

Restorative Justice and State Responsibility for the Return of Rights of Victims Due to Fraud in Indonesia

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Abstract

The rise of fraudulent practices that end up in criminal acts and cause material losses to victims, for example the First Travel and Abu Tours cases in Indonesia, which have captured massive public attention, has shifted the orientation of punishment in criminal law, especially in property crimes from Lex Talionis towards Restitutio ad Integrum which emphasises restoration to the original state. This paper will analyse how the responsibility of the state and how the restorative justice approach in addressing the problem of fraud in Indonesia. The research method uses a normative legal research model with secondary data as analytical material. The results show that restitution and compensation instruments are an option in restoring victims of property crime. Restitution is the responsibility of the perpetrator to restore the victim, while compensation is the responsibility of the state as part of the state's role in realising the welfare of the people. Restorative justice as a means of resolving property crimes, especially fraud, offers an alternative that is oriented towards effective legal remedies to provide adequate legal protection for victims, although in practice there are still some fundamental changes.

I. Introduction

News related to fraud cases with the Umrah travel mode that has attracted widespread public attention was carried out by the owner of the Umrah travel business, namely First Travel. The victims of First Travel's Umrah travel fraud that were successfully collected by the National Police Headquarters from the complaint post were 63,310 victims with a total loss of 905 billion.¹ The next case is fraud with a larger Umrah travel mode with the number of pilgrims and the biggest loss at the moment is the Abu Tours fraud case with the number of pilgrims victims as many as 86,720 people with a total loss of 1.8 trillion rupiah. Fraud with the Umrah travel mode causes the public to question the role of state administrators related to the problem.²

Before the fraud case with the Umrah travel mode, there have been other fraud cases with the investment mode which also caused quite a lot of victims with a lot of material losses, but the settlement of these fraud cases only boils down to the corporal punishment of the perpetrators of the fraud crime. One of them was related to the crime of fraud that caused victims of up to 12 thousand people carried out by the Joint-Owned Multi-Business Cooperative (KSUMB) which was one of the largest cooperatives in the South Sulawesi region at that time. The case has permanent legal force, where the panel of judges sentenced the defendant, namely the chairman of the KSUMB and its treasurer, to 4 years in prison, but the sentence remains a punishment. The prison sentence against the chairman and treasurer of KSUMB, but the victim of the fraud crime remains a victim, because the material losses of the victims of the crime have not been resolved until today.

The concept of organizing people's welfare as stated in the preamble to the 1945 Constitution of the Republic of Indonesia mentioned above should be embodied in the formulation of criminal objectives which are also oriented to the concept of improving the welfare of the people, especially victims of criminal acts and it is the obligation of the state through law enforcement institutions to provide guarantees of legal protection for victims of criminal acts, especially criminal acts that cause material losses. This is in line with Barda Nawawi Arief's view that the essence of policies or efforts to counter criminal acts is an integral part of efforts to protect the community (social defence) and efforts to achieve community welfare (social welfare). Therefore, it can be said that the ultimate goal or the main goal of criminal politics is "Protection of the community to achieve the welfare of the community. Made Darma Weda argued that the state through its apparatus is obliged to maintain public order and security. The criminal act that occurs is the responsibility of the state. This means that the occurrence of victims is the responsibility of the state. In order to see the contribution of the state in providing protection for victims of criminal

¹ Ferinda K Fachri, "Swallowing Tens of Thousands of Victims, Still Remember the Case of Fraud under the Guise of Umrah First Travel?," *Hukum Online*, 2024, <https://www.hukumonline.com/berita/a/telan-puluhan-ribu-korban--masih-ingat-kasus-penipuan-berkedok-umrah-first-travel-lt661387daf37c4/?page=1>.

² Hendra Cipto, "Deceiving 86,720 Umrah Pilgrims, Abu Tours Boss Sentenced to 20 Years in Prison," *KOMPAS.Com*, 2019, <https://regional.kompas.com/read/2019/01/28/20425601/tipu-86720-jemaah-umrah-bos-abu-tours-divonis-20-tahun-penjara?page=all>.

acts, especially fraud crimes, several provisions contained in Articles 98-101 of the Criminal Procedure Code, provide affirmation related to the merger of criminal and civil cases against criminal acts that cause losses to other persons which can be submitted no later than before the public prosecutor reads his charges or before the judge issues a verdict.

