Obstacles to the Enforcement of Restitution for Crime Victims in Indonesia: A Perspective on Legal Certainty and Victim Protection

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Abstract

Restitution is a form of remedy for victims of crime through compensation for losses, payable by the offender or another party legally required to provide it. In Indonesia's criminal justice system, restitution has been regulated through Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 on the Protection of Witnesses and Victims, Government Regulation Number 7 of 2018 as amended by Government Regulation Number 35 of 2020, and Supreme Court Regulation Number 1 of 2022. Nevertheless, the existence of these regulations does not, in itself, ensure that victims effectively receive restitution after a court decision has been issued. This study aims to examine the legal framework governing restitution, identify obstacles to enforcing restitution decisions, and formulate measures to strengthen the fulfillment of crime victims' rights in Indonesia. It employs normative juridical research using statutory and conceptual approaches. Secondary legal materials are analyzed qualitatively through legal interpretation and systematic reasoning. The analysis indicates that obstacles to restitution enforcement include offenders' limited financial capacity, difficulties in identifying and tracing assets, inadequate inter-agency coordination, victims' limited understanding of restitution procedures, and ineffective compulsory payment mechanisms in certain circumstances. Accordingly, enforcement procedures need to be strengthened, asset tracing should begin at an early stage of criminal proceedings, coordination among courts, prosecutors, and the Witness and Victim Protection Agency should be improved, and mechanisms for victim recovery should be developed for cases in which offenders are unable to pay.

Keywords: Restitution, Crime Victims, Enforcement of Judgments, Legal Certainty, Victim Protection.

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Introduction

The criminal justice system is fundamentally intended to enforce the law, provide legal certainty, maintain public order, and achieve justice for all parties involved in a criminal offense. Criminal law enforcement, however, should not focus solely on imposing punishment on offenders. Victims' interests must also form an essential part of criminal proceedings, particularly with regard to recovering losses arising from criminal acts. Victims may suffer material and immaterial losses, including loss of property, medical expenses, loss of income, psychological suffering, and other losses related to the offense. In such circumstances, imposing a criminal sentence on the offender does not necessarily restore the victim's circumstances. Restitution therefore plays an important role in fulfilling victims' rights while encouraging offenders to take responsibility for the consequences of their actions. In Indonesian law, the protection of victims' rights is grounded in Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 on the Protection of Witnesses and Victims. These provisions are supplemented by Government Regulation Number 7 of 2018, as amended by Government Regulation Number 35 of 2020, and Supreme Court Regulation Number 1 of 2022 concerning Procedures for Resolving Applications for and Granting Restitution and Compensation to Victims of Crime. Supreme Court Regulation Number 1 of 2022 provides procedural guidance for applications for restitution and compensation within the scope of that regulation. Its adoption was an important step toward clarifying how restitution applications are submitted and examined. Nevertheless, a successful legal process for establishing the right to restitution does not necessarily result in successful enforcement. In other words, recognition of victims' rights through a court judgment or order does not guarantee that payment will actually be received.

This issue reveals a gap between *das sollen* (what the law ought to provide) and *das sein* (what occurs in practice). From the perspective of *das sollen*, legislation recognizes victims' rights to restitution in accordance with applicable law. In practice, however, the fulfillment of those rights may be obstructed when offenders lack the ability to pay, executable assets cannot be located, or inter-agency coordination is ineffective. This gap is significant because a court judgment should not remain merely a legal document; it should produce tangible results for the person entitled to relief. One fundamental obstacle to restitution enforcement is the offender's financial capacity. A court's determination of the amount of restitution does not automatically ensure that funds are available to compensate the victim. If the offender lacks sufficient income or assets, payment may be delayed or remain only partially fulfilled. This raises questions about the effectiveness of the legal instruments available to ensure the recovery of victims' rights.

In addition to the offender's financial capacity, asset tracing and preservation are also important. Enforcing a decision requiring payment of a sum of money requires the identification of assets that can lawfully be used to satisfy the obligation. If assets are unknown, have been transferred, or are insufficient, enforcement may be difficult. Accordingly, the handling of restitution should not focus solely on calculating the victim's losses; it should also consider the prospects of satisfying the payment obligation from the early stages of criminal proceedings.

Another obstacle concerns victims' understanding of their rights and the restitution process. Not all victims know that losses caused by a criminal offense may be claimed through available legal mechanisms. Victims may also face difficulties collecting evidence of their losses, calculating the amount of restitution, satisfying administrative requirements, and navigating legal procedures. In this context, the Witness and Victim Protection Agency (*Lembaga Perlindungan Saksi dan Korban* or LPSK), public prosecutors, investigators, and other relevant institutions play an important role in helping victims access their rights.

