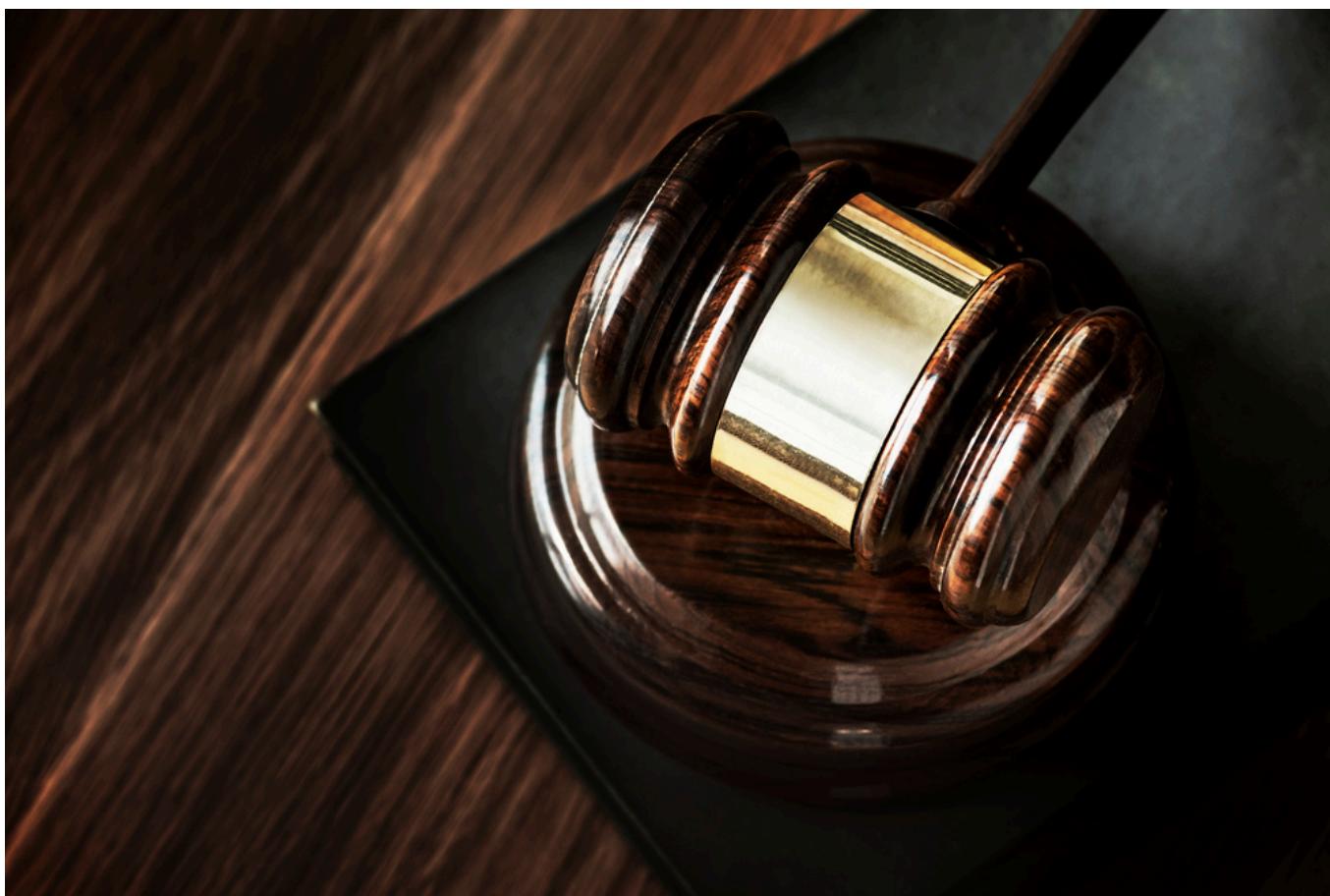




## Insight

# The Legal Implications of Restitution Determination by LPSK: Between Recommendation and Court Decision

Stevanus Sebayang, S.H.



**ADP Counsellors at Law**

Plaza Simatupang 6th Floor Kav. IS No. 01, Jl. T.B. Simatupang, RT.2/RW.17, Pd. Pinang, Kec. Kby. Lama, Kota Jakarta Selatan, Daerah Khusus Ibukota Jakarta 12310 | [info@adplaws.com](mailto:info@adplaws.com)

## Introduction

The Witness and Victim Protection Agency (Lembaga Perlindungan Saksi dan Korban/”LPSK”) plays a pivotal role in safeguarding the rights of victims in criminal proceedings, including in the premeditated aggravated assault case of David Ozora (“the Victim”) by Mario Dandy (“the Perpetrator”). This case attracted widespread public attention due to the brutality of the act, as well as the restitution claim amounting to more than Rp120,000,000,000 (one hundred and twenty billion).

LPSK, as an independent agency established based on Law Number 13 of 2006 on the Protection of Witness and Victim as amended by Law Number 31 of 2014 on Amendment to Law Number 13 of 2006 on Protection of Witness and Victim (“LPSK Law”), holds a vital mandate in ensuring the fulfillment of victims’ rights, including the right to restitution. In this particular case, LPSK not only provided protection to the victim, but also calculated the total damages to be borne by the Perpetrator, which served as a crucial consideration for the court in rendering the court decision.

