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Restitutio in Integrum in Criminal Regulation of Restitution for the Victims of Criminal Acts

Celine Endang Patricia Sitanggang¹, Jennifer Kurnia Putri², Albertus Hansen Setyabudi³, Sheyla Alif Alfiana⁴.

¹Universitas Airlangga, Surabaya, Indonesia, celine.endang.patricia-2023@fh.unair.ac.id.

²Universitas Airlangga, Surabaya, Indonesia, jennifer.kurnia.putri-2023@fh.unair.ac.id.

³Universitas Airlangga Surabaya, Indonesia, albertus.hansen.setyabudi-2022@fh.unair.ac.id.

⁴Universitas Airlangga, Surabaya, Indonesia, sheyla.alif.alfiana-2023@fh.unair.ac.id

Corresponding Author: celine.endang.patricia-2023@fh.unair.ac.id¹

Abstract: This study aims to determine the application of the Restitutio in Integrum principle in Indonesian laws and regulations governing restitution to victims of criminal acts. It is currently known that the weakness of restitution execution power in Indonesia has made the fulfillment of restitution to victims difficult to realize. This is because there is no binding force, so that the implementation of restitution is oriented towards the goodwill of the perpetrator of the crime. The research method used in this article is normative juridical with statute approach and conceptual approach. This study argues that restitution arrangements in various laws and regulations in Indonesia do not accommodate forced efforts if the perpetrators of criminal acts do not carry out restitution. In this case, the lacuna results in the difficulty of executing payments that should be received by victims of criminal acts. Therefore, it is necessary to strengthen the application of the principle of restitutio in integrum which is studied through substance, structure, and legal culture as an effort to realize protection as well as justice for victims of inclusive criminal acts.

Keyword: Restitutio in Integrum, Restitution, Victim.

INTRODUCTION

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as UUD NRI 1945) states that “the Indonesian state is a state of law” (rechtsstaat). The nature of the Indonesian state as a state of law should prioritize law enforcement based on the principles of the rule of law. According to A.V. Dicey, there are 3 (three) important elements in the implementation of the rule of law, namely (1) Supremacy of Law; (2) Equality before the law; and (3) Due Process of Law. It means the rule of law aims to provide guarantees for the community for fair treatment in social and state relations. Therefore, the concept of rule of law contains the principle of legal certainty which contains legality in carrying out a rule.

In the context of criminal law, the concept of rule of law, especially the rule of law, is actualized in the principle of *nullum delictum nulla poena sine praevia lege poenali* (principle of legality) as stipulated in Article 1 paragraph (1) of the Criminal Code (KUHP) which states that "a criminal act cannot be punished, except based on the strength of the provisions of existing criminal legislation". In line with this, the principle of the rule of law also requires the law as the commander in chief that serves as a reference in living in society and the state. On this basis, the principle of the rule of law is in line with the principle of legality in the realm of criminal law enforcement. This is because both of them aim to ensure that every individual must comply with the applicable legal provisions in order to realize 3 (three) elements of legal objectives, which include legal certainty (*rechtssicherheit*), legal benefits (*zweckmässigkeit*), and legal justice (*gerechtigkeit*) as stated by Gustav Radbruch.

Criminal law enforcement that is oriented towards the principle of legal certainty will have implications for not achieving justice in the context of fulfilling human rights. Article 1 point 1 of Law Number 39 of 1999 concerning Human Rights states that "Human Rights are a set of rights inherent in human existence as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the state, law and government, and everyone for the sake of honor and protection of human dignity". This reality is in line with the VII United Nations Congress (UN) in 1985 in Milan related to "The Prevention of Crime and the Treatment of Offenders" in response to the demands of the international community for victim protection, which the Congress produced that victims' rights should be an integral part of the entire criminal justice system. Therefore, countries that are members of the United Nations accommodate the protection of crime victims by providing rights in the form of compensation that can be demanded against.

