

THE URGENCY FOR THE ESTABLISHING A VICTIM TRUST FUND IN SEXUAL VIOLENCE CRIMES IN INDONESIA

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ABSTRACT

This article aims to examine the importance of the Victim Trust Fund in handling criminal cases of sexual violence in the Indonesian criminal law system and its comparison to the Victim Trust Fund in the United States. This article uses a normative juridical research with a statutory, a conceptual and a comparative approach. The position of victims in the Victim Trust Fund is very important for the criminal justice system in Indonesia because it creates a firm and a binding justice. The Victim Trust Fund is a compensation system in Indonesia apart from restitution and compensation where it is necessary to establish a victim assistance fund management institution to be able to manage the funds allocated to victims.

Keyword: Victim Trust Fund; Sexual Violence; Criminal Act, Indonesia

INTRODUCTION

Sexual violence perpetrated against children is classified as *Graviora delicta*, given its potential to induce depression, incite feelings of shame, and elicit lasting trauma, which in turn, detrimentally impacts the psychological development of the affected child (Harefa, Nabilla, and Supardi 2023). *Graviora Delicta* serves as an alternate terminology for the gravest of crimes, namely, sexual violence against minors. Such actions run counter to religious, legal, and societal norms (Harefa 2019). Sexual violence is characterized by acts that degrade, debase, harass, and violate an individual's bodily and reproductive functions, often driven by disparities

in power and/or gender relations, resulting in both psychological and physical distress that can disrupt reproductive health.

It is imperative that victims of sexual violence receive significant attention in order to expedite the cessation of the injuries and psychological shock they endure. Beyond punitive measures against the perpetrators, the provision of compensation for the victims of sexual violence assumes critical importance. The framework for victim compensation is delineated in various laws and regulations in Indonesia, as outlined in the following table:

Table 1. Compensation Arrangements within Various Indonesian Legal Frameworks

No	Regulation	Article	Compensation Regulations
1	Old Indonesian Criminal Code	Article 14C	Convicts are obligated to compensate the entire or partial losses incurred due to criminal acts.
2	New Indonesian Criminal Code (UU No. 1 of 2023)	Article 94 paragraph (1)	In a court verdict, the convicted may be required to make restitution payments to the victim or their heirs as an additional punishment.
2	Indonesian Criminal Procedure Code (UU No. 8 of 1981)	Article 98 to Article 101	An act causing harm to another person can result in a request for compensation by combining a civil case with a criminal case
3	UU No. 26 of 2000 concerning Human Right Courts	Article 35	Every victim of a serious human rights violation is entitled to receive restitution.
4	UU no. 31 of 2014 concerning Witness and Victim Protection	Article 7	The application for restitution can be submitted through LPSK.
5	UU no. 35 of 2014 concerning Amendments to Law no. 23 of 2002 Child Protection	Article 71D	Every child who becomes a victim of a criminal act has the right to file for restitution in court
6	UU no. 21 of 2017 concerning Eradication of Crime	Article 48 to Article 50	Every victim of human trafficking has the right to receive restitution.

Human Trafficking			
7	UU no. 12 of 2022 regarding the Crime of Sexual Violence	Article 30 to Article 38	Victims of sexual violence crimes have the right to receive restitution and compensation, which is paid through the Victim Assistance Fund.
8	PP No. 43 of 2017 concerning Implementation of Restitution for Children Who Are Victims of Crime Criminal	All Articles	Regulates the procedures for submitting requests for restitution for child victims of criminal acts

Source:classified by author from various sources

The ratification of the Sexual Violence Crime Law in May 2022 has served to affirm the regulatory framework governing the Trust Fund for Victims (TFV), commonly referred to as the Victim Assistance Fund. This legislation establishes two primary modes of redress for victims of sexual violence, namely restitution and compensation. Restitution, as stipulated by court orders, is supplemented by compensation provided by the state to rectify any shortfalls in restitution payments to the victim, with the disbursement of compensation being overseen by the Victim Assistance Fund.

In the context of Indonesian jurisprudence, the concepts of restitution and compensation are recognized as mechanisms for addressing the needs of victims. However, in practice, both restitution and compensation as forms of redress remain relatively unfamiliar to law enforcement officials and the broader Indonesian society (Apriyani 2021). The Victim Assistance Fund, as outlined in the Sexual Violence Crime Law, represents a novel development within the legal framework.

The inception of the Victim Trust Fund, alternatively known as the Trust Fund for Victims (TFV) or the Victim Assistance Fund, finds its origins in the Rome Statute of the International Criminal Court, ratified on 17 July 1998. Additionally, the Assembly of States Parties (ASP), which serves as the supervisory and legislative body of the International Criminal Court, established the Victim

Trust Fund in 2002 (Pandjaitan 2021; Widiarso 2020). Furthermore, in 1998, the United Nations (UN) promulgated the Rome Statute, which undertook to guarantee protection for victims of armed conflict (Kementerian Luar Negeri RI 2019).

