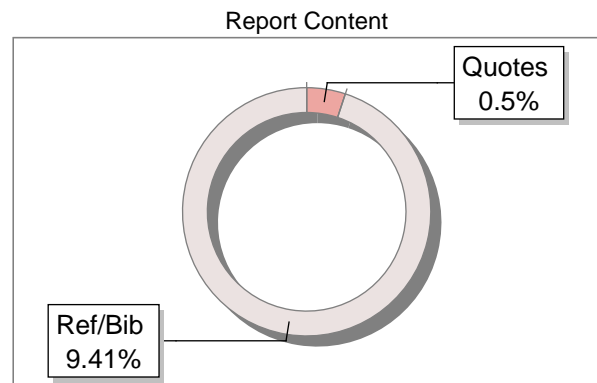
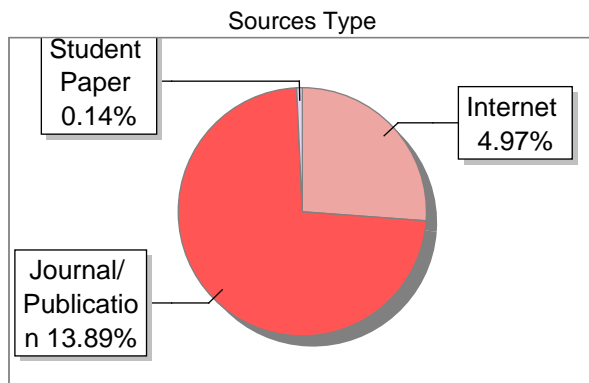
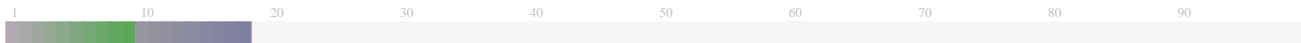


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Paper/Submission ID	5408318
Submitted by	jatisw@edu.unisbank.ac.id
Submission Date	2026-04-01 13:07:39
Total Pages, Total Words	12, 6398
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5	cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com	2	Publication

Rationality Test of The Application of Criminal Law on Restitution for Victim Protection in The Criminal Justice System

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Article Info

Received: 2024-10-12

Revised: 2024-12-10

Accepted: 2024-12-17

Keywords:

Rationality,
Restitution,
Victims, and
Criminal Justice

44

Abstract

The purpose of this study is to explain the rationality test of restitution imposition for victim protection in the criminal justice system. The ongoing criminal justice system shows a shift in perspective from being offender-oriented to a criminal justice system that also pays attention to aspects of victim protection. Various court decisions show the fulfillment of victim rights through the imposition of restitution, but there are also court decisions that do not impose restitution, so that the criminal justice system still applies victim protection that is abstracted into community protection. This fact is interesting to study from the approach of criminal law policy that is required to be rational. Based on a literature review of the rationality of criminal sanction policies, and the development of a criminal justice model that is accommodative for victim protection, and the juridical-normative method with the specification of inconcreto legal research, there are variations in the imposition of restitution, namely being subject to restitution and not being subject to restitution in the ongoing criminal justice system. The rationality test of restitution is based on the realization of the objectives of protection and recovery of victims of sexual violence. The rationality test explains that restitution as a tool/means of realizing the criminal objective of restoring balance that concretely improves the suffering and losses experienced by victims of sexual violence, improves the perpetrator, and resolves the conflict between the perpetrator and the victim. The criminal justice system that applies restitution to victims of sexual violence opens itself up to allow victims to obtain restitution. The procedural criminal justice system provides a means for victims of sexual violence to obtain restitution as a right. The Law on Protection of Witnesses and Victims and the Law on Sexual Violence Crimes, and the Declaration of Basic Principles of Victim of Crime and Abuse of Power have determined restitution to victims of sexual violence both in the trial process and after a court decision after it has permanent legal force.

