Fulfilling the Rights of Restitution for Victims of Fraudulent Investment Fraud

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Abstract

The fraudulent investment mode of fraud is carried out by the perpetrators with a fake fund collection program with the lure of large percentage returns and low risk, and does not require technical analysis to make a profit. For victims of fraudulent investment fraud, paying attention to the provision of restitution as a form of legal protection. In practice, law enforcers still pay little attention to efforts to fulfill restitution for victims who have suffered losses. The type of research used is normative research using a statutory approach and a case approach. As for now, arrangements regarding restitution in criminal acts have been regulated in several laws, but in practice, several factors influence them, including statutory regulations, judges' legal understanding factors, and victims' legal understanding factors, so that their implementation still relies on victims' initiatives to apply for restitution.

I. Introduction

Crime is a form of deviant action and is very easily found in the social life of society, including in Indonesia. Crime itself is an act that is detrimental to society, crime is *crime in society* or is also known as a symptom within society and is part of the entire social process, a product of history and is also always related to every economic process which also affects human relations. [1]Crime is often referred to as a criminal act. Action refers to human behavior only in a positive sense and does not include passive or negative behavior, even though the actual meaning of the word *"feit" is positive behavior or passive or negative behavior.* Where an active human action is an action that requires certain conditions to be realized, namely a movement or movements of the human body. [2]As a crime that has occurred frequently in recent times, especially in the era of development of information and communication technology, this is a criminal act of fraud. One form of this is through fake investment or fraudulent *(illegal) investment* . People generally focus only on the results promised by this type of investment, ignoring the risks that could potentially occur.

Fraudulent investment is a term regarding a mode of criminal fraud with the concept of investment aimed at collecting funds. The scheme carried out by the perpetrator was a fake fund collection program with the promise of large percentage results, low risk, and did not require analytical techniques or effort to obtain the expected profits. This scheme can also be interpreted as a technique using *a broker* , namely that the funds used will be processed through a market mechanism with *the broker's ability* to multiply capital into large profits. The fund owner or investor will initially be asked to invest some amount as capital to run a business commodity, then the perpetrator will take the money away. You can find several very diverse programs, for example establishing companies or foundations, *crypto* , shares, fake social gatherings, and so on.

Fraud crimes generally use articles regulated in the Law of the Republic of Indonesia (hereinafter abbreviated to UURI) No. 1 of 1946 concerning Criminal Law Regulations or also known as the Criminal Code (hereinafter abbreviated to the Criminal Code) as the legal basis for punishment. Fraud or also known as *Bedrog* (*Oplichting*), in chapter XXV book II of the Criminal Code entitled " *Bedrog* " which means fraud in a broad sense, on the other hand, the first article of that chapter is Article 378 of the Criminal Code, regarding the criminal act of " *oplichting* " which means fraud but in in a small sense, while other articles in this chapter contain other criminal acts which are fraudulent in a broad sense. [3]Article 378 of the Criminal Code which regulates that:

"Anyone who, with the intention of benefiting himself or another person, goes

[1] Yesmil Anwar and Andang, 2010, *Criminology* , Refka Aditama, Bandung, p. 57

[2]Andi Sofyan and Nur Azisa, 2016, *Textbook of Criminal Law* , Pustaka Pena Press, Makassar, p. 97.

[3]Wirjono Prodjodikoro, 2003, *Certain Criminal Offenses in Indonesia* , Refika Adityama, Bandung, p. 36.

against the rights, either by using a false name or a false condition, either by means of artifice and deceit, or by composing false words, induces someone to give something, creates a debt or writes off receivables, shall be punished for fraud, with a maximum prison sentence of four years."

Article 378 of the Criminal Code regulates that fraud is an attempt by a person to persuade another person to give goods, create a debt or write off a receivable with the intention that the inducement is to benefit oneself or another person against the rights of which this inducement can be carried out either by using a name. fake or fake situation, deception, or also by making up false words. Meanwhile, fraudulent investments can be qualified as regulated in Article 372 of the Criminal Code which stipulates that:

"Any person who intentionally owns against the rights of an item which wholly or partly belongs to another person and the item is in his hands not because of a crime, shall be punished for embezzlement, with a maximum prison sentence of four years or a fine of up to Rp. 900. "

Meanwhile, criminal acts of fraud generally also use electronic media. The crime of fraud via electronic media is regulated in UURI No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions (hereinafter abbreviated to UURI ITE, 2008). Article 28 paragraph (1) regulates that:

"Every person intentionally and without right spreads false and misleading news which results in consumer losses in electronic transactions."

Article 45 paragraph (2) UURI ITE 2008 further regulates that acts committed as regulated in Article 28 paragraph (1) can be punished with imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

A new paradigm in the Criminal Justice System in Indonesia is regarding witness and victim protection as a form of protection for witnesses and victims from the occurrence of a criminal act. One of the components is the fulfillment of victims' rights, which in several laws have been explicitly regulated. Among the laws related to fulfilling victims' rights is UURI No. 31 of 2014 concerning Protection of Witnesses and Victims (hereinafter abbreviated as UURI Protection of Witnesses and Victims 2014). The definition of protection in this law is defined as all efforts to fulfill rights and provide support to provide a sense of security to witnesses and/or victims which should be carried out by the Witness and Victim Protection Agency (hereinafter abbreviated as LPSK) or other institutions that are in accordance with the requirements of the Law. concerned.

