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From Normative Recognition to Effective Protection: Reformulating Restitution for Child Victims in Indonesia

Sokhib Naim[1], Wahab Aznul Hidaya[2], Kristi Warista Simanjuntak[3], Rajab Lestaluhu[4], Nurhalisa Nurhalisa[5]
[1,2,3,4,5] Faculty of Law, Universitas Muhammadiyah Sorong, Sorong, Indonesia
sokhibnaim@um-sorong.ac.id

Abstract

This study aims to analyze the effectiveness of restitution for child victims of criminal offenses within Indonesia's criminal justice system and formulate a restorative justice-based restitution model. Although Indonesian law recognizes restitution as a right of victims, its realization remains problematic due to fragmented regulations, weak inter-agency coordination, reliance on victims' procedural initiative, and the absence of effective enforcement mechanisms. This issue is particularly urgent for child victims of sexual violence, whose vulnerability and long-term physical, psychological, social, and educational impacts require an effective victim-oriented legal protection mechanism. Employing normative legal research, this study uses statutory, conceptual, case, and comparative approaches to examine legislation, legal scholarship, and Judgment No. 247/Pid.Sus/2023/PN Son through qualitative legal reasoning and ratio decidendi analysis. The novelty lies in integrating normative analysis with judicial analysis to identify the relationship between regulatory fragmentation, judicial discretion, institutional weaknesses, and the persistence of a retributive paradigm, while developing an integrated restitution framework. The findings demonstrate that restitution remains predominantly a normative entitlement rather than an effective legal remedy because its implementation depends on victims' initiative, discretionary judicial consideration, fragmented institutional coordination, and ineffective execution. Accordingly, this study proposes an Integrative Model of a Restitutory System Based on Restorative Justice comprising six stages: identification of losses, LPSK assessment, mandatory prosecutorial filing, mandatory judicial consideration, enforceable execution, and institutional monitoring. The model strengthens institutional responsibility and positions victim recovery as an integral objective of criminal justice.
Keywords: *Child Victims; Criminal Justice System; Restitution; Restorative Justice; Victim-Oriented Justice*

1. INTRODUCTION

Developments in modern criminal law indicate a fairly fundamental paradigm shift in how the purpose of the criminal justice system is viewed.[1] For many years, the criminal justice systems in various countries, including Indonesia, have been built on a retributive paradigm that prioritizes the punishment of offenders as the primary focus of law enforcement.[2] Under this paradigm, the success of law enforcement is measured by the state's ability to prove the perpetrator's guilt and impose a punishment commensurate with the offense committed.[3] While this approach does play an important role in maintaining public order and serving as a deterrent,

[1] Balqis Beta Achlam Gizella, "Menuju Sistem Pemidanaan Berkeadilan Untuk Mewujudkan Keseimbangan Antara Kepastian Hukum Dan Kemanusiaan Dalam Pembaharuan KUHP," *Al-Balad: Journal of Constitutional Law* 7, no. 2 (2025), https://urj.uin-malang.ac.id/index.php/albalad/article/view/16152.

[2] Murdoko Murdoko and Mohammad Syifa Amin Widigdo, "Alternatif Penghukuman Selain Penjara: Analisis Hermeneutika Kritis Dan Critical Legal Studies," *Jurnal Hukum Ius Quia Iustum* 30, no. 1 (January 1, 2023): 91–113, https://doi.org/10.20885/iustum.vol30.iss1.art5.

[3] Sokhib Naim et al., "Perwujudan *Restitutio in integrum* Sebagai Hak Anak Korban Tindak Pidana," *Jurnal USM Law Review* 8, no. 3 (October 28, 2025): 1683–96, https://doi.org/10.26623/julr.v8i3.12668.

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it has also drawn criticism for failing to adequately address the interests of victims who have directly suffered as a result of criminal acts.

This shift in orientation has spurred the development of the concept of victim-oriented criminal justice, an approach that places victims at the center of the criminal justice system. Under this paradigm, the resolution of criminal cases is no longer viewed solely as a relationship between the state and the offender, but also as a process of restoring the rights of victims who have been harmed.[4] Justice is not measured solely by the severity of the punishment imposed on the perpetrator, but also by the extent to which the legal system is able to restore the victim's economic, psychological, social, and legal well-being.[5] Victim protection has become one of the key indicators for assessing the effectiveness of the modern criminal justice system.[6]

These developments subsequently gave rise to the paradigm of restorative justice, which over the past two decades has gained widespread recognition in various international legal instruments and national policies.[7] Restorative justice does not view criminal acts solely as offenses against the state, but rather as acts that cause real harm to victims, their families, society, and even the offenders themselves.[8] The resolution of criminal cases is aimed not only at punishment but also at restoring the balance of social relationships disrupted by the commission of a criminal offense. One of the key instruments in this paradigm is restitution, which is the offender's obligation to compensate the victim for the losses suffered as a form of direct accountability for the consequences caused by the criminal offense.[9]

The urgency of restitution becomes even more apparent when it comes to children as victims of criminal acts, particularly sexual violence. Children are a highly vulnerable group because they lack the physical, psychological, and social capacity to protect themselves. The impact of sexual violence against children is not limited to economic loss but also includes long-term psychological trauma, impaired mental development, a loss of a sense of security, social stigma, a decline in the quality of education, and the potential to affect the victim's quality of life well into adulthood.[10] The recovery of child victims cannot be viewed merely as a

[4] Henny Yuningsih and Munawir Munawir, "Efektivitas Restitusi Dalam Perlindungan Korban Kekerasan Seksual Di Indonesia: Analisis Yuridis Dan Implementasi Praktis," *Ranah Research : Journal of Multidisciplinary Research and Development* 7, no. 2 (December 31, 2024): 1121–30, https://doi.org/10.38035/rrj.v7i2.1277.

