

**Guideline Number 1 of 2021
on Access to Justice for Women and Children
in the Management of Criminal Cases**

**ATTORNEY GENERAL'S OFFICE
OF THE REPUBLIC OF INDONESIA**

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**CHAPTER I
FOREWORD**

A. Background

Delivery of access to justice for women and children in the criminal cases has become a legal necessity within society for the purpose of protecting the interests and rights of women and children who are in contact with the law. In an integrated criminal justice system, prosecutors play a key role in monitoring and ensuring women and children's access to justice.

Providing access to justice to women and children in the management of criminal cases must be done in a proportionate manner with due consideration of their role and status in such cases, the principle of non-discrimination, the principle of protection, developments in crime and criminal procedural law, including the misuse or utilization of information technology, international conventions, as well as other aspects of the law in accordance with the applicable laws and regulations specifically relating to protection of witnesses and victims, as well as other influencing factors that would affect the outcome of the handling of such criminal case to ensure justice, legal certainty and benefit.

B. Purpose and Objective

1. Purpose

The present Guideline is intended to serve as reference for prosecutors in delivering access to justice for women and children in contact with the law in the course of prosecuting criminal cases.

2. Objective

The present Guideline aims to optimize the delivery of justice for women and children

in contact with the law in the management of criminal cases.

C. Scope

The scope of the present Guideline covers the management of criminal cases involving women and children in contact with the law during the phases of pre-investigation, investigation, pre-prosecution, prosecution, trial, and enforcement of court judgments that have gained permanent legal force.

D. Basis

1. Law Number 16 of 2004 on the Attorney General's Office of the Republic of Indonesia (Statute Registry of the Republic of Indonesia Year 2004 Number 67, Supplemental Statute Registry of the Republic of Indonesia Number 4401);
2. Presidential Regulation Number 38 of 2010 on the Organization and Working Procedure of the Attorney General's Office of the Republic of Indonesia as amended by Presidential Regulation Number 29 of 2016 on Amendment to Presidential Regulation Number 38 of 2010 on the Organization and Working Procedure of the Attorney General's Office of the Republic of Indonesia (Statute Registry of the Republic of Indonesia Year 2006 Number 65);
3. Regulation of the Attorney General Number PER-006/A/JA/07/2017 tentang Organisasi dan Tata Kerja Kejaksaan Republik Indonesia (Berita Negara Republik Indonesia Tahun 2017 Nomor 1069) sebagaimana telah diubah dengan Peraturan Kejaksaan Nomor 6 Tahun 2019 tentang Perubahan atas Peraturan Jaksa Agung Nomor PER- 006/A/JA/07/2017 tentang Organisasi dan Tata Kerja Kejaksaan Republik Indonesia (Berita Negara Republik Indonesia Tahun 2019 Nomor 1094).

E. Definitions

The terms used in the present Guideline are ascribed the following definitions:

1. Woman in Contact with the Law is any female criminal offender, female victim, [or] female witness.
2. Female Criminal Offender is any female person having reached 18 (eighteen) years of age who is suspected of having committed a crime and has been charged with such offense.
3. Female Victim is any female person having reached 18 (eighteen) years of age and is

- experiencing physical or mental suffering and/or economic loss as a result of a crime.
4. Female Witness is any female person who has reached 18 (eighteen) years of age who is able to provide a statement on matters with regard to a crime that such person has personally heard, seen and/or experienced for the purpose of an investigation, prosecution, or trial.
 5. Child in Contact with the Law is any child in conflict with the law, child victim, [or] child witness.
 6. Child in Conflict with the Law, hereinafter referred to as Child, is any child having reached 12 (twelve) years of age, but under 18 (eighteen) years of age, suspected of having committed a criminal offense.
 7. Child Victim is any child having reached 18 (eighteen) years of age who has experienced physical or mental suffering and/or economic loss as a result of a crime.
 8. Child Witness is any child not having reached 18 (eighteen) years of age who is able to provide a statement on matters with regard to a crime that such person has personally heard, seen and/or experienced for the purpose of an investigation, prosecution, or trial.
 9. Victim refers to a Female Victim and/or Child Victim.
 10. Witness refers to a Female Witness and/or Child Witness.
 11. Violence is any unlawful act committed physical or mentally [against a person] with or without a means causing danger to the life, body, psychological condition, or removal of the freedom of such person.

CHAPTER II

GENERAL

1. Prosecution of criminal cases involving a woman or children should be in accordance with the applicable laws and regulations with due regard of the guiding provisions on the prosecution of criminal offenses, operational standards for criminal prosecution, and the present Guideline.
2. Prosecution of criminal cases involving women or children should be conducted by adopting a perspective of delivering access to justice for women and children.
3. The publicizing of a criminal case involving a woman [or] child who is in contact with the law should always protect the human rights, dignity, privacy [of the woman or child] and in

accordance with the requirements of the laws and regulations.

CHAPTER III
PRE-INVESTIGATION AND INVESTIGATION

A. Taking of Statement and Examination

1. The taking of statement and/or examination of a Victim, Witness, Female Offender, [or] Child should at all times observe the human rights, dignity, and honor [of the Victim, Witness, Female Offender, or Child], without intimidation and without [judging] such person's wrongdoing, lifestyle, [or] moral values including their sexual history through the use of leading questions or questions that has are not related to the criminal offense.
2. In the taking of statement and/or examination of a Victim, Witness, Female Offender or Child, a Public Prosecutor (acting as investigator) shall not:
 - a. ask questions that are sexist and/or discriminative from a gender or sexual perspective that are not relevant to the case; and/or
 - b. build irrelevant assumptions relating to the socio-economic background or specific condition of such person that [judge], degrade [or] is prejudicial against their existence as a human being. When providing their statement and/or during an examination, a Victim and/or Witness may be accompanied by social worker, [an officer of] the Witness and Victim Protection Agency (hereinafter referred to as LPSK), family member, legal counsel and/or other support provider.
3. In performing examination of a Female Offender [or] Child, a State Prosecutor, in the capacity of investigator, should inform the rights afforded to them by the legislations.
4. In performing examination of a Victim [or] Witness, a State Prosecutor in the capacity of investigator should first inform them of:
 - a. the judicial process; and
 - b. the rights of Victims and/or Witnesses, including the right to claim for damages, restitution, and/or compensation, as well as the procedure by which such claim can be initiated.
5. Should there be sufficient grounds to believe that a Child Victim and/or Child Witness is unable to be present at a court session due to health, security, safety and/or other

reasons, examination of such person may be conducted through electronic recording, subject to the satisfaction of the following procedural requirements:

- a) certificate from a physician or psychologist;
 - b) notification to the parents/guardian and/or support provider of the Child Victim and/or Child Witness regarding the electronically recorded examination; and/or
 - c) request for authorization of the Chairperson of the District Court for the examination by way of electronic recording.
6. Examination by electronic means as provided under paragraph 6 must be recorded in a minutes of examination.
 7. If authorization is not issued by the Chairperson of the District Court as required under paragraph 6 item c), electronic recording may be performed at the discretion of the investigator.
 8. A Child Victim and/or Child Witness who has reached 15 (fifteen) years of age who, due to health, security, safety, and/or other reasons, is believed to be unable to be present at a court session, may have their statements heard under oath and a transcript of their oath shall be prepared.
 9. A Female Victim and/or Female Witness who, due to health, security, safety, and/or other reasons, is believed to be unable to be present at a court session, may have provide their statements under oath and their oath shall be recorded in writing.