Meanwhile, based on international provisions, compensation for losses suffered by victims of criminal acts can be sought as one of the rights of victims of criminal acts. *The United Nations Declaration on the Prosecution and Assistance of Crime Victims* in point 4 of Part I- *General Principles* has emphasized The obligations of each country in fulfilling the rights of victims of criminal acts: " *Reparation by the offender to the victim shall be an objective of the justice process.*

Such reparations may include (1) the return of stolen property, (2) monetary payment for loss, damages, personal injury and psychological trauma, (3) payment for suffering, and (4) service to the victim. Reparation should be encouraged by the corrective process".[4]

For victims of criminal acts of fraud, it is important for law enforcement officials to always pay attention to the provision of legal protection, whether preventive legal protection or in the form of repressive legal protection. [5]This form of repressive protection includes providing restitution to victims after criminal acts of fraudulent investment fraud. One form of fulfilling the rights of victims as a result of the occurrence of a criminal act is by fulfilling restitution to victims of criminal acts. Article 1 number 11 UURI Protection of Witnesses and Victims 2014 provides a definition of restitution that restitution is compensation given to victims and their families by perpetrators or third parties. Forms of restitution for victims of criminal acts are then regulated in Article 7A paragraph (1). Article 7A paragraph (1) regulates that:

Victims of criminal acts have the right to receive restitution in the form of:

a) Compensation for loss of wealth or income;
b) Compensation for losses incurred as a result of suffering directly related to criminal acts; and/or
c) Reimbursement for medical and/or psychological care.

Other statutory regulations were then issued as implementing regulations for the UURI Protection of Witnesses and Victims 2014, including Government Regulation of the Republic of Indonesia (hereinafter abbreviated as PP) Number 7 of 2018 concerning Provision of Compensation, Restitution and Assistance to Witnesses and Victims as amended by PP Number 35 of 2018 2020 concerning Amendments to PP Number 7 of 2018 concerning Providing Compensation, Restitution and Assistance to Witnesses and Victims. Within the scope of the Supreme Court, Supreme Court Regulation (hereinafter abbreviated as Perma) Number 1 of 2022 concerning Procedures for Completing Applications and Providing Restitution and Compensation to Victims of Crime is also issued . This regulation was issued with the aim of strengthening the legal basis for implementing the protection of witnesses and fulfilling the rights of victims of criminal acts.

One of the cases of criminal fraud using a fraudulent investment method recently occurred which was carried out by the Defendant using the Trustworthy and Honest Fund Investment mode *by Owner* Tasya. The scheme implemented by the perpetrator was to create promotions through brochures which were initially distributed on WhatsApp and Instagram account stories. In the brochure, the

[4] Lukman Hakim,. "Analysis of the Ineffectiveness of Procedures for Resolving the Rights of Restitution for Victims of Human Trafficking Crimes". Journal of Scientific Studies Vol 20, No. 1, January, 2020. Pg 47 https://ejurnal.ubharajaya.ac.id/index.php/JKI/article/view/69.

[5] Philipus M. Hadjon, 2009, *Legal Protection for the Indonesian People* , PT. Bina Ilmu, Surabaya, p. 20.

perpetrator promises a fixed profit every week to prospective members who invest their capital. To convince prospective members, the perpetrator promises that the invested capital can be withdrawn at any time depending on the member's wishes. Due to this lure, prospective members of the trust fund investment are then tempted and join the trust fund investment program. To be able to join, the perpetrator asks for a certain amount of funds to be sent to the perpetrator's account. Instead of making a profit, the funds and profits obtained by the perpetrator through these investment funds are actually used by the perpetrator to meet their daily needs and also pay the perpetrator's debts. As a result of his actions, the victim who should have benefited actually suffered a loss. The public prosecutor who examined the case files then charged the perpetrator with Article 372 of the Criminal Code jo. Article 65 paragraph (1) of the Criminal Code and Article 378 of the Criminal Code in conjunction with Article 65 Paragraph (1) of the Criminal Code, meanwhile, the Panel of Judges who examined and tried the case stated that the perpetrator was legally and convincingly proven to have violated Article 378 of the Criminal Code concerning fraud and for his actions was punished with a criminal offense. imprisonment for 4 (four) years.

Paying attention to the description above, it is necessary to pay attention to the reasons why the public prosecutor uses the offense in Article 372 of the Criminal Code jo. Article 65 paragraph (1) and Article 378 of the Criminal Code in conjunction with Article 65 Paragraph (1) of the Criminal Code because the media used by the perpetrator is social media which in UURI ITE 2008 is known as electronic media. Based on the principle of *lex specialis derogat legi generali* , it is more appropriate for the public prosecutor to apply charges using Article 28 paragraph (1) UURI ITE 2008 jo. Article 45 paragraph (2) UURI ITE 2008.

