

Recovering Ponzi Scheme Losses and Integrating the Victim Impact Statement into Indonesia's Criminal Justice System

Abstract

The protection of victims' rights within Indonesia's criminal justice system remains inadequate, particularly in complex financial crimes such as Ponzi schemes. Despite the legal framework established by Law No. 31 of 2014 on Witness and Victim Protection (UU PSK), victims often struggle to recover their losses due to systemic weaknesses, limited enforcement, and regulatory inconsistencies. Cases like the Budi Hermanto gold investment fraud and the Binomo investment scam illustrate the failure of asset confiscation and restitution mechanisms, leaving victims without proper compensation. This study aims to analyze the role of the Public Prosecutor in victim loss recovery, evaluate restitution and compensation mechanisms, and identify key legal obstacles to effective victim protection. A significant recommendation is the implementation of the Victim Impact Statement (VIS), which would allow victims to convey the emotional and financial effects of crimes in court, potentially influencing judicial decisions and improving the fairness of rulings. A comparative analysis with legal frameworks in the United States and Hungary highlights Indonesia's lagging victim compensation policies. The study concludes that strengthening prosecutorial involvement, refining restitution regulations, and integrating the VIS into judicial proceedings could significantly enhance victim rights and financial recovery. Such reforms are essential to ensure that justice is served to both perpetrators and victims, prioritising their restitution and protection.

KEYWORDS: compensation, Ponzi scheme, public prosecutor, restitution, Victim Impact Statement

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1 | Introduction

Protection of victims' rights in the criminal justice system is an essential component in ensuring justice and legal integrity.^[1] However, in Indonesia, the implementation of this protection sometimes encounters various obstacles, especially in complex financial crime cases such as Ponzi schemes. Despite the existence of a legal framework such as the Witness and Victim Protection Law (*Undang-Undang Perlindungan Saksi dan Korban* or abbreviated as UU PSK) No. 31 of 2014, which is designed to provide protection and basic rights to victims, its implementation sometimes does not reflect the expectations set out in the law.

The UU PSK stipulates important rights for victims, such as security protection and the right to restitution. However, practice in the field shows that victims are placed in a very limited role, especially in cases of economic crimes involving large financial losses. For example, in the case of gold investment fraud involving the defendant Budi Hermanto, the victims suffered losses of more than IDR 1 trillion (equivalent to EUR 58 million). Although the judge decided to seize the defendant's assets as an effort to recover the victims' losses, the implementation of this confiscation was hampered by the refusal of the party controlling the goods.^[2] This failure to carry out the confiscation shows significant weaknesses in the existing legal system, which can result in victims not receiving proper compensation.

One more case that highlights this issue is the Binomo investment fraud,^[3] where a platform that was initially promoted as a legal investment turned out to operate with a pattern similar to gambling. Although the victims have applied for restitution under the UU PSK, the Witness and Victim Protection Agency (*Lembaga Perlindungan Saksi dan Korban* or abbreviated as LPSK) rejected the application on the grounds that the case was considered gambling, not investment.^[4] In fact, if we look at the LPSK's work activities in 2022-2023, it was recorded that the highest number of protection applications came from illegal investment fraud cases including Ponzi schemes with robot trading modes or digital-based cooperatives, where in 2022 it reached 3,274 applications and in 2023 it reached

¹ Marc Groenhuijsen, "The Development of International Policy in Relation to Victims of Crime," *International Review of Victimology*, No. 1 (January 28, 2014): 31-48.

² Tangerang District Court Decision Number: 1907/Pid.B/2021/PN.Tng (2021).

³ Supreme Court Decision Number: 2029 K/Pid.Sus/2023 (2023).

⁴ Hendra Gunawan, "Nasib Korban Binomo: Uang Tak Kembali, Dianggap Kalah Judi" *Tribunnews.Com*, 23 December (2022).

2,772 applications.^[5] This data shows that although cases like Binomo have the potential to be rejected or not receive adequate protection, the number of cases related to Ponzi scheme investment fraud continues to increase. This emphasizes the need for updates in regulations related to victim recovery to be more comprehensive in viewing and interpreting various types of financial crimes that continue to develop, especially Ponzi schemes.

In this context, it is important to critically explore the challenges faced in protecting victims' rights, especially in cases of financial crimes such as Ponzi schemes. This study aims to analyze the role of the Public Prosecutor, existing restitution and compensation mechanisms, and to identify weaknesses in the implementation of the law that can hinder victim recovery. One mechanism that needs to be considered is the implementation of the Victim Impact Statement (VIS), which allows victims to convey the impact of the crime they experienced directly to the court. VIS can provide victims with an opportunity to express how the crime affected their lives emotionally and financially, which has the potential to improve the judge's consideration in making a fairer and more appropriate decision. Through this analysis, this article will propose recommendations for improving the criminal justice system in Indonesia, especially related to loss recovery, with the hope of increasing protection and justice for victims of crime. These steps include strengthening the role of the Public Prosecutor, clarifying regulations related to restitution and compensation, and increasing transparency and access to information for victims. The implementation of VIS, in this case, is expected to provide a more inclusive and holistic approach to law enforcement, ensuring that victims' rights are not only recognized but also effectively restored.

⁵ Witness and Victim Protection Agency, "Laporan Tahunan 2023: Perlindungan Saksi Dan Korban Dalam Pusaran Kejahatan Digital", (2023).

2 | The Role of Victims in Indonesia's Criminal Justice System: Passive or Active Participants?

The provisions regarding the role of victims of criminal acts in the Criminal Code have not yet explicitly formulated clear provisions regarding the provision of legal protection in terms of compensation for victims. Because in the process of sentencing, the impact of the crime on the victim or the victim's family should also be considered.^[6] However, in reality, the provisions in the Criminal Code focus more on the formulation of criminal acts, the perpetrator's responsibility, and the threat of punishment, without giving adequate attention to compensation for victims. Meanwhile, in the Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana* or abbreviated as KUHP), the role of the victim is only implicitly explained as a witness, as regulated in Articles 1, paragraph (26) and (27), of the Criminal Procedure Code.^[7] This affirmation shows that the role of the victim in the legal process is still limited and receives less proportional attention compared to the perpetrator.

In Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning Protection of Witnesses and Victims (UU PSK), a number of victim rights have been clearly regulated, which emphasizes the role of the victim as a witness in the criminal justice system. First, the most basic right that must be given to victims is the right to protection of their personal, family, and property security, as well as freedom from various forms of threats. This protection is a primary need for victims. Second, in the process of providing information, victims must be in a situation that is free from pressure or intimidation from any party. Information provided under pressure not only risks being inaccurate, but can also hinder the clear

⁶ Mark Button, Chris Lewis, Jacki Tapley, "Not a Victimless Crime: The Impact of Fraud on Individual Victims and Their Families" *Security Journal*, No. 1 (2014): 36-54.

⁷ Article 1, paragraph (26), of Criminal Procedure Code states "Witness is a person who can provide information in the interest of investigation, prosecution and trial on a criminal case which he himself has heard of, witnessed or experienced"; Article 1, paragraph (27), states "Testimony is one of the means of providing evidence in a criminal case in the form of information from a witness concerning a criminal event which he himself has heard of, witnessed or experienced by mentioning the reasons for his knowledge."

disclosure of facts regarding the crime experienced by the victim, which in turn can hinder the achievement of material truth in the trial process.^[8]

Victims of crime have two main roles: as witnesses or information providers in court, and as seekers of justice.^[9] In their role as witnesses, victims of crime function as witnesses in the criminal justice system, providing information related to the events they experienced. Based on Article 1, paragraph (27), of the Criminal Procedure Code, witness testimony is defined as one of the pieces of evidence in criminal cases. This information includes information about a criminal event that was heard, seen, and experienced directly by the witness, accompanied by an explanation of the source of that knowledge.

