

# Why have Indonesian murderers not paid victims' heirs?



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## Abstract

*The crime of murder results in material and non-material losses for the victims who experience it. The families of victims murder crimes or the heirs are the ones who suffer the most losses following a murder incident that claims the lives of family members or loved ones. Criminal law in Indonesia still does not really prioritize punishment in the form of compensation, so that if heirs want to get compensation they have to submit an application or go through a separate route, this results in the value of substantial justice in criminal law not being upheld, this is proven by the lack of obligations. Compensation in the form of restitution that is mandatory for perpetrators of crimes. To respond it, a new way of upholding substantial justice is needed. By using doctrinal research methods, pre-existing legal sources related to the research theme are searched for. The research results show that several efforts are needed to uphold substantial justice in criminal law, namely the re-actualization of criminal law and the provision of a special forum for heirs to demand compensation directly. In this way, substantial justice can be upheld in criminal law and without going through requests or independent efforts.*

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## 1. Introduction

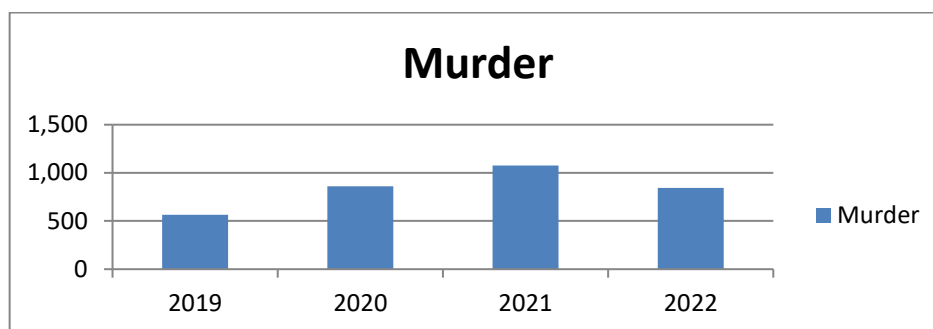
Criminal crime is an act that is greatly feared by those who will become its victims. One of them is the crime of murder.<sup>1</sup> The crime of murder has the potential to cause losses for those who experience it, even the families left behind are the first to experience

<sup>1</sup> James M Ogilvie and Steve Kisely, 'Examining the Health and Criminal Justice Characteristics for Young People on Compulsory Community Treatment Orders: An Australian Birth Cohort and Data Linkage Study', *International Journal of Law and Psychiatry*, 83 (2022), 101813 <<https://doi.org/https://doi.org/10.1016/j.ijlp.2022.101813>>.

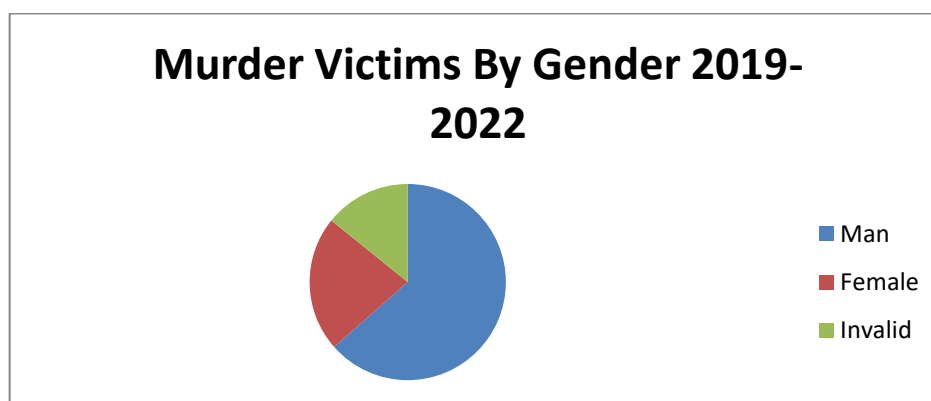
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material and non-material losses.<sup>2</sup> The number of murder crimes in Indonesia has fluctuated from year to year, data from the Indonesian Republic Police's Pusiknas (National Crime Information Center) shows.<sup>3</sup>



The gender of murder victims is classified as follows.