Meanwhile, law enforcers have an obligation to pay attention to legal protection for victims of fraudulent investments who, as a result of the perpetrator's actions, experience losses, both material and non-material. The panel of judges who examine and decide on the case are also obliged to convey the rights of the victim in relation to obtaining restitution. Applications for restitution can be made before prosecution or even after the judge's decision has obtained permanent legal force *(inkracht van bewisjde)* if the victim does not submit a request for restitution and the victim is presented at trial as a witness.

Because losses to victims of the Trusted and Honest Fund Investment *by Owner* Tasya reached up to Rp. 1,594,650,000,- (One Billion Five Hundred Ninety Four Million Six Hundred and Fifty Thousand Rupiah), the victim wants recovery in the form of returning the losses suffered by the victim. However, in the decision, the Panel of Judges who examined and tried this case only imposed a prison sentence for the Defendant. If we look at other decisions in similar cases, one of which is Decision Number 343/Pid.Sus/2022/PN Bjm , that the perpetrator was sentenced to imprisonment for 1 (one) year and 9 (nine) months. In this case, the perpetrator also committed fraud using an *online social gathering*

mode which was spread through the perpetrator's social media with losses reaching Rp. 689,000,000,- (Six Hundred Eighty Nine Million Rupiah).

It is interesting to examine the public prosecutor's reasons regarding the disparity in charges which leads to disparity in decisions, especially regarding the fulfillment of restitution to victims of criminal acts of fraudulent investment fraud. The amount of loss reached Rp. 1,594,650. 000,- (One Billion Five Hundred Ninety Four Million Six Hundred and Fifty Thousand Rupiah) from the actions of the Trusted and Honest Investment perpetrator *by Owner* Tasya whose value is greater than the loss in Decision Number 343/Pid.Sus/2022/PN Bjm by giving restitution in the decision is an interesting discussion to raise. This reason is considered important to analyze why restitution was not requested in Decision Number 82/Pid.B/2022/PN Mrs.

In the Criminal Code, it can be seen that it regulates fraud in general and does not regulate fraud committed using electronic media. Regarding fraud committed via electronic media, this can be found in the 2008 UURI ITE, which is also known as the Amendment to the ITE Law. In this law itself there is no detailed explanation regarding fraud, this can be seen from the absence of the use of fraud propositions in its articles. [6]However, Article 28 paragraph (1) UURI ITE 2008 regulates the prohibition of spreading fake news which results in consumer losses. This is considered to tend to be similar to the dimensions of criminal acts of fraud and consumer protection.[7]

In this article, we will explain the regulations in criminal law regarding the right of restitution for victims of criminal acts of fraudulent investment fraud and legal considerations by the panel of judges in imposing criminal sanctions and efforts to fulfill victims' rights of restitution in cases of criminal acts of fraudulent investment fraud .

2. Research Method

The type of research used in this article is normative legal research. Normative research is also understood as research conducted to test an applicable norm or regulation. [8]The legal materials used consist of primary legal materials in the form of Law Number 1 of 1946 concerning Criminal Law Regulations, Law Number 8 of 1981 concerning Criminal Procedure Law, Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, Government Regulation Number 7 of 2018 concerning Providing Compensation, Restitution and Assistance to Witnesses and Victims, Government Regulation of the Republic of Indonesia Number 35 of 2020 concerning Amendments to Government

[6] Noor Rahmad, "Legal Study of Online Fraud Crimes ", *Journal of Sharia Economic Law* , Vol. 3 No. December 2, 2019, p. 106.

[7]Anton Hendrik, "Modus Operandi and Problems of Overcoming Online Fraud Crimes", *Mimbar Hukum: Periodical Journal of the Faculty of Law, Gadjah University Mada* , Vol. 31 No. 1 2019, p. 67.

[8]Irwansyah, 2020, *Legal Research Choice of Article Writing Methods & Practices* , Mirra Buana Media, Yogyakarta, p. 42.

Regulation Number 7 of 2018 concerning Providing Compensation, Restitution and Assistance to Witnesses and Victims, Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2022 concerning Procedures for Settlement of Applications and Providing Restitution and Compensation to Victims of Crime and Decision of the Maros District Court No.82/Pid.B/2022/PN Mrs. The secondary legal materials used are books, journals, articles and previous research related to this writing. The technique for collecting legal materials is carried out using library research *which* is analyzed using qualitative prescriptive methods .

3. Results and Discussion

1. Regulations in Criminal Law Regarding the Rights of Restitution for Victims of Fraudulent Investment Fraud Crimes

The crime of fraudulent investment fraud is a crime that often occurs in this era of technological development. The OJK Investment Alert Task Force throughout 2022 has recorded illegal investment losses that have reached IDR 109.67 trillion. This value is even higher than the total illegal investment losses from 2018 to 2021 which reached IDR 13.84 trillion. Based on this data, it can be seen that losses from criminal acts of fraudulent investment fraud actually tend to increase every year. This of course causes significant material losses for each victim, so they have the right to recover for these losses. Regarding the resolution of criminal cases in Indonesia at this time, it cannot be looked at from just one side, namely in relation to the fate of the perpetrator of the criminal act, but it also needs to be taken into account regarding the victim of the criminal act who suffers the most from the criminal act, both material suffering and immaterial suffering and It is also related to the protection of victims' rights.[9]