B. Arrest and Detention

1. Arrest of a Female Offender [or] Child should as far as possible be performed by a female State Prosecutor acting in the capacity of investigator.
2. A Child who is placed under arrest is to be placed in a Temporary Children Placement Institution (Lembaga Penempatan Anak Sementara) facility. If such facility is unavailable, the Child may be placed with the Social Service Institution (Lembaga Penyelenggaraan Kesejahteraan Sosial).

C. Search and Seizure

1. Body search of a female person [or] child to the furthest extent possible should be performed by a female Prosecutor in the capacity of investigator.
2. Collection of evidence to be examined at a forensic laboratory should [preserve] integrity and authenticity in order to maintain its evidentiary value.

D. Compilation of Case File

1. In the presentation of facts and acts that are sexual in nature, the Prosecutor should, as far as possible, refrain from providing description that is overly detailed, vulgar, [or] excessive in the case file.
2. Avoidance of overly detailed, vulgar [or] excessive as required under paragraph 1 is meant to respect the human rights, dignity and privacy of Women and Children in Contact with the Law and to prevent the revictimization of Victims.
3. Elaboration of facts and acts that are overly detailed and vulgar as referred to in paragraph 1 is may be presented insofar as necessary to support the substantiation of the elements set forth in the articles [under which the charges are brought] and/or the charged offense or wrongdoing of the offender.
4. For the purpose of protecting information and/or documents [that contain sexual images/description], Prosecutor in the capacity of investigator shall separate documents that contain images, illustrations and/or photographs that depict sexual organs, activities and/or objects from the case file.
5. Protective [measures] as prescribed in paragraph 4 includes maintaining the confidentiality of identities, information, and/or documents as required by the applicable laws and regulations.
6. The documents referred to in paragraph 4 constitute an integral part of the case file.

CHAPTER IV

PRE-PROSECUTION

A. Tracking Progress of Investigation

1. For the purpose of tracking the progress of the investigation, Prosecutor shall direct and/or proactively coordinate with the investigators, including ensuring that investigators have informed the victim of their rights to damages, restitution or compensation, as well as the procedure to initiate such claims, as well as [ascertaining] that the Victim and/or Witness will be able to give their testimony in court with due consideration of their health, security, safety and/or other legitimate factors.
2. If the Prosecutor views that the result of the investigation is inadequate, they may

return the case file to the investigators together with instructions on how to address the gaps.

B. Examination of Case File

In examining the case file pertaining to a crime involving Women and Children in Contact with the Law, the Prosecutor should pay due attention to the substantive and procedural requirements:

1. Procedural Requirements

a. Where a criminal offense committed against the body and life of a person, including the removal of the freedom of a person, rape, acts of indecency, adultery, domestic violence, trafficking in persons, sexual exploitation, pornographic acts, crimes in the area of electronic information and transactions that violates moral values or contain pornography, terrorism [or] gross violation of human rights, the following elements can be included [in the case file]:

- 1) Forensic medical examination report (*Visum et Repertum*) or a medical certificate issued for the victim. If deemed necessary to provide evidentiary support, forensic examination can also be performed on the offender.
- 2) Forensic laboratory test result, among others test conducted on bodily fluid, hair, and/or cells of the offender as well as the victim that can prove the occurrence of penetration (penis) and/or ejaculation into the vagina or anus and/or which was committed orally, and others.
- 3) Forensic psychological examination (*Visum et Repertum Psikiatrikum*) result or a medical certificate issued by a psychiatrist:
 - a) with respect to the victim, to determine the psychological impact of the crime or their mental capacity to undergo the judicial process; and
 - b) with respect to the offender, to determine their ability to be held accountable, mental capacity to undergo the judicial process, and/or psychological response or specific external provocation such as history of being subject to abuse that can potentially create psychological conflict or proclivity to commit a violent crime.

b. In the event the prosecutor will be demanding additional punishment for an offender who have committed domestic abuse in the form of:

- 1) counseling, additional procedural requirements that must be provided are result of forensic medical examination, observation, and/or a certificate issued by a psychiatrist, certificate issued by a psychologist and/or result of a social assessment of the victim;
 - 2) restriction of movement of the offender, additional procedural requirements that must be provided are result of forensic medical examination, observation, and/or support for the victim by a psychiatrist, psychologist or a person who is certified or having a specific competence.
- c. In the event the Prosecutor will be demanding additional punishment for an offender who have committed sexual abuse against a minor in the form of announcement of the offender's identity, additional procedural requirements that must be provided are the result of forensic medical examination, observation, and/or a certificate issued by a psychiatrist, certificate issued by a psychologist and/or result of a social assessment of the victim.
- d. [Original text is a repetition of the immediately preceding point above—(1)(c).]
- e. In the event the Prosecutor will be demanding additional punishment for an offender committing sexual intercourse with a child in the form of:
- 1) chemical castration, additional procedural requirements that must be provided are result of clinical assessment, consisting of clinical and psychiatric interview, physical examination and supporting examinations;
 - 2) attachment of electronic detention device, additional procedural requirements that must be provided are result of forensic medical examination, observation, and/or a certificate issued by a psychiatrist, certificate issued by a psychologist and/or result of a social assessment of the offender;
 - 3) rehabilitation, additional procedural requirements that must be provided are result of forensic medical examination, observation, and/or a certificate issued by a psychiatrist, certificate issued by a psychologist and/or result of a social assessment of the offender.
- f. In the event the Prosecutor will be demanding certain actions to be taken against an offender who has committed indecent act against a child in the form of:

- 1) wearing of an electronic detection device, additional procedural requirements that must be provided are result of forensic medical examination, observation, and/or a certificate issued by a psychiatrist, certificate issued by a psychologist and/or result of a social assessment of the offender;
 - 2) rehabilitation, additional procedural requirements that must be provided are result of forensic medical examination, observation, and/or a certificate issued by a psychiatrist, certificate issued by a psychologist and/or result of a social assessment of the offender.
- g. If there exists sufficient health, security, safety and/or other legitimate reasons to believe that a Child Victim and/or Child Witness is not able to appear in court and thus prompting Investigators to conduct examination through electronic recording, additional requirements that must be satisfied are:
- 1) certificate issued by a doctor or psychologist; notification to the parents/guardian and/or support provider of the Child Victim and/or Child Witness regarding examination by way of electronic recording;
 - 2) letter seeking approval from the Chairperson of the District Court of the examination by way of electronic recording; and/or
 - 3) minutes of the examination of Child Victim and/or Child Witness.
- h. Where a child victim and/or child witness who has reached the age of 15 (fifteen) years due to health, security, safety and/or other legitimate reasons is believed to be unable to appear in court, their statement will be given under oath and the case file will contain a transcript of such oath.
- i. In the event a Child Victim files a claim for restitution, additional procedural requirements that must be submitted are:
- 1) a letter requesting restitution from the Child Victim or an institution; and
 - 2) documents to support the request for restitution.
- j. For the filing of a request for restitution and compensation for the benefit of a Female Victim, submission of the request and procurement of the relevant requirements are to be facilitated by the LPSK.
2. Substantive Requirements
- a. Where testimony can only be obtained from the Victim, from a witness not under

oath, or through hearsay (*testimonium de auditu*), the Prosecutor shall direct the investigators to make the most use of evidence obtained from:

- 1) a person who is able to provide a statement relating to a criminal case despite not having directly heard, seen or experienced the facts, provided that such testimony relates to the crime;
 - 2) witnesses whose statements are provided separately but are interlinked such that they can collectively establish the occurrence of an event or condition and such testimonies can be used as valid evidence (*chain of evidence/ketting bewijs*), whether to be taken as witness testimony or a lead;
 - 3) experts issuing evidentiary documents, such as forensic medical reports, forensic psychological reports, or forensic laboratory reports, or witnesses who corroborate the substantiation of charges or elements of a criminal offense, based on their respective field of knowledge; and/or
 - 4) information and/or documents in electronic form relating to the offense.
- b. In the event a Child Victim and/or Child Witness who has reached the age of 15 (fifteen) years, due to health, security, safety and/or other legitimate reasons, is believed to be unable to appear in court, their statement will be given under oath.
- c. If there exist sufficient health, security, safety, and/or other legitimate reasons to believe that a Child Victim and/or Child Witness cannot appear in court, the Prosecutor shall direct the investigator to electronically record the conduct of the examination subject to the approval of the Chairperson of the District Court or, if the Chairperson declines to give such approval, based upon the discretion of the investigator.
- d. If during the course of the investigation examination of a Child Victim and/or Child Witness is electronically recorded, substantive requirement for the trial shall include the recorded audio or visual testimony.