Indonesian criminal law has not seen a clear separation related to criminal acts committed by perpetrators with the consequences arising from the occurrence of these criminal acts, especially those that cause material losses to victims of criminal acts, such as theft, embezzlement, embezzlement and fraud. All forms of criminal acts mentioned by the author above can cause material losses to victims of criminal acts, but the state does not provide a guarantee of protection for victims of criminal acts who suffer material losses to be recovered, both through its law enforcement mechanisms and procedures and the form of sanctions given to the perpetrators of these criminal acts.

A literature study related to the recovery of material losses of victims of crimes due to fraud in the Medan Police area, for example, shows that the application of restorative justice does not abolish criminal acts but must also be oriented towards recovering losses experienced by all victims.³ Furthermore, the study of the implementation of restorative justice or RJ in the Tuban Police area with reference to Police Regulation No. 8 of 2021 shows that the essence of RJ is to seek justice for all parties due to fraud crimes. Criminal law is no longer the main focus as revenge for crime alone, but how the losses experienced by the victims can be better recovered.⁴

The fraudulent investment case is also one of the issues that needs to be considered by RJ as a mechanism for seeking justice oriented towards rehabilitation and social recovery through the process of mediation, apology and compensation. Thus, the perpetrators of fraudulent investments not only carry out punishments for their actions, but are also responsible for restoring the condition of the victims as before.⁵ Especially in the modern era with the massive use of digital technology, fraud models have also experienced increasingly significant developments, one of which is web phishing.⁶

In accordance with the provisions of Article 1 paragraph (3) of the 1945 Constitution 4th Amendment states that: "The State of Indonesia is a state of law". The provisions of this

³ Olma Fridoki, Alvi Syahrin, Sunarmi, Marlina, "PENERAPAN RESTORATIVE JUSTICE DALAM PENYELESAIAN PERKARA TINDAK PIDANA PENIPUAN DAN PENGHELAPAN DI POLRESTABES MEDAN (The Implementation of Restorative Justice in The Settlement of Criminal Crimes of Fraud and Embezzlement at the Polrestabes Medan)," *Res Nullius Law Journal* 4, no. 1 (2022): 42–56, doi:10.34010/rnlj.v4i1.4679.

⁴ Isna Veviati et al., "Restorative Justice Pada Tindak Pidana," *Jurnal Kertha Semaya* 11, no. 9 (2023): 2061–74, doi:10.24843/KS.2023.v11.i09.p05.

⁵ Nanda Thalia Prayogi and Edi Setiadi, "Restorative Justice in Fraud in Fraudulent Investment Cases Linked to National Police Regulation Number 8 of 2021 concerning Crimes Based on Restorative Justice," *Bandung Conference Series: Law Studies* 4, no. 1 (2024): 43–52, doi:10.29313/bcsls.v4i1.9756.

⁶ Faiz Emery Muhammad and Beniharmoni Harefa, "Criminal Arrangements for Web-Based Phishing Fraud Perpetrators," *Jurnal Usm Law Review* 6, no. 1 (2023): 226, doi:10.26623/julr.v6i1.6649.

article are the constitutional basis that Indonesia is a country based on law, the law is placed as the only rule of the game in the life of society, nation and state (supremacy of law). Considering that the state of Indonesia is a country of law, the administration of the state must realize legal objectives, as well as criminal law enforcement must be oriented towards the realization of these legal objectives. According to Gustav Radbruch, the purpose of law is justice, usefulness and legal certainty.⁷ In addition, the enforcement of criminal law as public law is the responsibility of the state, so it is influenced by the legal system as stated by Lawrence M. Friedman that the legal system consists of a legal structure (structure of law), substance of the law (substance of the law) and legal culture (legal culture).⁸

2. Research Method

The type of research used is a library research model with a juridical-normative approach including a legislative, analytical and conceptual approach.⁹ Data sources obtained from secondary data searches include primary legal materials, namely laws and regulations, secondary legal materials in the form of journal articles, books, digital-based information sources, and tertiary legal materials in the form of legal dictionaries. The analysis method used is descriptive-qualitative, namely by explaining the subject matter and compiling arguments based on data obtained through data reduction, data presentation, and drawing conclusions.