According to Arif Gosita, the role of victims in the criminal justice system is generally limited to being witnesses. In the judicial process, victims are only present in court to provide testimony, which reflects the passive role of victims because their interests have been represented by the public prosecutor.^[10] In this case, the public prosecutor must act as if they were the victims, so that they can understand and fight for the interests of the victims effectively. The prosecutor must ensure that the judicial process is fair, not only for the perpetrator, but also for the victims who have been harmed by the crimes committed by the perpetrator. This is important to ensure that the rights of victims are also respected and protected throughout the judicial process. As justice seekers, victims have the right to protection and restoration of their legal interests in the criminal justice process,

⁸ Ema Mar'ati Sholecha et al., "Justice Collaborator's Position and Function on Witness Protection's Rights as a Suspect from the Perspective of Criminal Law in Indonesia" *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 30 June (2023): 131-143.

⁹ Edi Yunara, Taufik Kemas, "The Role of Victimology in the Protection of Crime Victims in Indonesian Criminal Justice System" *Mahadi: Indonesia Journal of Law*, No. 1 (2024): 63-78.

¹⁰ Ony Rosifany, "Perlindungan Hukum Terhadap Korban Kejahatan" *LEGALITAS: Jurnal Ilmiah Ilmu Hukum*, No. 2 (2018): 20-30.

which includes access to justice and fair treatment.^[11] This includes the right to understand the mechanisms available to obtain justice, receive compensation for the suffering experienced, and obtain compensation through formal or informal procedures in an efficient, honest, affordable, and acceptable manner. Victims also have the right to receive notification regarding the regulations and developments in the judicial process, as well as guarantees of protection of personal and family security from intimidation and revenge. In addition, victims have the right to restitution, compensation, and legal aid.^[12] These rights are an important effort in realising legal protection for victims of criminal acts, as parties seeking justice for the losses they have experienced.

3 | The Role of Public Prosecutors in Victims' Loss Recovery: Dependencies and Limitations

In Ponzi scheme cases, there are three legal steps that can be taken by victims in order to recover losses from the perpetrators, namely through civil lawsuits, restitution, and compensation. Of the three legal steps, there are two recovery systems that intersect with the realm of criminal justice, namely recovery through restitution or compensation. In these two systems, there is a relationship between recovering losses experienced by victims of criminal acts and the role of the public prosecutor. Because if the victim expects that the recovery of losses can be carried out at once through the criminal justice process alone, then the request for recovery of losses must be included in the lawsuit. Regarding the relationship between the victim's efforts and the role of the Public Prosecutor in several laws and regulations as referred to, it can be seen in the table below:

¹¹ Janneke H. Gerards and Lize R. Glas, "Access to Justice in the European Convention on Human Rights System" *Netherlands Quarterly of Human Rights*, No. 1 (2017): 11-30.

¹² Mahrus Ali et al., "Compensation and Restitution for Victims of Crime in Indonesia: Regulatory Flaws, Judicial Response, and Proposed Solution" *Cogent Social Sciences*, No. 1 (2022).

Table 1. The Role of Public Prosecutors in Recovering Victims' Losses

No	Relevant Laws	The Involvement of Public Prosecutors to Recover Victims' Losses
1	Article 98, paragraph (2), of the Criminal Procedure Code (KUHP)	The victim submits a request to merge the loss recovery case to the Public Prosecutor no later than before the criminal charges are filed.
2	Article 7A, paragraph (4), Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning Protection of Witnesses and Victims	In the event that a request for Restitution is submitted before a court decision has obtained permanent legal force, the victims through LPSK can submit a request for Restitution to the public prosecutor to be included in their charges.
3	Article 3 and Article 27 of Government Regulation No. 7 of 2018 in conjunction with Government Regulation No. 35 of 2020 concerning Provision of Compensation, Restitution, and Assistance to Witnesses and Victims as implementing regulations of the Witness and Victim Protection Law	The Public Prosecutors has a role to include and read out requests for compensation and restitution in their charges.

Based on Article 182, paragraph (1), letter a of the Criminal Procedure Code, criminal charges are a tool of the Public Prosecutor that are submitted after the examination in court is declared complete.^[13] Criminal charges are a reference for the Judge in deciding a case,^[14] although the Judge himself has the discretion to decide a lower, the same, or higher sentence compared to the charges filed by the Public Prosecutor. Criminal charges are a tool for the Public Prosecutor to convey the type and severity of the sentence that is expected to be decided and imposed by the Panel of Judges on the Defendant, where the charges filed must be accompanied by an explanation regarding the basis of which criminal act in the charge was proven to have been committed by the Defendant. Therefore, the contents of the indictment must also be adjusted to the evidentiary process in court.^[15]

¹³ Article 182, paragraph (1), letter a of the Criminal Procedure Code states: "After an examination has been declared completed, the public prosecutor shall put forward his criminal charge."

¹⁴ Yuliandri, Gusti Ayu Ketut Rachmi Handayani, Ketut Seregig, Hilaire Tegnán, Teguh Prasetyo, "Retributive Justice Theory and the Application of the Principle of Sentencing Proportionality in Indonesia" *Journal of Legal, Ethical and Regulatory*, No. 4 (2018): 1-8.

¹⁵ Muhammad Deniardi et al., "Criminal Law Arrangements in Indonesia Related to Judicial Review" *Russian Law Journal*, No. 3 (2023): 1705-1716.

The evidentiary process is intended to create the judge's confidence in imposing a sentence as charged by the Public Prosecutor. In this case, facts are needed from at least two pieces of evidence that legally and convincingly show that a defendant has committed a crime.^[16] Based on the need for the evidentiary process, the victim is then presented in the trial process. Although the Criminal Procedure Code does not definitively explain the term "victim," the victim as "the party who experienced it themselves" is included in the definition of evidence in the form of "Witness Statement" as referred to in Article 1, paragraph (27), of the Criminal Procedure Code. The victim presented by the Public Prosecutor as evidence is used to defend the interests of the state due to the provisions of the law that have been violated and not to bring the legal interests of the victim himself.

If the public prosecutor does not have an orientation towards the needs of the victim, the imposition of criminal sanctions tends to be a monopoly of the apparatus so that the victim as the party who suffered the loss feels dissatisfied because the loss experienced does not receive enough attention. In fact, a victim of a crime cannot immediately ask for compensation from the perpetrator of the crime even though the loss has actually been experienced, considering the concept of a state of law which means that a victims cannot take their rights from the suspect without first going through a legal process.^[17] The victim is considered an instrument to help law enforcement in proving the guilt of the perpetrator, but it remains unknown for what the state is doing regarding the losses suffered by the victim so that they can be restored to their original condition before the crime occurred.

In fact, in the Decree of the Attorney General of the Republic of Indonesia No. Kep-030/J.A./3/1988 on the Improvement of the Tri Krama Adhyaksa (Three Noble Behaviours) Prosecutor's Doctrine states that the purpose of the prosecutor's doctrine namely loyalty, perfection, and wisdom (*Satya, Adhi, Wicaksana*) as a basic formulation in order to carry out duties and responsibilities with a sensitive feeling towards the surroundings. This doctrine should be a driving force for a Public Prosecutor to actively participate in efforts to compensate victims so that victims of criminal acts are not only presented to prove the Public Prosecutor's charges. Victims of criminal acts

¹⁶ Ali Yusran Gea, "Development of Criminal Evidence Law in Indonesia" *Legal Brief*, No. 3 (2024): 768-779.