C. Protection of Witnesses and Victims

1. Where the condition of the Victim and/or Witness qualifies them to request protection by the LPSK, the Prosecutor shall direct the investigators to coordinate with such agency.
2. For the purpose of protecting information and/or documents [that contain sexual

images/description], Prosecutor in the capacity of investigator shall separate documents that contain images, illustrations and/or photographs that depict sexual organs, activities and/or objects from the case file.

3. Documents that are described in paragraph 2 above constitute an integral part of the case file.
4. Protective [measures] as prescribed in paragraph 2 includes maintaining the confidentiality of identities, information, and/or documents as required by the applicable laws and regulations.

CHAPTER V PROSECUTION

A. Preliminary Meeting

1. For the purpose of obtaining successful prosecution and to determine whether the case file has met the requirements to be submitted with the court, and if deemed necessary by the prosecutor with the approval of the Head of the District Prosecutor's Office (Kejaksaan Negeri) or Head of the District Prosecutor's Branch Office, a preliminary meeting may be conducted with the Victim and/or Witness.
2. The preliminary meeting as referred to in paragraph 1 is conducted following delivery of the suspect and evidence (phase two).
3. For the purpose of the preliminary meeting, the Prosecutor may summon the Victim and/or Witness by stating the time and place and reason of the summon.
4. The preliminary meeting shall be conducted at the Prosecutor's Office or, if for any legitimate reason the Victim and/or Witness cannot be present, at another location or through an online platform based on considerations of their health, security, and/or safety.
5. During the preliminary meeting the Victim and/or Witness may be accompanied by a social worker, an LPSK staff, family member, attorney and/or other support provider, and the investigator may be present at such meeting.
6. At the preliminary meeting, the prosecutor may convey information on or explain about:
 - a. the judicial process;

- b. the right of the Witness and/or Victim, including their right to claim damages, restitution, and/or compensation and the procedure by which such claim can be filed;
 - c. consequences arising from the Victim and/or Witness' decision to appear or not to appear in court in order to ensure that they understand the situation;
 - d. [the possibility for] live remote audio visual examination to be conducted by order of the court if a Female Victim and/or Female Witness is not able to appear in court due to health, security, safety, and/or other legitimate reasons; and
 - e. [the possibility for] live remote audio visual examination to be conducted based on court order, if a Child Victim and/or Child Witness is not able to appear in court due to health, security, safety, and/or other legitimate reasons; and
 - f. [the possibility for] out-of-court examination to be conducted through electronic recording and/or live remote examination by order of the court if a Child Victim and/or Child Witness cannot appear in court due to health, security, safety and/or other legitimate reasons.
7. The preliminary meeting shall be recorded in a minutes of meeting signed by the prosecutor, Victim and/or Witness, and/or 2 (two) persons accompanying [the Victim and/or Witness] or who are present at the meeting and the supervisor of the Prosecutor.
 8. If based upon the outcome of the preliminary meeting it is found or can be presumed that the Victim and/or Witness cannot appear in court, the Prosecutor shall consider the strength and quantity of the evidence in order to determine the court strategy to be adopted with due consideration of the condition of the Victim and/or Witness.

B. Drafting of the Indictment

1. In the presentation of facts and acts that are sexual in nature, the Prosecutor should, as far as possible, refrain from providing description that is overly detailed, vulgar, [or] excessive in the case file, while maintaining accurate, clear and complete description of the case.
2. Avoidance of overly detailed, vulgar [or] excessive as required under paragraph 1 is meant to respect the human rights, dignity and privacy of Women and Children in Contact with the Law and to prevent the revictimization of Victims.
3. Elaboration of facts and acts that are overly detailed and vulgar as referred to in

paragraph 1 is may be presented insofar as necessary to support the substantiation of the elements set forth in the articles [under which the charges are brought] and/or the charged offense or wrongdoing of the offender.

4. In cases of online child and women sexual exploitation and abuse or which involve sexual elements, the prosecutor shall avoid inserting or copying and pasting picture, illustration, and/or photograph of the Victim, or which depict sexual organs, sexual activities and/or objects in the indictment document.
 5. Avoidance of inserting or copying and pasting materials described in paragraph 4 above is intended as a measure to protect and ensure safety and to respect the dignity and privacy of the Victim.
 6. Where a child has committed an [offense] without intent, through negligence or without culpability due to the child being in a situation they were unaware of, misled, forced or subjected to violence perpetrated by a person using such child as a means, then the construction of the law as adopted in the indictment shall stipulate that the person manipulating the child has ordered such child to commit the offense.
 7. In the legal construction where the offender has instructed the child to commit an offense as referred to in paragraph 5, the suspect is positioned as the *manus domina* and the child as *manus ministra*.
 8. A construction of the law that is similar to paragraph 6 may be applied to women if it can be established that she only served as a means by which a crime is committed, or as *manus ministra*.
 9. In the position of *manus ministra*, a woman or child as referred to in paragraph 6 and paragraph 7 is qualified as Victim and is are not subject of prosecution.
 10. Where a woman and/or child as *manus ministra* is deemed to be a Victim as referred to in paragraph 8, statement made by such woman and/or child will have evidentiary strength equal to that of a statement made by a Witness.
 11. In cases where claim for restitution/compensation is made before the filing of the case file [with the court], the Prosecutor shall state filing of such claim in the indictment.
 12. [Original text is a repetition of the immediately preceding point above—(B)(11).]
- C. Protection of Identity
1. If a request is made to the Prosecutor by the defendant or their legal counsel for a copy

of the minutes of examination for the purpose of mounting their defense, in order to protect information and/or documents containing items of a sexual nature, the Prosecutor shall inform [the defendant or their legal counsel] of the obligation of the Prosecutor to withhold such minutes.

2. Protection of information and/or documents as referred to in paragraph 1 above includes maintaining the confidentiality of identity, information, and/or documents as required under the applicable laws and regulations.

CHAPTER VI EXAMINATION DURING COURT SESSION

A. Examination During Court Session

1. Examination in a court session is conducted with the Victims and/or Witness attending such session.
2. If a Victim and/or Witness who is over 15 (fifteen) years of age cannot be examined in court due to health, security, safety, and/or other legitimate reasons, the Prosecutor shall seek the court's approval to read out the minutes of examination that has been conducted under oath.
3. If a Child Victim and/or Child Witness cannot be present in court for examination due to health, security, safety, and/or other legitimate reasons, the Prosecutor shall request the court to order the examination:
 - a. to be conducted outside the court by using electronic recording; and/or
 - b. to be conducted remotely by [using] audio/visual [device].
4. The method described in paragraph 3 point b shall also be applied to Female Victims and/or Female Witnesses.
5. In the event examination of a Child Victim and/or Child Witness is performed outside the court using electronic recording device or remotely using audio/visual communication device, the examining officer and/or person present at the examination session shall remove their court uniform or official attributes.
6. Prosecutor shall request to the court that the result of the examination conducted outside the court using electronic recording device or remotely using audio/visual device be recorded in a minutes of court examination.

