

# Naskah USM Law Review

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## The Effectiveness of Restitution Fulfillment for Children as Sexual Crime Victims: A Study in the North Maluku

### Abstract

**Introduction:** Restitution is compensation given to the victim by the perpetrator of the crime or a third party and is an effort to guarantee the rights of victims. There was an issue where restitution rights were seldom strived for by law enforcers. Another problem is that society lacks knowledge of the existence of restitution rights. This paper is urgent because it may provide information on why these issues exist and how to resolve them in order to give victims their rights. **Objective:** This paper aims to critically examine the effectiveness of the implementation of restitution rights for children as sexual crime victims in North Maluku, as well as identify key barriers faced by law enforcers in ensuring restitution is provided. **Methods:** This was empirical research which employed the statute approach and the case approach. In this paper, the live case study was applied. **Results:** Results showed that the restitution fulfillment of children as sexual crime victims in the North Maluku High Prosecutor's Office was still suboptimum as there was only one case in 2022 where the general prosecutor strived to demand restitution. There was only one successful case because in that case, the prosecutor inserted that case in the demand. The main challenge is that not many prosecutors have concerns over this restitution concept. The solution is that the application for restitution should be strived for by law enforcers starting from the investigation stage as more time is available. **Conclusion:** It was found that the restitution fulfillment of children as sexual crime victims in the North Maluku High Prosecutor's Office was still suboptimum as there was only one case in 2022 where the general prosecutor strived to demand restitution. It is hoped that law enforcers, especially the North Maluku High Prosecutor's Office become more progressive in striving for the restitution rights of children as sexual crime victims to bring justice to victims. **Novelty:** This paper provides novelty as it provides an analysis of the application of restitution with an emphasis on the importance of a structured mechanism which guarantees direct restitution to victims that is not based on the victim's gender.

**Keywords:** Crime, North Maluku, Restitution Rights, Sexual Violence Victims.

### 1. INTRODUCTION

Crimes are a form of deviant action that always exists and are attached to all forms of society. Deviant behavior is a realistic or a potential threat against social norms that become the basis of social life or social order. It may lead to individual or social strains.<sup>1</sup> Rape crime is a type of crime that makes their victims experience trauma. Thus, many rape victims were physically and mentally harmed. The penalization system in Indonesia has the tendency to punish perpetrators and make them suffer without giving any benefits to the victims. The idea that victims must obtain compensation from rape perpetrators as part of their punishment is a rational idea which develops according to the dynamics. This idea was based on the thought that punishment for perpetrators must bring benefits for the victims.

The crime of rape especially to children is an evil crime that must strictly be punished with severe sanctions. This is the urgency for the existence of compensations other than criminal ones. Apart from having child rapists suffer from imprisonment, his wealth must be confiscated to be given to the child rape victim as a compensation. Children who were raped always experience physical wounds and psychological trauma that requires treatment. Thus, the wealth and money of the rapist must be confiscated by

<sup>1</sup> Mulad Barda Nawawi Arief. *Teori-Teori Dan Kebijakan Pidana (Criminal Theories and Policies)* (Bandung: Alumi, 2005). <https://simpus.mkri.id/opac/detail-opac?id=7941>.

**Commented [JDH1]:** Untuk membuat abstrak lebih terstruktur, pisahkan elemen-elemen utama (tujuan, kebaruan, metode, hasil, kesimpulan) dengan kalimat yang lebih ringkas dan langsung.  
Jawaban: penulis memisahkan abstrak lebih terstruktur. (setiap bagian di bold untuk menandai)

Penulis dalam menguraikan kebaruan atau kontribusi dari penelitian ini masih dapat ditingkatkan. Saran saya, tambahkan kalimat yang lebih spesifik tentang aspek yang membedakan penelitian ini dari kajian sebelumnya, seperti "Penelitian ini memberikan wawasan baru tentang hambatan dalam pemenuhan hak restitusi bagi korban anak di wilayah hukum Kejaksaan Tinggi Maluku Utara, dengan fokus pada praktik aktual dan kendala hukum yang dihadapi."  
Jawaban: usulan reviewer ditambahkan dalam kebaruan (dengan warna merah di pendahuluan)

**Commented [REVIEWER2]:** Tujuan penelitian dalam abstrak tidak cukup jelas, karena tidak secara spesifik menggambarkan tujuan yang diinginkan. Penyebutan "analyze the implementation of restitution right fulfillment" terlalu umum tanpa penjelasan mengenai apa yang menjadi titik utama dalam analisis ini.  
Jelaskan tujuan penelitian dengan lebih spesifik. Contohnya, "This paper aims to critically examine the effectiveness of the implementation of restitution rights for children as victims of sexual crimes in North Maluku, as well as identifying key barriers faced by law enforcers in ensuring restitution is provided."  
Jawaban: penulis mengganti aim of research dengan sesuai arahan reviewer (bertanda merah)

Hasil penelitian hanya menyebutkan ada satu kasus di mana restitusi diperjuangkan pada tahun 2022, tetapi tidak menjelaskan lebih lanjut tentang temuan lain yang dapat mendukung argumen atau menunjukkan pola. Berikan hasil yang lebih konkret dan mendetail, termasuk analisis mengenai mengapa hanya satu kasus berhasil, tantangan spesifik apa yang dihadapi, dan bagaimana hal ini dapat diperbaiki.  
Jawaban: ditambahkan alasan dan ditambahkan tantangan spesifik serta bagaimana ini dapat diperbaiki

Kata kunci menggunakan ;

the state to be given to the children who became child rape victims to pay for their physical and psychological treatment. It is not compensation for the child's purity that was defiled by the perpetrator.