¹⁷ Alireza Millanei, Roshanak Khalili, "Balance among Rights of Complainant, Accused, and Society in State Procedures" *UCT Journal of Social Sciences and Humanities Research*, No. 1 (2016): 1-6.

must not only be treated as legal subjects who have equal standing before the law (equality before the law), but must also be treated with respect and compassion for the victim's dignity.

An example of the involvement of the Public Prosecutor in an effort to recover the victim's losses can be seen in the case of a Ponzi scheme gold investment fraud involving the defendant Budi Hermanto. This case resulted in a loss of IDR 1 trillion (equivalent to EUR 58 million) to the victims, and this case was registered at the Tangerang District Court with Number: 1907/Pid.B/2021/PN.Tng. The victims, who felt aggrieved by this fraudulent scheme, sued Budi Hermanto in a criminal trial. They also filed a lawsuit for recovery of losses using the mechanism of Article 98 of the Criminal Procedure Code, which allows the combination of criminal charges and claims for loss recovery in one trial.^[18] In the trial, Visi Law Office, as the lawyer for the victims, filed a request to confiscate 20 kilograms of gold that was allegedly transferred by the defendant before the confiscation process could be carried out. On 11 April 2022, the panel of judges granted the request and ordered investigators with the assistance of the Public Prosecutor from the South Tangerang District Prosecutor's Office to carry out the confiscation. However, in its development, the confiscation failed to be carried out.^[19]

The failure of the Public Prosecutor to return the victim's losses was evident when they failed to carry out the confiscation of the 20 kilograms of gold, even though there had been a ruling from the panel of judges on 11 April 2022. At the trial held on 18 May 2022, the Public Prosecutor stated that the confiscation could not be carried out because the owner of the gold shop, where the gold was stored, refused to have the goods confiscated.^[20] This fact is considered by the author to be a violation of existing regulations, where the act of confiscation according to the Criminal Procedure Code is

¹⁸ Article 98 of the Criminal Procedure Code states: "(1) If an act which becomes the basis of a charge in the examination of a criminal case by a court of first instance causes harm to another person, the judge/chairman of the court session at the request of said person can decide to combine the case of the compensation demand with the criminal case; (2) The request as intended in section (1) can only be made at the latest before the public prosecutor presents his criminal charge. In case the public prosecutor is not present, the request shall be submitted before the judge pronounces his verdict."

¹⁹ Ayu Cipta, "Korban Penipuan Investasi Rp 1 Triliun Kecwa Emas 20 Kilogram Gagal Disita" *Tempo.Co*, 19 May (2022).

²⁰ Reza Aditya Ramadhan, "Kasus Budi Hermanto, Kuasa Hukum Korban Sebut Penyidik Tak Sita Emas 20 Kg," *KumparanNews*, 19 May (2022).

a coercive measure that is pro justitia in nature, which does not require approval from anyone except the judge's permission. In other words, once the judge decides that evidence is to be confiscated, all parties related to the case must carry out the order without exception.

The author emphasizes that, as with other coercive measures such as arrest, detention, search, and confiscation, it is an authority that must be carried out by the investigator. The author questions, if the suspect refuses to be detained, can the detention be canceled? If this is understood, then no criminal process can proceed without the consent of the perpetrator, and the case cannot proceed as there is no evidence since the owner of the goods is not willing to be confiscated. Therefore, the author stresses that there is no reason for investigators to delay or fail to carry out the confiscation, especially after the panel of judges has granted the request.

Visi Law Office, in submitting a request for collateral confiscation, uses a strong legal basis, including Article 227, paragraph (1), of the *Herzien Inlandsch Reglement* (HIR)^[21] and several important arguments. First, Article 1131 of the Civil Code (*Kitab Undang-Undang Hukum Perdata* or abbreviated as KUHPerdata) which regulates that all movable and immovable goods belonging to the debtor, both existing and future, shall be regarded as securities for the debtor's individual obligations. Second, the *actio pauliana* argument refers to Article 1341 of the Civil Code, which allows the cancellation of actions that are detrimental to creditors by debtors carried out in bad faith.^[22] Therefore, the author argues that the failure of the Public Prosecutor to carry out this confiscation not only harms the victims, but

²¹ Article 227 of HIR states: "(1) If there is a reasonable suspicion that a person who is in debt, while a decision has not yet been passed on him or while the decision against him has not yet been executed, will try to embezzle or take away his goods, both immovable and fixed, with the intention of keeping the goods away from the debt collector, then Upon a letter of request from an interested person, the chairman of the district court can give an order that the goods be confiscated in order to safeguard the rights of the person submitting the request, and the requester must be notified that he will appear before the court at the first district court after that to advance and strengthen his claim."

²² Article 1341 of the Civil Code states: "Each creditor may invalidate any acts which were not compulsory, committed by the debtor, in any name, which are detrimental to the creditors, provided that it is proven that while committing the acts, the debtor as well as the individual with whom he committed the act or on whose behalf he acted, was aware that it would result in detriment to the creditors. Rights, which were obtained by a third party in good faith over the goods which were the subject matter of the invalid action, shall be honored. To nullify the acts committed by the debtor for free, it shall suffice if the creditor displays

also threatens the integrity of the law enforcement system. Although the law has provided a way for the recovery of victims' losses through mechanisms such as the consolidation of loss recovery lawsuits in criminal cases, its implementation in the field is still far from adequate. If the law is not implemented firmly and effectively, victims of financial crimes such as in this case will continue to experience difficulties in obtaining justice and the restoration of their rights. This failure also has the potential to become a bad precedent for handling similar cases in the future, where vital evidence cannot be confiscated simply because of the refusal of the party in control of the goods.

4 | Challenges in Recovering Losses for Ponzi Investment Fraud Victims

As a general rule to provide protection for victims in the criminal justice process, Law No. 13 of 2006 concerning Protection of Witnesses and Victims applies, which was amended by Law No. 31 of 2014 with implementing regulations in the form of Government Regulation No. 7 of 2018 concerning Provision of Compensation, Restitution and Assistance to Victims of Crime. It is stated in Article 1 number 3 regarding the definition of a victim, "[...] is a person who experiences physical, mental, and/or economic suffering caused by a criminal act." Then referring to Article 7A of Law No. 31 of 2014 concerning amendments to Law No. 13 of 2016. It is stated that

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

1. Compensation for loss of wealth or income; 2. Compensation for losses caused by suffering directly related to the criminal act; and/or; 3. Reimbursement of medical and/or psychological care costs.

In the context of a Ponzi scheme, the losses experienced by victims can be very significant and multidimensional. A Ponzi scheme is a form of

that the debtor was aware at the time the act was committed that he would jeopardize his creditors, regardless of whether or not the beneficial party shared that knowledge."

investment fraud in which the perpetrator promises high returns with little or no risk.^[23] However, these returns are actually paid from funds provided by new investors, not from legitimate profits from the investment. Eventually, when the number of new investors is insufficient to pay previous investors, the scheme collapses, and the majority of investors lose their money.^[24]

According to Jacob E. Sahetapy, a good measure of compensation in cases like this must be seen from the ability of the law to support the settlement of compensation in an appropriate, fast, and low-cost manner.^[25] In the case of a Ponzi scheme, the effectiveness of the regulations is often tested by the complexity of the case and the number of victims involved.^[26] Therefore, the regulations that support an efficient and fair recovery process are essential to ensure that victims do not become structural victims—that is, victims who continue to suffer due to a lack of support from the legal and social systems. There are at least two legal options for providing loss recovery through the criminal justice system to victims of Ponzi scheme fraud, which is through restitution and compensation. In the following sections, the author will elaborate on the restitution and compensation systems and review the challenges and obstacles to their implementation particularly in cases of Ponzi scheme crimes.