7. In addition to reading out the minutes of examination conducted under oath, the examination conducted outside the court using electronic recording device, and/or live remote examination using audio/visual device, for the purpose of further substantiating the charges, 2 (two) legitimate evidentiary instruments and reinforcement of the judge's conviction can be acquired by:
 - a. examining a Witness whose testimony incriminates the defendant and/or an expert not named in the case file, as requested by the Prosecutor during the course of the legal proceeding or before the passing of judgment; and/or
 - b. having the witnesses meet to ascertain the correctness of their testimonies and/or examine the witnesses orally, as needed.
 8. Examination of a Victim and/or Witness shall be undertaken while respecting the victim or witness' fundamental rights, dignity, and honor, without intimidation and without judgment of the omissions, lifestyle and moral values, including sexual history of the Victim and/or Witness by asking leading questions or questions that are not related to the crime, as extenuating circumstances for the defendant.
 9. If deemed necessary and with due consideration of the condition of the Victim and/or Witness, during the examination process the Victim and/or Witness may be accompanied by a psychologist, psychiatrist, doctor, and/or spiritual counselor.
- B. Examination Outside the Court by Using Electronic Recording Device
1. Prosecutor shall seek the approval of the Judge to review the result of examination conducted by using electronic recording device at the investigation phase.
 2. If the judge approves the request as referred to in paragraph 1, the Prosecutor shall present the result of examination conducted using electronic device for examination in court.
 3. If the judge denies the request made pursuant to paragraph 1, the prosecutor may ask the court to order the examination of the Child Victim and/or Child Witness to be conducted outside the court using electronic recording device.
 4. Upon obtaining the approval as referred to in paragraph 3, the Prosecutor shall prepare and deliver:
 - a. letter requesting for assistance in performing examination outside the court to the Correctional Facility (Balai Pemasyarakatan); and

- b. letter of summons to examination outside the court by using electronic recording device to the Child Victim and/or Child Witness and the parent/guardian, social worker, and/or other support provider,
by stating the time and place of the examination and the reason for such examination.
 5. Examination outside the court by using electronic recording [device] shall be performed by the Prosecutor, attended by a Social Worker and parent/guardian (if the examination is performed on a child victim and/or child witness), investigator, and legal counsel or other legal aid provider.
 6. In the event the Child Victim and/or Child Witness is domiciled or living outside the geographical jurisdiction of the court having judicial competence to hear the case, with due consideration of the principle of expedient, simple, and low-cost judicial proceeding. Examination as described in paragraph 5 may be performed by the Prosecutor with the local District Prosecutor's Office or the original investigating officer under the coordination of the Prosecutor trying the case.
 7. In the course of the examination referred to in paragraph 6, the prosecutor trying the case may participate in the examination through online means.
 8. Examination conducted outside the court through the use of electronic recording device shall be recorded in a report, which at least contains:
 - a. time and location of the examination;
 - b. officer recording the examination;
 - c. officer performing the examination;
 - d. identity of the Child Victim and/or Child Witness being examined;
 - e. the parties present during the examination;
 - f. type of electronic recording device and the audio/video file format;
 - g. duration of examination;
 - h. the questions asked by the examining officer and/or advocate and the response given by the Child Victim and/or Child Witness; and
 - i. signature of the parties present at the examination.
- C. Live Remote Examination using Audio Visual Communication Device
1. Upon receiving approval from the judge to perform live remote examination, the Prosecutor shall prepare and deliver summons to:

- a. the Victim and/or Witness;
 - b. the support provider, who may be a social worker, an LPSK officer, family member, attorney of the Victim and/or Witness; and/or
 - c. other support provider,
- by stating the time and location of the examination, and the reason for such summon.
2. In the case of Child Victim and/or Child Witness, summons shall also be delivered to the parents/guardian/person trusted by the Child Victim and/or Child Witness or social worker.
 3. Location of the examination as stated in the summon letter as referred to in paragraph 1 shall be determined based on the location of the Victim and/or Witness providing the statement.
 4. Live remote examination using audio visual communication device can be conducted from the courthouse where the case is being heard or at another location with due regard of the health, security, and/or safety of the Victim and/or Witness.
- D. Substantiation of Case
1. Substantiation of Criminal Case in General
 - a. In taking the statement from and/or conducting an examination on a Victim, Witness, Female Offender, [or] Child, the Prosecutor shall not:
 - 1) ask questions that are sexist and/or discriminative from a gender or sexual perspective that are not relevant to the case; and/or
 - 2) build irrelevant assumptions relating to the socio-economic background or specific condition of such person that [judge], degrade [or] is prejudicial against their existence as a human being.
 - b. Special conditions that constitute a contributing factor of the offense or the impact of the offense on Women and Children in Contact with the Law, such as depression, reoccurrence of an event that happened in the past, trauma, sense of shame, fear, low esteem or defensive mindset, should be supported by evidentiary statement and/or expert report.
 - c. Where a Female Offender and/or Child committing a criminal offense experiences the following situation:
 - 1) violence experienced during the commission or occurrence of the offense,

- 2) psychological condition prevailing during the commission or as a result of the crime,
 - 3) gender stereotyping causing the person to be trapped in a certain position or condition within the family and/or community,
 - 4) dominating relationship placing such person as a subordinate, and/or
 - 5) other conditions that cause a person to commit or react to a crime,
- the Prosecutor shall establish causality between the conditions described in points 1) through 5) supported by statements, expert reports, statement from a social worker and/or social report, and the relevant evidence that are appropriate to the identified legal facts linked with the crime.
- d. If causality as referred to in item c can be established, the crime committed by the Female Offender and/or Child can serve as justification of or grounds to disregard culpability.
 - e. If causality as referred to in item c cannot be established, but no justifying factor or ground exists that can nullify culpability, then the Prosecutor shall consider such situation as an extenuating circumstance.
 - f. With a Victim of a crime, the Prosecutor shall examine factors such as:
 - 1) psychological condition that prevails during the commission of or as a result of the offense;
 - 2) gender stereotyping causing the person to be trapped in a certain position or condition within the family and/or community,
 - 3) dominating relationship placing such person as a subordinate, and/or
 - 4) power relationship between the offender and the Victim; and/or
 - 5) psychological response or specific syndromes which indicate deviant relationship or misconstruction of relationship, thus causing tolerance of the acts of the offender due to situation, circumstances or past experience.
 - g. The situation, impact, or reaction of the victim as referred in paragraph f points 1) through 5) must be established by the Prosecutor through legal analysis and can be taken into account as an aggravating circumstance with due regard of the legal facts uncovered during trial in a proportionate manner.
 - h. For the purpose of proving a criminal offense related to marriage, marriage

registration document or copy thereof does not constitute the sole valid evidence to prove marriage.