The allocation of state resources for the Victim Assistance Fund serves as a safeguard, ensuring the availability of financial support when the perpetrator of a crime lacks the means to fulfill their obligation to compensate the victim adequately. Consequently, the existence of the TFV, as a mechanism for compensating victims of sexual violence, represents a vital instrument for redressing the injustices suffered by these victims.

This article shall expound upon the merits of the Victim Assistance Fund, alongside a comparative analysis of its operationalization vis-à-vis the United States. It is envisaged that this exposition may serve as a valuable resource for informing the development of governmental regulations in alignment with the stipulations outlined in Article 35, subsection (4), of the Law Number 12 of 2022 pertaining to Offenses of Sexual Violence.

RESEARCH METHOD

This paper uses normative legal research methods, which entail a comprehensive examination of library materials and secondary data as foundational elements for research. This research method involves conducting searches on relevant regulations and literature pertaining to the specific problem under investigation (Soekanto and Mamudji 2001). The primary analytical approaches employed include the statute approach, conceptual approach, and comparative approach (Marzuki 2007). The technique utilized for the retrieval of legal materials is document study, and the subsequent analysis adopts a qualitative approach.

The overarching objective of this research methodology is to identify ideas that contribute to the formulation of legal concepts, enhance comprehension of legal principles, and address issues relevant to the field of law. The process of gathering legal materials relies on the document study or library research method, which encompasses the systematic collection of legal resources through extensive

exploration of library materials, literature, documents, expert opinions, and articles that elucidate legal concepts.

RESEARCH OUTCOME AND DISCUSSION

1) Advantages of The Trust Fund for Victims (TFV)

The regulatory framework governing compensation for victims of criminal offenses in Indonesia is delineated across various statutes and regulations. This framework encompasses the principles of compensation and restitution. Nonetheless, when juxtaposed with the Victim Trust Fund, distinctions and benefits inherent in the concept of compensation compared the Victim Trust Fund become conspicuously apparent.

Table 2. A Comparison Between Compensation and Restitution with Victim Trust Fund

No.	Restitution and Compensation	Victim Trust Fund
1	Not all victims of sexual violence have received their compensation rights.	All victims of sexual violence are entitled to compensation.
2	The administrative mechanism is quite complicated, making it difficult for victims to obtain compensation.	They can be represented by an organization to obtain the compensation they have suffered.
3	Limited sources of payment funds.	Increased and more flexible funding sources.
4	Compensation for victims of criminal acts is limited (serious human rights violations and terrorism).	Compensation for victims to be provided to all victims of criminal acts, especially sexual violence.
5	The compensation application process goes through several institutions.	The compensation application process can be directly accessed by the victim.
6	Compensation claims are requested after a court decision.	The compensation application can be included in the prosecutor's demand letter.

Source: from various sources

Compelling restitution is obligatory for individuals responsible for criminal transgressions, serving as a means of satisfying the entitlement to redress for victims

Victims of sexual violence and other criminal acts harbor a fervent desire for the establishment of a government regulation concerning Victim Trust Funds. Such a regulatory framework is deemed the optimal recourse to address their

rehabilitation needs. Consequently, the Victim Trust Fund should be designed to cater to all crime victims, transcending the confines of solely addressing victims of sexual violence (commonly referred to as TPKS victims). This inclusivity is paramount due to the financial support and substantial time required for the recovery of all victims of criminal acts. Regrettably, the extant government regulation fails to fulfill its intended purpose, as it primarily caters to victims who are participants in health insurance programs.

Within the Indonesian context, victims of criminal acts remain inadequately shielded, with insufficient focus on the provision of comprehensive protection that encompasses healthcare costs and psychological rehabilitation. This deficit underscores the significance of the Victim Trust Fund, consonant with the principles of justice articulated by W. J. S. Poerwadarminto, which postulate the absence of bias as a fundamental facet of justice. The Victim Trust Fund, being all-encompassing in its approach, emerges as an exemplary alternative for the support of all victims of criminal acts, transcending the boundaries of sexual violence victims.

Broadly, the Victim Trust Fund constitutes a financial mechanism derived from non-tax revenue and the fines imposed in financial criminal cases. This corpus of funds is allocated to the creation and execution of programs designed to uphold the rights of victims, with a pronounced emphasis on the victims of sexual violence (Sukoyo 2020). The enactment of the Sexual Violence Crime Law underscores the inescapable necessity for the government to assume responsibility for the Victim Trust Fund, ensuring the provision of suitable assistance to facilitate victims' recovery and secure their rights. Therefore, the government should endeavor to establish an optimized framework for the management of this financial resource (Rahayu and Hariyanti 2022).

In accordance with Article 7, Section 3, compensation payments, as delineated in Section 2, are disbursed by the Witness and Victim Protection Agency (LPSK) based on a legally binding court decision. However, the administrative hurdles and protracted timelines inherent in this process often culminate in victims not receiving the compensation they are entitled to. To address this predicament, an

alternative approach would be to incorporate provisions for the Victim Trust Fund into the Indonesian criminal justice system, intertwined with the series of legal demands articulated by the Public Prosecutor (JPU). This mechanism aligns with the current Indonesian criminal justice system, amalgamating the determination of the defendant's guilt status with the process of securing compensation for the victim during the judge's pronouncement.