Restitution is a payment of compensation that shows an understanding of the suffering of victims of a criminal offense, compensation must be paid to the victim or the victim's heirs. Juridically, the terminology of restitution is regulated in Article 1 point 11 of Law Number 31/2014 on Witness and Victim Protection (hereinafter referred to as the Witness and Victim Protection Law) which states that "restitution is compensation given to victims or their families by perpetrators or third parties". Referring to its implementation, the restitution arrangement still has gaps that cause injustice today. This is because it is true that restitution has been explicitly regulated in Government Regulation Number 7 of 2018 in conjunction with Government Regulation Number 35 of 2020 concerning Providing Compensation, Restitution and Assistance to Witnesses and Victims (hereinafter referred to as the PP Restitution). However, the regulation does not provide coercive power for the execution of the restitution. The weakness of restitution execution power in Indonesia makes the fulfillment of restitution to victims difficult to realize. This can be seen through the data from the Kompas study which states that the restitution calculated by LPSK in 2020 is IDR 7,909,659,387 with the following details: (a) trafficking in persons amounting to Rp.4,964,506,369; (b) Sexual Violence amounting to Rp.2,130,183,947; (c) Serious Maltreatment amounting to Rp.639,407,26; and (d) Other Crimes (Murder, Torture, Domestic Violence, and Violence against Children amounting to Rp175,561,645. Based on LPSK's calculation, the restitution decided by the Judge only amounted to Rp1,345,849,964 which includes: (a) Human Trafficking amounting to Rp598,263,089; (b) Sexual Violence amounting to Rp229,112,700; (c) Serious Maltreatment amounting to Rp.468,404,907; and (d) Other Crimes (Murder, Torture, Domestic Violence, and Violence against Children amounting to Rp50,069,268. However, restitution paid by the perpetrators amounted to Rp101,714,000 with details, namely Sexual Violence amounting to Rp10,364,000 and Serious Maltreatment amounting to Rp91,350,000. Meanwhile, restitution for human trafficking and other crimes was not paid by the perpetrators. Based on this explanation, it can be seen that restitution in order to fulfill the rights of victims has not received enough attention from law enforcement officials and judges even though restitution is directed

at the responsibility of the perpetrator for the consequences caused by the crime so that the main goal is to overcome all the losses suffered by victims. Therefore, the implementation of restitution provides room for in-depth analysis to be examined in terms of aspects of justice and legal benefits in order to reflect the operation of law or law enforcement agencies in accommodating the protection of victims.

In the study of several other studies reviewed by Anissa Rahmawati and Otto Yudianto with the research title "Arrangements for Providing Restitution in a Crime of Murder (Study of Decision Number 22-K/PMT-II/AD/II/2022)" resulted in the provision of restitution is the responsibility of the state in protecting human rights, especially victims and families of victims. Another research conducted by Maria Novita Apriyani with a study entitled "Implementation of Restitution for Victims of Sexual Violence Crimes" resulted in the procedure for applying for restitution for victims of sexual violence crimes can be carried out simultaneously with the criminal process or the beginning of the investigation submitted through LPSK. In addition, there are 4 (four) challenges for LPSK in facilitating victims, including: (1) lack of support from the community and victims' lawyers; (2) limited availability of psychologists; (3) lack of support from law enforcement officials; and (4) the lack of regulation on forced efforts for perpetrators of criminal acts to pay restitution decided by the court. In addition, Sandy Ari and Wijaya Hartati in a study entitled "Implementation of the Restitutio In Integrum Policy in Mining Criminalization without a License" found that the regulation of the Restitutio In Integrum principle is only regulated at the level of government regulations.

Thus, this research will focus on explaining the criminal arrangements in positive law that provide provisions related to restitution, or vice versa. In addition, this research also aims to answer whether the criminal restitution arrangements in national law against criminal offenders are in line with the principle of Restitutio in Integrum or vice versa, and answer the direction of strengthening the application of the principle of restitutio in integrum which will be reviewed in terms of substance, structure, and legal culture. This is because the arrangements related to restitution in positive law tend to be biased due to the alternative imposition of restitution that does not consider the losses of victims of criminal acts.

