

## Providing Ideal Restitution to Rape Victims Based on the Principle of Justice

Rodhi Agung Saputra<sup>1\*</sup>, Agnes Atia Aurellia<sup>2</sup>, Adinda Bintang Maharani<sup>3</sup>  
Faculty of Law, University of Lampung

**Corresponding Author:** Rodhi Agung Saputra [rodhiagungsaputra@gmail.com](mailto:rodhiagungsaputra@gmail.com)

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### ABSTRACT

Problems related to rape cases are still carried out from adolescence to adulthood. This case has a negative impact on the image of the nation, especially for rape victims who can cause material and immaterial losses to victims of criminal acts, so the principle of justice is needed to provide legal certainty for victims of crimes, especially rape victims, to get restitution from the losses of these crimes. The problem that will be discussed in this study is how to provide ideal restitution to rape victims based on the principle of justice. The research method used in this study is a normative research method using a statutory approach and a case approach and will be analyzed using analytical content.

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## **INTRODUCTION**

Rape cases in Indonesia are still massive to occupy an emergency position. This rape case took many victims, not only adults but minors were not spared from being victims of these heinous acts. The Central Statistics Agency stated that the number of rape crime cases in Indonesia in 2020 and 2021 the number of reported rape crime cases reached above 5,900 cases per year. This number is higher than the years before the pandemic, namely 2017 and 2019. Until the peak in 2020, rape crime cases increased very drastically, namely there were reports of 6,872 cases of rape crimes. So that the number of cases reached 31.32% from the previous year which was 5,233. The impact of losses from this rape crime case is material and immaterial losses experienced by the victim. Material losses suffered by rape victims include: bruises, the onset of pubic disease, damage to the hymen and the risk of sexually transmitted diseases (STDs).<sup>1</sup> While the immaterial losses experienced by victims include: trauma, feeling afraid of new people, regretting themselves, and isolating themselves from the scope of society<sup>2</sup>. Thus, knowing the enormous losses suffered by victims, restitution of rape victims by the state is needed as an act of providing compensation and justice to victims.

Restitution is part of recovery or recovery to the criminal act in the form of compensation that must be given by the perpetrator of the crime.<sup>3</sup> Rape victims are entitled to restitution and requests for restitution can be submitted by the victim, her family, or attorney with a special power of attorney to the court or through the witness and victim protection agencies.<sup>4</sup> The implementation of restitution is regulated in Government Regulation Number 7 of 2018 concerning the provision of compensation, restituti, and assistance to witnesses and victims<sup>5</sup>. However, the implementation of this restitution has experienced legal confusion. Because many compensation awards given by judges to perpetrators are not commensurate with the perpetrator's actions against rape victims, this does not work in accordance with the principle of justice. For example, the case of Hery Wiarawan at Pesantren Mandani Boarding School who raped 13 Santriwati case number number: 5642 K / PID. SUS/2022. Of the 13 victims, 8 were declared to have given birth to 9 babies. In that case the judge sentenced the victims to death, and restitution costs of Rp.331, 500.000 (three hundred thirty-one five hundred million). This restitution decision is considered not based on justice because of the 13 victims, the total number of each victim received restitution with a nominal value of Rp. 8.804,064.00 (eight million eight hundred and four sixty-four rupiah). Given that the cost of recovering health both mentally and physically is relatively expensive, the restitution provided by judges and witness and victim protection agencies does not adhere to the principle of justice. Based on the description above, researchers are interested in

conducting research and studies as outlined in the form of scientific papers entitled "Providing Ideal Restitution to Rape Victims Based on the Principle of Justice" with the scope of the problem: how to provide ideal restitution to rape victims based on the principle of justice, which aims to find out how to provide ideal restitution for victims rape is based on the principle of justice.

## **METHODOLOGY**

The research method used is a normative research method, namely research conducted by examining library materials or secondary data, using a *statute approach* related to the Provision of Ideal Restitution to Rape Victims Based on the Principle of Justice. The *statute approach* examines matters concerning legal principles, legal views and doctrines, and laws and regulations related to restitution, then an in-depth examination of these legal facts is carried out to solve the problems that arise in the symptoms concerned.

