

Fulfillment of the Rights of Restitution for Victims of Sexual Violence Crimes in Ruling Number: 196/Pid.Sus/2023/Pn.Gtlo

Rahman Sahi¹, Darmawati³, Apriyanto Nusa³

Universitas Ichsan Gorontalo

Article Info

Article history:

Accepted: 6 January 2025

Published: 1 March 2025

Keywords:

Fulfillment of Restitution;

Victims;

Sexual Violence;

Abstract

Sexual violence is a crime that must be eliminated because sexual crimes can cause psychological and/or physical suffering to victims that interfere with physical health. Therefore, it is necessary to make efforts for optimal mental and social recovery for Victims of Sexual Violence in accordance with existing regulations as a form of legal protection for victims. The purpose of this study is to realize the rights of Victims of Sexual Violence. This study uses a normative legal research method. The purpose and intent of this study is to analyze how judges consider the Fulfillment of Restitution Rights for Victims of Sexual Violence in their decisions, as regulated in Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, Government Regulation Number 43 of 2017 and Supreme Court Regulation Number 1 of 2022, by the panel of judges in the case of sexual violence Number 196/Pid.sus/2023/PN.Gtlo. Cases of sexual violence are rampant in our environment. The current Criminal Code (KUHP) only focuses on punishing the perpetrators and has not considered the best legal efforts for victims of sexual violence. This study aims to determine the implementation of restitution as the fulfillment of the rights of victims of sexual violence. This study is a normative study by looking at the implementation of restitution from the laws and regulations carried out by the Witness and Victim Protection Agency (LPSK). The results of this study indicate that the application for restitution can be submitted by the victim through LPSK along with the criminal process and even starting from the beginning of the investigation. The challenges faced by LPSK as an institution that facilitates restitution for victims of sexual violence include limited psychologists in several areas, lack of support from the community, and fulfillment of restitution rights that have not been implemented effectively. The obstacles experienced by law enforcement officers in implementing restitution for victims of sexual violence are that there has been no regulation of coercive efforts for perpetrators of sexual violence to pay restitution decided in court.

This is an open access article under the [Lisensi Creative Commons Atribusi-BerbagiSerupa 4.0 Internasional](https://creativecommons.org/licenses/by-sa/4.0/)



Corresponding Author:

Mohamad Rizky Alhasni

Universitas Ichsan Gorontalo

Email: kikialhasni@gmail.com

1. INTRODUCTION

Criminal law is a part of the law that does not show any differences with other laws, namely that all of these laws contain a number of provisions to ensure that the norms recognized in the law will truly be obeyed by everyone. This is because basically all laws aim to create a situation in social life in society, both in small environments and in larger environments, so that there is harmony, order, legal certainty, and so on.

The existence of special suffering in the form of punishment certainly cannot be avoided in other parts of the law in general, namely if people want the norms contained therein to be strictly obeyed by everyone. This suffering is in the form of punishment for those who have committed a violation of the prohibitions or prohibitions specified therein. the requirements and prohibitions specified therein.

Based on the 1945 Constitution of the Republic of Indonesia, in relation to Human Rights contained in Article 28A, it states that "Everyone has the right to live and the right to defend his life and living". Everyone has the right to survive, grow, develop and obtain protection from crime and discrimination. The progress of a nation is determined by how productive society is in taking certain roles to raise the image and good name of the nation itself. The better the quality of a nation's society, the better the nation will be.

In social life we must respect and share guard each other, both men and women, in order to avoid evil that is not desired, as an effort to overcome rampant crimes such as sexual violence, in society there is a view that places women as inferior, because it is considered to be contrary to their nature (according to their nature, women are gentle, sensitive, patient, etc.). Thus, when women are in a position as victims of crime, judgment has taken place from the start. Generally, women's position is vulnerable. It is called vulnerable because of the disadvantaged position of women.

