

# Legal Risks for the Victims of the Criminal Act of Murder Plan on a Recovery Plan through Restitution

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## Abstract

*One form of compensation for victims of criminal acts is restitution. Restitution in accordance with the Principle of Restoration in its Original Condition (restitutio in integrum) is an effort that the victim of a crime must be returned to its original condition before the crime occurred even though it is based on the fact that it is impossible for the victim to return to his original condition. A crime can cause harm to another person, namely the victim of a crime. To obtain compensation, a victim of a crime can take the procedure provided by the Criminal Procedure Code, namely the merger of cases for compensation. After the enactment of Law Number 13 of 2006 concerning Protection of Witnesses and Victims, all victims of criminal acts were also given the option to apply for compensation in the form of restitution through the LPSK. However, it turns out that there are several problems that arise in the implementation of mechanisms to obtain restitution for victims of these crimes. These problems are not only about the rules, but also about the institutions that are authorized to assist victims of criminal acts in obtaining their right to restitution.*

**Keywords:** *Legal risks, victims of crime, restitution.*

## INTRODUCTION

The law enforcement process is an important aspect of life. The law that applies in a country is called positive law or with the foreign term *ius constitutum*, as opposed to *ius constituendum*, namely the law that is aspired to. *Jus Constitum* is a law that is currently in force, one example of which is the Criminal Code. The *ius constituendum* is the law that is aspired to or the law in the design process for the future.[1]

The law currently in force in Indonesia is called Indonesian positive law. In resolving a criminal case, law enforcement officers are guided by the use of positive law. The positive law used refers to the Criminal Code and statutory regulations. If a criminal act occurs, the judge may not reject a criminal case if there are no regulations governing it, in other words, the principle of legality can be violated, so the judge gives a decision based on jurisprudence.[2]

A broader understanding of criminal law was put forward by Moeljatno who stated that criminal law is part of the overall law in force in a country which establishes the basics and regulates provisions regarding acts which may not be carried out, which are prohibited and accompanied by criminal threats for anyone who commits them. , when and in what cases those who have violated the prohibition may be subject to criminal sanctions and in what manner the criminal sanctions can be implemented.

The crime of murder is an act of taking another person's life without any justification. Every religion strongly condemns the crime of murder. There are several reasons why someone commits the crime of murder, namely because their life is threatened, they feel angry, and so on. In Indonesia, murder cases occur very often, including attempted murder, ordinary murder and

premeditated murder. [3]

Based on this opinion, Indonesian criminal law as a specific field in the national legal system functions to provide protection for the rights and interests of individuals, communities, nations and states represented by the government, including the rights and interests of perpetrators of criminal acts and victims of criminal acts. Neglecting the rights and interests of victims of criminal acts at the normative legislative level, in turn has the consequence of ignoring the rights and interests of victims in the process of resolving criminal cases through the mechanisms of the criminal justice system. The limited position of victims of criminal acts only as witnesses clearly does not allow them to voice their aspirations regarding their rights and interests as victims who have suffered losses due to the actions of perpetrators of criminal acts. Therefore, legal protection for victims is important to emphasize.[4]

Legal protection for crime victims as part of protecting society can be realized in various forms, such as through the provision of restitution and compensation. In essence, the State must provide protection to witnesses, victims and perpetrators of criminal acts. Providing protection and interests to witnesses, victims and perpetrators of criminal acts so that their rights are fulfilled and avoiding abuses that occur between these parties. Injustice can occur due to an imbalance in the rights and obligations of the parties. So that the state provides clear regulations regarding the imbalance between the interests of victims and law enforcement officials.

The Witness and Victim Protection Agency has an important role in applying for restitution by victims of criminal acts. According to Law Number 31 of 2014 regarding amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims. Article 1 point 11 states that restitution is compensation given to the victim or their family by the perpetrator or third party. Fulfilling victims' rights to restitution is very dependent on the proactive attitude of investigators, public prosecutors and judges in providing information on their rights to restitution. The Witness and Victim Protection Agency is also expected to be at the forefront in guarding and assisting witnesses or victims, but perhaps due to limited resources or other reasons, the Witness and Victim Protection Agency is still rarely able to directly assist victims.

