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Restitution as an Instrument of Justice for Victims of Domestic Sexual Violence: A Study of Positive and Islamic Law in the Contemporary Era

Abstract: Domestic sexual violence is a hidden form of gender-based crime that often goes unreported due to prevailing social norms and its status as a complaint-based offense. These conditions create serious obstacles to law enforcement and hinder victims from obtaining justice, ideally including immediate restitution and comprehensive protection from the state. This study explores the effectiveness of restitution as a criminal sanction in cases of domestic sexual violence, analyzed through the perspective of justice values in both positive law and Islamic law in the contemporary context. The research employs a normative juridical method, using a statutory approach by examining relevant legal instruments and Islamic legal principles. The findings reveal that although restitution is formally recognized in various laws—such as the Domestic Violence Law, the Law on Witness and Victim Protection, the Law on Sexual Violence Crimes (TPKS), and the 2023 Criminal Code—its enforcement remains limited. This is due to structural and cultural challenges, including weak legal awareness, ineffective implementation mechanisms, and the perpetrators' inability to fulfill restitution obligations. From the perspective of Islamic law, the concept of compensation (*Ta'wid*) supports the idea of restoring victims' rights, but its application requires reinterpretation to fit the modern legal system. This study offers a new perspective by emphasizing the need to move beyond fines toward mandatory restitution, integrating restorative justice principles and strengthening institutional and cultural support. These steps are crucial for building a justice system that is more responsive, fair, and centered on the recovery and dignity of victims.

Keywords: Domestic Sexual Violence, Restitution, Restorative Justice, Victim-Centered Justice.

INTRODUCTION

Domestic sexual violence is one of the most hidden but far-reaching forms of human rights violations. Taking place in a private space that is supposed to be a place of refuge and affection, this violence makes women and children the primary victims. They often experience physical suffering, psychological trauma, social loss, and spiritual destruction. Although various regulations have regulated the criminalization of perpetrators, the dominant retributive approach has not been sufficient to answer the needs of victim recovery. In this context, restitution—the provision of compensation from the perpetrator to the victim—should be an important part of the justice process that punishes and heals.¹

Unfortunately, the practice of restitution in Indonesia still faces many obstacles. Structural obstacles such as a complicated submission process, weak execution of judges' decisions, and low levels of compliance of perpetrators often result in victims' rights being neglected. Criminal sanctions in the form of fines are not directly beneficial to the victim, because the funds go into the state treasury, not to recover the victim's suffering. The spirit of justice should not stop at punishment, but also touch the recovery and rehabilitation of victims as a whole, both materially, psychologically, and socially.²

Many factors can lead to domestic violence.³ Various studies have highlighted the importance of restitution in cases of domestic violence. A study by Rida Madyana and Safik Faozi (2023) shows that restitution in the form of compensation and psychosocial assistance

¹ Salwa Salsabilla, Imran Bukhari Razif, and Ulil Albab, 'Legal Protection Against Sexual Violence on Women: A Study on Legislation', *SIGn Jurnal Hukum* 5, no. 2 (20 October 2023): 249-262, <https://doi.org/10.37276/sjh.v5i2.288>.

² Selviana Krismawati et al., 'Advocacy and Protection for Victims of Sexual Violence against Children: Insight from Indonesia's Experience', *Indonesian Journal of Advocacy and Legal Services* 5, no. 2 (30 September 2023): 207-240, <https://doi.org/10.15294/ijals.v5i2.65820>.

³ Faisal Khadafi, 'Perlindungan dan Kedudukan Korban Dalam Tindak Kekerasan Dalam Rumah Tangga Menurut Undang-undang Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga di Indonesia', *Jurnal Pembaharuan Hukum*, Volume II No. 2 Mei - Agustus 2015, page.391-399 <http://dx.doi.org/10.26532/jph.v3i3>

has indeed been given to child victims in cases of domestic sexual violence.⁴ However, such protection is incidental and has not yet become part of a structured legal policy. Research by Maria Novita Apriyani (2021)⁵ and Faza Shaqila et al. (2023)⁶ normatively reviews the role of restitution in the criminal law system, but has not discussed the potential integration with the Islamic legal system. The LPSK report also shows that the realization of restitution in the field is still minimal. This shows a serious gap between legal norms and the reality of their implementation.

In fact, in the Islamic legal tradition, the concept of *Ta'wid* or compensation has been recognized as part of the moral and legal responsibility of the perpetrator to the victim. Islam views justice not only as retribution, but also as a restoration of the dignity and rights of the victim. Unfortunately, these Islamic legal values have not been optimally integrated into the national legal system, even though Indonesia has a strong sociocultural and religious basis to make it an ethical foundation in criminal law enforcement, especially in cases that touch on the humanitarian and spiritual dimensions, such as sexual violence. Departing from this issue, this study offers an integrative approach between Indonesian positive law and Islamic legal principles, seeing restitution as an administrative procedure and an instrument of substantive justice oriented towards recovering victims. This research departs from the assumption that justice is measured by how severely the perpetrator is punished and how far the victim is restored to his rights and given room to rise again.

