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Restitution and Compensation for Crime Victims: A Normative Shift in the Criminal Justice System

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ABSTRACT

The national criminal justice system has undergone a normative shift from a retributive approach toward justice oriented to the recovery of victims' rights through restitution and compensation. This normative development raises an issue of horizontal synchronization between Law Number 20 of 2025, as the general criminal procedure law that regulates the right to compensation conditionally where the offender is unable to fulfill restitution, and Law Number 3 of 2026, as a special law that limits compensation to certain categories of victims. This study aims to analyze that paradigm shift, evaluate the regulatory disharmony between the two laws, and formulate a prescriptive basis for state involvement in the recovery of victims' rights. This study applies normative legal research using statute, historical, and conceptual approaches. The findings show that the limitation of compensation under the special law may create differentiated legal protection for crime victims outside those special categories where the offender is unable to fulfill restitution. Therefore, the obligation of investigators, public prosecutors, and judges to notify and facilitate the rights to restitution and compensation should be understood as an active state mandate to guarantee victims' access to recovery. This study recommends harmonizing Law Number 3 of 2026 with Law Number 20 of 2025 and enacting a Government Regulation on the transparent and accountable governance of the endowment fund.

***Keywords:** Compensation; Crime Victims; Horizontal Synchronization; Restitution; Substantive Justice.*

INTRODUCTION

Before the reform of the criminal procedure law, Indonesia's criminal justice system remained dominated by an offender-oriented approach. This retributive approach primarily positioned victims within the evidentiary function of criminal proceedings rather than as legal subjects with a direct interest in recovering their losses (Saputra & Nugraha, 2022). This condition demonstrates the urgency of paradigm reform in national criminal law. Victim-oriented justice then became a conceptual basis for balancing the protection of offenders, victims, and the public interest (Muladi, 2014).

The design of judicial policy under the regime of Law Number 8 of 1981 reveals structural limitations in victim protection. That law did not define the terminology of restitution or compensation. Victims' losses were still placed within a claim for compensation that could be joined to criminal proceedings, with limited scope and dependent upon the request of the injured party (Christian & Panjaitan, 2025). Within the framework of criminal law policy, this condition indicates the need for reform so that the objectives of sentencing are not directed solely toward punishing offenders but also toward restoring the social balance disrupted by criminal offenses (Arief, 2008). The state subsequently began to regulate victims' right to recovery through Law Number 26 of 2000 and Law Number 13 of 2006 *juncto* Law Number 31 of 2014. However, the transitional regulatory framework still limited compensation to certain categories of criminal offenses (Nawawi et al., 2023).

The transformation of the national sentencing system is reflected in the enactment of Law Number 1 of 2023. This law demonstrates a shift from the doctrine of retribution toward a more corrective and restorative sentencing paradigm (Hikmah

& Agustian, 2023). The payment of compensation was institutionalized as part of an additional penalty. Accordingly, victims' recovery is no longer understood merely as a civil-law matter separate from the sentencing system (Zakran et al., 2025). This integration reinforces the need to evaluate the balance of protection among the rights of suspects, defendants, convicted persons, victims, and the public interest in the criminal justice system after criminal law reform (Arafat, 2025).

The development of positive law in regulating restitution and compensation raises an issue of horizontal synchronization among laws and regulations. Law Number 20 of 2025 is positioned as the general criminal procedure law that regulates the mechanism for fulfilling restitution and compensation for crime victims. Under the construction of that law, compensation is provided by the state where the offender is unable to pay restitution. By contrast, Law Number 3 of 2026 operates as a special law that limits compensation to victims of gross human rights violations, trafficking in persons, terrorism, and sexual violence. This difference in regulatory scope raises a doctrinal issue concerning equality of victim protection, particularly for crime victims outside those special categories who suffer losses but do not obtain a state compensation mechanism where restitution cannot be fulfilled by the offender. Therefore, a normative examination of the relationship between the two laws is necessary to clarify the direction of harmonizing the victim recovery system.

