makes the perpetrator specifically responsible for what has been done. Unlike fines paid by the perpetrator to the state, restitution is more intimate because it is given directly by the perpetrator to the victim and its existence is specifically linked to the actual loss suffered by the victim caused by the perpetrator's actions. Therefore, in restitution there is a causal relationship between the crime and the loss suffered by the victim. (Ali & Wibowo, 2018a; Devi, 2014; Kamran & Maskun, 2021; Marasabessy, 2016)

In order to achieve the goals of restitution, Burt Galaway put forward four benefits of restitution as follows: (Galaway, 1988; Galaway & Hudson, 1974; Sharwell, 1978)

1. Restitution as a condition for the imposition of a probationary sentence allows the court to avoid imposing a serious sentence;
2. The restitution order helps renew the perpetrator's self-respect by holding him responsible for what he has done;
3. Restitution as a criminal sanction and a cheaper alternative to imprisonment; and
4. Restitution is able to provide the victim with material fulfillment and psychological satisfaction.

C. COMPENSATION AND RESTITUTION ARRANGEMENTS IN INTERNATIONAL INSTRUMENTS

There is an important statement in the Declaration related to granting restitution, which states that: Governments should review their practices, regulations and law to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions. The inclusion of restitution as an additional crime can make it easier for judges to pay more attention to the fate of the victim. (Braun, 2019; "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power," 2021; Mahfud, 2020; Melup, 1991)

On December 15, 1985, the UN General Assembly adopted Resolution No. 40/34 on the "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which in Article 6b states: (Bassiouni, 2006; "Declaration of Basic

Principles of Justice for Victims of Crime and Abuse of Power,” 2021; Mahfud, 2020; Melup, 2018)

6. The responsiveness of judicial and administrative process to the needs of victims should be facilitated by:

b. Allowing the views and concern of victims to be presented and considered at appropriate stages of the proceedings where their personal interest are affected, without prejudice to the accused and consistent with the relevant national justice system.

This declaration also regulates restitution, compensation and assistance to victims. Specifically regarding restitution and compensation, it is mentioned in this declaration especially in Articles 8, 9 and 12. (Bassiouni, 2006; “Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,” 2021; Mahfud, 2020; Melup, 2018)

Offenders or third parties responsible for their behaviour should, where appropriate make fair restitution to victims, their families or dependant. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.

In addition to Article 8, the regulation on the role of the Government related to the protection of victims is specifically regulated in Article 9. (Bassiouni, 2006; “Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,” 2021; Mahfud, 2020; Melup, 2018)

Article 9 states: Government should review their practices, regulation and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanction.

While the responsibility of the State is regulated in Article 12. (Bassiouni, 2006; “Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,” 2021; Mahfud, 2020; Melup, 2018)

Article 12 states: When compensation is not fully available from the offender or other sources, States should endeavor to provide financial compensation.

D. WEAKNESSES OF COMPENSATION AND RESTITUTION ARRANGEMENTS IN INDONESIA

In the Criminal Code, provisions that contain protection for victims are limited to determining the type and weight of criminal threats by looking at the condition of the victim, for example a criminal act of persecution as regulated in Article 351 of the Criminal Code. Ordinary maltreatment carries a maximum sentence of two years and eight months imprisonment or a maximum fine of Rp. 4,500, if the act results in serious injury, it is punishable by a maximum imprisonment of five years, and if it results in death, it is threatened with a maximum imprisonment of seven years. As for other forms of protection such as criminal compensation which is very beneficial for the victim, it is not accommodated in the Criminal Code. Lack of attention to victims in the Criminal Code because in criminal law the position of the direct victim is abstracted as a public interest (indirect victim), so that the protection is compensated by imposing criminal charges against the perpetrator. The abstraction of the victim's

interest in criminal law cannot be separated from the notion of a crime according to a retributive view which is a violation of public law of the state. (Rizkal & Mansari, 2019; Vitasari et al., 2020)

In addition, the definitions of criminal law expressed by experts also escape the attention of victims, for example according to W.L.G. Lemaire, criminal law consists of norms in the form of imperatives and prohibitions where the violator is threatened with punishment in the form of special suffering. In line with that, W.F.C. van Hattum defines criminal law as the whole of the principles and rules that are followed by a state or other general legal community, in the form of a prohibition on carrying out actions that are unlawful and the violators are threatened with special suffering as punishment. Regulations in Law no. 8 of 1981 concerning the Criminal Procedure Code (KUHAP) is also more dominated in the aspect of protection against perpetrators of criminal acts. In Chapter I concerning General Provisions, Article 1 of the Criminal Procedure Code which consists of 32 numbers does not find the definition of victim. As for Chapter VI concerning Suspects and Defendants, Chapter VII concerning Legal Aid, Chapter XII concerning Compensation and Rehabilitation, and Chapter XIV concerning Investigations, contains provisions concerning the rights of the perpetrators. (Andi Hamzah, 2000; C Djisman, 2013; Eddy, 2015)