I. Introduction

The reality of the application of criminal law in the criminal justice system shows that judicial practice places the interests of victims of criminal acts into the interests of society. According to Sudarto, the position of the victim becomes only an element of the legal order. So a criminal act is not an act that harms people who have blood, flesh, and feelings, but as something that is against the law, contrary to something abstract called legal order (*inbreuk op de rechtsorde*). With this growth, the person who is harmed has no meaning; he is abstracted. In the process of examining a criminal case, it is as if he is "dehumanized; he is only (usually the first witness) who is only important to provide information about what the perpetrator did in order to be used as evidence of the perpetrator's guilt.¹ Even compensation that should be a concrete effort that must be received by victims of crime to repair the suffering or losses experienced by victims of crime has been taken by the state and replaced with fines. Victims of crime have lost their right to receive compensation.² Even according to Schafer, the development of ideas about the purpose of punishment which is based on the need for the development of the perpetrator (convict) has been accompanied by the reality of a great deal of attention to the victim. And even if there is attention to the victim, it is considered not to hinder the development of the perpetrator/convict.³ On the basis of this, something rational, in an integrative criminal policy includes the interests of crime victims, not only as something abstracted into the interests of society, but as a factor underlying the purpose of the crime, which must be realized concretely in a criminal sanction. Criminal sanctions in the form of compensation payments or what is known as restitution are not only the rights of victims to repair or restore the suffering experienced as in the Declaration of Basic Principles of Victim of Crime and Abuse of Power in 1985 have become additional criminal sanctions. Even with the development of human rights which initially had an impact on the rights of perpetrators of criminal acts, it has also included the rights of victims. The criminal justice system which was originally oriented towards the perpetrator (Offender Oriented) must also pay attention to the rights of victims to be restored. The service rights model which places victims as passive and positioned as witnesses who are not entitled to sue is no longer in accordance with developments where victims as parties who suffer from criminal acts have rights in the criminal justice mechanism. The existence of procedural rights in criminal justice greatly assists victims in the justice mechanism. The UN Declaration on Basic Principles for Victims also determines The responsiveness of judicial and administrative process to the needs of victims should be facilitated. The existence of the Bandung District Court decision No.989/pid.sus/2021/PN.Bdg, which was revised by the Bandung High Court decision No. No.86/pid.sus/2022/PT.Bdg on the one hand provides the fulfillment of victims' rights to have their suffering and losses restored through criminal justice that accommodates the interests of the victim. On the other hand, there is the Surabaya

¹ Sudarto, *Law and Criminal Law*, Alumni, Bandung, 1986, pp. 184-185.

² In this regard, please note the opinion of Mardjono Reksodiputro in Sahetapey, *Viktimologi Sebuah Bunga Rampai*, Pustaka Sinar Harapan, Jakarta, 199, pages 113-114.

³ Schafer in Sahetapey, *Ibid.*, page 114.

District Court decision No. 1361/Pid.B/2022/PN/Sby which does not provide for the fulfillment of restitution rights through the demands of the public prosecutor or court decisions. Although both incidents occurred at a time when the provisions on restitution for victims of sexual violence were in effect as regulated in Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning Protection of Witnesses and Victims. It has been determined that victims of criminal acts have the right to receive restitution.

2. Research Method

The approach method used is normative legal research with the specification of in-concreto legal research, namely research on court decisions that decide and try criminal acts of sexual violence with the imposition of restitution for the protection of victims in the criminal justice system. The data used are secondary data with primary legal materials. Data analysis is carried out descriptively-analytically using the theory of criminal justice and victim protection,

3. Results and Discussion

Facts on the Imposition of Restitution for the Protection of Victims of Sexual Violence Through Various Court Decisions

Based on a search of literature documents sourced from various decisions, the following can be presented:

1. The Bandung District Court Decision Number 989/Pid.Sus/2021/PN Bdg was appealed to the Bandung High Court with Number 89/Pid.Sus/2022/PT Bdg stating that the defendant was sentenced to death, subject to restitution of Rp. 331,527,186,- (three hundred thirty-one million five hundred twenty-seven thousand one hundred and eighty-six rupiah) for the cost of recovering 12 victims from the suffering they experienced.
2. Decision of the Panel of Judges of the Surabaya High Court No. 1003/PID.SUS/2022/PT SBY which amended the Decision of the Malang District Court Number 60/PID.SUS/2022/PN MLG which was appealed only regarding the length of the sentence imposed on the defendant, so that the sentence became 8 (eight) years in prison, and a fine of Rp. 300,000,000 (three hundred million rupiah). In addition, the defendant was also subject to restitution of Rp. 44,744,623 ,- (Forty-four million seven hundred forty four thousand six hundred and twenty-three rupiah). With the provision that if the defendant does not pay the restitution money within a maximum of 1 month since the court decision has permanent legal force, then his property can be confiscated by the Prosecutor and auctioned to pay the restitution, and with the provision that in the event that the defendant does not have sufficient assets to pay the restitution, then it is replaced with a substitute imprisonment for 1 (one) year in prison.
3. the Ihya' Ulummiddin Islamic Boarding School , Padang Village, Singojuruh, Banyuwangi was sentenced to 10 years in prison and a fine of Rp100 million, subsidiary to six months in prison. In addition, restitution payments were imposed on the victims. There were five victims who received compensation. They were MA who

received restitution of Rp6.6 million, DF worth Rp3.7 million, KR Rp5.2 million, SW Rp7.1 million, and MA Rp4.4 million.

4. Decision of the Surabaya District Court No. 1361/Pid.B/2022/PN Sby with the defendant Moch. Subchi Azal Tsani (MSAT), the child of the caretaker of the Majma'al Al Bahrain Shiddiqiyah Islamic Boarding School.

The panel of judges sentenced him to 7 (seven) years in prison because he was proven legally and convincingly to have committed the crime of "committing an act that attacks moral honor, namely violating Article 289 in conjunction with Article 65 (1) of the Criminal Code and Law No. 8 of 1981 concerning the Criminal Procedure Code." The imposition of this sanction is far below the demands of the Public Prosecutor, namely violating Article 285 in conjunction with Article 65 paragraph (1) with a demand of 16 years.

Based on a study of the documents, the legal panel's decision did not impose restitution on victims of the sexual violence crimes he committed.

5. Decision Number 108/Pid.Sus/2018/PN.Pwk

Based on the study of the decision documents, there was no restitution granted. The restitution request was rejected by the Panel of Judges due to the time limit, considering that the restitution request did not comply with Article 20 Paragraph (2) of Government Regulation Number 7 of 2018 concerning the Provision of Compensation, Restitution, and Assistance.

6. Decision Number 137/Pid.Sus/2018/PN.Kdl

Based on the study of the verdict documents, it turns out that the panel of judges ordered the Defendant to pay restitution in the amount of IDR 1,050,000 (one million fifty thousand rupiah) to the victim's child.

7. Decision Number 148/Pid.Sus/2019/PN.Sbr

Based on the study of the decision documents, it was stated that the Panel of Judges ordered the Defendant to pay restitution amounting to IDR 29,000,000 (twenty nine million rupiah).

8. Decision Number 473/Pid.Sus/2020/PN. Dpk

Based on the study of the document, it is explained that the perpetrator paid restitution to the victim's child YJ in the amount of Rp. 6,524,000 (six million five hundred and twenty four thousand rupiah) with the provision that if the restitution is not paid, it will be replaced with a prison sentence of 3 (three) months and paid restitution to the victim's child BA in the amount of Rp. 11,520,639 (eleven million five hundred and twenty thousand six hundred and thirty nine rupiah) with the provision that if the restitution is not paid, it will be replaced with a prison sentence of 3 (three) months.

9. Decision Number 2068/Pid.Sus/2020/PN. Mdn

Based on the study of the document, it is explained that no restitution was given, considering that the victim did not submit a request for restitution by the victim's party.

10. Decision Number 166/Pid.Sus/2021/PN. Kot

Based on the study of the document, it is explained that no restitution was given, considering that the victim did not submit a request for restitution by the victim's party.