In the scope of victimology, victims have a broad meaning because they are not only limited to people who actually suffer losses, but also groups, corporations, the private sector and the government. J. E Sahetapy further stated that what is defined as a victim is an individual, legal entity who suffers injuries, damage or other forms of loss experienced either physically or psychologically, where the loss is not only seen from the outside. only legally, but also seen from an economic and political perspective as well as from a social and cultural perspective.[10]

Victims of crime in the criminal justice system according to Stanciu as quoted Teguh Prasetyo, what is meant by victim in a broad sense is a person who suffer the consequences of injustice.9 Stanciu further states that there are two

[9] Maria Novita Apriyani, "Implementation of Restitution for Victims of Crimes of Sexual Violence", Journal of Legal Treatise Vol. 17 No. June 1, 2021, p. 2

[10] Ismail Koto and Faisal, 2022, *Textbook of Witness and Victim Protection Law* , UMSU Press, Medan, p. 5

characteristics fundamental (inherent) of the victim, namely suffering (suffering) and injustice (injustice). The occurrence of victims cannot be seen as a result of actions illegal because the law actually also creates injustice, next causing victims, such as victims resulting from legal procedures .[11]

This recovery or protection can be obtained through submitting an application for the right to restitution. Restitution itself is an effort to restore/replace various losses experienced by victims as a result of a criminal act. By providing restitution to victims of criminal acts, this is also a manifestation of the protection of human rights. [12]It is felt that the current position of victims in the Criminal Code is not optimal as a result of the Criminal Code which has not clearly formulated related provisions that directly and concretely provide legal protection for victims, the Criminal Code also does not formulate types of criminal restitution (compensation) which are actually very useful for victims and /or the victim's family themselves.[13]

Although the Criminal Code does not provide concrete provisions related to legal protection for victims of criminal acts. However, regarding legal protection for victims in the form of providing compensation/restitution, it has been regulated in several regulations, including:

1. Law Number 8 of 1981 concerning Criminal Procedure Law;
2. Law Number 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning Protection of Witnesses and Victims;
3. Government Regulation Number 7 of 2018 concerning Providing Compensation, Restitution and Assistance to Witnesses and Victims;
4. Republic of Indonesia Government Regulation Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning Providing Compensation, Restitution and Assistance to Witnesses and Victims;
5. Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2022 concerning Procedures for Settlement of Applications and Providing Restitution and Compensation to Victims of Crime.

Regulations related to granting restitution rights to victims of criminal acts are contained in UURI Number 8 of 1981 concerning Criminal Procedure Law (hereinafter abbreviated to KUHAP) more precisely in Article 98 paragraph (1) which regulates:

"If an act that is the basis of an indictment in a criminal case examination by a district court causes harm to another person, then the presiding judge at the trial

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[11] Saputra, Trias, and Yudha A. Nugraha. "Fulfilling the Right to Restitution: Recovery Efforts for Crime Victims." Krtha Bhayangkara , vol. 16, no. 1, June. 2022, p 72, doi:10.31599/ krtha.v 16i1.1038.

[12] Barda Nawawi Arief, 1998, *Several Aspects of Criminal Law Enforcement and Development Policy* , Citra Aditya Bhakti, Bandung, p. 8

[13]Siswantoro Sunarso, 2012, *Victimology in the Criminal Justice System* , Sinar Grafa, Jakarta, p. 49

may decide, at the person's request, to combine the claim for compensation with the criminal case."

Based on the description of Article 98 of the Criminal Procedure Code, it can be seen that criminal law allows for restitution if the action that is the basis of the indictment has caused harm to another person, so it is possible to combine cases for compensation at the request of that person.

Furthermore, restitution has also been regulated by UURI Protection of Witnesses and Victims 2014, where in Article 7A paragraph (1) which reads:

Victims of criminal acts have the right to receive restitution in the form of:

a. Compensate for loss of wealth or income.
b. Compensation for losses incurred as a result of suffering directly related to criminal acts; and/or
c. Reimbursement for medical and/or psychological care.

In the description of this article, it can be seen that this Law guarantees the right to restitution for victims of criminal acts. Furthermore, Article 7A paragraphs (2) to paragraph (6) also explains the process of granting the right to restitution, such as submitting an application which can be carried out either before or after the court decision, and stipulates that the application for the right to restitution is submitted through the LPSK.

Apart from that, other regulations related to the right to restitution are contained in PP Number 7 of 2018 concerning Providing Compensation, Restitution and Assistance to Witnesses and Victims, where Article 19 paragraph (1) provides a guarantee of the right to restitution which victims of criminal acts are entitled to obtain as well. guaranteed by Article 7A paragraph (1) UURI LPSK 2014. This PP also regulates who has the right to submit a request for restitution and when the request can be submitted. Apart from that, this PP also regulates in more detail regarding the submission of applications, such as details of the files needed to submit the application to LPSK's obligations in examining the restitution application. The restitution payment mechanism, payment grace period and the legal consequences of late restitution payments have also been regulated in this PP.

