

Effectiveness of Restitution Implementation through Consignation (Case Study: Wates, Sleman, and Karanganyar District Courts)

Maria Prehatiningsih Utami
Pengadilan Negeri Purbalingga

✉ mariautami1996@gmail.com

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Abstract

The implementation of restitution can be carried out by the defendant through the prosecutor or by the defendant through the prosecutor by involving the LPSK. Based on various mechanisms, in fact it is unable to guarantee payment of restitution by the perpetrators. Facing this phenomenon, the prosecutor approached the perpetrator so that the restitution was paid. Based on this approach, the defendant can pay restitution during the trial process. The restitution money is consigned and handed over to the victim after the decision is final and binding. After being analyzed using the legal effectiveness theory of Donald Black and Anthony Allot, it was found that restitution consignments made prior to prosecution were effective. However, there is no technical uniformity in the implementation of the restitution consignment. Moreover, its implementation is also influenced by social factors. Based on the analysis with the theory of the legal system, it was found that there were obstacles in the aspects of legal structure, legal substance and legal culture. This research is a sociological legal research with a qualitative research type. The primary data of this research are the results of interviews conducted with informants who handle restitution cases at the Karanganyar District Court, Wates District Court and Sleman District Court. Secondary data in the form of primary, secondary and tertiary legal materials are obtained through literature studies. Further research data are presented in the form of narrative descriptions with inductive thinking logic. This research provides recommendations for the formation of regulations regarding the technicalities of restitution consignment including institutions that receive deposits, the amount of payment, the time of deposit and the time of submission of restitution money.

Keywords: consignment;; effectiveness; restitution

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Introduction

Restitution is compensation provided to the victim or their family by the perpetrator of a criminal act or a third party.¹ Restitution arises from the growing recognition of victims' rights within a criminal justice system that has traditionally focused heavily on the offender while failing to address the needs of the victim.² A criminal justice approach that is offender-centered has led to the marginalization of the victim's position. Victims are often merely treated as witnesses during legal

¹ Usman Hamid, "Laporan Tahunan LPSK 2020: LPSK Menolak Menyerah, Separuh Napas Perlindungan Saksi Dan Korban Di Tengah Pandemi" (Jakarta, 2020).

² Mahrus Ali and Ari Wibowo, "Kompensasi Dan Restitusi Yang Berorientasi Pada Korban Tindak Pidana," *Yuridika* 33, no. 2 (2018): 260.

proceedings, whose role is limited to proving the guilt of the suspect or defendant.³ In this context, restitution serves as one of the efforts to fulfill the rights of victims.

The 2020 Annual Report of the Witness and Victim Protection Agency (LPSK) indicates that the restitution paid by perpetrators amounted to only IDR 101,714,000 out of a total court-ordered restitution of IDR 1,345,849,964. This data reflects that the implementation of restitution in Indonesia remains ineffective. This ineffectiveness stems from the restitution enforcement mechanism currently in place, which does not guarantee payment by the perpetrator. Moreover, it is acknowledged that the actual payment of restitution is also influenced by accompanying social factors.

This ineffectiveness occurs because the restitution enforcement mechanism currently applied in Indonesia does not ensure payment by the perpetrator. It is important to note that in Indonesia, restitution is regulated under various laws and regulations, each with different enforcement mechanisms. In contrast, the United States has long implemented a consignment mechanism for all restitution payments. The term “consignment” originates from the Dutch word *consignatie*, which refers to the deposit of money or goods with the court for the purpose of debt repayment.⁴ According to the Kamus Besar Bahasa Indonesia (Indonesian Dictionary), consignment (*konsinyasi*) is defined as the deposit of money with the court.⁵ In this context, consignment refers specifically to the deposit of restitution funds with the court.

United Nations Declaration on The Prosecution and Assistance of Crime Victims pada butir 4 *Part I General Principles* menegaskan “*reparation by the offender to the victim shall be an objective of the process justice ...*”. The underlying principle is that compensation by the perpetrator to the victim should be one of the primary objectives of the criminal justice process. This concept of compensation was subsequently adopted into the criminal procedure law of the United States. The U.S. Code: Title 18, which came into force in 1942, was later amended in 1970⁶, particularly in Part II on Criminal Procedure, which introduced provisions governing the implementation of restitution. Under § 3663, restitution may be ordered for the following types of criminal offenses: (i) all offenses under

³ Ni Putu Rai Yulianti, “KEDUDUKAN KORBAN KEJAHATAN DALAM SISTEM PERADILAN PIDANA DI INDONESIA BERDASARKAN KITAB UNDANG-UNDANG HUKUM ACARA PIDANA (KUHP),” *Jurnal Komunikasi Hukum (JKH)*, 2015, <https://doi.org/10.23887/jkh.viii.5006>.

⁴ Aartje Tehupeior, *Makna Konsinyasi Pengadaan Tanah Untuk Kepentingan Umum* (Jakarta: Raih Asa Sukses, 2017).

⁵ Badan Pengembangan dan Pembinaan Bahasa Kementerian Pendidikan Kebudayaan Riset dan Teknologi, “KBBI Daring: Konsinyasi,” 2022.

⁶ Legal Information Institute, “U.S. Code: Title 18,” n.d.

U.S. Code: Title 18, except as provided in § 3663A(c); (ii) offenses related to food and drugs under U.S. Code: Title 21; and (iii) transportation-related offenses under U.S. Code: Title 49.

Furthermore, the mechanism for the enforcement of restitution is clearly stipulated in § 3611 on the Payment of a Fine or Restitution, which states:

“A person who is sentenced to pay a fine, assessment, or restitution, shall pay the fine, assessment, or restitution (including any interest or penalty), as specified by the Director of the Administrative Office of the United States Courts. Such Director may specify that such payment be made to the clerk of the court or in the manner provided for under section 604(a)(18) of title 28, United States Code.”

In connection with U.S. Code: Title 28 § 604(a)(18), it is stated as follows:

“The Director shall be the administrative officer of the courts, and under the supervision and direction of the Judicial Conference of the United States, shall: Establish procedures and mechanisms within the judicial branch for processing fines, restitution, forfeitures of bail bonds or collateral, and assessments.”

Based on U.S. Code Title 18 § 3611 and U.S. Code Title 28 § 604(a)(18), it can be understood that in the United States, the implementation of restitution for any criminal offense follows the same mechanism, namely through the deposit of funds with the court clerk. The process of such deposit is regulated by the Director (court administrative officer).