At least the regulation regarding the protection of victims in the Criminal Procedure Code is reasonable because the background of its implementation is regarding the need for human rights protection for perpetrators of criminal acts which are often violated by law enforcement officers. Thus, the birth of the Criminal Procedure Code has the main objective of increasing the protection of human rights for perpetrators of criminal acts both when they are suspects or defendants when dealing with law enforcement officers who are given certain powers. Criminal Procedure Code wants to place the perpetrator in a position of dignity or his entity and dignity as a human being who must be treated according to humanistic values. The provisions regarding the rights of victims in the Criminal Procedure Code are very limited to a few things, for example the right to claim compensation as regulated in Article 98. If an act that is the basis for an indictment in an examination of a criminal case by a district court causes harm to another person, then the judge presiding over the trial at the request of that person may decide to combine the lawsuit for compensation to the criminal case. (Audina, 2020)

In the context of restitution, the provision of restitution for victims of criminal acts is contained in Articles 98 to 101 which regulates the possibility of merging compensation cases. Article 98 states that if an act that forms the basis for an indictment in an examination of a criminal case by a district court causes harm to another person, then the presiding judge of the trial at the request of that person may decide to combine the lawsuit for compensation to the criminal case. The request can only be submitted no later than before the public prosecutor files a criminal charge. In the event that the public prosecutor is not present, the request is submitted no later than the judge renders a decision. The amalgamation of compensation cases as regulated in the Criminal Procedure Code is in accordance with the principle of balance which is not only concerned

with the protection of the rights of the perpetrators but also the protection of the rights of the victims as other related parties. In addition, the purpose of merging these cases is to achieve the principle of a simple, fast, and low-cost trial. With this process, the victim can file a claim for compensation without going through an ordinary civil lawsuit and without waiting for the completion of the criminal case process, so that the victim is expected to be able to immediately get compensation caused by the crime. (Ali & Wibowo, 2018a; Devi, 2014; Marasabessy, 2016; Sahetapy, 2016)

Even though it reflects the protection of victims, the provisions for merging cases as regulated in Articles 98 to 101 of the Criminal Procedure Code have weaknesses. Some of the weaknesses include: depending on the main case, compensation is only for material losses, the submission is no later than before the prosecution, legal remedies depend on the main case, and if the criminal case is not appealed then the claim for compensation cannot be appealed. With these weaknesses, the amalgamation of compensation cases is not fully oriented towards the protection of the victim, for example at the district court level a defendant is sentenced to a sentence, but his claim for compensation is not granted.

If the criminal case is not appealed, the compensation case cannot be appealed even though the victim may still feel entitled to compensation. Another example, if the victim wants to get full compensation, then he still has to go through the civil examination process because the merger in a criminal case is only limited to the amount of material losses he has suffered as regulated in Article 99 paragraph 2. According to Fauzy Marasabessy the provisions of Article 99 paragraph 2 which limit only the material loss is actually a contradiction with the contents of Article 101 which reads: "the provisions of the rules of civil procedural law apply to claims for compensation". Thus, there should be no need for restrictions on the types of losses as stipulated in civil law as long as the losses, both material and immaterial, are in accordance with the principle of causality as regulated in Article 1365 of the Civil Code.

In Law no. 26 of 2000 concerning the Court of Human Rights, provisions regarding compensation and restitution are regulated in Article 35, namely: first, every victim and witness in serious human rights violations and/or their heirs can obtain compensation, restitution, and rehabilitation. Second, compensation, restitution, and rehabilitation as referred to in paragraph 1 are included in the decision of the Human Rights Court, and the three provisions regarding compensation, restitution and rehabilitation are further regulated by Government Regulation. (Aprilia, 2019; Faisal, 2019; Yunara, 2019)

Further provisions related to compensation and restitution in gross human rights violations are regulated in Government Regulation no. 3 of 2002 concerning Compensation, Restituti and Rehabilitation for Victims of Serious Human Rights Violations. In the General Provisions Chapter, Article 1 letters 4 and 5 of Government Regulation no. 3 of 2002 explains that compensation is compensation given by the state because the perpetrator is unable to provide full compensation for which he is responsible. While restitution is compensation given to the victim or her family by the perpetrator or a third party, it can be in

the form of returning property, payment of compensation for loss or suffering, or reimbursement of costs for certain actions.

The compensation and restitution are given to the victim or the victim's family who are their heirs. Relevant government agencies, including the Ministry of Finance, which are explicitly mentioned in the decision, are tasked with implementing compensation based on the decision of the Human Rights Court which has permanent legal force. In the case of compensation related to financing and calculating state finances, the implementation is carried out by the Ministry of Finance. The granting of restitution is carried out by the perpetrator or a third party based on the orders contained in the decision of the Human Rights Court

The procedure for providing compensation and restitution as regulated in Government Regulation no. 3 of 2002 are as follows: (Ali & Wibowo, 2018a; Devi, 2014; Marasabessy, 2016; Sahetapy, 2016)