On average, every day in Indonesia 2 or 3 people die because they are killed. Of course, this situation raises many questions, how people can easily commit murder and what the impact will be on future murder victims. One of the reasons why a person commits murder is due to momentary emotions, so that a person cannot think long about the future impact.<sup>4</sup> Maybe someone will be satisfied after committing murder, but for the victim and the victim's family it is the main beginning that opens the door to suffering for a long period of time in the future. Real material losses will definitely be suffered, such as medical costs, funeral costs, and other costs that arise when the death process is

<sup>2</sup> Anna Johnson and Myrna Dawson, 'Child Homicide in Ontario, Canada: Comparing Criminal Justice Outcomes', *International Journal of Law, Crime and Justice*, 75 (2023), 100625 <<https://doi.org/https://doi.org/10.1016/j.ijlcj.2023.100625>>.

<sup>3</sup> POLRI, *Lebih 3.000 Orang Tewas Dibunuh Dalam 4 Tahun* (Indonesia, 2023).

<sup>4</sup> Katharina Janke, Carol Propper, and Michael A. Shields, 'Assaults, Murders and Walkers: The Impact of Violent Crime on Physical Activity', *Journal of Health Economics*, 47 (2016), 34–49 <<https://doi.org/10.1016/j.jhealeco.2016.01.006>>.

completed.<sup>5</sup> Furthermore, non-material losses will become suffering that awaits in the future.<sup>6</sup>

The law in Indonesia relating to providing compensation to the heirs of murder victims has not been regulated clearly and is binding, the regulations are only limited to additional punishment, and the nature of the punishment is not binding, that is, it can be replaced by other punishments, for example prison sentences or paying a fine to the state.<sup>7</sup> This situation adds to the suffering for the heirs of murder victims. In fact, Indonesia has provided a forum or effort for heirs to claim compensation, namely through combining compensation cases (KUHP 98-101), lawsuits against unlawful acts (Civil Code article 1365), and through claims for compensation through compensation or restitution through the Institute.<sup>8</sup> Witness and Victim Protection (LPSK). However, all these efforts cannot run by themselves, they must begin with a request from the injured party, in this case the heirs, apart from that, bureaucratic and administrative processes must also be taken. The process of compensation for losses also goes through a separate trial process, so this situation adds to the suffering for the victim if they want to take it.<sup>9</sup>

The author presents a selection of publications from prior study findings to demonstrate the originality of this research paper. These studies include: Initially, a document titled “Compensation and restitution for victims of crime in indonesia: Regulatory flaws, judicial response, and proposed solution” : The study aims at examining the limitations of the Indonesian legislation concerning the compensation and restitution for the victims of crime by reviewing court cases and the implementation of the laws. By employing the doctrinal legal research, this study identifies that the victims’ rights to compensation and restitution in various legislations are contingent upon the perpetrator’s conviction, excluding the victims of crime from obtaining their rights. In court decisions, the perpetrator’s resuscitation is frequently accompanied with a sentence of criminal detention for a short period of time. Victims have a tough time obtaining restitution since the perpetrator prefers to serve time in prison rather than to pay compensation to the victim. Therefore, to provide

<sup>5</sup> Marcos Alan Ferreira and Anna Beatriz Gonçalves, ‘Criminal Governance and Systems of Parallel Justice: Practice and Implications in Brazilian Urban Peripheries’, *International Journal of Law, Crime and Justice*, 68 (2022), 100519 <<https://doi.org/https://doi.org/10.1016/j.ijlcj.2021.100519>>.

<sup>6</sup> Aprillia Krisdayanti, ‘Perlindungan Hukum Bagi Justice Collaborator Dalam Pengungkapan Tindak Pidana Pembunuhan Berencana’, *Jurnal Lex Renaissance*, 7.4 (2022), 803–18 <<https://doi.org/10.20885/jlr.vol7.iss4.art8>>.

<sup>7</sup> Stuart Yeh, ‘The Electronic Monitoring Paradigm: A Proposal for Transforming Criminal Justice in the USA’, *Laws*, 4.1 (2015), 60–81 <<https://doi.org/10.3390/laws4010060>>.

<sup>8</sup> Rian Saputra, Josef Purwadi Setiodjati, and Jaco Barkhuizen, ‘Under-Legislation in Electronic Trials and Renewing Criminal Law Enforcement in Indonesia (Comparison with United States)’, *JOURNAL of INDONESIAN LEGAL STUDIES*, 8.1 (2023), 243–88 <<https://doi.org/10.15294/jils.v8i1.67632>>.