Thus, the novelty of this research lies in an interdisciplinary and integrative approach that systematically tries to synergize two legal systems that coexist in the legal reality in Indonesia, namely positive law and Islamic law, especially in the issue of restitution for victims of domestic sexual violence. So far, restitution studies tend to be

⁴ Rida Madyana and Safik Faozi, 'Pemulihan Korban Melalui Restitusi Bagi Korban Kekerasan Seksual (Studi Putusan Nomor : 989,PID.SUS/2021/PN BDG)', *UNES Law Review* 6, no. 1 (3 September 2023): 426-439, <https://doi.org/10.31933/unesrev.v6i1.863>.

⁵ Maria Novita Apriyani, 'Restitusi Sebagai Wujud Pemenuhan Hak Korban Tindak Pidana Kekerasan Seksual Di Indonesia', *Risalah Hukum*, 4 June 2021, 1-10, <https://doi.org/10.30872/risalah.v17i1.492>.

⁶ Faza Shaqila, Marlina, and Rafiqoh Lubis, 'Hak Restitusi Terhadap Anak Korban Tindak Pidana Dan Implementasinya Dalam Putusan Hakim', *Neoclassical Legal Review: Journal of Law and Contemporary Issues* 2, no. 2 (25 November 2023): 63-70, <https://doi.org/10.32734/nlr.v2i2.11520>.

limited to a normative framework of positive law that is legal-formal and procedural. This research seeks to go beyond this approach by reformulating the restitution paradigm as a substantive justice tool that aims to uphold the law and ensure the restoration of victims' rights, dignity, and welfare.

This effort is important given that justice in the context of domestic sexual violence cannot be achieved simply by punishing the perpetrator, but must be accompanied by concrete reparations for the victim. In this case, Islamic law with the concept of *Ta'wid* (compensation) offers ethical and moral principles oriented towards protecting and restoring victims' rights that have not been widely explored and applied concretely in the national legal system. Therefore, this research also aims to build a contextual, humanistic, and applicative restitution model, considering Indonesian society's social, cultural, and religious complexity as a country with a Muslim majority and a pluralistic legal system. Through this approach, this research not only fills the theoretical and practical gaps regarding the restitution of victims of sexual violence in the domestic sphere, but also encourages the birth of a new legal framework that can bridge the gap between state law and Islamic law values that live in society. The framework is expected to provide a new direction in reforming national criminal policy that favors victims, without ignoring the accountability of perpetrators.

Based on these goals and frameworks, the main question that is the focus of this study is: How can restitution be effectively implemented as an instrument of substantive justice for victims of sexual violence in domestic violence through the integration between positive law and Islamic law in Indonesia? This question has become particularly relevant amid increasing demands on a legal system that is repressive to the perpetrator and restorative and empathetic to the victim. By formulating answers to these questions, this research is expected to make a theoretical contribution to the development of criminal law and contemporary Islamic law, as well as provide practical significance for policymakers, law enforcement officials, and victim protection institutions in designing a more effective, fair, and humane restitution system.

METHOD

This study employs a normative juridical legal research method to analyze legal norms, principles, and doctrines through authoritative sources.⁷ Using a statutory approach, it examines laws related to restitution for victims of domestic sexual violence within Indonesia's positive legal framework, such as Law No. 23 of 2004, Law No. 12 of 2022, and the 2023 Penal Code. The analysis relies on secondary data, including primary legal materials (legislation, court decisions, official records) and secondary sources (legal commentaries, academic literature, and scholarly opinions), applying a qualitative approach consistent with legal science as an applied normative discipline.

In addition, the study integrates a contemporary Islamic legal perspective by exploring the concept of *Ta'wid* (compensation) within classical and modern Islamic legal discourse. It examines how Islamic legal principles are reinterpreted to align with human rights and gender justice, particularly in the Indonesian context as a Muslim-majority country with a plural legal system. This dual-framework approach—combining state law and Islamic law—aims to offer a culturally contextual and ethically grounded model of restitution that promotes substantive justice for victims of domestic sexual violence.

RESULTS AND DISCUSSION

Restitution as a Criminal Sanction for Perpetrators of Domestic Sexual Violence

Indonesia has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) as a form of commitment to protect women's rights and eliminate all forms of discrimination against them. One of the concrete forms of this commitment is the enactment of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law), which is the legal basis for taking action against perpetrators of domestic violence, including sexual violence within the scope of the

⁷ Matthew B Miles and A. Michael Huberman, *Analisis Data Kualitatif : Buku Sumber Tentang Metode Metode Baru* (Jakarta: Universitas Indonesia Press, 2014).

household. This law aims to provide protection to victims and a deterrent effect to perpetrators of violence who have been hidden in the private sphere.⁸

In Indonesia's criminal law system, domestic sexual violence is categorized as a crime, meaning that legal proceedings can only run if the victim actively reports the incident to law enforcement officials. Proof in criminal cases uses a negative proof system, combining evidence that is valid according to the law with the judge's conviction as a criminal act agreed upon between the perpetrator and the victim.⁹ In one case, the prosecutor presented witnesses who gave evidence that the defendant had committed sexual violence against his wife, reinforced by visum et repertum evidence that showed injuries to the victim's intimate organs.¹⁰ The defendant even admitted the testimony of the witnesses, which then strengthened the judge's belief that the defendant had violated Article 46 of the PKDRT Law without any excuse or justification.