Based on the study of the documents, several decisions of the panel of judges imposing restitution on perpetrators of criminal acts to victims of sexual violence crimes on the one hand are based on the victim's request through the Witness and Victim Protection Agency (LPSK). On the other hand, the absence of restitution imposed on perpetrators of criminal acts is based on the absence of a request for restitution from the victim. Where based on the applicable positive law, namely Article 7 A paragraph (1) of Law Number 51 of 2014 concerning Amendments to Law Number 1 of 2006 concerning Witness and Victim Protection, which states that victims of criminal acts have the right to obtain restitution in the form of: a. compensation for loss of wealth or income; b. compensation for losses caused by suffering directly related to the crime; and/or c. reimbursement of medical and/or psychological care costs. In paragraph (3) it is determined that the right to obtain restitution is submitted through LPSK either before or after a court decision that has obtained permanent legal force. Paragraph (4) determines that LPSK submits to the Prosecutor to be included in the lawsuit. Article (5) states that in the event that a restitution application is submitted after a court decision has obtained permanent legal force, the LPSK can submit a restitution application to the Court in the form of a decision. Based on these provisions, victims of sexual violence can still submit a restitution application through the LPSK, namely after the court decision has obtained permanent legal force in the form of a Court Decision. These provisions are also stipulated in Article 20 (1) of Government Regulation No. 7 of 2018 concerning the Provision of Compensation, Restitution, and Assistance, which states that a restitution application is submitted before the court decision has obtained permanent legal force through the Witness and Victim Protection Agency (LPSK) to be included in the Public Prosecutor's demands. It must also be understood that paragraph (3) states that a restitution application can be submitted after a decision has obtained a permanent decision and a restitution application can be submitted through the LPSK to the Court to obtain a decision.

Specifically related to the imposition of restitution for victims of sexual violence, it is one of the rights that is fulfilled to restore the suffering or losses experienced by the victim. Article 30 paragraph (1) of Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence states that Victims of Criminal Acts of Sexual Violence have the right to receive Restitution and Recovery services. (2) Restitution as referred to in paragraph (1) is in the form of: a. compensation for loss of wealth or income; b. compensation for losses incurred due to suffering directly related to the Criminal Act of Sexual Violence; c. reimbursement of medical and/or psychological care costs; and/or d. compensation for other losses suffered by the Victim as a result of the Criminal Act of Sexual Violence.

The existence of variations in the fulfillment of restitution as the right of victims of violent crimes in various different court decisions constitutes a neglect of the rights of victims of sexual violence. Victims of sexual violence experience increasing suffering and loss considering that the court as a means to realize justice including for victims who actually experience suffering and loss due to court decisions. On this basis, the Circular of the Supreme Court No. 1 of 2023 concerning Procedures for Settling Applications and Granting Restitution and Compensation to Victims of Criminal Acts. Article 8 regulates the mechanism for submitting a restitution application. Investigators/LPSK submit the restitution application file to the Public Prosecutor before the case file is transferred to

the Court or ¹⁴ the latest before the Public Prosecutor reads the criminal charges. In paragraph 4 ¹⁴ it is stated that the Judge notifies the Victim's right to obtain ²⁴ Restitution which can be submitted before the Public Prosecutor files the charges or ¹⁴ after the court decision has permanent legal force. With ¹⁴ the existence of a restitution application in paragraph 10 ¹⁴ it is stated that the Public Prosecutor is obliged to include a Restitution application in the criminal charges. In article 11, the judge examines the Restitution application file and provides a legal assessment ¹³ of the evidence presented in court and considers it in the decision. Article 11 (1) stipulates that in the event that the victim does not file a Restitution application in ²⁴ the trial process against the perpetrator of the crime, the application can be submitted ²⁴ after the court decision has permanent legal force. The provisions are very understandable because restitution is a victim's right that must be fulfilled. The deadline for a restitution application as stipulated in Article 12 paragraph (2) is a maximum of 90 (ninety) days from when the Applicant learns of the Court's decision which has permanent legal force.