3. Results and Discussion

State Responsibility Through Criminal Law Enforcement Oriented to the Recovery of Material Losses of Victims of Fraud Crimes

Protection for every citizen is an obligation that must be fulfilled by a country. Likewise, the Indonesian state is obliged to protect every citizen wherever they are. This is in accordance with the Preamble to the 1945 Constitution of the Republic of Indonesia (4th Paragraph). The Indonesian nation always places recognition and guarantee of respect for human dignity and dignity. The recognition and guarantee in the 1945 Constitution of the Republic of Indonesia is based on the understanding that human rights are basic rights that are inherent in every citizen without discrimination. The protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the state.

W. Poespoprodjo explained that subjective obligation is a moral imperative to do something, while objective obligation is something that must be done. According to him, obligation is a passive form of responsibility, that is, something that is done because the

⁷ B. H. Bix, "Radbruch's Formula and Conceptual Analysis," *The American Journal of Jurisprudence* 56, no. 1 (2011): 45–57, doi:10.1093/ajj/56.1.45.

⁸ Lawrence M. Friedman, *The Legal System: A Social Science Perspective*, Khozim. Cet. 4th. Bandung: Nusa Media, vol. 110 (Nusa Media, 2011).

⁹ J Efendi and J Ibrahim, *Normative and Empirical Legal Research Methods* (Jakarta: Kencana, 2016).

responsibility itself, all obligations, like all rights, come from the law. Obligations come from responsibility. In the science of constitutional science, the subject of the state has the responsibility to determine the purpose of the formation of the state. The state is a tool used by the nation to achieve its goals. For this reason, the state government is responsible for managing its resources as well as possible, regulating its government system, and issuing relevant policies to achieve the welfare of its citizens.¹⁰

The instruments of international law through the Universal Declaration of Human Rights affirm that everyone has the right to effective remedies by competent national courts for acts that violate the fundamental rights granted to him by the constitution or the law. The Criminal Code is built systematically, in accordance with the interests and objectives of protecting the construction of criminal law. Crimes against property are regulated from Chapter XXII to Chapter XXX with the aim that the owner's property rights are not infringed by anyone. These crimes include theft, extortion and intimidation, embezzlement, fraud and destruction and destruction of objects, as well as prevention. Crimes against property, it is said that it is guaranteed that citizens' property rights will not be lost, violated, if disturbed, they will be threatened with criminal penalties. Criminal sanctions in this case are essentially only warnings and are not really intended to be implemented. People who are victims of property crimes want their property back, not imprison the perpetrators. Even if from the state's point of view the act is considered a crime that requires revenge against its victims, it does not matter.¹¹

In order to implement substantive criminal law, including property crimes, in this case it is carried out through criminal procedure law. Criminal procedure law is in charge of implementing substantive criminal law, meaning determining how the state by using its instruments can exercise its authority to punish or release criminals.¹² From a criminal point of view, sanctions can be imposed on violators for acts of theft, embezzlement and fraud that are punishable. Resolving property crime cases with imprisonment cannot restore the losses suffered by the victim, because the victim cannot regain his rights that have been taken away by the perpetrator. The proposal for compensation at the pretrial stage, or only focuses on other criminal acts that are not property crimes and only applies the provisions of Article 98.

In some countries, the penal system recognizes daily fines, such as in Finland and Denmark. In Finland, criminal fines are calculated based on the daily salary or wage earned by the convict. In terms of fines, this crime is the closest to the crime of compensation for damages due to acts of corruption. However, if corruption occurs, the perpetrator must pay fines and criminal compensation to the state. This is understandable because the victim of corruption is the state, so what must be compensated by the perpetrator is the state's loss.

¹⁰ Nur Azisa, "Compensation and Restitution for Crime Victims as an Implementation of the Principle of Justice" (Hasanuddin University, 2015), http://repository.unhas.ac.id/23585/4/B013171012_disertasi_07-11-2022_1-2.pdf.

¹¹ Erdianto Effendi, *Customary Law (Criminal) (The Idea of Pluralism in Criminal Law and the Application of Law According to Legal Beliefs)* (Refika Aditama, 2018).

¹² Fauziah Lubis, *Flower of the Criminal Procedure Law, CV Manhaji* (Jakarta: CV. Manhaji Medan, 2020).