The limitation of compensation payment by offenders also raises discourse on state responsibility. In certain contexts, the state must assume a role where the recovery mechanism imposed on the offender cannot effectively guarantee victims' rights (Ali et al., 2022). This debate relates to the idea of rebalancing justice, namely that victims should not lose access to a recovery mechanism regulated by law merely because the offender cannot pay (Waller, 2011). Accordingly, state involvement in facilitating restitution and compensation should be understood as an active mandate to guarantee victims' access to justice, not as a voluntary benefit granted by the state.

This study offers scientific novelty by focusing on the synchronization of victim recovery norms in Indonesian positive law. The analysis is directed toward the doctrinal construction of state involvement in facilitating compensation for loss, without examining the empirical effectiveness of institutions or administrative procedures. This study also does not examine the position, functions, or institutional procedures of the Witness and Victim Protection Agency as its main object. This limitation is intended to keep the discussion focused on the relationship among norms, principles, and legal consequences arising from the regulation of restitution and compensation. Based on this limitation, this study examines the disharmony between the general mandate under Law Number 20 of 2025 and the sectoral limitation under Law Number 3 of 2026.

Previous studies have identified various obstacles in fulfilling victims' rights. Several studies show that the fulfillment of restitution is often constrained by

the absence of sufficiently strong legal instruments to ensure that offenders pay compensation for loss (Kusyandi, 2024). Other literature critically highlights the weakness of compensation mechanisms where recovery depends excessively on victims' initiative or on applications that are not adequately facilitated (Larwuy et al., 2023). Research on restorative justice also emphasizes the importance of the state's role when an agreement on recovery is not reached (Beremanda et al., 2023). These studies are important as a basis for understanding the weaknesses of the previous regime. However, they have not specifically examined the issue of horizontal synchronization between Law Number 20 of 2025 and Law Number 3 of 2026.

This study aims to analyze the paradigm shift in victim protection through a historical deconstruction of the development of compensation-for-loss instruments under national laws and regulations. This study also aims to evaluate horizontal disharmony between the general criminal procedure law and the special law on witness and victim protection. Ultimately, this study formulates a prescriptive basis for the state's active role in facilitating the fulfillment of the rights to restitution and compensation as part of the principle of substantive justice in the criminal justice system.

METHOD

This study constitutes normative legal research or prescriptive doctrinal legal research (Irwansyah, 2020). It is not directed toward measuring the empirical effectiveness of norm implementation, but toward examining regulatory consistency, the relationship among laws, and the conceptual basis of victim recovery in the criminal justice system. Given this character, the discussion does not focus on bureaucratic procedures, institutional obstacles, or administrative practices in providing restitution and compensation.

This study employs three principal approaches. First, the statute approach is used to examine provisions on restitution and compensation in relevant laws and regulations. Second, the historical approach is used to map the development of regulations on compensation for loss from the old criminal procedure law regime to the post-reform criminal law system. Third, the conceptual approach is used to construct arguments concerning substantive justice, state responsibility, and the paradigm shift from an offender-oriented approach toward victim-oriented justice.

The types and sources of legal materials in this study are based on library research (Sampara & Husen, 2016). Primary legal materials consist of the 1945 Constitution, Law Number 8 of 1981, Law Number 26 of 2000, Law Number 31 of 2014 on the Amendment to Law Number 13 of 2006, Law Number 1 of 2023, Law Number 20 of 2025, and Law Number 3 of 2026. Secondary legal materials consist of books and scholarly articles addressing criminal law policy, victim recovery, restitution, compensation, state responsibility, and restorative justice.

All legal materials were collected through documentary study. The collection stages involved inventorying, systematizing, and classifying legal materials according to the issues examined. The analytical technique used is qualitative analysis within the framework of normative legal research (Qamar & Rezah, 2020). The analysis was conducted through systematic interpretation, historical interpretation, and horizontal synchronization analysis. The research process began with identifying the development of norms, proceeded with an assessment of the relationship between the general criminal procedure law and the special law, and concluded with prescriptive conclusions on the position of restitution and compensation within the framework of substantive justice.