[5] Herli Antoni, Asmak Ul Hosnah, and Angelica Clara Anaztasia Simanjuntak, "Perlindungan Hukum Bagi Korban Kekerasan Seksual Pada Anak Berdasarkan Undang-Undang Nomor 12 Tahun 2022 Tentang Tindak Pidana Kekerasan Seksual," *Logika : Journal of Multidisciplinary Studies* 15, no. 2 (October 17, 2024): 235–47, https://doi.org/10.25134/logika.v15i02.10471.

[6] Lasmin Alfies Sihombing, "Restorative Justice, Kejahatan, Hukuman, Dan Peradilan Pidana: Sebuah Analisis Kesejarahan, Peluang Dan Tantangan," *Unes Law Review* 6, no. 3 (2024), https://www.review-unes.com/law/article/view/1777.

[7] Lorens Soli Daud Bangkole, Rudepel Petrus Leo, and Adrianus Djara Dima, "Perbandingan *Ratio decidendi* Putusan Hakim Terhadap Pemberian Kompensasi Kepada Korban Tindak Pidana Perdangangan Orang Di Indonesia (Tinjaun Yuridis Putusan Nomor: 12/Pid.Sus/2021/Pn Kpg Dan Putusan Nomor:584 K/Pid.Sus/2013/Pn,Sby)," *Artemis Law Journal* 1, no. 1 (November 17, 2023): 230–36, https://doi.org/10.35508/alj.v1i1.13427.

[8] Chetrine Br Meliala, Torkis Lumban Tobing, and Selvia Oktaviana, "Efektivitas Gugatan Ganti Kerugian Terhadap Perempuan Dalam Kasus Kekerasan Seksual (Studi Putusan Nomor 132/Pid.B/2023/PN Pnn)," *Al-Zayn : Jurnal Ilmu Sosial & Hukum* 3, no. 2 (May 18, 2025): 685–94, https://doi.org/10.61104/alz.v3i2.1133.

[9] Penias Isba, Marius Suprianto Sakmaf, and Jumiran, "Evaluation of Restorative Justice Implementation in Criminal Conflict Resolution: Victim and Offender Perspectives," *DELICTUM : Jurnal Hukum Pidana Islam* 3, no. 1 (September 30, 2024): 14–30, https://doi.org/10.35905/delictum.v3i1.10736.

[10] Dwi Hapsari Hendriana, Rani; Raharjo, Agus; Prayitno, Kuat Puji; Wahyudi, Setya; Retnaningrum, "Development of a Restitution Model Based on Justice and Legal Certainty for Crime Victims in Indonesia," *Pakistan Journal of Criminology* 16, no. 3 (June 8, 2024): 1409–25, https://doi.org/10.62271/pjc.16.3.1409.1425.

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humanitarian issue,[11] but rather a constitutional obligation of the state to ensure the protection of children's human rights, as mandated by the 1945 Constitution of the Republic of Indonesia.

This issue highlights a significant gap between *das sollen* and *das sein* in the legal protection of child victims of criminal offenses. At the normative level, the state has recognized restitution as a legal right inherent to victims. However, at the implementation level, restitution is still treated as an optional right and is heavily influenced by administrative mechanisms and the discretion of law enforcement officials. As a result, the fulfillment of the right to restitution has not yet become an integral part of the investigation, prosecution, or trial processes.

Another issue that is no less important is the lack of an effective mechanism for enforcing restitution orders. In various cases, the courts have indeed issued rulings ordering perpetrators to pay restitution to the victims.[12] However, when the perpetrator does not voluntarily fulfill these obligations, the legal system does not yet provide effective enforcement instruments, such as the enforcement mechanisms available in civil cases. As a result, restitution orders often remain merely normative declarations that provide no tangible benefit to the victims. This situation demonstrates that the effectiveness of restitution depends not only on the existence of legal norms but is also determined by the criminal justice system's ability to establish implementation and oversight mechanisms capable of ensuring the actual enforcement of such orders.

This situation indicates that Indonesia's criminal justice system is still dominated by a retributive paradigm. The primary focus of the judicial process remains on proving the elements of a criminal offense, determining the perpetrator's guilt, and imposing prison sentences as a form of criminal liability.[13] Meanwhile, the issue of victim restitution is still viewed as an ancillary consequence that is not always a primary concern in the law enforcement process. The prevalence of this paradigm has resulted in restitution not being regarded as an integral part of the objectives of criminal punishment, but rather merely as a supplementary instrument whose application depends on specific conditions.

The issue of the effectiveness of restitution has been a focus of attention for a number of researchers in recent years. Various studies indicate that Indonesia has, in fact, made significant progress in establishing a normative framework for the protection of victims through the enactment of various laws and regulations.[14] Efren Nova's research confirms that strengthened regulations have expanded recognition of victims' rights, particularly following the enactment

[11] Novitri Anjani Putri, A.M. Endah Sri Astuti, and Mujiono Hafidh Prasetyo, "Pelaksanaan Pemulihan Post-Traumatic Stress Disorder Bagi Anak Sebagai Korban Kekerasan Seksual Terhadap Kehidupan Sosial Dan Kesehatan Mental (Perspektif Viktimologi)," *Diponegoro Law Journal* 14, no. 3 (2025), http://ejournal3.undip.ac.id/index.php/dlr/article/view/51577.

[12] Gita Kiki Septia and Suhartini Suhartini, "Kepentingan Restitusi Dalam Sistem Peradilan Pidana Sebagai Sarana Pemulihan Korban Kekerasan Seksual," *Jurnal Syntax Imperatif : Jurnal Ilmu Sosial Dan Pendidikan* 4, no. 6 (February 15, 2024): 916–28, https://doi.org/10.36418/syntax-imperatif.v4i6.334.