Women who are vulnerable (women at risk) are women who are at great risk of experiencing disorders or problems in their development, both psychologically (mentally), socially and physically. Women are vulnerable to being influenced by internal and external conditions, including women who are economically disadvantaged (from poor families), culturally disadvantaged (in remote areas), broken homes (disharmonious families), as well as women who experience disabilities, who are vulnerable to potential treatment. Crime of Sexual Violence.

In Article 1 Paragraph (1) of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, it explains that Criminal Acts of Sexual Violence are all acts that fulfill the elements of criminal acts as regulated in this Law and other acts of sexual violence as regulated in the Law. -Law to the extent specified in this Law.

As an effort to provide legal protection for vulnerable groups, especially women who are victims of criminal acts of sexual violence, the state issues regulations that guarantee women's rights and protect women from all forms of crime, especially criminal acts of sexual violence as stipulated in Law NO. 12 of 2022, Article 6 paragraph (c) which reads *"Any person who abuses position, authority, trust or trust arising from deception or circumstances or takes advantage of a person's vulnerability, inequality or dependency, forces or through misdirection moves that person to allow sexual intercourse or obscene acts to be committed with him or with another person. , shall be sentenced to a maximum imprisonment of 12 (twelve) years and/or a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah)."*

Regarding the crime of sexual violence which causes women to suffer losses both materially and immaterially, the rights of victims of sexual violence are regulated in Law Number 12 of 2022, Article 30 paragraph (1) and paragraph (2) which reads, Paragraph (1) "Victims of Crimes of Sexual Violence have the right to receive Restitution and Recovery Services." Paragraph (2) "Restitution as intended in paragraph (1) is in the form of: (a). compensation for loss of wealth or income; (b). Compensation for losses incurred as a result of suffering directly related to the crime of sexual violence; (c). reimbursement for medical and/or psychological care; and/or (d). compensation for other losses suffered by the Victim as a result of the Crime of Sexual Violence.

Talking about the crime of sexual violence, it cannot be separated from the issue of women's rights as victims. Often, we focus on cases and punishment of perpetrators without

thinking about guarantees and fulfilling the rights of women as victims. Therefore, Law Number 12 of 2022 concerning Crimes of Sexual Violence, regulates Article 31 which reads Paragraph (1). Investigators, public prosecutors and judges are obliged to notify victims and LPSK of their right to restitution. Paragraph (2). "Restitution can be deposited in advance at the clerk's office of the district court where the case was examined." Paragraph (3). "Investigators can confiscate the assets of perpetrators of crimes of sexual violence as collateral for restitution with permission from the local district court. Paragraph (4). "Confiscation as intended in paragraph (3) is carried out taking into account the rights of third parties to have faith in Good." This article gives a mandate to law enforcers such as investigators, public prosecutors and judges required to notify the Victim and LPSK of the Right to Restitution, in the explanation of Law Number 12 of 2024 Restitution is the payment of compensation charged to the perpetrator or third party based on a court decision or decision which has permanent legal force, for material losses and/or immaterial suffered by the victim or his heirs.

Legal protection for women which includes regulations on guaranteeing the rights of victims of sexual violence crimes is actually quite good, however, what is of note for law enforcers is how to show their side with the victims. Law Enforcers tend to gravitate towards punishing perpetrators so that the essence of protecting and guaranteeing victims' rights is not optimal, and is even neglected even though it is the victims who suffer major losses, both material and immaterial. Facts on the ground prove that law enforcement relating to victims' rights, especially the right to obtain compensation for the suffering experienced by victims, is still far from optimal. This right to obtain compensation is known in law as the right of restitution.

The small number of victims in cases of criminal acts of sexual violence who fail to receive the right to restitution is usually caused by several factors, including the ignorance of law enforcers (investigators, public prosecutors and judges), victims and families regarding the right to restitution, as well as the perpetrator's lack of awareness of how to pay Restitution to victims because there is no force when the Restitution Rights are not paid, complicated legal procedures in submitting a request for restitution, the judge's consideration of the defendant's economic capacity, and so on. From this explanation, it can be judged that law enforcement regarding the rights to restitution for victims of crimes of sexual violence in Indonesia is still very weak.