The urgency of this research is that victims who were harmed must obtain compensation for their suffering. This compensation is not to recompense for the victim's honor that was violated by the perpetrator. However, this compensation is directed as an effort to fulfill victims' needs to recover, such as to pay for the treatment with psychotherapists or psychologists as well as to consult with and obtain treatment from doctors. So far, the concept of compensation does not run well considering that not many victims have obtained compensation. For instance, in Ternate, Indonesia, only one child rape victim obtained compensation. In other areas, such as in North Sumatera Province, there were 584 cases of rape. Unfortunately, only thirteen victims obtain compensation.<sup>2</sup>

A criminal phenomenon that is often experienced by children is the crime against decency. Among the many crimes against decency that led to children becoming victims, there is the crime of rape (*verkrachting*).<sup>3</sup> In this postmodern era, the crime of rape is a crime (*misdrifven*) that rather attracts the attention of society. Historically, this type of crime (*delict, strafbaarfeit*) has existed long ago. It can be said as a configuration of a classical crime that will always follow the development of human culture.<sup>4</sup> Children are posed with the threat of becoming victims of the rape crime. One of the reasons is that their position is weak.<sup>5</sup>

Concerning the context of the protection of crime victims, preventive and repressive efforts must be carried out both by society and the government (through their law enforcers). It may be carried out by giving protection/supervision from any threats that may endanger the lives of the victims, providing sufficient medical aid or legal aid, and carrying out a fair examination and adjudication process for crime perpetrators.

Such actions are categorized into actions that lead to physical and mental harm and suffering. They may also comprise threats such as coercion or other violations of one's right to freedom. An analysis of the judicial process as a social process strives to explain the meaning and the background of how Indonesian law enforcers work. This is crucial considering that the phenomenon of social violence brings the most difficulties in the resolution process.

<sup>2</sup> Vina Mustika Dan Iwan. *Legalite: Jurnal Perundang Undangan dan Hukum Pidana Islam* Volume 9 No 2, Juli-Desember 2024. (h.117-131) <https://journal.iainlangsa.ac.id/index.php/legalite> /doi.org/10.32505/legalite.v9i2.9224

<sup>3</sup> Pruzarty. "Pelaksanaan Restitusi Bagi Anak Yang Menjadi Korban Tindak Pidana Sebagai Bentuk Pembaruan Hukum Berdasarkan Peraturan Pemerintah Nomor 43 Tahun 2017." *Soumatara Law Review* 2, no. 1 (2019), h.55. doi.org/10.22216/soumlaw.v2i1.3567.g1347.

<sup>4</sup> I. A. Sadiyah and S. P. W. <sup>60</sup> a. "Upaya Perlindungan Hukum Terhadap Anak Sebagai Korban Kekerasan Seksual (Studi Kasus Di Polda Bali)." *Jurnal Analisis Hukum* 5, no. 2 (2022). <https://doi.org/10.38043/jah.v5i2.3743>.

<sup>5</sup> Eko Yudhoyono and Eko Soponyono. "Jurisprudence for Resolving Crimes of Narcotics Abuse by Children in Indonesia." *Jurnal Jurisprudence* 14, no. 1 (2024). <https://doi.org/10.23917/jurisprudence.v14i1.4289>.

**Commented [JDH3]:** penulis perlu mengaitkan fenomena kejahatan seksual terhadap anak langsung dengan pentingnya restitusi bagi korban anak. Uraikan masalah secara lebih langsung dengan menjelaskan mengapa kejahatan seksual terhadap anak merupakan masalah serius di Indonesia, terutama dari sisi perlindungan hukum dan pemenuhan hak restitusi. Ini akan membantu pembaca memahami konteks dan urgensi masalah.

Jawaban: penulis menambahkan hal tersebut pada pendahuluan (dengan warna kuning) Pernyataan masalah sebaiknya lebih eksplisit, misalnya melalui dua atau tiga kalimat yang menyatakan masalah spesifik yang dihadapi dalam pemenuhan restitusi anak korban kejahatan seksual, seperti lemahnya penerapan oleh penegak hukum dan kurangnya pemahaman masyarakat tentang hak restitusi.

Jawaban: Telah ditambahkan penulis di pendahuluan dengan warna hijau

Bagian ini sudah mencantumkan beberapa penelitian terdahulu, tetapi bisa ditingkatkan dengan merangkum temuan utama setiap penelitian dalam satu kalimat yang jelas, kemudian menunjukkan bagaimana penelitian ini melengkapi atau memperluas penelitian sebelumnya. Misalnya, sebutkan bahwa penelitian ini menekankan pentingnya mekanisme yang terstruktur untuk memastikan restitusi langsung kepada korban dan tidak terbatas pada jenis kelamin korban

Jawaban: telah ditambahkan di pendahuluan dengan warna ungu.

Contoh ringkasan: "Penelitian sebelumnya oleh Larwuy et al. di Maluku dan Adri et al. di Jambi telah menunjukkan pentingnya pemberian restitusi langsung kepada korban, namun mekanisme pemberian yang jelas belum ada. Penelitian ini melengkapi penelitian tersebut dengan fokus pada mekanisme pemenuhan restitusi yang dapat diimplementasikan di dalam sistem peradilan pidana Indonesia, khususnya dalam konteks Kejaksaan Tinggi Maluku Utara."

Jawaban: telah direvisi sesuai saran dari reviewer (dengan warna merah)

Rumuskan Tujuan Penelitian secara Ringkas dan Jelas: Tujuan penelitian sebaiknya langsung menyatakan apa yang akan dianalisis dalam penelitian ini. Tujuan penelitian berupa kalimat pernyataan dan konsisten dgn tujuan penelitian di abstrak untuk selanjutnya konsisten di pembahasan

Jawaban: tujuan penelitian telah diselaraskan (dengan sedikit perbedaan teks)

81

Previous research was conducted by Larwuy et al.<sup>6</sup> in Maluku and Adri et al.<sup>7</sup> in Jambi. These researches showed the importance of giving direct restitution to victims. However, there are yet any stipulations which regulate the mechanism in giving this restitution. This research completes previous research<sup>58</sup> focusing on the mechanism for restitution fulfillment which may be implemented in the Indonesian criminal justice system, especially in the context of the North Maluku High Prosecutor. Then, another previous research was carried out by Hadiati et al.<sup>8</sup> in Jakarta, Indonesia. They found that the compensation payment for girls who became victims of sexual abuse is seldom applied by judges. Their research focused on the payment of compensation for girls, while this current research is not gender-specific as all genders may potentially become victims of sexual abuse.