The judge's consideration in deciding a case consists of juridical and non-juridical aspects.¹¹ Juridically, the judge based his decision on the legal facts revealed at the trial that showed that the defendant was legally and convincingly proven to have committed sexual violence against the victim. Meanwhile, non-juridically, the judge considers the defendant's condition, such as fatigue factors and health problems he experienced.¹² However, these non-juridical reasons are insufficient to remove the criminal liability of legally considered capable and physically and mentally healthy defendants.

⁸ David Mangaraja Lumban Batu, Setiawan Noerdajasakti, and Faizin Sulistio, 'Inconsistency In The Provision Of Restitution For Victims Of Sexual Violence Crimes In Light Of Judicial Decisions In Indonesia', *International Journal of Educational Review, Law And Social Sciences (IJERLAS)* 5, no. 3 (2 May 2025): 797-803, <https://doi.org/10.54443/ijerlas.v5i3.2816>.

⁹ Andri Winjaya Laksana, Ida Musofiana, Achmad Sulchan, Ahmed Kheir Osman and Tajudeen Sanni, 'The Disparities in Punishment for Narcotic Addiction: Does it Reflect the Value of Justice?', *Jurnal Media Hukum*, Vol. 32, No. 1, June 2025, page.134-150, <https://dx.doi.org/10.18196/jmh.v32i1.25678>

¹⁰ Luh Putu Nitya Dewi, 'Juridical Analysis of Criminal Acts of Non-Physical Sexual Violence in Law Number 12 of 2022 Concerning Criminal Acts of Sexual Violence', *Ratio Legis Journal* 3, no. 1 (6 March 2024): 295-306, <https://doi.org/10.30659/rlj.3.1.221-230>.

¹¹ Andri Winjaya Laksana et al., 'Legal Uncertainty in Law Enforcement for Drug Addicts Resulting in Criminal Disparity', *Yuridika* 40, no. 2 (27 May 2025): 253-270, <https://doi.org/10.20473/ydk.v40i2.68153>.

¹² Christina Maya Indah and Sri Harini Dwiyatmi, 'Advancing Access to Justice for Female Victims of Sexual Violence Through Restitution', *Jurnal Hukum* 40, no. 1 (1 September 2024): 171-186, <https://doi.org/10.26532/jh.v40i1.37794>.

Punishment is not solely to provide punishment as a form of revenge, but to educate, rehabilitate, and instill legal awareness in the defendant and society. Even so, the implementation of the law against domestic sexual violence is often hampered by the victim's reluctance to report due to social pressure, shame, or dependence on the perpetrator.¹³ In fact, in the PKDRT Law, it has been emphasized that violence against the wife is a criminal act, but the nature of the complaint makes the legal process unable to run without a report from the victim.

In the Indonesian criminal law system, an act is considered a criminal act if it violates the provisions of the law, followed by the threat of criminal sanctions. The perpetrator must go through the criminal justice system regulated in the Criminal Procedure Code (KUHAP) to impose criminal sanctions. This system must maintain a balance between the public interest—for criminals to be prosecuted and punished for the sake of public order—and the interests of individuals—so that the rights of suspects are preserved until proven guilty through a fair legal process.¹⁴

Protection of victims in the criminal justice system includes not only material losses but also psychological suffering. In this context, two forms of compensation are known: restitution and compensation. The state gives compensation at the victim's request, while restitution is compensation paid by the perpetrator based on a court decision. However, the Criminal Code only regulates the restitution mechanism for material losses and is still ineffective in accommodating immaterial losses that victims of sexual violence often experience.¹⁵

To remedy this, Law No. 13 of 2006 concerning the Protection of Witnesses and Victims, which has been updated with Law No. 31 of 2014, regulates the right of victims to obtain restitution, including compensation for suffering and medical and psychological

¹³ Muhammad Arif Sahlepi and Cut Nurita, 'The Comparative Law On The Crime Of Sexual Violence Between Indonesia And The United Kingdom', *Jurnal Pembaharuan Hukum* 10, no. 3 (24 December 2023): 481-493, <https://doi.org/10.26532/jph.v10i3.35287>.

¹⁴ Hendi Ismoyo Wicaksono, 'Legal Protection for Children as Victims of Criminal Sexual Violence', *Ratio Legis Journal* 3, no. 1 (2 April 2024): 1009-1018, <https://doi.org/10.30659/rlj.3.1.%p>.