In case studies related to fraud crimes that have an impact on the material losses of victims, one of the tangible manifestations of state responsibility for the color of the state that suffers losses due to property crimes such as fraud is through legal instruments that can be applied for by victims either individually or through their legal representatives. These provisions are regulated in Article 98 (1) of the Criminal Code.

“If an act that is the basis of an indictment in an examination of a criminal case by the district court causes losses to another person, then the presiding judge at the request of that person may decide to combine the case of a lawsuit for damages to the criminal case.”

The meaning of the phrase for the person's request is those who have suffered losses due to the occurrence of the crime. The submission of an application for consolidation of cases must be submitted to the district court no later than before the public prosecutor files a criminal complaint or if the public prosecutor is not present, the application must be submitted no later than before the panel of judges renders a verdict.

For example, the handling of cases of application with Article 98 of the Criminal Code occurred at the Tangerang District Court. The Panel of Judges granted the merger of the compensation lawsuit filed by the victims of the 1 trillion rupiah ponzi scheme. In its verdict, the panel of judges stated that the defendant Budi Hermanto was legally and convincingly proven to have committed the crime of fraud and money laundering and sentenced him to 13 years, and a fine of 2 billion rupiah in addition to 6 months of imprisonment. In addition, the panel of judges sentenced the defendant to pay compensation of 53 billion rupiah to 8 victims who sued.

It is different from the handling of money laundering and fraud cases in the First Travel case which does not use the provisions of Article 98 of the Criminal Code. So that the judge took a decision on behalf of the state to confiscate the property, while the victim had not regained his rights that had been confiscated by the perpetrator. From January 2015 to June 2017, First Travel promoted Umrah packages at fairly cheap prices. Prospective pilgrims who deposited their money amounted to 93,295 people. Of the 93,295 people, as many as 63,310 prospective pilgrims have paid in full but cannot depart. The amount of money deposited by the pilgrims is approximately Rp.905,333,000,000,- (nine hundred and five billion three hundred and thirty-three million rupiah), until now it has not been returned.¹³

According to the researcher, if the victim of property crime does not use the provisions of Article 98 of the Criminal Code, then the legal instrument used in the context of recovering the losses of the victim of property crime is through restitution and compensation. Restitution is charged to the perpetrator of the crime to bear the victim's losses due to the property crime committed. Of course, the perpetrator of the crime has limitations in terms

¹³ Erdianto Effendi, "The Imposition of Compensation as a Principal Crime in Crimes Against Property," *Usm Law Review* 5, no. 2 (2022): 618, doi:10.26623/julr.v5i2.5355.

of this responsibility, because a legal situation that occurs, namely confiscated goods or loot in terms of handling the case is not enough to recover the victim's losses.

Such a situation is a form of state responsibility to protect its citizens, so the legal instrument of compensation can be used to recover losses for victims of property crimes. The state must be present to provide protection through compensation for victims of property crimes. Indeed, the author realizes that there are differences of views regarding this idea. Where many parties state that it is impossible for the state to be held criminally responsible for crimes committed by its citizens, because the state is not the subject of national criminal law. Criminals must be held accountable for the crimes committed. The state cannot represent the perpetrators of crimes to account for the actions of the perpetrators.

But of course, on the other hand, why the imposition of compensation on the state, solely as part of the state's responsibility in fulfilling the welfare of the people, the people suffer losses due to their abundant crimes, so the state must be present as a form of responsibility for the realization of the people's welfare. So the state is present not to represent the perpetrators of crimes, but to be present as a manifestation of the welfare of the people due to the crimes that occur. On the other hand, as the researcher described above, the occurrence of crime is not solely due to the negligence of the crime victim, but because the state fails to carry out its duties and responsibilities in maintaining public order and security, so that crime occurs. As a form of legal responsibility and moral responsibility, when a crime occurs, the state must be present to provide recovery to the victims of crime.

The presence of the state is certainly expected when the perpetrators of crimes have limitations in recovering the losses of crime victims due to crimes committed. This happens when the assets of the perpetrator of the crime are insufficient to recover the victim's losses. Restitution is certainly the main instrument that must be maximized in the context of recovering victims' losses due to property crimes. This means that when restitution has not been able to recover the losses of victims of property crimes, compensation is an option for the recovery. If compensation has succeeded in recovering the losses of victims of property crimes, then the state has succeeded in fulfilling its obligations to its people who have suffered due to the crimes that occurred. The instrument of fulfilling state obligations in the form of compensation is the hope of every victim of property crimes, which has recently become more and more prevalent.