[13] Mokhammad Syahruddin Syamzah et al., "Tindak Pidana Korupsi Kejahatan Jabatan Dalam Perspektif Pertanggungjawaban," *SEIKAT: Jurnal Ilmu Sosial, Politik Dan Hukum* 5, no. 3 (June 19, 2026): 1121–38, https://doi.org/10.55681/seikat.v5i3.2671.

[14] Muhammad Alvin Nashir, Nabila Maharani, and Aisyah Zafira, "Urgensi Pembentukan Undang-Undang Restorative Justice Dalam Rangka Reformasi Keadilan Dan Kepastian Hukum Di Indonesia," *Sapientia Et Virtus* 9, no. 1 (March 31, 2024): 344–57, https://doi.org/10.37477/sev.v9i1.501.

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of Law No. 12 of 2022 on Sexual Violence Crimes.[15] Meanwhile, research by Kiki Diah Hafidzah shows that although the legal framework for restitution is becoming more comprehensive, its implementation still faces various administrative and procedural obstacles that prevent victims from receiving optimal redress.[16] Other studies have also highlighted that judges' consideration of restitution remains inconsistent and often does not constitute a central part of the *ratio decidendi* in criminal judgments.[17]

Although these various studies have made important contributions to the development of research on restitution, most are still oriented toward a normative analysis of statutory provisions or merely identify general obstacles to implementation. These studies have not comprehensively explained the relationship between regulatory weaknesses, law enforcement practices, judicial discretion, and the institutional design of the criminal justice system as an interconnected whole. In other words, previous research has tended to view the issue of restitution in a fragmented manner and has thus failed to explain why rights that are guaranteed in law remain difficult to realize in practice. Furthermore, previous research has generally not paid sufficient attention to how the retributive paradigm continues to influence the way law enforcement officials view restitution within the criminal justice process. In fact, the successful implementation of restitution is not only determined by the existence of legal norms but is also influenced by legal culture, the mindset of law enforcement officials, inter-institutional coordination, and the institutional design that supports the enforcement of court decisions. These aspects are key factors in determining whether restitution can truly function as an instrument for victim recovery or merely serve as a symbolic, administrative form of legal protection.

Based on a review of previous studies, this research identifies three major research gaps. First, a normative gap: the absence of an integrated legal framework regarding restitution mechanisms across various laws and regulations, resulting in regulatory inconsistencies. Second, an empirical gap: there remains a limited body of research linking the analysis of legal norms to judges' reasoning in specific rulings to explain how restitution rights are practiced within the criminal justice system. Third, a policy gap: there is currently no conceptual framework for a model to strengthen restitution that effectively integrates regulatory, institutional, and enforcement mechanisms within the framework of restorative justice.

Based on these gaps, the novelty of this study lies not merely in the use of court decisions as its subject matter, but in an analytical approach that integrates a normative examination of restitution regulations with an in-depth analysis of Decision No. 247/Pid.Sus/2023/PN. This will identify the relationship between weaknesses in legal norms, judicial discretion, and the institutional design of the criminal justice system. This approach enables this study not only to

[15] Efren Nova, "Implikasi Yuridis Pembuktian Tindak Pidana Kekerasan Seksual Dalam Perspektif Undang-Undang Nomor 12 Tahun 2022 Bagi Pembenuhan Keadilan Korban," *Unes Journal of Swara Justisia* 9, no. 1 (June 26, 2025): 208–19, https://doi.org/10.31933/vfqn8k12.

[16] Kiki Diah Hafidzah and Maroni Maroni, "Model Restitusi Sosial Anak Korban Perkosaan Untuk Mewujudkan Keadilan Hukum," *Al-Zayn : Jurnal Ilmu Sosial & Hukum* 3, no. 4 (2025): 5297–5310, https://ejournal.yayasanpendidikandzurriyatulquran.id/index.php/AlZayn/article/view/2107.

[17] Abraham Ferry Rosando Zainal Afandi, "*Ratio decidendi* Terhadap Putusan Pengadilan Negeri Kota Surabaya Nomor 2073/Pid.Sus/2023/Pn.Sby Tentang Pornografi," *Media Hukum Indonesia (MHI)* 2, no. 4 (2024), https://ojs.daarulhuda.or.id/index.php/MHI/article/view/906.

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explain the causes of the suboptimal implementation of restitution but also to propose a framework for strengthening the restitution system based on restorative justice, which prioritizes victim recovery as the primary goal of the criminal justice system.

2. METHOD

This study is a normative legal research project that aims to critically examine the effectiveness of restitution provisions for child victims of criminal offenses within the Indonesian criminal justice system.[18] The normative approach was chosen because the primary focus of this study is not to measure public behavior or the empirical effectiveness of a policy through field surveys, but rather to analyze the consistency of legal norms, the structure of statutory provisions, judicial reasoning, and their alignment with the principles of victim protection and restorative justice. From a legal research perspective, the normative approach allows researchers to evaluate the alignment between existing legal norms ("*law in the books*") and their implementation in judicial practice ("*law in action*"), thereby enabling the formulation of prescriptive legal recommendations.

This study employs four approaches: the statutory approach, the conceptual approach, the case approach, and the comparative approach. The statutory approach is used to examine various provisions governing the right to restitution for child victims of criminal offenses, including Law No. 31 of 2014 on the Protection of Witnesses and Victims, Law No. 35 of 2014 on Child Protection, Law -Law No. 11 of 2012 on the Juvenile Criminal Justice System, Law No. 12 of 2022 on Sexual Violence Crimes, and Government Regulation No. 43 of 2017 on the Implementation of Restitution for Child Victims of Criminal Offenses. This approach aims to identify the consistency of regulations, the relationships between legal norms, and potential inconsistencies that affect the effectiveness of restitution implementation.