1. The Human Rights Court shall send a copy of the decision of the Human Rights Court, High Court, or Supreme Court, which has obtained permanent legal force to the Attorney General.
2. The Attorney General implements the decision by making an official report on the implementation of the court decision to the relevant government agencies to provide compensation, and to the perpetrators or third parties to provide restitution.
3. The relevant government agency shall provide compensation and the perpetrator or third party shall provide restitution, no later than 30 working days from the receipt of the official report.
4. The implementation of the provision of compensation or restitution is reported by the Relevant Government Agencies, perpetrators, or third parties to the Head of the Human Rights Court who decides the case, accompanied by evidence of the implementation of the provision of compensation or restitution.
5. A copy of the proof of implementation of the provision of compensation or restitution is submitted to the victim or the victim's family who are their heirs.
6. After receiving evidence of the implementation of compensation or restitution, the Chairperson of the Human Rights Court shall announce the implementation on the notice board of the court concerned.
7. In the event that the implementation of compensation or restitution to the victim exceeds the predetermined time limit, the victim or the victim's family who are his heirs can report the matter to the Attorney General.
8. The Attorney General after receiving the report immediately orders the relevant government agencies, perpetrators, or third parties to implement the decision no later than seven working days from the date the order is received.
9. In the event that the provision of compensation and restitution can be carried out in stages, each stage of implementation or delay in implementation must be reported to the Attorney General.

Terdapat kelemahan dalam pengaturan kompensasi dan restitusi dalam UU Pengadilan HAM, sehingga belum sepenuhnya berorientasi pada

perlindungan korban tindak pidana. Kompensasi merupakan ganti kerugian yang diberikan oleh negara hanya jika pelaku tidak mampu membayar restitusi kepada korban. Restitusi sendiri akan dimasukkan dalam amar putusan pengadilan jika terdakwa diputus dengan pemidanaan. Dengan demikian kompensasi dan restitusi tidak dapat diberikan kepada korban jika tidak ada terdakwa yang diputus dengan pemidanaan dalam peristiwa pelanggaran HAM yang berat. Ketentuan ini dapat menghalangi korban untuk mendapatkan kompensasi padahal banyak korban yang nyata-nyata telah mengalami kerugian dalam peristiwa pelanggaran HAM yang berat terutama di masa lalu (sebelum diberlakukan UU Pengadilan HAM) tetapi sulit membuktikan pelakunya karena peristiwanya sudah sangat lama sehingga banyak alat bukti yang sudah tidak ada.

Compensation should not be based on the perpetrator's inability to pay restitution. In the Tanjung Priok case at the ad hoc Human Rights Court, the defendant was found guilty of gross human rights violations, so that the verdict included restitution. However, at the level of appeal and cassation, the defendant was acquitted and restitution was not included in the verdict. In this case, the court actually acknowledged that there would be serious human rights violations, but the court considered that there was no evidence to show that the defendant was the perpetrator of serious human rights violations. Thus, the victim does not receive any compensation even though he has actually suffered losses in the incident of gross human rights violations in Tanjung Priok.

In addition, the Law on the Human Rights Court also does not specify clear indicators to determine the amount of restitution or compensation that can be given to victims. Article 2 paragraph 2 Government Regulation no. 3 of 2002 only stipulates that compensation must be given appropriately, appropriately, and quickly, while the amount is determined by the judge. This is in accordance with the General Elucidation of Government Regulation no. 3 of 2002 which reads:

“Compensation or return of rights, for example the return of basic needs which include physical needs and non-physical needs, which are included in the scope of compensation, restitution and rehabilitation are decided by the Human Rights Court at every level of the court. Regarding the amount of compensation or restoration of basic needs, it is completely left to the judge who decides on the case that is included in his decision. Thus, judges are given full freedom in a fair, appropriate, and prompt manner regarding the amount of compensation based on the results of investigations, investigations and prosecutions, as well as examinations in court trials and the evidence that supports them.

The word "quick/ fast" in the explanation of Article 2 paragraph 2 states that compensation and or restoration of other rights are given to the victim as soon as possible in order to immediately reduce the suffering of the victim. In practice, this provision will be difficult to realize because Article 3 states that the Relevant Government Agencies are tasked with providing compensation and rehabilitation based on the decision of the Human Rights Court which has permanent legal force. In the records of the Institute for Criminal Justice Reform, the experience of investigating until a final decision at the ad hoc Human Rights Court takes years.

In Law no. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism, the provision of compensation and restitution is specifically regulated in Chapter IV concerning Compensation, Restitution and Rehabilitation which consists of Articles 36 to 42. Article 36 of Law no. 15 of 2003 reads: the first paragraph, every victim or heir due to a criminal act of terrorism is entitled to compensation or restitution. Second, the compensation as referred to in paragraph 1, the financing is borne by the state which is carried out by the Government. Third, restitution as referred to in paragraph 1 is compensation given by the perpetrator to the victim or his heirs. Fourth, the compensation and/or restitution are given and included in the court's decision. (Abdullah, 2021; Suntoro, 2020b, 2020a)

Article 38 stipulates that the application for compensation is made by the victim or his/her proxy to the Minister of Finance based on the decision of the district court. Meanwhile, the request for restitution is made by the victim or his/her proxy to the perpetrator or a third party based on the court's decision. The Minister of Finance provides compensation and the perpetrator provides restitution, no later than 60 working days from the receipt of the application. The implementation of the provision of compensation or restitution is reported by the Minister of Finance, the perpetrator, or a third party to the Head of the Court who decides the case accompanied by evidence of the implementation of the provision of compensation and restitution. A copy of the proof of the provision of compensation and restitution is then submitted to the victim or his heirs. After receiving the evidence, the Chief Justice of the Court announces the implementation on the notice board of the court concerned.