If the Victim Trust Fund is established, it operates under non-disputable conditions as it assumes the role of a judicial decision. Consequently, victims of sexual violence are not subjected to prolonged waiting periods, and expeditious processing is ensured through the designated governing body, specifically the Witness and Victim Protection Agency (LPSK). Furthermore, it is imperative to acknowledge that the Victim Trust Fund in Indonesia offers a range of six distinct advantages as a means of reparation for victims of sexual violence, as delineated in the ensuing table:

Table 3. Advantages of Victim Trust Fund

No.	Advantages	Objective	Follow-up
1	Fulfillment of the Rights of Sexual Violence Victims	Creating a secure and comprehensive justice	Providing funding to victims
2	Regulation of the Victim Trust Fund in the Sexual Violence Law	Legal certainty of the Victim Trust Fund in the Criminal Justice System.	Technical regulations are required
3	The State's Increasing Financial Burden towards Victim Compensation	Minimizing the state budget to balance the nation's finances	Using philanthropic funds, community, individuals, social responsibility, and others
4	Implementing the Victim Trust Fund	Ensuring that all victims receive their compensation rights	All victims of criminal acts receive compensation.
5	The Authority of the Institution to Administer the Victim Trust Fund System	Facilitating victims in obtaining compensation	Assigning LPSK and the Ministry of Finance to disburse compensation to victims
6	Obligation to Provide Compensation to Sexual Violence Victims	Victims of sexual violence crimes immediately receive compensation rights	Incorporate the Victim Trust Fund into the prosecutor's demand letter.

Source:

By directing our focus towards the merits of the Victim Trust Fund, it aligns with a central tenet of justice theory propounded by John Rawls. Specifically, Rawls posits that justice and fairness are pivotal principles governing the fundamental societal framework, characterized by overarching objectives and consensus (Gališanka 2019). In this context, the overarching objective pertains to the administration of justice for victims, entailing an accord among the victims to secure a Victim Trust Fund as a requisite means of reparation.

Victim Trust Fund Mechanism: Source of Payment Funds and Authorized Institution

Since the enactment of the Sexual Violence Crime Law, there has been a heightened commitment to the more rigorous management of the Victim Trust Fund. In order to safeguard the rights of sexual violence victims, encompassing facets of recovery, it is imperative that the state institute specialized mechanisms. To attain this objective, the state must institute a mechanism such as the Victim Trust Fund or the Crime Victim Assistance Fund, in accordance with the doctrine of legal certainty as expounded by Sudikno Mertokusumo. The Victim Trust Fund can serve as a safeguard to ensure the implementation of rights for victims of sexual violence as prescribed by judicial decisions (Asikin 2012).

The Victim Trust Fund may serve as a financial resource to provide compensation for victims when restitution cannot be secured from the perpetrator. Consequently, the establishment, fortification, and expansion of a national trust fund for victim compensation must persist. According to a report from the LPSK (Indonesian National Commission on Human Rights), the realization of restitution for victims has been dismally low, with less than 10% of court-awarded sums being delivered, which amounts to approximately IDR 101 million. Hence, the Victim Trust Fund mechanism is regarded as a viable solution to mitigate this issue.

States have the capacity to accrue non-tax revenues within the framework of the Victim Assistance Fund Scheme, which can subsequently be processed and allocated towards restorative services. The disbursement of these funds will be executed through the LPSK or relevant service institutions down to the regional

UPTD level. These funds can serve to provide victims with compensation for expenses and losses incurred, including compensation disbursements.

The requisite financial resources are undeniably substantial and may impose a financial burden on the government. Nonetheless, when juxtaposed with the overall state revenue, the allocation for victim support must be augmented. As per data from the Ministry of Finance, Non-Tax State Revenue (PNBP) reached IDR 452 trillion in 2021, exceeding 151.6% of the 2021 APBN target of IDR 298.2 trillion. This presents a remarkable opportunity to institute a relief program for victims (Rahmawati 2022).

For the aforementioned reasons, the feasibility of implementing the Victim Trust Fund scheme is highly plausible due to its financial independence from the National State Budget (APBN), as stipulated in Article 35, Paragraph (3) of Law No. 12/2022 concerning TPKS. The resources for this fund can emanate from philanthropic entities, civil society, individuals, corporate social and environmental responsibility initiatives, and various other legal and non-binding sources, in addition to allocations from the state budget in accordance with statutory regulations, non-tax revenues, financial penalties related to criminal activities, and third-party donations (Pasal 35 ayat (3) Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual). These resources are then to be processed and allocated to programs aimed at safeguarding the rights of victims, or funds acquired from donations. Philanthropy, in this context, refers to non-profit institutions or organizations that do not pursue profit in their projects and endeavors, which are designed to enhance the quality of life for those beneficiaries who receive assistance (Nurhadi 2022).

