


## Restitution of Death-Causing Criminal Acts in Justice and Human Rights Perspectives

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Article	Abstract
<p><b>Keywords:</b> Criminal Acts; Human Rights; Justice; Restitution</p> <p><b>Article History</b> Received: Oct 26, 2023; Reviewed: Jan 12, 2024; Accepted: Feb 15, 2024; Published: Mar 04, 2024.</p>	<p>Restitution has become a representative of the development of the criminal justice system in Indonesia, with its foundation relying on the eligibility of the rights of crime victims. Such a practice is said to have made the criminal justice system in Indonesia more humane, particularly in terms of human rights. The provision of restitution to victims of criminal acts resulting in death has occurred in Indonesia for the first time. This is based on the presence of severe human rights violations in these criminal acts. This research employs a normative-empirical method, which involves examining the implementation, application, or enforcement of the prevailing laws and regulations in Indonesia in specific legal events within the community. The balance between fulfilling the rights of both the perpetrators and the victims in criminal acts in Indonesia is increasingly pursued over time, one of which is through restitution. Restitution can be one of the efforts made to fulfill victims' rights, including in cases of murder or violence that causes the victim's death. But, it is challenging to determine an appropriate nominal amount for fulfilling restitution for victims. There is a need for a deeper examination and evaluation of the losses suffered by victims of criminal acts who have lost their lives and their right to life. Thus, the provision of restitution as a means of achieving justice for victims will be better fulfilled.</p>
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### Introduction

Criminal justice in Indonesia has been significantly shifted and developed day by day. It is indicated through the balanced orientation of rights amenability that supports not only the accused, but also the victims (Sulistiani, 2022). Basically, with reference to Module of the Republic of Indonesia on the Code of Criminal Procedure (KUHP), the core lies more on the protection of the defendant's rights and concerns. However,

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rights of the criminal victims have been currently rapt to its amenability (Malik & Hanafi, 2023). It has been demonstrated through legislation that concerns and accommodates the rights of the criminal victims, which also remains undetachable from the core values of human rights.

The existence of rights amenability has been practically pronounced by the release of Law No. 13 of 2006 concerning Protection of Witnesses and Victims. This also remarks how more humane the criminal justice system in Indonesia has been since the law enforcement is now fully required to concern rights of witnesses and victims. One of the criminal victims' rights is that they are guaranteed for restitution or compensation received from the accused (Marasabessy, 2015). The Law has ruled on any of rights which victims are supposed to be granted with. Nevertheless, proposal technics to receive the restitution rights have not been regulated clearly yet (Sulistiani, 2022). For that reason, Supreme Court (MA) issued Regulation of the Supreme Court No. 1 of 2022 concerning Guidance of Proposal Completion and Restitution and Compensation Grants for Criminal Victims (Prasdyantoro & Zamroni, 2023). In addition, restitution is also regulated by under Government Law No. 35 of 2020 concerning Amendments of Government Law No. 7 of 2018 concerning Compensation, Restitution, and Assistance Grants to Witnesses and Victims.

Restitution based on law perspective can be referred to as any compensations granted by the accused or the third parties to the victims or the victims' relatives (Wijaya, 2018). Compensations for material and immaterial losses undergone by the victims or their relatives are levied to the defendants based on law supremacy by means of court ruling. Further, restitution based on criminal justice system can be a stabilizer to set up rights for actions, mainly for sufferance of the victims (Saodana, 2023). It is meant to: compensate the criminal victims for their recovery before named as a victim; urge the defendants to take responsibility for the crimes they have committed; uphold justice for the criminal victims; and strive for physical and psychological recoveries for the victims.

Victims of criminal acts are certainly suffering from losses, material and immaterial either (Wardhani & Pranawa, 2023). The former refers to any whose values are calculatable, or based on some amounts of money the victims deserve to get compensated. It is, furthermore, relatively based on how much wealth or money they have lost for due to the crime. Meanwhile, immaterial loss infers any of unprovable losses because of which victims will need recovery as they will, in a meantime, be suffering from sorrow, fear, pain, shock, and so forth (Mantili, 2019). As a matter of the

fact, in accordance with the law term, this sort of loss cannot be fully defined as it remains uncalculatable based on amounts of money. For those losses, restitution is present in order to manifest the actualization of victim's rights completion after criminal acts, especially for the material loss.