²³ Norman Mugarura, “The Use of Anti-Money Laundering Tools to Regulate Ponzi and Other Fraudulent Investment Schemes” *Journal of Money Laundering Control*, No. 3 (2017): 231-246.

²⁴ Darwin Cortés, Julieth Santamaría, Juan F. Vargas, “Economic Shocks and Crime: Evidence from the Crash of Ponzi Schemes” *Journal of Economic Behavior & Organization* 131 (2016): 263-275.

²⁵ Nurul A’fiah et al., “Analisis Yuridis Dalam Pemberian Hak Serta Ganti Rugi Terhadap Korban Tragedi Kanjuruhan” *Terang : Jurnal Kajian Ilmu Sosial, Politik Dan Hukum*, No. 2 (2024): 331-346.

²⁶ Henry N. Pontell, William K. Black, Gilbert Geis, “Too Big to Fail, Too Powerful to Jail? On the Absence of Criminal Prosecutions after the 2008 Financial Meltdown” *Crime, Law and Social Change*, No. 1 (2014): 1-13.

5 | Concerns in the Implementation of Restitution and Substitute Sentences

In general, compensation efforts based on the Witness and Victim Protection Law can be carried out before a court decision is made where the victim (or victim's family) who has known their rights can file for restitution through the Witness and Victim Protection Agency (LPSK) for examination (no later than 7 days), then the LPSK Decision is submitted to the public prosecutor to be read together with the charges if it is considered complete (with a maximum period of 30 days if the file is returned for correction) and has been substantively examined. The implementation of restitution is the task of the Public Prosecutor after being decided by the judge. However, before entering the realm of justice, it is important for victims of criminal acts to not only understand their rights, but also know the correct mechanism in accordance with applicable laws and regulations. This knowledge is the basis for victims to fight for their rights, including the right to recovery or restitution. However, in practice, especially in cases of Ponzi schemes such as the Binomo case involving 144 victims with a total loss of IDR 83 billion (equivalent to EUR 4.8 million), the restitution mechanism is not specifically regulated in the regulations, which causes various problems for victims in their efforts to obtain their rights.

Article 2 of the Supreme Court Regulation (*Peraturan Mahkamah Agung* or abbreviated as *Perma*) No. 1 of 2022 shows the limited scope of criminal acts that allow for a request for restitution. Only serious criminal acts related to violations of Human Rights (*Hak Asasi Manusia* or abbreviated as *HAM*), terrorism, human trafficking, racial and ethnic discrimination, crimes against children, and other criminal acts determined by the Witness and Victim Protection Agency (LPSK) can be requested for restitution. Outside of the crimes mentioned, such as in the case of Ponzi scheme fraud, the process of obtaining restitution becomes relatively difficult, particularly since there is no specific regulation of Ponzi schemes so that sometimes it must be interpreted or transferred to other criminal offenses regulated in other sectoral laws that may be linked to the fraud and this condition is exacerbated when state officials do not provide adequate information to the victim.

One example of this issue in the case of a Ponzi scheme is when the LPSK rejects the victim's request for restitution. In the Binomo case, for example, the LPSK through its Deputy Chairman, Edwin Partogi, considered that this case was not an investment case, but rather gambling, so that

the perpetrator's assets should be confiscated by the state.^[27] However, the author contends that this assessment ignores the fact that when it was first introduced, the Binomo platform was promoted as an investment platform, not gambling. The victims, who initially thought they were investing, should not have been treated as part of a gambling crime and should have been given the right to file for restitution. This injustice shows a fundamental problem in determining the category of criminal acts and the victim's rights to compensation.

Furthermore, the limitations of the rules governing the right to restitution for victims of criminal acts do not only seem to be limited to that. For example, in terms of notification of restitution rights, Article 9 and Article 14 of Government Regulation No. 43 of 2017 concerning the Implementation of Restitution for Children Who Are Victims of Crime state that investigators at the investigation stage and public prosecutors at the prosecution stage are required to notify victims of their rights to restitution.^[28] Likewise, the Elucidation of Article 48, paragraph (1), of Law No. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking requires public prosecutors to notify victims of their rights to restitution. This notification mechanism is carried out since the victim reported the case they experienced, which provides clear guidance for victims to apply for restitution.^[29] However, in the case of a Ponzi scheme, there is no provision requiring law enforcement officers or the LPSK to notify victims of their rights to restitution. This means that victims must independently

²⁷ Ridhayanti, "LPSK Sebut Korban Binomo Dan Quotex Tidak Dapat Restitusi" *Gatra*, 23 December (2022).

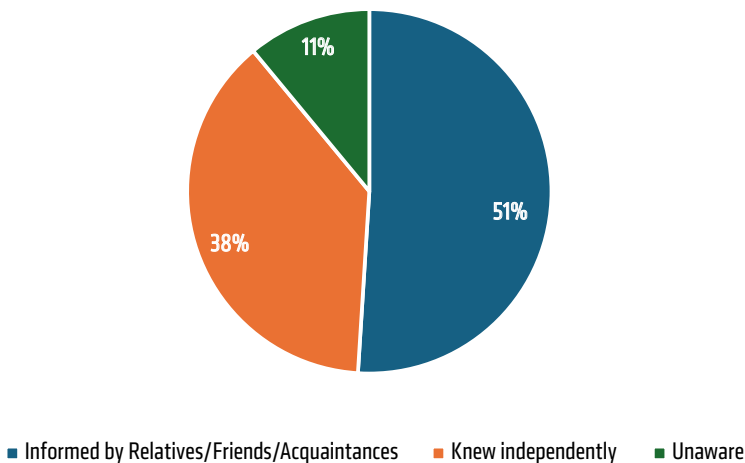
²⁸ Article 9 of Government Regulation No. 43 of 2017 states: "At the investigation stage as referred to in Article 5, paragraph (2), letter a, the investigator shall inform the victim regarding the rights of children who are victims of criminal acts to receive restitution and how to apply for it."; Article 14 states "At the prosecution stage as referred to in Article 5, paragraph (2) letter b), the public prosecutor shall inform the victim regarding the rights of children who are victims of criminal acts to receive restitution and the procedures for submitting it before and/or during the trial process."

²⁹ The Elucidation of Article 48, paragraph (1), of Law No. 21 of 2007 states: "In this provision, the restitution submission mechanism is implemented since the victim reported the case to the local Indonesian National Police and is handled by investigators together with the handling of the crime committed. The public prosecutor informs the victims of their right to file for restitution, then the public prosecutor submits the amount of losses suffered by the victim due to the crime of human trafficking together with the charges. This mechanism does not eliminate the victim's right to file a lawsuit for their own losses."

and take the initiative to seek information about their rights, which of course is a big challenge, particularly for victims who do not have adequate legal knowledge. The absence of a clear mechanism and obligation for state officials to provide this information raises serious questions about who should be responsible if a victim of a crime does not know their rights and ultimately loses the opportunity to apply for restitution?