2. Substantiating Cases of Rape or Sexual Violence

a. In establishing acts relating to sexual violence, the Prosecutor should take into account provisions of various laws that contain elements of sexual intercourse, sexual violence, or rape, as set forth in the following table:

No	Act	Criminal Code	Child Protection Law	Domestic Abuse Law
1.	Forced sexual intercourse using violence or threat of violence.			
	a. adult female victim and committed outside a marriage	✓ (Article 285)	-	✓ (Article 8 point a jo. Article 46) If the victim is living within the household
	b. in a marriage	-	-	✓ (Article 8 point a jo. Article 46) If the victim is the spouse
2.	Having sexual intercourse with a woman outside a marriage			
	a. while it is known that the woman is unconscious or powerless Note: such act is equated to “committing violence”	✓ (Article 286) If the victim is an adult female	✓ [Article 76D jo. Article 81 paragraph (1)] If the victim is a Child Victim	✓ (Article 8 point a jo. Article 46) If victim is living within the household
	Supreme Court Decree Number 377/Pid.B/2011/ including for victims having intelektual disability			
b. while it is known or ought to be known that the person’s age is below fifteen years or has not reached the right age for marriage	✓ (Article 287)	✓ [Article 81 paragraph (2)] If the victim is a Child Victim	✓ (Article 8 point a jo. Article 46) If the victim is living in the household and sexual violence occurs	
3.	Having sexual intercourse with a woman in a marriage			
	a. who is known or	✓	✓	✓

	ought to be known that the person has not reached the right age for marriage	(Article 288) If resulting in injury	[Article 81 paragraph (2)] If achieved through seduction and/or deception	(Article 8 point a jo. Article 46) If sexual violence occurs
4.	Forced Sexual Intercourse			
	Forced Sexual Intercourse for commercial or specific purposes with another person	✓ [Article 296]	✓ (Article 761 jo. Article 88) If the victim is a Child Victim	✓ (Article 8 point b jo. Article 47) If the victim is part of the household

- b. In establishing acts relating to sexual violence, the Prosecutor should take into account provisions of various laws that contain elements of indecency, sexual violence, or sexual harassment as set forth in the following table:

No.	Act	Criminal Code	Child Protection Law	Domestic Abuse Law
1.	Forcing to commit or allow the commission of indecency through violence/threat of violence			
	a. against an adult	✓ (Article 289)	-	✓ (Article 8 item a jo. Article 46)
	b. against a child		✓ (Article 76E jo. Article 82)	If victim is part of the household
2.	Committing indecency against a person			
	a. who is unconscious or in a powerless state	[Article 290 ayat (1)]	✓ (Article 76E jo. Article 82) If the victim is a Child Victim	✓ (Article 8 item a jo. Article 46) If victim is part of the household
	b. against a child	✓ [Article 290 paragraph (2)] If the victim has not reached 15 years of age or is not ready to be married	✓ (Article 76E jo. Article 82) If committed with the use of violence, threat of violence, deception, a series	✓ (Article 8 item a jo. Article 46) If victim is part of the household and element of sexual violence is present

No.	Act	Criminal Code	Child Protection Law	Domestic Abuse Law
		<p style="text-align: center;">✓</p> <p>[Article 290 paragraph (3)] If through deception, a series of lies or persuasion</p>	of lies, or persuasion	
		<p>(Article 293) If by providing gift or promise of money/goods</p>		
	c. as a result of power relation	<p style="text-align: center;">✓</p> <p>[Article 294 paragraph (1) if the victim is a child</p> <p style="text-align: center;">or</p> <p>[Article 294 paragraph (2)]</p>	<p style="text-align: center;">✓</p> <p>(Article 76E jo. Article 82) If the victim is a child, the act is committed by using violence or threat of</p>	
	d. with the same sex		violence, coercion, deception, a series	
	c. Who is known or ought to be known as not being an adult	<p style="text-align: center;">✓</p> <p>[Article 292]</p>	of lies, or persuasion	

- c. In substantiating charges of rape, the Prosecutor must understand medical/ forensic evidence to be able to look for signs of intercourse through the matching of semen found on the female victim’s body with the defendant by testing their hair, serology and DNA.
- 1) Establishing intercourse with a woman is done through the presentation of statements and/or expert statements that prove:
 - a) penetration of the penis inside the vagina; or
 - b) occurrence of ejaculation of discharge of semen into the vagina or anus, within the determinate forensic time relevant to the *tempus delicti*.
 - 2) Strength of evidence of sexual intercourse is affected by:

- a) timeliness of medical examination performed after the commission of the offence;
 - b) uncontaminated condition of the evidence before being cleaned from the body of the person;
 - c) other factors that may bias the value of the evidence, such as old scars caused by past sexual activity and/or intercourse, high elasticity or resistance of the hymen to tear, and incomplete penetration.
- 3) Collecting evidence of intercourse from the offender is performed through the following:
- a) medical examination to find spermatozoa cell component and seminal fluid within the vagina, to be performed not more than 7 (seven) days following intercourse;
 - b) determination of rape offender is done through medical examination of the offender's seminal fluid, DNA of the sperm cells, and other biological pieces of evidence collected from the person, such as hair, saliva, epithelial cells from the mouth found on that person.
- d. Sexual intercourse is categorized as exploitative rape when such act is received by a male through the taking of advantage of a position of vulnerability of the women, such as consent to intercourse given by a minor.
- d. Sexual intercourse performed with a [minor] under the Child Protection Law and the Criminal Code is deemed as statutory rape.
- e. Concept of power relation under Article 294 of the Criminal Code
- 1) In cases involving indecent act or sexual intercourse without coercion, violence or threat of violence, but taking advantage of the position of vulnerability of the woman or child thereby creating a power relation, the offender may be charged under Article 294 of the Criminal Code.
 - 2) Indecent act as referred to in Article 294 of the Criminal Code also covers sexual intercourse.
 - 3) Although unlawfulness and intent are not the core elements of the offense (*delicts bestandelen*), in order to prove the absence of any exonerating and extenuating factors as described in paragraph 1), the Prosecutor must establish the presence such

elements.

3. Substantiation of Domestic Violence

- a. The relationship between the offender and the victim in a household may be as follows:
 - 1) husband, wife, child;
 - 2) suami, isteri, dan anak;
 - 3) person having familial relationship with any of the persons referred to in point 1) due to blood, marriage, common wet nurse, care, and guardianship, who are living with the same household; and/or
 - 4) person assisting with domestic chores and living within the household.
- b. Child as referred to in paragraph a point 1) is any child who has not reached adulthood and whose parents are in a marriage.
- c. In the event the father and mother of the child has separated, the relationship between the child and either parent does not fall under the category of paragraph a point 1), but rather under paragraph a point 2), insofar as the child is living in the same location as one of the separated parents.
- d. In the event the child has reached 18 (eighteen years of age), such child does not fall under the category of paragraph a point 1), but rather falls under the category of paragraph a point 2), insofar as the child is living in the same location as one of the separated parents.
- e. A person assisting in the performance of domestic work and living in the household as referred to in paragraph a point 3) is established through related documents and/or witness statements proving that at the time the offense was committed (*tempus delictie*) such person was in fact [staying] with the household for the purpose of working in such household.
- f. Physical violence as defined under Article 44 paragraph (1) Law Number 3 of 2004 on Elimination of Domestic Violence only needs to be proven by the resulting pain, without the need to prove illness or impediment to perform work or pursue livelihood or carry out day to day activities, except where it is committed by the husband against the wife or vice versa.
- g. Elements that must considered to determine physical domestic violence that result

in death must be differentiated from those in respect of murder, as physical violence is directed against the body, not the life of the person.