METHOD

This research is normative legal research, namely research that is focused on examining the application of rules or norms in applicable positive law using a statutory approach and conceptual approach. The statutory approach is carried out by examining all laws and regulations related to the legal issues raised. In this approach, primary legal materials will be used in the form of Criminal Procedure Law, Law No. 26/2000 on Human Rights Courts, Law No. 31/2014 on Witness and Victim Protection, Law No. 35/2014 on Child Protection, Law No. 11/2012 on the Child Criminal Justice System and Law No. 5/2018 on Eradicating the Crime of Terrorism. The conceptual approach is carried out by examining existing views and doctrines related to the issues raised. Views and doctrines are taken from books, journals and other scientific writings which are used as secondary legal materials in analyzing the issues discussed.

RESULTS AND DISCUSSION

Restitutio In Integrum Principle in Restitution Criminal Arrangement for Victims of Crime

The Criminal Code as a legacy product of the Dutch East Indies colonial government is the main pillar in providing protection for morality in order to realize a just social life. However, it still cannot be realized inclusively. This is because the provisions in the Criminal Code are only oriented towards the classification of criminal offenses, thus emphasizing on the punishment of the perpetrators. Not only that, the Criminal Procedure Code, which is a

milestone in the implementation of the criminal justice system, has also not paid special attention to victims of crime. This can be seen through the arrangement in the Criminal Procedure Code that only places the victim as a witness in a criminal offense, so that the victim only assists the public prosecutor in proving his claim. On this basis, it can be stated that the criminal law products in Indonesia are not in line with the *daad-dader strafrecht* model as proposed by Muladi, which is a balance of interest model that requires that criminal law must provide protection for the interests of the state, individual interests, public interests, the interests of the perpetrator and the interests of victims of crime.

The orientation of victims' interests in criminal law enforcement is motivated by the development of criminal law. This can be seen through a new approach related to the purpose of punishment, which was originally deterrence and retribution, to rehabilitation. This is in line with Albert Eglash's idea that there are 3 (three) types of criminal justice system, namely:

a. Retributive Justice

The retributive criminal justice system focuses on punishing the perpetrators for what they have done.

b. Distributive Justice

The distributive criminal justice system is oriented towards rehabilitating offenders.

c. Restorative Justice

The restorative criminal justice system emphasizes substantial justice that aligns offender accountability and victim recovery efforts through restitution.

Moving on from Albert Eglash's idea, Wesley Cragg also argued that there has been a shift in the purpose of punishment to restorative justice due to the imperfection of retributive justice which is oriented towards retaliation. This is because retributive justice is unable to minimize the occurrence of crime, as well as unable to repair the losses suffered by victims of crime.

According to Marshall as quoted by Joanna Shapland, restorative justice is “process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implication for the future”. In line with this, LaFave stated that “restorative justice its said, creates an avenue to bring criminals and their victims together rather than keep them apart”. Based on this, it can be stated that restorative justice is the forerunner of the concept of restitution or the principle of *restitutio in integrum*. This is because restorative justice prioritizes the role of victims of crime by restoring the material and immaterial losses of victims, demanding direct accountability of the perpetrators of crime, as well as providing various opportunities for dialogue and negotiation to realize legal justice for each party.

The principle of *restitutio in integrum* or restitution is the principle of restoration in its original state for victims of criminal acts. This is in line with the idea of Sudikno Mertokusumo who emphasized that the balance of the disturbed social order must be restored or restored to its original condition. This states that the form of restitution to victims must be inclusive, and cover various aspects caused by the crime. This is because restitution aims to restore the freedom, legal rights, social status, family life, employment, and assets of the victim of the crime. The application of restitution as a form of legal protection for victims of criminal acts is also in line with the UN Declaration on "The Prevention of Crime and the Treatment of Offenders" which states that: “Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependents. 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”. This means that the perpetrator or those responsible for an illegal act must provide restitution to the victim, the victim's family or guardian. Restitution is in the form of returning property rights or compensating for losses suffered by victims, costs for

negligence that has caused victims, which is a stipulation of the law as a form of service and fulfillment of rights.