It cannot be denied that cases of criminal acts of sexual violence against women are very vulnerable to occurring, especially in big cities, such as cases of criminal acts of sexual violence that done by the defendant" abuse position, authority, trust, or influence arising from deception or relationship of circumstances or taking advantage of vulnerability, inequality, or someone's dependence, forcing or allowing done sexual intercourse or lewd acts with him or another person." as arranged And threatened in article 6 paragraph (c) of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, which occurred in the jurisdiction of the Gorontalo District Court as stated in the decision of the Panel of Judges in Case Number: 196/Pid.Sus/2023/PN.Gtlo, in which the Panel of Judges does not sentenced will/terminating the Right of Restitution to the Perpetrator/Defendant as a form of liability for material or material losses immaterial suffered by the victim, even though Law Number 12 of 2022 concerning Crimes of Sexual Violence requires Law Enforcement to provide the Right of Restitution to victims of Crimes of Sexual Violence.

Then, based on the explanation that the author has outlined above, by referring to several references regarding the Crime of Sexual Violence (TPKS) against Women and its legal guarantees and protections, it is interesting to study in more depth the considerations of the Panel of Judges at the Gorontalo District Court regarding whether to fulfilled The Right to Restitution for Women Victims of Violent Crimes Sexual on

Decision Number: 196/Pid.Sus/2023/PN.Gtlo, and what are the considerations of the Panel of Judges? Inspect and to try the case, was decided by the Panel of Judges at the Gorontalo District Court, in Decision Number: 196/Pid.Sus/2023/PN.Gtlo in accordance with the concept of compensation as intended in Law number 12 of 2022 concerning Crimes of Sexual Violence and Regulations Government Number 43 of 2017 concerning Implementation Restitution for Victims of Crimes of Sexual Violence.

2. RESEARCH METHOD

The approach method that the author will use in this research is a normative legal research method that focuses on aspects of law that are normative in nature, such as norms, principles or legal rules themselves. focuses on assessing the suitability of existing legal norms with legal objectives and community needs.

3. RESEARCH RESULTS AND DISCUSSION

1. Fulfillment of the Rights of Restitution for Victims of Sexual Violence in Decision Number 196/Pid.sus/2023/PN.Gtlo.

a. The Right to Restitution for Victims of Crimes of Sexual Violence in Decision No. 196/Pid.sus/2023/PN.Gtlo

- Investigators Did Not Inform Victims of their Rights to Restitution

Investigators have an important role in identifying and investigating an incident that is suspected of being a criminal act. Finding case positions is an important point in determining and determining a criminal act and naming a suspect. Investigators are state organs that have the authority to carry out investigations, collect evidence so that criminal acts become clear.

Apart from that, investigators also have the authority to respond to any information. Investigations of criminal acts are of course carried out by investigators, whether the crime committed is caught red-handed or not caught red-handed. However, every investigation process has become the duty and authority of investigators, starting from Police Investigators, Civil Servant Investigators, and Investigators. In addition, investigators have the authority to process investigations.

Investigators are also obliged to inform victims of crimes of sexual violence of their rights to restitution, as mandated by Law Number 12 of 2022 concerning Crimes of Sexual Violence. in Decision number; 196/Pid.sus/2023/PN.Gtlo, this can be done seen In the Consideration of the Panel of Judges who examined and tried the case, this matter was not taken into consideration because The investigator who handled the case did not inform the victim that the victim was entitled to restitution, so the prosecutor Claimant General does not include in the indictment and also the claim.

