

THE EFFORTS TO FULFILL RESTITUTION FOR VICTIMS OF RACIAL AND ETHNIC DISCRIMINATION CRIMES IN INDONESIA

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doi: <https://doi.org/10.24843/KS.2024.v12.i12.p24>

ABSTRAK

Tujuan dari penelitian ini adalah untuk mengkaji terkait pemberian restitusi kepada setiap warga negara Indonesia yang terdampak akibat tindak pidana diskriminasi ras dan etnis, karena hal dinilai sangat penting bagi pemerintah yang mana menghormati nilai-nilai perlindungan hukum. Penelitian ini adalah penelitian yuridis normatif yang meneliti terkait norma hukum positif yang menempel pada peraturan perundang-undangan yang berhubungan dengan distribusi hak restitusi bagi korban tindak pidana ras dan etnis di Indonesia. Hasilnya membuktikan bahwa restitusi kepada korban tindak pidana diskriminasi ras dan etnis berdasarkan peraturan perundang-undangan dikerjakan oleh Lembaga Perlindungan Saksi dan Korban dan Kejaksaan. Demi memperoleh restitusi wajib diajukan oleh korban kepada lembaga tersebut, maka lembaga ini hanya reaktif yang artinya akan bereaksi sesudah adanya permohonan dari pihak korban.

Kata Kunci: Restitusi, Diskriminasi, Ras dan Etnis, LPSK, Korban

ABSTRACT

The purpose of this research is to examine the provision of restitution to every Indonesian citizen affected by criminal acts of racial and ethnic discrimination, because it is considered very important for the government which respects the values of legal protection. This research is a normative juridical research that examines positive legal norms attached to laws and regulations related to the distribution of restitution rights for sufferers of racial and ethnic crimes in Indonesia. The results prove that restitution to victims of racial and ethnic discrimination crimes based on legislation is carried out by the Witness and sufferers Protection Agency Prosecutor. In order to obtain restitution, it must be submitted by the victim to the institution, so this institution is only reactive, which means that it will react after a request from the victim.

Keywords: Restitution, Discrimination, Race and Ethnicity, LPSK, Victim

1. INTRODUCTION

1.1 Problem Background

The cases of discrimination are often a serious problem in Indonesia. Until now, the majority of victims of racial and ethnic discrimination are minority and marginalized groups. This is approved with data from the National Commission on Human Rights of the Republic of Indonesia (KOMNAS HAM RI) that until now, victims with minority and marginalized backgrounds always occupy the highest position as victims of discrimination every year in Indonesia.¹ The Republic of Indonesia has provided

¹ KOMNAS HAM. "Potensi Diskriminasi Ras dan Etnis Sangat Tinggi". Komisi Nasional Hak Asasi Manusia, 2018, <https://www.komnasham.go.id/index.php>

certainty and one of the constitutional rights guaranteed by Article 28I, Paragraph (2) of the 1945 Constitution of the Republic of Indonesia is the freedom from discrimination acts.²

Unfortunately, in its implementation are still discriminatory actions, particularly against vulnerable communities, minority and marginalized community people. Various activities against discrimination are systematically and continuously carried out. Basically, they want a guarantee of legal protection and fulfillment of the right to be independent from discriminatory treatment. In human rights terminology, the principles of compatibility and anti-discrimination are the hallmarks of human rights.

The principle of compatibility as set forth in Article 1 of the Universal Declaration of Human Rights (UDHR) is as follows: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood".³ Article 1 of the UDHR can be concluded in relation to the principles of freedom, compatibility and brotherhood. This means that in personal life and social life every individual has the same position as one another.

While the principle of anti-discrimination as stipulated in Article 2 of the Universal Declaration of Human Rights, it is expressly stated that everyone is eligible to all the rights and freedoms stipulated in the Declaration without any exceptions or differences such as sex, skin color, political, religion, social origin, birth, property, position, or language.⁴ Therefore, from a humanity point of view, there cannot be discriminatory actions directed at certain racial or ethnic groups.