In contrast, restitution in Indonesia is regulated under various laws and regulations, including: Law No. 13 of 2006 concerning the Witness and Victim Protection Agency (LPSK); Law No. 15 of 2003 in conjunction with Law No. 5 of 2018 concerning the Eradication of Terrorism; Law No. 23 of 2002 in conjunction with Law No. 17 of 2016 concerning Child Protection; Law No. 31 of 1999 in conjunction with Law No. 20 of 2001 concerning the Eradication of Corruption; Law No. 26 of 2000 concerning Human Rights Courts; Law No. 21 of 2007 concerning the Eradication of Human Trafficking; and Law No. 12 of 2022 concerning Sexual Violence Crimes. Its implementation is further guided by various technical regulations, including: Government Regulation (PP) No. 7 of 2018 in conjunction with PP No. 35 of 2020; PP No. 43 of 2017; and PP No. 3 of 2002. Based on these technical regulations, restitution may be provided through various mechanisms, such as by the defendant through the public prosecutor to the victim, or by the defendant through the prosecutor in coordination with LPSK before being transferred to the victim. Meanwhile, Article 48 paragraph (5) of Law No. 21 of 2007, Article 31 paragraph (2) of Law No. 12 of 2022, and Article 7 of Supreme

Court Regulation (PERMA) No. 1 of 2022 regulate that the implementation of restitution shall be carried out through a consignment mechanism.

The inconsistency in restitution enforcement norms has resulted in inconsistent implementation practices, ultimately leading to varying outcomes in the execution of restitution orders. In case No. 52/Pid.Sus/2018/PN Wat concerning the crime of child sexual intercourse, the restitution amount was IDR 30,828,000 (thirty million eight hundred twenty-eight thousand rupiahs), and in case No. 1/Pid.Sus/2022/PN Wat concerning the crime of child molestation, the restitution amount was IDR 4,013,000 (four million thirteen thousand rupiahs). Both cases used the execution mechanism through the public prosecutor. In reality, however, no restitution was paid by the defendants.

There is also a mechanism whereby restitution payments are deposited through the Witness and Victim Protection Agency (LPSK). In case No. 63/Pid.B/2022/PN Smn, involving the jointly committed violent crime resulting in death, the restitution amount was IDR 100,000,000 (one hundred million rupiahs). The defendants, jointly and severally, deposited the restitution funds to LPSK through the prosecutor's office. Nevertheless, the restitution money was not immediately received by the victim following the final and binding court decision. A schedule adjustment between the prosecutor's office and LPSK was required before the money could be handed over. This means that, even after the judgment became final and binding, the victim or their heirs did not immediately receive the restitution payment. This contrasts with case No. 164/Pid.Sus/2021/PN Krg, concerning the crime of child molestation, in which the restitution amount was IDR 8,280,000 (eight million two hundred eighty thousand rupiahs). Although, legally, Supreme Court Regulation (PERMA) No. 1 of 2022 had not yet come into force at the time, the case applied the consignment mechanism for restitution. The defendant paid restitution in accordance with the court ruling, and the victim received the restitution funds after the judgment became final and binding.

Considering the potential of restitution payments through the consignment mechanism and the relative simplicity of the process involved, the researcher is interested in conducting an analysis of this method. Nevertheless, not all legal instruments that regulate restitution accommodate the consignment mechanism. Moreover, not all courts are willing to accept consigned restitution payments in the absence of specific technical regulations. In addition, the implementation of restitution cannot be separated from the social factors that influence it. Given these issues, the researcher is motivated to study *The Effectiveness of Restitution Implementation Through the Consignment Mechanism*.

This research constitutes a novel study that has not previously been undertaken by the researcher. Several academic journals have addressed the issue of restitution, including “The Right to Restitution for Child Victims of Sexual Violence” in the *Journal of Legal Research* (2021), “Problems of Victims’ Restitution Rights in Criminal Acts Regulated Under and Outside the Criminal Code” in the *Bina Mulia Hukum Journal* (2022), and “Restitution in Sexual Violence Crimes in Indonesia from a Utilitarian Perspective” in the *Esensi Hukum Journal* (2023). However, these journals do not elaborate on the technical implementation of restitution through the consignment mechanism as explored in this study.

The analysis presented in this paper is theoretically expected to contribute to the development of criminal law scholarship, particularly regarding the mechanism of restitution implementation through consignment. Practically, this research is beneficial for law enforcement officers as input to utilize the consignment mechanism in the execution of restitution amidst the diverse regulations governing restitution payments. The choice of consignment as a method for delivering restitution is due to its ability to provide legal certainty and, importantly, benefits for victims of criminal acts.

Research Problems

The issues discussed in this article include:

1. How effective is the implementation of restitution through the consignment mechanism?
2. What are the obstacles in the implementation of restitution through the consignment mechanism?

Research Method

This research is a socio-legal study with a qualitative approach. It analyzes the fact that restitution implementation in Indonesia is not uniform and specifically examines the implementation of restitution through the consignment mechanism. Since this study is socio-legal in nature, the primary data used are primary data supported by secondary data. Primary data were obtained from interviews with judges, prosecutors, offenders, and victims involved in restitution cases within the jurisdiction of Wates, Sleman, and Karanganyar. Secondary data were obtained through a literature study of primary legal materials (laws and regulations related to restitution), secondary legal materials (restitution court decisions), and tertiary materials (dictionaries and legal dictionaries explaining the primary and secondary legal materials).

The data processing method employs techniques of data reduction, data presentation, and conclusion drawing or verification. Besides descriptive narrative presentation, the data are also presented prescriptively, meaning that the research data are not only described as they are, but also accompanied by argumentation based on the data. The analysis uses an inductive reasoning process. It begins with specific matters, namely the implementation of restitution at the Karanganyar District Court, Sleman District Court, and Wates District Court. Subsequently, the findings are tested using Donald Black and Anthony Allot's theory of legal effectiveness and Lawrence M. Friedman's legal system theory to identify obstacles in the implementation.