- The Public Prosecutor Does Not Inform Victims of Sexual Violence Crime Rights

Public prosecutors have an important role in the criminal system, especially in informing and ensuring the Rights of Restitution for victims of sexual violence crimes. However, if the prosecutor does not provide the victim with sufficient rights to restitution, this can result in the loss of the opportunity for the victim to obtain it change losses they should receive.

Prosecutor Claimant The general public is responsible for informing victims of their rights, including the right to apply for restitution. According to Supreme Court Regulation (Perma) no. 1 of 2022, restitution is compensation given to victims or their families by the perpetrator of a crime or a third party.

This right covers various forms of loss, both material or immaterial, as a result of the criminal act experienced.

However, this research shows that in practice, many prosecutors do not properly inform about the right to restitution, including in Criminal Case Number 196/Pid.sus/2023/PN.Gtlo. This can be caused by several factors:

- a. Lack of Legal Awareness: Many prosecutors may not fully understand the importance of the right to restitution or how to communicate it to victims.
- b. Limited Resources: Prosecutors often face time pressures and limited resources, so they may not be able to devote sufficient attention to each case.
- c. Weak Coordination: Sometimes, there is a lack of coordination between prosecutors and other institutions that play a role in victim protection, such as the Witness and Victim Protection Agency (LPSK).

When the public prosecutor does not inform the victim of the right to restitution, several negative impacts can occur:

- a. Loss of Legal Rights: Victims may lose the opportunity to apply for restitution, so they do not receive compensation for the losses experienced.
- b. Increased Trauma: Not receiving compensation can harm the victim's psychological condition, adding to the emotional and financial burden resulting from the crime they have experienced.
- c. Injustice in the Legal Process: Uncertainty regarding their rights can make victims feel neglected in the justice system, resulting in decreased trust in the law and law enforcement agencies

It is important for public prosecutors to actively inform victims of criminal acts of their rights to restitution. Increasing legal awareness and strengthening coordination with relevant institutions can help ensure that victims' rights are properly fulfilled. In this way, the criminal system can be fairer and more responsive to the needs of victims.

- **Judge Does Not Inform Victims of Sexual Violence Crime Rights**

The defendant has been charged by the public prosecutor with the indictment subsidiarity so that the Panel of Judges immediately considers and decides on the primary charges as regulated in Article 6 Letter (c) of Law number 12 of 2022, concerning the Crime of Sexual Violence, the elements of which are as follows:

1. Each person
2. Abusing a person's position, authority, trust or disposition arising from deception or circumstances or taking advantage of a person's vulnerability, inequality or dependency, forcing or misleadingly encouraging that person to commit or permit sexual intercourse or obscene acts with him or with another person:

Based on the facts revealed at the trial that the defendant, RICALDO aka RIKAL, the Defendant was presented in court charged with committing a criminal act as stated in the public prosecutor's indictment and based on the identity in the Public Prosecutor's Indictment Letter that the Defendant was correct so there was no error in person or error in persona and it was obtained. The fact that the defendant responded to all questions asked during the trial means that the panel of judges is of the opinion that the defendant is physically and mentally healthy. Therefore, the elements for each person have been proven.

The panel is of the opinion that the actions carried out by the defendant against the victim witness OTAVIANI ALI alias ANI and the consequences

experienced by the victim witness OTAVIANI ALI alias ANI have met the formulation of the element of abuse of position, authority, trust or authority arising from deception or relationships. circumstances or taking advantage of a person's vulnerability, inequality or dependency, forcing or misleadingly moving that person to commit or permit sexual intercourse or obscene acts with him or with another person:

In the Judge's Considerations, during the trial process the panel of judges did not find anything that could be annulled accountability crime, whether as a justification or excuse, the defendant must be held responsible and because the defendant is capable of responsibility, he must be declared guilty and sentenced to a crime. In addition, in this case the defendant has been subject to lawful arrest and detention, so the period of arrest and detention must be deducted in full from the sentence imposed.