The legal protection of victims of criminal acts through the provision of restitution in Indonesia is juridically regulated in Articles 7A and 7B of the SF Law. However, the mechanism for providing restitution is regulated in PP Restitution and Supreme Court Regulation Number 1 of 2022 concerning Procedures for Settling Applications and Providing Restitution and Compensation to Victims of Crime. In this case, the mechanism for requesting restitution is carried out from the time the victim reports the case or after a court decision that has obtained permanent legal force through LPSK. If the request for Restitution is submitted before the court decision has obtained permanent legal force, then LPSK can submit Restitution to the Public Prosecutor to be included in the prosecution. However, if the Restitution application is submitted after the court decision is inkraht, then LPSK can submit Restitution to the court for a determination. In this case, the provision of restitution is carried out within 14 (fourteen) days from the notification of the decision that has obtained permanent legal force.

Laws and regulations have accommodated the opportunity for victims of criminal acts to demand restitution. However, these arrangements are not accompanied by coercive power in the context of executing the restitution. In this case, Indonesian criminal law products do not provide clauses related to coercive power in the form of sanctions against the implementation of restitution if the perpetrator / convict does not implement the decision or determination of restitution imposed on him. Therefore, the implementation of restitution is entirely based on the goodwill of the perpetrator. The laws and regulations that regulate the provision of restitution but not with coercive power in its execution are as follows:

Table 1. Restitution Arrangements in the Legislation

Aspect	Criminal Procedure Law	Law 5/2018	Law 31/2014	Law 21/2007	Law 35/2014
Mechanisms that can be taken if restitution is not implemented	Not regulated	Not regulated	The victim, family, or proxy reports to the public prosecutor with a copy to the head of the court and LPSK.	the victim or their heirs notify to the court.	Not regulated
Additional time period if restitution is not paid	Not regulated	Not regulated	Public prosecutor or Court issues warrant (valid for 14 days) to execute	The court as intended gives a written warning letter to the restitution provider, to immediately fulfill the obligation to provide restitution to the victim or their heirs (within 14 days).	Not regulated

Other consequences of not paying restitution	Not regulated	Substitute imprisonment for a minimum period of 1 (one) year and a maximum period of 4 (four) years.	Not regulated	<ol style="list-style-type: none"> 1. The court shall order the public prosecutor to confiscate the assets of the convicted person and auction the assets for the payment of restitution. 2. Substitute light imprisonment for a maximum of 1 (one) year. 	Not regulated
Other mechanisms for restitution payments	Not regulated	Not regulated	Gradual payment	<ol style="list-style-type: none"> 3. Consignment or deposited with the court 4. asset seizure 	Not regulated

Based on the table above, it can be stated that most of the arrangements regarding restitution do not include arrangements related to coercion if restitution is not carried out, which has implications for the emergence of obstacles for victims to obtain payment for losses arising from the occurrence of a criminal offense. Although there are provisions in the TPPO Law that include asset forfeiture schemes for restitution payments, Article 50 paragraph (4) of the TPPO Law requires the replacement of unpaid restitution efforts with a maximum of 1 year of substitute confinement. This actually obscures the essence of restitution which seeks to return or restore victims of criminal acts to their original state, while ignoring the rights and interests of victims of criminal acts to obtain compensation.

Thus, the principle of *restitutio in integrum* in the criminal restitution arrangement in Indonesia has not been able to provide comprehensive protection to victims of criminal acts. This is because the reluctance of perpetrators to pay restitution still often occurs, which results in restitution sanctions being subsidized or given a substitute sentence. As a result, the implementation of restitution is contrary to the essence of restitution which focuses on restoring victims' losses, both for physical, moral, property and victims' rights caused by a criminal act.

The Importance of Restitutio In Integrum Principle as the Basis of Judge's Decision to Impose Restitution Penalty for Perpetrators in Order to Fulfill Victims' Rights.