Discussions

1. The Effectiveness of Restitution Implementation Through the Consignation Mechanism

Victims, according to Stanciu,⁷ and Simha F. Landau,⁸ in *Section A Number 1 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, are understood as parties who suffer as a result of crime. Article 1 number 3 of Law No. 13 of 2006 in conjunction with Law No. 31 of 2014, Article 1 number 2 of Government Regulation No. 7 of 2018 in conjunction with Government Regulation No. 35 of 2020, and Article 1 number 3 of Supreme Court Regulation No. 1 of 2022 define victims as persons, including children (under eighteen years old), who experience physical, mental suffering and economic loss. In the criminal justice process, victims still must participate in the evidentiary process. H This situation is described by Elias,⁹ Doerner¹⁰ and Nils Christie¹¹ as victims experiencing *second victimization*.

Physical, mental, and economic suffering as referred to above were experienced by the victims and their families in case No. 1/Pid.Sus/2022/PN Wat, case No. 63/Pid.B/2022/PN Smn, and case No. 164/Pid.Sus/2021/PN Krg. The physical suffering endured by the victims included: (i) loss of life in case No. 63/Pid.B/2022/PN Smn; and (ii) tearing of the hymen experienced by the child

⁷ V.V. Stanciu, *Victim-Producing Civilizations and Situations* (Washington DC: Visage Inc., 1976).

⁸ Simha F. Landau and Robert E. Freeman-Longo, "Classifying Victims: A Proposed Multidimensional Victimological Typology," *International Review of Victimology* 1, no. 3 (September 1990): 267–86, <https://doi.org/10.1177/026975809000100304>.

⁹ Robert Elias, *Community Control, Criminal Justice and Victim Services* (Oxford: Oxford University Press, 1986).

¹⁰ Steven P. Lam Doerner, William G, *Victimology* (America: Anderson Publishing co, 1988).

¹¹ Peter Duff Joanna Shapland, Jon Willmore, *Victim in The Criminal Justice System*, ed. A.E. Bottonms (ed.) Gower Publishing Company Limited, 1985.

victim in case No. 164/Pid.Sus/2021/PN Krg. The psychological/mental suffering experienced by the victims included: (i) trauma experienced by the child victim in case No. 1/Pid.Sus/2022/PN Wat and the child victim in case No. 164/Pid.Sus/2021/PN Krg; (ii) deep grief suffered by the family of the victim in case No. 63/Pid.B/2022/PN Smn; and (iii) feelings of shame causing the child victim in case No. 164/Pid.Sus/2021/PN Krg to rarely play with friends. The economic suffering involved expenses for medical treatment amounting to Rp. 800,000.00 (eight hundred thousand rupiah), as experienced by the child victim in case No. 164/Pid.Sus/2021/PN Krg.

Based on the explanation regarding the participation of victims and/or their families in the criminal justice process, it is known that this process causes additional consequences, including: (i) travel expenses that must be incurred; (ii) the victim's family having to repeatedly explain what they know about the criminal incident that occurred; (iii) leaving their work activities, which are sources of income, to attend the examination process; and (iv) experiencing discomfort throughout the criminal justice process.

Understanding that victims undergo second victimization during the criminal justice process, Muladi and Barda Nawawi Arief argue that victim empowerment through restitution is necessary.¹² In terms of victim protection, the essence of restitution lies in the losses suffered by the victim. This concept of restitution has subsequently been adopted in various laws and regulations that define restitution, including: (i) Article 36 paragraph (3) of Law No. 15 of 2003 concerning the Stipulation of Government Regulation in Lieu of Law No. 1 of 2002 on the Eradication of Terrorism Crimes; (ii) Article 1 number 13 of Law No. 21 of 2007 on the Eradication of Human Trafficking Crimes; (iii) Article 1 number 11 of Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 on Witness and Victim Protection; (iv) Article 1 number 20 of Law No. 12 of 2022 on Sexual Violence Crimes; (v) Article 1 number 5 of Government Regulation No. 3 of 2002 on Compensation, Restitution, and Rehabilitation for Victims of Gross Human Rights Violations; (vi) Article 1 number 1 of Government Regulation No. 43 of 2017 on the Implementation of Restitution for Children Who Are Victims of Criminal Acts; (vii) Article 1 number 5 of Government Regulation No. 35 of 2020 concerning Amendments to Government Regulation No. 7 of 2018 on the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims; and (viii) Article 1 number 1 of Supreme Court Regulation No. 1 of 2022 on Procedures for Submission and Granting of Restitution and Compensation to Victims of Criminal Acts.

¹² Muladi & Barda Nawawi Arief, *Bunga Rampai Hukum Pidana* (Bandung: Alumni, 1992).

Based on the aforementioned provisions, it is understood that restitution is compensation charged to the perpetrator based on a court decision that has obtained permanent legal force for material and/or immaterial losses suffered by the victim or their heirs. In practice, immaterial losses are proven through the cost of psychological treatment. A restitution request submitted during the investigation stage must be attached to the case file so that the file can be declared complete (P-21) by the public prosecutor.

The amount of restitution determined by the Witness and Victim Protection Agency (LPSK) is referred to as a reasonable compensation value. The so-called reasonable compensation value is the amount obtained through a reasonable calculation and estimation of material and/or immaterial losses suffered by the victim as a result of a criminal act. This value results from a combination of material and immaterial losses related to an assessed object. The value refers to the loss/elements/components of calculation as stipulated in statutory regulations. The reasonableness parameter is obtained through a market approach. The market approach involves collecting information or conducting surveys on goods/items available in the market (either by directly checking stores that provide the goods/items or checking online prices by comparing the highest and lowest values). Losses are determined by considering the actual costs incurred by the victim or their family, which must be supported by receipts, payment slips, statements, and the victim's testimony.¹³

There is no specific agenda designated for restitution hearings. Ayun Kristiyanto,¹⁴ Cahyono,¹⁵ and Dili Timora Andi Gunawan¹⁶ concluded that restitution can be examined during the victim's testimony, the defendant's examination, the reading of the prosecutor's charges, or the submission of the public prosecutor's final statement. A restitution request must be submitted no later than before the prosecution's charges. Practically, this is intended to ensure that the charges include a demand for restitution to be imposed on the defendant, which will subsequently be considered in the court's ruling. With regard to the restitution amount submitted to the court, the public prosecutor tends to adopt the amount determined by the Witness and Victim Protection Agency (LPSK) in

¹³ Edwin Patogi Pasaribu, "Implementation of the Right to Restitution for Victims of Human Trafficking" (the National Consultation Workshop: Strengthening Access to and Implementation of Compensation for Victims of Human Trafficking, organized by the Supreme Court of the Republic of Indonesia, 2022).