¹⁵ Wahidah Zein Br Siregar, 'Causes and Impacts of Domestic Violence against Women: Cases in Indonesia', *Jurnal Sosiologi Dialektika* 19, no. 1 (11 June 2024): 77-88, <https://doi.org/10.20473/jsd.v19i1.2024.77-88>.

treatment costs. However, there is a weakness in the regulation: only victims of certain types of criminal acts determined by the Witness and Victim Protection Institution (LPSK) can obtain the right to restitution, thus limiting the scope of protection for victims of other crimes.¹⁶

Significant developments can be seen with the presence of Law No. 12 of 2022 concerning the Crime of Sexual Violence (TPKS Law), which expressly requires judges to determine restitution for perpetrators of sexual violence, including corporations, if the crime is threatened with a minimum penalty of four years in prison. Restitution includes economic losses, suffering directly related to criminal acts, medical expenses, and other losses. If the perpetrator does not pay within 30 days from the verdict, which has permanent legal force, then the perpetrator's property can be confiscated and auctioned by the prosecutor, even if the state is obliged to replace it if the property's value is insufficient.¹⁷

Domestic Sexual Violence and the Lack of Substantive Justice in Indonesia's Criminal Sanction Regulations

The victim is the party who suffers the most in a criminal act, including in cases of domestic sexual violence. Although formally, victims are often positioned as passive parties in criminal justice proceedings, their role greatly determines the direction of the judge's decision, primarily when the victim acts as a key witness. Nevertheless, our legal system has not entirely placed victims as the primary subjects entitled to justice and comprehensive restoration. This shows a gap between the principle of substantive justice and the implementation of positive law that is still oriented towards punishing perpetrators alone.¹⁸

Sexual violence in the domestic setting often occurs in private and closed spaces, making it a hidden crime. Many victims and perpetrators choose to cover up these events

¹⁶ Gabriella Sandra S and Noenik Soekorini, 'Analysis of Legal Protection of Sexual Violence Against Domestic Workers', *JURNAL HUKUM SEHASEN* 9, no. 2 (23 October 2023): 393-402, <https://doi.org/10.37676/jhs.v9i2.5017>.

¹⁷ Salsabilla, Razif, and Albab, 'Legal Protection Against Sexual Violence on Women'.

¹⁸ Sari Maharani Tarigan Sibero, Hedwig Adianto Mau, and Tubagus Achmad Darodjat, 'Application of Restorative Justice in Criminal Offences of Domestic Violence Domestic Violence in Indonesia', *LAW & PASS: International Journal of Law, Public Administration and Social Studies* 1, no. 5 (31 December 2024): 576-583, <https://doi.org/10.47353/lawpass.v1i5.55>.

due to cultural pressure, social stigma, and shame. In certain cultures, such as Javanese society, exposing domestic violence is considered to expose family disgrace, so many cases are never reported. As a result, the recorded rates of domestic sexual violence do not reflect the reality on the ground, and victims lose access to the legal protections they should have earned.¹⁹

Within the framework of the criminal law system in Indonesia, restitution is a victim's right that can be used as a means of recovery from material and immaterial losses. However, in reality, fulfilling restitution is very difficult to achieve. Long legal trails, convoluted procedures, and a lack of understanding by the authorities of the psychological condition of victims are the main obstacles.²⁰ One potential approach to bridging this rigidity of formal law is penal mediation, which is the settlement of criminal cases involving perpetrators and victims in a dialogue process, emphasizing the perpetrator's responsibility to constructively restore the victim's condition.

The impact of sexual violence leaves not only physical wounds, but also deep psychological trauma. In many cases, the community blames the victim for the violence that befell him. Such views exacerbate the psychological burden of victims and make them reluctant to report. In this context, restitution should be an instrument of recovery that is not only in the form of financial compensation but also includes the restoration of the victim's dignity.²¹ However, the form and value of restitution are still greatly influenced by the social status of the perpetrator and the victim. If the victim has a lower social status, the recovery received is likely to be limited and unfair.

Unfortunately, until now, there has been no regulation that explicitly and effectively guarantees restitution in cases of domestic sexual violence. Law Number 23 of

¹⁹ Resti Rienita Wahyuni and Beni Ahmad Saebani, 'Pendekatan Sosiologi Hukum Islam Terhadap Perlindungan Hukum Korban Tindak Pidana Kekerasan Seksual', *Causa: Jurnal Hukum Dan Kewarganegaraan* 9, no. 8 (20 December 2024): 61-70, <https://doi.org/10.3783/causa.v9i8.8774>.

²⁰ Ramiyanto, 'handling Domestic Violence Cases Through Restorative Justice (Domestic Violence Solving Through Restorative Justice)', *Indonesian Legislative Journal* 12, no. 2 (30 November 2018), <https://doi.org/10.54629/jli.v12i2.404>.

²¹ Joshua Irawan et al., 'Restorative Justice In Adult Women Victims Of Electronic-Based Sexual Violence', *Journal of Law and Policy Transformation* 9, no. 1 (9 July 2024): 69-82, <https://doi.org/10.37253/jlpt.v9i1.9146>.