Decision No. 63/Pid.B/2022/PN in criminal acts of violence resulting in death stated that the defendant jointly paid restitution to the victim's heirs, in contrast to Decision No. 22-K/PMT-II/AD/II/2022, where the judge's decision does not specify the form of providing restitution to the victim, the victim's family, or third parties in cases of premeditated murder committed by members of the military. Bearing in mind that in Decision Number 22-K/PMT-II/AD/II/2022 the perpetrator's actions in killing the victim were very cruel and pathetic, in this case the two lovebirds who were riding the victim's motorbike collided with the four-wheeled vehicle ridden by the defendant Col. inf Priyanto and his men had a collision with the victim's motorbike and the two victims were seriously injured. At the time of the incident, they were assisted by residents who were passing by the crime scene (TKP). In short, the perpetrator and his men moved the two victims into the car and the two children The men took the initiative to take them to the nearest health center but were refused by the perpetrator and planned to Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance throw the two victims who were still alive into the river with the intention of eliminating traces, of course this is very contrary to human rights.[5]

## METHOD

The research method used by researchers is an empirical juridical research method that examines facts about the rights of victims' families related to criminal acts who have not received the rights they should get as well as updating perspectives on criminal law reform in Indonesia. The data analysis method uses a study approach, namely the approach legislation and conceptual approaches.[6]

## RESULTS AND DISCUSSION

### Arrangements for Providing Restitution to victims of the crime of Murder

Victims are defined as people who experience physical, mental or economic loss as a direct result of criminal activity, based on Article 1 paragraph 3, Law no. 31 of 2014, which amends Law no. 13 of 2006 concerning Witness and Victim Protection. The rights of potential witnesses and victims are not discussed in the Criminal Procedure Code, therefore this law is new. Crime victims, who suffer most when illegal behavior occurs, do not enjoy the same legal protections as criminals.[7] This causes the victim and the victim's family to apparently not be cared for when the criminal is punished. Justice and respect for human rights must be given to victims or relatives of victims whose rights have been damaged substantially or immaterially. Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia states, "All citizens have a dual role in law and government and must defend it without exception." [8]

As a victim of crime, you have the right to be compensated for the losses you suffer as a result of the perpetrator's actions, but the systems set up to provide such compensation are often considered unreliable. According to Muladi's book *Human Rights, Politics, and the Criminal Justice System*, the most important factor in the regulatory concept for protecting victims of criminal acts is to take into account the nature of the losses experienced by the victim. For victims, loss is not just about the things lost or the physical harm they experience. Restoring the rights of the victim or the victim's family after a heinous crime has been committed must be done in a manner consistent with common sense. Reasons for offering compensation are:

- 1) As a form of compensation for losses felt by victims of criminal acts committed by perpetrators, in addition to restitution as a form of punishing perpetrators,
- 2) With restitution as an effort to determine the amount of loss caused, this is a means of prevention because it warns that if someone commits an unlawful act, they will be held responsible for their actions.
- 3) The condition of restitution makes the perpetrator strictly responsible for what has been done by forcing him to accept the damage caused by action by forcing him to pay a certain amount of money or other type of compensation to the victim.

Regarding compensation and restitution, there is an understanding in the Government Regulation of the Republic of Indonesia Number 7 of 2018 concerning Providing Compensation, Restitution and Assistance to Witnesses and Victims. Article 1 paragraph 4 reads, namely: Compensation is compensation given by the State because the perpetrator is unable to provide full compensation. which is the responsibility to the victim or his family, while Article 1 paragraph 5 states that restitution is compensation given to the victim or his family by the perpetrator or a third party.[10]

Costs to be covered by criminal insurance due to injuries suffered as a result of a crime. If the victim makes a claim for damages, whether material or non-material, the claim will be filed

in civil court and considered on its own merits. In addition, victims will go through two different types of courts: criminal courts for the prosecution of criminal acts committed by criminals against victims, and civil courts for compensation claims filed by victims. When both of these legal avenues are pursued, the court case will likely drag on for a while and cost a lot of money. It doesn't fit the bill on the basis of cheap, fast, and easy.