RESULTS AND DISCUSSION

A. Normative Evolution of Restitution and Compensation in the Criminal Justice System

At the beginning of its development, the national criminal justice system placed greater emphasis on a sentencing construction centered on offenders. This retributive orientation created an imbalance in protection because victims' interests had not yet obtained an equal position in criminal proceedings (Arief, 2008). The shift from an approach centered on punishing offenders toward victim protection constitutes an important part of the doctrinal development of Indonesian criminal law (Muladi, 2014).

The design of applicable positive law (*ius constitutum*) under the regime of Law Number 8 of 1981 shows that victims had not yet been positioned as the primary subjects of recovery. Victims were predominantly placed within the evidentiary function of criminal proceedings (Christian & Panjaitan, 2025). This limitation indicates that the old criminal justice system remained strongly influenced by a punitive approach that emphasized proving the offender's guilt (Fathan et al., 2025).

An examination of Article 98 and Article 99 of Law Number 8 of 1981 demonstrates that the mechanism for compensation for loss had not yet used the terminology of restitution or compensation. Victims' losses were placed within the mechanism of joining a claim for compensation to criminal proceedings. This mechanism gave the injured party an opportunity to submit a request, but its scope was limited because it depended on the victim's application and judicial assessment. Accordingly, victim recovery had not been regulated as a mandate fully integrated into the criminal justice system. This condition explains why victims' rights at that time had not received proportionate protection (Yusmar, 2021; Saputra & Nugraha, 2022).

The mechanism for resolving compensation for loss under the regime of Law Number 8 of 1981 operated passively. The recovery procedure depended

substantially on the initiative of the injured party. As a result, victims' rights might not be included in the operative part of the judgment if they were not submitted through the mechanism available under criminal procedure law (Larwuy et al., 2023). This limitation became more apparent because no imperative legal instrument yet existed to ensure that offenders fulfilled their obligation to pay compensation for loss to victims (Kusyandi, 2024).

These limitations show that the old criminal law provided mostly abstract protection for victims. Punishing offenders did not necessarily correspond to the recovery of victims' losses (Kaban et al., 2023). Consequently, material and/or immaterial losses suffered by victims had not obtained an adequate recovery mechanism. This condition reinforces the need for criminal law reform so that victim recovery is positioned as part of more substantive justice (Adamullah & Fuqoha, 2024; Hasibuan & Lubis, 2024).

The subsequent development is reflected in the enactment of Law Number 26 of 2000. Article 35 section (1) and section (2) of that law recognize compensation, restitution, and rehabilitation for victims of gross human rights violations or their heirs. This provision is significant because it demonstrates the more explicit regulation of victim recovery terminology in Indonesian positive law. However, the regulation still had limited scope because it applied only to victims of gross human rights violations. Nawawi et al. (2023) emphasize that this phase is important for understanding the distinction between the offender's responsibility and the state's responsibility for recovery.

The evolution of victim protection then entered a regulatory phase preceding criminal procedure law reform through Law Number 13 of 2006 *juncto* Law Number 31 of 2014. Article 1 point 3, point 10, and point 11 of Law Number 31 of 2014 provide definitions of victim, compensation, and restitution. Article 7A section (1) expands the forms of restitution to include compensation for loss of property or income, suffering directly related to the criminal offense, and the costs of medical and psychological treatment. This expansion indicates progress in recognizing victims' right to restitution.

Nevertheless, that expansion did not fully apply to compensation. Under Article 7 section (1) of Law Number 31 of 2014, compensation remained limited to victims of gross human rights violations and victims of terrorism. Accordingly, this phase demonstrates different regulatory directions between restitution and compensation. On the one hand, restitution was expanded as a right of crime victims. On the other hand, compensation remained limited to certain categories of criminal offenses. This sequence of developments shows the strengthening of regulations on victim recovery, although such recovery had not yet been fully regulated as a general mandate in the national criminal justice system.