2. Testing the Rationality of Imposing Restitution for Victim Protection ⁶⁶ in the Criminal Justice System

The Rationality Test of the imposition of restitution for the protection ⁶⁶ of victims of violent crimes in the justice system is based on Sudarto's understanding that criminal policy is a total and rational effort by society to overcome crime. ⁴This means that criminal policy shows its rationality characteristics. Karl O. Christiansen argues that the characteristic *of rational criminal policy is nothing more than the application of rational methods*. Furthermore, the application of rational methods must still be measured in the formulation of the objectives to be achieved. In this regard, Karl O. Christiansen also ¹⁴ argues that the fundamental prerequisite in formulating a rational way/method or action is ¹⁴ that the objectives to be achieved must have been formulated well (*the fundamental prerequisite of defining a means, method or measure as a rational is that the aim or purpose to be achieved is well defined*). ⁵This approach ¹⁴ means that the rationality of a criminal law policy must begin with the formulation of better criminal objectives, ¹⁴ in this case criminal objectives that are in accordance with the outlook on life of the community or nation concerned. The effort to formulate the purpose of punishment can be intended as an effort to guide and provide guidelines in determining the form and type of punishment to be determined. Therefore, the abstraction of several purposes of punishment introduced in the theories of punishment and punishment is very helpful in formulating good purposes of punishment, which are in accordance with the outlook on life of the Indonesian nation. In the literature study, a number of theories of punishment are known. Traditionally, in general, theories of punishment can be divided into absolute theories and relative theories. Both theories are commonly known as the theory of retribution and the theory of purpose/benefit. Both theories in the view of Hugh D. Barlow as *two major*

⁴ According to Sudarto, criminal policy is briefly a rational effort by society to overcome crime, Sudarto, *Selected Chapters of Criminal Law*, Alumni Bandung, 1986, page 73. Sudarto's opinion seems to be a translation of Marc Ancel's opinion that *criminal policy is the rational organization of the control of crime by society*. Marc Ancel, *Social Defense*, 1965, page 209. Marc Ancel's opinion is also quoted by G. Peter Hoefnagles in his book, *The Other Side of Criminology: An Inversion of the Concept of Crime*, Cluwer Deventer, Holland, 1969, page 57.

⁵ Karl O. Christiansen, *Some Considerations on the Feasibility of a Rational Criminal Policy*, in Report For 1973 and Resource Material Series No. 7, UNAFEI, Tokyo, 1973, pages 74-75. See also Muladi and Barda Nawawi Arief, *Criminal Theories and Policies*, Alumni, Bandung, 1992, page 94.

arguments have been offered in support of legal punishment . ⁶In relation to this, according to AM Quinton, there is a prevailing antinomy about the philosophical justification of punishment.⁷ The nature of the two theories which are placed in conflict with each other, has apparently - in the development of punishment theory - given rise to a combined theory between retributive theory and utilitarian theory.⁸

The characteristics of this criminal political rationality have consequences for the application of criminal law as part of criminal politics. G. Peter Hoefnagels places the application of criminal law as a major part of crime prevention, in addition to efforts to utilize mass media and prevention without punishment.⁹

The imposition of restitution for the protection of victims of sexual violence crimes is a manifestation of the application of criminal law through a criminal justice system. As the application of criminal law which is part of rational criminal politics, the imposition of restitution in the criminal justice system is a matter of criminal law policy. In Karl O. Christiansen's view, the rationality of a criminal policy is characterized by the application of criminal sanctions that realize better criminal goals. Better criminal goals must be formulated first and then determine the criminal sanctions that realize the underlying criminal goals. From this point of view, the rationality of a criminal sanction must be able to realize the criminal goals that have been formulated. Based on literature searches, there are various opinions on the purpose of criminal law, which in the Criminal Code have agreed on various formulations of the purpose of punishment as in Article 51, namely a. preventing the commission of Criminal Acts by enforcing legal norms for the protection and protection of society; b. socializing convicts by providing guidance and mentoring so that they become good and useful people; c. resolving conflicts caused by criminal acts, restoring balance, and bringing a sense of security and peace in society; and d. fostering a sense of regret and freeing the convict from guilt. These criminal objectives show the integrative nature of criminal objectives, namely combining the theory of retribution on one side and the theory of benefits/theory of objectives on the other side. The previous approach to the integration of criminal objectives was also conveyed by Muladi, which is more briefly called (1) prevention (general and specific); (2) community protection; (3) maintaining community solidarity; (4) recompense/balance. ¹⁰Criminal objectives must be met with the note that which objective is the focus is casuistic in nature. ¹¹With a casuistic approach, the objectives of punishment in the form of resolving conflicts caused by criminal acts, restoring balance, and bringing a sense of security and peace in society can be realized when the suffering and damage experienced by the victim is restored and rebalanced. Muladi said that criminal acts are disturbances of balance, harmony, and harmony in community life which result in individual or societal damage.