The problem of legal protection for Ponzi victims is further exacerbated by the fact that many Indonesians are still unaware that their problems can be resolved through the legal process. This is reflected in the results of a survey conducted in 2021 by the Directorate of Law and Regulation of the Indonesian Ministry of National Development Planning, in collaboration with the Judicial Monitoring Society of the Faculty of Law, University of Indonesia (MaPPI FHUI) and the Demographic Institute of the University of Indonesia, with support from the Australian Government through the Australia-Indonesia Partnership for Justice 2 (AIPJ2). The survey, which involved 2,341 respondents, revealed that the majority of the public, namely 51.2%, knew that their problems could be resolved through the legal process after receiving information from relatives, friends, or people they knew. As many as 38.2% of the public found out about this independently, while the other 10.7% were still unaware of it until now (Figure 1).^[30]

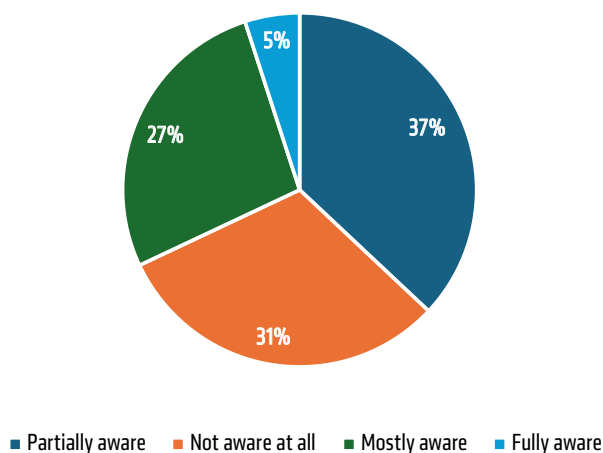
Figure 1. Public Awareness of Legal Resolutions



³⁰ Directorate of Law and Regulation of the Indonesian Ministry of National Development Planning, *Indeks Akses Terhadap Keadilan Di Indonesia Tahun 2021* (Jakarta, 2021), 62.

The authorities should play an active role in providing clear and comprehensive information to victims regarding their rights, including the right to apply for restitution. This condition is exacerbated by the existence of complicated procedures and limited access for victims to adequate legal assistance where based on the justice index in 2021, only a small portion of the community (36.7%) in the survey were aware of the existence of free legal aid. In fact, 31.2% of the community did not know at all about the free legal aid (Figure 2).^[31]

Figure 2. Public Awareness of Free Legal Aid Services



In this context, the role of the government and legislative institutions to creating regulations to address this issue is very crucial. This is in line with the 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which must ensure that every victim of a crime receives sufficient information about their rights and has easy access to the mechanism for submitting restitution.^[32] The state must also consider expanding the scope of crimes that can be submitted for restitution, including crimes

³¹ Directorate of Law and Regulation of the Indonesian Ministry of National Development Planning. 65.

³² Article 6 point a of Declaration states: “The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information.”

such as fraud in a Ponzi scheme, where the victim clearly suffered significant financial losses due to the perpetrator's actions.

In addition, another issue regarding restitution at this time is the absence of a substitute sentence in carrying out restitution. Of the several laws that contain restitution, only the contents of Law No. 21 of 2007 concerning the Crime of Human Trafficking include a substitute sentence in the event that restitution is not carried out by the convict. Although Article 66, paragraph (1), letter d of the 2023 Criminal Code makes reimbursement of losses a form of additional penalty. However, the current 2023 Criminal Code only explicitly regulates two types of criminal acts that can be accompanied by additional penalties in the form of reimbursement of losses, namely violence against people or goods collectively in public places as stated in Article 262, paragraph (5), and forgery and use of state stamps as stated in Article 388, paragraph (2).

There is no more detailed explanation regarding the criteria for criminal acts that can be subject to additional penalties in the form of reimbursement of losses for victims, and whether this mechanism can be applied to all types of criminal acts or is only limited to the two crimes mentioned. There is no written clarity regarding the application of this sanction to other crimes or whether certain criteria must be met. This could potentially lead to various interpretations among law enforcers in its application and will be even more complex if the scope of the crime is expanded to Ponzi scheme fraud where the Ponzi Scheme is a form of economic crime that harms a large number of victims with significant financial losses. In the context of crimes like this, the lack of clarity regarding the criteria for criminal acts that can be subject to restitution is a serious problem, considering that the impact of the losses experienced by victims is usually large-scale and complex.

If Article 66, paragraph (1), letter d of the 2023 Criminal Code, which makes reimbursement of losses an additional penalty, does not explicitly cover economic crimes such as Ponzi schemes, the author believes this can cause legal uncertainty in the process of enforcing victims' rights to receive restitution. Without clear regulations, interpretations regarding the application of restitution in Ponzi cases can vary from one law enforcer to another. Some may assume that the Ponzi scheme, because it is not explicitly mentioned in the 2023 Criminal Code, is not included in the category of crimes that can be subject to compensation. On the other hand, some may expand the meaning of the article to cover economic crimes like this, considering the scale of the losses incurred. This situation

shows the importance of clarity in laws and regulations. In Ponzi scheme crimes, where the perpetrators potentially do not have enough assets to compensate the victim's losses,^[33] additional punishment in the form of compensation is crucial. If the rules regarding the application of compensation in economic crimes are not clarified, victims of crimes like this will have difficulty recovering their losses. Therefore, there is an urgent need to firmly regulate that crimes such as Ponzi schemes are included in criminal acts that can be subject to additional penalties in the form of restitution or reimbursement of losses, in order to protect the rights of victims more comprehensively.

Furthermore, one more thing that needs to be well thought-out is the provision of Article 94, paragraph (2), of the 2023 Criminal Code which stipulates that the procedure for reimbursement of losses follows the *mutatis mutandis* principle with Articles 81 to 83 of the 2023 Criminal Code. In this case, if reimbursement of losses cannot be made directly, the convict is allowed to pay in installments. If restitution is not paid within the specified period, the prosecutor can confiscate and auction the convict's assets or income to fulfill the obligation. If the results of the confiscation and auction are still insufficient or cannot be implemented, the following provisions apply:

- a. If the remaining loss is less than IDR 10,000,000 (approximately EUR 584), then the restitution can be replaced with a prison sentence of at least 1 month and a maximum of 1 year, or can be increased to 1 year and 4 months. Other alternatives are a supervision sentence of at least 1 month and a maximum of 1 year, or a community service sentence with a duration of at least 8 hours and a maximum of 240 hours, with a maximum limit of 8 hours per day (Article 81 paragraph (1) and (2), of the 2023 Criminal Code).
- b. If the amount of reimbursement of losses exceeds IDR 10,000,000 (approximately EUR 584), then the substitute sanction that can be applied is a prison sentence of at least 1 year, with a maximum limit according to the penalty prescribed for the crime committed (Article 83, paragraph (1), of the 2023 Criminal Code).

The author argues that the mechanism of substitute penalty in situations where the convict is unable to reimburse the loss, although still

³³ Catherine Carey, John K. Webb, "Ponzi Schemes and the Roles of Trust Creation and Maintenance" *Journal of Financial Crime*, No. 4 (2017): 589-600.

controversial, still has an important role in ensuring the fulfillment of victims' rights. In the context of Ponzi scheme fraud cases, this argument is increasingly relevant considering the magnitude of the losses suffered by victims. In a Ponzi scheme, the perpetrator uses funds from new investors to pay profits to old investors, creating the illusion of continued profits until it eventually collapses because there are not enough funds to cover all of its financial obligations.^[34]

In many Ponzi scheme fraud cases, the perpetrator often does not have enough assets to replace the victim's losses. For example, in the largest Ponzi scheme fraud case carried out by Bernie Madoff, the losses incurred reached around USD 65 billion,^[35] but only a small portion of these losses could be recovered through asset confiscation. In Indonesia, investment fraud cases such as the Indosurya Savings and Loans Cooperative (KSP) which involved losses of up to IDR 106 trillion (equivalent to EUR 1.6 billion) also face similar challenges.^[36] Data from various large fraud cases such as Madoff and Indosurya show that asset recovery is often far from sufficient. In the Madoff case, only about USD 14.7 billion was recovered from the USD 65 billion loss.^[37] This shows that mechanisms such as substitute penalty are potentially inadequate to meet the needs of victims in their entirety.