The occurrence of property crimes is certainly inseparable from the failure of state/government instruments in carrying out supervisory duties against business entities that collect citizen funds to carry out their business activities as in many cases that occur. Policies that protect the interests of victims are an integral part of efforts to improve social welfare that cannot be separated from the state's goal, which is to protect and advance the general welfare of Indonesian society as a whole. Based on this, the state must actively intervene in an effort to ensure concrete and individual protection of the fate of the victims, one of which is in the form of compensation.

The theory of state obligation according to Asbjorn Eide includes respect (to respect), which means that the state is asked to repeatedly intervene directly or indirectly in terms of enjoying these rights, protecting (to protect), namely that the state is asked to take appropriate actions so that it can prevent outside parties from intervening in terms of enjoying these rights and to fulfill (to fulfill), to facilitate and to provide. The author realizes that Asbjorn Eide's idea related to state obligations is fully focused on state responsibility for mistakes committed by state organs, but as it develops, of course, respect for human rights is not limited to the mistakes of state organs, but also mistakes made by non-state organs, in this case private parties for human rights violations.¹⁴

The Concept of Restorative Justice in Criminalizing Fraud Crimes That Cause Material Losses

Howard Zehr and Ali Gohar gave an explanation related to the elements of harm and needs as follows for restorative justice, justice begins with the concerns of the victims and their needs. It seeks to repair as much damage as possible, both concretely and symbolically. This victim-oriented approach requires justice to pay attention to the needs of victims even when no perpetrators are identified or arrested.¹⁵

The harm and needs proposition developed by Howard Zehr and Ali Gohar as stated above emphasizes the concept of repairing the damage caused by crime. The settlement of criminal cases should be oriented towards repairing the damage caused by the crime, not solely on the punishment of the perpetrators, because according to researchers, the punishment of the perpetrators of crimes that is not accompanied by the repair of the damage suffered by the victims is a classic paradigm of criminal law enforcement. Currently, criminal law enforcement has been oriented towards the protection of crime victims as mandated through Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning the Protection of Witnesses and Victims, although the existence of the law, according to researchers, is not sufficient to provide maximum protection for victims.

It is necessary for the recovery of victims of criminal acts to be an important part of resolving criminal cases through restorative justice. The victim recovery intended in this study and analysis is not only the return of the condition of the victim of the crime as it was before the crime occurred, but also concerns the improvement of the condition of the victim of the crime. Although the improvements that can be made by the perpetrator of the crime cannot completely restore the condition of the victim of the crime as before the crime occurred, if the corrective action taken by the perpetrator of the crime can be accepted by the victim and/or his family, then that is actually what is meant as the recovery of the victim of the crime which the researcher termed as an effective legal recovery.

Researchers are fully aware that recovery as it was before the crime occurred is not easy,

¹⁴ O De Schuttler, *International Human Rights Law* (London: Cambridge University Press, 2010).

¹⁵ Howard Zehr and Ali Gohar, *The Little Book of Restorative Justice, Pennsylvania*, vol. 01 (New York: Good Books, 2002).

because criminal acts have different characteristics that can affect whether it is related to property, honor/reputation, or a person's soul. The forms of recovery are also highly determined by the form of criminal acts that occur. If the form of criminal act that occurs is a crime related to a person's honor/reputation, then it is not easy to make improvements as it was before the criminal act occurred, but if the means of recovery carried out by the perpetrator of the criminal act such as apologizing through the media or in front of the public, sincere confession of guilt and expression of regret for his actions and so on are accepted by the victim of the criminal act, Therefore, efforts to recover victims of criminal acts are considered successful.

Likewise related to property crimes, if the improvement efforts made by the perpetrator of the crime such as returning the proceeds of the crime, or making repairs to the property damaged by the perpetrator of the crime and the recovery action is accepted by the victim of the crime, then the recovery is considered successful. In essence, the recovery actions taken by the perpetrators of crimes against victims of crimes depend on how the efforts made can be accepted by victims of crimes as a recovery effort.