¹⁴ Interview with Ayun Kristiyanto, Presiding Judge of the panel examining and adjudicating Case Number: 1/Pid.Sus/2022/PN Wat, on October 6, 2022.

¹⁵ Interview with Cahyono, Judge at the Sleman District Court, who examined and adjudicated Case No. 63/Pid.B/2022/PN Smn, October 24, 2022.

¹⁶ Interview with Dili Timora Andi Gunawan, Chief Judge of the Karanganyar District Court, October 20, 2022.

their demands. However, if the panel of judges considers that the defendant's financial capacity is lower than that considered by LPSK, the judges may rule on a restitution amount lower than the one proposed by LPSK. This reduction in the restitution amount is expected to increase the likelihood that the perpetrator will actually pay it. Conversely, if the public prosecutor believes that the perpetrator or a third party has the willingness and financial capacity exceeding the amount determined by LPSK, the demanded restitution amount may exceed LPSK's calculation. In such cases, not only is the perpetrator's condition taken into account, but also the actual losses suffered by the victim as revealed during the trial.

Based on the provisions regarding the payment of restitution as stipulated in Government Regulation No. 7 of 2018 in conjunction with Government Regulation No. 35 of 2020, Government Regulation No. 43 of 2017, and Supreme Court Regulation (PERMA) No. 1 of 2022, differences in the restitution payment mechanisms have been identified as follows:

Tabel 1. Comparison of Restitution Payments between Government Regulation No. 7 of 2018 in conjunction with Government Regulation No. 35 of 2020, Government Regulation No. 43 of 2017, and Supreme Court Regulation (PERMA) No. 1 of 2022

No.	Comparison	Government Regulation No. 7 of 2018 in conjunction with Government Regulation No. 35 of 2020	Government Regulation No. 43 of 2017	Supreme Court Regulation (PERMA) No. 1 of 2022
1.	Time of Payment	No later than 30 days after receiving a copy of the court decision/ruling	No later than 30 days after receiving a copy of the court decision	May be made during trial proceedings or before the decision obtains permanent legal force
2.	Payment Mechanism	The perpetrator reports the implementation to LPSK with a copy sent to the court. LPSK then reports to the public prosecutor	The perpetrator/parents report the restitution payment to the court and the prosecutor's office	The payment is deposited with the court clerk's office in the same manner as a bail deposit

In practice, the regulation of restitution payments as stipulated in Government Regulation No. 7 of 2018 in conjunction with Government Regulation No. 35 of 2020 and Government Regulation No. 43 of 2017 has led to various mechanisms of payment. This is further complicated by empirical evidence showing that not all perpetrators fulfill their restitution obligations, nor do they do so within the time period prescribed by law. When the perpetrator fails to pay restitution, no report on the execution of the restitution is submitted by the

perpetrator to LPSK, the public prosecutor, or the court. Considering that the perpetrator may already be in detention, their ability to take any action—including preparing and submitting a report to the relevant legal institutions—is limited. Therefore, the provisions on restitution payment as outlined in Government Regulation No. 7 of 2018 in conjunction with Government Regulation No. 35 of 2020 and Government Regulation No. 43 of 2017 do not correspond to the empirical realities faced by perpetrators.

The inability or unwillingness of perpetrators to immediately pay restitution has prompted law enforcement authorities to formulate strategies aimed at encouraging restitution payments. These strategies have resulted in a variety of restitution payment practices that do not align with the procedures stipulated in Government Regulation No. 7 of 2018 in conjunction with Government Regulation No. 35 of 2020 and Government Regulation No. 43 of 2017. The diversity in payment mechanisms affects the time required for victims to actually receive the restitution funds. Despite efforts to compel payment, such strategies do not always lead to the fulfillment of restitution obligations by the perpetrator. This was evident in Case No. 1/Pid.Sus/2022/PN Wat, where no restitution payment was made by the perpetrator.

Comparing Restitution Payments in Case No. 63/Pid.B/2022/PN Smn and Case No. 164/Pid.Sus/2021/PN Krg Conducted through the Consignation Mechanism as Follows:

Tabel 2. Comparison of Restitution Implementation in Case No. 63/Pid.B/2022/PN Smn and Case No. 164/Pid.Sus/2021/PN Krg

No.	Aspect of Comparison	Case No. 63/Pid.B/2022/PN Smn	Case No. 164/Pid.Sus/2021/PN Krg
1	Timing of Restitution Payment	Prior to the criminal prosecution	After the verdict but before it becomes legally binding
2	Mechanism of Restitution Payment	Deposited with LPSK	Deposited with the court clerk's office
3	Impact on Prosecution	Considered a mitigating factor, resulting in a reduced sentence demand	Not considered a mitigating factor, thus no reduction in sentence demand
4	Impact on Verdict	Considered a mitigating factor, resulting in a reduced prison sentence	Not considered a mitigating factor, thus no reduction in prison sentence
5	Timing of Restitution Disbursement	Approximately one month after the verdict becomes legally binding (awaiting confirmation from LPSK)	Immediately after the verdict becomes legally binding

6	Mechanism of Restitution Disbursement	Disbursed at the prosecutor's office, attended by the defendant's family, victim's family, public prosecutor, and LPSK	Disbursed at the district court, attended by the defendant's family, public prosecutor, and court clerk
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Based on the comparison of mechanisms above, it can be concluded that both the depositing of restitution funds with LPSK and with the court clerk's office follow relatively simple procedures. There is no complex or convoluted bureaucracy involved. In terms of promptness, restitution deposited with the court clerk's office reaches the victim or their family more quickly, as the funds can be disbursed immediately without having to wait for LPSK's readiness. Considering that the purpose of restitution is to alleviate the suffering of victims resulting from criminal acts, it is more effective if the restitution can be promptly utilized by the victim.