The panel of judges considers aggravating and mitigating. The following are things that could aggravate and mitigate the defendant's sentence:

a. Aggravating Matters

The Defendant's actions damaged the victim's future until the victim became traumatized. Victim Witness Victim OTAVIANI ALI alias ANI suffered material and immaterial losses. experienced trauma and felt pain in her reproductive organs, this was supported by the results of the Visum et Repertum examination issued by Aloesaboe General Hospital Gorontalo City number; 357/Perk/27/RS/2023, January 30 2023, signed by the examining doctor, Dr. Maimun Ihsan Sp.OG(K) with the following examination results:

- A. There was a tear in the blood membrane at the 2 o'clock position twelve point six o'clock and three o'clock.
- B. There were visible abrasions on the perineum at the six o'clock position.
- C. There were no visible signs of violence anywhere else on the body.

b. Mitigating Matters

The defendant behaved politely during the trial and regretted his cooperative actions at the time of inspection.

2. Implications of Decision No. 196/Pid.sus/2023/PN.Gtlo regarding the fulfillment of the rights of restitution for victims of criminal acts of sexual violence.

Whereas from the facts of the trial in case no. 196/Pid.sus/2023/PN.Gtlo, the judge's consideration was that the defendant had had sexual intercourse with the victim witness by previously using coercion. The defendant had taken advantage of the victim witness' vulnerability in carrying out the sexual intercourse, thus the element of taking advantage. vulnerability, a person, forcing to have intercourse with him has been proven:

That because all the elements of Article 6 Letter c of Law Number 12 of 2022 concerning the Crime of Sexual Violence are fulfilled, the Defendant must be declared to have been legally and convincingly proven to have committed the criminal act as charged in the single indictment. Considering that in this case the defendant has been subject to legal detention, the period of detention must be deducted in full from the sentence imposed. Considering, that because the Defendant is detained and the detention of the Defendant is based on sufficient reasons, it is necessary to determine that the Defendant remains in detention:

The decision of the panel of judges regarding Case no. 196/Pid.sus/PN.Gtlo as follows:

- a. Declaring that the Defendant Ricaldo Ishak alias Rikal was legally and convincingly proven guilty of committing the crime of "Taking advantage of a person's vulnerability, forcing him to have sexual intercourse with her" as stated in the Public Prosecutor's single indictment.
- b. Sentenced the Defendant to prison for 3 (three) years.
- c. Determines that the period of detention that has been served by the Defendant is deducted entirely from the sentence imposed.
- d. Determining that the Defendant remains detained:
- e. Charge the Defendant to pay court costs in the amount of Rp. 5,000.00 (five thousand rupiah):

Settlement of criminal cases Case No. 196/Pid.sus/2023/PN.Gtlo, through the criminal justice system which is a series of processes consisting of several stages, namely the stages of inquiry, investigation, prosecution, and examination in court and the Court Decision. in the decision of case no. 196/Pid.sus/2023/PN.Gtlo does not provide protection for victims of sexual violence from the Investigation, Investigation and Examination Stages in Court Gorontalo State, where victims' rights (Rights of Restitution) have been established violated as it has been arranged in applicable legislation.

Regulation of victims' rights can be found in several laws, namely Book Criminal Law (KUHP), Book Procedural Law Criminal (KUHP), Law Number 12 of 2022 concerning Crimes of Sexual Violence and Government Regulation (PP) Number 43 of 2017 concerning Implementation of Restitution for Children Who Are Victims of Crimes.