Previous research became an inspiration for the writer to carry out this research in another location. This research will complete previous research. The authors realize that the compensation concept for rape victims is a new concept that brings great benefits to victims. Unfortunately, not many people have understood it and this information has not been introduced to society. By researching and publishing these research results, it is hoped that more people will read and understand it. In turn, it is hoped that more victims will obtain compensation. An advantage of this research is that it emphasizes the importance of a structured mechanism which guarantees direct restitution to victims that is not based on the victim's gender.

33

The specific issue that is faced in fulfilling the restitution rights of children who became victims of sexual crimes is that many law enforcement apparatuses, such as police force, the attorney, and judges do not understand the compensation concept for children who became victims of rape or sexual assault. Thus, in making a police examination report, the demands and verdicts are only focused on imprisonment sanctions. If only a few people understand this concept, it means that fewer victims obtain compensation from law enforcement. Another issue is people's lack of understanding of restitution or compensation rights for children who became rape victims. Thus, it is not inserted as a priority to be applied in law enforcement.

The difficulties in the limitations above also comprise difficulties in bringing evidence. In this case, rape or other perversion actions are commonly carried out without the presence of other people or a third party. Even though many rape cases have been processed to court, from the existing cases, perpetrators are not imposed with maximum sanctions according to the legal stipulations imposed in the Criminal Code Chapter XIV on Crimes Against Decency (Articles 281 to 296). The case of rape crime that is committed with violence is regulated in Article 285 of the Criminal Code which states:

26

<sup>6</sup> Weny Yorinike Larwuy, Shery Adam, and Yonna Beatrix Salamor, "Kompensasi Terhadap Anak Sebagai Korban Tindak Pidana Perkosaan," *Sanisa Jurnal Kreativitas Mahasiswa* 3, no. 1 (2023): 14 – 20, <https://doi.org/10.32505/legalite.v7i2.4705>.

<sup>7</sup> Adita Adri, Andi Najemi, and Yulia Monita, "Penuhan Hak Ganti Rugi Bagi Anak Korban Kekerasan Seksual," *Pampas: Journal of Criminal Law* 5, no. 1 (2024): 62–71, <https://doi.org/10.22437/pampas.v5i1.31815>.

<sup>8</sup> Mia Hadiati et al., "Upaya Penuhan Ganti Kerugian Terhadap Perempuan Dan Anak Korban Kekerasan Seksual Di Indonesia," *Prosiding Serina IV* 2, no. 1 (2022): 191–98, <https://doi.org/10.24912/pserina.v2i1.18530>.

10

"Whoever with violence or threats of violence force a woman to undergo intercourse with him outside of marriage is threatened as he has committed rape, with a punishment of imprisonment for a maximum of twelve years."

Sexual crimes that are perpetrated on children will certainly impact their psychological condition. Psychological impacts may be in the form of mental disorders, including experiencing hallucinations, obsessions, delusions, and trauma. Meanwhile, concerning mood disorders, child victims may experience excessive sadness, tension, and happiness.<sup>9</sup> Due to these rather severe impacts, it is appropriate for children who are sexual crime victims to obtain legal protection.

Based on the applicable stipulations, the party of the victim may file a lawsuit against the harm they experienced or demand compensation from the party of the perpetrator.<sup>10</sup> It is always interesting to analyze the phenomenon of protection of victims of aggravated rape. This is because the issue of protection of rape victims is not only related to the provision of protection but it is also linked to the right of restitution fulfillment.

From the description of the background above, this research aims to analyze two main issues, namely: (1) How is the implementation of restitution right fulfillment for child sexual crime victims in the legal area of the North Maluku High Prosecutor's Office? and (2) What are the challenges in fulfilling the restitution rights of child sexual crime victims Ternate City, especially in the North Maluku?

## 2. METHOD

This was empirical research which employed the statutory approach and the case approach. The statutory approach was an approach to solve research issues in the law. In this research, the authors used statutes as one of the approaches in resolving the research problem. The case approach was an approach based on previous cases which have been decided upon. It was used to see how the law is implemented in resolving cases. The statute approach was used to analyze relevant legal provisions on restitution, while the case approach focused on relevant world examples of restitution applications.<sup>11</sup>

In this paper, the live case study was applied, which was an approach towards a legal phenomenon with an ongoing process.<sup>11</sup> Therefore, the authors conducted observation or direct research in the field to obtain an accurate truth in the process of perfecting this paper. Thus, the aim and use of this study may basically be used to show the path to resolve the research issues. This research aims to analyze the effectiveness of restitution payment for child sexual crime victims in the legal area of the North Maluku High Prosecutor's Office.

11

<sup>9</sup> F. N. Eleonora and A. Sari, "Eksistensi Lembaga Perlindungan Saksi Dan Korban Dalam Memberikan Perlindungan Terhadap Anak Korban Eksploitasi Seksual," *Supremasi Hukum: Jurnal Penelitian Hukum* 28, no. 2 (2019): 153-163. <https://doi.org/10.33369/supremasi.28.2.153-163>.

<sup>10</sup> Anggelia Anggelia and Ani Purwanti, "Kebijakan Perlindungan Anak Terhadap Eksploitasi Seksual Melalui Nikah Siri Dalam Perspektif Hukum Nasional Di Indonesia," *Jurnal Jurisprudence* 10, no. 1 (2020): 109-26. <https://doi.org/10.23917/jjr.v10i1.10974>.

<sup>11</sup> Sholahuddin al Fatih, *Perkembangan Metode Penelitian Hukum Di Indonesia* (Malang: UMM Press, 2023).