The funds, designated for the aid, are intended for the support provided by the Indonesian Correctional Board (LPSK) to victims of sexual violence who endure various forms of suffering, encompassing physical, psychological, material, economic, and social consequences. Nevertheless, the LPSK routinely confronts a myriad of impediments in its endeavors to facilitate victims through the legal processes for the realization of their rights. These challenges include suboptimal victim data collection, inadequate financial provisions, cessation of medical

funding for victims of sexual violence by the Social Security Administering Body (BPJS), restricted institutional authority, the implementation of restitution, and the unsystematic nature of recovery programs. These obstacles curtail the effectiveness of LPSK's actions in aiding the victims (Jurnal Perempuan 2022). The introduction of the Victim Trust Fund is anticipated to alleviate the impact of these six hindrances as much as possible.

A system that offers incentives to perpetrators has been initiated, yet LPSK agents still face difficulties in accessing the assets of perpetrators for the purpose of compensating victims. Consequently, the establishment of financial provisions such as the Victim Trust Fund is of utmost importance in empowering victims to assert their rights. In practice, investigators, public prosecutors, and judges are required to inform victims and the LPSK regarding their entitlement to restitution. Additionally, investigators possess the authority to seize the assets of individuals involved in sexual violence crimes as collateral for restitution, subject to approval from the local district court (Pasal 31 UU Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual).

Restitution may be awarded to the wrongdoer in cases where prosecution is not pursued due to insufficient evidence or the determination that the act in question does not constitute a criminal offense. Additionally, restitution may be granted based on a court ruling with a permanent legal authority, such as the defendant's acquittal or the dismissal of all legal charges. In the event that the assets of the convicted individual do not cover the restitution costs, an alternative prison sentence, not exceeding the principal penalty, shall be imposed. When a corporation is found to be involved in a criminal act, some of its business premises and/or operations may be temporarily suspended for a maximum duration of one year (Rini and Habibie 2022). According to Article 7, Paragraph (2) of Law No. 31 of 2014 concerning the Protection of Victim Witnesses, compensation for victims of severe human rights violations must be applied for by the victim, their family, or their legal representative through the Human Rights Court via the Indonesian Witness and Victim Protection Agency (LPSK) (Pasal 7 ayat (2) Undang-undang (UU) Nomor 31 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 13 Tahun 2006

Tentang Perlindungan Saksi dan Korban). This process implies that compensation applications must navigate through multiple institutions, and not all victims are guaranteed compensation.

Presidential Regulation No. 80 of 2011 outlines a scheme for Trust Funds, which are funds allocated by one or more grantors and managed by a designated institution as a trustee for specific purposes (Peraturan Presiden Nomor 80 Tahun 2011 tentang Dana Perwalian). Notably, this regulation does not explicitly address the Victim Trust Fund or Victim Assistance Fund, as established in Law No. 12 of 2022 concerning Crimes of Sexual Violence. The TPKS Law, on the other hand, specifies two significant aspects of victim compensation: Restitution, which is the responsibility of the convicted party, and the Victim Assistance Fund, which is financed by the government.

It is imperative that the community actively participates in efforts to prevent and aid victims, thus creating an environment free from sexual violence, as envisioned by the legal reform pursued in Law No. 12 of 2022 concerning Crimes of Sexual Violence. The government's response to the demand for justice for victims of sexual violence is through the provision of assistance. Therefore, the Witness and Victim Protection Agency (LPSK) and the Ministry of Finance are the appropriate bodies to oversee and manage the Victim Trust Fund. LPSK, given its direct engagement with victims, is better positioned for effective communication and leading efforts in victim recovery. Collaboration with the Ministry of Finance is necessary to allocate funds to the victims.

This discourse pertains to the two theories previously elucidated by the writer, namely the theory of legal certainty and the theory of justice. Victims have the right to secure compensation through a court decision, and the establishment of the Victim Trust Fund aligns with the concept of legal certainty, as proposed by Sudikno Mertokusumo. This legal framework ensures that victims of criminal acts, particularly sexual violence, are entitled to compensation, reinforcing the principles of justice. In reference to the theory of justice postulated by Thomas Hobbes, justice is construed as an action deemed equitable when predicated upon a mutually consented agreement. Under these circumstances, it is paramount to prioritize the

provision of compensation assistance to victims through duly authorized and state-regulated institutions (V Sasan 2021).

2) Ideal Victim Trust Fund Mechanism for Victims of Sexual Violence

In essence, the legal framework serves as an instrument designed to influence societal change and requires diligent execution. As a vehicle for social engineering, law must be oriented towards the provision of tangible benefits to a broad spectrum of individuals (Rahardjo 1991). During the course of the year 2022, the Ministry of Women's Empowerment and Child Protection in Indonesia documented a total of 10,664 reported cases of sexual violence against children. Prior legislation, such as Law no. 31 of 2014 and Law no. 35 of 2014, stipulated that child victims of sexual violence possessed the entitlement to receive compensation in the form of restitution. Restitution, in this context, denotes the financial compensation disbursed by the perpetrator of sexual violence as an additional punitive measure.