The following are the rights of the victims arranged in legislation and has been violated, and not considered in Decision No. 196/Pid.sus/2023/PN.Gtlo ;

1. The Criminal Code, in the decision is not considered in Decision No. 196/Pid.Sus/2023/PN.Gtlo, Victims' rights in the Criminal Code arranged In Article 14 (C), in this case, when the judge is going to impose a conditional sentence, it is determined that there are general conditions and special conditions that must be fulfilled by the convict during the probation or detention period. The special condition is that within a certain time the convict, which is shorter than his probation period, must compensate all or part of the losses resulting from his actions, in this case having committed a crime of sexual violence.
2. Book Criminal Procedure Law, Victims' rights in the Criminal Procedure Code are not considered in Decision no. 196/Pid.Sus/2023/PN.Gtlo, which has arranged in Article 98 paragraph (1), that if the act that is the basis of an indictment in a criminal investigation by a district court causes harm to another person, then the presiding judge at the trial, at the request of the other person, can decide to combine the claim for compensation with the criminal case.
3. Law Number 12 of 2023 concerning Crimes of Sexual Violence, Victims' Rights in this Law are not considered in Decision No. 196/Pid.Sus/2023/PN.Gtlo, which has arranged In Article 31 paragraph (1) investigators, public prosecutors and judges are obliged to notify victims and LPSK of their right to restitution. Paragraph (2) Restitution can be sought first at the Registrar's Office of the District Court where the case was examined. Paragraph: Investigators can confiscate the assets of perpetrators of crimes of sexual violence as collateral for restitution with permission from the local district court. Paragraph: Confiscation as intended in paragraph (3) is carried out taking into account the rights of third parties who have good intentions.

4. Government Regulation no. 43 of 2017 concerning Implementation of Restitution for Child Victims of Crime. Article 14 paragraph (1) At the prosecution stage as intended in Article 5 paragraph (2) letter b, the public prosecutor informs the victim regarding the rights of the victim of a criminal act to obtain restitution and the procedures for submitting it before and/or during the trial process.
5. Supreme Court Regulation Number 1 of 2022, concerning Procedures for Settlement of Applications and Providing Restitution and Compensation to Victims of Crime, Article 14 (1) At the prosecution stage as intended in Article 5 paragraph (2) letter b, the public prosecutor notifies the victim regarding the rights of children who are victims of criminal acts to obtain restitution and procedures for applying for it before and/or during the trial process.

4. CONCLUSION

Judges who do not consider restitution for victims of criminal acts of sexual violence in Decision Number: 196/Pid.Sus/2023/PN.Gtlo, do not reflect the values of justice. The judge did not sentence the defendant to the amount of restitution, then the request for restitution was not submitted by the public prosecutor and was not fought for by the investigator, even though in this case the defendant had an important role in compensating for the losses experienced by the victim, the victim is entitled to receive restitution. with a compensation value commensurate with the material and immaterial losses suffered.

5. BIBLIOGRAPHY

- Andi Hamzah, 2008, *Hukum Acara Pidana Indonesia Edisi Revisi*, Sinar Grafika, Jakarta.
- Andi esse, Darmawati, Sumiati B, *Jurnal restorative justice, peran pemerintah dalam memberikan kepastian hukum bagi masyarakat di suku bajo* 'Vol. 7 No. 1, 2023
- Dr. Suryanto, SH, MH, *Mkn Buku Metode penelitian Hukum* (Unigrees Press tahun 2023)
- Jurnal Deassy J.A. Hehanussa, Yonna Beatrix Salamor, *Membangun Kesadaran Hukum Perempuan Dan Anak Dalam Penanggulangan Tindak Pidana Kekerasan Seksual*
- Nanda Yunisa, *UU Perlindungan anak, UURI NO. 35 tahun 2014 tentang perubahan atas UU no. 23 tahun 2002 tentang perlindungan anak*, Pustaka mahardika, yogyakarta, 2015
- Satjipto raharjo 2000, *ilmu hukum*, Bandung : PT. Citra Aditya Bakti.
- Teguh Prasetyo, *Hukum Pidana Materil*, Kurnia Alam, Yogyakarta, 2005.
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 28A
- Undang-Undang Republik Indonesia, Nomor 12 Tahun 2022, Tentang Tindak Pidana Kekerasan seksual, Pasal 1 ayat (1).seksual, Pasal 1 ayat (1).