In the Victim’s case, LPSK’s involvement commenced on 17 March 2023, when the victim’s father submitted a request for restitution calculation on behalf of his son. In this application, the victim’s family initially claimed losses amounting to Rp52,313,545,000. LPSK then conducted a comprehensive assessment and analysis of the various components of damage suffered by the victim. Based on the Decision of LPSK Executive Court Hearing No. A.0821.R/KEP/IV/2023 and Letter No. R-1307/5.1 HSPP/LPSK/04/2023 dated 4 April 2023, LPSK determined the total restitution amount at Rp120,388,911,030.

However, based on the decision of the South Jakarta District Court No. 297/Pid.B/2023/PN Jkt.Sel jo. decision of the DKI Jakarta High Court No. 245/PID/2023/PT DKI jo. decision of the Supreme Court No. 101 K/Pid/2024, the panels of judges at all levels ruled to impose restitution on the Perpetrator in the amount of Rp25,140,161,900 (twenty five billion, one hundred forty million, one hundred sixty one thousand, nine hundred Rupiah), taking into account the provision of Article 4 of Supreme Court Regulation Number 1 of 2022 on Procedures for the Application and Provision of Restitution and Compensation to Victims of Criminal Acts (“Supreme Court Regulation 1/2022”). The breakdown of the court awarded restitution is as follows:

<b>a. Compensation for Loss of Property</b>	
Rental payments (house, Somerset Hotel, JS Luwansa Hotel)	Rp9.108.900
<b>b. Compensation for Medical and/or Psychological Treatment</b>	
Stem Cell procedures	Rp425.045.000

### **b. Compensation for Suffering as a Result of a Criminal Act**

Long-term recovery guarantee	12.000.000.000
Living expenses guarantee	12.000.000.000

### **c. Other losses suffered by the Victim as a result of the Criminal Act**

Transportation	Rp6.818.000
Meals	Rp7.380.000
Legal Counsel Fees	Rp700.000.000
<b>The total of restitution</b>	<b>Rp25.140.161.900</b>

LPSK's role in this case extends beyond not only providing physical protection to the victim but also providing the comprehensive calculation of restitution as part of fulfilling the victim's rights. To further understand the legal basis and mechanisms governing restitution in such cases, the following section will elaborate on the regulatory framework.

## **Regulatory Framework**

Based on Article 1 number 5 of LPSK Law, LPSK is an agency authorized to provide protection and other rights to witnesses and/or victims. Furthermore, Article 1 number 1 of the LPSK Law defines restitution as compensation given to the victim or his/her family by the perpetrator or a third party due to suffering or loss arising from a criminal act.

Then, based on Article 7A paragraph (1) of LPSK Law jo. Article 4 of Supreme Court Regulation 1/2022, the Victim is entitled to restitution in the form of:

- Compensation for loss of property and/or income;
- Compensation, both material and immaterial, for suffering directly resulting from the crime;
- Reimbursement for medical and/or psychological treatment costs; and/or
- Other losses suffered by the victim as a result of the crime, including transportation, legal fees, or other litigation-related expenses.

## **ADP Counsellors at Law**

Plaza Simatupang 6th Floor Kav. IS No. 01, Jl. T.B. Simatupang, RT.2/RW.17, Pd. Pinang, Kec. Kby. Lama, Kota Jakarta Selatan, Daerah Khusus Ibukota Jakarta 12310 | [info@adplaws.com](mailto:info@adplaws.com)

Although LPSK is authorized to calculate and recommend the amount of compensation based on a structured assessment, the final determination remains in the hand of the judge. From a regulatory standpoint, no explicit conflict exists, as each institution operates within its respective mandate. LPSK acts in an advisory and supportive capacity to advocate for victims' rights, while the judge maintains judicial independence in adjudicating and issuing binding rulings.

In deciding a case, the judge's consideration is not an arbitrary act, but must be legally accountable. The judge's reasoning is essentially a form of judicial accountability based on legal and sociological considerations relevant to the case. This aligns with the provisions of Article 5 paragraph (1) of Law Number 48 of 2009 on Judicial Power, which states that judges are required to explore, follow, and understand the legal values and sense of justice that exist in society. Then, this is further elaborated in Article 197 paragraph (1) letter d of Law Number 8 of 1981 on Criminal Procedure Code, which stipulates that in determining the guilt of the defendant, the judge considers the facts, circumstances, and evidence obtained at trial. Therefore, although LPSK's assessment can provide an important and objective basis, but in the end, the judge must still make an independent assessment by considering legal certainty, justice, and the public interest.

## Conclusion

LPSK is an institution authorized to provide protection and other entitlements to witnesses and/or victims. LPSK not only provided protection to the Victim, but also calculated the total damages to be borne by the Perpetrator, which served as a crucial consideration for the court in rendering the court decision. Even though judges maintain discretion in assessing and determining the amount of restitution based on evidence presented during the trial, the assessment report issued by LPSK provides an objective foundation that may serve as an initial reference.

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## ADP Counsellors at Law

### Office

Plaza Simatupang 6th Floor Kav. IS No. 01, Jl. T.B. Simatupang, RT.2/RW.17, Pd. Pinang, Kec. Kby. Lama, Kota Jakarta Selatan, Daerah Khusus Ibukota Jakarta 12310

### Email

[info@adplaws.com](mailto:info@adplaws.com)

### Tel.

+6221 2270 2291

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