<sup>9</sup> Niying Li, Zhan Wang, and K. Dear, ‘Violence against Health Professionals and Facilities in China: Evidence from Criminal Litigation Records’, *Journal of Forensic and Legal Medicine*, 67.May (2019), 1–6 <<https://doi.org/10.1016/j.jflm.2019.07.006>>.

victim protection and assistance, it is necessary to comprehensively understand the distinguished natures between compensation and restitution that have direct impact on the promulgation of the laws and the imposition of such victim rights by the courts.<sup>10</sup>

Furthermore, a document titled “Victims’ Rights, Victims’ Expectations, and Law Enforcement Workers’ Constraints in Cases of Murder”. Research on crime victims and their experiences with the criminal justice system suggests that victims’ rights (e.g., victim impact statements) and victims’ services (e.g., crime victims’ compensation, counseling) have not significantly improved victims’ satisfaction with the criminal justice system or their recovery from the crime. Thus, we appear to know little about how to satisfy and assist victims of crime. This study uses the symbolic interactionist perspective to examine victims’ experiences with law enforcement workers (e.g., detectives, counselors) with a focus on people who have lost a loved one to murder (“bereaved victims”). The data come from in-depth interviews with thirty-two bereaved victims, seven law enforcement workers, and three crime victims’ advocates in Union County (pseudonym). Bereaved victims define the victim role differently from law enforcement workers, creating two main points of conflict with workers: (1) a conflict over their deceased loved one's body, and (2) a conflict over the flow of information in the case. Bereaved victims’ frustrations over these conflicts created problems for their recovery. Bereaved victims’ efforts to see their deceased loved one's body, guide detectives’ investigation, and learn information about the murder and the investigation took a back seat to detectives’ interests in protecting the integrity of the investigation and building a strong case for the prosecution. Policy implications are discussed.<sup>11</sup>

According to the two articles, the author asserts that this research is innovative since it addresses legal concerns around the lack of compensation paid by murderers in Indonesia to their victims. The author accomplishes this by conducting a comprehensive examination and analysis of all legal documents produced by the Indonesian government that pertain to the specific legal matters addressed in this study. Murder punishment in Indonesia prioritizes repressive punishment,<sup>12</sup> namely giving physical punishment to the perpetrator of the crime, while restitutive punishment is still not popularly enforced, the proof is that until now there has been no criminal punishment, especially for murder, which requires the perpetrator of the murder to provide compensation or restitution.<sup>13</sup> This situation is

<sup>10</sup> Mahrus Ali and others, ‘Compensation and Restitution for Victims of Crime in Indonesia: Regulatory Flaws, Judicial Response, and Proposed Solution’, *Cogent Social Sciences*, 8.1 (2022) <<https://doi.org/10.1080/23311886.2022.2069910>>.

<sup>11</sup> Sarah Goodrum, ‘Victims’ Rights, Victims’ Expectations, and Law Enforcement Workers’ Constraints in Cases of Murder’, *Law and Social Inquiry*, 32.3 (2007), 725 – 757 <<https://doi.org/10.1111/j.1747-4469.2007.00075.x>>.

<sup>12</sup> Eddy Rifai, ‘An Analysis of the Death Penalty in Indonesia Criminal Law’, *Sriwijaya Law Review*, 1.2 (2017), 190–99 <<https://doi.org/10.28946/slrev.Vol1.Iss2.44.pp191-200>>.

<sup>13</sup> Laurence Roy and others, ‘Profiles of Criminal Justice System Involvement of Mentally Ill Homeless Adults’, *International Journal of Law and Psychiatry*, 45 (2016), 75–88 <<https://doi.org/https://doi.org/10.1016/j.ijlp.2016.02.013>>.

something that needs to be considered together, where the main law must be positioned as a balanced enforcer of justice, namely a balance between actions and responsibilities, so that the damage caused must also be repaired, because the victim's losses cannot be recovered just by seeing the perpetrator of the murder sentenced to prison.