In the event that the implementation of providing compensation and restitution to the victim exceeds the predetermined time limit, the victim or his heirs can report the matter to the court. The court then immediately orders the Minister of Finance, the perpetrator, or a third party to implement the decision no later than 30 working days from the date the order is received. As for the provision of compensation or restitution can be done in stages, then each stage of implementation or delay in implementation is reported to the court

There are weaknesses in the provision of compensation and restitution above. One of them is the dependence of compensation and restitution with the verdict of the criminal case. If the defendant is not convicted with a sentence, compensation and restitution cannot be given. This provision does not reflect the orientation of the protection of the victim because even though it is a fact that a criminal act of terrorism has occurred and the victim has suffered losses, compensation and restitution will not be given if no defendant is sentenced to a sentence. Compensation should not be dependent on the criminal case, but it can still be given as long as in fact a terrorist act has occurred and the victim has actually suffered a loss as a result of the incident. The mechanism that requires victims or their heirs to apply for compensation to the Minister of Finance and requests for restitution to the perpetrators or their heirs also becomes an obstacle in fulfilling compensation and restitution quickly because this process can create a lengthy bureaucracy. There should be no need for a request from the victim or his heirs, it is enough for the court to order it by including it in its decision.

Law No. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons does not regulate compensation, but only regulates restitution. In Article 1 point 13, restitution is defined as the payment of compensation charged to the perpetrator based on a court decision with permanent legal force for material and/or immaterial losses suffered by the victim or his heirs. Provisions regarding restitution are regulated in Articles 48 to 50. Article 48 regulates about: (Hakim, 2020; Makarao, 2019; Nuraeni & Kania, 2018; Wijayanto, 2014)

(1) Every victim of the criminal act of trafficking in persons or their heirs is entitled to receive restitution. (2) Restitution as referred to in paragraph 1 is in the form of compensation for: a. loss of wealth or income; b. suffering; c. costs for medical and/or psychological treatment measures; and/or d. other losses suffered by the victim as a result of trafficking in persons. (3) The restitution is given and included at the same time in the court's decision regarding the criminal act of trafficking in persons. (4) The granting of restitution as referred to in paragraph 1 shall be implemented since the decision of the first instance court is rendered. (5) The restitution as referred to in paragraph 4 may be deposited in advance at the court where the case was decided. (6) Restitution shall be granted within 14 days as of the notification of the decision which has permanent legal force. (7) In the event that the perpetrator is acquitted by the court of appeal or cassation, the judge shall order in his decision that the restitution money deposited be returned to the person concerned.

According to Law no. 21/2007, the implementation of the granting of restitution is reported to the head of the court who decides the case, accompanied by evidence of the implementation of the granting of the restitution. After the chairman of the court receives the evidence, the chairman of the court announces the implementation of the granting of restitution on the notice board of the court concerned. A copy of the proof of the implementation of the granting of restitution is submitted by the court to the victim or his heirs. In the event that the implementation of the provision of restitution to the victim is not fulfilled until the specified time limit is exceeded, the victim or his heirs shall notify the court. The court then gives a written warning letter to the restitution provider to immediately fulfill the obligation to provide restitution to the victim or his heirs. In the event that the warning letter is not executed within 14 days, the court orders the public prosecutor to confiscate the assets of the convict and auction the property for restitution. If the perpetrator is unable to pay the restitution, the perpetrator is subject to a maximum imprisonment of one year.

Based on the above regulation, there are weaknesses related to the provision of restitution to victims of the crime of trafficking in persons, namely: first, the granting of restitution depends on the verdict of the criminal case. If the defendant is acquitted by the court, the victim will not receive any compensation. Despite the fact that a person suffers material and immaterial losses due to being a victim of a criminal act of trafficking in persons, he or she will not receive compensation if the defendant is acquitted. Second, if the perpetrator does not carry out the court's decision to provide restitution and also does not have sufficient assets, the victim will not receive any compensation because the perpetrator will only be subject to a maximum imprisonment of one year. Thus,

the regulation of restitution in Law no. 21/2007 has not been fully oriented to the protection of victims of criminal acts

The definition of compensation and restitution in Law no. 13 of 2006 in conjunction with Law no. 31 of 2014 concerning the Protection of Witnesses and Victims is regulated in Article 1 points 10 and 11. Compensation is defined as compensation provided by the state because the perpetrator is unable to provide full compensation which is his responsibility to the victim or his family. While restitution is compensation given to the victim or his family by the perpetrator or a third party. The arrangement regarding compensation is contained in Article 7 which reads:(Apriyani, 2021; Audina, 2020; Fatoni, 2015; Kasih, 2018; Marasabessy, 2016; Sujarwo, 2020)

(1) Every Victim of gross violation of human rights and Victim of a criminal act of terrorism, apart from obtaining the rights as referred to in Articles 5 and 6, is also entitled to Compensation. (2) Compensation for Victims of serious human rights violations shall be submitted by the Victim, his family, or their proxies to the Human Rights Court through the Witness and Victim Protection Agency. (3) The implementation of the Compensation payment as referred to in paragraph 2 is given by the Witness and Victim Protection Agency based on a court decision that has obtained permanent legal force. (4) The provision of compensation for victims of criminal acts of terrorism is carried out in accordance with the provisions of the Act that regulates the eradication of criminal acts of terrorism.