2004 concerning the Elimination of Domestic Violence does provide general protection for victims, but it has not regulated the restitution mechanism in detail. As a result, the fulfillment of the victim's right to justice, materially and psychologically, often only stops as a normative principle without real realization.²² For example, in Decision Number 35/Pid.Sus/2021/PN Wkb, perpetrators of domestic sexual violence were sentenced to prison and a fine of IDR 5 million. However, the fine was paid to the state and had no direct impact on the victim's recovery. There is no compensation for the physical suffering or psychological trauma experienced by the victim. This shows that the legal system emphasizes the perpetrator's punishment more than the victim's recovery, contrary to the principle of restorative justice and *restitutio in integrum*, which is restoring the victim to the best possible condition before the crime occurred.²³

Restitution should be focused on restoring the victim's condition through assistance with medical expenses, psychological services, and recognition of the suffering he or she has experienced. However, its implementation in Indonesia is still hampered by low public legal awareness, limited apparatus resources, and the inability of actors to fulfill restitution obligations. Sometimes, no monitoring mechanism ensures that the perpetrator pays restitution as the court decides.²⁴ This makes many victims feel that their rights only apply on paper.²⁵

Amid this situation, it is important to strengthen synergy between law enforcement officials, victim protection institutions, and the community to ensure that the right to restitution can be fulfilled fairly and humanely. Restitution must be seen not just as an administrative legal process, but as a tangible form of social and moral responsibility

²² Dwi Rahmawati, 'Fulfillment Of The Rights Of Domestic Violence Victims Through Restorative Justice Policy', *Jurnal Ilmiah Advokasi* 13, no. 1 (1 March 2025): 1-15, <https://doi.org/10.36987/jiad.v13i1.6975>.

²³ Suwito Suwito et al., 'Restorative Justice: An Alternative Approach to Addressing Domestic Violence in Indonesia', *Innovative: Journal Of Social Science Research* 5, no. 1 (6 February 2025): 5066-5077, <https://doi.org/10.31004/innovative.v5i1.18045>.

²⁴ Hadi Sucipto et al., 'Transformation of Public Trust in Restorative Justice by the Prosecutor's Office: An Islamic and Social Law Approach in the Contemporary Era', *MILRev: Metro Islamic Law Review* 3, no. 2 (30 December 2024): 364-387, <https://doi.org/10.32332/milrev.v3i2.9938>.

²⁵ Melli Astritia, Interview with one of the victims of domestic violence, 2024.

towards victims of domestic sexual violence.²⁶ By encouraging a more empathetic and responsive approach to the needs of victims, regulations on restitution can develop into an integral instrument of justice, not just a legal symbol without the power of realization.

Comparison of the Value of Justice in Restitution: Positive Law vs. Islamic Law

Restitution is a form of restoration of victims' rights to the suffering experienced due to acts of violence, especially in the context of domestic sexual violence. In Indonesia's positive law, restitution is regulated through several legal instruments such as Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law) and Law Number 12 of 2022 concerning the Crime of Sexual Violence (TPKS Law). Restitution in this framework is interpreted as compensation for material and immaterial losses suffered by the victim, and its implementation depends on the court's decision.²⁷ However, the restitution process is often hampered by rigid bureaucracy, difficult proof, and the lack of law enforcement officials' impartiality against the victims' interests.

In contrast, in Islamic law, restitution is known through the concept of *Ta'wid*, which includes the provision of compensation for all forms of loss, whether physical, psychological, moral, or spiritual. Islamic law is not only oriented towards material loss, but also emphasizes the importance of restoring the dignity and honor of the victim.²⁸ This concept is based on the principles of justice (*al-'adalah*), the elimination of suffering (*raf' al-darar*), and the protection of the human soul and honor (*hifz al-nafs and hifz al-'ird*), as contained in *maqasid al-syarī'ah*. This approach is more comprehensive and humanistic, making the victim the main subject in the justice process.

²⁶ Putri Silvah Al Hikmah, Dinda Fajarohma, and Hana Sabilillah, 'Perlindungan Bagi Korban Pelecehan Seksual Dengan Pendekatan Keadilan Restoratif (Restorative Justice)', *Hakim: Jurnal Ilmu Hukum Dan Sosial* 1, no. 3 (6 July 2023): 204–224, <https://doi.org/10.51903/hakim.v1i3.1248>.

²⁷ Shinta Nur Ramadhanti, Alifia Nurensa, and Syahrar Adjani Rianto, 'Konsep Restorative Justice Dalam Perbandingan Hukum Pidana Di Indonesia Dengan Hukum Islam', *PESHUM: Jurnal Pendidikan, Sosial Dan Humaniora* 1, no. 4 (1 June 2022): 417–423, <https://doi.org/10.56799/peshum.v1i4.533>.

²⁸ Mira Maulidar, 'Korelasi Filosofis Antara Restorative Justice Dan Diyat Dalam Sistem Hukum Pidana Islam', *At-Tasyri': Jurnal Ilmiah Prodi Muamalah* 13, no. 2 (2021): 143–155, <https://doi.org/10.47498/tasyri.v13i2.856>.