## 2. Research Method

This writing uses doctrinal research methods, doctrinal research is legal research is a process of finding legal rules, doctrines, or court decisions related to the scope of research. All legal materials related to research are collected and analyzed according to the problem.<sup>14</sup> Through this method, legal gaps related to providing compensation to the heirs of murder crimes can be identified and solutions can be found. A legal vacuum is found and then an appropriate answer is sought to resolve the problem. The analysis technique is carried out using several approaches, namely the historical approach, legal approach, case approach and theoretical approach.<sup>15</sup>

## 3. Results and Discussion

### Merger of Compensation Cases

Merger of compensation cases is regulated in Law no. 8 of 1981 concerning the Criminal Procedure Code ("KUHP"), for victims of wrongful arrest or wrongdoing in the judicial process it is regulated in: Article 1 Number 22 of Law Number 8 of 1981 states that compensation is a person's right to receive fulfillment of his demands in the form of compensation for a sum of money for being arrested, detained, prosecuted or tried without reasons based on law or because of a mistake regarding the person or the law. implemented in the manner regulated in this Law. Furthermore, arrangements for victims of criminal crimes are regulated starting from Article 98 to Article 101.<sup>16</sup>

Article 98 paragraph (1) of the Criminal Procedure Code stipulates that, "If an act which is the basis of an indictment in a criminal case examination by a district court causes harm to another person, then the presiding judge at the trial may, at the person's request, decide to consolidate the claim for compensation to criminal case." Applications for combining compensation cases based on the provisions of Article 98 paragraph (2) of the Criminal Procedure Code Law are submitted no later than before the public prosecutor files a criminal complaint. In the event that the public prosecutor is not present, the request is submitted no

<sup>14</sup> M Zaid and others, 'Eradicating Public Official Corruption Indonesia : A Revolutionary Paradigm Focusing on State Financial Losses', *Wacana Hukum*, 29.2 (2023), 87–111 <<https://doi.org/10.33061/wh.v29i2.9564>>.

<sup>15</sup> Tara Nadya Andiani, FX Hastowo Broto Laksito, and Jose Gama Santos, 'Evidence from Indonesia on the Legal Policy Confronting Discrimination of Minority Groups Based on Race and Ethnicity', *Wacana Hukum*, 29.2 (2023), 146–62 <<https://doi.org/10.33061/wh.v29i2.9808>>.

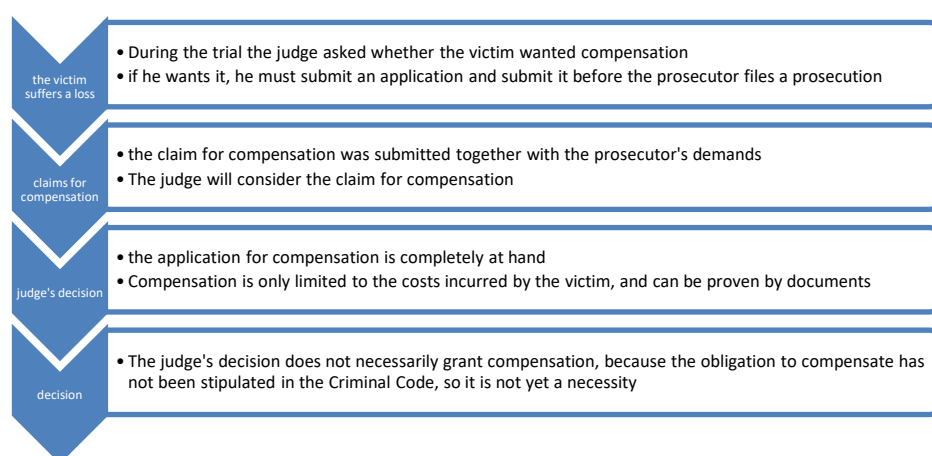
<sup>16</sup> Destri Tsurayya Istiqamah, 'Analisis Nilai Keadilan Restoratif Pada Penerapan Hukum Adat Di Indonesia', *Veritas et Justitia*, 4.1 (2018), 201–26 <<https://doi.org/10.25123/vej.2914>>.

later than the judge makes a decision.<sup>17</sup>

Article 99 paragraph 3 of the Criminal Procedure Code, when a victim of a crime requests a combined compensation case, the court is obliged to consider its authority to try the lawsuit, the truth of the basis of the lawsuit and the penalty for compensation for costs incurred by the victim (see Article 99 paragraph 1 of the Criminal Procedure Code). Decisions regarding compensation will automatically have permanent legal force if the criminal decision also has permanent legal force.<sup>18</sup>