Through its publication concerning Supreme Court Regulation Number 1 of 2022, the Supreme Court has explained that the regulation was adopted to provide procedural guidance for restitution and compensation applications that had not previously been comprehensively regulated in a single judicial instrument. However, the availability of an application procedure must be accompanied by stronger enforcement mechanisms, particularly when the payment obligation is not fulfilled voluntarily. Based on these considerations, research into obstacles to enforcing restitution decisions in Indonesia is important for assessing the relationship between the normative legal framework and its practical effectiveness. This study is expected to contribute to the development of victim-protection law, particularly by strengthening legal certainty and ensuring that the right to restitution is not merely formally recognized but can also be realized in practice.

Research Methodology

This study employs normative juridical legal research, which examines legal norms, principles, and statutory provisions concerning the enforcement of restitution for victims of crime. It uses a statutory approach and a conceptual approach. The statutory approach examines provisions concerning victim protection, restitution, and the enforcement of court decisions. The conceptual approach is used to analyze the concepts of legal certainty, offender accountability, and the recovery of victims' rights.

The research materials consist of primary, secondary, and tertiary legal materials. Primary legal materials include Law Number 3 of 2026 concerning the Protection of Witnesses and Victims, Government Regulation Number 7 of 2018 as amended by Government Regulation Number 35 of 2020, Supreme Court Regulation Number 1 of 2022, and other relevant legislation that remains in force. Secondary legal materials include legal books, scholarly articles, and research findings addressing restitution, victimology, judgment enforcement, and victim protection. Tertiary legal materials include legal dictionaries and reference sources that assist in explaining legal terminology. Legal materials were collected through library research and the examination of legal documents. They were analyzed qualitatively by identifying relevant legal norms, comparing applicable provisions with implementation issues discussed in the literature, and drawing conclusions deductively. This study does not claim to present interview or field-observation findings because it uses a normative legal research method.

Results

3.1 Legal Framework Governing Restitution for Victims of Crime in Indonesia

Restitution is a mechanism for recovering victims' losses, imposed on the offender or another legally responsible party in accordance with applicable law. From the perspective of victim protection, restitution is not merely a monetary payment; it also acknowledges the losses suffered by victims and constitutes accountability for the consequences of a criminal offense. Restitution must be distinguished from compensation. In principle, restitution is payable by the offender or another responsible party, whereas compensation, in the context of victim protection, is a form of payment or recovery provided by the state in accordance with the requirements and provisions of applicable law. This distinction is important because the two mechanisms have different legal bases, procedures, and responsible parties.

At the statutory level, Law Number 3 of 2026 concerning the Protection of Witnesses and Victims represents a significant legal development because it replaces the framework established by Law Number 13 of 2006, as amended by Law Number 31 of 2014. The new law addresses the protection of victims' rights, restitution, compensation, the institutional role of the Witness and Victim Protection Agency, and funding related to victim protection. Accordingly, restitution must be analyzed within the latest legal framework rather than solely by reference to legislation that applied before 2026. In addition, Government Regulation Number 7 of 2018, as amended by Government Regulation Number 35 of 2020, regulates the provision of compensation, restitution, and assistance to witnesses and victims. Supreme Court Regulation Number 1 of 2022 provides procedural guidance for resolving applications for and granting restitution and compensation to victims of crime within the scope of that regulation.

Conceptually, the successful implementation of restitution involves at least three stages. First, the victim's right is recognized and determined through the available legal process. Second, the responsible party fulfills the payment obligation. Third, the victim actually receives payment or otherwise experiences the intended recovery. If the second and third stages do not occur, restitution risks providing only formal legal certainty without effective recovery. The legal framework for restitution must therefore be understood comprehensively, from the submission of an application and proof of loss to the determination of the payment obligation, asset tracing, enforcement, and transfer of the proceeds to the victim. All of these stages require clear rules and consistent inter-agency coordination.

1. Obstacles to the Enforcement of Restitution Decisions in Indonesia

One of the principal obstacles to the enforcement of restitution is the offender's limited financial capacity. A court judgment or order imposing a payment obligation does not, by itself, guarantee that the offender has the financial ability to fulfill that obligation. In cases involving substantial losses, the offender's economic circumstances may become a serious barrier to payment. This problem illustrates the difference between a legal obligation and the practical ability to perform it. From the victim's perspective, the offender's inability to pay may result in losses remaining unrecovered, even though the right to restitution has been recognized by the court.