As for restitution, it is regulated in Article 7A which reads: (Apriyani, 2021; Audina, 2020; Fatoni, 2015; Kasih, 2018; Marasabessy, 2016; Sujarwo, 2020)

(1) Victims of criminal acts are entitled to Restitution in the form of: a. compensation for loss of property or income; b. compensation for losses caused by suffering directly related as a result of a crime; and/or c. reimbursement of medical and/or psychological treatment costs. (2) The criminal act as referred to in paragraph 1 is stipulated by a Decree of the Witness and Victim Protection Agency. (3) The application for restitution can be made before or after a court decision that has obtained permanent legal force through the Witness and Victim Protection Agency. (4) In the event that the application for Restitution is filed before a court decision that has obtained permanent legal force, the Witness and Victim Protection Agency may apply for Restitution to the public prosecutor to be included in its claim. (5) In the event that the application for restitution is filed after a court decision has obtained permanent legal force, the Witness and Victim Protection Agency may apply for restitution to the court for a determination. (6) In the event that the Victim of a crime dies, Restitution is given to the Victim's Family who are the heirs of the Victim.

The procedure for providing compensation and restitution is further regulated in Government Regulation no. 44 of 2008 concerning the Provision of Compensation, Restitution and Assistance to Witnesses and Victims. This Government Regulation has not changed even though Law no. 13 of 2006 has been amended by Law no. 31 of 2014. Based on Government Regulation No. 44 of 2008, an application to obtain restitution is submitted by the victim, family, or their proxies with a special power of attorney in writing to the court through the Witness and Victim Protection Agency. The Government Regulation also

stipulates the time requirements for submitting applications for restitution, administrative requirements, implementation period, as well as several other technical matters.

Because it is only regulated at the Government Regulation level, judges and prosecutors prefer to use case combinations as regulated in Articles 98 to 101 of the Criminal Procedure Code. Judges and prosecutors consider that the Government Regulation is not at the same level as the Criminal Procedure Code and cannot regulate procedural law. As a result, victims can only get very limited compensation, namely real or material losses. Therefore, Law no. 31 of 2014 which accommodates several restitution mechanisms previously regulated in Government Regulation no. 44 of 2008.

Despite the existence of Law no. 31 of 2014 can "force" judges and prosecutors to use the Witness and Victim Protection Law instead of the Criminal Procedure Code, but some of the provisions in the Witness and Victim Protection Law still have weaknesses. The inclusion of Article 7A paragraph 2 in Law no. 31 of 2014 actually limits the granting of restitution to victims of certain crimes. Article 7A paragraph 2 reads: "The crime as referred to in paragraph 1 is determined by a decision of the Witness and Victim Protection Agency". Based on the article, not all victims who have suffered losses due to criminal acts can get restitution because it will be limited to victims of certain crimes based on the Decree of the Witness and Victim Protection Agency. In addition, the Law on the Protection of Witnesses and Victims also does not specify criteria that can be used as guidelines for the Witness and Victim Protection Agency to decide what types of crime victims can be given restitution.

Another weakness of the Law on the Protection of Witnesses and Victims is that there is no limit on when a judge must determine a request for restitution that is submitted after a court decision has obtained permanent legal force. In addition, there is no "coercive tool" for the perpetrator to pay the restitution determined by the court either because of the perpetrator's reluctance or the perpetrator is simply unable to pay it. It is also impossible to replace restitution with compensation because the provision of compensation in the Witness and Victim Protection Law is limited only to victims of gross human rights violations and victims of terrorism crimes, not to crimes other than the two. From these weaknesses, the compensation and restitution arrangements in the Witness and Victim Protection Law have not been fully oriented to the protection of victims of criminal acts.