"If a criminal case decision is appealed, then the compensation decision will automatically experience the same thing (Article 100 paragraph 1 of the Criminal Procedure Code)." If the criminal case is not appealed, then the appeal request regarding the compensation decision is not permitted (Article 100 paragraph 2 of the Criminal Procedure Code). The mechanism for examining the merger of compensation cases is based on the provisions of Article 101 of the Criminal Procedure Code, namely the mechanism regulated in the Civil Procedure Law.<sup>19</sup>

Based on these regulations, applicants for compensation must make an application using the following mechanism:



A request for compensation must be accompanied by several documents, namely a request document, an identity document, and a document detailing the crime that has occurred.<sup>20</sup> In this effort, the victim must make several independent efforts if he wants to receive

<sup>17</sup> Achmad Ratomi, 'Konsep Prosedur Pelaksanaan Diversi Pada Tahap Penyidikan Dalam Penyelesaian Tindak Pidana Yang Dilakukan Oleh Anak', *Arena Hukum*, 6.3 (2013), 394–407 <<https://doi.org/10.21776/ub.arenahukum.2013.00603.6>>.

<sup>18</sup> Hikmawati Puteri, 'Pidana Pengawasan Sebagai Pengganti Pidana Bersyarat Menuju Keadilan Restoratif', *Negara Hukum*, 7.1 (2016), 71–88.

<sup>19</sup> Rian Saputra and others, 'Reconstruction of Chemical Castration Sanctions Implementation Based on the Medical Ethics Code (Comparison with Russia and South Korea)', *Lex Scientia Law Review*, 7.1 (2023), 61–118 <<https://doi.org/10.15294/lesrev.v7i1.64143>>.

<sup>20</sup> Yul Ernis, 'Diversi Dan Keadilan Restoratif Dalam Penyelesaian Perkara Tindak Pidana Anak Di Indonesia', *Jurnal Ilmiah Kebijakan Hukum*, 10.2 (2017), 170.



compensation, and apart from that, compensation is only limited to the costs that have been incurred, and the costs of non-material losses or future costs due to the victim's death cannot be granted. This causes additional suffering for the victim, because the victim still has to take several legal steps to obtain compensation, and the compensation is only concrete expenses.

### **Lawsuit Against The Law**

A lawsuit against the law can be carried out after the judge gives a decision at the first instance. This effort is based on the Civil Code Article:

Article 1365: Any act that violates the law and brings harm to other people, requires the person who caused the loss through his fault to replace it the loss.

Article 1366: Everyone is responsible, not only for losses caused by actions, but also top loss Which caused negligence or his frivolity.

Article 1367: A person is not only responsible for losses caused by his actions themselves, but also for losses caused by the actions of people who be his responsibility or due to goods under his supervision. Parents and guardians are responsible for any harm caused by their children minors, who reside with them and over whom they exercise authority parent or guardian. Employers and persons who appoint others to represent their affairs their affairs, responsible for losses caused by servants or subordinates them in carrying out the work assigned to those people. The school teacher or head craftsman is responsible for any losses caused by his students or craftsmen during the time those people were under supervision. The above-mentioned responsibilities end, if parents, school teachers or heads the craftsman proved that each of them could not prevent the act for which meneka should be responsible. Apart from having to fulfill these elements, the basis for filing a lawsuit can also be due to:<sup>21</sup>

Article 1370 Civil Code: In the case of deliberate murder or the death of a person due to someone else's carelessness, the husband or wife left behind, the child or parent of the victim who usually earns a living and the victim's job, has the right to claim compensation which must be assessed according to the position and wealth of both parties, as well as according to circumstances.

Article 1371 Civil Code: Causing injury or disability to someone's body parts intentionally or due to carelessness, gives the victim the right, apart from demanding compensation for medical costs, to also demand compensation for losses caused by the injury or disability. Also, compensation for losses is assessed according to the position and abilities of both parties and according to the circumstances. This last provision generally applies in terms of assessing the losses caused by a crime to a person's person.