Recently, Witness and Victim Protection Agency (LPSK) in collaboration with the respective law enforcement apparatus in Yogyakarta had succeeded in facilitating restitution for murder crime as the completion of the victim's rights. The practice had become the first to happen in Indonesia, and was seen as an excellent achievement. By means of Decision No. 63/Pid.B/2022/PN Smn dated on April 20, 2022, Panel of Judges of District Court of Sleman decided that all of the defendants were proven legally and convincingly to commit death-causing violence. Moreover, the defendants were condemned a four-year prison sentence and levied the amounts of IDR 100,000,000.00 (one hundred million rupiahs) for restitution to the heirs. There were some court rulings that granted restitution for victims of murder and death-causing violences. However, restitution remained not paid due to defendants' indisposition. This is proof that restitution can be given as a form of fulfilling the rights of victims of criminal acts of murder

In relevance to Article 2 Verse (1) of Decision of Supreme Court No. 1 of 2022, restitution is valid for such criminal acts as serious violences of human rights, terrorism, human trafficking, racial and ethnical discriminations, criminal acts upon children, and others based on the LPSK's decisions. Referring to Law Number 26 of 2000 concerning Human Rights Courts, article 7 states that serious human rights violations consist of two types of crimes, namely genocide and crimes against humanity. Thus, coverage of human rights violations in the context of Indonesian positive law is limited to these two acts. Within the scope of crimes against humanity, acts that reflect serious human rights violations are part of widespread or systematic attacks, which are known to be directly aimed at civilians, including killing, extermination, silence, expulsion or forced transmission of the population. In this way, violent criminal acts that cause the victim's death can be treated as serious human rights violations.

Restitution granted can be in the form of compensation for wealth loss, material and immaterial compensations for sufferance victims are undergoing, compensation for maintenance wages, and other losses which the criminal victims might face. Thus, restitution can be applied for any of death-causing criminal acts in completion of the victims' rights through their heirs. In addition, restitution also strives for legal justice for

the victims due to losing their life. The essence of restitution lies on the acquiescence of rights, especially for the victims. In a case on the Decision Number 63/Pid.B/2022/PN Smn, restitution in the amount of IDR 100,000,000.00 was paid to the victim's heir.

This research will show how the provision of restitution for criminal acts of violence that resulted in the death of the victim is seen from the perspective of the principles of justice and human rights. This research aims to provide an overview of the perspective of the principles of justice and human rights regarding the provision of restitution for violent crimes that result in the death of the victim. Thus, restitution can be one answer in efforts to fulfill the rights of victims of criminal acts of murder. Apart from that, restitution is a form of implementation of the principles of justice and human rights in the crime of murder.

## Method

This research adopts a normative research method with a conceptual and case approach. Normative research methods are an approach that focuses on the analysis of legal documents, literature and theories that are relevant to answering the problems being studied (Benuf & Azhar, 2020). The conceptual approach refers to the use of legal and theoretical concepts as a basis for analyzing the problems faced. Meanwhile, the case approach allows researchers to study concrete cases or real examples to illustrate and support the arguments made. They were obtained from literature reviews of existing laws and regulations, legal views, and experts' opinions, which came together with other relevant literatures based on certain substances under the research (Ibrahim, 2006). Results of analysis in the research, further, would be presented in the form of formulated answers of legal concerns being discussed.

## Discussion

### 1. Restitution of Death-Causing Crimes based on Justice Perspective

Sudikno Mertokusumo opines that legal perspective is not a concrete law, but general and abstract school of thoughts that also remain as the root of concrete rules identifiable at each of legal systems created in Laws and Regulations (Suyanto & Nugroho, 2016). On the other hand, Radbruch suggests that justice is equality of rights for whomever in front of the court (Prayogo, 2016). Legal benefits and goals can be explained through understanding the final legal goals that refer to the suitability of legal substances and goals expected to be achieved through the laws. Meanwhile, legal

certainty is centralized at a specific situation where laws can work well as substantial rules everyone must be subject to (Palsari, 2021). In other words, final goals of law explain connection between legal substances and goals, while legal certainty explicate legal capacity that plays role as supreme guidance to follow.