**Commented [REVIEWER4]:** Penulis dalam memperbaiki bab pendahuluan dapat memulai dengan Fokus di latar belakang pada kejahatan seksual terhadap anak dan perlunya restitusi bagi korban. Jangan terlalu banyak membahas tentang perilaku menyimpang secara umum, melainkan fokuskan pada masalah spesifik yang ingin dipecahkan.  
Jawaban: pendahuluan telah ditambahkan dengan saran reviewer (dengan highlight ungu)

Tegaskan urgensi penelitian dengan menjelaskan kesenjangan dalam penerapan hak restitusi bagi korban kejahatan seksual anak, misalnya, seberapa sering hak ini tidak terpenuhi dan apa dampaknya bagi korban. Dan dilengkapi dengan data  
Jawaban: urgensi penelitian ditambahkan dan implementasi hak ini serta data. Dengan Highlight Hijau)  
Pembahasan tentang penelitian terdahulu tidak jelas mengapa hasil-hasil tersebut relevan untuk mendukung penelitian ini. Tidak ada analisis mengenai bagaimana penelitian sebelumnya berkaitan dengan permasalahan yang diangkat.  
Penulis agar menjelaskan dengan lebih spesifik keterkaitan penelitian terdahulu dengan penelitian yang dilakukan. Misalnya, jelaskan bagaimana temuan Larwuy et al., Adri et al., dan Hadiati et al. menginspirasi atau mengisi celah dalam penelitian ini  
Jawaban: peneliliti menambahkan relevansi hasil penelitian terdahulu dalam mendukung penelitian ini dan keterkaitan dengan penelitian ini. (dengan warna cokelat)

To collect data, this paper employed literary study and field study techniques. The latter was carried out through interviews. The data collection study was divided into two, namely primary data and secondary data. The primary data were obtained from field studies, while the secondary data were sourced from literary studies. Then, the analyzing results of the field study were analyzed to obtain a conclusion.<sup>12</sup> They were then analyzed using the integrative and conceptual analysis methods which tend to be directed to find, identify, process, and analyze legal materials to understand their meaning, significance, and relevance.

### 3. RESULTS AND DISCUSSION

#### 3.1 Implementation of Restitution Right Fulfillment to Child Sexual Crime Victims in North Maluku High Prosecutor's Office

In 2017, the government issued Governmental Regulation No. 43 of 2017 on the Implementation of Restitution for Children as Criminal Victims (GR No. 43 of 2017) which was an implementing regulation of the Law on Child Protection. This Governmental Regulation is relevant and is specially directed to give restitution rights to children who became crime victims. This GR regulates children's rights to obtain restitution from perpetrators due to their actions that bring physical and/or psychological harm to children that hinder them from carrying out their functions.<sup>13</sup>

Apart from GR No. 43 of 2017, there is also another government regulation which governs the granting of restitutions, namely Governmental Regulation No. 7 of 2018 on the Granting of Compensation, Restitution, and Aid to Witnesses and Victims (GR No. 7 of 2018). It is just that GR No. 7 of 2018 focuses on all victims of criminal actions. Therefore, this study uses the GR No. 43 of 2017 legal instrument as a basis for giving restitution as this governmental regulation specially regulates the implementation of restitution for children as criminal victims. Further, the Supreme Court issued the Supreme Court's Regulation No. 1 of 2022 on the Guidelines to Applying and Granting Restitution and Compensation to Criminal Victims. GR No. 7 of 2018 and Supreme Court Regulation No. 1 of 2022 give support or clarify the restitution application in the context of the researched case.

The Supreme Court's Regulation No. 1 of 2022 on the Guidelines to Applying and Granting Restitution and Compensation to Criminal Victims comprises 34 Articles and 8 Chapters. It applies to the application of restitution and compensation over a certain crime. According to Article 2 of this Supreme Court's Regulation, restitution can be applied for in some cases of criminal actions, such as severe violation of human rights, terrorism, human trafficking, racial and ethnic discrimination, crimes related to children, as well as other criminal actions that are determined in the decision of the Institution for the Protection of Witnesses and Victims as stipulated in legal regulation stipulations. Meanwhile,

<sup>12</sup> 13

<sup>13</sup> Atikah Rahmi, "Pemenuhan Restitusi Dan Kompensasi Sebagai Bentuk Perlindungan Bagi Korban Kejahatan Seksual Dalam Sistem Hukum Di Indonesia," *Delegata Jurnal Ilmu Hukum* 4, no. 2 (2019): 140–59, <https://doi.org/10.30596/dj1.v4i2.3173>.

**Commented [REVIEWERS]:** Jelaskan bagaimana pendekatan statute (analisis peraturan perundang-undangan) dan pendekatan kasus (analisis kasus konkret) diintegrasikan dalam penelitian empiris ini. Misalnya, "The statute approach was used to analyze relevant legal provisions on restitution, while the case approach focused on real-world examples of restitution applications." Jawaban: telah di tambahkan pada metode dengan warna merah

compensation can be applied in cases of criminal actions related to severe violations of human rights and terrorism, as stipulated in legal regulation stipulations.

Regulations have actually existed. However, there have been many critiques on the unavailability of sanctions for law enforcing apparatuses such as prosecutors and judges who did not decide on a restitution. Apart from that, there is no mechanism that is strong enough to force perpetrators to pay restitution (such as confiscating collateral in the form of the perpetrator's wealth until the restitution is paid) or the lack of sanctions such as the asset and wealth freeze for perpetrators who fail to pay restitution. This has serious implications. Thus, only few cases of rape ended with a restitution sanction. These challenges make few cases of rape and/or sexual assault end with a verdict in the form of a restitution. An implication of this is that only a few children who became rape victims obtain restitution which is actually the right of the victim.

The decision on restitution may obtain a permanent legal power if the penal decision also obtained a permanent legal power. Related to the application for restitution demands, some things must be considered, namely the harm that is caused by the criminal action or other people that suffer from the harm (victims) as a direct impact of that criminal action, the application for restitution that was caused by that criminal action is directed to criminal perpetrators (defendants) and the restitutions applied to the defendants are compiled with or simultaneously examined and decided along with the examination and decision of the criminal case that was charged to the defendants in the form of one decision.