Talcott Parsons formulated a basic unit scheme of social action characterized by the following elements: (i) there is an individual as an actor; (ii) the actor is viewed as a pursuer of certain goals; (iii) the actor has alternatives in terms of means, tools, and techniques to achieve those goals; (iv) the actor operates within situational conditions; and (v) the actor is constrained by values, norms, and various abstract ideas—such as cultural constraints—that influence their choices in setting goals and selecting alternative actions to achieve them.¹⁷ In this context, the actor can be analogized to the judge as the decision-maker. The judge, in carrying out their actions, pursues objectives within a given situation and has the discretion to choose the means by which to achieve those objectives.¹⁸

Based on Talcott Parsons' perspective, in the context of Case No. 63/Pid.B/2022/PN Smn, the actor refers to the panel of judges adjudicating the *quo* case. The actor's encounter with situational conditions pertains to the trial facts indicating that the defendants, through a third party, had deposited a restitution amount of IDR 100,000,000 (one hundred million rupiah). The means to achieve the goal refers to the judge's choice to determine a restitution amount that exceeded the calculation provided by LPSK. This is reflected in the legal reasoning, which states, "...the judge needs to take progressive steps in conducting *rechtvindig* so that restitution for the victim or their family can truly be meaningful." Cahyono further clarified that the concept of *rechtvindig* in this

¹⁷ Hans H. Gerth, "On Talcott Parsons' The Social System," *International Journal of Politics, Culture and Society* 10, no. 4 (June 1997): 673–84, <https://doi.org/10.1007/BF02098738>.

¹⁸ M. Syamsudin, "Faktor-Faktor Sosiolegal Yang Menentukan Dalam Penanganan Perkara Korupsi Di Pengadilan," *Jurnal Hukum Ius Quia Iustum*, 2010, <https://doi.org/10.20885/iustum.vol17.iss3.art4>.

context involves deciding on a restitution value different from LPSK's assessment. The panel of judges considered that there would be greater benefit (*kemanfaatan*) to the victim's family through the *a quo* decision.¹⁹ Thus, it can be understood that the objective pursued by the actor in this context is the realization of benefit (*kemanfaatan*).

This differs from the consignment of restitution in Case No. 164/Pid.Sus/2021/PN Krg, which was carried out after the verdict (although it had not yet obtained permanent legal force). As a result, the consignment was not considered a mitigating circumstance for the perpetrator. Nevertheless, it is known that the restitution could be delivered to the victim immediately after the verdict became legally binding. In contrast, in Case No. 63/Pid.B/2022/PN Smn, the delivery of restitution was carried out after a schedule was agreed upon with the Witness and Victim Protection Agency (LPSK). This means that restitution was not delivered immediately after the decision became legally binding, as occurred in Case No. 164/Pid.Sus/2021/PN Krg.

According to Donald Black, the law is considered effective when there is no disparity between ideality and reality. The implementation of legal regulations aligns with what has been planned and does not show any imbalance.²⁰ Indonesian legislation does not explicitly formulate the objective of restitution. Therefore, the perspective of Margery Fry is applied, which views restitution as a remedy for the harm caused.²¹ Accordingly, it is more appropriate to regard restitution as a beneficial effort to alleviate the suffering caused by criminal acts, as argued by Dennis F. Dibari.²² In practice, there is no restitution payment implemented under Articles 33–36 of Government Regulation No. 7 of 2018 in conjunction with Government Regulation No. 35 of 2020 and Articles 21–22 of Government Regulation No. 43 of 2017. Perpetrators do not automatically pay restitution to victims and report it to the Witness and Victim Protection Agency (LPSK), the public prosecutor, or the court. Therefore, a review of the effectiveness of the restitution implementation mechanism is conducted by comparing the payment of restitution through consignment prior to prosecution with the payment of restitution through consignment after a court decision that has not yet obtained permanent legal force.

¹⁹ Interview with Cahyono, Judge at the Sleman District Court who examined and adjudicated Case No. 63/Pid.B/2022/PN Smn, October 24, 2022.

²⁰ Donald J. Black, "The Boundaries of Legal Sociology," *The Yale Law Journal*, 1972, <https://doi.org/10.2307/795221>.

²¹ Angkasa, *Viktimologi* (Depok: PT Rajagrafindo Persada, 2020).

²² DiBari Dennis F, "Restoring Restitution: The Role Of Proximate Causation In Child Pornography Possession Cases Where Restitution Is Sought," *Cardozo Law Review* 33, no. 2 (2018): 268.

Anthony Allott argues that the effectiveness of law is measured by the level of compliance, with one of the indicators of compliance being the extent to which the law is facilitative.²³ In the context of this research, the parameter used is whether the law facilitates the needs of legal subjects. Subsequently, it is analyzed whether consignment (*consinyasi*) serves as a facilitative mechanism for the payment of restitution for victims, offenders, and law enforcement officials.

Considering that the implementation of restitution through consignment has adopted the principles of being swift, simple, and low-cost, and provides a guarantee of restitution payments to victims along with ease of access in receiving the restitution funds, it can be concluded that the payment of restitution through consignment facilitates the needs of victims. Furthermore, the deposit of restitution made by the offender prior to prosecution is, in practice, considered a mitigating factor both in the prosecution and in the court's decision, which may result in a reduced prison sentence. This differs from the deposit of restitution made after the court's decision, where there is no tangible evidence that it facilitates the granting of sentence remission. Therefore, consignment of restitution prior to prosecution is regarded as facilitating the needs of the offender. As for law enforcement officials, in order to realize a law that serves human interests, progressive measures are required. Law enforcement should not be rigidly confined to regulations that are no longer relevant but should aim to provide utility. The enforcement of law should not rely solely on formal legality but should be capable of meeting the legal needs of society.²⁴ The consignment of restitution can thus be seen as a facility utilized by law enforcement to realize a legal system that benefits victims, offenders, and society at large.

Furthermore, the payment of restitution through the consignment mechanism does not conflict with the principle of the presumption of innocence. The purpose of applying this principle within the criminal justice system is to position suspects or defendants as legal subjects who possess dignity, honor, and human worth. A suspect or defendant is not a legal object to be treated arbitrarily.²⁵ Respect for suspects/defendants is manifested through the granting of a set of human rights, as stipulated in Articles 50 to 68 of the Indonesian Criminal

²³ Anthony Allott, "The Effectiveness of Laws," *Valparaiso University Law Review* 15, no. 2 (1981).

²⁴ Imam Sukadi, "Matinya Hukum Dalam Proses Penegakan Hukum Di Indonesia," *Risalah Hukum* 7, no. 1 (2011).