Referring to its implementation, restitution submitted at the trial stage does not have uniformity regarding the response or response of the panel of judges to the request for restitution. This can be seen in Decision Number XXX/Pid.Sus/2023/PN Smn regarding the crime of sexual intercourse against a child victim. In the Court Decision, the Public Prosecutor on his initiative had attempted to inventory the loss of the child victim of the crime in the amount of Rp2,926,000.00 and the form of the victim's loss was in the form of:

1. “The cost of medical and psychological treatment, namely suffering that causes the physical and psychological condition of the child victim to be disturbed. Costs to restore the physical condition/health of the child victim in the form of projected costs for medical treatment and medicines;

2. damages for suffering as a result of the criminal offense, namely the administration of the child's school transfer because the child victim suffered embarrassment for the victim of the crime of sexual intercourse having to move to another school;

3. The psychological and/or mental suffering of the child victim as a result of the criminal act committed by the defendant the child victim has been traumatized and the child victim is now pregnant.”

The decision of the Sleman District Court is:

1. “Declare that the defendant has been legally and convincingly proven guilty of committing the crime of "intentionally deceiving and causing a child to have sexual intercourse with him/her continuously as a continuing act";

2. Sentencing the defendant to 7 years imprisonment and a fine of Rp 1,000,000,000.00, provided that if the fine is not paid, it shall be substituted with 4 (four) months imprisonment;

3. Determine that the length of the period of arrest and detention served by the defendant shall be deducted in full from the sentence imposed;

4. Declare the defendant to remain in custody;

5. Accept the request for restitution from the applicant for restitution in part and charge the defendant to pay restitution to the child victim in the amount of Rp 2,926,000.00 (two million nine hundred twenty six thousand rupiah);

6. Stating the evidence in the form of:

1 (one) piece of brown pants;

1 (one) brown hoodie;

1 (one) toyota calya brand car, police number AB-1531-CP, frame number: MHKA6GJ6JMJ623420, Engine no: 3NRH594679, without STNK;

7. Charged the defendant to pay court costs in the amount of Rp 2,000 (two thousand rupiah).”

On the other hand, there is a decision with case register number 473/Pid.Sus/2020/PN.Dpk which in its decision granted the demands of the public prosecutor to order the defendant to pay restitution. The decision of the Depok District Court is as follows:

1. “Stating that the Defendant Syahril Parlindungan Martinus Marbun Alias Kaka Ai mentioned above has been proven legally and convincingly guilty of committing the crime of "Inducing a child to commit obscene acts several times";

2. Sentenced the Defendant Syahril Parlindungan Martinus Marbun Alias Kaka Ai to 15 (fifteen) years imprisonment, and a fine of Rp.200.000.000,- (two hundred million rupiah), provided that if the fine is not paid it shall be substituted with confinement for 3 (three) months and the Defendant shall be ordered to pay restitution to the child victim Yesaya Jonaya Gabriel in the amount of Rp.6 .524,000,- (six million five hundred twenty four thousand rupiah), provided that if the Restitution is not paid, it shall be substituted with confinement for 3 (three) months and to pay Restitution to the child victim Basilius Andrew in the amount of Rp.11,520,639,- (eleven million five hundred twenty thousand six hundred thirty nine rupiah), provided that if the Restitution is not paid, it shall be substituted with confinement for 3 (three) months.”

Based on these two decisions, it can be seen that the panel of judges accepted the request for restitution and charged the defendant to pay restitution to the child victim. In Decision XXX/Pid.Sus/2023/PN Smn, if the restitution was not paid by the perpetrator, then no consequences were given to the defendant for his actions. Meanwhile, in Decision 473/Pid.Sus/2020/PN.Dpk, the panel of judges imposed a consequence of imprisonment for 3 (three) months if the defendant did not pay the restitution. At the norm level, it is not clear whether the provisions regarding the consequences of restitution not paid by the defendant are part of the decision that must be decided by the panel of judges in their decision or not.

Article 5 paragraph (2) of PP Restitution emphasizes that the process of applying for restitution can also be carried out during the prosecution stage. Reviewing the prosecution stage, the implementation of protection can be carried out at the initiative of the public prosecutor to conduct an inventory of losses from victims of criminal acts which then includes restitution in the criminal charges. Referring to the provision of restitution in the district court decision No XXX/PidSus/2023/Pn Smn dated June 26, 2023, the provision of restitution is calculated based on losses for physical and psychological suffering. However, the execution of restitution did not run smoothly because the defendant was unable to pay. However, there is no subsidiary or substitute punishment if the restitution is not paid and there is no implementing regulation. Therefore, restitution arrangements that are not accompanied by coercion will make restitution lose its meaning. This shows that in addition to the public prosecutor, the Panel of Judges should consider morality in its authority to guarantee the restoration of the rights of victims of criminal acts.