The affirmation of the principles of compatibility and anti-discrimination in the application of humanity can also be understood in international legal instruments on human rights, among others, The International Covenant on Civil and Political rights which has been ratified through Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights. The above descriptions, which emphasize the principles of freedom, equality, fraternity and anti-discrimination as the hallmarks of human rights, show that in human rights terminology various forms of discriminatory treatment are violations of human rights.

The Criminal Justice System relies on the principles of Criminal Law and Criminal Procedure to perform its duties specifically in the state through its institutional institutions that hold the power and prerogative to impose punishment and sanctions in the form of *ius puniendi*.⁵ In the event of a crime, the perpetrator can be prosecuted through a judicial process, which requires the charge of punitive size in the form of criminal sanctions. Under the criminal justice system, the state bears the responsibility to represent both the victims of crime and society at large. That is traditionally achieved through the prosecution process, where a punishment proportionate to the defendant's actions is imposed. In contrast to earlier times, individuals who have suffered harm or

</news/2018/11/19/687/potensi-diskriminasi-ras-dan-etnis-sangat-tinggi.html>

² Pasal 28I Ayat (2) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

³ Pasal 1 Undang-Undang Nomor 12 Tahun 2005 tentang Pengesahan International Covenant on Civil and Political Rights (Kovenan Internasional Tentang Hak-Hak Sipil dan Politik).

⁴ *Ibid.*

⁵ Bakhtiar, Handar Subhandi & Heru Sugiyono. "Paradigma Keadilan: Konsep dan Praktek". *Jurnal Hukum De Lege Ferenda Trisakti* 1, No. 1 (2023): 9-17. <https://doi.org/10.25105/ferenda.v1i1.16551>.

their respective relatives can immediately seek retribution or redress from the individual responsible for the wrongdoing.⁶

The diverse discrimination problems that happen in social life that are slightly sensitive in Indonesia and have the chance to cause clashes among others, racial discrimination or discrimination on the basis of ethnicity and discrimination based on belief or religion.⁷ The distinction among the ethnic community compounded with social gap and poverty is constantly high. The ethnic and racial discrimination that appears in communities always causes scrapes which could trigger social unsafety in the society.⁸

The social impact of ethnic and racial discrimination is devastating, especially for the victims. Many individuals experience significant social disadvantage, which often impacts their social life. In many cases, vulnerable minorities suffer the most from the actions of those who discriminate against them such as divisions, damaged relationships between community members, and social stigma are some of the consequences that must be faced.⁹ In addition, psychological impacts such as stress, anxiety and depression also accompany this condition, creating a cycle of problems that is hard to solve.

If we look at Decision Number 82/Pid.Sus/2024/PN Sdk regarding discrimination based on race and ethnicity, the Panel of Judges stated that the defendant Bobby Suhardi Naibaho had committed the criminal act of incitement against person or certain community based on how they look like, namely from the ethnic Pakpak tribe, causing hatred or hostility and sentenced the accused to imprisonment for 2 (two) years and 6 (six) months. In this context, the right to restitution is a very important issue to be raised.¹⁰

Restitution is a mechanism for recovering losses suffered by victims of criminal acts. As part of the justice system, restitution aims to return the victim's situation to the initial position before the crime occurred.¹¹ However, the application of restitution in Indonesia, especially in cases of racial and ethnic discrimination, still faces many challenges. One of the main problems is that there is still too much focus on punishing the perpetrator of the crime compared to restoring the victims, in this case minorities or marginalized groups and people who are directly related.

Based on these considerations, the legislative and the government have one of the Laws on Witness and Victim Protection, specifically accorded to as Law Number 7 of 2018. The overarching principles of the legal concept argues, among other things: "To facilitate the improvement of the community's ability to uncover criminal offenses, it is

⁶ Nurlail, Annisa & Beniharmoni Harefa. "Pengembalian Kerugian bagi Korban Tindak Pidana Penipuan". *5TH NATIONAL CONFERENCE on Law Studies* 5, No 1 (2023): 454-488.