⁶ Hugh D. Barlow, *Introduction to Criminology*, Third Edition, Little, Brown Company, Boston Toronto, 1984, page 478. It is further stated that the first theory emphasizes ¹¹the ideas of moral responsibility and justice, known as Retributivists. The second theory emphasizes the justification of punishment in the context of the ability of punishment to prevent or improve. This view is often known as Utilitarians. *Loc.Cit*.

⁷ AM Quinton in Gertrude Ezorsky, *Philosophical Perspectives on Punishment*, State University of New York, Albany, 1972, page 6. Next two theories are mentioned - retributive and utilitarian- seem, and at least are understood by their defenders, to stand in open and fla grant contradiction. Both sides have arguments at their disposal to demonstrate the atrocious consequences of the rival theory. *Loc.,Cit*.

⁸ Gertrude Ezorsky calls it the term cal retributivist Theology, Gertrude Ezorsky, *Ibid.*, page xi. Muladi also calls the combined theory with the term teleological retributivism. Muladi, *Conditional Criminal Institution, Op., Cit.*, page 51.

⁹ G. Peter Hoefnagels, *The Other Side of Criminology*, 1969, p. 56

¹⁰Muladi, *Conditional Criminal Institution, Alumni, Bandung*, 1985, p. 61.

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Thus, the purpose of punishment is to repair individual and social damages caused by criminal acts.¹² The purpose of punishment that is characterized by repairing damage or suffering of victims reflects the enforcement of law and justice as mandated in Article 52 paragraph (1). Specifically related to punishment, judges are required to consider, among others, the impact of the crime on the victim or the victim's family. Punishment that takes into account the aspect of victim protection is also mentioned first when a corporation commits a crime as referred to in Article 56 which states that in punishing corporations, the following must be considered:

- a. the level of loss or impact caused;
- b.
- c. etc.

The purpose of criminal law that is based on rational repairs to the victim's losses or suffering must be realized through rational sanctions, namely criminal sanctions that realize the purpose of the crime, namely repairing the losses or damages experienced by the victim. The types of criminal law stated in the 2023 Criminal Code refer to restitution as a criminal sanction, namely an additional criminal sanction. Article 66 paragraph (1) letter d refers to the payment of compensation as an additional criminal sanction. Furthermore, Article 94 (1) states that in a court decision, the obligation of the convict to pay compensation to the victim or heirs can be determined as an additional punishment as referred to in Article 66 paragraph (1) letter d.

Determination of compensation payments has the same meaning as restitution. Article 1 number 11 of Law Number 35 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims. Article 1 number 20 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence states that Restitution is Restitution is payment of compensation imposed on the perpetrator or third party based on a court decision or ruling that has permanent legal force, for material and/or immaterial losses suffered by the victim or his heirs. The last definition of restitution includes the determining party and its use, namely for payment of compensation for material and/or immaterial losses. With the criminal purpose of payment of compensation for losses experienced by the victim which is imposed on the perpetrator of the crime, restitution functionally realizes a rational criminal purpose. Even Article 30 paragraph 2 of Law Number 12 of 2022 states that Restitution as referred to in paragraph (1) is in the form of: a. compensation for loss of wealth or income; b. compensation for losses incurred due to suffering directly related to the Crime of Sexual Violence; c. reimbursement of medical and/or psychological care costs; and/or d. compensation for other losses suffered by the Victim as a result of the Crime of Sexual Violence. The types of losses are also determined in Article 7 A paragraph (1) of Law Number 31 of 2014 concerning Amendments to Law Number 1 of 2006 concerning Protection of Witnesses and Victims, except for point d. namely compensation for other losses suffered by the Victim as a result of the Crime of Sexual Violence.

The determination of restitution as a right in both laws and at the same time as an additional sanction under the name of compensation payment has long been mentioned

in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power at the UN General Assembly on December 15, 1985 in point 2.1. which states that offenders or third parties responsible for their behavior should, where appropriate, make fair restitution to victims, their families or dependants. 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. Restitution includes the return of property, or payment for damage or loss suffered, reimbursement of costs incurred as a result of the victimization, the provision of services and the restoration of rights. Even since 1985, this Declaration has advised the state to evaluate legislation by placing restitution as an additional criminal sanction. In point 2.2. stated Governments should be review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.