Apart from that, Aristotle also made a distinction between two concepts of justice, namely distributive justice and corrective justice (Nasution, 2014). Distributive justice is a type of justice that applies in the realm of public law, which focuses on the distribution of honor, wealth and other goods obtained by individuals in society. Distributive justice in this context refers to the fair determination and distribution of rights between citizens and the state. This includes an understanding of what the state should provide to its citizens in terms of equitable rights and obligations. Meanwhile, corrective justice is related to correcting mistakes committed, including providing compensation to the injured party or giving appropriate punishment to the perpetrator of the crime (Helmi, 2015). Corrective justice refers to the principle of justice which ensures that all legal subjects are treated equally and fairly before the law. This means that every individual must be treated the same way in law enforcement, regardless of their status or background. So, if an event occurs that is considered unfair, the principle of corrective justice mandates that appropriate action must be taken to provide justice for the incident.

In effort of protecting criminal victims, preventive actions are performed by groups of society and government (through legal enforcement apparatus), including upholding or monitoring potential threats that exist and possibly cause death to the victims, providing adequate medical and legal assistances, and ensuring procedures of inspection and fair justice for the criminal defendants. In fact, all of the actions are basically a manifestation of upholding the essence of human rights, which has become a core instrument to maintain the legal balance (Sunarso, 2015). The principle of justice concerns the amenability of rights, in addition to legal provision grant to witnesses and victims based on their rights and in line with proportionalism, proceduralism, and responsibilities for witnessing in every each of justice stages. This principle is connected with Legal Certainty principle that concerns a series of process of rights compliance and legal assistance provision in legal countries whose core lies on Laws and Regulations, propriety and justice of policies under state administration (Gumanti, 2017).

According to the context of restitution for dead victims in light of Supreme Court Rules by the Supreme Court, Supreme Court Rule No. 1 of 2022 concerning Guidelines to Proposal Completion and Restitution and Compensation Grants to Criminal Victims

can be seen at consideration chapter pronounced at Act No. 13 of 2006 concerning Protection of Witnesses and Victims. The Act has defined victims at Verse 1 (b) generally as someone who suffers from anguish, not only physically, mentally, and economically, but also all of those in combined. This is relevant with Supreme Court Rule of Verse 4 concerning forms of restitution possibly granted to the criminal victims, including:

- a. compensation for loss of wealth/earnings;
- b. compensation for material and immaterial losses due to direct sufferance from criminal acts;
- c. compensation to cover up costs of medical and/or psychological treatments, including basic transportation cost, lawyer cost, and other relevant costs spent for legal process.

In criminal law, restitution is closely linked to any means of recovering the victims just like which before they suffer from loss due to the criminal acts. Such a mechanism is usually applied in the practice of criminal law in order to compensate the victims for their loss or damages. Restitution, in fact, is defined as an act of virtue, or in other words, compensating the victims by giving them some amounts of money equivalent with the value of loss, damages, and injuries of the victims. Restitution, furthermore, can be applied for several goals, such as:

- a. to compensate loss of the victims and to punish the accused for crimes they have committed;
- b. to prevent from potential crimes due to its ability to trace and track records of loss – by doing so, people can be warned about how they are supposed to be responsible for if they committed such a crime;
- c. to urge the criminal doers to fully confess and take consequences by having to pay with some amounts of money to the victims.

The case in decision 63/Pid.B/2022/PN Smn which is included in the material and immaterial compensation category amounting to IDR 100,000,000.00 (one hundred million rupiah) as a form of payment of compensation for the death of the victim is in line with the corrective justice proposed by Aristotle. The perpetrator of the crime certainly made a mistake, in this case committing violence which resulted in the death of the victim. Therefore, this will create injustice for the victims who have lost their lives and life opportunities and the families who have been left behind by the victims. Providing restitution by the perpetrator of the crime to the victim's family is a form of reparation for the mistakes that have been made. Justice is not only given to victims, but



also perpetrators of criminal acts who must be treated equally, fairly and equitably. One of them is related to providing punishment for perpetrators of criminal acts (Rahmansyah et al, 2023).