⁷ Tessadinanti, Angelica & Ceisyafira Anindita. "Dampak Psikologis Individu Yang Mengalami Diskriminasi Agama Di Indonesia". *Moderasi: Jurnal Kajian Islam Kontemporer* 1, No. 01 (2022): 1-25.

⁸ Aisha, Salma & Malika Baby Natasha. "Analisis Perlindungan Hukum Terhadap Korban Diskriminasi di Indonesia." *MOTEKAR: Jurnal Multidisiplin Teknologi dan Arsitektur* 2, No. 1 (2024): 409-417. DOI: [10.57235/motekar.v2i1.2334](https://doi.org/10.57235/motekar.v2i1.2334)

⁹ Kamang, Aurelius Ekliando. "Kajian Tindak Pidana Diskriminasi Ras Dan Etnis Ditinjau Dari Undang-Undang Nomor 40 Tahun 2008 Tentang Penghapusan Diskriminasi Ras Dan Etnis." *Journal Lex Crimen* 10, No. 5 (2021): 47-56.

¹⁰ The Decision of Sidikalang Court Number 82/Pid.Sus/2024/PN Sdk.

¹¹ Amardhotillah, Putri Tamara & Beniharmoni Harefa. "Pemberian Restitusi Sebagai Pelaksanaan Diversi Pada Perkara Pidana Anak." *Jurnal Ius Constituendum* 8, No. 1 (2023): 34-49.

necessary to create a welcoming atmosphere by providing legal protection and guaranteeing the safety of any person".¹²

Individuals who have been victimized are considered to be particularly exposed and vulnerable to the consequences of the acts committed by the perpetrator, including racialized acts committed specifically against the individual. In summary, it can be argued that immoral acts constitute a violation of societal principles and ethical standards. Individuals who have experienced hate crimes need special protection, which includes physical and special protection, which includes physical and mental provisions.¹³

One of the endeavors to safeguard the interests of Victims of crime is the restitution mechanism, which includes recovering losses from the person who committed the unlawful act. Restitution recovery has been provided to victims who are deemed deserving of the right, due to a marked in racial incident committed against minority communities in recent times. The media seem to be competing to cover incidents of racial and ethnic discrimination crimes. In addition to taking action against the perpetrators of criminal acts, the Legal Aid Institute (LPSK) also appeals to all relevant parties to prioritize the basic rights and interests of victims of criminal acts.¹⁴

Based on the explanation of the decision concerning the discrimination, there is a problem that occurs, namely regarding the imposition of imprisonment for the perpetrator. Even though the perpetrator has been sentenced to imprisonment, from the victim's side, they may not necessarily get what they want by reporting the case. This is because imprisonment is basically unable to provide the losses that have been experienced by victims of racial and ethnic discrimination when becoming harmed by the offender.

The legal enforcement against the perpetrators of this crime must focus on recovering the losses from the criminal acts committed by the offender as a way of fulfilling legal guard for victims of discrimination. Victims have the right to gain and propose for restitution, as stated in the provisions of Article 8 to Article 15 of Supreme Court Regulation Number 1 of 2022 concerning Procedures for Settling Applications and Providing Restitution and Compensation to Victims of Crime.¹⁵ So based on this, an effort must be made to fulfill compensation to victims in cases of criminal acts of discrimination based on race and ethnicity.

Starting from the background that the author has explained above, this research is entitled "Efforts to Fulfill Restitution for Victims of Criminal Acts of Racial and Ethnic Discrimination in Indonesia" to examine more deeply the efforts to fulfill restitution to victims. It is hoped that the fulfillment of restitution can provide the victims of racial and ethnic discrimination in Indonesia.

¹² Undang-Undang Nomor 7 Tahun 2018 Tentang Pemberian Kompensasi, Restitusi, dan Bantuan Kepada Saksi dan Korban.

¹³ Adrian, Defira Martina, Fence M. Wantu & Abdul Hamid Tome. "Diskriminasi rasial dan etnis dalam perspektif hukum Internasional." *Jurnal Legalitas* 14, No. 01 (2021): 1-17.