²⁵ Nurhasan Nurhasan, "Keberadaan Asas Praduga Tak Bersalah Pada Proses Peradilan Pidana: Kajian," *Jurnal Ilmiah Universitas Batanghari Jambi* 17, no. 3 (2017): 205–15, <https://doi.org/10.33087/jiubj.v17i3.414>.

Procedure Code (KUHP).²⁶ There is no coercion involved in requiring the offender to deposit restitution funds. Moreover, the handover of such funds only takes place after a court decision has obtained permanent legal force (*inkracht van gewijsde*). The restitution funds are not immediately transferred to the victim or their family upon deposit. This is intended to ensure that if the defendant is acquitted or released from all legal charges, the restitution can be returned, thereby preventing any violation of rights.

In addition to benefiting the victim, it is also necessary to consider the utility of restitution for the offender. Gresham M. Sykes argues that individuals serving prison sentences experience various forms of deprivation, including: (i) deprivation of liberty; (ii) deprivation of goods and services; (iii) deprivation of heterosexual relations; (iv) deprivation of autonomy; and (v) deprivation of security.²⁷ These forms of deprivation, as described by Sykes, were indeed experienced by offenders in the cases of Decision No. 1/Pid.Sus/2022/PN Wat, Decision No. 63/Pid.B/2022/PN Smn, and Decision No. 164/Pid.Sus/2021/PN Krg. Ano Iswan Sunarso, Aloysius Wish Wora Wora, and Rohmad alias Bagong testified that during their imprisonment, they were separated from their families (referring to deprivation of liberty), and were unable to carry out normal activities such as working (referring to deprivation of autonomy). Although not explicitly stated, their separation from family life also implies the experience of deprivation of heterosexual relations. The various deprivations experienced by offenders during imprisonment demonstrate the numerous negative impacts of incarceration. Moreover, imprisonment has not been proven effective in reducing or suppressing crime rates.²⁸ Therefore, the imposition of prison sentences must align with human rights principles.

Based on the foregoing explanation, it can be concluded that the imposition of longer prison sentences on offenders does not yield positive outcomes, especially in terms of utility for the offender. On the contrary, offenders tend to experience increased suffering. In principle, the imposition of criminal sanctions must take into account humanitarian values, including those experienced by the offender. Empirical evidence also shows that the payment of restitution is often accompanied by the offender's hope of receiving the lightest possible criminal sanction, as noted by Terry Arie Endro Wibowo. Therefore, a form of utility that

²⁶ Muhammad P Schinggyt Tryan and Nyoman Serikat Putrajaya, "Tinjauan Yuridis Terhadap Pelaksanaan Asas Praduga Tak Bersalah Dalam Proses Peradilan Pidana," *Diponegoro Law Journal*, 2016.

²⁷ Gresham M. Sykes, *The Society of Captives: A Study of a Maximum Security Prison* (New Jersey: Princeton University Press, 2020).

²⁸ Dede Kania, "Pidana Penjara Dalam Pembaharuan Hukum Pidana Indonesia," *Yustisia Jurnal Hukum*, 2014, <https://doi.org/10.20961/yustisia.v3i2.11088>.

can be granted to offenders who have deposited restitution funds is the reduction of their prison sentence. This approach was applied in Decision No. 63/Pid.B/2022/PN Smn. A reduction in the duration of imprisonment implies a decrease in the period of suffering caused by the deprivations of incarceration. Nevertheless, any reduction in prison sentence must be carried out carefully, while still considering the elements of culpability, the unlawful nature of the act, and the impact of the criminal offense on the victim.

In its development, the success of criminal law enforcement is no longer measured by the severity of the punishment imposed. Instead, criminal law enforcement is deemed successful when it can provide benefits to victims, offenders, and society. This aligns with the progressive legal theory, which holds that the existence of law is not solely limited to achieving legal certainty, but more importantly, to realizing true justice for the welfare of the people.²⁹ Therefore, the reduction of prison sentences for offenders who have deposited restitution funds is an appropriate measure. Such sentence reductions are also in line with the sentencing objective theory (relative/utilitarian/doeltheorieen).

2. Obstacles in the Implementation of Restitution Through the Consignment Mechanism

An analysis of the obstacles in the implementation of restitution through the consignment mechanism is carried out using Lawrence M. Friedman's legal system theory. According to Friedman, a legal system consists of three components: legal substance, legal structure, and legal culture. The constraints in the implementation of restitution through the consignment mechanism are described based on these three components.

a. Legal Structure

In his work *American Law: An Introduction*, Lawrence M. Friedman describes the legal structure as follows:

The structure of a legal system consists of elements of this kind: the number and size of courts; their jurisdiction (that is, what kind of cases they hear, and how and why); and modes of appeal from one court to another. Structure also means how the legislature is organized, how many members, what a president can (legally) do or not do, what procedures the police department follows, and so on. Structure, in a way,

²⁹ Mukhidin Mukhidin, "Hukum Progresif Sebagai Solusi Hukum Yang Mensejahterakan Rakyat," *Jurnal Pembaharuan Hukum* 1, no. 3 (2014).

*is a kind of cross section of the legal system? A kind of still photograph, which freezes the action.*³⁰

Based on Friedman's perspective, the legal structure can be simply understood as the institutional framework and the performance of institutions and legal officials in executing and enforcing the law. In the implementation of restitution through the consignment mechanism, the institutions involved include the Public Prosecutor's Office, the Courts, and the Witness and Victim Protection Agency (LPSK). The identified obstacles are as follows.

First, not all prosecutors adopt an approach strategy to encourage offenders to pay restitution. As a result, not all restitution rulings are accompanied by the actual payment of restitution. There is a prevailing view that the primary focus is on the execution of the main criminal sentence. As long as the principal sentence has been carried out, the execution of the criminal verdict is considered complete. Not all prosecutors make efforts to pursue approaches that facilitate the realization of restitution payments. Moreover, there is no incentive or recognition from superiors or internal structures within the Prosecutor's Office for prosecutors who successfully execute restitution decisions. Consequently, not all prosecutors handling restitution cases work optimally or take non-litigation approaches aimed at ensuring the payment of restitution.