B. Horizontal Synchronization of the Right to Compensation for Loss under Law Number 20 of 2025 and Law Number 3 of 2026

Restitution as compensation for loss imposed on the offender or a third party has limitations where the offender is unable to fulfill the payment obligation. In such circumstances, victims' right to recovery has not been effectively realized because a judgment on restitution does not always guarantee actual recovery. Dependence on the offender's capacity indicates that restitution requires a mechanism that supports the fulfillment of victims' rights so that it does not remain merely a normative recognition ([Amar, 2022](#)).

The limitation of restitution provides an important basis for developing compensation as a form of state involvement. Compensation cannot be understood as a voluntary benefit granted by the state, but as a recovery instrument carried out by the state where restitution cannot be fulfilled by the offender or a third party. Under the theory of failure to protect, the state has a basis of responsibility to recover victims because it bears the obligation to safeguard citizens' security ([Hafrida & Helmi, 2020](#); [Ali et al., 2022](#)). Therefore, compensation occupies an important position in ensuring that victims are not burdened with losses without a recovery mechanism available under the law.

This idea obtained a clearer normative form through Law Number 20 of 2025. This law is positioned as the general criminal procedure law that regulates the rights to restitution and compensation in the criminal justice system. Article 1 point 43, point 44, and point 50 provide definitions of restitution, compensation, and victim. Article 178 section (1) and section (2) regulate victims' right to restitution, while Article 183 section (1) and section (3) regulate victims' right to compensation provided by the state where the offender is unable to pay restitution. Accordingly, Law Number 20 of 2025 provides a legal basis for compensation on a conditional basis, namely where recovery through restitution cannot be fulfilled by the offender.

The state's obligation under Law Number 20 of 2025 is also evident through an active mandate assigned to law enforcement officers. Article 179 section (1) and section (2) require investigators, public prosecutors, and judges to notify victims of their right to restitution. These provisions also require investigators and public prosecutors to facilitate the calculation of restitution. Article 184 section (1) requires investigators, public prosecutors, and judges to notify victims of their right to compensation. This mandate shows that the fulfillment of victims' rights no longer depends entirely on the victims' personal initiative, but is actively facilitated by law enforcement officers. Furthermore, Article 181 section (1) and Article 185 section (1) provide a time limit for the provision of restitution and compensation of no longer than 30 days after the copy of the court judgment is received.

However, this construction has a regulatory relationship with Law Number 3 of 2026 as a special law. This law regulates witness and victim protection through several provisions consistent with Law Number 20 of 2025, particularly concerning the definitions of victim, restitution, and compensation. Article 19 and Article 20 regulate the right to restitution and the obligation of officers to notify and facilitate restitution. These provisions demonstrate consistency in recognizing restitution as a right of crime victims.

Normative disharmony arises in the regulation of compensation. Article 23 section (1) and section (2) of Law Number 3 of 2026 limit compensation to victims of gross human rights violations, victims of trafficking in persons, victims of terrorism, and victims of sexual violence. This limitation may be understood as special protection for victims whose particular vulnerability is recognized by law (Salsabilla et al., 2023; Radjak et al., 2025). However, that limitation raises a problem when compared with Law Number 20 of 2025, which regulates compensation for crime victims where the offender is unable to pay restitution.

This difference in scope creates horizontal disharmony between Law Number 20 of 2025 as the general criminal procedure law and Law Number 3 of 2026 as the special law. Where that special provision is applied restrictively, crime victims outside those special categories may not obtain access to state compensation even though restitution cannot be fulfilled by the offender. In this context, the issue is not merely a technical regulatory difference, but a difference in the scope of the right to compensation and its legal consequences for protection. This distinction is significant because victims are in comparable positions of loss and face the condition in which restitution is not fulfilled by the offender or a third party. This disharmony should be examined through systematic interpretation consistent with the principle of equality before the law so that the principle that special law derogates from general law (*lex specialis derogat legi generali*) is not applied in a manner that disproportionately reduces the objective of victim recovery within the criminal justice system.