¹⁴ Amardhotillah, Putri Tamara & Beniharmoni Harefa. "Pemberian Restitusi Sebagai Pelaksanaan Diversi Pada Perkara Pidana Anak." *Jurnal Ius Constituendum* 8, No. 1 (2023): 34-49.

¹⁵ Pasal 8 Peraturan Mahkamah Agung Nomor 1 Tahun 2022 tentang Tata Cara Penyelesaian Permohonan dan Pemberian Restitusi dan Ganti Kerugian Kepada Korban Tindak Pidana.

1.2 Research Problem

1. How is the fulfillment of restitution to victims of ethnic and racial discrimination crimes in Indonesia?
2. What implications will occur if restitution is not implemented by the perpetrators of racial and ethnic discrimination crimes?

1.3 Purpose of Writing

1. To provide contributions as a form of new thinking about the fulfillment of restitution to victims of racial and ethnic discrimination crimes in Indonesia;
2. To provide contributions as a form of new thinking regarding the legal implications that will occur if restitution is not carried out by the perpetrators of racial and ethnic discrimination crimes.

2. METHOD

The category of research used is normative legal research which focuses on deepening positive legal norms such as legislation, books, previous research results, scientific articles, journals, and various other credible literature related to this research.¹⁶ In this research, the author also uses a case approach by checking the laws and regulations connected to the issues in this research. The author analyzes a legal problem through legislation as well as literature and other reference materials and the method of data collection used by the author is library study which is a single method used in normative legal research, to obtain data through reading, quoting, and examining laws and regulations.¹⁷ Who related to efforts to fulfill restitution to victims of racial and ethnic discrimination in Indonesia and the legal implications if restitution is not carried out by perpetrators of racial and ethnic discrimination in Indonesia.

3. RESULT AND DISCUSSION

3.1. The fulfillment of restitution to victims of racial and ethnic discrimination crimes in Indonesia

The Decision of Sidikalang Court Number 82/Pid.Sus/2024/PN Sdk is a decision of the Sidikalang District Court regarding criminal acts based on ethnic and racial discrimination, which is one of the cases of ethnic and racial discrimination that contains restitution rights for victims. Victims of criminal acts of racial and ethnic discrimination should have the right to restitution due to the criminal acts they have received but when trying to obtain their rights, they must submit a Restitution Request as organized in Supreme Court regulation Article 8 Number 1 of 2022.¹⁸

Efforts to restore the restitution right for victims of criminal acts of discrimination based on ethnic and racial, on the part of the victim and law enforcement officials must have an equal role in the effort of restitution rights, which in this case both Investigators and Public Prosecutors are required to inform the rights of victims who have been lost by the criminal person of criminal acts of ethnic and racial

¹⁶ Efendi, Jonaedi dan Ibrahim, Johnny. *Metode Penelitian Hukum: Normatif dan Empiris* (Depok, Prenada Media Group, 2018), 132-136.

¹⁷ Jonathan, LCA Robin dan Theresia Militina. *Panduan Praktis Metode Penelitian* (Nomaden Institute, 2019), 27-35.

¹⁸ Pasal 8 Peraturan Mahkamah Agung Nomor 1 Tahun 2022 tentang Tata Cara Penyelesaian Permohonan dan Pemberian Restitusi dan Ganti Kerugian Kepada Korban Tindak Pidana.

discrimination.¹⁹ Notification of victims about their rights has been instinctively carried out at the investigation stage by investigators, because basically investigators are the ones who know more and meet with victims.

Therefore, if the victim wants to use the right of restitution, it will be attached to the Minutes of Investigation submitted by the Investigator to the Prosecutor's Office. One of the reasons for the lack of efforts to fulfill the right of restitution to victims of racial and ethnic discrimination is also due to the lack of communication harmony between law enforcers regarding this right of restitution.