On May 9, 2022, Indonesia officially enacted Law no. 12 of 2022, titled "Criminal Acts of Sexual Violence," thereby providing the official legal framework for women and children who have fallen victim to sexual violence in the nation. This legislation governs three distinct categories of compensation that survivors shall be entitled to, namely restitution, rehabilitation, and the Victim Assistance Fund, also referred to as the Victim Trust Fund. The Victim Trust Fund represents a novel mechanism introduced in Indonesia, influenced by a proposition from the Institute for Criminal Justice Reform (ICJR) and inspired by the compensation system in the United States, adapted to align with the Indonesian legal system. In its operationalization, the Victim Trust Fund is designed to come into play when the perpetrator is unable to fulfill their restitution obligations as originally promised to the victim.

Historically, Indonesian legal frameworks have exhibited a proclivity towards the punitive sanctioning of sexual violence perpetrators, often at the expense of addressing the compensation needs of victims. Consequently, Law no. 12 of 2022 introduces a novel mechanism in the form of a Victim Assistance Fund, or Victim

Trust Fund, in cases where the perpetrators of sexual violence fail to meet their restitution obligations. The absence of effective restitution mechanisms raises pertinent inquiries regarding the predicament of child victims of sexual violence who find themselves denied their rightful compensation due to the inability of perpetrators to fulfill their obligations, while simultaneously being ineligible for the Victim Trust Fund, since their experiences of sexual violence fall outside the purview of Law no. 12 of 2022.

In the realm of judicial practice within the Indonesian legal system, a fundamental guiding principle, known as the principle of legality, serves as a cornerstone for the enforcement of the law. As stipulated in Article 1, Paragraph (1) of the Criminal Code, it is explicitly declared that no action can be subject to punitive measures unless governed by statutory regulations that were in force prior to the commission of said action. This particular provision essentially signifies that Indonesia adheres to a non-retroactivity of the law (Undang-Undang Nomor 1 Tahun 1946 tentang Kitab Undang-Undang Hukum Pidana). In a theoretical sense, this entails that incidents of sexual violence against children occurring before the enactment of Law no. 12 of 2022 do not qualify for inclusion in the Victim Trust Fund, a circumstance that arguably undermines the principles of legal certainty. In practical terms, however, it is pertinent to acknowledge that the principle of legality frequently encounters exceptions, especially in cases of grave human rights violations, such as terrorism, genocide, and related offenses.

On the premise that instances of sexual violence against children are regarded as the most severe category of criminal acts, known as "graviora delicta," a number of experts in Indonesia contend that exceptions to the principle of legality can be warranted in such cases. Consequently, the application of the Victim Trust Fund, as governed by Law no. 12 of 2022, can still extend to child victims of sexual violence, contingent on the establishment of exceptions to the legality principle as delineated in the Ministerial Regulation.

The legal protection afforded to child victims of sexual violence is a matter of utmost gravity due to the profound and enduring impact that such acts have on minors. Such acts are unequivocally classified as "graviora delicta," constituting the

most heinous of offenses. Dr. Beniharmoni Harefa, S.H., LL.M, posits that an action can be categorized as a "graviora delicta" if it satisfies five specific criteria:

- A) The crime inflicts broad and lifelong victimization;
- B) The crime is intrinsically evil and abhorrent, being universally condemned by society (people condemnation) both domestically and internationally;
- C) The presence of dedicated institutions established for addressing these offenses;
- D) These crimes are rooted in international conventions; and
- E) There exist specialized laws and regulations designed to govern and address such offenses.

Under the provisions of Article 30 of Law no. 12 of 2022, victims of sexual violence are entitled to access recovery services, with the primary form of recovery service, currently in effect, being restitution. Stephen Schafer characterizes restitution as a legal remedy of a criminal nature that emanates from a judicial decision and is exacted from the perpetrator of a criminal act as a manifestation of their legal responsibility (Mansur and Gutom 2008).

The ineffective implementation of restitution highlights the necessity for an alternative mechanism to replace the role of restitution in compensating child victims of sexual violence. One such alternative is the Victim Trust Fund or Victim Assistance Fund, a scheme employed by numerous countries to provide compensation to victims of criminal offenses, particularly those who have suffered human rights violations such as sexual violence (Mehrotra 2022).

The United States is an example of a nation that has employed the Victim Trust Fund mechanism, a regulatory framework established under the Victims of Crime Act (VOCA) of 1984, which underwent revisions via H.R.1652 - VOCA Fix to Sustain the Crime Victims Fund Act of 2021. The administration and oversight of the Victim Trust Fund are entrusted to the Office for Victims of Crime (Office for Victims) operating within the judicial system. The agency is entrusted with the

responsibility of administering the Crime Victims Fund, facilitating the provision of direct assistance to victims, offering educational programs for service providers, and generating comprehensive reports concerning optimal methodologies and practices (Sacco 2020).