The legal materials used in this study consist of primary, secondary, and tertiary legal sources. Primary legal sources include laws and regulations, court decisions, and various legal instruments related to victim protection and restitution. Secondary legal materials consist of academic books, articles from reputable national and international journals, research findings, and expert doctrines discussing criminal law, child protection, restorative justice, and the rights of victims of criminal offenses. Tertiary legal materials include legal dictionaries, legal encyclopedias, and other reference sources used to clarify the legal concepts under analysis.

The analysis of legal materials was conducted qualitatively using the method of legal reasoning through several stages. The first stage involved the inventory and classification of all legal materials based on type, hierarchy, and relevance to the research issue. The second stage involves legal interpretation through grammatical, systematic, and teleological approaches to comprehensively derive the meaning of legal norms. The third stage is an analysis of the judge's legal reasoning (*ratio decidendi* analysis) in Judgment No. 247/Pid.Sus/2023/PN.Son to identify how the right to restitution is positioned within the decision-making process. The fourth stage involves synthesizing the results of the normative analysis, the judgment analysis, and the legal theories employed to develop an argument regarding the factors that have led to the suboptimal implementation of restitution in the Indonesian criminal justice system. Based

[18] Muhaimin, *Metode Penelitian Hukum* (Nusa Tenggara Barat: Mataram University Press, 2020).

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on this synthesis, this study then formulates prescriptive recommendations regarding the reformulation of the restitution system, oriented toward victim protection and the strengthening of the principles of restorative justice.

3. RESULTS AND DISCUSSION

3.1 Fragmentation of Restitution Provisions in the Indonesian Criminal Justice System

Regulations regarding restitution in the Indonesian criminal justice system have undergone significant developments over the past two decades. A paradigm shift in victim protection has prompted lawmakers to accommodate victims' right to restitution as part of the objectives of the criminal justice system. These changes are marked by the enactment of various laws and regulations that recognize restitution as a victim's right, including Law No. 31 of 2014 Amending Law No. 13 of 2006 on the Protection of Witnesses and Victims, Law No. 35 of 2014 Amending Law No. 23 of 2002 on the Protection of Children, Law No. 11 of 2012 on the Juvenile Criminal Justice System, Law No. 12 of 2022 on Sexual Violence Crimes, and Government Regulation No. 43 of 2017 on the Implementation of Restitution for Child Victims of Crimes. The existence of these various instruments demonstrates that, from a normative perspective, the state has sought to shift the orientation of the criminal justice system from an approach focused solely on punishing perpetrators toward one that places greater emphasis on the recovery of victims.

The large number of regulations governing restitution does not automatically result in an effective victim protection system.[19] On the contrary, the existence of these various regulations actually reveals a fragmentation of legal norms, which has led to restitution mechanisms developing in a piecemeal and unintegrated manner. Each piece of legislation governs restitution from a different perspective in accordance with its respective scope, but has not yet formed a comprehensive legal framework regarding the role of restitution within the overall criminal justice process. This situation has resulted in restitution not yet holding a position as strong as that of prosecution or sentencing mechanisms, meaning its implementation is highly dependent on the interpretation and practices of individual law enforcement officials.[20]

A legal right is effective if it meets at least three fundamental prerequisites: normative recognition (legal recognition), an implementation mechanism, and an enforcement mechanism. These three elements must function in an integrated manner so that the rights granted by law do not remain mere normative declarations but can actually be enjoyed by legal subjects. Regulations on restitution in Indonesia currently place a strong emphasis on the aspect of legal recognition, while the aspects of implementation and enforcement still exhibit various structural weaknesses.[21] As a result, although victims are legally recognized as having the right

[19] Viri Oktadiana and Nandang Sambas, "Efektivitas Restitusi Dalam Pencegahan Kekerasan Dalam Rumah Tangga Yang Berulang: Tinjauan Hukum Pidana dan Perlindungan Korban," *Collegium Studiosum Journal* 8, no. 1 (July 4, 2025), https://doi.org/10.56301/csj.v8i1.1644.

[20] David Ricardo, Ismail, and Dewi Iryani, "Optimalisasi Eksekusi Restitusi Bagi Anak Yang Menjadi Korban Tindak Pidana Kekerasan Seksual Dalam Mewujudkan Kepastian Hukum," *Ilmu Hukum Prima (IHP)* 7, no. 1 (April 30, 2024): 27–38, https://doi.org/10.34012/jihp.v7i1.4994.

[21] Zico Junius Fernando, Andrea H Poeloengan, and Mahmud Mulyadi, "Customary Victimology: Perspektif Baru Perlindungan Korban Dalam Sistem Peradilan Pidana Indonesia," *Proceedings Series on Social Sciences & Humanities* 27 (2025): 34–47, https://conferenceproceedings.ump.ac.id/pssh/article/view/1824.

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to restitution, the realization of that right in practice still faces various procedural and institutional obstacles.

This fundamental issue can be understood through an analysis of Law No. 31 of 2014 on the Protection of Witnesses and Victims. This law is the first legal instrument to comprehensively establish the basis for recognizing victims' right to restitution as part of legal protection. Article 7A stipulates that victims are entitled to compensation covering loss of property or income, suffering directly related to the criminal offense, and the costs of medical and psychological care.[22] These provisions indicate a shift in the orientation of criminal law policy, which no longer focuses solely on punishing offenders but is beginning to recognize the importance of victim restitution.