Accordingly, the relationship between Law Number 20 of 2025 and Law Number 3 of 2026 should not be understood as a simple conflict that requires determining the absolute applicability of one law over the other. The relationship is more appropriately situated as an issue of normative harmonization. Law Number 20 of 2025 provides the general framework for victim recovery in criminal procedure law, while Law Number 3 of 2026 provides special protection for certain categories of victims. Both should be interpreted coherently so that the special law does not limit the scope of victim recovery regulated under the general criminal procedure law. At the same time, the general criminal procedure law must continue to respect the need for special protection for certain victims.

C. Philosophical and Doctrinal Bases of State Involvement in Victim Recovery

The Constitution provides an important basis for establishing a criminal justice system that guarantees balanced legal protection. Article 27 section (1) of the 1945 Constitution affirms the principle of equality before the law. This principle is relevant not only to offenders but also to victims who suffer losses as a result of criminal offenses. Therefore, human rights protection in the criminal justice system cannot be directed solely toward procedural guarantees for offenders. It must also address the need for victim recovery. This balance of protection forms part of substantive justice, which positions victims as legal subjects with a right to recovery ([Arief, 2008](#); [Waller, 2011](#)).

This constitutional basis is closely related to the doctrine of state responsibility. The state has an obligation to ensure that criminal law functions not only to punish offenders but also to recover victims' losses in accordance with the requirements and mechanisms regulated by laws and regulations. Where the offender is unable to fulfill restitution, the state must provide a compensation mechanism legally established by laws and regulations. In this context, compensation constitutes a recognition that victims need to obtain a recovery mechanism where restitution cannot be fulfilled ([Muladi, 2014](#); [Nawawi et al., 2023](#)).

The formulation of sentencing objectives in a state governed by law must also represent more comprehensive human rights protection. State involvement in facilitating compensation for loss cannot be understood as a discretionary policy without a legal basis. Such involvement is part of the state's obligation to maintain social welfare, recover victims' losses, and address the legal consequences of criminal offenses ([Khalid, 2023](#); [Ramadhan & Ariyanti, 2023](#)). Within the framework of criminal law reform, sentencing can no longer be understood solely as retribution. Sentencing must also be directed toward resolving conflicts, restoring the social balance disrupted by criminal offenses, and providing a normative basis for strengthening public trust in the law ([Irmawanti & Arief, 2021](#)).

The institutionalization of victim recovery is evident in post-reform substantive criminal law. Article 66 section (1) letter d *juncto* Article 94 section (1) of Law Number 1 of 2023 regulates the payment of compensation as part of an additional penalty. This regulation shows that the recovery of victims' losses has been recognized as part of the sentencing system. The payment of compensation is no longer positioned merely as a civil-law matter, but as one form of criminal-law response to the consequences caused by a criminal offense ([Arafat, 2025](#); [Zakran et al., 2025](#)).

The position of payment of compensation as an additional penalty demonstrates a shift from sentencing oriented solely to offenders toward sentencing that also takes victims into account. Compensation within the framework of an additional penalty positions the payment of compensation as an additional

legal consequence of the offender's criminal responsibility. This construction is consistent with the ideas of corrective and restorative justice, which seek to repair legal relations damaged by criminal offenses ([Beremanda et al., 2023](#); [Hikmah & Agustian, 2023](#)).

The transformation of substantive criminal law requires support from criminal procedure law. Law Number 20 of 2025 provides a procedural basis so that the rights to restitution and compensation do not remain merely a normative recognition. The obligation of officers to notify and facilitate victims' rights reflects a shift from a passive mechanism to a more active mechanism. Thus, the role of the state lies not only in establishing norms but also in the obligation of law enforcement officers to ensure that victims know, calculate, and submit their recovery rights through the mechanism regulated under Law Number 20 of 2025.