If positive law tends to place justice within a procedural and legalistic framework, then Islamic law emphasizes more substantive justice that considers the victim's social, psychological, and spiritual conditions. Formal procedures in positive law, while providing legal certainty, are often unable to reach the emotional and moral needs of the victim.²⁹ This is in contrast to Islamic law, which opens up space for recovery through a family, community, or social institution approach based on religious values, so that the restitution process does not always have to go through complex court channels. In terms of implementation, restitution in positive law is highly dependent on the state as the law implementer. The victim does not have the flexibility to determine the form of recovery that best suits his needs. Meanwhile, in Islamic law, the community is important in supporting the victim's recovery process through mediation, direct assistance, and social-emotional support. Thus, the *Ta'wid* mechanism can run more flexibly, quickly, and oriented to the victim's interests.

The positive legal system does promise certainty and written legal protection, but in practice, it has not been able to ensure that victims truly obtain holistic justice. Many victims of domestic sexual violence do not get restitution due to the heavy burden of proof and convoluted procedures. In this case, a restorative Islamic approach is an important alternative, as it emphasizes moral and spiritual justice, rather than mere punishment of the perpetrators.³⁰ Integrating the positive legal system and Islamic legal values is relevant in the contemporary era.³¹ The *Ta'wid* approach can be adopted as a substantial value in the reform of Indonesia's criminal law, especially in the framework of the protection of victims of domestic sexual violence. This approach can strengthen the restorative justice

²⁹ Noercholis Rafid Ahmad and Nazaruddin, 'Study Comparatif Penerapan Restorative Justice Dalam Fikih Jinayah Dan Hukum Pidana Nasional', *Jurnal Al-Ahkam: Jurnal Hukum Pidana Islam* 4, no. 2 (30 September 2022): 97-107, <https://doi.org/10.47435/al-ahkam.v4i2.1236>.

³⁰ Ali Sodiqin, 'Legal, Moral, and Spiritual Dialectics in the Islamic Restorative Justice System', *AHKAM: Jurnal Ilmu Syariah* 21, no. 2 (30 December 2021), <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/22675>.

³¹ Syaibatul Hamdi, M. Ikhwan, and Iskandar, 'Tinjauan Hukum Islam Terhadap Implementasi Restorative Justice Dalam Sistem Peradilan Pidana Anak Di Indonesia', *MAQASIDI: Jurnal Syariah Dan Hukum*, 30 June 2021, 74-85, <https://doi.org/10.47498/maqasidi.v1i1.603>.

dimension in the national legal system, which is currently weak in providing comprehensive remedies for victims.³²

Thus, it is important to reassess the concept of restitution that has been applied in positive law, so that it stops at the formal legal framework and reaches moral, psychological, and spiritual aspects. Islamic law, with its *Ta'wid* principle, teaches that justice is not only about punishment for the perpetrators, but also about how the state and society actively participate in restoring the suffering of victims in a fair and dignified manner.³³

The following table presents a comparison between positive law and Islamic law in understanding and applying the concept of restitution:

Table 1: Comparison of the Value of Justice in Restitution

Aspects	Indonesia's Positive Law	Islamic Law (<i>Ta'wid</i>)
Legal basis	PKDRT LAW, TPKS LAW	Al-Qur'an, Hadith, fiqh rules, maqāṣid al-ṣyārḥ
Types of losses	Material & immaterial (with formal proof)	Physical, psychic, moral, spiritual
Justice approach	Formalistics, prosedural	Substantive, restorative, contextual
Implementation process	Through the courts	It can be through family, community, and social institutions
Main focus	Compensation based on loss	Restoration of dignity, elimination of suffering (<i>raf' al-darar</i>)
The victim's position	Passive beneficiaries in the legal system	The main subjects in the recovery process
Community involvement	Minimal	Strong, participatory
Basic values	Legal certainty	Divine Justice, Welfare, Humanity

Source: Author's Interpretation

Table 1 shows the fundamental difference between Indonesia's positive legal approach and Islamic law in understanding and applying the concept of restitution for victims of domestic sexual violence. Positive law is based on formal regulations such as the PKDRT Law and the TPKS Law, with a procedural approach to justice, and focuses on

³² Shinta Nur Ramadhanti, Alifia Nurensa, and Syahrur Adjani Rianto, 'Konsep Restorative Justice Dalam Perbandingan Hukum Pidana Di Indonesia Dengan Hukum Islam', *PESHUM: Jurnal Pendidikan, Sosial Dan Humaniora* 1, no. 4 (1 June 2022): 417-423, <https://doi.org/10.56799/peshum.v1i4.533>.

³³ Iqbal Kamalludin et al., 'Revitalizing Justice in Fiqh: Revisiting Non-Retroactive Principles to Address Sexual Violence', *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam* 7, no. 2 (3 May 2024): 136-150, <https://doi.org/10.30659/jua.v7i2.31028>.

material and immaterial damages that can be legally proven. The implementation process depends on the court mechanism and tends to make the victim a passive recipient. In contrast, Islamic law through the concept of *Ta'wid* emphasizes a substantive and restorative justice approach that includes physical, psychological, moral, and spiritual harm, and places the victim as the main subject in the recovery process. In Islamic law, society has an active role, and the fundamental values used are rooted in divine justice, welfare, and humanity, making it more flexible and oriented towards restoring the dignity of the victim as a whole.