Another obstacle concerns the identification, tracing, seizure, and auction of assets that may be used to satisfy the restitution obligation. The enforcement process requires certainty regarding the existence and ownership of assets, their economic value, and the legality of the measures taken to enforce the obligation. In practice, difficulties may arise when the offender's assets are unknown or insufficient, are held by another party, or require additional legal procedures before they can be subject to enforcement. Without adequate information concerning the offender's assets, a court

order granting restitution may be difficult to translate into actual payment. Consequently, effective asset tracing and the implementation of lawful enforcement measures are essential to ensuring that restitution decisions provide tangible benefits to victims.

Furthermore, unclear enforcement procedures and the division of authority among law-enforcement institutions may hinder the fulfillment of restitution obligations. The investigation, prosecution, judicial examination, and enforcement stages involve different institutions, each with distinct powers and responsibilities. If procedures concerning asset tracing, seizure, or the transfer of payments are not consistently understood and implemented, the fulfillment of restitution obligations may be delayed. Supreme Court Regulation Number 1 of 2022 provides important guidance on applications for and the granting of restitution. However, post-judgment enforcement also requires clarity regarding the authority of implementing institutions, coordination with investigators, and procedures for managing assets intended to satisfy restitution obligations. Such uncertainty may result in situations in which one institution waits for another to act, while the victim remains unpaid. Therefore, standard operating procedures are needed to establish the stages of restitution enforcement, the officials responsible, administrative timelines, reporting mechanisms, and follow-up measures when payment is not made. These procedures must remain consistent with applicable legislation. Technical guidelines should not create new powers that conflict with higher-ranking laws but should instead clarify how powers already granted by law are to be exercised.

Another significant obstacle relates to victims' limited understanding of and access to assistance in obtaining restitution. Victims may be unaware that they have the right to seek compensation for their losses through available legal mechanisms. They also need to understand which losses may be claimed, what supporting documents are required, and when and how an application must be submitted. Establishing the amount of loss may itself present difficulties because medical expenses, lost income, property damage, and other losses must be supported by relevant evidence in accordance with applicable requirements. When documentation is unavailable or losses are not properly calculated, the application process may become more complicated. In these circumstances, the Witness and Victim Protection Agency (LPSK) and law-enforcement officials play an important role in providing information, assistance, and facilitation within their respective mandates. Adequate assistance can help victims prepare more accurate applications and reduce the risk that they will fail to claim restitution simply because they lack sufficient information. Such assistance should not end once a restitution application has been granted. Victims should also receive information regarding the status of enforcement, progress in execution, asset-tracing results that may lawfully be disclosed, and the steps available to them if payment has not been received.

A further obstacle arises when restitution obligations are not fulfilled voluntarily and the offender's assets are insufficient to cover the full amount ordered by the court. This situation raises questions concerning the subsequent enforcement measures available and the forms of recovery accessible to victims. Supreme Court Regulation Number 1 of 2022 contains provisions concerning restitution enforcement, including mechanisms involving the seizure and auction of a convicted person's property under the circumstances specified in the regulation. Nevertheless, the effectiveness of these mechanisms depends on the availability of assets that can legally be enforced against and on effective coordination among the relevant institutions. When assets cannot be located or are insufficient to satisfy the restitution obligation, a court decision may fail to provide victims with full recovery. This demonstrates that the effectiveness of restitution should not be measured solely by the number of applications granted or court decisions issued, but also by the

amount of restitution actually received by victims and the time required for them to receive it. Accordingly, an effective restitution system must ensure not only the recognition of victims' rights through judicial decisions but also the practical implementation of those rights through clear procedures, coordinated enforcement, and appropriate follow-up measures when payment remains outstanding.

2.2 Analysis of *Das Sollen* and *Das Sein* in Restitution Enforcement

From the perspective of *das sollen*, legislation provides a basis for victims to obtain protection and restitution, subject to applicable requirements. Supreme Court Regulation Number 1 of 2022 provides procedural guidance for resolving applications for and granting restitution and compensation. Law Number 3 of 2026 also establishes the latest statutory framework for the protection of witnesses and victims. From the perspective of *das sein*, however, restitution enforcement may be impeded by offenders' limited financial capacity, difficulties in tracing assets, administrative obstacles, inconsistent exercise of institutional authority, and inadequate assistance for victims. These factors may prevent victims from fully receiving the rights already recognized.

This gap does not mean that all restitution decisions fail to be enforced. This study does not use national statistical data on enforcement success rates. Therefore, the conclusion is limited to identifying legal and practical obstacles that may reduce the effectiveness of restitution enforcement. The scale and frequency of each obstacle require further empirical investigation. From the perspective of legal certainty, a decision granting restitution should clearly specify the amount owed, the party required to pay, the enforcement procedure, and the legal steps available if payment is not made. From the perspective of victim protection, such certainty must be accompanied by realistic mechanisms that encourage payment and minimize the risk that victims will receive no recovery.