The implementation of that obligation requires clear financial support. In this context, the regulation of the endowment fund must be properly understood. The endowment fund is not the final form of compensation for loss provided to victims, but a financing instrument managed by the state to support the implementation of compensation and victim recovery programs. This interpretation is important so that the endowment fund is not equated with compensation itself. The endowment fund functions as a financing vehicle, while compensation constitutes a victim's right provided under the requirements and mechanisms determined by laws and regulations ([Widiastana et al., 2026](#)).

Based on these grounds, state involvement in victim recovery has philosophical and doctrinal bases. Law Number 1 of 2023 provides the substantive basis through the payment of compensation as an additional penalty, while Law Number 20 of 2025 provides the procedural basis through the regulation of restitution and compensation. However, the effectiveness of this construction still requires harmonization with Law Number 3 of 2026 so that special protection for certain categories of victims does not eliminate the recovery mechanism for crime victims outside those special categories where restitution cannot be fulfilled. Therefore, the shift toward criminal justice oriented to victim recovery should be understood as a normative construction that already has a basis in substantive criminal law and criminal procedure law, while still requiring synchronization so that the principle of substantive justice can be implemented consistently.

CONCLUSIONS AND SUGGESTIONS

The normative evolution of the national criminal justice system shows a shift from an offender-oriented retributive approach toward victim-oriented justice (gives greater attention to victim recovery). The regime of Law Number 8 of 1981 still placed compensation for loss within the mechanism of joined claims, which was limited in nature and dependent on the victim's request. Subsequent developments through

Law Number 26 of 2000 and Law Number 31 of 2014 began to recognize restitution and compensation, although the regulation of compensation remained limited to certain categories of criminal offenses. Thus, this historical development indicates that the legal basis for victim recovery has expanded, although it has not yet been fully regulated as a general mandate in the criminal justice system.

Criminal law reform through Law Number 1 of 2023 and Law Number 20 of 2025 strengthens the position of victims in the criminal justice system. Law Number 1 of 2023 positions the payment of compensation as an additional penalty, while Law Number 20 of 2025 regulates restitution and compensation as victims' rights in criminal procedure law. Compensation under Law Number 20 of 2025 should be understood as a right available on a conditional basis, namely where the offender is unable to pay restitution. However, Law Number 3 of 2026 limits compensation to victims of gross human rights violations, trafficking in persons, terrorism, and sexual violence. This difference creates horizontal disharmony because crime victims outside those special categories may not obtain access to state compensation where restitution cannot be fulfilled by the offender.

State involvement in victim recovery has strong philosophical and doctrinal bases. The principle of equality before the law requires that protection in the criminal justice system be given not only to offenders but also to victims. The obligation of investigators, public prosecutors, and judges to notify and facilitate the rights to restitution and compensation reflects a shift from a passive mechanism to a more active mechanism. However, this active mandate must be implemented through systematic and harmonious interpretation so that the general criminal procedure law and the special law do not disproportionately reduce the applicability of each other's norms. In this context, substantive justice requires normative synchronization so that crime victims outside those special categories continue to have access to recovery where restitution cannot be fulfilled.

Based on these conclusions, several recommendations should be considered. First, lawmakers should harmonize Law Number 3 of 2026 so that the limitation of compensation does not create disproportionate differentiated legal protection for crime victims outside those special categories. Second, the government should enact a Government Regulation as a follow-up to the regulation of the endowment fund in a transparent and accountable manner, with an express affirmation that the endowment fund is a financing instrument and not a form of compensation itself. Third, law enforcement officers should use systematic interpretation consistent with the principle of equality before the law in applying norms on restitution and compensation, so that the objective of victim recovery in criminal procedure law is not reduced by sectoral interpretation that disproportionately limits victim recovery. Fourth, further research may be directed toward institutional design and operational mechanisms for victim recovery, provided that such research remains distinguished from doctrinal inquiry into the legal construction of restitution and compensation.

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