- h. If the physical domestic violence is intended to take the life of a person, such act qualifies as murder.
 - i. Psychological violence is proven by the presence of fear, loss of self-esteem, loss of capacity take action, sense of powerlessness, without having to establish that they result in illness or impediment to perform work or generate livelihood or car out day to day activities, except if committed by a husband against the wife or vice versa.
4. Substantiation of Cases of Violence Against Children Under the Child Protection Law
- a. Under Article 76C j.o. Article 80 paragraph (3) of Law Number 23 of 2002 as amended by Law Number 35 of 2014 on Child Protection, elements that must considered to determine physical domestic violence that result in death must be differentiated from those in respect of murder, as physical violence is directed against the body, not the life of the person.
 - b. If the act of violence as described in paragraph a is intended to take a life, then such act qualifies as murder as defined under the Criminal Code.
5. Substantiation of Cases of Neglect Under the Child Protection Law and the Anti-Domestic Violence Law

To determine acts relating to neglect as a criminal offense, the Prosecutor should duly observe the provisions of the laws set forth in the following table:

	Child Protection Law	Anti-Domestic Violence Law
Subject	Any person not having reached 18 (eighteen) years of age, including child still in the womb	A person within the household
Scope	Unfulfillment of physical, mental, spiritual, and social needs Article 76B	a. failure to provide sustenance, care, or maintenance, Article 49 paragraph (1) jo. Article 9 paragraph (1)
		b. Economic dependance through restriction of and/or prohibition from engaging in decent work within or outside the home, Article 49 paragraph (2) j.o. Article 9 paragraph (2)

6. Substantiation of Trafficking in Persons Cases
 - a. For the crime of trafficking in persons which results in the exploitation of the Child Victim, the criminal offender is sentenced regardless of the methods engaged by the criminal offender in recruiting, transporting, harboring, sending, transferring, or receiving [Child Victims].
 - b. The crime of trafficking in persons as referred to in point a is categorized as a “substantive offense” (offense deemed to have been committed if the consequence of such offense as determined by law has materialized).
 - c. In the event the victim of trafficking in persons engage in a crime as a result of coercion by the criminal offender, the victim cannot be prosecuted for a crime.
 - d. Coercion as referred to in point c is a situation in which the victims are compelled to commit an act in such a way that it is against the will of the victims themselves.
 - e. In the event that the victim of trafficking in persons commits a crime without any coercion, a Public Prosecutor may prosecute the victim.
7. Gross Human Rights Violations
 - a. [A crime involving a direct attack against civilian population can be considered as a] crime against humanity and gross human rights violations if it can be established that such crime was committed in furtherance of the policies of the government or an agency organization.
 - b. The definition of murder and rape in gross human rights violations is established as regulated in the Criminal Code.

CHAPTER VII

INDICTMENT AND ENFORCEMENT OF COURT JUDGMENTS

- A. Preparation of Indictment.
 1. For criminal cases where women and/or children are criminal offenders or victims, in the juridical analysis apart from outlining the elements of the offense based on the evidence and legal facts at trial, a Public Prosecutor shall also to the furthest extent possible include relevant jurisprudence, theory and/or legal principles to support such evidence.

2. Prior to elaborating on aggravating and mitigating matters, the Public Prosecutor shall outline the:
 - a. special circumstances that underlie the crime committed by Female Criminal Offenders and/or Children; and
 - b. consequences of the crime against the Victim.
3. The special circumstances and consequences of crimes as referred to in number 2 are described by taking into account, among others, the history of violence that has been experienced, and psychological conditions, position in vulnerable groups, conditions of gender stereotypes and power relations, psychological responses, or certain syndromes that demonstrate deviations or misinterpretations of a relationship causing the victim to tolerate the defendant's actions and other relevant conditions.
4. The description as referred to in number 3 is prepared based on evidence and legal facts at trial and considered as aggravating circumstances, mitigating circumstances or factors that must be considered.
5. Certain legal constructions, terminology, definitions and/or legal concepts in the relevant laws that support the elements of the crimes that are being charged, are properly described in the juridical analysis in the statement of claims (Applicant) supported by evidence in accordance with legal facts at trial and in the event that it is deemed need to be strengthened by legislation, jurisprudence, doctrine and/or secondary legal materials.
6. Child Custody in Social Service Institutions or other establishments is viewed as a period of detention in the Statement of Claims, whereas placement for the protection of the Child is not regarded as a period of detention in the Statement of Claim.
7. Placement of Children in Social Service Institutions or other establishments is not regarded as a period of detention in the Statement of Claims.
8. For crimes of domestic violence, a Public Prosecutor may include in the indictment for the Judge to sentence the defendant to undergo additional sentencing in the form of counseling under the supervision of a specific institution. Such additional sentence can be handed down if the criminal profiling assessment document provides a reference for the implementation of additional sentencing [for the defendant to undergo] counseling under [the supervision] of a specific institution.

9. Documents as referred to in number [8] include:
 - a. *Visum et repertum psikiatrikum* (VeRP);
 - b. A psychiatric certificate;
 - c. *Visum et repertum psikologikum*;
 - d. Psychologist's certificate on the results of the suspect's mental health examination from a government-owned or regional government hospital; and/or
 - e. Expert testimony.
 10. The duration of the additional sentence in the form of counseling program is determined by the [result] of the criminal profiling.
 11. For crimes of domestic violence, in the event legal facts have been obtained from the trial supported by the results of the Victim's psychiatric examination, the Public Prosecutor can consider for the defendant to be sentenced with additional restriction on movement, [therefore] the Public Prosecutor shall include in the indictment for the Judge to pass additional sentence on the restriction of movement.
 12. The psychiatric examination of the victim as referred to in number 10 is conducted by:
 - a. psychiatrist;
 - b. psychologist; and/or
 - c. a person who has certain certifications or competencies.
 13. Additional punishment in the form of restriction on movement [imposed upon] the criminal offender as referred to in number [11] is determined by a distance of at least 100 (one hundred) meters from the victim for a period of at least 1 (one) month and a maximum of 1 (one) year.
 14. Additional punishment and further actions arising from charges of sexual violence against children are enforced in accordance with the provisions of the legislations.
- B. Enforcement of Court Judgments.
1. The process of enforcing court judgments that have obtained permanent legal force in the form of corporal punishment against Female Criminal Offenders and Children to the furthest extent must be carried out by female prosecutors.
 2. Storage of case files, documents, and/or information [that contain sexual images/description] whose court judgments have permanent legal force, is carried out by taking into account the protection of information and/or documents [that contain

- sexual images/description] and the retention period [should be established] in accordance with the provisions of the legislation.
3. Destruction of case files, documents, and/or information [that contain sexual images/description] whose court judgments have permanent legal force, is enforced by ensuring that information and/or documents cannot be used, recovered, and/or displayed again.
 4. Enforcement of Court Judgments Imposing Additional Punishments arising from Charges of Domestic Violence
 5. In addition to the primary punishment, the Public Prosecutor in the indictment may ask the judge to impose additional punishments in the form of:
 - a. Imposing a restraining order against the criminal offender to keep him/her away from the victim within a certain distance and time, as well as imposing restrictions on certain rights of the criminal offender; and/or
 - b. A counseling program under the supervision of a hospital, clinic, group of counselors, or those with counseling expertise.
 6. The additional punishment in the form of restriction on movements of the Criminal Offender must be enforced after the Convicted Offender has served his/her prison term, or [short-term] imprisonment in lieu of a fine.
 7. In the event that the Convicted Offender is sentenced to a fine or probation, additional punishment is enforced after the court judgment has obtained permanent legal force (*inkracht van gewijsde*).
 8. The additional punishment in the form of restriction on movements is enforced by summoning the Convicted Offender and reading out the additional sentence as specified in the court's judgment to the Convicted Offender.
 9. In the event the Convicted Offender fails to understand the additional sentence that was read out as referred to in number 4, the Public Prosecutor shall provide an explanation of the crime in question.
 10. The enforcement of additional punishment involving the restriction on movements shall be recorded in writing.
 11. In the event the Convicted Offender violates the enforcement of additional punishment as referred to in number 4, the prosecutor may notify the police to have the Convicted

Offender be processed in accordance with the prevailing legislations.