Upon closer analysis, these provisions still contain fundamental weaknesses. The provisions regarding the right to restitution are not accompanied by mandatory legal obligations for investigators, prosecutors, or judges to ensure that this right is considered in every case that meets the requirements. The established norms still rely on a rights-based regulatory approach, which positions restitution as a right of the victim without simultaneously imposing active obligations on law enforcement institutions. As a result, the effectiveness of restitution implementation depends heavily on the ability of the victim or their family to file a restitution request,[23] Yet children, as victims, are a group that is, in fact, limited in their ability to access the legal system on their own.

According to the theory of responsive law proposed by Nonet and Selznick, this situation indicates that the law still functions as an administrative instrument that provides formal recognition of victims' rights, but has not yet evolved into an instrument that actively ensures the fulfillment of those rights.[24] Responsive law places the effectiveness of legal protection not only on the existence of norms, but also on the ability of legal institutions to respond to the needs of the protected community. In the context of restitution, recognition of victims' rights should be followed by the establishment of institutional mechanisms that ensure those rights become an integral part of every stage of the criminal justice process. Thus, the main weakness of Law No. 31 of 2014 does not lie in the absence of provisions regarding restitution, but rather in the failure to establish a strong link between normative recognition and institutional obligations.

Fragmentation of legal norms is also evident in the provisions of Law No. 35 of 2014 on Child Protection.[25] This law reaffirms that children who are victims of criminal offenses are entitled to special protection, including the right to restitution as determined by a court ruling. From a child protection perspective, this provision reflects the recognition that the harm suffered by a

[22] Delvasta Caesar Endyka et al., "Efektivitas Undang-Undang TPKS Dalam Menjamin Hak Restitusi Korban Kekerasan Seksual: Sebuah Tinjauan Yuridis," *Ulil Albab : Jurnal Ilmiah Multidisiplin* 5, no. 6 (May 6, 2026): 1268–75, https://doi.org/10.56799/jim.v5i6.17299.

[23] Indah Permatasari, Thea Farina, and Nuraliah Ali, "Restitusi Dan Perlindungan Hak Korban Tindak Pidana: Kebijakan, Tantangan Dan Praktiknya Di Pengadilan Negeri Kuala Kapuas," *Syntax Literate ; Jurnal Ilmiah Indonesia* 10, no. 2 (February 10, 2025): 1167–78, https://doi.org/10.36418/syntax-literate.v10i2.55559.

[24] Rr Rina Antasari, "Telaah Terhadap Perkembangan Tipe Tatanan Hukum di Indonesia Perspektif Pemikiran Nonet-Selznick Menuju Hukum Yang Berkeadilan," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 19, no. 1 (January 1, 2019): 103–18, https://doi.org/10.19109/nurani.v19i1.3344.

[25] Arifai et al., *Hukum Perlindungan Perempuan Dan Anak* (Sleman: Selfietera Indonesia, 2025).

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child is not limited to economic loss but also includes psychological and social suffering, as well as disruptions to the child's growth and development. Therefore, restitution is positioned as part of the recovery process for which the state is responsible.

Although it strengthens the status of restitution, the Child Protection Law has not yet provided detailed regulations on its implementation mechanisms. The established norms still refer to other provisions regarding the procedures for filing restitution claims, thus failing to create a self-contained system. As a result, there is a high degree of dependence on other regulations, particularly the Law on the Protection of Witnesses and Victims and Government Regulation No. 43 of 2017. This regulatory model indicates that victim protection is built through a sectoral approach rather than through an integrated legal system.[26] As a result, coordination among regulations becomes highly dependent on the interpretation of law enforcement officials, which has the potential to lead to inconsistencies in practice.

This perspective suggests that the main issue regarding restitution is not a lack of regulations, but rather a lack of harmonization among them. In Lawrence M. Friedman's theory of legal systems, the effectiveness of the law is influenced not only by legal substance but also by legal structure and legal culture. The fragmentation of restitution regulations reveals that the legal substance has not been developed harmoniously, which directly impacts the weakness of the institutional structure tasked with implementing victims' rights. In other words, the abundance of regulations has not yet produced legal certainty because each instrument still operates independently without forming an integrated framework for victim protection.

3.2 Structural Weaknesses in the Implementation of Restitution in Criminal Justice Practice

The success of a legal protection system for victims is determined not only by the comprehensiveness of legal norms, but also by the criminal justice system's ability to effectively implement those norms. Normative recognition of victims' rights, as stipulated in various laws and regulations, has not automatically resulted in tangible redress for victims of criminal offenses.[27] This situation indicates that the main issue regarding restitution in Indonesia has shifted from legal recognition to institutional implementation, namely how rights guaranteed by law can be realized through effective institutional mechanisms.

In Lawrence M. Friedman's theory of legal systems, the effectiveness of a legal system is determined by three interrelated elements: legal substance, legal structure, and legal culture.[28] These three elements cannot function independently, as a failure in any one of them will affect the overall effectiveness of the legal system. Therefore, an analysis of the implementation of restitution cannot be limited to an examination of legal norms alone; it must also encompass

[26] Muhammad Fachri Said, M. Azham Ilham, and Rizki Hadi Nugroho, "Analisis Hukum Terhadap Perlindungan Dan Integrasi Hak Anak Sebagai Hak Asasi Manusia Dalam Sistem Hukum Indonesia," *Jurnal Tana Mana* 6, no. 2 (2025), https://ojs.staialfurqan.ac.id/jtm/article/view/1165.

[27] Muhammad Fajar Lutfi Raihan et al., "Perlindungan Hukum Terhadap Korban Tindak Pidana Dalam Perspektif Viktimologi Di Indonesia," *Jurnal Kajian Hukum Dan Pendidikan Kewarganegaraan* 2, no. 3 (2026): 935–942, https://jurnal.globalscients.com/index.php/jkhpk/article/view/1355.