The misalignment of communication has made the request for restitution to victims of racial and ethnic discrimination go unnoticed and forgotten. Often the request that has been submitted by the victim is not included by the Public Prosecutor in the prosecution or when the right of restitution has been submitted by the victim then the prosecutor includes it in the Prosecution, but in the verdict the Judge does not grant the right of restitution in his ruling.²⁰

The next steps for requesting restitution after the verdict is legally binding are regulated in Article 11 to Article 15 of the Supreme Court Regulation No. 1 of 2022. There is Article 14 paragraph (11) of Perma No. 1 of 2022 which states that "Legal remedies against the Court's decision as referred to in paragraph (9) can only be appealed", and in Article 14 paragraph (12) states that "The appellate Court's decision is final and binding."²¹ So far, requests for restitution in cases of racial and ethnic discrimination in the jurisdiction of the District Court are still very few.

The practice of restitution rights for victims of racial and ethnic discrimination should be an illustration of restorative justice itself, namely justice that prioritizes the restoration of the victim's condition in the condition before the loss arose from criminal acts. However, what actually happens is that it is impossible for the victim's condition to return to what it was before, but at least the application of restitution can provide a positive feeling to victims of racial and ethnic crimes.

The rule of law must also provide justice to victims, fairness in the application of victims' restitution rights is fair that provides the maximum benefit compared to not enforcing the granting of restitution rights to victims. Hans Kelsen believes that law as a social order can be expressed proportional if it can manage human behaviour in the maximum method so that it can be beneficial.²² Also Bentham's utility theory views that punishment can be justified if its implementation provides prevention in the future not to return again and the punishment imposed can provide a sense of satisfaction for victims and society.²³

In the theme of the decision of restitution rights to victims of racial and ethnic crimes in Indonesia, the sense of satisfaction for victims is not only mental but the perpetrators have accepted the consequences of criminal acts as well as a sense of

¹⁹ Marasabessy, Fauzy. "Restitusi Bagi Korban Tindak Pidana: Sebuah Tawaran Mekanisme Baru." *Jurnal Hukum & Pembangunan* 45, No. 1 (2016): 53-75.

²⁰ Shaqila, Faza & Rafiqoh Lubis. "Hak Restitusi Terhadap Anak Korban Tindak Pidana dan Implementasinya Dalam Putusan Hakim." *Neoclassical Legal Review: Journal of Law and Contemporary Issues* 2, No. 2 (2023): 11-18.

²¹ Pasal 14 Peraturan Mahkamah Agung Nomor 1 Tahun 2022 tentang Tata Cara Penyelesaian Permohonan dan Pemberian Restitusi dan Ganti Kerugian Kepada Korban Tindak Pidana.

²² Saima, Ika Dewi. *Rekonstruksi Pidana Restitusi Dan Pidana Kurungan Pengganti Dalam Tindak Pidana Perdagangan Orang* (Yogyakarta, Deepublish, 2020), 89-97.

²³ Ali, Mahrus & Ari Wibowo. "Kompensasi Dan Restitusi Yang Berorientasi Pada Korban Tindak Pidana." *Jurnal Yuridika* 33, No. 2 (2018): 260.

satisfaction because victims get protection in the form of restoring their condition due to the application of the sentence. Enforcing justice must provide benefits to all elements of society. In terms of the practice of restitution rights to victims of racial and ethnic crimes, the provision of restitution rights is a sign that in his era criminal law does not only function to give a deterrent effect for the perpetrators of crimes, but also provides a guarantee of protection to victims due to the criminal acts they have experienced.

The implementation of restitution is also clear evidence that with the pursuit of a legal case through litigation, the victim also benefits, which in this case the victim is not a witness party for the implementation of a criminal case, but the victim also receives protection in the form of restoring the victim's condition caused by the criminal act that occurred. Restitution that is delegated to the perpetrator is in addition to compensating for the bitterness caused by the criminal act as a form of retribution for the criminal act that has occurred, it is also intended to reduce bitterness and uphold justice for the victim who suffers most in the act.