The concept of responsibility of perpetrators according to Howard Zehr and Ali Gohar is that perpetrators of criminal acts must be responsible as a consequence of their mistakes, both in the form of punishment and perpetrators must be responsible for making the condition of crime victims better, so it is necessary to make concrete and symbolic efforts to improve the condition of crime victims. The emphasis of the responsibility of the perpetrators stated by Howard Zehr and Ali Gohar above is on how the perpetrators of crimes can be punished, but the orientation of punishment in the context of restorative justice is not actually on imprisonment as referred to in the context of punishment in classical criminal studies.

Restorative justice is a new approach in looking at the function of law that does not only focus on justice as the ultimate goal, especially in criminal law after the principle of certainty. Justice is often considered a form of retribution for crime according to the theory of absolute retribution (Vergelding Theorie), although criminal law can also be seen as a preventive tool according to the theory of relativity (doel theorien). In contrast, restorative justice seeks to combine the principles of prevention and retribution, so that the goal of criminalization is not only to tackle crime but also to support other social efforts to reduce crime rates and prevent wider problems.

According to Gustav Radbruch, the purpose of law includes three basic aspects: certainty, fairness, and utility. These three aspects must be integrated proportionately in law enforcement to overcome existing problems.¹⁶ Law enforcement that focuses only on certainty and justice often does not meet the expectations of society, especially because of

¹⁶ Heather Leawoods, "'Gustav Radbruch: An Extraordinary Legal Philosopher,'" *Washington University Journal of Law & Policy* 2, no. 1 (2000): 493.

debates about justice that are influenced by ego or the limitations of human thought.¹⁷ John Rawls describes justice with the principle of equality of the greatest importance, in which everyone has the same basic rights, and social and economic inequalities must be regulated to achieve proportionality between the rights and obligations of the parties on the condition of good faith and justice.¹⁸

The concept of punishment through prison is a model of punishment through imprisonment of perpetrators is not suitable in the context of restorative justice, because the context of punishment through prison reflects a form of revenge that has been abandoned by many developed countries and currently restorative justice has a good place to be applied in Indonesia considering that the imprisonment model is quite burdensome on the state's finances. However, in its implementation, the RJ cannot be carried out arbitrarily, but must go through a strict mechanism so as not to cause confusion in the public.¹⁹

In relation to this description, the researcher found forms of punishment as part of the responsibility of the perpetrator of the crime he committed, namely compensation and restitution. The implementation of compensation for victims that has been realized through the settlement of criminal cases through restorative justice is applied by both the police, the prosecutor's office and the court judge. The return of the property is delegated to the Civil Court. That was the general attitude of the Indonesian police at that time. Civil and criminal cases must be strictly separated. The impact is the length of time it takes for the court to resolve the community's sense of justice.

From a theoretical perspective, especially the victimology approach, the imposition of restitution or compensation, both as an independent crime and as an alternative to prison sentences, is in line with the purpose of criminalization that criminal sanctions are not only oriented to the perpetrators of crimes but also oriented to the victims of crimes. It will also be easier to eliminate the conflict between the two and will release the perpetrator's guilt towards the victim as the purpose of punishment outlined in the Criminal Code Bill.²⁰ The idea of victimology, justice is considered as a process of finding solutions to problems that occur in a criminal case where the involvement of the victim, the community and the perpetrator is important in efforts to improve the situation caused by the perpetrator's actions. The approach to the concept of restorative justice seeks to restore victims' security, personal respect, dignity, and more importantly, a sense of control. The concept of restorative justice emerged from the idea of criticism of the implementation of the criminal justice system with imprisonment that is considered ineffective in resolving

¹⁷ A Walsh and C Hemmens, *Law, Justice, and Society A Sosiolegal Introduction* (New York: Oxford University Press, 2016).

¹⁸ J Rawls, *A Theory of Justice Revised Edition* (Amerika Serikat: Harvard University Press, 1971).

¹⁹ Ady Thea DA, "Deputy Minister of Law and Human Rights: Restorative Justice Does Not Make Criminal Enforcement Permissive," *Hukumonline.Com* (A, 2022), <https://www.hukumonline.com/berita/a/wamenkumham--restoratif-justice-tidak-membuat-penegakan-pidana-menjadi-permisif-lt6360d61718ff8/>.