The reality of applying legal principles sometimes experiences clashes in terms of political interests, power, and authority, so that at the same time the application of the principle of restitution in *Integrum* does not run consistently and ideally. This is in line with the data from the LPSK study results for the 2021 period as quoted by Kompas, which states that restitution for victims is IDR 7.43 billion. Meanwhile, the restitution decided by the court amounted to IDR 3.71 billion. However, the restitution paid to victims only amounted to IDR 279.53 million. The low amount of restitution received by victims is due to the actions of judges or prosecutors who tend to use the merger of damage claims based on Article 98 of the Criminal Procedure Code, as well as the actions of criminal offenders who prefer to carry out substitute punishment instead of seeking restitution.

This tendency results in the loss of opportunities for victims to obtain their rights. Based on the description of the case, it can be seen that the main interest in the criminalization of restitution is basically the state's effort to provide protection and fulfillment of victims' rights. Restitution is intended as compensation that must be given by the perpetrator of the crime. "It is the purpose of [restitution law] to encourage the compensation of victims by the person most responsible for the loss incurred by the victim, the offender." (Free translation; the purpose of [restitution law] is to encourage the compensation of victims by the person most responsible for the loss incurred by the victim, the offender). However, in practice, there is no guarantee that restitution can be paid immediately to victims. What usually happens is that the perpetrator does not want to pay and is unable to pay, except in cases of trafficking in persons (TPPO).

This is because there are coercive mechanisms that can be given to the perpetrator, such as asset forfeiture. Meanwhile, in restitution outside of TPPO, generally perpetrators who do not want to pay are only subject to a 2-3 month prison sentence. With this situation, in its implementation, victims still cannot obtain financial compensation.

Currently, the regulation of restitution payment obligations that have been decided by the court needs to refer to the restorative justice paradigm by focusing on the responsibility of the perpetrator to compensate the victim for the crime committed on the one hand and the willingness of the victim to forgive the wrongdoing of the perpetrator on the other. In the event that the perpetrator does not have sufficient assets to pay restitution to the victim, replacement with imprisonment for a maximum of 1 (one) year shows that the provision still has a retributive justice paradigm. There are still other alternatives such as the perpetrator being obliged to find the victim or the victim's family a new job in the event that they are dismissed from their job due to being a victim of a criminal offense, or the perpetrator working for the victim for a certain time without being paid. The perpetrator's work is restitution because he or she does not have enough money to pay the victim. Thus, the meaning of restitution is not only limited to money, but is extended to work or other things that directly benefit the victim so that the victim's condition can be restored to its original state.

Efforts to restore victims to the situation before they suffered a number of losses due to criminal acts realize the purpose of restitution itself, namely: First, restitution serves both to compensate victims for their losses and to punish perpetrators. Secondly, the ability of restitution to trace losses caused by the offender serves as an instrument of deterrence as it warns potential offenders that they too will be held accountable for any losses incurred. Thirdly, restitution also forces the offender to acknowledge the harm caused by his or her actions by ordering him or her to pay a sum of money to the victim. This makes the offender specifically responsible for what he or she has done. Unlike fines that offenders pay to the state, restitution is more intimate in nature as it is given directly by the offender to the victim and its existence is specifically linked to the actual loss suffered by the victim caused by the offender's actions. By looking at the problem of the fulfillment of restitution that is not in accordance with the principle of restoration in the original state (*restitutio in integrum*), the state must present a revolutionary scheme for the restoration of victims' rights. This principle emphasizes that the form of compensation for victims of crime must be as complete as possible and cover the various aspects arising from the consequences of the crime. That's because restitution will allow crime victims to regain their freedom, legal rights, social status, family life and citizenship, return to their place of residence, restore their employment, and recover their assets. The House of Representatives and the Government should evaluate, update and strengthen the regulation on victims' rights, ranging from victim services to clarity on restitution and execution of victims' rights in every legislation governing restitution. Therefore, the current criminal equity framework ought to not only focus on the perpetrators but also on the interests and needs of casualties.