However, before making a claim for compensation, the victim must ensure that the action

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<sup>21</sup> Riki Perdana Raya Waruwu, 'PERLUASAN RUANG LINGKUP KERUGIAN IMMATERIAL', *Kepaniteraan Mahkamah Agung*, 2017.

being sued must meet the following elements:<sup>22</sup>

### Acts against the law

This element emphasizes a person's actions that are considered to violate the legal rules that apply in society. Since 1919, the meaning of the word "law" has been expanded to include not only acts that violate statutory regulations, but also every act that violates propriety, prudence and decency in relations between fellow citizens and towards other people's objects. So it can be concluded that actions that are considered unlawful are not only based on written legal rules, but also on unwritten legal rules that exist in society, such as the principles of propriety or decency.<sup>23</sup>

### Error

According to civil law experts, Rutten stated that every result of an unlawful act cannot be held responsible if there is no element of error. The elements of error itself can be classified into 2 (two), namely errors committed intentionally and errors due to carelessness or negligence. In civil law, both intentional and careless errors have the same legal consequences. This is because according to Article 1365 of the Civil Code, actions that are carried out intentionally or carried out due to carelessness or negligence have the same legal consequences, namely that the perpetrator is still responsible for compensating for all losses resulting from the Unlawful Actions he commits. For example, a car driver hits a pedestrian and causes the pedestrian to faint. Due to this, whether the driver deliberately hits the pedestrian or is negligent, for example because he is sleepy, he must still be responsible for the losses suffered by the pedestrian.<sup>24</sup>

### Losses

Losses in civil law can be divided into 2 (two) classifications, namely material losses and/or immaterial losses. Material losses are losses that are actually suffered. What is meant by immaterial loss is loss of benefits or advantages that may be received at a later date. In practice, fulfilling claims for immaterial losses is left to the judge, this then creates difficulties in determining the amount of immaterial losses that will be granted because the benchmark is left to the subjectivity of the judge who decides.<sup>25</sup>

<sup>22</sup> Wagino, 'Tinjauan Terhadap Gugatan Perbuatan Melawan Hukum', *Kementrian Keuangan Indonesia*, 2021.

<sup>23</sup> Norbert Konrad and Birgit Völlm, 'Forensic Psychiatric Expert Witnessing within the Criminal Justice System in Germany', *International Journal of Law and Psychiatry*, 37.2 (2014), 149–54 <<https://doi.org/10.1016/j.ijlp.2013.11.012>>.

<sup>24</sup> Otwin Marenin, 'The Tragic Core of Criminal Justice: Coercive Social Control and the Loss of Innocence', *International Journal of Law, Crime and Justice*, 58.April (2019), 91–99 <<https://doi.org/10.1016/j.ijlcj.2019.04.003>>.

<sup>25</sup> Bandy X Lee, 'Causes and Cures X: Criminal Justice Approaches', *Aggression and Violent Behavior*, 31 (2016), 237–42 <<https://doi.org/https://doi.org/10.1016/j.avb.2016.11.002>>.



### **Causal relationship between unlawful acts by the perpetrator and the losses experienced by the victim.**

The doctrine of causality in civil law is to examine the causal relationship between unlawful acts and the losses caused, so that the perpetrator can be held accountable. This element wants to emphasize that before asking for responsibility, it is necessary to first prove the cause-and-effect relationship from the perpetrator to the victim. This relationship concerns the losses experienced by the victim as a result of unlawful acts committed by the perpetrator.

If these elements are met, the victim can file a claim for compensation in civil court using the following mechanism: a. Lawsuit; b. power of attorney for lawsuit if authorized through a lawyer; c. pay the down payment costs of the lawsuit; d. waiting for the trial date. A lawsuit against the law can indeed be used as a forum to demand compensation from another person if that person has committed an act that has caused harm to him, but this effort still requires a long struggle for the victim, and of course takes a lot of time and money, so it is considered that it has not yet been demonstrated. justice for those, especially those who still experience obstacles in terms of knowledge and finances.

### **Witness and Victim Protection Agency**

The compensation claims filed through LPSK are similar to lawsuits that consolidate instances involving compensation and wrongful activities. The distinction is that LPSK is an accompanying party in these claims. The Massachusetts Supreme Court has issued Perma No.1 of 2022, which outlines the procedures for resolving applications and granting restitution and compensation to crime victims. This Perma was issued due to the proliferation of restitution legislation in multiple jurisdictions, resulting in inconsistencies in their execution. Individuals have the option to seek reparation from the wrongdoer by applying the LPSK, specifically through the means of restitution.<sup>26</sup>

### **Customary Law**

The existence of customary law in Indonesia is still recognized today, this is because the diversity of ethnic groups and community groups in Indonesia is very large and varied. Recognition of customary law in Indonesia is based on: <sup>27</sup> Recognition of customary law communities is regulated in Article 18 B paragraph (2) of the 1945 Constitution, the provisions of Article 28 I paragraph (3) of the 1945 Constitution that the cultural identity of traditional communities is respected in line with developments over time and civilization. Apart from that, there are several sectoral laws that provide guarantees for the rights of customary law communities, including Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA).