Therefore, it is deemed that the process or procedures and substances of the regulation on restitution have a weakness. Even though regulations have guaranteed restitution rights, the implementation in the field is still weak due to a lack of coordination between prosecutors and other law enforcing apparatuses. Apart from that, society also lacks an understanding of restitution rights. This leads to the effectiveness in implementing this right. As a consequence, it has also decreased the effectiveness of the implementation of restitution for children who became child rape victims. In the end, it will bring harm to victims.

In its practice, it is very rare for this joint case on restitution lawsuit to happen. Thus, the issue is rather complex. The next challenge in this application for restitution is that there are many ways for a criminal perpetrator to reject paying it. In the current practice, there is no guarantee that the restitution will immediately be paid to the victims.<sup>14</sup>

For instance, there was a rape case in the Jailolo Police Station, North Maluku Province, 2021. In this case, the perpetrator, N, was punished with imprisonment for six years. Then, the prosecutor inserted a demand of fines with an amount of six billion rupiahs (which is not restitution as fines will be given to the state treasury whereas restitution is given to victims) as well as so that the perpetrator is fired from his job as a

**Commented [rr6]:** Pada bagian yang membahas tantangan implementasi, fokuskan pada tiga hingga empat tantangan utama yang dihadapi Kejaksaan Tinggi Maluku Utara, seperti keterbatasan mekanisme paksaan bagi pelaku untuk membayar restitusi, rendahnya kesadaran masyarakat, dan kurangnya informasi kepada korban. Tambahkan ringkasan bagaimana tantangan ini berdampak pada rendahnya pemenuhan restitusi.  
Jawaban: telah ditambahkan dengan warna hijau

Diskusi kasus terlalu panjang dan dapat diringkas. Alih-alih menyajikan kronologi yang mendetail, cukup ringkas dengan menyebutkan poin penting seperti hasil akhir, hambatan utama dalam kasus tersebut, dan dampaknya terhadap korban. Misalnya, "Dalam kasus kejahatan seksual di Ternate pada tahun 2021, jaksa gagal menuntut restitusi karena kurangnya informasi tentang hak korban."  
Jawaban: telah ditambahkan pada point 3 Sub Point 3.1 (dengan warna ungu)  
Tekankan kesenjangan dalam implementasi, misalnya: "Meskipun peraturan telah menjamin hak restitusi, implementasi di lapangan masih lemah karena kurangnya koordinasi antara jaksa dan aparat penegak hukum lainnya, serta kurangnya pemahaman masyarakat tentang hak restitusi."  
Jawaban: telah ditambahkan pada poin 3 sub poin 3.1 dengan warna abu abu

police officer.<sup>15</sup> It seems that prosecutors do not understand the restitution concept. Thus, he chose the option of fines which, if granted, does not bring any benefits for the victims.

In cases of rape, the police force does not discuss the harm that victims suffer from, including physical wounds and psychological trauma, with treatment that needs to be paid for using restitution at all. Meanwhile, prosecutors are not active in demanding restitution as they lack concerns over victims' fate that require physical and psychological treatment that needs to be paid for using restitution. Thus, they chose the option of fines. On the other hand, judges are still focused on the Criminal Code. They tend to ignore the existence of the restitution in the Law on Sexual Violence Crime. Thus, in the decision considerant, they tend to give a penal verdict without restitution. So far, there has only been one case where the judge decided a verdict of restitution or compensation for children who became victims of rape.

What usually happens is that perpetrators do not want to pay or they state as not being able to pay. It is very seldom for perpetrators to want to pay restitution except in cases of the crime of human trafficking. This is because there is a coercive mechanism that may be imposed on the perpetrators, such as the confiscation of assets. Meanwhile, concerning restitution outside of the crime of human trafficking, there have not been any regulations on the consequences for perpetrators who are unwilling to pay restitution to victims. With this situation, in its implementation, victims still do not obtain financial compensation.<sup>16</sup>

The concept of redressal that is known in Indonesia is restitution and compensation. Redressal is a form of direct protection for victims. But in its application, both the Indonesian law enforcing apparatus and society as a whole do not understand restitution and compensation. The differences between restitution and compensation can be seen from two aspects: (1) compensation is a demand to fulfill redressal that is carried out by victims through an application that is paid for by society or the state. This compensation does not require the existence of a sanction imposition to criminal perpetrators and (2) in restitution, the demand for redressal is carried out through a courtly decision and is paid for by criminal perpetrators.<sup>17</sup>

The implementation of restitution must be according to the principle of recovering the condition to its original state (*restitutio in integrum*). This is an effort so that the criminal victims may be returned to their original state before the crime occurred. Even though basically, it is impossible for the criminal victims to return to the condition before they experienced the harm they suffered from. This principle also states that the forms of recovery that must be carried out to victims must be complete and encompass various

<sup>15</sup> Irfansyah, Perkosa Anak di Bawah Umur, Mantan Anggota Polisi di Maluku Utara Divonis 6 Tahun Penjara <https://indotimur.com/hukrim/perkosa-anak-di-bawah-umur-mantan-anggota-polisi-di-maluku-utara-divonis-6-tahun-penjara> diakses pada 5 November 2024

<sup>16</sup> Ace King Hutaaruk, Yusrizal Yusrizal, and Muhammad Hatta, "Ace King Hutaaruk, Yusrizal Yusrizal, Muhammad Hatta," *Jurnal Ilmiah Mahasiswa* 6, no. 4 (2023): 2023, <https://doi.org/10.29103/jimih.v6i4.13075>.