## **RESULTS AND DISCUSSION**

Rape originated from the word "rape" which means forced, dashing, strong, mighty<sup>6</sup>. To rape means to subdue by force, to assault, to violate or to attack<sup>7</sup>. While rape can be defined as deprivation of human rights which include the right to virginity, the right to be free from suffering, the right to be free from fear, and inhuman behavior and abuse of human rights<sup>8</sup>. In Indonesia, rape cases are still massive. So that from this rape case, many victims, both adults and minors, did not escape being the target of rape. According to the Central Bureau of Statistics, the number of rape crime cases in Indonesia in 2020 and 2021 the number of reported rape crime cases reached above 5,900 cases per year. This number is higher than the years before the pandemic, namely 2017 and 2019. Until the peak in 2020, rape crime cases increased very drastically, namely there were reports of 6,872 cases of rape crimes. So that the number of cases reached 31.32% from the previous year which was 5,233. The impact of losses from this rape crime case is material and immaterial losses experienced by the victim. Material losses suffered by rape victims include: bruises, the onset of pubic disease, damage to the hymen and the risk of sexually transmitted diseases (STDs).<sup>9</sup> While the immaterial losses experienced by victims include: trauma, feeling afraid of new people, regretting themselves, and isolating themselves from the scope of society<sup>10</sup>. Thus, knowing the enormous losses suffered by victims, restitution of rape victims by the state is needed as an act of providing compensation and justice to victims. The definition of restitution is the process of recovery or recovery to the criminal act in the form of compensation that must be given by the perpetrator of the crime. The purpose of providing restitution is according to Siegel who said that the provision of restitution is part of the *restorative justice* approach, which is an

effort to restore the rights of victims lost due to crime, the rights of victims of these crimes must be restored immediately. <sup>11</sup>The legal basis for restitution lies in Supreme Court Regulation Number 1 of 2022 concerning Procedures for Settling Applications and Granting Restitution and Compensation to Victims of Criminal Acts. This Perma applies to:

1. Requests for restitution for cases of gross human rights violations, terrorism, trafficking in persons, racial and ethnic discrimination, crimes related to children, and other crimes determined by the Decree of the Witness and Victim Protection Agency ; and
2. Application for compensation for cases of criminal acts of gross human rights violations and terrorism as referred to in the provisions of laws and regulations.

In obtaining an application for restitution, you must follow the procedure for submitting an application for restitution in accordance with Government Regulation Number 1 of 2022, namely:

1. The request for restitution is made in writing in Indonesian, signed by the applicant or his attorney and submitted to the Chairman/Head of the Court, either directly or through the LPSK, investigators, or public prosecutors.

If the victim is a child, the application is submitted by his parents, family, guardians, heirs or proxies, or LPSK, and in the case of more than one applicant, a merger of applications can be made.

2. Restitution filed can be:
  - a. compensation for loss of wealth and/or income;
  - b. compensation, both material and immaterial, incurred as a result of suffering directly related to the criminal act;
  - c. reimbursement of medical and/or psychological treatment costs; and/or
  - d. other losses suffered by victims as a result of criminal acts, including basic transportation costs, attorney fees, or other costs associated with legal proceedings.
3. The request for restitution must contain:
  - a. identity of the applicant;
  - b. the identity of the victim, in the event that the applicant is not the victim himself;
  - c. description of the criminal offence;
  - d. identity of the accused/respondent;
  - e. description of losses suffered; and
  - f. the amount of restitution requested.
  - g. In addition, the request for restitution must be completed with:
    - 1) photocopy of identity of applicant and/or victim;
    - 2) evidence of material loss suffered by the applicant and/or victim is made or certified by the competent authority, or based on other valid evidence;

- 3) proof of the victim's expenses during treatment and/or treatment authorized by the agency or party carrying out the treatment or treatment or based on other valid evidence;
  - 4) description of immaterial losses suffered by the applicant and/or victim;
  - 5) photocopy of death certificate, in the case of the deceased;
  - 6) Certificate of familial, beneficiary, or guardian relationship if the application is submitted by a family, heir or guardian;
  - 7) a special power of attorney, if the request for restitution is filed through a power of attorney; and
  - 8) a copy or excerpt of the decision of the Court, if the case has been decided and has permanent legal force.
4. If an application for restitution is filed before the case file is submitted, the public prosecutor must include it in the indictment and include it in the case file and immediately deliver a copy to the defendant or his legal counsel.
  5. If the victim does not apply for restitution, the judge notifies the victim of her right when she appears in court to obtain restitution, which can be filed before the public prosecutor files a charge or after a court decision of permanent legal force.
  6. The public prosecutor must include the request for restitution in the criminal prosecution.
  7. The judge then examines the restitution application file and gives a legal assessment of the evidence submitted and considers it in a judgment that must contain:
    - a. a statement of whether or not the request for restitution is accepted;
    - b. grounds for accepting or rejecting, either in part or for the entire request for restitution; and
    - c. The amount of restitution that must be paid by the defendant or the defendant's parents in the event that the defendant is a child, and/or a third party.
  8. However, an application for restitution does not remove the right of the victim, family, heirs and guardians to file a civil lawsuit if:
    - a. the restitution application was rejected because the defendant was acquitted or acquitted of the lawsuit; and
    - b. the request for restitution is granted and the defendant is convicted, but there are losses suffered by the victim that have not been requested for restitution to the court or have been requested but not considered by the court.