Substitute penalty mechanisms such as imprisonment or community service, although they do not provide a direct solution in terms of recovering financial losses, remain important instruments in the legal system. Substitute penalty functions as a form of sanction that still imposes consequences on perpetrators who are unable to recover the victims' loss. However, the effectiveness of substitute punishment, particularly imprisonment, is often debated because of its impact on victim recovery.^[38] Prison sanctions do not provide direct financial benefits to victims and can actually

³⁴ Vasant Raval, Vivek Raval, "Differentiating Risk Factors of Ponzi from Non-Ponzi Frauds" *Journal of Financial Crime*, No. 4 (2019): 993-1005.

³⁵ Diana B. Henriques, "A Case Study of a Con Man: Bernie Madoff and the Timeless Lessons of History's Biggest Ponzi Scheme" *Social Research: An International Quarterly*, No. 4 (2018): 745-766.

³⁶ Syafril Hendrik Hutabarat, Hartiwiningsih, Pujiyono Suwadi, "Reconstructing the Authorities of Investigators of the Financial Service Authority" *Journal of Law and Sustainable Development*, No. 2 (2023): e323.

³⁷ Diana B. Henriques, "Bernard Madoff, Architect of Largest Ponzi Scheme in History, Is Dead at 82" *The New York Times*, 14 April (2021).

³⁸ Nicola Lacey, Hanna Pickard, "To Blame or to Forgive? Reconciling Punishment and Forgiveness in Criminal Justice," *Oxford Journal of Legal Studies*, nr 4 (2015): gqvo12.

worsen the perpetrator's financial situation, which ultimately prolongs the victim's recovery time.

Therefore, the judge's consideration is very crucial in determining whether substitute penalty is necessary or whether there are other more effective alternatives. The judge must carefully consider the perpetrator's financial capabilities, not only during the trial process but also their future prospects. For example, the perpetrator's hidden assets or future income must be carefully calculated before imposing sanctions.^[39] If restitution to victims cannot be fulfilled, victims risk experiencing double disappointment, namely failing to obtain financial justice and seeing the perpetrator receive a sentence that may be irrelevant to their suffering. Therefore, a balance is needed between the imposition of substitute sentences and maximum efforts to ensure that victims' rights to restitution remain a top priority. In a Ponzi scheme, this also means considering other approaches such as the establishment of a compensation fund from the state or third parties to protect the rights of victims who have suffered major financial losses.

6 | Challenges of Compensation Implementation in Ponzi Scheme Cases and Practical Comparison with Other Countries

Bazon et al argue that the legal system often focuses more on taking action against the perpetrator without giving enough attention to the victim. As a result, victims often feel abandoned and do not get the justice they expect.^[40] Simon Robins supports this view by emphasizing that providing compensation to victims of crime is something crucial which is based on the idea that the state has a responsibility to ensure justice for victims.^[41] Similarly, Bumiller also argues that in many cases, the state plays a role in

³⁹ Tommaso Trincherà, "Confiscation And Asset Recovery: Better Tools To Fight Bribery And Corruption Crime" *Criminal Law Forum*, No. 1 (2020): 49-79.

⁴⁰ Lara Bazon and Bruce A Green, "Victims' Rights from a Restorative Perspective" *Ohio State Journal of Criminal Law*, 17 (2019): 293.

⁴¹ Simon Robins, "Failing Victims: The Limits of Transitional Justice in Addressing the Needs of Victims of Violations" *Human Rights & International Legal Discourse*, 11 (2017): 41.

the failure of the legal system which can cause victims not to get proper justice.^[42] Therefore, compensation is not only a form of the perpetrator's responsibility, but also a form of the state's responsibility in correcting existing systemic errors.

Building from the perspective of the aforementioned experts, the author believes that compensation is a fundamental right for victims of crime, especially in cases where the perpetrator cannot provide direct restitution. The author argues that the state plays a crucial role in upholding victims' rights, including through the provision of compensation. This view reflects the broader responsibility of the state to protect society and ensure justice, emphasizing that the state must ensure victims receive adequate compensation even in cases where the perpetrator is incapable of providing it.

The idea of compensation for victims has important relevance, but the fact is that compensation in Indonesia is currently only focused on victims of terrorism and gross human rights violations, as regulated in Article 7, paragraph (1), of Law 31 of 2014 concerning Protection of Witnesses and Victims. Meanwhile, the Ponzi scheme, as a form of financial fraud that harms many people, also raises questions about the state's responsibility to protect its citizens from this kind of crime and the potential for compensation for victims.

Compensation is given as an acknowledgement that the state has failed to carry out its duties in protecting victims from crime. In the case of a Ponzi scheme, although not included in the category of criminal acts explicitly mentioned in the law, the basic concept of compensation remains relevant. This is because victims of the Ponzi scheme also suffer great losses due to the state's failure to supervise and prevent this fraudulent practice.

Should the existing regulations be expanded or revised to cover financial crimes such as Ponzi schemes, victims can apply for compensation through the Witness and Victim Protection Agency (LPSK), similar to the mechanism used for victims of other crimes. This process involves submitting a compensation application which is then taken to the court through the LPSK, which will issue a decision whether the application is granted or rejected.^[43] If the compensation application is granted, the LPSK is obliged

⁴² Kristin Bumiller, "Victims in the Shadow of the Law: A Critique of the Model of Legal Protection," [in:] *Race, Law and Society* (London: Routledge, 2017), 105-123.

⁴³ Muhammad Miftahul Umam, Ridwan Arifin, "Legal Protection for Witnesses and Victims of Crimes of Terrorism" *Indonesian Journal of Counter Terrorism and National Security*, No. 2 (2022): 109-118.

to implement the compensation provision and this ensures that victims not only receive recognition for their losses, but also receive financial assistance to mitigate the negative impact of the crime.

However, because Ponzi schemes often involve a very large number of victims and significant losses,^[44] so the implementation of this compensation will require special considerations. For example, the availability of compensation funds, priority for victims who are most in need, and how financial losses are fairly assessed and compensated. In addition, because many victims of Ponzi schemes may not immediately realize that they have been victims, the timeliness of filing applications can also be a challenge.

Referring to the application of compensation for economic crimes such as Ponzi schemes in other countries, compensation payments sourced from the state are a possible form of compensation for victims of certain crimes. Unlike in Indonesia, in several other countries, compensation for victims of criminal acts is not limited to victims of terrorism and gross human rights violations. Here are examples of several countries that apply compensation to victims of Ponzi scheme crimes:

a. The United States

Montana's House Bill 81 (HB 81) is an example of a Ponzi scheme crime compensation scheme. HB 81 focuses on efforts to compensate victims of securities fraud through the establishment and funding of the Securities Restitution Assistance Fund (SRAF). HB 81, introduced by Rep. Duane Ankney, became law after being signed by Governor Steve Bullock on 7 March 2013. The legislation is part of a broader initiative to strengthen consumer protections and provide a path to financial recovery for those affected by securities fraud, including Ponzi schemes, which can result in significant losses.^[45]

The SRAF was established in 2011 with the primary purpose of providing compensation to victims of securities fraud. The fund was initially funded through voluntary contributions and fines from fraudsters involved in the activity. However, HB 81 makes a significant change by proposing additional funding sources for the SRAF. The legislation requires that a portion of

⁴⁴ Melissa S. Baucus, Cheryl R. Mitteness, "Crowdfunding: Avoiding Ponzi Entrepreneurs When Investing in New Ventures" *Business Horizons*, No. 1 (2016): 37-50.