Furthermore, regarding the regulation of the right to restitution for victims of criminal acts, it is also regulated in the Regulation of the Supreme Court of the Republic of Indonesia (hereinafter abbreviated to Perma) Number 1 of 2022 concerning Procedures for Settlement of Applications and Providing Restitution and Compensation to Victims of Criminal Acts, where Article 4 also provides The guaranteed right to restitution that victims of criminal acts are entitled to obtain is the same as stated in Article 7A paragraph (1) UURI Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of

Witnesses and Victims and Article 19 paragraph (1) PP Number 7 of 2018 concerning Providing Compensation, Restitution and Assistance to Witnesses and Victims, what differentiates Article 4 of this Supreme Court Regulation from the two previous regulations is that in Article 4 of this Supreme Court Regulation one more point is added so that it reads as follows:

a. Victims have the right to receive restitution in the form of:
b. Compensation for loss of wealth and/or income;
c. Compensation for losses, material or immaterial, resulting from suffering directly related to the crime ;
d. Reimbursement of medical and/or psychological care costs; and/or

Other losses suffered by the victim as a result of the crime, including basic transportation costs, attorney's fees, or other costs associated with the legal process.

Based on the description of the article above, it can be seen that Perma Number 1 of 2022 also includes other losses in the form of losses from transportation costs, attorney's fees, or other costs incurred during the legal process that can be replaced through restitution. This means that through Perma Number 1 of 2022, compensation for victims' losses not only covers losses incurred when the criminal act occurred but also when the criminal act has entered the judicial process.

Apart from that, Perma Number 1 of 2022 also regulates the submission of applications, such as details of the files required to submit as well as the mechanism for paying restitution, payment grace periods and the legal consequences of late payment of restitution as also stated in PP Number 7 of 2018 concerning Providing Compensation, Restitution and Assistance to Witnesses and Victims. Furthermore, Perma Number 1 of 2022 explains that requests for restitution can be submitted to the Chairperson/Head of the Court, either directly or through the LPSK, investigators, or General Apparatus. This is different from what is regulated in UURI Protection of Witnesses and Victims 2014 and PP Number 7 of 2018 concerning Providing Compensation, Restitution and Assistance to Witnesses and Victims where both regulations only state that requests for restitution are submitted through LPSK only. Although the Criminal Code does not explain the provisions for granting restitution, UURI No. 1 of 2023 concerning the Criminal Code has determined the payment of compensation (restitution) as an additional penalty.

Furthermore, regarding the right to restitution for victims of criminal acts of fraudulent investment fraud, as regulated in the Criminal Code, regarding fraud, Article 378 of the Criminal Code is regulated which reads:

"Anyone who, with the intention of unlawfully benefiting himself or another

person, by using a false name or false dignity, by deception or a series of lies, induces another person to hand over something to him, or to give a debt or write off a receivable, is threatened with criminal imprisonment for a maximum of four years."

Apart from that, if this fake investment fraud is carried out through electronic media then there is also Article 28 paragraph (1) UURI ITE 2008 which more or less regulates the act of spreading fake news which can mislead and result in losses for consumers in electronic transactions with criminal provisions regulated in Article 45 paragraph (2) UURI ITE 2008 states that as a result of the actions referred to in Article 28 paragraph (1) you can be sentenced to imprisonment for a maximum of 6 (six) years and/or a fine of a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

We can observe Article 28 paragraph (1) UURI ITE 2008 and Article 378 of the Criminal Code if they both use different word phrases. Article 378 of the Criminal Code regulates fraud, while Article 28 paragraph (1) UURI ITE 2008 regulates fake news which results in consumer losses in electronic transactions. These two criminal acts have something in common, namely that they can cause harm to other people. However, the formulation of Article 28 paragraph (1) UURI ITE 2008 does not require the element of "benefiting oneself or others" as regulated in Article 378 of the Criminal Code concerning fraud.

Based on the two criminal provisions above that can ensnare perpetrators of criminal acts of fraudulent investment fraud, only UURI ITE 2008 allows perpetrators to be fined for their actions and the Criminal Code does not at all discuss fines for perpetrators or compensation for losses for victims. Even though fines are possible through UURI ITE 2008, as is known, these fines will be given to the state treasury and not handed over to the victim. So that none of the two criminal provisions that can ensnare perpetrators of criminal acts of fraudulent investment regulate the right to restitution for victims of criminal acts of fraudulent investment. This is different from criminal acts of human trafficking, criminal acts of terrorism, or other criminal acts involving children, where in particular laws such as UURI Number 21 of 2007 concerning Eradication of Criminal Acts of Human Trafficking and UURI Number 35 of 2014 concerning Amendments to Laws. Law Number 23 of 2002 concerning Child Protection, specifically regulates in its law the right to restitution that victims are entitled to. So based on this, the regulations regarding the rights of restitution for victims of criminal acts of fraudulent investment fraud can be guided by the general regulations regarding the rights of restitution as previously described.

2. Efforts to Fulfill the Rights of Restitution for Victims of Fraudulent Investment Fraud

So far, it is still rare to find decisions primarily on criminal acts of fraudulent

investment fraud that provide compensation to the victims. In fact, this compensation is also a form of legal protection for victims which will be very beneficial for victims who have experienced losses, both material and immaterial. Legal protection for victims is contained in UURI Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, where Article 7A paragraph (1) guarantees the right to restitution that victims of criminal acts are entitled to.