Knowing the procedure for submitting a restitution application has been regulated in Government Regulation No. 1 of 2022 and the rights of victims to apply for restitution are recognized by law. However, the provision of restitution by judges and witness and victim protection agencies is considered not in accordance with the principle of justice. As in the case of Hery Wiarawan at Pesantren Mandani Boarding School who raped 13 Santriwati case number number: 5642 K / PID. SUS/2022. Of the 13 victims, 8 were declared to have

given birth to 9 babies. In that case the judge sentenced the victims to death, and restitution costs of Rp.331, 500.000 (three hundred thirty-one five hundred million). This restitution decision is considered not based on justice because of the 13 victims, the total number of each victim received restitution with a nominal value of Rp. 8,804,064.00 (eight million eight hundred and four sixty four rupiah). With this nominal is not comparable to the cost of restoring health both materially and immaterial. This is not in accordance with the principle of justice, because rape victims suffer the same losses, both materially and immaterially. However, each victim of the rape case by Hery Wirawan received a different nominal. The difference in nominal restitution of Hery Wirawan victims may be caused by several factors, namely:

1. It is possible that the victim will not report further losses to the witness and victim protection agencies.
2. There was an agreement by the victim to the witness and victim protection agencies regarding the nominal restitution.
3. The amount of restitution is based on the total loss on the part of the rape victim.
4. The amount of restitution must be adjusted to the needs of the rape victim

So that the ideal provision of restitution and in accordance with the principle of justice is to provide the nominal restitution of rape victims not too far from other rape victims. Considering that 13 victims of Hery Wirawan rape cases suffered the same loss.

## **CONCLUSION**

Based on the explanation related to the Provision of Ideal Restitution to Rape Victims Based on the Principle of Justice, it can be concluded that rape is an act of violence that violates human rights. In Indonesia, rape cases still occur massively, with the number of cases increasing dramatically in 2020. The impact of rape on victims includes material and immaterial harms, such as physical injury, psychological disorders, and social isolation. To provide redress and justice to rape victims, the state needs to provide restitution. Restitution is recovery or repatriation to victims of crime in the form of compensation provided by the perpetrator of the crime. The purpose of providing restitution is to restore the rights of victims lost as a result of the crimes experienced.

The legal basis for restitution in Indonesia is contained in Supreme Court Regulation Number 1 of 2022 concerning Procedures for Settling Applications and Granting Restitution and Compensation to Victims of Criminal Acts. Restitution may be filed in cases of certain criminal offenses such as human rights violations, terrorism, trafficking in persons, racial and ethnic discrimination, and child-related crimes. The process of filing a request for restitution involves the procedures stipulated in the regulation. The request for restitution must be submitted in writing by attaching the identity of the applicant and victim, a description of the criminal act, the losses suffered, and the amount of restitution requested. Supporting documents such as evidence of

material and immaterial losses should also be included. However, although the procedure for applying for restitution has been regulated, there is an assessment that the granting of restitution by judges and the witness and victim protection agencies is not always in accordance with the principle of justice. An example is the case of Hery Wiarawan at Pesantren Mandani Boarding School, where the restitution given to rape victims was considered not proportional to the losses suffered by them. The difference in restitution amounts is likely due to factors such as the victim's ignorance of their rights, an agreement with the witness and victim protection agencies, or an assessment of the victim's total losses. In this case, the conclusion that can be drawn is that the granting of restitution in rape cases needs to pay attention to the principle of justice. The ideal restitution is to give a nominal that does not vary too much between rape victims, especially if they have suffered the same loss. It is important to ensure that victims receive adequate recovery, both material and immaterial.

#### **ADVANCED RESEARCH**

This research still has limitations so further research needs to be done on this topic.

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