Thus, regarding the case in decision number 63/Pid.B/2022/PN Smn, it shows the importance of the principle of justice for victims of criminal acts which cause the victim to die or lose his life. The application of the principle of justice in an effort to protect crime victims is not absolute because this is also limited by the sense of justice that must also be given to the perpetrators of the crime. In discussing restitution for deceased victims, it is considered to be one manifestation of efforts to fulfill the principles of justice (Rahmawati & Yudianto, 2023). However, problems may arise in determining the nominal value of the restitution given. This is because in essence a person's life is more valuable than anything else, so it is felt that it will be difficult to provide the exact nominal value of restitution.

## **2. Restitution for Death-Causing Crimes based on Human Rights Perspective**

Human rights constitute any of rights possessed by everyone in this universe without contesting races, religions, tribes, sexes, and so forth as a gift blessed by God. As a matter of the fact, human rights are undebatable and absolute as nobody can violate them (Nurdhin & Athahira, 2022). Further, human rights can be also defined as the rights naturally attached with people since they were at wombs, which is always valid until the rest of their life, incontestable and inviolable by other people, even the state to which they belong (Huda & Nurhidayatuloh, 2011). In nature, there are several forms of human rights, such as the right for life, right to express thoughts and ideas, right of legal equality, and right for being free from discriminations, and many others. In addition, concepts of human rights have been enacted at Universal Declaration of Human Rights (UDHR or DUHAM). Indonesia has become one of the countries to ratify the human rights instrument demonstrated through the presence of human rights regulations endorsed in the state constitution of the 1945 Constitution of the Republic of Indonesia.

Human rights are basically classified into two, derogatory and non-derogatory rights. The former is decoded to Indonesian language as derogation, which means that the state can violate over its responsibilities in event of emergency situations (Asplund, 2008). Simply said, the derogatory rights infer that human rights are not fully in need of amenability as it is limitable and degradable. Chapter 4 Verse (1) of International Covenant concerning Civil and Political Rights (ICCPR) declares that "In event of emergency that threatens the life of nations and after official declaration of its, the state

based on this covenant is allowed to take necessary actions in order to degrade the main responsibility as long as it is really needed for the situational demands, does not violate the other state responsibilities in accordance with international law, and leaves behind the discrimination acts on races, sexes, languages, religions, and social origins". This chapter has been oftentimes a foundation for several countries in the universe to limit the human rights amenability to every each of people. In fact, not all human rights can be degraded or restricted for its amenability (Matompo, 2014). Due to reasons in respect of essential and emergency situations, state existence, national security, and state disintegration, derogation of human rights becomes possible to perform.

On the other hand, non-derogatory rights refer to any of human rights whose compliance cannot just be overlooked or degraded in any sort of situations (Sihotang, 2021). In this case, human rights are totally absolute, which means that the state does not have the right to degrade its compliance since this sort of rights will result in guarantee, acknowledgement, and respect to the other people's rights and freedom in order to comply with fair justice that is in the vein of common morality, norms, religious values, security, and public orders. In addition, non-derogatory human rights have been enacted at the 1945 Constitution of the Republic of Indonesia Chapter 28 Verse (1) pronouncing "The right to life, freedom from torture, freedom of thoughts and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under a law with retrospective effect are all the human rights that cannot be limited under any circumstances." Those rights have become the legal norm that is valid for an international scale, which is also known as *jus cogens norms*, or norms that must be adhered to (Triputra, 2017).

With reference to the Supreme Court Rule No. 1 of 2022, it is explained that restitution can be proposed for several criminal acts, one of which is serious human rights violation. Regarding serious human rights, it was then clarified through Law Number 28 of 2000 concerning Human Rights Courts that serious human rights violations include crimes of genocide and crimes against humanity. Violent criminal acts that result in the victim losing his life as in decision case number 63/Pid.B/2022/PN Smn can certainly be interpreted as murder which can be categorized as a human crime in the form of a serious violation of human rights. This is stated in Article 9 letter a which states that crimes against humanity as intended in Article 7 letter b are acts committed as part of a widespread or systematic attack where it is known that the attack is aimed directly at the civilian population, one of which is in the form of murder. In this case, the



actions carried out by the perpetrator led to actions that threatened and endangered the victim's life, which ultimately resulted in the victim losing his life. Thus, restitution can be given as an effort to fulfill the property rights of the victim who in this case lost his life.