One of the cases that can be analyzed is the case with Decision Number 82/Pid.B/2022/PN. Mrs. The defendant was around September 2021-April 2022 or at least sometime between September 2021-April 2022, located at BTN Nusa Idaman B3 No 5, Bontopuasa Environment, Adatongeng Village, Turikale District, Kab. Maros or at least in other places which are still included in the jurisdiction of the Maros District Court, the Defendant has with the intention of benefiting himself or others unlawfully, by using a false name or false dignity, by deception, or by a series of lies. , encouraging another person to hand over something to him, or to give a debt or write off a receivable, is threatened for fraud with a maximum prison sentence of four years in conjunction with several acts which must be seen as independent acts so that they constitute several crimes committed against the victims.

Initially the Defendant carried out a Trustworthy & Honest Fund Investment *by Owner* Tasya by making a story in the form of a brochure on his Whatsapp application account and Instagram application account which read:

a. Safe & Trustworthy Savings Fund Investment
b. WA: 082293319954
c. 1 million Back 1,250/week
d. 2 million Back 2,400/week
e. 3 million Back 3,500/week
f. 4 million Back 4,650/week
g. 5 million Back 6,000/10 Days
h. 10 million Back 12,500//15 Days
i. 20 million Back 23,500//20 Days
j. 30 million Back 34,000//25 Days
k. 40 million Back 46,000//25 Days
l. 50 million Back 58,000//25 Days
m. Back 110,000/Month

Through the Whatsapp application account and Instagram application

account, the Defendant sent brochures to each member explaining how to join and the mechanism of the investment. based on the story on the WhatsApp application account and the Defendant's Instagram application account which then attracted the attention of the victim witness Andi Tita Andriani who then replied to the story with a question regarding the investment profit the witness would get if he invested every day, then based on this question the Defendant assured the victim of the profit he will get. Then on January 3 2022, one of the Witnesses transferred IDR 7,000 to the Defendant's account. 000,- (Seven million rupiah). Then the victim witness who saw the Defendant's Whatsapp and Instagram *stories* was interested and asked about the investment mechanism. Then, on February 17 2022, the victim witness transferred money to the Defendant's account with a total of Rp. 65,000,000 (Sixty Five Million Rupiah). Apart from offering investment to the victim witness, the Defendant also offered the victim witness to look for other members by promising to provide profits based on the number of members they successfully invited. The victim witness succeeded in getting fifty-one new members with a total investment of Rp. 315,000,000.00 (Three Hundred and Fifteen Million Rupiah) which until now has never received any profits or *profits* and the deposit has not been returned by the Defendant. Apart from the victim witnesses who were members of the Defendant's investment, there were also 32 other members who had deposited investments with the Defendant and had not yet had their investment deposits returned by the Defendant with a total loss for their members amounting to Rp. 1. 594,650 (One Billion Five Hundred Ninety Four Million Six Hundred Fifty Thousand Rupiah). In carrying out his investment, the Defendant sent each of his members an online investment agreement letter which was sent via his WhatsApp application account with the aim of convincing his members to invest with the Defendant.

Initially, the Defendant paid the *profits* of his members by using borrowed funds from other people and also used the funds of other members who invested to pay the profits or profits of other members who were due. The results of the Trusted & Honest Fund Investment *by Owner* Tasya, the Defendant, were then used to purchase 1 (one) two-wheeled vehicle. In carrying out this investment, the Defendant did not have a business entity and did not have a business permit from the authorities to carry out investment in the Trusted & Honest Fund *by Owner* Tasya. Due to the Defendant's actions, he was charged with two alternative charges, namely Article 372 of the Criminal Code jo. Article 65 paragraph 1 of the Criminal Code and Article 378 of the Criminal Code jo. Article 65 paragraph 1 of the Criminal Code. The Panel of Judges who examined and tried this case stated that the Defendant was legally and convincingly proven to have committed the Crime of Fraud which was committed several times as in the second alternative indictment of the Public Prosecutor and sentenced him to imprisonment for 4 (four) years.

Regarding the fulfillment of the right to restitution for victims of criminal acts in Case No. 82/Pid.B/PN.Mrs, since the existence of Law No. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking and Law No. 26 of 2000 concerning Human Rights Courts, Law No. 15 of 2003 concerning the Eradication of Criminal Acts On terrorism, as well as other laws that contain restitution or compensation, there are only a few requests for restitution submitted to the LPSK and most of the requests for restitution that we hear are from victims of criminal acts that contain restitution in the law as mentioned above. Meanwhile, for other criminal acts, it is very rare for victims to apply for restitution.

Victims of a criminal act cannot immediately take away their rights, without going through a legal process, this illustrates the consequences of the rule of law so that everything related to resolving victims' rights also needs to go through a legal process and victims cannot directly ask or take (forcibly) the rights of the accused or suspect.[14]

Victims through LPSK have the right to apply to the court in the form of the right to compensation in cases of serious human rights violations as well as the right to restitution or compensation for losses which are the responsibility of the perpetrator of the crime, next the decision regarding compensation and restitution is given by the court and further conditions regarding the provision of compensation and restitution is regulated by Government Regulation.[15]

Based on the description of the judge's decision above, it can be seen that the judge did not burden the defendant with paying restitution to his victims, based on the results of the author's interview on March 21 2023 with Firdaus Zainal as member judge in case No. 82/Pid.B/2022/PN Mrs explained that as a judge she was aware of a number of regulations relating to the provision of restitution, however, so far she had never once handled a request for restitution, but she stated that she was aware of both the existence and authority of her as a judge to notify the victim's right to obtain restitution as regulated in Article 8 paragraph (4) of Perma Number 1 of 2022 concerning Procedures for Completing Applications and Providing Restitution and Compensation to Victims of Crime.