<sup>17</sup> H. S. Disemadi, "Adultery Child Status In Islamic Law And In The Civil Code," *Legal Standing : Jurnal Ilmu Hukum* 3, no. 2 (2019): 20–31, <https://doi.org/10.24269/ls.v3i2.1877>.



aspects<sup>17</sup> that occur due to the crime. Through the application for restitution, it is hoped that the legal rights, social status, family life and citizenship of the victims may be restored. It is also hoped to restore their careers and assets.<sup>18</sup> In fulfilling these restitution rights, an application for restitution is proposed by the party of the victim. In granting the restitution, there are some important points in its mechanism as follows:<sup>19</sup>

In North Maluku, there was only one case which obtained the restitution verdict. Thus, there are not many examples. However, in other areas, there have been efforts to heal victims from wounds and depression by taking them to psychiatrists and doctors. Then, victims have the right to obtain legal assistance, transportation aid, cost of living, as well as other required funds, including a safe and proper place of living, spiritual assistance, as well as education facilities as part of victims' rights to obtain treatment with funds taken from the restitution.<sup>20</sup>

Before submitting the application to obtain restitution to court, it must first be remembered that an application must be submitted in written form using the Indonesian language. It must be added with a duty stamp and submitted before the courtly decision, i.e., during the investigation and prosecution stages. During<sup>21</sup> the investigation period, investigators may priorly inform the party of the victim on the rights of the children that became victims of the crime to obtain restitution as well as the procedures of submitting it.<sup>21</sup> Through this notice, the party of the victim has a period of a maximum of three days to file a restitution application.

Based on the description above, it can be understood that the Law on Child Protection has guaranteed the protection of children's rights as part of the human rights that must be protected and fulfilled by parents, families, society, the state, and the government. Therefore, this protection aims to guarantee and protect children and the rights that they have so that they may grow, and develop. This is so that children may optimally participate according to their dignity and honor as human beings and so that they may obtain protection from violence and discrimination.<sup>22</sup>

The Law on Child Protection also regulates the guarantee of protection to children by the state. This is contained in its second part which stipulates the joint responsibility and obligation of the country and the government to protect and fulfill children's rights. Articles 21 to 24 regulate how to honor children's rights without discrimination, how to

<sup>17</sup> Sapti Prihatmini et al., "Pengajuan Dan Pemberian Hak Restitusi Bagi Anak Yang Menjadi Korban Kejahatan Seksual (Submission and Granting of Restitution Rights for Children Who Are Victims of Sexual Crimes)," *Jurnal Tranjojo* 14, no. 1 (2019), <https://doi.org/10.21107/jt.v14n1.4768>.

<sup>18</sup> T. A. Putri, "Perlindungan Terhadap Tindak Pidana Kekerasan Seksual Dalam Perspektif Hukum Pidana Di Indonesia," *Media of Law and Sharia* 5, no. 2 (2024): 126-140, <https://doi.org/10.31157/mls.v5i2.57>.

<sup>19</sup> Ghina Nabilah, Atika Nur Rahmah Utama, Irene Maria Angela, Nabila Nariswari, "Perlindungan Hukum Bagi Korban Kekerasan Seksual: Upaya Pemulihan dan Hak Privasi Korban Kekerasan Seksual di Era Digital," *Padjadaran Law Review*, Volume 10, Nomor 1, 2022, Pp 1-18.

<sup>20</sup> Prihatmini et al., "Pengajuan Dan Pemberian Hak Restitusi Bagi Anak Yang Menjadi Korban Kejahatan Seksual (Submission and Granting of Restitution Rights for Children Who Are Victims of Sexual Crimes)."

<sup>21</sup> Silvia Cahyadi and Rasji, "Perspektif Hukum Terhadap Perlindungan Anak Korban Kekerasan Seksual Dalam Undang-Undang Nomor 12 Tahun 2022," *Unes Law Review* 6, no. 4 (2024): 304-11, <https://doi.org/10.31933/unesrev.v6i4>.

make policies related to children, he<sup>8</sup> to strive to make child-friendly cities, as well as how to give support in the forms of facilities and infrastructure. It also regulates the provision of human resources in establishing child protection as well as guarantee children's rights to express their opinions according to their age and level of intelligence.<sup>23</sup> Further, stipulations of Article 25 regulate the role of society in establishing protection for children by involving societal organizations, academic institutions, and organizations that care for children.<sup>24</sup>

The guarantee for legal protection<sup>84</sup> for children must still pay attention to the principle<sup>1</sup> and goals of child protection. Children who have become victims of a criminal action have the right to obtain compensation or restitution for their sufferings that are according to the capability of the perpetrator based on their level of involvement, participation, and role. Meanwhile, the guarantee in the Law on Child Protection has substance<sup>82</sup> fulfilled the standard of child protection. Apart from that, it has provided special protection for children who became vic<sup>53</sup> of sexual abuse. On October 17th, 2017, the government issued a new regulation related to the protection<sup>4</sup> children as victims of crimes, especially concerning restitution. It is the Governmental Regulation No. 43 of 2017 on the Implementation of Restitution for Children as Criminal Victims which in total contains 23 Articles.

According to this Governmental Regulation, restitution is a redressal payment that is<sup>1</sup> posed on perpetrators based on courtly decisions that have permanent<sup>3</sup> legal power over material and/or immaterial losses suffered by victims or their heirs. It is also regulated in Article 71 D of the Law on Child Protection which states that:

“Victims have the right<sup>77</sup> to submit to the court over their restitution rights that become the obligation of perpetrators of sexual crimes against children.”

This regulation is crucial to clarify the mechanisms and procedures of giving and granting the application for restitution rights for children as victims of a crime. This regulation on restitution puts a greater emphasis on the redressal regulation of the recovery process for children as victims of a crime, especially in sexual abuse crime<sup>4</sup>. The presence of this regulation is also hoped to ease children as victims of a crime to apply for their restitution rights to court, which becomes the obligation of a criminal perpetrator.<sup>25</sup>

This regulation is specially a manifestation of the protection of victims. Apart from that, it serves as a literary source for law enforcement apparatuses to give greater consideration to the protection of children after a criminal action has happened. According