Direction of Strengthening the *Restitutio in Integrum* Principle as a manifestation of Justice and Legal Expediency

The existence of restorative justice which is the background of the birth of the *Restitutio in Integrum* principle is a paradigm as well as an opportunity that aims to restore the victim's loss from an action that actively involves all parties in the judicial process. The understanding and application of the concept of restitution actually departs from several countries, such as the United States, the Netherlands, Canada, Germany, Belgium, Singapore and Australia. Referring to the United States, restitution arrangements are regulated in 18 US Code 3663, 3663A, and 3664. In this case, the obligation to make restitution is carried out in the event of 3 (three) circumstances, which include: (a) offenses that result in property damage or loss; (b) offenses that result in bodily injury to the victim; and (c) offenses that result in the death of the victim. Referring to 18 US Code 3663A, if the victim suffers property damage or loss, the defendant is obliged to return the property to the property owner, or another person designated by the owner. However, if the return of the property cannot be made, then the defendant has the obligation to pay an amount equal to or greater than the value of the property. Meanwhile, in the event of an offense that results in bodily injury or death to the victim, the defendant is obliged to pay the costs of medical and professional services and devices required by the victim in terms of physical, psychiatric, and psychological treatment, including non-medical treatment and other treatment in accordance with what has been determined, pay the costs of physical and occupational therapy required in the context of rehabilitation, reimburse the victim's lost income as a result of the crime, as well as pay the necessary funeral expenses and other related services.

18 US Code 3664 states that "In each order of restitution, the court shall order restitution to each victim in the full amount of each victim's losses as determined by the court and without consideration of the economic circumstances of the defendant". This provision confirms that the court's order of restitution will override the financial circumstances of the defendant, so that each victim will be ensured that their rights are properly restored. In this case, the

restitution payment mechanism in the United States can be made in the form of a single payment, partial payment at a certain period of time, payment in kind, or a combination of payment at a certain interval and payment in kind. The payment in kind includes 3 (three) things, namely: return of property, replacement of property, and other services for the victim or someone other than the victim, in accordance with the victim's consent. Furthermore, the execution of restitution in the United States has significant differences with Indonesia. This can be seen through the compulsion of restitution execution as stipulated in Article F section (3) letter which states that "a restitution order may direct the defendant to make nominal periodic payments if the court finds from facts on the record that the economic circumstances of the defendant do not allow the payment of any amount of a restitution order, and do not allow for the payment of the full amount of a restitution order in the foreseeable future under any reasonable schedule of payments". This provision confirms that if the financial condition of the defendant is insufficient to carry out the restitution order, then the defendant can make periodic payments. In this case, the alternative solution echoed by the United States Government is actually in line with the principle of Restitutio In Integrum. This is because the government prioritizes criminal liability while seeking to restore the rights of victims as stipulated in 18 US Code 3771 Article (a) Section 6.

Another example of a more detailed regulation of victims' rights in terms of restitution imposed on perpetrators is the Canadian regulation, which is contained in the Criminal Code, the Victims Act, and the Public Prosecutor's Guide to Restitution Orders. Article 16 Canadian Victims' Bill of Rights provides that every victim has the right to have the court consider a restitution order imposed on the perpetrator. The arrangement provides for the right of the victim to have access to the court to consider restitution and not the right to apply for restitution, so it is the court and not the victim that plays an active role. In the Criminal Code of Canada, after the offender has been found guilty prior to sentencing, the court must ask the public prosecutor what steps have been taken to provide the victim with restitution for her losses and a determination of the value of those losses has been made by the public prosecutor. If the victim, through the public prosecutor, states that he/she will request restitution, the court may adjourn the trial to hear the request for restitution. Restitution can be requested by the victim through the public prosecutor or determined by the court. Furthermore, the Public Prosecutor's Guide to Restitution Orders states that the public prosecutor has an obligation to assist victims in exercising their right to restitution. In fact, in this guideline, public prosecutors are asked to pay attention to specific needs for example, for large cases, the assistance of third parties or law enforcement officers is required and a plan in this regard should be prepared by the public prosecutor. Public prosecutors are also required to prepare responses to questions from the court about victim restitution applications.