3.2 The implications that will occur if restitution is not implemented by the perpetrators of racial and ethnic discrimination crimes

Regarding restitution payments that are not implemented by the perpetrators of racial and ethnic discrimination, there are still several other ways and methods such as by depositing restitution money contained in Article 31 Paragraph (2) of Law Number 12 of 2022, which states very clearly that the perpetrators of criminal acts and third parties can pay restitution payments at the stage of the examination process or before the Court's decision that already has permanent legal force, where the restitution money can be deposited with the Court registrar.²⁴

This also has been regulated in Article 7 of Supreme Court Regulation Number 1 of 2022 which basically states that it does not rule out the possibility of a policy of confiscating assets from the perpetrator for the payment of restitution, related to the confiscation of assets can also involve investigators as stated in Article 31 Paragraph (3) of Law Number 12 of 2022 which confirms that investigators can carry out confiscation of assets belonging to perpetrators of racial and ethnic discrimination crimes.²⁵

The confiscation is intended to be an effort to guarantee the protection and usefulness of the law. Investigators in carrying out confiscation must have the permission of the local District Court handling the case.²⁶ The confiscation of property can be carried out by investigators by considering third parties in good faith. Which is meant by good faith third parties are the rights of the husband, wife and children.

The description of the procedure flow of restitution execution:²⁷

- a. Article 33 Paragraph 1 of Law No. 12 of 2022 explains that restitution is given with a deadline of no later than 30 days calculated from the time the Court's decision or a copy of the decision is received, so in terms of fulfillment or provision of restitution, victims or their attorneys aimed at perpetrators and

²⁴ Pasal 31 Peraturan Mahkamah Agung Nomor 1 Tahun 2022 tentang Tata Cara Penyelesaian Permohonan dan Pemberian Restitusi dan Ganti Kerugian Kepada Korban Tindak Pidana.

²⁵ *Ibid.*

²⁶ Kasih, Dien Kalpika. "Efektivitas Pemberian Restitusi Terhadap Korban Tindak Pidana Berdasarkan Undang-Undang Nomor 31 Tahun 2014 Tentang Perlindungan Saksi dan Korban." *Jurnal Idea Hukum* 4, No. 1 (2018): 836-845.

²⁷ Pasal 33 Peraturan Mahkamah Agung Nomor 1 Tahun 2022 tentang Tata Cara Penyelesaian Permohonan dan Pemberian Restitusi dan Ganti Kerugian Kepada Korban Tindak Pidana.

third parties must be guided by the ruling of the court. After the restitution decision that already has permanent legal force within 30 days calculated from the receipt of a copy of the Court decision that has permanent legal force, the perpetrator must have provided restitution.

b. Article 33 Paragraphs 2 and 3 of Law No. 12 of 2022 explains that the prosecutor will submit a copy of the decision regarding the provision of restitution to the convicted person, victim and LPSK with a period of 7 days calculated from the receipt of the copy. Regarding the implementation of restitution, if within 30 days of the determination and decision on restitution is not fulfilled, the victim or his/her heirs shall notify the Court of this matter.

c. The court will give a written warning to the restitution provider to immediately pay restitution to the victim or their heirs, however if within 30 days after the court's decision is legally binding the restitution has not been paid, the judge in his decision will order the prosecutor to conduct an auction of the restitution guarantee.

d. The auction of assets confiscated as restitution security as carried out by the prosecutor there is an excess amount of restitution that has been determined or decided by the Court then the prosecutor will return the excess to the convicted person but if the assets of the convicted person are not sufficient to make restitution payments then a substitute prison sentence will be imposed which does not exceed the threat of the main punishment.

The substitute imprisonment in this case is calculated proportionally that has been paid. In this provision there is a subsidiary option if the convicted person cannot fulfill the restitution payment, the legal consequences with substitute imprisonment are one of the consequences. Regarding the confiscated property of the convict that is not sufficient for the amount of restitution that has been determined or decided by the Court, the government will give compensation according to the measure of restitution that has not been paid to victims of racial and ethnic discrimination crimes which if this is proven to be a violation of human rights.