4. Conclusion

In the criminal justice system, the imposition of restitution in the criminal justice system is highly dependent on the model of the criminal justice system used. According to Muladi, the Criminal Justice System related to victim protection has 2 models, namely the procedural rights model and the Service Model. According to Muladi, the first model emphasizes the possibility of the victim to play an active role in the criminal process or in the course of the judicial process. In this case, the victim of the crime is given the right to file a criminal complaint or to assist the prosecutor or the right to be present and heard at every level of the court hearing where his interests are involved, including the right to be consulted by the correctional institution before being given conditional release and ultimately the right to make peace or civil court proceedings.¹³ Furthermore, in the Service Model, the emphasis is placed on the need to create standard standards for the development of crime victims, which can be used by the police, for example in the form of guidelines for notification to victims and/or the prosecutor's office in handling their cases, providing compensation as a criminal sanction of a restitutionary nature and the impact of statements from victims before the sentence is imposed. This approach sees victims of crime as specific targets to be served within the framework of police and other law enforcement activities.¹⁴

In relation to the demands of today's criminal law on the interests of victims, it seems that the model of procedural rights is considered to be able to fulfill the feeling of revenge for the victim and the community. According to Muladi, this feeling exists everywhere, so that the function of criminal law and criminal law can run well and can even improve cooperation between the police, prosecutors and victims. In addition, the victim through this method is possible to regain self-esteem and self-confidence. Furthermore, according to Muladi, the existence of these procedural rights can assist the prosecutor's duties and provide a strong flow of information to the judge.¹⁵

However, the procedural rights model can also create a conflict between public

¹³Muladi, Protection of Victims Through the Criminal Process in Muladi and Barda Nawawi Arief, *Anthology of Criminal Law*, Alumnus, Bandung, 1992, page 77.

¹⁴ *Ibid.*, page 80.

¹⁵ *Ibid.*, page 80.

interest and personal interest. ²⁹ The participation of victims in the administration of criminal justice can place public interest below individual interest. Another negative aspect is the possibility that the rights given to the victim can actually cause a mental burden for the person concerned ⁷ and open up opportunities to make them the targets of oppressive actions from the perpetrators of criminal acts and in turn can even make them victims who become victims for the second time (*Risk of Secondary victimization*). ²⁵ Finally, according to Muladi, a free judicial atmosphere is based on the principle of the presumption of innocence. ²⁰ In the second model (service model), the first advantage that can be put forward is that this model can be a means of returning what is called *the Integrity of the System of institutionalized trust* , within the framework of a communal perspective. The victim will feel that his interests are guaranteed again in an orderly social atmosphere. An orderly, controlled and trusting atmosphere can be recreated. ¹² ⁷ ¹⁸

The procedural justice system provides victims with their rights in the criminal justice mechanism. The Declaration on Basic Principles Concerning Victims of Crime and Abuse of Power has determined that *The responsiveness of judicial and administrative process to the needs of victims should be facilitated by :* ⁴⁰ ¹²

- (a) informing victims of their role and and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information
- (b) allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system
- (c) providing proper assistance to victims throughout the legal process
- (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation
- (e) Avoiding unnecessary delays in the disposition of proceedings and the execution of orders or decisions granting awards to victims

⁹⁰ Even in the declaration it is possible that informal mechanisms to resolve disputes including using mediation, arbitration, customary justice practices must be used to facilitate peace and recovery for victims. The existence of facilities specified in the Declaration shows that the criminal justice system through the application of criminal law that facilitates the payment of compensation or restitution has been a means of realizing the goal of restoring the suffering and losses of victims of sexual violence. The means of restitution sanctions for victims of sexual violence have implemented a rational criminal law policy approach.

¹⁶ *Ibid.*, page 81.

¹⁷ *Loc. Cit.*

¹⁸ *Ibid.*, pages 81-82. Furthermore, according to Muladi, this model is also considered to be able to save costs, because with the help of standard guidelines, criminal justice can consider the losses suffered by the victim in order to determine the composition for the victim. ¹⁰

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