E. COMPENSATION AND RESTITUTION AS VICTIMS RIGHTS IN VICTIMOLOGICAL PERSPECTIVE

The understanding that the victim has suffered some form of loss due to the occurrence of a criminal act that befell him is understood as a universal principle in almost all parts of the world. Protection of human rights and protection of victims' rights are two sides of the same coin. The two cannot be separated, as stated by Zvonimir-Paul Separovic as quoted by Barda Nawawi Arief, namely: "The rights of the victim or a component part of the concept of human rights". In other words, providing protection for the rights of victims is part of the realization of the protection of human rights. (Sahetapy, 2016)

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime is a protocol to prevent and punish perpetrators of human trafficking, especially because the victims are women and children. The protocol was issued by the United Nations which later became known as the "Palermo Convention 2000". Chapter II of the Palermo Convention specifically regulates the provisions regarding "Protection of Victims of Trafficking in Persons", where Article 6 implicitly regulates the provisions concerning "Assistance to and protection of victims of trafficking in persons, which includes: "Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

In the Law on the Eradication of the Crime of Trafficking in Persons, provisions regarding the protection of the rights of victims are specifically regulated in chapter V Articles 43 to 55. Overall there are 12 (twelve) articles that regulate the rights of victims of trafficking in persons, but there are several Article which specifically states that:

1. Every victim of the crime of trafficking in persons has the right to receive restitution. This is regulated in Article 1 point 13 where the perpetrator is charged with paying compensation;
2. Restitution is included in the verdict of the Criminal Act of Trafficking in Persons, this is specifically regulated in Article 48 paragraph (3);
3. If the perpetrator is unable to pay then the provisions stipulated in Article 50 paragraph (4) shall apply. a maximum of 1 year of imprisonment will be provided.
4. The government has the right to obtain health rehabilitation, social rehabilitation, repatriation and social reintegration

The formulation of the articles mentioned above is not "binding and coercive" for law enforcement officers. The concern is that in order to realize Indonesia's commitment to implement the 2000 United Nations Protocol in which Indonesia has ratified with the ratification of Law Number 21 of 2007, however, in its implementation, it turns out that there are articles that are not clear enough to hinder the implementation in the context of provide protection for the rights of victims, especially trafficking in persons.

The inclusion of restitution is also explicitly regulated in the Law on the Eradication of the Criminal Act of Trafficking in Persons but is not regulated as a type in additional penalties and is not written more specifically the nominal amount in the minimum and maximum limits as in the criminal fine. It is

undeniable that the nominal amount of fines imposed is quite large, but the fines are not intended or intended for the recovery of victims but will be submitted to the State Treasury.

The Netherlands is an example of one of the countries taking over responsibility for the payment of compensation. This happened in 1977 when compensation was paid by the state for victims of violent crimes. The same thing happened in England in 1964, with the issuance of the "Criminal Injures Compensation Board" (CICB), in which the state provided compensation to victims of violent crimes and until 1992 had paid approximately 35 million pounds to 19,771 victims.

The provision of compensation in Singapore is regulated in The Criminal Procedure Code, in accordance with what is stated in Section 40 (1) (b) of the Criminal Procedure Code (Cap 68), which states:

The general statutory provision which empowers the court to make a compensation order. There is no express stipulation in 5 401 that an application must be made to the court before it may make an order for payment of compensation. The court can therefore make a compensation order on its motion. A compensation order may be made only by the court which convicted the accused of the offence.

This provision shows that the law gives the court the power to provide compensation. The court is given the authority to determine the procedure for awarding the compensation. This of course provides a legal certainty for victims to get their rights.

F. THE IDEAS OF RENEWING COMPENSATION AND RESTITUTION ARRANGEMENTS IN INDONESIA

Compensation arrangements in the legislation in Indonesia are still not oriented to the protection of victims. Some of the existing weaknesses, such as the provision of compensation, depend on the court's decision against the defendant and are only given after the decision has permanent legal force, reflecting that the compensation arrangement is still a criminal law paradigm. This can be seen in the equalization of the mechanism between compensation and restitution, even though the two victims' rights have different philosophical foundations and characteristics. (Ali & Wibowo, 2018a; Marasabessy, 2016)

Philosophically, the provision of compensation by the state to victims is evidence that the state failed to protect and provide a sense of security to victims. Law enforcement officials who are representatives of the state fail to prevent the occurrence of a crime so that it causes harm to the victim. Consequently, the state is required to provide compensation to victims as a form of failure and accountability to citizens (victims). Meanwhile, restitution is an implication of a paradigm shift in punishment; from retribution-oriented to restorative justice. Restitution is one of the efforts to fulfill the interests and needs of victims that have been forgotten in the criminal justice system. Restitution is actually a small part of efforts to fulfill the rights of victims. Through restitution, the perpetrators of crimes are held accountable for the losses suffered by the victims. (Ali & Wibowo, 2018a; Marasabessy, 2016)

The philosophical differences in compensation and the characteristics of compensation and restitution must be used as the basis for reforming compensation and restitution arrangements in Indonesian legislation. In this context, the compensation paradigm on the one hand must refer to the fulfillment of the rights of citizens and on the other hand as a form and recognition of the state's "guilt" for failing to protect and provide a sense of security to each citizen. In other words, compensation arrangements need to be linked to human rights violations that always involve state actors. (Ali & Wibowo, 2018a; Marasabessy, 2016)

The provision of compensation by the state does not need to depend on the court's decision against the defendant because there is no connection between the compensation and the statement of guilt of the defendant as outlined in the court's decision. If compensation is basically a form of state failure to protect and provide a sense of security to victims, then it is given to every citizen who is a victim of crime. The state is obliged to provide compensation to every citizen who is a victim of a crime. Consequently, the scope of crimes in which victims are entitled to compensation from the state which is limited to genocide, crimes against humanity, and criminal acts of terrorism no longer needs to be maintained.