Further related to the reasons why in case no. 82/Pid.B/2022/PN Mrs was not asked for restitution, she admitted that she did not know about this matter. However, during the proceeding the judge informed the victim of their right to obtain restitution as regulated in Article 8 paragraph (4) of Perma Number 1 of 2022 concerning Procedures for Settlement of Applications and Providing Restitution and Compensation to Victims of Crime.

[14]Bambang Waluyo, 2022, *Victimology: Protection of Victims and Witnesses* , Sinar Grafa, Jakarta, p. 3

[15]Salam Siku, 2016, *Protection of the Human Rights of Witnesses and Victims in the Criminal Justice Process* , Indonesia Prime, Makassar, p. 97

However, based on the results of an interview the author conducted on March 18 2023 with the Victim Witness, he admitted that he felt he had a right to receive compensation, but he did not know either the mechanism or the guarantee of this right. Furthermore, the Victim Witness explained that the reason he did not submit a request for restitution was because he did not know what restitution was at all and did not understand the mechanism for applying for it and tended to assume that compensation was just another way of punishment and was not an additional crime. During the proceedings, the Victim Witness admitted that he had not been informed at all regarding the right to restitution by the judge and in fact this was the first time he had heard about the right to restitution as a lay person.

Based on the results of the interview above, there are differences in information between the judge as law enforcer and the victim. The ignorance of victims as ordinary people regarding their right to obtain restitution is part of the role of law enforcers in fulfilling the rights of victims by either notifying, informing, or by educating victims regarding the right to obtain restitution. These matters are also included in efforts to fulfill the right to restitution for victims of criminal acts, moreover this matter has also been included in Supreme Court Regulation no. 1 of 2022 concerning Procedures for Completing Applications and Providing Restitution and Compensation to Victims of Crime in Article 8 paragraph (4) which regulates:

"In the event that the victim does not submit a request for restitution and the victim is presented at trial as a witness, the judge will notify the victim of their right to obtain restitution which can be submitted before the Public Prosecutor files a lawsuit or after the Court's decision becomes legally binding."

The theory of punishment believed by law enforcers also plays an important role in the decision of law enforcers to view the importance of the right of restitution for victims if law enforcers still believe in the absolute theory which views that punishment is retaliation for mistakes that have been committed so that punishment is given because the perpetrator is obliged to receive sanctions. it's for his fault. According to this theory, the basis for punishment must be sought from the crime itself because the crime has caused suffering for other people, in return the perpetrator must also be given suffering. [16]So of course law enforcers will focus more on punishing perpetrators with prison sentences and ignoring the restoration of victims' rights.

According to Jo-Anne Wemmers, [17]criminal law usually views victims as witnesses to criminal acts or violations of state law only, thereby denying them

[16] Dwidja Priyanto, 2009, *Prison Criminal Implementation System in Indonesia* , PT. Rafika Aditama, Bandung, p. 22.
[17] Lies Sulistiani. 2022. "Problematics of Victims' Rights of Restitution in Crimes Regulated by the Criminal Code and Outside the Criminal Code." Bina Mulia Hukum Journal Vol 7 No (1) September 2022. Faculty of Law UNPAD (FHUNPAD): p 91. doi:10.23920/ jbmh.v 7i1.948.

access to the criminal justice process and only allowing them in when they are needed to testify.

Apart from that, in seeking to fulfill the rights of restitution for victims of criminal acts, it is good to also use victim protection theory, where in this theory there are two known models, namely the procedural rights model and the service model. Especially in a service model that views victims as persons who must be served by the police and other law enforcement officers, service to victims by law enforcement officers, if carried out well, will have positive consequences for law enforcement and victims, so that victims will have more confidence in enforcement institutions. the law and victims will feel that their rights are protected and their interests guaranteed.

So, based on the description above, the author assumes that the judge in criminal case Number 82/Pid.B/2022/ PN.Mrs has not made maximum efforts to fulfill the victim's right to restitution, bearing in mind that this fulfillment also includes the obligation of law enforcement officials to notify the victim of their right to obtain restitution. Even though the judge's statement stated that he had informed the victim of this right at the trial, based on the victim's statement which stated that he was not informed at all and did not know about the existence of this right, it is possible that the judge did not ensure that the victim as a lay person fully understood what he was conveying. Remembering that the purpose of notifying is so that people who previously did not know know what is being notified, so if this is not achieved then the judge's authority will not be realized as explained in Article 8 paragraph (4) of Perma Number 1 of 2022 concerning Procedures for Settlement of Applications and Providing Restitution and Compensation to Victims of Crime. So fulfilling the right to restitution for victims of criminal acts in this case is difficult to obtain due to the law enforcement authority not being implemented properly, bearing in mind that this fulfillment begins when the judge notifies and explores the facts of the victim's losses and then considers them and makes a decision.