[28] Fara Rizqiyah Sari and Rayno Dwi Adityo, "Efektivitas Alat Bukti Elektronik Pada Praktik Beracara Perspektif Teori Sistem Hukum Lawrence M. Friedman," *Sakina: Journal of Family Studies* 8, no. 2 (June 16, 2024): 244–57, https://doi.org/10.18860/jfs.v8i2.7751.

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how law enforcement officials exercise their authority, how inter-agency coordination is established, and how evolving legal paradigms influence the protection of victims.

3.2.1 The Dominance of the Retributive Paradigm in Judicial Decision-Making

An analysis of the Sorong District Court's Decision No. 247/Pid.Sus/2023/PN.Son shows that the judge's primary focus remains on establishing the elements of the criminal offense, the defendant's criminal liability, and the imposition of a prison sentence as a form of state retribution for the defendant's actions. The structure of the legal reasoning in the decision systematically outlines the proof of each element of the offense, the evidence presented, witness testimony, and the aggravating and mitigating circumstances regarding the defendant.[29] However, the issue of victim rehabilitation through restitution mechanisms has not yet received proportionate attention in the judges' reasoning.

This situation demonstrates that the retributive paradigm still dominates criminal justice practices in Indonesia. Restitution has not been positioned as an integral part of the objectives of criminal punishment, but rather as an additional consequence whose implementation depends on a request from the victim or a specific institution. As a result, court rulings tend to prioritize punishing the perpetrator over restoring the victim's rights. Yet, from a victim-oriented criminal justice perspective, the success of the criminal justice system is measured not only by the state's ability to impose criminal penalties but also by the system's ability to restore the losses suffered by victims.

This phenomenon reveals an imbalance between the interests of the state and those of the victim in the criminal justice process. The state possesses very strong mechanisms to prove the perpetrator's guilt and enforce criminal penalties, yet it has not established equally robust mechanisms to ensure the fulfillment of victims' rights to restitution. Consequently, victims' rights remain subordinate to the state's interest in imposing criminal penalties.

3.2.2 The Dependence of Restitution on the Victim's Initiative

Another finding that points to the weak implementation of restitution is the continued dominance of the claim-based mechanism. Under Government Regulation No. 43 of 2017, restitution is essentially filed by the victim, a parent, a guardian, or another party representing the victim's interests.[30] This mechanism is intended to provide victims with opportunities to participate in the fight for their rights. However, in practice, this mechanism has actually become a major obstacle for child victims of crime.

Child victims are a vulnerable group who lack the legal and psychological capacity to navigate the judicial process independently. Their dependence on parents, guardians, or advocates means that the success of a restitution claim is heavily influenced by these parties' ability to understand legal procedures. In many cases, the victim's family is unaware that restitution can be sought as early as the investigative stage, or they do not receive adequate assistance in

[29] Marwan Mas, "Penguatan Argumentasi Fakta-Fakta Persidangan dan Teori Hukum Dalam Putusan Hakim," *Jurnal Yudisial* 5, no. 3 (2021): 283–97, https://jurnal.komisiyudisial.go.id/jy/id/article/view/125.

[30] Anshar Anshar, Alexander Maradentua, and Syawal Abdulajid, "Penerapan Dominus Litis Dalam Upaya Pemenuhan Hak Restitusi Terhadap Anak Korban Tindak Pidana Asusila (Studi Kasus Di Kejaksaan Negeri Tidore Kepulauan)," *Innovative: Journal Of Social Science Research* 3, no. 6 (2023): 518–533.

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preparing the required documents. As a result, the right to restitution is never incorporated into the prosecution process or considered by the judge.

This situation contradicts the principle of the best interests of the child, which requires the state to take an active role in ensuring that children's rights are fulfilled. This principle implies that the state cannot entirely shift the burden of protection onto the victim or their family. Instead, law enforcement officials should have a proactive obligation to identify the victim's losses, coordinate the calculation of restitution, and ensure that restitution requests are incorporated into the prosecution process.

3.2.3 Weak Coordination Among Law Enforcement Agencies

The issue of restitution implementation is also affected by the lack of optimal coordination among investigators, public prosecutors, the Witness and Victim Protection Agency (LPSK), and the courts. Each institution has different authorities, but the relationship between these authorities has not yet been established within an integrated mechanism. As a result, the restitution process often stalls at one of the stages of the judicial process.

In practice, investigators tend to focus on establishing the elements of a criminal offense, while prosecutors concentrate more on proving the charges in court. The LPSK, on the other hand, has the authority to facilitate restitution requests, but its involvement is highly dependent on receiving a request or coordination from other parties. This situation indicates that the restitution system still operates based on a sectoral approach, rather than a collaborative approach that treats victim protection as a shared responsibility of all law enforcement institutions.

Due to this lack of coordination, the right to restitution often receives no attention from the early stages of the criminal process. Once a case reaches trial without a calculation of damages or a restitution request, the judge's ability to provide redress to the victim becomes increasingly limited. Thus, the failure to implement restitution is not merely a matter of legal norms but also constitutes a governance failure within the criminal justice system.

3.2.4 Lack of an Effective Enforcement Mechanism

The most fundamental structural weakness in Indonesia's restitution system lies in the absence of an effective enforcement mechanism for restitution rulings. A court ruling ordering the perpetrator to pay restitution is, in essence, a legal recognition of the victim's rights. However, if the perpetrator does not voluntarily fulfill this obligation, positive law does not yet provide an effective enforcement mechanism as is common in the enforcement of civil judgments.

The absence of an enforcement mechanism causes restitution to lose its enforceability. The victims' rights, which have been recognized through court rulings, ultimately depend on the economic capacity and good faith of the perpetrators. Under such circumstances, victims are once again placed in a vulnerable position because the state does not provide adequate instruments to ensure the enforcement of these rulings. Consequently, restitution risks becoming a symbolic right (symbolic justice) rather than a right that provides tangible benefits for the victim's recovery.