Since 1984, the Victims of Crime Act (VOCA) has undergone multiple amendments to bolster its support for supplementary victim-focused initiatives. These modifications have included the allocation of discretionary grants to private organizations, the establishment of a federal victim notification system, the provision of financial resources for victim assistance personnel within the Federal Bureau of Investigation and U.S. Attorney Executive Juvenile Justice, the provision of assistance and compensation to victims of terrorism, funding for the notification of survivors of sexual violence, the distribution of grants and guarantees aimed at safeguarding the rights of survivors of sexual violence, and the facilitation of restitution for victims of child pornography.

According to Article 35, paragraph (3) of the TPKS Law, if the perpetrator is unable to fulfill restitution to the victim, compensation is provided through the Victim Trust Fund funded by the state. The funding sources for this fund include philanthropic donations, contributions from society, individuals, corporate social and environmental responsibility, as well as other legally permissible sources that do not burden the state budget (Julianto 2020). In contrast, the United States' Victim Trust Fund is primarily financed by criminal fines, forfeited bail, fines, and special assessments collected by the U.S. Attorney's Office, federal courts, and the Federal Bureau of Prisons. Since 2002, Congress has allowed private entities to make gifts, bequests, and donations to be deposited into the Crime Victims Fund (CVF). It is important to note that the principal source of deposits into the CVF consists of criminal fines. As of the end of fiscal year 2019, the CVF had accumulated a balance of \$6.353 billion.

Table 4. Comparison of Victim Trust Funds in Indonesia and the United States

No.	Comparison	Indonesia	United States
1	Concept of Compensation	The concept of compensation for the victims of criminal acts in Indonesia is known as restitution and compensation. Supreme	The Victim Trust Fund in the United States has been in operation for quite some time, and its name is consistent with

		Court Regulation No. 1 of 2022, which was issued, aims to provide procedures for the resolution of restitution and compensation requests for crime victims. This is based on the existence of different regulations regarding restitution, which has led to inconsistencies in its application. Furthermore, the Victim Trust Fund has started to become a new system integrated into the Indonesian judicial system, as regulated by Article 35 of the Victim Assistance Fund Act.	either "Victim Trust Fund" or "Trust Fund for Victims." Specifically, it is referred to as the "Crime Victims Fund." The Crime Victims Fund, established by the Victims of Crime Act (VOCA) in 1984, is further regulated under 34 U.S. Code Section 20101 of the Crime Victims Fund.
2	Regulation setting	In Indonesia, the regulations regarding compensation are governed by several laws, namely: a. The Criminal Procedure Code (KUHP). b. Law No. 12/2022 concerning Victims and Witnesses Protection (TPKS). c. Law No. 31/2014 concerning Amendments to Law No. 13/2006 concerning Prostitution. d. Government Regulation No. 35/2020 concerning Amendments to Government Regulation No. 7/2018 regarding Compensation, Restitution, and Assistance to Witnesses and Victims. a. Presidential Regulation No. 80/2011 concerning Guardian Funds.	In the United States, there are several regulations regarding the Victim Trust Fund, which include: a. <i>Constitution of the United States.</i> b. <i>Victims of Crime Act of 1984.</i> c. <i>U.S Code Section 20101 Title 34 of Crime Victims Fund.</i> a. <i>Legal Information Institute (LII), Title 34 Crime Control and Law Enforcement, Subtitle II Protection of Children and Other Persons, Chapter 201 Victim Rights, Compensation, and Assistance, Subchapter I Crime Victims Fund, section 20101.</i>
3	Court proceedings	In Indonesia, the stages of a criminal trial typically consist of 10 (ten) phases, which are the reading of the indictment by the Public Prosecutor (JPU), the presentation of exceptions by the Defense Counsel (PH),	In the United States, the legal process is divided into three stages: the pre-trial stage, the trial stage, and the post-trial stage. The Victim Trust Fund is a part of the post-trial stage, which

		replication, duplication, interim decision by the Presiding Judge (MH), evidence presentation, examination of witnesses, reading of the charges by the JPU, pleading by the Defense Counsel (PH), and the final verdict by the Presiding Judge (MH). The Victim Trust Fund itself will be established when the JPU reads the indictment.	occurs after the congressional decision has been made.
4	Scheme/Mechanism	In practice, investigators, public prosecutors, and judges must inform the Victim and the LPSK (National Commission on Violence Against Women) of their right to receive restitution. Restitution may be provided in advance at the district court registry where the case is resolved. Additionally, investigators also have the authority to seize the assets of the perpetrator of Sexual Violence Crimes as security for restitution, with permission from the local district court based on Article 31 of Law Number 12 of 2022 regarding Sexual Violence Crimes. When conducting the seizure, the rights of third parties acting in good faith must be considered.	In the United States, the process regarding the Victim Trust Fund initially involves Congress establishing an annual funding limit. Subsequently, funds are transferred to the Office on Violence Against Women and the Office of the Inspector General, with 5% set aside for services to tribal victims. The Juvenile Justice Act receives \$10 million, plus 50% of the prior year's balance exceeding \$324 million, with a maximum award of \$20 million. The United States Executive Office for U.S. Attorneys receives funding to support hundreds of victim witness coordinators in the USAO districts and technical assistance from the Victim Notification System. Additionally, the Federal Bureau of Investigation receives funding to support hundreds of victim-witness specialists assigned to field offices across the country. Finally, the Office of Justice Program Management and Administration costs have been allocated.