<sup>35</sup>  
<sup>23</sup> Prizqian, “Upaya Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Kekerasan Seksual Dikaji Melalui Hukum Pidana Indonesia,” *Journal Justiciabelen* 1, no. 1 (2021): 51.  
<sup>24</sup> Novita Apriyani, “Restitusi Sebagai Wujud Pemenuhan Hak Korban Tindak Pidana Kekerasan Seksual Di Indonesia,” *Revisi Hukum* 17, no. 1 (2021): 1–10, <https://doi.org/10.30872/risalah.v17i1.492>.  
<sup>25</sup> N. P. Sari, A. A. S. L. Dewi, and L. P. Suryani, “Perlindungan Hukum Terhadap Anak Penyandang Disabilitas Sebagai Korban Kekerasan Seksual,” *Jurnal Preferensi Hukum* 2, no. 2 (2021): 359–364, <https://doi.org/10.22225/jph.2.2.3338.359-364>. Gusti Ayu Trimita Sania and Anak Agung Sri Utari, “Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Pemerkosaan,” *Kertha Wicara: Journal Ilmu Hukum* 9, no. 3 (2020): 1–15, <https://jurnal.harianregional.com/kerthawicara/full-55084>.

to this regulation, the children who can apply for their restitution rights based on Article 2 number 2 of the Governmental Regulation No. 43 of 2017 on Implementation of Restitution for Children as Criminal Victims:<sup>26</sup> children who face the law; children who have been economically and/or sexually exploited; children who became victims of pornography; children who were victims of kidnapping, trafficking, and/or trade; children who became victims of physical and/or psychological violence; and children who became victims of sexual crimes.<sup>69</sup>

A law-enforcing apparatus in the prosecution sector has a crucial role in the effort to enforce the law, especially in the criminal law sector. The existence of Republic of Indonesia's Prosecution institution has a central position and a strategic role in a legal state as this institution becomes a filter between the investigation and examination processes in court. Therefore, its existence in society's lives must be able to take the burden of the law enforcement task.<sup>58</sup>

In handling a case, in the prosecution stage, prosecutors are called general prosecutors. General prosecutors may implement the decision of judges. Therefore, other prosecutors cannot implement the decision of judges. However, general prosecutors may implement executions as they are prosecutors. In essence, the difference between a prosecutor and a general prosecutor is that if the former is tasked with the activity of case handling during the prosecution stage, the prosecutor is called a general prosecutor. Outside of the prosecution task, he is called a prosecutor.<sup>27</sup>

Concerning the legality of a prosecutor as a functional officer, a prosecutor has the authority to act as a general prosecutor as well as execute the decision of the court that has obtained permanent legal power based on the law. Meanwhile, a general prosecutor is a prosecutor who, according to this law, is given the task and authority to carry out prosecution and implement the decision of the judge.

The authority of the attorney institution, which is a governmental institution that independently implements state power is regulated in Law No. 16 of 2004 on the Republic of Indonesia's attorney. This law gives the authority to the attorney in the sector of prosecution as well as other authorities that have been regulated based on the law. Thus, attorney and state power in the prosecution sector and other authorities are inseparable.

The submission of restitution application for children as sexual violence victims in the prosecution sector is regulated in Article 14 of the Governmental Regulation No. 43 of 2017 on the Implementation of Restitution for Children as Criminal Victims. It states that the general prosecutor in the North Maluku High Prosecutor's Office informs the party the victim on the rights of the children who became victims of sexual violence crimes to obtain restitution, and the guidelines to submit it before and/or within the trial process.<sup>28</sup>

<sup>19</sup> G. B. D. Pribadi, "Perlindungan Anak Sebagai Korban Pemerkosaan," *Konstruksi Sosial: Jurnal Peneli Ilmu Sosial* 2, no. 2 (2024): 53–60, <https://doi.org/10.56393/konstruksisocial.v1i8.1324>.

<sup>27</sup> A. Jamaludin, "Perlindungan Hukum Anak Korban Kekerasan Seksual," *JCIC: Jurnal CIC Lembaga Riset Dan Konsultan Sosial* 3, 2 (2021): 1–10, <https://doi.org/10.51486/jbo.v3i2.68>.

<sup>28</sup> A. Arianto, M. Mustamam, and M. Marlina, "Perlindungan Hukum Terhadap Anak Korban Tindak Pidana Pelecehan Seksual (Studi Di Kepolisian Resor Subulussalam)," *Jurnal Meta Hukum* 2, no. 3 (2023): 18–33, <https://doi.org/10.47652/jmh.v2i3.446>.

Concerning the time limit for submitting the restitution application during the prosecution stage, the application for restitution during the prosecution stage must be submitted at most three days after the notice on children's rights as criminal victims by the general prosecutor. The effort to demand restitution is carried out by a general prosecutor. According to Article 137 of the Criminal Procedural Code, "The general prosecutor has the authority to carry out a prosecution to anyone who is charged to have committed a criminal action in legal area by bestow the case to a court that has the right to adjudicate." Article 30 of Law No. 16 of 2004 on the Republic of Indonesia's attorney explains that the tasks and authorities of the prosecutor in the penal sector include:<sup>29</sup> carrying out prosecution; carrying out judges' determination and courtly decisions that have obtained permanent legal power; carrying out investigation to certain criminal actions based on the law; carrying out monitoring towards the application of conditional penal decisions, penal decisions on supervision, and conditional independent decisions; and completing certain case files and carrying out additional examinations before a case is bestowed to court by coordinating with investigators.

This paper suggests that the application of the above regulation is not yet adequate. In reality, in the North Maluku High Prosecutor's Office's legal area, the general prosecutors' role in striving for the fulfillment of restitution rights of child victims is by imposing basic penalties on the perpetrator. They do not make efforts to fulfilling the rights of victims by, for instance, giving restitution to children who became victims of sexual violence. This may be proven from the data in the North Maluku High Prosecutor's Office's legal area which handle more than 20 cases each month.

Letter of the Republic of Indonesia's Institution for the Protection of Witnesses and Victims No. R-1589/5.1.HSHP/LPSK/06/2022 dated June 27<sup>th</sup>, 2022 contains a Demand of Information. In principle, it demands information on the proposal of restitution application that was submitted by the Institution for the Protection of Witnesses and Victims under the name of The Protected Miss Nur Indah a.k.a. Indah Binti Hartanto in a case under the name of the Offender Nermal Idwar a.k.a. Imal Bin Idwar that has been demanded upon by the Judicial Assembly of the Ternate District Court No. 254/Pid.Sus/2021/PN Ternate dated February 15<sup>th</sup>, 2022. But in that decision, there was no decision related the proposed restitution.