The payment of compensation is paid through the victim assistance fund as stated in Article 35 Paragraphs 1- 2 of Law Number 12 of 2022, this legal basis is the legal basis for enforcing the judge's decision on compensation to victims who have suffered racial and ethnic discrimination crimes.²⁸ The practice of restitution for victims is not only regulated in the laws and regulations, but the technical implementation of restitution is also regulated by PERMA Number 1 of 2022 concerning Procedures for Settling Requests and Providing Restitution and Compensation to Victims of Crime.

The existence of Article 30 Paragraph (12) stipulated in PERMA Number 1 of 2022 regulates that related to the assets of the perpetrator or third party is not sufficient to fulfill restitution compensation, the perpetrator or defendant will be subject to imprisonment or substitute confinement as stipulated in Article 8 paragraph (13) and (14), which in this case the implementation is carried out by the Attorney General, Prosecutor, and Oditur.²⁹ The provision makes the legal consequences given to the perpetrator or defendant, namely the option for the perpetrator not to provide restitution compensation due to considerations in the court decision which stipulates that the defendant pay restitution to the victim or the family of the victim, but if the restitution is not paid, it will be replaced with imprisonment or confinement.

²⁸ *Ibid.*

²⁹ *Ibid.*

Furthermore, the mechanism for implementing decisions on imprisonment and substitute confinement must be carried out in a balanced manner based on the calculation of the total of restitution that has been paid by the criminal person and third parties as regulated in Article 30 Paragraph (13) of PERMA Number 1 of 2022.³⁰ The provision of restitution is inserted in the court decision and is imposed on the perpetrators and defendants of racial and ethnic discrimination crimes.

So clearly that is a form of realization of legal security for victims who have been given by the state in order to obtain compensation in the form of restitution rights. The criminal person or defendant must pay the restitution as in the Court decision that has been decided by the judge. The payment by the perpetrator can be paid from the property owned by the perpetrator of the crime of racial and ethnic discrimination which has been auctioned by the authorized official if the perpetrator cannot pay the restitution.³¹

The regulations on the procedures for implementing the confiscation of the property of the perpetrators and defendants of racial and ethnic discrimination crimes must include adequate legal arrangements to facilitate the tracking of these assets so that the management of these assets during the investigation period, trial or after the judge's decision is handed down.³²

The legal order in the confiscation of property becomes a work pattern for law enforcers who aim to execute seizure of the perpetrator's property where the seizure becomes one of the legal actions that can be carried out by a judge and is optional at the request of one of the parties which aims to provide security for property from the opportunity for transfer of hands, or encumbrance on collateral, destruction by the party who controls the goods so that the court conclusion can be executed.³³

The Prosecutor's Office is one of the law enforcement agencies related to restitution. According to the Criminal Procedure Code, prosecutors have the authority and function to carry out their duties as public prosecutors and execute court decisions that have been finalized. One of the duties of the prosecutor is to execute court decisions and also includes the provision of restitution to victims of racial and ethnic discrimination. The execution of this restitution decision is important as a final form of carrying out legal protection for victims of racial discrimination.³⁴

The prosecutor has a role as an officer who hands over the restitution money to the applicant, this is regulated in Article 30 paragraph (2) of PERMA Number 1 of 2022, which states that when the perpetrator or defendant of a criminal act of racial and ethnic discrimination is found guilty based on a court decision, the perpetrator or third party can deposit the restitution money with the court as stated in Article 7 and later the Attorney General, Prosecutor or Oditur will give the restitution money to the applicant or victim. In addition, the role of the Prosecutor is also evident from Article 30 paragraph (10), where the implementation of restitution given to victims of racial and ethnic discrimination crimes has not been fulfilled until the specified time period as contained

³⁰ *Ibid.*

³¹ Bimantara, I. Agusti Agung Dian & I. Putu Sudarma Sumadi. "Konsep Restitusi Terhadap Perlindungan Korban Tindak Pidana di Indonesia." *Jurnal Kertha Wicara* 7, No. 2 (2018): 3-4.

³² Marasabessy, Fauzy. "Restitusi Bagi Korban Tindak Pidana: Sebuah Tawaran Mekanisme Baru." *Jurnal Hukum & Pembangunan* 45, No. 1 (2016): 53-75.