If the compensation does not need to depend on the court's decision against the defendant, then compensation is also given to the victim of a crime whose perpetrator died before the judicial process was completed or held. In the case of a criminal act of terrorism, the perpetrator sometimes dies before the judicial process against him is held or is completed until a court decision has permanent legal force. Compensation is also given to victims of wrongful arrest by law enforcement officers. As a form of state responsibility and for law enforcement officers to be careful when arresting or assigning a person as a suspect, the state should provide compensation to citizens who are victims of wrongful arrests by law enforcement officers. The state has violated the right to security or the right to be free from torture by citizens, and therefore, the state is obliged to compensate him.

What costs must be borne by the state and given to victims? The answer to this question depends on the capacity and availability of funds by the state. Ideally, compensation given to victims includes material and immaterial losses for treatment, mental health counseling, funeral costs, lost salaries, costs for buying glasses, contact lenses, dental care, purchasing prosthetics, moving or relocating costs, transportation costs to obtain treatment. medical, occupational rehabilitation, substitute services for infant/child care, and domestic assistance. But if the state cannot pay all of these costs, at least the state provides compensation in the form of losses directly experienced by the victim as a result of a crime. For victims who have experienced trauma or stress, the state must bear all costs so that the victim can recover. In the event that the state is unable to provide lump sum compensation to the victim, the state can pay it monthly or annually. If it is difficult to do, compensation can be converted into a tax reduction, a certain fee rebate that should be paid by the victim, the provision of certain educational or health facilities, to ensure that the compensation program

runs smoothly and the rights of the victim are fulfilled, the state needs to establish a compensation scheme. subsidized or funded by the state called public funds. The funds collected can come from several sources, including fines, confiscation of the convict's assets, part of tax revenues, or donations from private individuals or institutions that are not binding, and are given for the special needs of the victim. These funds are managed by certain institutions with an obligation to report them to the public and there is an annual audit by an independent auditor. (Ali & Wibowo, 2018a; Marasabessy, 2016)

The compensation application procedure also still reflects a long and complicated bureaucracy. This procedure should be kept simple. For example, an online or offline application for compensation is made by giving additional tasks to the Witness and Victim Protection Agency. For matters of coordination with related agencies or ministries, let the Witness and Victim Protection Agency take care of it, and there is no need to burden the applicant (victim). In the context of restitution, reform of restitution arrangements needs to refer to the paradigm of restorative justice by focusing on the responsibility of the perpetrator to provide compensation to the victim for the crime committed on the one hand and the willingness of the victim to forgive the perpetrator's mistakes on the other. In other words, before restitution is paid by the perpetrator to the victim, both need to meet with the aim of repairing the damage or loss suffered by the victim.

In this context, the provisions concerning the necessity of dependence on the payment of restitution for a guilty verdict against a defendant who has permanent legal force contained in various laws and regulations indicate that the basic idea of restorative justice has not been introduced before. This provision should not be absolute, in the sense that a court decision with permanent legal force does not have to be an absolute requirement for the payment of restitution by the perpetrator to the victim. This provision should only be enforced if the perpetrator does not admit his guilt and does not want to be responsible for providing restitution to the victim without a court decision that has permanent legal force.

In the event that the perpetrator admits his guilt and is willing to provide restitution to the victim before the judicial process takes place or before the court's decision has permanent legal force, the perpetrator can still provide restitution to the victim. Giving restitution like this can be used as a mitigating factor or even can be used as a basis for judges to forgive perpetrators (judicial pardon). For certain crimes, such as a traffic accident on a highway that causes the victim to be injured or die, the judge may declare the defendant guilty of a crime, but not impose a sentence on him on the grounds that the defendant has paid restitution to the victim.

The initiative to apply for restitution does not only come from the victim, but also from the judge and the public prosecutor. Judges and public prosecutors actually have a very strategic role so that the defendant is willing to pay restitution. Even if the victim does not demand restitution, the judge and the public prosecutor may ask the defendant to be willing to pay it to the victim. In addition, by referring to the concept of restorative justice, the defendant is morally obligated to provide compensation to the victim. The main goal is that

the good relationship between the victim and the defendant which was damaged by the criminal act by the defendant can be restored. The main goal of restitution is not revenge, but healing and peace. Restitution, thus, changes the criminal justice system which is known to be static towards a humanistic criminal law.