The Victim Trust Fund (VTF) mechanism, as proposed by the Institute for Criminal Justice Reform (ICJR), was successfully incorporated into the final

version of Law no. 12 of 2022. Article 35, paragraph (1) of this law stipulates that in cases where the perpetrator is incapable of providing restitution to the victim, the state will compensate the victim through a Victim Trust Fund. Notably, the funding sources specified in Law no. 12 of 2022 differ from those initially recommended by ICJR. ICJR had proposed utilizing non-tax state revenues (known as PNBPNBP) as the funding source for the implementation of the Victim Trust Fund.

According to Law no. 9 of 2018, which pertains to Non-Tax State Revenue, PNBPNBP encompasses all activities, items, and objects that ultimately generate non-tax revenue for the state (Undang-Undang Nomor 9 Tahun 2018 tentang Penerimaan Negara Bukan Pajak). Consequently, it is arguable that, under the provisions governing the source of the Victim Trust Fund in Law no. 12 of 2022, PNBPNBP may not be considered an appropriate source, as it does not fulfill the essential criterion of being "... other sources that are legal and do not burden the state budget." Examining the alternative sources of funding outlined in Article 35, paragraph (3) of Law no. 12 of 2022 does not provide sufficient clarity regarding the smooth operation of the Victim Trust Fund. Subsequently, these funds will be deposited in a trust fund account and overseen by an authorized institution for distribution, aimed at benefiting the victim.

To implement the funding sources as prescribed in Article 35, paragraph (3) of the TP PKS Law for the Victim Trust Fund, it is imperative to establish specific regulations that define the distribution scheme. This aligns with the perspective of Jeremy Bentham, who contended that laws must serve the utility and benefit the greatest number of people. Laws are designed to maximize societal benefit. When applying Bentham's viewpoint to the legal protection system utilized by Indonesia for child victims of sexual violence, it becomes evident that the existing legal framework has not sufficiently served the utility of many individuals. Therefore, the establishment of specialized regulations governing the VTF fund's distribution scheme can significantly enhance the equitable distribution of VTF resources to victims.

To facilitate the seamless implementation of the VTF concept, it is also essential to designate the appropriate institution responsible for managing VTF

funds. Drawing inspiration from the United States, where a dedicated judicial institution oversees VTF funds, it is ideal for Indonesia to establish a specialized institution to manage assistance funds for victims following the enactment of the TPKS Law. This aligns with the overarching paradigm adopted by the Republic of Indonesia within the environmental sector. Specifically, Indonesia has instituted the Environmental Fund Management Agency as a proficient institutional entity entrusted with the stewardship of environmental funds. These funds play a pivotal role in advancing Indonesia's overarching objective of environmental conservation and the mitigation of greenhouse gas emissions.