Integration of the Concept of Islamic Restitution in the Contemporary Legal Framework in Domestic Sexual Violence Cases

In the context of domestic sexual violence, restitution is one of the important instruments in ensuring substantive justice for victims.³⁴ However, the current positive legal system still faces various obstacles in its implementation. These obstacles include complicated legal procedures, a lack of understanding of law enforcement officials regarding the victim's trauma, and a low realization of restitution after court decisions.³⁵ Therefore, the restitution approach, which is only formal legal, is not enough to answer the complexity of the suffering of victims of sexual violence in the household.

Islamic law, through the concept of *Ta'wid* (compensation), offers a more holistic and humane alternative approach. This concept focuses on compensation for material losses and restoring the victim's moral, emotional, and spiritual integrity. *Ta'wid* in Islam also refers to the principle of *raf' al-darar* (removing harm), which places the suffering of the victim as the center of attention in recovery. This is a substantive and more profound form of justice than just a legal formality. Integrating the concept of Islamic restitution into

³⁴ Vina Mustika and Iwan, 'Restitusi Terhadap Korban Kekerasan Seksual Di LPSK Medan; Analisis Hukum Pidana Dan Hukum Pidana Islam', *Legalite : Jurnal Perundang Undangan Dan Hukum Pidana Islam* 9, no. 2 (15 August 2024): 117-131, <https://doi.org/10.32505/legalite.v9i2.9224>.

³⁵ Inna Fauzi, Any Ismayawati, and Azka Hanani, 'Seeking Harmony over Punishment: Restorative Justice Approaches to Domestic Violence in Islamic and Indonesian Legal Frameworks', *Al-Mazaahib: Jurnal Perbandingan Hukum* 11, no. 2 (26 November 2023): 183-204, <https://doi.org/10.14421/al-mazaahib.v11i2.3192>.

the contemporary legal framework can strengthen the victim protection system in Indonesia. This can be done by reformulating legal norms that contextualize Islamic values without negating universal human rights principles.³⁶ In this case, Islam and national law are not positioned dichotomically, but as two value systems that can complement each other in creating a restitution system that is more responsive to the victim.

Implementing the Islamic approach in the positive legal system can be directed at strengthening restorative justice, which is a form of justice that emphasizes recovery for the impact of crime, not just the perpetrator's punishment. In Islam, the concept of justice does not only mean punishing the perpetrator, but also restoring the victim's rights, restoring his dignity, and facilitating social healing. Therefore, this integration aligns with the spirit of the TPKS Law, which begins to place victims at the center of the law enforcement process.³⁷ On the other hand, the role of the community and socio-religious institutions must be strengthened to support the implementation of restitution. In the Islamic tradition, the community is important in supporting the victim through social solidarity (*ta'awun*), alms, or moral and spiritual assistance. Strengthening these values in legal practice can help overcome structural and cultural barriers that have made it difficult for victims to access their rights.³⁸ Synergy between the state and the community's role will accelerate the victim's recovery.

In terms of policy, the integration of the concept of *Ta'wid* can be done by incorporating the principles of Islamic law into derivative regulations or technical guidelines for handling sexual violence, for example, by making room for non-monetary forms of restitution such as open apologies, psychosocial support, or social reintegration of victims following the principles of *maqāṣid al-syarī'ah*. This will expand the form of

³⁶ Syarifah Rahmatillah, 'Rekontruksi Pemenuhan Restitusi Melalui Qanun Jinayat di Aceh Bagi Korban Perkosaan', *Serambi Tarbawi* 10, no. 2 (30 July 2022): 139-152, <https://doi.org/10.32672/tarbawi.v10i2.4757>.

³⁷ Henny Yuningsih and Munawir Munawir, 'Efektivitas Restitusi Dalam Perlindungan Korban Kekerasan Seksual Di Indonesia: Analisis Yuridis Dan Implementasi Praktis', *Ranah Research: Journal of Multidisciplinary Research and Development* 7, no. 2 (2025): 1121-1130, <https://doi.org/10.38035/rj.v7i2.1277>.

³⁸ Syarifah Rahmatillah, 'Rekontruksi Pemenuhan Restitusi Melalui Qanun Jinayat di Aceh Bagi Korban Perkosaan', *Serambi Tarbawi* 10, no. 2 (30 July 2022): 139-152, <https://doi.org/10.32672/tarbawi.v10i2.4757>.

restitution to be more adaptive and contextual to the needs of victims at the grassroots level.³⁹ Strengthening legal education based on Islamic values is also a strategic step in supporting this integration. Law enforcers, village officials, religious leaders, and victims' companions need to be trained to understand the concept of *Ta'wid* and its implementation ethically and professionally.⁴⁰ Thus, the restitution process stops on paper and is a real solution in healing victims and restoring social justice.

By paying attention to this urgency and potential, integrating the concept of Islamic restitution in the contemporary legal framework is not just a normative discourse, but a concrete step towards a more just, responsive, and humanitarian-oriented legal system. This integration not only revives religious values in national law but also enriches legal approaches with spiritual and ethical dimensions neglected in the positivistic approach.