Second, not all courts are willing to accept the deposit of restitution funds on the grounds that there are no technical regulations governing the procedure. This situation has led to inconsistencies regarding which institution should hold the deposited restitution funds. Some choose to deposit the funds with the Witness and Victim Protection Agency (LPSK), while others choose the court registrar. The mechanism of depositing funds with LPSK ultimately affects the timeframe for the transfer of restitution payments to victims. In Central Java, LPSK has an office only in Yogyakarta, and its bureaucratic procedures further delay the process. This means that even after a decision has obtained permanent legal force, LPSK cannot immediately disburse the funds to the offender or their family; instead, it must first arrange a schedule. As shown in Case No. 63/Pid.B/2022/PN Smn, the consignment of restitution funds was conducted through LPSK. Initially, there was an attempt to deposit the restitution funds at the Sleman District Prosecutor's Office, but the office declined to receive them due to the absence

³⁰ Lawrence M. Friedman, *American Law: An Introduction* (New York: W.W. Norton & Co, 1984).

of any regulation stipulating that restitution funds can be deposited at the prosecutor's office. Consequently, using LPSK as the depository for restitution funds caused delays in disbursement to the victims. The presence of LPSK only in Yogyakarta for the Central Java region, combined with its procedural requirements, means that restitution funds cannot be promptly handed over after a final judgment is rendered; LPSK must first organize a schedule for the handover.

Third, not all prosecutors issue directives (P-19) to investigators to complete case files with a request for restitution. This is because the existing legislation does not explicitly mandate that a restitution request must be submitted in certain criminal cases. Moreover, the presence or absence of a restitution request does not prevent prosecutors from fulfilling their core duties of preparing indictments and proving criminal acts. As a result, there is a tendency for prosecutors to carry out their primary tasks—preparing indictments, presenting sentencing demands, and executing judgments—as they are "normally" done, without including restitution-related directives.

Fourth, not all panels of judges examining and adjudicating criminal cases inform victims of their right to restitution. Fifth, the offices of the Witness and Victim Protection Agency (LPSK) are limited to representative offices in certain regions. As a result, LPSK faces difficulties in conducting direct examinations. Therefore, in assessing the value of restitution, the offender's condition must also be taken into consideration. Empirical evidence shows that not all victims are aware of their right to restitution, and not all law enforcement officers (investigators and prosecutors) inform them of this right. Furthermore, it is understood that the likelihood of restitution actually being paid by the offender is a crucial factor. It is futile to set a high restitution amount if the offender lacks the financial capacity to fulfill the payment. However, this does not mean that the determination of restitution value should ignore the losses suffered by the victim. Rather, it should aim to strike a balance between the interests of the victim and the offender.

b. *Legal Substance*

Lawrence M. Friedman defines the component of legal substance as "... the actual rules, norms, and behavior patterns of people inside the system".³¹ Legal substance encompasses rules, norms, and societal behavior within the legal system, including legal principles, ethics, and judicial decisions. It

³¹ Friedman.

includes both written laws (law in books) and unwritten laws (living law).³² In this study, legal substance refers to the laws and court decisions related to the implementation of restitution through the consignment mechanism. The challenges identified are as follows.

First, restitution is regulated under various statutory provisions, which often differ from one another, resulting in multiple interpretations. Not all implementing regulations explicitly recognize consignment as a method of paying restitution. In practice, the restitution payment provisions as outlined in Government Regulation No. 7 of 2018 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims, in conjunction with Government Regulation No. 35 of 2020 amending Government Regulation No. 7 of 2018, and Government Regulation No. 43 of 2017 on the Implementation of Restitution for Children Who Are Victims of Crime, are not always relevant to the offender's circumstances. In reality, no offender voluntarily pays restitution without being approached by the public prosecutor. Therefore, to facilitate offenders willing to pay restitution, prosecutors often resort to the consignment mechanism. Nevertheless, since not all implementing regulations recognize consignment as a legitimate method for restitution payment, not all law enforcement officers—particularly prosecutors—direct offenders to deposit restitution through this method.

Second, there is still no clear regulation regarding the implementation of restitution through the consignment mechanism. There should be clarity on which institution is authorized to receive the deposited funds, the exact amount to be paid, the timing of the deposit, and the timing of the handover to the victim. In practice, differences in the designated institutions for receiving the consignment result in varying timeframes for the disbursement of restitution to the victims. The absence of specific provisions regarding the timeline for restitution disbursement causes uncertainty for victims or their families about when they will actually receive the funds. If the location of the case is far from the LPSK office or overlaps with other official agendas, the restitution payment may be delayed. The lack of technical regulation on consignment procedures ultimately leads to legal uncertainty, making the implementation susceptible to subjective conditions.

Third, existing legislation does not specify which types of criminal offenses should be prioritized for restitution applications. Empirical evidence

³² Abdul Halim Barkatullah, "Budaya Hukum Masyarakat Dalam Perspektif Sistem Hukum," *Jurnal UKSW*, 2013, <https://repo-dosen.ulm.ac.id/handle/123456789/8032?show=full>.

shows that offenders are often reluctant to pay restitution due to the absence of punishment for non-payment or incentives for compliance. Penalties for failure to pay restitution are only found in specific crimes, such as terrorism and human trafficking. As a result, only a small number of criminal cases are accompanied by restitution claims. Quantitatively, this also leads to a low percentage of actual restitution payments being executed.

Fourth, there is currently no legislation that explicitly regulates the legal consequences of restitution consignment for the offender. Specifically, there is no provision regarding the potential benefits that may be granted to the offender when depositing restitution funds prior to the prosecution stage. Through clear regulation within statutory law, it is expected that the public will become more informed and that offenders will be encouraged or incentivized to engage in the restitution consignment process.

c. *Legal Culture*

According to Lawrence M. Friedman, legal culture is explained as follows:

“The legal culture, in other words, is the climate of social thought and social force which determines how law is used, avoided, or abused. Without legal culture, the legal system is inert? a dead fish lying in a basket, not a living fish swimming in its sea”.³³

Based on this explanation, legal culture is defined as the values, attitudes, and behaviors of society in relation to the law. In this research, legal culture pertains to the attitudes and behaviors of society that influence the implementation of restitution payments through the consignment mechanism. The obstacles identified within this legal culture sub-system are as follows.

First, the economic capacity of the offender. The dominant factor influencing the payment of restitution is the offender's financial ability. If the offender is not economically capable of paying restitution, then restitution through consignment will inevitably not occur.