Furthermore, specifically the recognition of customary law in criminal law is regulated in

<sup>26</sup> MUHAMMAD BUSYROL FUAD, *Restitusi Korban, Jauh Panggang Dari Api* (Indonesia, 2023).

<sup>27</sup> Relexi Bayo, Andy Usmina Wijaya, and Fikri Hadi, 'PERUNDANG-UNDANGAN DI INDONESIA', 1945 (2009), 1–11.

Law No. 1 of 2023 concerning the Criminal Code, regulated in: Article 2: "The provisions as intended in Article 1 paragraph (1) do not reduce the validity of the laws existing in society which determine that a person deserves to be punished even though the act is not regulated in this law. Article 2: laws that live in society as intended in paragraph (1) apply in the place where the law lives and as long as they are not regulated in this Law and are in accordance with the values contained in Pancasila, the 1945 Constitution of the Republic of Indonesia, human rights, and general legal principles recognized by the people of nations. However, this law cannot yet be implemented, because it is still waiting for the transition period, namely until 2026, and what is still in effect now is the old Criminal Code left over from the Netherlands.

Customary law remains prevalent in Indonesia, particularly among indigenous populations. Utilizing customary law for dispute resolution is regarded as a more accurate manifestation of justice, as it entails bringing the involved parties (the wrongdoer and the victim) together for a purposeful dialogue aimed at finding a resolution to the issue. This dialogue is typically observed by the community or facilitated by traditional leaders.<sup>28</sup> This method is efficient in determining the value of justice. The primary objectives of customary law are to achieve equilibrium between victims and wrongdoers and to protect indigenous communities' rights and interests. Nevertheless, the effective implementation of customary law remains challenging due to its divergence from formal legal frameworks. Customary law decisions are limited to local customary responsibilities and are not explicitly defined in official legislation. Consequently, resolving such matters necessitates collective efforts from the surrounding community.<sup>29</sup> Despite multiple ongoing initiatives, they generally exhibit several deficiencies in effectively prosecuting and compensating offenders of crimes. These weaknesses include the requirement for initial application processes and the informal nature of the resulting agreements. A revised strategy is required to expedite the process of providing restitution to offenders, particularly those who have targeted the descendants of murder victims.<sup>30</sup>

### Actualization of the Criminal Code

Despite the government's introduction of the 2023 Criminal Code, which will take effect in 2026, the regulation does not provide a strong position for matters related to compensation. Compensation is still considered an additional punishment and cannot be

<sup>28</sup> Suriansyah Murhaini and Achmadi, 'The Farming Management of Dayak People's Community Based on Local Wisdom Ecosystem in Kalimantan Indonesia', *Heliyon*, 7.12 (2021), e08578 <<https://doi.org/https://doi.org/10.1016/j.heliyon.2021.e08578>>.

<sup>29</sup> Dorien Kartikawangi, 'Symbolic Convergence of Local Wisdom in Cross-Cultural Collaborative Social Responsibility: Indonesian Case', *Public Relations Review*, 43.1 (2017), 35–45 <<https://doi.org/https://doi.org/10.1016/j.pubrev.2016.10.012>>.

<sup>30</sup> Roger Smith, 'Criminal Justice and Social Work Practice', in *International Encyclopedia of the Social & Behavioral Sciences (Second Edition)*, ed. by James D Wright, Second Edi (Oxford: Elsevier, 2015), pp. 208–13 <<https://doi.org/https://doi.org/10.1016/B978-0-08-097086-8.28020-3>>.

imposed independently without the primary punishment.<sup>31</sup>

Compensation punishment should be regarded as the primary form of criminal punishment, as it is the only way the injured party can recover fully. It goes beyond physical punishment for the offender, recognizing that losses cannot be adequately restored solely through the physical punishment of the perpetrator. Or incarceration. Restorative justice can be enacted through a collaborative discourse among all parties engaged in the case to return the situation to its normal state. This involves understanding the relationship between the cause and effect of the situation and determining the appropriate measures to restore it.<sup>32</sup> The purpose of the law is to pursue the concept of restitutive justice. At the same time, its repressive aspect serves as a deterrent to prevent individuals from engaging in actions that transgress the established boundaries of justice, including the principles of fairness and responsibility.<sup>33</sup>