⁴⁵ Jordan Maglich, "Should States Compensate Ponzi Scheme Victims? Montana and New Hampshire Think So," *Forbes*, 20 March (2013).

the fees for registering, filing, or renewing securities be deposited into the fund, providing an essential additional cash flow to support victim compensation. Based on Section 6 point (3) of HB 81, victims of securities fraud prosecuted by the Montana Securities Commissioner would be eligible for the lower of 25% of their losses or \$25,000.^[46] For example, if an investor lost \$100,000 due to securities fraud, they would be eligible for 25% of their losses, or \$25,000, which is the maximum amount of compensation. On the other hand, if a victim lost \$50,000, they would be eligible for 25% of \$50,000, or \$12,500, because it is lower than the maximum amount.

This measure is intended to ensure that victims of fraud do not lose all their money and can recoup some of their losses. One clear example of the urgent need for this legislation is the massive Ponzi scheme that occurred in 2009, when Cornerstone Financial in Polson stole nearly \$14 million from investors. This case demonstrated the devastating impact that securities fraud can have on individuals and communities, especially in areas like Lake and Flathead Counties.^[47] With HB 81, it is hoped that future victims of similar scams can get the financial help they need to recover from their losses. Victims must apply to the Montana Securities and Insurance Commission to evaluate their claims and determine their eligibility for assistance from the fund.

b. Hungary

One of the Ponzi scheme cases involving the Quaestor Group and Buda-Cash has become a major concern in Hungary, resulting in widespread impacts for many investors. The Quaestor Group, led by Csaba Tarsoly, was involved in the Ponzi scheme investment practice. The investigation also revealed that Quaestor received a loan of HUF 17 billion for the ETO Park project, but the funds were not used for the project as intended. To deal with the impact of this scandal, the Hungarian government launched several compensation measures. Minister of the Prime Minister's Office János Lázár announced that the Investor Protection Fund will provide full compensation to small investors who have investments of up to HUF 6 million from the Quaestor Group. Out of a total of 31,832 affected investors, 22,264 of them will get

⁴⁶ Section 6 point (3) of HB 81 states: "The maximum award from the fund for each claimant is the lesser of \$25,000 or 25% of the amount of unpaid restitution awarded in a final order."

⁴⁷ "Bullock Signs Law to Protect Ponzi Scheme Victims," *DGA*, 11 March (2013).

their money back in full. In addition, the government also promised to refund 97% of the 96,301 Buda-Cash customers.^[48]

The Hungarian Parliament has also amended the Criminal Procedure Code to impose stricter regulations on the freezing of assets related to white-collar crimes committed in the context of financial services. The changes also give the courts the power to freeze the personal assets of managers, board members or auditors, as well as the assets of companies at the group level. This aims to strengthen law enforcement's ability to tackle financial crime by ensuring that perpetrators and entities involved are subject to appropriate action and that funds needed to compensate victims are appropriately sourced.^[49] The move includes summoning former heads of the Hungarian Financial Supervisory Authority (PSZÁF), Ádám Farkas and Károly Szász, to provide an explanation of the results of their inspections and the information they have about the scandal.

Protection of victims of Ponzi schemes through compensation mechanisms, as implemented in several countries, appears to have a significant contrast with the victim protection system in Indonesia. Based on the provisions in force in several countries, victims of crimes who suffer financial losses are generally entitled to receive compensation from the state, either in part or in full, for the losses they have suffered. However, in Indonesia, the regulations regarding victim protection appear less comprehensive. Law No. 31 of 2014 concerning Protection of Witnesses and Victims only provides the right to compensation and restitution to victims of certain crimes, namely violations of Human Rights (HAM), terrorism, human trafficking, racial and ethnic discrimination, crimes against children, and other crimes determined by the Witness and Victim Protection Agency (LPSK). This regulation shows the uncertainty and subjective nature of the LPSK's assessment regarding the eligibility for compensation. As a result, victims of crimes such as Ponzi schemes, who have clearly suffered economic losses, must fight harder to prove to the LPSK that they deserve compensation or restitution for the losses they have suffered. The state, as an institution that functions to protect individuals in society, has the primary responsibility for safeguarding individual rights.^[50] With the legal and judicial system

⁴⁸ "Government to Help Compensate Small Investors Affected by Brokerage Scandals" *Prime Minister's Office*, 2 April (2015).

⁴⁹ Janos Puskas, "Hungary: Managers' and Companies' Assets to Be Frozen Swiftly in White Collar Cases," *Global Compliance News*, 9 April (2015).

⁵⁰ Carsten Stahn, "Responsibility to Protect: Political Rhetoric or Emerging Legal Norm?," [in:] *Globalization and Common Responsibilities of States* (London: Routledge, 2017), 147-168.

established by the state, individuals no longer have the authority to take legal action on their own.

In this context, the state's responsibility includes protecting every individual in society. If a crime occurs, this reflects a failure to carry out this responsibility, consequently the state shall provide compensation to victims of crime.^[51] Crime can happen to anyone, and therefore, everyone is at risk of becoming a victim of crime. Compensation serves as a form of insurance for society against potential losses arising from criminal acts.^[52] Furthermore, compensation sourced from the state has the potential to provide more reliable compensation as its implementation does not depend on the perpetrator of the crime. This ensures that victims can receive compensation without having to rely on the perpetrator's ability or intention to provide compensation.

As a state that is committed to "advancing public welfare," as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia, and adheres to the principle of 'social justice for all people' according to Pancasila (the official foundational philosophical theory of Indonesia), the state should have a clear orientation towards protecting victims.^[53] In this case, the author opines that compensation needs to be viewed as the state's obligation to protect victims of crime. Determination of compensation should not be limited to the type of crime, but should also consider the specific conditions of each victim, in order to reduce the suffering they experience. When the state is deemed to have failed to provide protection and a sense of security to victims, compensation must be given to all citizens who are victims of crime. The provision of compensation should not depend on the court's decision against the defendant, because compensation is not related to the statement of the defendant's guilt stated in the court's decision. Instead, the focus of compensation should be on proving that someone has been a victim and suffered losses due to the crime, not on proving the defendant's guilt.

Ultimately, the author suggests that the state must ensure that the mechanism for submitting restitution and compensation for victims of crime is not only in the regulations but can also be easily accessed and understood by

⁵¹ Kristīne Strada-Rozenberga, Dāvids Gurevičs, "Victim of Crime and the State's Liability for the Result of Criminal Proceedings" *Journal of the University of Latvia. Law*, 16 (2023): 60-70.

⁵² Cortney E Lollar, "What Is Criminal Restitution" *Iowa Law Review*, 100 (2014): 93.

⁵³ Irit Suseno, "Forms of Ideal Laws of State-Owned Enterprises in Harmony with Article 33, paragraph IV, of the Preamble of the 1945 Constitution of the Republic of Indonesia" *Journal of Policy & Globalization*, 85 (2019): 99.

victims. Law enforcement officers need to be trained and guided to provide accurate information to victims from the start of the legal process. The state also needs to ensure that the LPSK and other related institutions function transparently and fairly in assessing applications for restitution and compensation, and do not make decisions based on narrow or irrelevant interpretations of the case faced by the victim. In this case, a breakthrough and legal solution are needed, one of which according to the author is to consider the Victim Impact Statement (VIS) process so that victims can independently represent their interests in court. This will be outlined and explained in the next section.