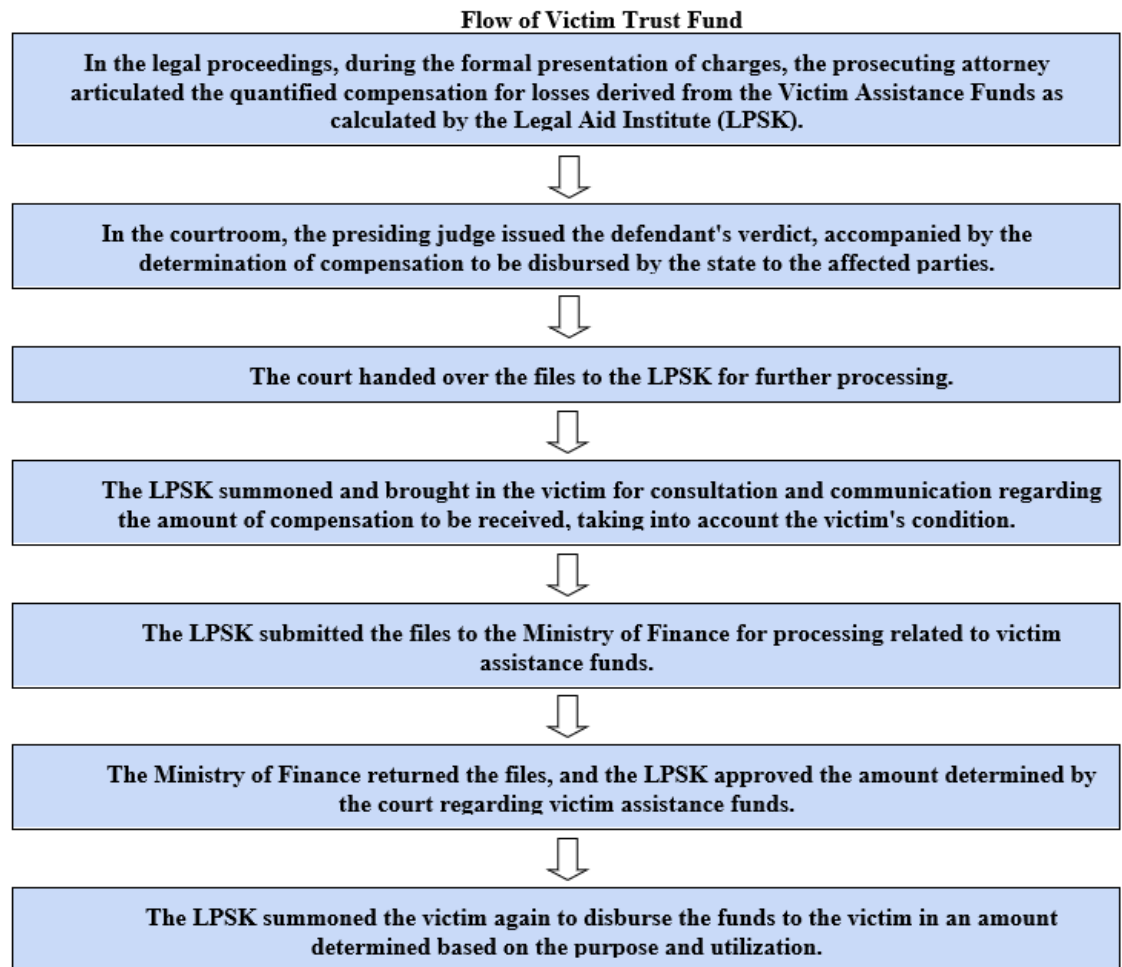
To preclude a reiteration of shortcomings in the execution of restitution, it is imperative that the regulatory framework accompanying Law No. 12 of 2022 incorporates, as a minimum requirement, a lucid and comprehensive procedure for the submission of applications to the Victim Trust Fund. The outlined approach for the submission of Victim Trust Fund applications, as posited by the Indonesian Center for Law and Policy Studies (ICJR), is as follows:

The same as the process of restitution, the initiation of the Victim Trust Fund involves the reporting of victimization to law enforcement during the investigatory phase. During this stage, in addition to conducting examinations of the involved parties, law enforcement authorities will also inform the family of the victimized child of their entitlement to receive compensation from the state in the form of a Victim Trust Fund. Notably, unlike the procedure for requesting restitution, victims are not required to await a three-day objection period for the assembly of requisite documents. In order to request the Victim Assistance Fund Management Agency to perform calculations, the sole document that the police must compile is the Case Report. This report contains pertinent information, such as the victim's identity, the perpetrator's identity, a detailed account of the sexual violence incident, and evidence of compensation, typically in the form of a post-mortem examination.

The post-mortem examination subsequently serves as a valuable tool for the Victim Assistance Fund Management Institutions, facilitating the determination of cost amounts. The specific regulations pertaining to the calculation of Victim Trust Fund fees allocated to child victims of sexual violence are further outlined in

implementing regulations. A notification letter is dispatched by the Victim Assistance Fund Management Institution to the Public Prosecutor, detailing the amount of the Victim Trust Fund to be disbursed to child victims of sexual violence. Analogous to the process of restitution, the Victim Trust Fund undergoes legal proceedings culminating in a court decision to gain legal validity. However, a key distinction lies in the fact that, in cases of restitution, the judge reserves the right to decline the compensation amount if it is deemed inadequate, illogical, or erroneous, whereas in the context of the Victim Trust Fund, such judicial refusal is precluded. This is due to the adherence of the Victim Assistance Fund Management Institution to implementing regulations as a point of reference during their calculations. In essence, the author's research furnishes a comprehensive overview of the procedural

aspects associated with the Victim Trust Fund, as depicted in the accompanying image:



CONCLUSION

Sexual violence perpetrated against minors is classified as *Graviora Delicta* due to its potential to induce depression, instigate feelings of shame, and result in enduring trauma that detrimentally impacts the child's psychological development. It is imperative that victims of such sexual violence are accorded comprehensive attention, extending beyond punitive measures against the perpetrators. Equally critical is the provision of compensation to the victims. Within existing legal frameworks, the notion of compensation encompasses both indemnification and restitution. However, with the enactment of Law Number 12 of 2022, addressing

Crimes of Sexual Violence, this legislation introduces a novel concept in the form of the Victim Trust Fund, also known as the Victim Assistance Fund. This concept exhibits distinct characteristics and advantages when compared to traditional compensation and restitution. Article 35, paragraph (3) of Law no. 12/2022 pertaining to Crimes of Sexual Violence (TPKS) stipulates that the Victim Trust Fund may draw contributions from various sources, including philanthropic endeavors, societal contributions, individual donations, corporate engagement in social and environmental responsibility, and other legally non-binding entities, in addition to allocations from the state budget as prescribed by statutory provisions. Furthermore, the appropriate entity entrusted with the management of the Victim Trust Fund is the establishment of a Victim Assistance Fund Management Institution.

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