²⁰ Iskandar Wibawa, "Social Work Crime and Restitution as an Alternative to Prison Sentence in the Reform of Indonesian Criminal Law," *Journal of Legal Media* 24, no. 2 (2017): 24, doi:10.18196/jmh.2017.0086.105-114.

conflicts, even though it has shifted from a retributive paradigm to a more restorative one.

Restorative justice is sometimes interpreted as the same as handling cases in a non-penal manner, namely the method of criminal prevention by not using criminal law (prevention without punishment).²¹ Non-penal law enforcement is the enforcement of social order by preventing crime, not by using legal means. In restorative justice, criminals are directed to be responsible for recovering the losses they have caused. Those who suffer losses should be the center of attention in decision-making. Restorative justice is a holistic philosophy that has become increasingly popular in reformist criminal justice debates and criminological research. However, there is some debate about whether the programs adequately meet the needs of victims. Braithwaite argues that one of the restorative justice models that can be applied is to use a reintegrative shaming model.²² For its implementation, restorative justice will be successfully implemented in the community if it is in line with the norms that exist in the community in particular.²³

The lack of clarity in the regulation of the concept of restorative justice in the Indonesian criminal justice system puts law enforcement in a difficult and dilemma position because so far the settlement of cases in Indonesian criminal cases has been very formalistic and legalistic. Therefore, this concept must be given an umbrella/legal framework that is integrated in the criminal case law (KUHP) and formal criminal law (KUHAP).²⁴ Restorative justice has actually succeeded in resolving criminal cases in many countries. In Europe, for example, victims in restorative justice are officially recognized as individuals entitled to the rights of recognition, assistance and protection.²⁵ The concept of restorative justice has also been accommodated in the Criminal Code Bill, which has currently been passed into Law Number 1 of 2023 concerning the Criminal Code. The restoration of victims' rights is regulated as an additional crime. Additional penalties as referred to in paragraph (1) may be imposed in the event that the imposition of the principal penalty alone is not enough to achieve the purpose of punishment. Additional crimes as referred to in paragraph (1) may be imposed on 1 (one) or more types.

This is considering that the Criminal Code that is currently in force and is a legacy of the Dutch East Indies does not substantively recognize compensation or criminal liability. Types of crimes against the perpetrator's property include fines and confiscation of certain property. Fines are one of the main criminal sanctions regulated in Article 10 of the

²¹ Chandra Noviardy Irawan, "Handling the Crime of Murder Committed by Children Based on Restorative Justice," *Jurnal Usm Law Review* 4, no. 2 (2021): 672, doi:10.26623/julr.v4i2.4283.

²² John Braithwaite, "The Conversation, the Journal, Not the Book," *The International Journal of Restorative Justice* 3, no. 1 (2020): 106–21, doi:10.5553/tijrj/258908912020003001012.

²³ Wahyu Beny Mukti Setiawan and Hadi Mahmud, "Initiating a Restorative Justice Model for Marital Rape Crimes in Forming Protection for Women in Accordance with Legal Norms in Indonesia," *Jurnal Ius Constituendum* 3, no. 1 (2018): 68, doi:10.26623/jic.v3i1.864.

²⁴ Ahmad Agus Ramdlany, "Restorative Justice in Islamic Legal Philosophy Perspective," *International Journal of Business, Economics and Law* 24, no. 2 (2021): 109–17, http://152.118.58.226.

²⁵ Ivo Aertsen, "Recalibrating Victimhood through Restorative Justice: Perspectives from Europe," *Restorative Justice* 5, no. 3 (2017): 352–67, doi:10.1080/20504721.2017.1390997.

Criminal Code. The current criminal law is based on Law No. 1 of 1946 (Wetboek van Strafrecht voor Nederlands Indie) which came into force in Indonesia on January 1, 1918. However, the crime of confiscation of certain goods is regulated as an additional criminal offense.

One of the shocking verdicts in money laundering and fraud cases is the First Travel case, where the judge decided to confiscate the goods for the state, but the victim could not regain the rights taken by the perpetrator. From January 2015 to June 2017, First Travel advertised Umrah packages at quite affordable prices. Prospective pilgrims who have deposited their money amounted to 93,295 people. Of the 93,295 pilgrims, as many as 63,310 prospective pilgrims have paid in full but cannot depart. The community's deposit money of approximately Rp.905,333,000,000,- (nine hundred and five billion three hundred and thirty-three million rupiah), was not returned.