12. In the enforcement of additional punishment in the form of a counseling program under the supervision of a specific institution, the prosecutor hands over the Criminal Offender to a hospital, clinic, group of counselors, or those who have the expertise to provide counseling and this process shall be recorded in writing.
 13. Additional punishment in the form of a counseling program can be executed simultaneously with the sentence to a term of imprisonment or the imposition of a fine.
- C. Enforcement of Court Judgments Imposing Additional Punishments and Measures for Criminal Offenders Arising from Charges of Sexual Violence Against Children

Court judgments with regard to the imposition of additional punishment and measures to be undertaken in cases arising from charges of sexual violence against children are enforced according to the provisions set forth in the legislations.

CHAPTER VIII

COMBINED CLAIMS OF DAMAGES, RESTITUTIONS, AND COMPENSATION

- A. Combined Claims for Compensation
1. In the event that the judge decides to combine the claim for compensation with a criminal case, the Public Prosecutor shall summon the Victim or the injured party as the complainant in accordance with the day of the trial of the criminal case.
 2. The Public Prosecutor shall request the complainant as referred to in number 1 to prepare documents or evidence of pecuniary losses [that the Complainant has] suffered, including reimbursement of costs that have been incurred as a direct result of the crime.
 3. The examination of the claim for compensation is carried out together with the examination of criminal cases in the presence of the Complainant.
 4. Burden of proof in claiming for compensation rests on the Complainant.
 5. In the event that the Public Prosecutor, based on at least two valid pieces of evidence, believes that the defendant is guilty of a crime, the claim for compensation can be included in the criminal charge.
 6. The inclusion of the value of the claim for compensation in criminal charges is

calculated based on pecuniary losses that can be substantiated as a direct result of a crime.

7. The judgment on the claim for compensation has permanent legal force if the criminal case has acquired permanent legal force.
8. Judgments on compensation cases that are combined with criminal cases that have acquired permanent legal force are executed by the registrar/ bailiff.

B. Restitution

1. Examination on the Application for Restitution
 - a. The application for and granting of a restitution is effected in accordance with the provisions set forth in the legislations.
 - b. In particular with respect to Child Victim, parties representing Child Victim can apply for restitution at the stage of investigation or prosecution without going through LPSK.
 - c. The documents that must be submitted to apply for restitution as referred to in point a shall at least contain:
 - 1) Identity of the Complainant;
 - 2) Identity of the Criminal Offender;
 - 3) A description of the crime experienced [by the Complainant];
 - 4) A description of losses suffered; and
 - 5) Amount of the restitution.
 - d. Submitting application for restitution as referred to in point b must attach:
 - 1) photocopy of Victim's identity legalized by the authorized official;
 - 2) valid proof of loss;
 - 3) photocopy of death certificate which has been legalized by the competent authority if the Victim dies; and
 - 4) evidence of a special power of attorney if the application is submitted by the attorney of the Victim's parents, guardians, or heirs.
 - e. The Victim as referred to in point b submits an application for restitution to the Public Prosecutor no later than 3 (three) days after the Child Victim is notified of his/her right to restitution.
 - f. The notification as referred to in point e can be submitted during the diversion

- process, before or during the preliminary examination.
- g. The Public Prosecutor conducts a completeness check upon the application for restitution as referred to in point c and point d no later than 7 (seven) days for Female Victims or 3 (three) days for Child Victims, starting from the date the application for restitution is received.
 - h. In the event that the application for restitution is submitted to LPSK, the Public Prosecutor is obliged to conduct a completeness check upon the application for restitution.
 - i. The completeness check of the application for restitution as referred to in point g shall be specified by the Public Prosecutor in a Memorandum Opinion on the completeness of the application for restitution.
 - j. Based on the results of the research on the completeness of the application for restitution, the Public Prosecutor shall render an opinion in the Memorandum Opinion as referred to in point i, with the following options:
 - 1) the file on the application for restitution is deemed incomplete therefore it shall be returned to the Applicant for further completion; or
 - 2) the complete file on the application for restitution is to be followed up by presenting evidence at trial.
 - k. In the event that the application for restitution is deemed incomplete as referred to in point j point 1), the Public Prosecutor shall submit a notification letter to the applicant to complete the application for restitution within a maximum period of 14 (fourteen) days or 3 (three) days in the case of a Child Victim, and comes into effect upon submission of the notification by the Public Prosecutor.
 - l. In the event that the application for restitution is not completed within the period as referred to in point k, the applicant is deemed to have withdrawn his/her application.
 - m. In the event that the application for restitution is deemed complete as referred to in point j item 2), or the application is well received from the LPSK along with the decision of LPSK and its considerations as referred to in point h, the Public Prosecutor shall draw up a notification letter of restitution to the suspect/defendant.

- n. In the notification letter as referred to in point m, the Public Prosecutor informs the suspect/defendant to deposit an amount of money with the bailiff of the local District Court and in the event that the court enters judgement of acquittal, or the amount of restitution is less than the amount of money deposited, therefore based on a judgment that has permanent legal force (*inkracht van gewijsde*), restitution or excess in restitution will be returned to the Defendant/Convicted Offender/Third Party who deposited the restitution.
 - o. The Public Prosecutor receives a copy of the receipt for the deposit of restitution from the bailiff of the local district court, as evidence and becomes an inseparable part of the case file.
 - p. If deemed necessary, the Public Prosecutor may request assistance in writing from LPSK to assess the amount of restitution and/or provide information at the court proceedings regarding the amount of restitution as an inherent part of its main duties and functions.
 - q. Restitution can be withdrawn at any time, before the Public Prosecutor reads out the criminal charge, by withdrawing a written request for restitution addressed to the Head of the Public Prosecution Office/Head of the Branch Prosecution Office.
 - r. Upon the withdrawal by the applicant as referred to in point q, the restitution cannot be re-applied.
 - s. In the case of withdrawing the application for restitution as referred to in point q, the Public Prosecutor shall draw up that contains:
 - 1) notification to the suspect/defendant of the withdrawal, by attaching a copy of the letter of withdrawal of the application for restitution from the applicant, therefore grants the right of the defendant to take back the restitution that was deposited with the registrar of the local district court effective immediately upon receiving the notification letter by bringing a notification letter from the Public Prosecutor; and
 - 2) Notification to the Head of the local District Court with regards to the withdrawal therefore grants the defendant the right to receive the restitution that has been deposited in the deposit account of the district court.
2. Substantiating the Application for Restitution

- a. In the event that the application for restitution or compensation is submitted after the case file has been transferred by the Public Prosecutor, the application is submitted and substantiated by the Public Prosecutor at trial prior to the examination of the defendant.
- b. The public prosecutor substantiates the facts that support the elements of the crimes that are charged as well as substantiating evidence that the victim is entitled to restitution or compensation or damages as a result of the crime.
- c. In the event that the completeness of the requirements for the application for restitution or compensation is submitted through LPSK, the Public Prosecutor must submit the decision of LPSK and its considerations, as required submission/evidence in court.
- d. Compensation, reimbursement of costs or other losses that are a direct result of the crime requested in the application for restitution, compensation or damages combined with a criminal case is proven as pecuniary losses.
- e. Compensation for death, serious injury or indignity experienced/suffered by the Victim in the request for restitution or compensation is proven as immaterial losses.
- f. In the case for which restitution is requested, the Public Prosecutor substantiates the material and immaterial losses as referred to in points d and e by compiling evidence/documents showing a causal relationship between the losses incurred/suffered by the injured victim and the crime charged to the defendant.
- g. In the event that there is a request for restitution, the public prosecutor substantiates and/or presents evidence that supports the:
 - 1) Loss of wealth and income;
 - 2) Suffering as a result of the crime;
 - 3) Medical and/or psychological treatment cost; and/or
 - 4) Other losses suffered by Female Victims as a result of crime in terms of trafficking in persons.
- h. In the event that the public prosecutor deems it necessary or by order of a judge for the purpose of substantiating restitution or compensation at trial, the public prosecutor may request:

- 1) LPSK to explain the calculation and/or response to restitution or compensation as an inherent part of its main duties and functions; and/or;
 - 2) Victims and their parents/guardians to respond to restitution or compensation and/or corroborate evidence.
- i. In the event that the suspect/defendant deposits a sum of money to the registrar of the district court for payment of restitution, the public prosecutor may consider a lighter criminal charge while still taking into account the legal facts at trial proportionally.
3. Enforcement of a Judgment on Restitution
 - a. Within 7 (seven) days since the issuance of the copy/excerpt of the court's judgment which has obtained permanent legal force (*inkracht van gewijsde*), the public prosecutor submits a statement of claim for restitution and a statement of ability to pay restitution to the convicted offender.
 - b. The statement letter as referred to in point a, is addressed directly to the convicted offender, or in the case that the convicted offender is difficult/cannot be found, the prosecutor prepares a letter to summon the convicted offender to pay restitution to the village head/local environment, the head of the police sector where the convicted offender resides or domiciles and the receipt of the summons (*relaas*) as intended, is submitted back by the person who made the summons to the prosecutor.
 - c. Prosecutors receive restitution payments from Convicted Offender and/or third parties to be handed over to victims.
 - d. In the event the Convicted Offender deposited the restitution money with the registrar of the district court, the Prosecutor shall request that restitution money be deposited with the Registrar of the District Court no later than 7 (seven) days after the judgment has permanent legal force and such money is to be handed over to the Victims.
 - e. The process of receiving payment of restitution by the Public Prosecutor is recorded in writing and signed by the submitting parties (Convicted Offender, Registrar of the District Court, and/or third party), and the Public Prosecutor.
 - f. Payment of restitution as referred to in point d shall also have a receipt for

payment of restitution prepared affixed with a stamp duty which is signed by the Head of the Public Prosecution Office or the Head of the Branch Prosecution Office.

- g. For cases involving Trafficking in Persons:
 - 1) The Public Prosecutor shall convey to the Victim/heirs with regard to their right to notify the court in the event that the grant of restitution is not fulfilled until it exceeds the 14 (fourteen) day period since the court's judgment which has obtained permanent legal force (*inkracht van gewijsde*) is notified to the Convicted Offender.
 - 2) The Public Prosecutor confiscates the assets of the Convicted Offender and auctions the assets for restitution payments based on a court order requested by the Victim/heir.
 - 3) In the event the Convicted Offender is unable to pay restitution, the Convicted Offender shall serve a term of imprisonment in lieu of fine in accordance with the court's judgment.
- h. In the event the Convicted Offender of a crime of terrorism does not pay restitution, subsequently within 14 (fourteen) days after the judgment has gained permanent legal force (*inkracht van gewijsde*), an imprisonment in lieu of restitution shall be enforced.
- i. Confiscation of the Convicted Offender's assets as well as the enforcement of confinement/imprisonment in lieu of restitution shall be recorded in writing.
- j. Upon receiving the payment of restitution from the Convicted Offender or a third party, the Public Prosecutor shall summon the Victim/heirs to receive their restitution.
- k. Receipt of restitution as referred to in point j is submitted to the Victim/heirs and 4 (four) copies of the restitution payment receipt shall be prepared and signed by the Victim/his heirs as the recipient of the restitution.
 - 1. A copy of the restitution receipt as referred to in point k is submitted to the Convicted Offender, Victim and the court along with a copy of the official report on the enforcement of restitution.

C. Compensation

1. Request to Claim for Compensation
 - a. Compensation is granted by the state, in this case, the Minister of Finance in the form of a sum of money as the Criminal Offenders are unable to pay full compensation in which they are responsible for as a result of committing crimes of terrorism and crimes of gross human rights violations.
 - b. In the event that the application for compensation from LPSK is received at the pre-prosecution stage, the Public Prosecutor requests the investigator to combine the results of the investigation and the indictment in the case file.
 - c. In the event that the handling of case related to women and/or children has entered the prosecution stage, LPSK submits a request for compensation along with LPSK's decision and considerations to the public prosecutor directly during the trial examination process, no later than before the examination of the defendant.
 - d. In the event that the application for compensation from LPSK is received at the prosecution stage as referred to in point c, the Public Prosecutor shall include it in the statement of claim.
2. Substantiating Claim for Compensation
 - a. In the event that the application for compensation from LPSK is received at the pre-prosecution stage, the Public Prosecutor requests the investigator to combine the results of the investigation and the indictment in the case file.
 - b. In the event that the application for compensation is submitted after the case file has been transferred by the Public Prosecutor, the application is submitted and substantiated by the Public Prosecutor at trial prior to the examination of the defendant.
 - c. The Public Prosecutor substantiates the facts that support the elements of the crimes as well as corroborating evidence that the victim is entitled to restitution, compensation or damages as a result of the crime.
 - d. In the event that the application for compensation is submitted through LPSK, the Public Prosecutor is obliged to submit the LPSK Decision and its considerations, as required submission/evidence in court.
 - e. Compensation, reimbursement of costs or other losses that are a direct result of the crime requested in the application for compensation combined with a criminal

- case are proven as pecuniary and immaterial losses.
- f. In the case for which compensation is requested, the Public Prosecutor substantiates the pecuniary losses and immaterial losses as referred to in point e without the need to show a causal relationship between the losses incurred/suffered by the injured victim and the crime charged with the defendant, as compensation is a form of state's responsibility.
 - g. In the event there is a request for compensation, the Public Prosecutor shall prove and/or present evidence that supports the evidence of:
 - 1) Losses due to each wound;
 - 2) Losses due to death;
 - 3) Loss of income/livelihood; and/or
 - 4) Loss of or damage to property.
 - h. In the event that the public prosecutor deems it necessary or by order of a judge for the purpose of substantiating compensation at trial, the public prosecutor may request:
 - 1) LPSK to provide explanation in terms of the calculation and/or response to compensation as an inherent part of its main tasks and functions; and/or
 - 2) The Victim or in the event the Victim is a child, together with their parents/guardian should provide a response to such compensation and/or corroborate evidence.
3. Enforcement of a Judgment on Compensation
- a. The Public Prosecutor enforces a court judgment having permanent legal force (*inkracht van gewijsde*) which contains the provision of compensation by submitting a copy of a court judgment to LPSK no later than 7 (seven) days from the receipt of the copy of the court's judgment.
 - b. Submission of a copy of the court's judgment to LPSK as referred to in point a, is recorded in writing in the minutes of the enforcement of court judgments.
 - c. In the event that the court's judgment having permanent legal force (*inkracht van gewijsde*) containing the compensation as referred to in point a, and such judgment specifies the crime of gross human rights violation, a copy of the judgment shall be submitted by the Human Rights Court to the Attorney General.

- d. A copy of the minutes of enforcement of the judgment which has been duly signed by the Public Prosecutor/Attorney General and LPSK as referred to in point b, such copy shall be submitted to the relevant district court/human rights court.

CHAPTER IX
CONCLUDING PROVISIONS

This guideline comes into force on the date of its affirmation.

Affirmed in Jakarta
on 21 January 2021
ATTORNEY GENERAL
OF THE REPUBLIC OF INDONESIA

BURHANUDDIN