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This phenomenon indicates that legal protection for victims has not yet reached the level of substantive justice. The state has successfully granted normative recognition to the right to restitution but has not yet been able to ensure the realization of that right through an effective law enforcement system. Therefore, restitution reform cannot be achieved merely by adding legal norms; rather, it must be directed toward establishing institutional mechanisms that ensure the effective enforcement of court decisions, including strengthening the role of public prosecutors and the LPSK, as well as establishing enforcement mechanisms that possess the power to compel perpetrators to comply.

Based on this comprehensive analysis, it can be concluded that the low effectiveness of restitution in Indonesia's criminal justice system is not caused by a lack of legal provisions, but rather by structural weaknesses that include the dominance of the retributive paradigm, reliance on the victim's initiative, weak inter-agency coordination, and the absence of effective enforcement mechanisms. These four factors are interrelated and form systemic barriers that prevent restitution rights from functioning as a legal protection instrument that provides tangible redress for child victims of criminal offenses.

3.3 Reformulation of a Restorative Justice-Based Restitution System in the Indonesian Criminal Justice System

The research findings indicate that the low effectiveness of restitution implementation is not solely due to weak normative regulations, but rather to the lack of a criminal justice system design that comprehensively prioritizes victim restitution as the primary goal of law enforcement. This finding is consistent with Ardiansyah et al., who identified a "victim-oriented gap" in Indonesia's criminal justice system, where normative recognition of restitution has not been fully accompanied by effective institutional access for victims, while the law enforcement paradigm remains largely focused on punishing perpetrators.[31] This situation indicates a gap between the normative recognition and the effective realization of the right to restitution. Research by Lilis and Muslim shows that although restitution has been enshrined in various legal instruments, its implementation remains ineffective; for example, there are still court rulings in sexual violence cases that do not provide for restitution for victims.[32]

In criminal policy, this situation indicates that restitution reform cannot be achieved merely through partial amendments to statutory provisions. Reform must be directed toward a comprehensive restructuring of the criminal justice system so that victim protection becomes an integral part of every stage of the law enforcement process. A restitution model that relies on victims' applications has the potential to create inequities in access to justice, as the effective fulfillment of rights depends on victims' legal knowledge, administrative capacity, and access to legal representation. Findings by Ningsih, Yoserwan, and Mulyati indicate that the complexity of the application procedures is one of the barriers to the fulfillment of restitution

[31] Indra Ardiansyah et al., "Taking Restitution Seriously? Victim-Oriented Gaps in the Criminal Justice System," *IJCLS (Indonesian Journal of Criminal Law Studies)* 10, no. 1 (May 31, 2025), https://doi.org/10.15294/ijcls.v10i1.19636.

[32] Lilis Lilis and Ikhwanul Muslim, "Analysis of Legislation and Regulations on the Fulfillment of Restitution Rights for Sexual Violence Victims in Indonesia," *Ahmad Dahlan Legal Perspective* 5, no. 1 (April 26, 2025): 54–67, https://doi.org/10.12928/adlp.v5i1.10895.

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for child victims of sexual violence.[33] By comparing the system to that of California, the study demonstrates the relevance of automatic restitution orders as an alternative for shifting the focus of restitution from a claims-based mechanism to an institutional obligation within the criminal justice system.

The fundamental principle that must underpin this reformulation is to establish restitution as a mandatory right in every case that results in harm to a victim, particularly children who are victims of sexual violence. To date, the granting of restitution has depended on a request from the victim or their family; consequently, its implementation is heavily influenced by the victim's level of legal understanding, economic capacity, and access to legal aid. This model is inconsistent with the principle of child protection because it places the burden of responsibility on those who are, in fact, in the most vulnerable position. Therefore, the claim-based restitution approach needs to be changed to mandatory victim restitution, a mechanism that requires law enforcement officials to identify, calculate, and propose restitution from the early stages of the criminal justice process without waiting for a request from the victim.

Under this model, investigators are no longer tasked solely with proving the elements of a criminal offense, but are also obligated to identify the forms of harm suffered by the victim. This identification includes material losses, medical expenses, psychological rehabilitation, loss of educational opportunities, and other social impacts resulting from the criminal offense. The results of this identification then become an integral part of the case file submitted to the public prosecutor. Thus, starting from the investigation stage, there is already a sufficient legal basis for the public prosecutor to include a claim for restitution in the indictment.

At the prosecution stage, public prosecutors should be subject to a legal obligation (mandatory prosecutorial motion) to always file a restitution claim in every case that meets the requirements as stipulated by law. To date, filing for restitution is still viewed as a discretionary authority that depends on a request from the victim or a recommendation from the Witness and Victim Protection Agency (LPSK). As a result, many cases that qualify for restitution are never actually sought during the trial process. Therefore, a change in prosecution policy is a critical prerequisite for achieving more effective victim protection.

Furthermore, judges must be positioned as key actors in ensuring the realization of restorative justice through the implementation of a mandatory judicial assessment regarding restitution. In every ruling involving victims of criminal offenses, judges should not only consider the proven elements of the crime and the length of the sentence imposed but are also required to provide legal considerations regarding the victim's recovery. These considerations include an assessment of the nature of the harm suffered by the victim, the appropriate amount of restitution to be awarded, the offender's ability to fulfill their obligations, and alternative methods of restitution if the offender lacks sufficient financial means. Thus, restitution becomes part of the judge's *ratio decidendi*, not merely an optional supplementary order.

[33] Eva Silvia Ningsih, Yoserwan Yoserwan, and Nani Mulyati, "Restitusi Anak Korban Kekerasan Seksual Dalam Perspektif Viktimologi Dan Pengaturan Hukum Positif," *Jurnal Niara* 19, no. 1 (2026): 203–12, https://journal.unilak.ac.id/index.php/nia/article/view/32094.