Second, the offender's desire to receive the lightest possible sentence. Offenders often experience significant suffering throughout the criminal justice process, especially when faced with an additional burden in the form of restitution payments. Furthermore, criminal convictions that impose prison sentences result in offenders experiencing various forms of deprivation, as described by Gresham M. Sykes. The entire process—from the commencement of criminal proceedings to the execution of the sentence—is

³³ Friedman, *American Law: An Introduction*.

perceived as deeply burdensome. The addition of a restitution obligation further aggravates the offender's situation, especially in the absence of legal provisions mandating restitution payments. Consequently, this creates a condition in which offenders may choose not to pay restitution.

On one hand, the offender may indeed express remorse for their actions and promise not to repeat the offense. However, such remorse should not be interpreted as requiring the offender to bear full responsibility for the victim's suffering resulting from the criminal act. The remorse is often limited to the offender not anticipating that the victim would experience trauma or other physical suffering, as seen in sexual crime cases (Case No. 1/Pid.Sus/2022/PN Wat and Case No. 164/Pid.Sus/2022/PN Smn), or the loss of life in violent crime cases (Case No. 63/Pid.B/2022/PN Smn). On the other hand, some offenders perceive that the criminal incident occurred, at least in part, due to the victim's involvement. For instance, in Case No. 63/Pid.B/2022/PN Smn, the defendants assaulted the victim after being provoked while the victim was intoxicated and challenged them to fight. This reflects a sense of injustice on the part of the offender when they are expected to fully bear the consequences of the harm suffered by the victim as a result of the offense.

Third, there are instances of intervention or vested interests influencing the handling of criminal cases. This intervention refers to efforts that shape the opinion of victims or their families by suggesting that if restitution is accepted, the offender will not be subjected to criminal punishment. As revealed during the trial of Case No. 63/Pid.B/2022/PN Smn, there was an attempt by a third party to offer a "peace payment" (*tali asih*). This type of intervention is not limited to Case No. 63/Pid.B/2022/PN Smn, but may also occur in other cases involving powerful groups or significant interests. Nonetheless, law enforcement authorities—prosecutors and judges—are expected to remain independent when considering restitution payments made by the offender. In other words, offenders who are financially capable of paying large amounts in restitution should not be granted greater access to sentence reductions. Prosecutors and judges must clearly articulate the rationale behind restitution payments in relation to sentencing considerations.

Fourth, public understanding of restitution remains limited. As a result, not all criminal cases include a request for restitution from the victim. A restitution request is typically submitted only when there is an active role played by law enforcement officials handling the case. In other words, if no restitution request is made, it becomes unlikely that the offender will make a

restitution payment. There also remains a negative perception within society toward offenders,³⁴ even after they have served their sentence or paid restitution. This is especially true when restitution is made through consignment (*konsinyasi*) and results in a reduced sentence, potentially leading to public assumptions that “the law is transactional.” In other words, society still finds it difficult to accept the offender as a reintegrated member of the community and to accept sentence reductions as a consequence of consignment-based restitution. Although this does not directly hinder restitution payments, the persistent stigma and prevailing belief that offenders must be punished as severely as possible do not contribute positively to the enforcement of restitution mechanisms.

The paradigm of legal culture, as conceptualized by Lawrence M. Friedman, influences the level of acceptance and compliance with the law within society. A strong legal culture promotes the achievement of legal objectives. In the context of this research, restitution will be effectively implemented in society if the public holds a comprehensive understanding of its concept. This means not only acknowledging that restitution involves compensation from the offender to the victim but also accepting that, through consignment-based restitution, offenders may be granted sentence reductions. Without this acceptance, the enforcement of restitution laws in society risks creating negative precedents.

Furthermore, the phenomenon of societal labeling toward offenders—as illustrated by the experiences of Ano Iswan Sunarso, Aloysius Wish Wora Wora, and Rohmad alias Bagong—contributes to offenders’ reluctance to pay restitution. In their testimonies, the defendants expressed that, after undergoing criminal proceedings, both they and their families were treated differently by the community. Despite having served their sentence and even having contributed to reducing the victim’s suffering, society continues to perceive them as criminals. Therefore, it is essential for the public to develop a comprehensive understanding of restitution. Such understanding aims to: (i) increase the number of restitution requests in criminal cases, and (ii) promote a societal paradigm that views restitution payments as an effort to improve the victim’s condition after a crime, rather than continuing to label offenders as fundamentally different from the rest of society. This form of legal culture ultimately seeks to stimulate offenders to take part in fulfilling restitution obligations.

³⁴ Fathul Lubabin Nuqul, “Penilaian Keadilan Hukuman Kejahatan Seksual: Tinjauan Dari Latar Belakang Pendidikan Dan Gender,” *Sosio-Religia* 9 (2010).

Conclusion

Based on the analysis of the effectiveness of restitution implementation through the consignment mechanism, the following conclusions are drawn:

1. The implementation of restitution through a consignment mechanism carried out prior to the prosecution stage is effective, as it serves a facilitative function by providing a guarantee of restitution payment for the victim, being considered a mitigating factor for the offender, and contributing to the reduction of the victim's suffering.
2. The implementation of restitution through the consignment mechanism encounters several obstacles within the legal structure subsystem, including: the fact that not all law enforcement officials adopt a restitution-oriented approach in handling criminal cases; the absence of uniform regulations governing the implementation of restitution; and the economic condition of the offender, which often makes it unfeasible for them to fulfill restitution payments.

Suggestion

1. For the Witness and Victim Protection Agency (LPSK), the following recommendations are proposed: (i) to formulate a joint regulation with law enforcement institutions concerning the technical procedures for restitution payments made through the consignment mechanism; (ii) to conduct public outreach regarding restitution, including the application procedures, the legal implications of submitting a restitution request, and the process of handing over restitution funds.
2. For Law Enforcement Officers, the following recommendations are proposed: (i) to actively inform victims of their right to restitution; (ii) to provide assistance or facilitate communication between victims and LPSK in submitting restitution requests; (iii) to clearly elaborate in legal considerations of both the prosecution and the court decision that restitution payment constitutes a mitigating circumstance, so that sentence reduction can be legally justified and does not result in sentencing disparity.
3. For the General Public, the following recommendations are proposed: (i) to seek information on restitution and adopt an objective perspective on its implementation; and (ii) to understand that the criminal justice process is not solely intended to impose the harshest possible punishment on offenders, but also to serve as an educational process for both the offender and the community.

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