Of course there will be no request for restitution if there is no law enforcement authority to inform the victim that he has the right to request restitution. The author also believes that this cannot be separated from the government's role as a rule maker. Of course, most of the victims who are ordinary people do not understand the existence and mechanisms of the rights they are entitled to as victims, especially the right to restitution, so it would be better if the government made the right to restitution a right that law enforcers must offer to victims. criminal acts and not waiting for the victim himself to submit a request for restitution, considering that the regulations regarding law enforcement that notify victims of the right to restitution are generally only contained in Perma Number 1 of 2022 concerning Procedures for Settlement of Applications and Providing Restitution and Compensation to Victims of Crime in

Article 8 paragraph (4) only regulates judges, even though not only judges but all law enforcement officers should inform and educate victims as ordinary people regarding the rights they are entitled to as victims of criminal acts.

So based on the description above, according to the author, there are several factors that cause delays in fulfilling the victim's right to restitution, including:

1. The Legislative Regulation factor, a number of existing statutory arrangements related to restitution so far have not optimally realized the objectives of the enactment of the legislation itself. The mechanism for submitting restitution is quite lengthy and the legal arrangements that require the victim's initiative to submit a request first mean that victims tend to be reluctant to submit a request for restitution because they feel they do not understand the regulations related to restitution and its mechanisms. Even though the Supreme Court Regulation no. 1 of 2022 concerning Procedures for Completing Applications and Providing Restitution and Compensation to Victims of Crime has summarized the mechanism and implementation of the right to restitution itself and in Article 8 Paragraph 4 of this PERMA has guaranteed that victims are aware of their right to obtain restitution, however this is still not implemented properly considering that the article only states that the judge has the authority to inform victims who are presented in court regarding their rights, even though according to the author all law enforcement officials starting from investigators, public prosecutors, and judges should be given the authority to inform and educate victims regarding their rights. as a form of service from law enforcement officers to ordinary people.
2. The Judge's Legal Understanding Factor, the judge's legal understanding certainly plays a big role in realizing the victims' right to restitution, if the judge still adheres to the absolute/retributive theory of punishment then of course the judge's focus in giving punishment to the perpetrator of a crime will only focus on the perpetrator and not the victim. Apart from that, the result of the lack of restitution requests submitted by victims has resulted in judges rarely handling restitution requests which results in them being less *aware* of victims' rights to restitution.

The Victim's Legal Understanding Factor, the victim's legal understanding also plays a very important role in realizing the fulfillment of the right to restitution. Victims need to understand that they have the right to obtain restitution and that this right is guaranteed by law. Because it is impossible to fulfill the rights of restitution for victims if the victims themselves do not submit a request, of course the general public needs help and the role of law enforcement officials in providing them with an understanding of the law.

4. Conclusion

a. Regulations relating to the rights of restitution for victims of fraudulent investment crimes, although unlike criminal acts of human trafficking and criminal acts of terrorism which in the law specifically contain provisions relating to restitution, the criminal act of fraudulent investment fraud which is a general criminal offense relating to the regulation of the right to restitution can be guided by several General regulations related to restitution include Law Number 8 of 1981 concerning Criminal Procedure Law, Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning Protection of Witnesses and Victims, Government Regulation No. 7 of 2018 concerning Provision of Compensation , Restitution and Assistance to Witnesses and Victims, Government Regulation of the Republic of Indonesia No. 35 of 2020 concerning Amendments to Government Regulation No. 7 of 2018 concerning Provision of Compensation, Restitution and Assistance to Witnesses and Victims, and Regulation of the Supreme Court of the Republic of Indonesia No. 1 of 2022 Concerning Procedures for Completing Applications and Providing Restitution and Compensation to Crime Victims. Efforts to fulfill the right to restitution of victims of criminal acts of fraudulent investment fraud in decision no. 82/Pid.B/PN Mrs. This has not been implemented maximally, this is due to several factors which become obstacles, including the statutory regulations factor, the judge's legal understanding factor, the victim's legal understanding factor, so that the statutory regulations still rely on the initiative of the victims in applying for the right to restitution, coupled with the judge's understanding which only focuses on the perpetrator rather than the victim and also the victim's legal understanding which is still minimal regarding their rights as victims, means that the right to restitution, especially for general crimes such as fraud, will be difficult to realize.
b. Based on the problems encountered in fulfilling the right to restitution for victims of criminal acts of fraudulent investment fraud, what can be attempted to overcome this is that it is hoped that the arrangements made regarding the right to restitution do not only rely on the initiative of the victims in submitting their requests considering the legal understanding of the victims as a community. laypeople are of course very minimal and tend not to follow developments in every legal regulation issued by the government. Apart from that, it is also hoped that judges in seeking restitution rights for victims ensure their authority as stated in Article 8 paragraph (4) of Supreme Court Regulation no. 1 of 2022 concerning Procedures for Completing Applications and Providing Restitution and Compensation to Victims of Crime is carried out properly, the authority to notify victims of the right to restitution must be conveyed until the victim truly understands the existence of this right, apart from that the government in making legal regulations related invitations .

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