### **The Ideal Concept of Providing Rights to Victims' Families Regarding the Crime of Murder Reviewed by Law Number 1 of 2023 concerning the Criminal Code (KUHP)**

In recovering restitution related to requesting compensation for the victim or the victim's family against the perpetrator or third party in criminal cases, with the existence of the Witness and Victim Protection Agency, requests for restitution (compensation) have never stopped, but up to now there has been no request for compensation. losses related to criminal acts of murder in providing compensation and restitution to the Witness and Victim Protection Agency (LPSK) to obtain protection in granting requests for compensation to perpetrators or third parties related to criminal acts of murder for victims and the victim's family.[11] The plan for providing restitution to the victim and the victim's family is contained in Article 52 of the Criminal Code in the fifth section, which states that the punishment is reduced to the same extent that the person has committed a criminal act, by providing voluntary or appropriate compensation and the damage suffered can be repaired for his actions. There is an explanation that there are criteria in the form of providing compensation that is very appropriate in Law Number 1 of 2023 concerning the Criminal Code (KUHP), whether there is a form of compensation from the material side or from the immaterial side.[12]

The facultative nature of additional punishment will result in compensation being imposed which is a weakness, thus it does not have characteristics like an imperative (necessity) which is called the imposition of additional punishment. In court, the judge can impose a sentence in addition to the main crime which has the character of 'accessory'. So there is a need for a concept of justice and a substantive concept that has injustice and does not take sides, so there should also be honesty and direction according to appropriate procedural standards without looking at the point of view of position, ethnicity, race and other social status. Regarding the development of a type of justice, it can be said to be procedural justice. Procedural justice is very much more prominent and can also be an option that society considers for Nonet and Selznick which can be termed as an autonomous type of law which always creates huge problems, thus currently it can be seen from the legal reality, especially in Indonesia, that its aim is to create a procedure that will result in the enforcers always providing procedural reasons so that their sentences are given leniency and are released.

### **CONCLUSION**

Law is very closely related to justice, in fact law must be combined with justice, so that it is truly meaningful as law, because the aim of law is to achieve a sense of justice in society. If the decision letter for restitution is received by the Witness and Victim Protection Agency, the Public Prosecutor then includes it in the demand letter, however, if the Witness and Victim Protection Agency does not provide a decision letter for requesting restitution, the Public Prosecutor SHOULD be able to include restitution in the demand letter. In order to achieve justice, the Public Prosecutor sees that restitution for the crime of murder refers to the restitution provisions in child protection laws and regulations. Currently, the legal regulations regarding restitution for the crime of murder SHOULD be contained in Law Number 1 of 2023

concerning the Criminal Code (KUHP).

Crime victims who use the system to seek joint compensation must comply with the limits and forms of compensation outlined in the Criminal Procedure Code. The application procedure is already challenging without having to include crime victims in it. Regarding the existence of the rights of the victim's family, there is still not much discussion regarding the rights that should be provided by law enforcement in the criminal justice process, such as justice, comfort and legal protection for the victim and the victim's family regarding the crime of murder which takes someone's life.

## ACKNOWLEDGEMENTS

Thank you to the Open University for providing the opportunity to contribute ideas about criminal law, especially for the benefit of victims and society so that they can get justice and legal benefits as absolute legal certainty is given to marginalized communities so that they have legal equality. I also express my enthusiasm to law enforcers so that criminal law can be enforced to the highest level, especially for the police, prosecutors, judiciary and advocates, as they enforce the law in fulfilling progressive legal guarantees.

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