In the event that the perpetrator does not have sufficient assets to pay restitution to the victim, replacement with a maximum imprisonment of 1 (one) year shows that the provision is still in the retributive justice paradigm. These provisions need to be updated, for example with provisions for seizing the assets of the perpetrator and giving them to the victim in accordance with the amount of restitution decided by the court. This asset confiscation also applies to perpetrators who die before they have time to pay restitution to victims after a court decision that has permanent legal force. In addition, in the event that the perpetrator does not have enough assets to pay restitution to the victim, the perpetrator may be required to find the victim a new job in the event that he is dismissed from his job because he is a victim of a crime, or the perpetrator works for the victim for a certain time without being paid. The perpetrator's job is restitution because he himself does not have enough assets to pay the victim. Thus, the meaning of restitution is not only limited to money, but is extended to work or other things that are of direct benefit to the victim. (Ali & Wibowo, 2018a; Marasabessy, 2016)

Payment of restitution by the perpetrator to the victim must also be limited in time. For example, one month after a court decision has permanent legal force, the perpetrator is required to pay restitution to the victim at the same time, and if it exceeds that period, the perpetrator's assets are confiscated. However, if the perpetrator does not have sufficient assets to pay restitution to the victim at once, the court's decision may order the perpetrator to pay restitution to the victim in installments over a certain period of time. Provisions regarding this matter if the perpetrator has proven before the court that he really does not have sufficient assets to pay restitution at once to the victim.

The scope of criminal acts that require the perpetrator to pay restitution to the victim is also extended to all types of criminal acts as long as the victim suffers a loss that is directly caused by the criminal act of the perpetrator. Restitution must be applied to all criminal acts that cause direct harm to the victim. This is because the main goal of restorative justice is restoration and peace between the perpetrator and the victim. The amount and amount of restitution paid by the perpetrator to the victim is in accordance with the court's decision by referring to the evidence presented by the victim or according to the agreement between the perpetrator and the victim.

G. ALTERNATIVE WAY OUT OF COMPENSATION AND RESTITUTION THROUGH STATE SECURITIES

The Witness and Victim Protection Agency stated that the losses suffered by victims in the Binomo and Quotex binary options cases can be returned through a restitution or compensation mechanism by the perpetrators. Through the restitution mechanism, the perpetrator's assets confiscated by law enforcement officers can be used to pay compensation to the victim.

Philosophically, compensation by the state to victims is proof that the state failed to protect and provide a sense of security to victims. Law enforcement officials who are representatives of the state fail to prevent the occurrence of a crime that causes harm to the victim. Consequently, the state is required to provide compensation to victims as a form of failure and accountability to citizens (victims). Meanwhile, restitution is an implication of a paradigm shift in punishment; from retribution-oriented to restorative justice. Restitution is one of the efforts to fulfill the interests and needs of victims which have been neglected in the criminal justice system. Restitution is actually a small part of efforts to fulfill the rights of victims. Through restitution, the perpetrator of the crime is held accountable for the loss suffered by the victim. (Kennedy et al., 2019; Sulistyono et al., 2021; Weaver & Swank, 2020; Wenzel et al., 2008; Willis, 2020; Wood, 2015)

If it is deemed difficult, there is another alternative solution regarding compensation for victims of fraud on a massive scale, namely the state issuing state securities. Surat Berharga Negara (SBN) consist of Surat Utang Negara (SUN) and Surat Berharga Syariah Negara (SBSN). In general, SUN can be divided into State Treasury Bills/ Surat Perbendaharaan Negara (SPN) with a maturity of up to 12 months and Government Bonds/ Obligation of Nation (ON) with a maturity of more than 12 months. According to the currency denomination, ON issued by the Government can be grouped into two groups, namely ON denominated in Rupiah and ON denominated in foreign currency. According to the type of interest rate, ON can be grouped into ON with a fixed interest rate and ON with a floating interest rate. In addition, the Government has also issued interest-free ON, namely Zero Coupon (ZC). Meanwhile, State Sharia Securities were issued in 2008 with Rupiah denomination and fixed rate of return. (Azifah & Rahayu, 2015; Hartono, 2019; KSEI, 2017; Rahardjo, 2007)

By issuing state securities (obligations), it can bridge the two sides, namely compensation for victims of fraud, on the other hand the state gets the profits from the confiscated money that has been successfully obtained by the perpetrators.

CONCLUSIONS AND RECOMMENDATIONS

The conclusions in this study are:

1. Guarantees of legal protection for the rights of victims of criminal acts are very important considering that the consequences of a criminal act can cause a person to experience physical, psychological and property losses and suffering. Through the legislation guaranteeing the protection of the rights of victims, it is necessary to obtain legal certainty and justice as a result of the occurrence of a crime.
2. The mechanism for providing compensation and restitution to victims of criminal acts has been regulated in Government Regulation no. 44 of 2008 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims, which is the implementation of Law no. 13 of 2006. Witness and Victim Protection Agency which implements the mechanism for providing compensation, restitution and assistance to victims. Compensation is compensation provided by the state because the perpetrator is unable to provide full compensation for which he is responsible. Restitution is compensation given to the victim or his family by the perpetrator or a third party, it can be in the form of returning property, payment of compensation for loss or suffering, or reimbursement of costs for certain actions. Assistance is a service provided to Victims and/or Witnesses by the Witness and Victim Protection Agency in the form of medical assistance and psycho-social rehabilitation assistance.
3. Another alternative to providing restitution and compensation that can bridge the two sides, namely the victim and the state, is to provide compensation through the issuance of State Securities which can make the victim receive compensation, and the state gets an injection of funds in terms of development without injuring both sides.

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