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The next reformulation pertains to strengthening the role of the LPSK as an institution with expertise in victim protection. To date, the LPSK's involvement in restitution mechanisms has remained reactive, as it relies heavily on requests from victims or coordination with law enforcement agencies. Moving forward, the LPSK needs to be given a stronger mandate to proactively assess victims' losses, formulate recommendations on restitution amounts based on measurable standards, and provide support throughout the process of enforcing the court's decision. Strengthening this role will establish national standards for assessing victims' losses, thereby reducing disparities in court rulings regarding the amount of restitution.[34]

An equally important aspect of reforming the restitution system is the establishment of an effective enforcement mechanism. Until now, the enforcement of restitution orders has depended entirely on the perpetrator's willingness to fulfill their obligations. When a perpetrator fails to comply with a restitution order, positive law has not yet provided adequate instruments to ensure that the victim's rights are upheld.[35] A special enforcement mechanism is needed to enable the state to take legal action against the perpetrator's assets, similar to the mechanism for enforcing judgments in civil cases. In addition, consideration should be given to establishing a state-administered Victim Recovery Fund to serve as a subsidy mechanism in cases where the perpetrator is proven to lack the financial means to pay restitution.[36] The state then acquires the right of recourse to recover the amount from the perpetrator in accordance with the provisions of applicable laws and regulations.

This reformulation essentially constitutes the implementation of a victim-oriented criminal justice paradigm—a paradigm that places victims at the center of the criminal justice system. Under this paradigm, the success of law enforcement is no longer measured solely by the severity of the punishment imposed on the perpetrator, but also by the extent to which the state is able to effectively restore the victims' rights. Consequently, restitution is no longer viewed as a supplementary tool but rather as a key indicator of the criminal justice system's success in achieving substantive justice.

Based on the overall findings of the analysis, this study proposes an Integrative Model of a Restitutory System Based on Restorative Justice, consisting of six main stages. The first stage is the identification of the victim's losses by investigators as part of the investigative process. The second stage involves an assessment of the losses by the LPSK based on objective and measurable national standards. The third stage is the mandatory filing of a restitution claim by the public prosecutor in the indictment. The fourth stage involves the judge's assessment and determination of restitution as part of the legal considerations in the judgment. The fifth stage is the enforcement of the judgment through binding execution mechanisms, including the possible seizure of the perpetrator's assets or the use of the Victim Recovery Fund if the

[34] Wahab Aznul Hidaya Et Al., "Realizing Restitution Justice For Child Victims Of Sexual Assault," *Jurnal USM Law Review* 7, No. 3 (December 2, 2024): 1484–97, Https://Doi.Org/10.26623/Julr.V7i3.9697.

[35] Tesalonika Amazia Simamora and Handar Subhandi Bakhtiar, "Restitution for Child Victims of Sexual Violence Crimes," *Al-Risalah Jurnal Ilmu Syariah Dan Hukum* 26, no. 1 (2026): 300–322, https://journal.uin-alauddin.ac.id/index.php/al_risalah/article/view/63962.

[36] Robby Alexander Sidabutar and Riswan Munthe, "Tinjauan Yuridis Terhadap Pemberian Restitusi Kepada Anak Korban Tindak Pidana Kekerasan Seksual (Studi Di Lembaga Perlindungan Saksi Dan Korban Medan Sumatera Utara)," *Locus Journal of Academic Literature Review* 4, no. 6 (2025): 382–391, https://jurnal.locusmedia.id/index.php/jalr/article/view/562.

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perpetrator is unable to pay. The sixth stage involves the monitoring and evaluation of restitution implementation by the LPSK in collaboration with the prosecutor's office to ensure that the victim's rights are fully upheld.

This model demonstrates that victim protection cannot be entrusted to a single institution alone but must be built through collaborative victim protection governance among investigators, public prosecutors, the LPSK, the courts, and the state as the primary entity responsible for protecting victims' human rights.[37] Under this model, restitution is no longer merely a normative recognition, but has evolved into a legal protection mechanism that offers certainty, effectiveness, and enforceability in achieving restorative justice for child victims of criminal offenses.

4. CONCLUSION

This study concludes that, normatively speaking, the provisions on restitution for child victims of criminal offenses within the Indonesian criminal justice system have recognized the rights of victims through various laws and regulations; however, their implementation has not yet been able to ensure effective legal protection due to regulatory fragmentation, weak coordination among law enforcement agencies, the dominance of a retributive paradigm in judicial practice, reliance on victims' own initiatives to file restitution claims, and the lack of enforceable execution mechanisms. An analysis of Judgment No. 247/Pid.Sus/2023/PN.Son indicates that victim restitution has not yet been positioned as an integral part of the judge's legal considerations, resulting in a gap between "*law in the books*" and "*law in action*." Based on these findings, this study proposes an Integrative Model of a Restorative Justice-Based Restitution System that integrates the roles of investigators, public prosecutors, the Witness and Victim Protection Agency (LPSK), the courts, and enforcement mechanisms into a single, coordinated victim protection system. This model emphasizes that restitution reform cannot be achieved solely through changes in legal norms but requires strengthening the institutional design and governance of the criminal justice system so that restitution functions as an effective legal protection instrument, oriented toward victim recovery, and capable of realizing restorative justice for child victims of criminal offenses.

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[37] Hari Purwadi Et Al., "Regulatory Framework On Compensation For The Restoration Of Victims Of Sexual Violence," *LAW REFORM* 20, No. 2 (November 22, 2024): 383–407, Https://Doi.Org/10.14710/Lr.V20i2.58181.

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