Table 2: Integration of the Concept of *Ta'wid* in Contemporary Law

Integration Aspects	Concepts in Islam (<i>Ta'wid</i>)	Relevance in Contemporary Law
Restitution Focus	Physical, psychological, moral, and spiritual recovery	Holistic victim protection
The Justice Approach	Substantive and restorative	In line with restorative justice in the TPKS Law
The Role of Community	Participatory (ta'awun, almsgiving, social support)	Involvement of the community and NGOs in the recovery of victims
Implementation Process	Flexible, value- and context-based	Adaptive with a victim-based approach
Form of Restitution	Monetary and non-monetary (acknowledgment, apology, social assistance)	Diversification of forms of restitution in the national legal system
Normative Foundations	Maqaṣid al-syarī'ah and the principles of humanity	Can be adopted in technical case handling regulations
Beneficiaries	Victims are the main subject of recovery	The victim regains his dignity and protection of his rights
Legal Orientation	Removing harm and restoring justice	Transformation of the legal system towards a victim-based approach

³⁹ Weini Wahyuni, 'Jarimah Pemerkosaan Dalam Qanun Jinayat Aceh Perspektif Feminist Legal Theory', *Jurnal Hukum* 38, no. 1 (29 May 2022): 43-60, <https://doi.org/10.26532/jh.v38i1.17458>.

⁴⁰ Syarifah Rabiattunnisa, 'Kebijakan Restitusi: Bentuk Perlindungan Hukum Atau Diskriminasi Terhadap Kasus Kekerasan Seksual (Studi Kasus Qanun Aceh Nomor 6 Tahun 2014 Tentang Hukum Jinayat Di Kota Banda Aceh)', *Jurnal Ilmiah Mahasiswa Fakultas Ilmu Sosial & Ilmu Politik* 7, no. 3 (20 October 2022), <https://jim.usk.ac.id/FISIP/article/view/20886>.

Source: Author's Interpretation

Table two illustrates how the concept of *Ta'wid* in Islamic law can be relevantly integrated into contemporary legal frameworks, particularly in dealing with cases of domestic sexual violence. The Islamic approach that emphasizes comprehensive recovery—physical, psychological, moral, and spiritual—aligns with the spirit of restorative justice in national law, as reflected in the TPKS Law. The community's participatory role in Islam through the value of *ta'awun* (help-help) can also strengthen the involvement of civil society in supporting victims. Its flexible and contextual implementation process allows restitution to be carried out adaptively in material and non-material forms such as acknowledgement, apology, or social assistance. Based on *maqāṣid al-syarī'ah*, this integration not only expands the possible restitution forms but also directs the legal orientation towards the holistic restoration of justice, by placing the victim as the main subject of protection and restoration of his rights.

CONCLUSION

This research shows that restitution has a strategic role as an instrument of justice for victims of sexual violence in the household. In Indonesia's positive law, restitution has been regulated normatively, but its implementation is still weak due to procedural and bureaucratic obstacles and a lack of impartiality towards the victim. On the other hand, Islamic law through the concept of *Ta'wid* offers a more substantial and humanistic approach, emphasizing a comprehensive restoration—whether physical, psychological, moral, or spiritual—based on the values of *maqāṣid al-shari'ah* and divine justice. This comparison confirms a gap in positive law that can be filled with an Islamic approach to present a more equitable and contextual restitution system. The integration of *Ta'wid* values into the contemporary legal system not only enriches the substance of the law but also strengthens the orientation of victim protection more comprehensively and equitably.

A restorative and participatory approach to Islam can solve the various limitations of formal restitution in positive law by encouraging collaboration between the state, society,

and religious institutions. Therefore, restitution is no longer just a form of compensation but a tangible manifestation of the law's alignment with humanity, the dignity of victims, and transformative justice in the modern era. The suggestion for further research can be to delve deeper into the concrete forms of integrating *Ta'wid* values into positive legal practice through normative-comparative juridical studies and empirical research on the implementation of restitution in the field. Researchers can also focus on analyzing the role of non-state actors, such as religious institutions, civil society organizations, and religious leaders, in supporting the victim recovery process based on Islamic values.

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AUTHOR CONTRIBUTIONS STATEMENT

Hendro Widodo was the primary author who designed the research structure, compiled the conceptual framework, and wrote and revised the entire manuscript. Anis Mashdurohatun has significantly contributed to strengthening the study of Islamic law and normative analysis and supervising the direction of scientific argumentation. Kristiawanto is responsible for positive legal analysis, including the review of laws and regulations and relevant case studies. Andrianto Budi Santoso contributes to the literature data collection,

reference processing, and preparing comparison tables. Derick Yunanda is involved in final editing, methodological conformity checks, and academic validation of manuscript content. All authors have read and approved the final version of this article.

CONFLICT OF INTEREST

The authors declare that there is no conflict of interest regarding the publication of this manuscript. The research was conducted independently, and no financial or personal relationships have influenced the outcomes or interpretations presented in this study.

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