³³ *Ibid.*

³⁴ *Ibid.*

in paragraph (9), then the Applicant or LPSK must notify the conditions to the Attorney General, Prosecutor, or Oditur.³⁵

Based on paragraph (11), when the Prosecutor has received a notification, the Attorney General, Prosecutor, or Oditur must confiscate the property of the perpetrator or Third Party and must sell the property through a public auction to provide fulfillment of Restitution payments within a maximum of 30 days.³⁶ Therefore, it is clear that the duty of the Prosecutor in the practice of the execution of court decisions containing restitution is a party that by the rules and provisions of its authority duties can conduct execution auctions against the assets of the perpetrators of racial and ethnic discrimination crimes, which then the proceeds of the auction are paid restitution to the victims of racial and ethnic discrimination crimes.³⁷

The investigators will coordinate with LPSK regarding the nominal restitution that should be given to the victim based on the material and immaterial losing his rights by the victim.³⁸ LPSK Protection and Assistance, the process of assessing the nominal restitution is of course through consideration from the assessment team from the LPSK and then if the nominal has been determined it will be reconsidered by the central LPSK leadership, after the nominal restitution has been determined LPSK submits the results of the calculation to the Investigator and will be submitted to the Public Prosecutor to be inserted in the charges.³⁹

Unfortunately, most perpetrators of racial and ethnic discrimination crimes are generally poor people. Which is for the law enforcers, that becomes a challenge when deciding the restitution charged to the perpetrator, because even though it has been decided to pay restitution, it turns out that in the execution the perpetrator is unable to pay it and chooses additional imprisonment. After the verdict was read, if the offender did not pay the restitution within the specified period, the Judges gave an order that the public prosecutor could confiscate the defendant's property.⁴⁰

4. CONCLUSION

The execution of restitution as regulated within PERMA Number 1 of 2022 concerning Procedures for Settling Requests and Providing Restitution and Compensation to Victims of Crime. The law explains that defendants who do not fulfill the implementation of restitution payments, the prosecutor will carry out an auction of the assets and if the defendant's assets are not sufficient for the total of restitution determined by the Judge, the difference in the amount of restitution calculated proportionally will be replaced by imprisonment or confinement as a form of responsibility for the defendant who is unable to pay the amount and the state has the

³⁵ Pasal 30 Peraturan Mahkamah Agung Nomor 1 Tahun 2022 tentang Tata Cara Penyelesaian Permohonan dan Pemberian Restitusi dan Ganti Kerugian Kepada Korban Tindak Pidana.

³⁶ *Ibid.*

³⁷ Bimantara, I. Agusti Agung Dian & I. Putu Sudarma Sumadi. "Konsep Restitusi Terhadap Perlindungan Korban Tindak Pidana di Indonesia." *Jurnal Kertha Wicara* 7, No. 2 (2018): 3-4.

³⁸ Saputra, Trias & Yudha Adi Nugraha. "Pemenuhan Hak Restitusi: Upaya Pemulihan Korban Tindak Pidana." *Jurnal Krtha Bhayangkara* 16, No. 1 (2022): 65-80.

³⁹ Asafari, Budi & Fauzan Hakim. "Hak Restitusi Sebagai Perlindungan Terhadap Korban Tindak Pidana Pada Lembaga Perlindungan Saksi Dan Korban." *Jurnal Ilmu Hukum Prima (IHP)* 6, No. 1 (2023): 120-129.

⁴⁰ Kasih, Dien Kalpika. "Efektivitas Pemberian Restitusi Terhadap Korban Tindak Pidana Berdasarkan Undang-Undang Nomor 31 Tahun 2014 Tentang Perlindungan Saksi dan Korban." *Jurnal Idea Hukum* 4, No. 1 (2018): 836-845.

right to compensate according to the measure of restitution that is not paid to the sufferer. If the offender does not execute the restitution payment by the deadline, the victim notifies the court. The court provides a written letter as a warning to immediately fulfill the restitution responsibility to the sufferer.

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