7 | The Idea of Victim Impact Statement Implementation: A Recommendation

Historically, the emergence of the Victim Impact Statement (VIS) was first recorded in Fresno, California, as a response to a murder case that occurred in 1969. In that case, seven people were killed in two nights, including an actress named Sharon Tate. This incident had a profound impact on the victim's family, especially Sharon Tate's mother, who was devastated by the incident. When she heard that the perpetrator of the murder was given the opportunity to be released on parole, her emotions peaked and prompted her to form a coalition called the Coalition for Victim's Equal Rights. This coalition focuses on protecting the rights of victims and acts as an activist organization that is recorded in History where Doris Tate played a role in trying to pass the Victim's Rights Act in California in 1982, which provided an opportunity for the submission of victim impact statements.^[54]

Victim Impact Statement is a mechanism that allows victims or families of victims to submit a statement to the judge, either verbally or in writing, containing information about the physical, emotional, psychological, and financial impacts experienced by the victim due to a crime.^[55]

⁵⁴ Fiona Giles, "The Other-Directed Memoir: Victim Impact Statements and the Aesthetics of Change," [in:] *Mediating Memory* (London: Routledge, 2017), 77-90.

⁵⁵ Mitchell J Frank, "From Simple Statements to Heartbreaking Photographs and Videos: An Interdisciplinary Examination of Victim Impact Evidence in Criminal Cases" *Stetson Law Review*, 45 (2015): 203.

This statement serves to clearly describe the direct consequences received by the victim due to the crime, and to assist the judge in considering the sentence to be imposed on the defendant.^[56]

Currently in Indonesia there are no legal provisions that explicitly adopt or implement the Victim Impact Statement (VIS) method. However, there are similarities with the method applied in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, especially in Article 60, paragraph 2, which states, "In certain cases, child victims are given the opportunity by the judge to express their opinion regarding the case in question." Giving children as victims the opportunity to express their opinion regarding the case reflects a principle that is in line with VIS, where victims can provide information outside the process of examining evidence. The information provided by the victim will be additional information for the judge in considering the victim's perspective before deciding the case, thus contributing to justice for the victim.

The author believes the existence of this conceptual similarity shows the potential for the development of the VIS method in Indonesia, particularly in cases involving many victims and significant losses, such as Ponzi scheme fraud crimes. This development is expected to accommodate the victim's right to speak and ensure equality of position between the victim and the accused, in accordance with the applicable principles of criminal procedure law. The criminal justice system frequently neglects victims after they provide testimony as witnesses. Following the conclusion of the verdict, victims are often overlooked and forgotten.

In this context, it is important to consider improving the role of victims of crime, one of which is through the implementation of the Victim Impact Statement (VIS). According to the Criminal Division of the US Department of Justice, a Victim Impact Statement "describes the emotional, physical, and financial impact you and others have suffered as a direct result of the crime. Victim impact statements can be either written or oral statements."^[57] The author asserts that implementing VIS in Indonesia is straightforward and feasible. This process would introduce an additional stage to the judicial proceedings without altering the existing evidentiary process. Specifically, the VIS would be presented after the evidentiary phase

⁵⁶ Edna Erez, "Integrating a Victim Perspective in Criminal Justice through Victim Impact Statements," [in:] *Integrating a Victim Perspective within Criminal Justice* (London: Routledge, 2019), 165-184.

⁵⁷ "Victim Impact Statements" *US Department of Justice*, 27 September (2023_).

and before the judge renders a decision, ensuring that the established evidentiary procedures remain unaffected.

In general, the Victim Impact Statement (VIS) can be in two forms, namely the first is entirely in written form or alternatively is in written form and subsequently delivered verbally. As a comparison, if referring to the implementation of the VIS in Malaysia and South Australia, the form of VIS is explained as follows:

- a. Under Article 183A point (2) of the Criminal Procedure Code 1999 (Amendment 2012) Malaysia, VIS is applied in two ways:
 1. The victim can ask the judge to be called to the trial to convey the impact of the crime directly.
 2. The victim or the victim's family can submit a VIS in writing which subsequently used as a consideration for the judge.
- a. Under Article 14 point (2) and (3) of the Sentencing Act 2017 of South Australia, VIS is implemented through several options:
 1. Victims can submit a VIS to be read directly by themselves in court.
 2. Victims can submit a VIS recorded in audio or video format to be played in court.
 3. Victims can submit a VIS that will be used as a consideration by the judge in making a verdict, even though it is not read directly in court.

The 2023 Criminal Code (KUHP) in Indonesia, which is stated in Law No. 1 of 2023, is planned to come into effect in 2026, implicitly covers the essence of the Victim Impact Statement (VIS). Article 54, paragraph (1), letters i and j of the 2023 Indonesian Criminal Code stipulates that punishment must consider the impact of the crime on the victims or the victim's family, as well as the forgiveness given by the victim or their family. This provision fundamentally reflects the basic principles of VIS.

However, although this provision reflects the main idea of the VIS, its implementation in the 2023 Indonesian Criminal Code does not fully cover all aspects of the VIS. The VIS itself is a special stage where victims have the opportunity to convey their interests directly in the judicial process,

including filing a claim for compensation.^[58] Meanwhile, the provisions in the 2023 Indonesian Criminal Code focus more on the fundamentals of punishment and do not provide clear and explicit space for victims to convey their interests independently in the judicial process. Through a Victim Impact Statements, victims of criminal acts can provide their views on the right decision in a fair and appropriate manner,^[59] including requesting the judge to give an order such as awarding compensation for the victim with the note that the determination of the decision remains the authority of the judge. The VIS is able to provide a place for victims to be confronted directly with the defendant and the judge as the final mouthpiece of the trial process is required to listen to the statement submitted by the victim and the submission is not made through another party who is basically not related to the occurrence of the crime.^[60]

8 | Conclusion

This study confirms that in the Indonesian criminal justice system, the protection and restoration of victims' rights still need to be improved, especially in cases of financial crimes such as Ponzi schemes. Although there are laws such as the Witness and Victim Protection Law that provide basic rights, however, the protection in the Criminal Code and Criminal Procedure Code is still inadequate, especially related to the recovery of losses for victims of financial crimes. The Ponzi scheme investment fraud case, such as that involving Budi Hermanto, reveals the weaknesses in the justice system in this regard, where the failure to implement asset confiscation shows the inability of existing legal mechanisms to ensure the effective recovery of losses. Comparison with other countries, such as the United States and Hungary, reveals that the compensation system

⁵⁸ Tinneke Van Camp, Vicky De Mesmaecker, "Procedural Justice for Victims of Crime: Are Victim Impact Statements and Victim-Offender Mediation Rising to the Challenge?," [in:] *Justice for Victims*, ed. Vanfraechem Inge, Antony Pemberton, Felix Ndahinda (London: Routledge, 2014), 277-299.

⁵⁹ Kathryn M Young, "Parole Hearings and Victims' Rights: Implementation, Ambiguity, and Reform" *Connecticut Law Review*, 49 (2016): 431.

⁶⁰ Marie Manikis, "Victim Impact Statements at Sentencing: Towards a Clearer Understanding of Their Aims" *University of Toronto Law Journal*, No. 2 (2015): 85-123.

in Indonesia is still far behind. These countries have more inclusive compensation schemes and clearer regulations that favor victims in dealing with financial crimes, indicating an urgent need for reform in Indonesia. The restitution and compensation mechanisms in Ponzi scheme cases in Indonesia are not yet adequately regulated, and the decision of institutions such as the LPSK to reject Binomo victims' restitution applications reflects shortcomings in regulation and a lack of adequate information for victims. To address this issue, several key steps are needed, including strengthening the role of the Public Prosecutor in fighting for victims' rights, clarifying regulations related to restitution and compensation, and increasing the transparency and accessibility of compensation mechanisms. In addition, the implementation of mechanisms such as the Victim Impact Statement (VIS) which has been adopted in several other countries, can be a solution to provide victims with the opportunity to voice the impact of the crime directly in court. These steps are expected to improve the effectiveness of the criminal justice system in Indonesia in providing protection and justice for victims.

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