The Criminal Code of Canada also guarantees restitution to victims from a technical perspective to provide clarity on the implementation of restitution. One of the mechanisms to guarantee the payment of restitution in the Criminal Code of Canada is that the victim can obtain an order from the court that is equivalent to a civil court judgment when an award of restitution is made. In this case, the order can be imposed on the perpetrator if it is not paid. In the verdict, the court can directly determine the period of payment as well as the payment scheme whether it will be carried out by installment mechanism accompanied by a payment schedule scheme in the installment. The judgment can also determine that if more than one person is liable to pay, it can also determine which party is prioritized to be paid the damages. The judgment may also designate which public authority may collect from the perpetrator based on existing provincial regulations. Prior to the restitution decision, the court looks at the offender's ability to pay, once it has done this, it can decide whether to seize assets or impose a fine on the offender. If restitution is not paid, the judgment is treated as a civil judgment and the court is authorized to seize assets equal to the restitution to be paid to the victim.

Based on this explanation, it can be seen that there are differences in restitution mechanisms in Indonesia, the United States and Canada, which indicate the need for the government to focus on strengthening and placing restitution arrangements in the right corridor. On this basis, the author provides an alternative solution to provide clarity and direction for strengthening the principle of restitutio in integrum in Indonesia which can be reviewed in legal substance, legal structure, and legal culture as echoed by Lawrence M. Friedman.

Furthermore, the legal structure is a framework of a legal system that focuses on institutions, law enforcement officials and implementing officers. Regarding law enforcement, it is necessary to strengthen judges in the judicial sphere so that judges can act objectively by taking into account the interests of victims in considering the restitution payment mechanism that will be imposed on the defendant. With the strengthening of judges, judges will prioritize restitution requests instead of combining restitution with other punishments, such as imprisonment for 1 (one) year in a subsidiary decision. In addition, there is also a need for a public authority that can collect and supervise the implementation of restitution to the perpetrators of criminal acts. This is so that the rights of victims due to criminal acts can be properly restored, so that the principle of restitutio in integrum is always in the right corridor.

In addition to substance and structure, legal culture is the power of society to determine the application of the law. Therefore, the government must actively conduct socialization in order to educate the public regarding the rights possessed by victims of criminal acts, which in this case is restitution. This aims as an effort to protect victims in order to realize justice and inclusive legal benefits.

CONCLUSION

Restitution arrangements in various laws and regulations in Indonesia do not accommodate the mechanism of forced efforts if the perpetrators of criminal acts do not carry out the restitution. In this case, the lacuna results in the difficulty of executing payments that should be received by victims of criminal acts. The execution of restitution in Indonesia has no binding rules and is only subsidized, which is contrary to the essence of restitution, which is to restore the victim's loss to its original state. In this case, the restitution cannot be replaced by other punishment, because the restitution is related to the physical, moral, property, and rights of the victim caused by the criminal offense. Therefore, based on the explanation above, the criminal restitution arrangement in Indonesia is not in line with the principle of restitutio in integrum. This results in the loss of opportunity for victims to obtain their rights. Therefore, it is necessary to strengthen the application of the principle of restitutio in integrum which can be reviewed in terms of substance, structure, and legal culture as proposed by Lawrence M. Friedman as an effort to realize inclusive protection of victims of crime.

Alternatives to strengthen the principle of restitutio in integrum in order to realize justice for victims of crime can be reviewed through legal substance, namely structuring and updating the restitution arrangements based on the principle of restitutio in integrum in the context of harmonization of laws and regulations by providing explicit arrangements related to: (a) forced restitution; and (b) restitution payment mechanism. Meanwhile, in the legal structure, optimization of law enforcement officers and implementing officers is carried out, as well as encouraging the creation of public authorities that can collect as well as supervise the implementation of restitution to criminal offenders. When arrangements related to restitution have been fulfilled, and there is strengthening of implementing institutions and officers, then the community must also be open and play an active role in the applicable law enforcement process.

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