At the trial, the prosecutor asked the defendant to return evidence in the form of money that had been entrusted by the city government to the victim. The panel of judges of the Depok District Court rejected the lawsuit because it was difficult to determine who had the right to collect evidence and because it was worried that the victim would confiscate the confiscated goods if returned to the victim. To avoid legal uncertainty regarding the property, the judge considers it reasonable for the loot to be handed over to the state. The judge in his decision ignored the actual victim of the crime, namely the prospective pilgrims. However, the decision taken in the First Travel case was appropriate because the settlement of the return of the property should have been delegated to the civil court. This indicates that civil and criminal cases must be strictly separated. The impact is the length of time it takes for the court to resolve the community's sense of justice.

The settlement of property crimes with imprisonment cannot restore the losses suffered by the victim, because the victim cannot regain the rights that have been deprived by the perpetrator. Three previous studies recommended the payment of damages at the pretrial stage or focus only on non-property crimes and only apply the provisions of Article 98. These three options are less effective because they depend more on the good intentions of the prosecutor and the police than necessary. The penal penalty system recognizes daily compensation in some countries, such as Finland and Denmark. In Finland, fines are calculated based on the salary earned or the convict's daily wage.²⁶ Judging from the form of the fine, this crime is the closest to the compensation penalty for corruption crimes. However, in corruption crimes, fines and criminal compensation are handed over to the state. This is understandable, because the victim of corruption is the state, so the perpetrator must get compensation from the state. Likewise with the crime of money laundering.

The author is fully aware that the Criminal Code as a formal criminal law that is used as the main basis for the settlement of criminal cases in Indonesia is not yet oriented towards the

²⁶ Tommy Leonard, "Renewal of Criminal Sanctions Based on the Pancasila Philosophy in the Criminal Law System in Indonesia," *Yustisia Jurnal Hukum* 5, no. 2 (2016), doi:10.20961/yustisia.v5i2.8764.

involvement of victims as the main stakeholders in the criminal justice system. The victim was involved in his position and capacity as a mere witness. The settlement of criminal cases through restorative justice introduced by Howard Zehr and Ali Gohar places the victim in the settlement of criminal cases through restorative justice as the main party who determines what kind of justice is needed in the settlement of the criminal case.

The role of crime victims in Indonesia's criminal justice system was only realized in 2006 through Law No. 13 of 2006 concerning the Protection of Witnesses and Victims as amended by Law No. 31 of 2014. The basic recognition of the position of crime victims through the Witness Protection Law and the victim is only limited to witnesses that need to be protected by the state, so that the state is able to uncover the crime. According to researchers, the position and role of victims of crime as stated in the Law on the Protection of Witnesses and Victims is still far from the expectations of victims as the most disadvantaged party due to the occurrence of the crime, so it is not surprising that Jacquelyn P. Poplawsky, emphasized that victims are alienated by the retributive justice system.²⁷ The existence of restorative justice to answer the needs and desires of crime victims, in order to have a much more important and main role and position in the settlement of criminal cases in the criminal justice system in Indonesia.

4. Conclusion

The state is obliged to provide effective legal remedial measures against victims of property crimes, especially fraud crimes. The birth of the state obligation is based on the theory of state obligation and the idea of the state's failure to supervise and prevent the occurrence of fraudulent crimes. The form of state obligation in question is the provision of compensation to victims of crimes not only for victims of gross human rights violations and victims of terrorism crimes, but also for victims of property crimes, especially fraud crimes. Compensation appears to support the limited ability of criminals to provide restitution to victims of fraudulent crimes. Restorative justice as a means of resolving property crimes, especially fraud crimes, is an alternative to crime resolution oriented towards effective legal recovery in order to provide adequate legal protection for crime victims. Various legal instruments, both national and international, already exist, although they still need to be fundamentally improved. The needs of victims, the responsibility of perpetrators and victim recovery are the main ideas in restorative justice that can answer the impasse of the criminal justice system in providing effective legal remedies to victims of fraud crimes.

²⁷ Jacquelyn P Poplawsky, *Learning to Heal : The Impact of a Restorative Justice Program on Crime Victims* (San Antonio: University of The Incarnate Word, The Athenaeum, 2017), https://athenaeum.uiw.edu/uiw_etds/317/.

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