### **Murder Article Compensation Obligations**

Indonesia is a highly compliant nation, as evidenced by the frequent use of the phrases "legal" and "illegal" to determine the permissibility of actions being or have been undertaken. Actions conducted without adherence to regulations or laws will be deemed "illegal" actions, and conversely, actions conducted by regulations or laws will be considered lawful. The repercussions of criminal activities in Indonesia are highly regarded, as they are closely tied to implementing normative laws. Therefore, a law is necessary for the commission of an act. Suppose this law is effectively enforced to uphold substantive justice. In that case, it is fitting for the requirement of paying restitution to be explicitly stated in the criminal law, specifically the Criminal Code. Currently, neither the previous nor updated Criminal Code explicitly includes the requirement to provide restitution as a form of mandatory compensation.<sup>34</sup>

By discussing the requirement for compensation in the form of restitution as stipulated in the Criminal Code, law enforcement authorities will automatically execute this obligation to adhere to the established requirements in the formal law. Judges lack a statutory framework when making compensation decisions, resulting in subjective judgments based on their considerations. Additionally, to facilitate fulfilling the compensation requirements outlined in the Criminal Code, it is necessary to establish a dedicated platform or procedure that allows victims to file compensation claims directly without the need for prior requests. Given that the present measures to provide compensation for losses rely solely on requests made by

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<sup>31</sup> Ogilvie and Kisely.

<sup>32</sup> Leandro Mancano and Deborah Russo, 'Punishment of Criminals', in *Encyclopedia of Violence, Peace, & Conflict (Third Edition)*, ed. by Lester R Kurtz, Third Edit (Oxford: Academic Press, 2022), pp. 539–51 <<https://doi.org/https://doi.org/10.1016/B978-0-12-820195-4.00160-6>>.

<sup>33</sup> Tina S Ikpa, 'Balancing Restorative Justice Principles and Due Process Rights in Order to Reform the Criminal Justice System', *Washington University Journal of Law & Policy*, 24, January (2007), 301–25.

<sup>34</sup> Craig E Henderson and Faye S Taxman, 'Competing Values among Criminal Justice Administrators: The Importance of Substance Abuse Treatment', *Drug and Alcohol Dependence*, 103 (2009), S7–16 <<https://doi.org/https://doi.org/10.1016/j.drugalcdep.2008.10.001>>.

victims, the absence of a request implies no claim for compensation.<sup>35</sup>

This specialized container or technique is designed to offer a specific form or document for the victim to complete to seek compensation for the repercussions resulting from the actions of the criminal perpetrator. Completing this form is obligatory despite its lack of inquiry for compensation. The potency of this form is equivalent to that of the demand letter presented by the general prosecutor. In order to safeguard the principle of "ultra petita," which stipulates that the judge's ruling must not stray from the demands made by the prosecutor and the applicant (in this instance, the victim).

#### 4. Conclusion

Indonesia's law enforcement can be classified as a country that adheres to the law as long as explicit and written restrictions exist. Nevertheless, fair law enforcement is still plagued by various vulnerabilities, including the absence of regulations mandating restitution in criminal proceedings. Currently, criminal punishment continues to prioritize repressive measures rather than restorative ones. While repressive enforcement may deter individuals from committing unlawful acts, it does not fully align with the principles of justice. It needs to reflect the actual value of substantive justice. The victim in the trial serves solely as a witness to establish the actions committed by the perpetrator of the crime. Any losses incurred by the victim are considered optional, meaning that compensation can be sought. However, it requires submitting a bureaucratic and administrative application, necessitating a comprehensive understanding of the law. Simultaneously, the victim continues to endure psychological distress due to the recently committed crime, highlighting a flaw in the enforcement of laws that are meant to be fair and equitable. The purpose of the law should be to establish justice, and if justice is not attained, a more stringent approach must be taken, serving as the ultimate recourse in criminal law. In order to address this grave issue, it is imperative to promptly update the Criminal Code and incorporate a provision for compensation. A dedicated platform should also be established for the beneficiaries to seek reparation in the same instance. This would ensure that the responsibility to provide compensation becomes an obligatory duty for offenders, thereby upholding the fundamental principles of justice.

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