2.3 Measures to Overcome Obstacles to the Enforcement of Restitution Decisions

The government and law-enforcement institutions should ensure consistency among the latest statutory provisions, government regulations, Supreme Court regulations, and technical enforcement guidelines governing restitution. Older regulations should be adjusted where necessary to ensure alignment with Law Number 3 of 2026. In addition, enforcement guidelines should clearly regulate the stages following a final and binding judgment, the division of authority among relevant institutions, procedures for tracing and seizing assets, the auction process, and the transfer of payment proceeds to victims. These arrangements must respect the authority of each institution and comply with the procedures prescribed by law.

Asset tracing should be incorporated into case-management strategies in cases where restitution may be awarded to victims. Subject to the applicable legal framework and the authority granted by law, investigators, public prosecutors, and other relevant institutions should identify information concerning the offender's assets as early as possible. This approach may help assess the offender's ability to pay restitution, reduce the risk of asset transfers intended to avoid payment, and provide the information necessary to support the proceedings. Nevertheless, asset tracing must respect lawful property rights, protect the rights of third parties, and comply with legally prescribed seizure procedures.

Coordination among investigators, public prosecutors, courts, the Witness and Victim Protection Agency (LPSK), and other relevant institutions should be strengthened through lawful communication and information-sharing mechanisms. Such measures may include appointing

liaison officers, establishing standardized administrative forms, and maintaining an integrated record of restitution enforcement while ensuring the protection of confidential information. Effective coordination would enable each institution to understand its responsibilities and the actions required at every stage of the enforcement process. Furthermore, improved coordination could reduce delays arising from unclear procedures, overlapping responsibilities, or dependence on action by other institutions.

Victims should receive accessible and adequate information regarding their rights to restitution, application requirements, evidence of financial and non-financial losses, and the procedures for enforcing restitution judgments. Assistance may include providing information services, helping victims prepare the necessary documents, and delivering regular updates on the progress of proceedings and enforcement. Such assistance should also consider the specific circumstances and needs of child victims, victims of sexual violence, victims of human trafficking, and other individuals requiring special protection under applicable legislation. Through more effective assistance, victims can better understand and exercise their legal rights and participate in the restitution process without facing unnecessary administrative or procedural obstacles.

The effectiveness of restitution enforcement should be evaluated using clear and measurable indicators. These indicators may include the percentage of judgments in which restitution has been paid, the amount paid in comparison with the total amount ordered by the court, the average time required to complete payment, the number of cases in which the offender's assets cannot be located, and the number of victims who receive assistance. The use of these indicators would enable relevant institutions to identify weaknesses in the enforcement process, evaluate institutional performance, and establish priorities for improvement. Periodic evaluations should be conducted using valid, verified, and accountable data to ensure that the results accurately reflect the implementation of restitution and support evidence-based policy development.

In certain circumstances, particularly when offenders lack sufficient assets to fulfill their restitution obligations, alternative recovery mechanisms for victims should be examined. One possible approach is the establishment of a funding scheme or victim recovery fund based on applicable legislation and implementing regulations. Such a mechanism should clearly define the sources of funding, eligibility requirements, application procedures, and the relationship between payments provided by the state and the offender's restitution obligations. The development of alternative recovery mechanisms should not automatically extinguish the offender's legal responsibility to compensate the victim. Instead, these mechanisms should aim to ensure that victims retain a meaningful opportunity to obtain compensation for their losses, even when the offender is unable to pay the full amount of restitution ordered by the court.

Conclusion

1. Based The enforcement of restitution in Indonesia is an important component of protecting and restoring the rights of crime victims. The legal framework has developed through several instruments, including Government Regulation Number 7 of 2018 as amended by Government Regulation Number 35 of 2020 and Supreme Court Regulation Number 1 of 2022. For the current legal context, this framework must be aligned with Law Number 3

of 2026 concerning the Protection of Witnesses and Victims, which took effect on 20 May 2026.

2. Obstacles to restitution enforcement may include offenders' limited financial capacity, difficulties in tracing and enforcing assets, unclear enforcement procedures and division of authority, victims' limited understanding of and access to assistance, and ineffective mechanisms when payment is not made. These obstacles indicate a potential gap between the formal recognition of victims' rights and the recovery they actually receive in practice.
3. Accordingly, the effectiveness of restitution should not be assessed solely by whether an application is granted or a payment obligation is imposed. It should also be measured by whether payment is made, how long it takes, and the extent to which victims obtain recovery. Strengthening regulations, tracing assets from the early stages of proceedings, improving inter-agency coordination, assisting victims, evaluating performance through measurable indicators, and examining alternative recovery mechanisms are measures that may improve restitution enforcement in Indonesia.

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