Furthermore, crime enacted in the decision number 63/Pid.B/2022/PN Smn constitutes a violation on non-derogatory human rights. It is because the defendants have been proved to commit death-causing violation upon the victim. As matter of the fact, the defendants have violated or obliterated the human rights in which the victim should naturally possess the rights to life and of freedom from torture and/or any inhumane treatments. Meanwhile, the violation on the right to life is indicated by the loss of life due to violence, torture, and beating up towards the victim.

In such a case, the victim was indeed at loss, both material and immaterial. For that reason, the grant of restitution was hierarchically compensating for material and immaterial losses in order to recover or protect the victim and his family members. Moreover, it also serves as a consequence of criminal responsibility the criminal actors should bear with towards the victims. Regarding the scrutiny and assessment by LPSK, the loss that had to be compensated for the victim's wife as the heir constituted IDR 94,111,616.00. The defendants, in this case, were willing to receive the decision and give the amount of IDR 100,000,000.00 as the compensation (restitution) for the loss of the victim's life.

In fact, the amount of money granted to the victim's family was quite low for the material and immaterial losses. It is because the crime had fully violated the human rights that belong to non-derogatory ones, which means that the amenability of the rights is absolute and cannot be limited, degraded, or eliminated. The doers had also been proved to intentionally lose someone's right to life by committing such a death-causing violence. It is clearly unlike the derogatory rights that are still open for limitation or elimination by specific reasons for their amenability. Thus, the victim and his family are actually facing much bigger loss, which is extremely inequivalent with the amount of money the received.

According to the human rights conception, life is blessed and granted by the Almighty God, which allows the humans have the right to live (Hakim & Kurniawan, 2021). For that reason, it will be very complicated to define the valuation for loss of life due to criminal acts. It is because, in essence, one's life is as worthful as the other ones' lives. Nobody knows people's fates in the future. If the victim did not lose his life, he

would probably have made and collected more wealth much bigger than the nominal of restitution/compensation given, only IDR100,000,000.00.

Thus, LPSK or other relevant parties that possess the authority for inspecting and assessing the loss faced by the victim in this case are strongly required to pay bigger attention to the potential loss. Calculation of potential loss, both materially and immaterially, can be performed through careful estimation that lies much on highest life expectancy as well as appraisal incomes the victim would probably have gained within that appraised life expectancy. Besides, immaterial loss will be harder to tackle as it has nothing remaining to do with loss of life, which infers that other bad things will possibly come to the victim's family, inadequate life compliance afterwards, and so forth. Entire loss (including the potential) faced by the victim in this case certainly excludes the estimation for pain or anguish due to the violence (immaterial) and costs spent for suing this case (material). Thus, restitution remains harder as the nominal for compensation is basically inequivalent with costs to repair and recover to be as similar to as that of before the case (*restitutio in integrum*), which can be concluded that restitution nominal should have been much higher.

## Conclusion

Balancing the fulfillment of the property rights of perpetrators or defendants and victims of criminal acts in Indonesia is increasingly being sought over time. Restitution is one way of fulfilling the rights of victims of criminal acts by providing compensation for both material and immaterial losses. Criminal case in decision number 63/Pid.B/2022/PN Smn stipulates that the perpetrator or defendant pays replacement money with a nominal value of IDR 100,000,000.00 (one hundred million rupiah). Providing restitution in this case is very appropriate because it is a form of effort to fulfill justice for the victims' rights. However, it is difficult to determine the nominal value of compensation for the loss of a person's life, so providing a relatively small nominal value of restitution will actually prevent justice from being fully carried out. Moreover, the right to life is a non-derogable right or a right that cannot be reduced or even eliminated from human rights. Therefore, compensation provided through restitution should have a higher nominal value in line with the serious human rights violations committed by the perpetrator or defendant in the case.

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