The demand for restitution rights was not granted by the Ternate District Court in 2022 due to a lack of information and guidance on the restitution rights of victims or the party of the victim. During the prosecution stage of the initial meeting between the general prosecutor and the party of the victim, law enforcers should inform the latter of the methods of demanding it according to Article 14 of the Governmental Regulation No. 43 of 2017 on the Implementation of Restitution for Children as Criminal Victims of sexual crimes.

<sup>29</sup> D. Yusyanti, "Perlindungan Hukum Terhadap Anak Korban Dari Pelaku Tindak Pidana Kekerasan Seksual," *Jurnal Penelitian Hukum De Jure* 20, no. 4 (2020): 619, <https://doi.org/10.30641/dejure.2020.V20.619-636>.

Based Letter of the Head of the North Maluku High Prosecutor's Office No. B-1117/Q.2/Eoh.2/07/2022 dated July 8<sup>th</sup>, 2022 and its main content, the following is a description of how that case was handled.

### 3.1 A. The Case Position

On Monday, June 14<sup>th</sup>, 2021 at around 03.00 a.m. of Central Indonesian Time, located at the Societal Guidance Room of the South Jailolo Sector Police, Sidangoli Village, Jailolo District, West Halmahera Regency, the offender, Nikmal Idwar a.k.a. Imal Bin Idwar Hi. Ishak (who is a member of the police force) has undergone intercourse with the child victim, Nur Inda Hartanto a.k.a. Inda who is 16 (sixteen) years old. She was born on June 8<sup>th</sup>, 2005 based on the Birth Certificate No. 1323/CS/HS/2006 dated June 15<sup>th</sup>, 2006, through violent means, i.e., the offender pushed the child victim until she fell backwards to the floor. He pulled the clothes and thighs of the child victim using the offender's knees. In the end, the offender inserted his penis into the vagina of the child victim, making the child victim feel scared.

### 3.1. B. The Case Handling Process

On August 10<sup>th</sup>, 2021, the General Prosecutor of the North Maluku High Prosecutor's Office returned the case files to the investigator based on Letter No. B-1350/S.21/Euh.1/08/2021 (P-19) which was equipped with instructions, one of which is asking investigators to help facilitate the child victim in making a complete restitution application by Institution for the Protection of Witnesses and Victims and attach it to the case files;

On September 12<sup>th</sup>, 2021, the aforementioned case was deemed complete according to the General Prosecutor in Letter No. B-1521/Q.2.4/Eku.1/09/2021 (P-21). Then, a handover of the perpetrator and evidence (Second Stage) was made at the Ternate District Attorney on October 6<sup>th</sup>, 2021; On October 27<sup>th</sup>, 2021, a case bestowment occurred to the Ternate District Court based on the Letter of Delegation of Ordinary Examination Procedure Matters No. B-1124/Q.2.10/Eku.2/10/2021 (P-31).

### 3.1. C. The Implementation of Courtly Decisions

The handling of the case under the name of Offender Nikmal Idwar a.k.a. Imal Bin Idwar Hi. Ishak, especially related to the application of restitution imposition to the offender (during the courtly process) can be explained as Originally, during the pre-prosecution stage, the general prosecutor has given a direction to the investigator to ask to have their application for restitution facilitated to the Institution for the Protection of Witnesses and Victims. Then, based on that request, the Institution for the Protection of Witnesses and Victims followed it up by issuing letter No. R-1124 /1.5.2 HSKR/LPSK/08/2022 dated August 23<sup>rd</sup>, 2021 on the Application of Restitution under the name of Nur Indah Hartanto, which also contained details on the assessment of the aforementioned restitution. Then, the results of that restitution assessment are inserted into the case files by the investigators;

That during the courtly process, the general prosecutor did not remember the existence of the aforementioned restitution assessment from the Institution for the Protection of Witnesses and Victims. Thus, it was not proposed during the trial and the party of the

victim and the Judge Assembly did not ask about this aforementioned restitution assessment.

Based on the description of the chronology and the legal facts above, this paper suggests that law enforcement for children as sexual crime victims in the legal area of the North Maluku High Prosecutor's Office is still suboptimum. Thus, it has not manifested legal justice and legal benefit to the party of the victims. The law enforcing apparatuses, including the investigators and the general prosecutor still lacked progressiveness in striving for restitution rights. This may be proven by the lack of restitution efforts in the legal area of the North Maluku High Prosecutor's Office. <sup>62</sup>

Based on the legal substance, the fulfillment of restitution rights for children victims of crimes has been regulated in Law No. 35 of 2014 on the Change of Law No. 23 of 2002 on Child Protection and Governmental Regulation No. 43 of 2017 on the implementation of Restitution for Children as Criminal Victims. The implementation of efforts to fulfill restitution rights for children as victims of crimes by the general prosecutor <sup>25</sup> is also regulated in the Guidelines of the Republic of Indonesia's Supreme Court No. 1 of 2021 on the Access of Justice for Women and Children in Handling Criminal Cases. This regulation has explained the guidelines and the process of applying for restitution. But this paper suggests that these regulations on restitution still have weaknesses. For instance, there is no coercive power to make perpetrators pay restitution.<sup>30</sup>

Apart from that, there is no explanation on whether the material fulfillment of restitution rights is included in principal or additional penalties. This is because restitution is not mentioned in the Criminal Code as a type of punishment. The party of the victim must be more active in striving for their restitution rights as restitution is not obligatory as the party of the victim did not submit a restitution application beforehand. This makes children who were victims of sexual crimes lose their chance to obtain restitution recovery because the general prosecutor only focused on demanding the punishment of imprisonment for the perpetrators.

This happened even though ideally, society desires that the general prosecutor applies his/her role based on his/her status/position better. It was shown that the general prosecutor still lacks a good application in giving information to the party of the victim and society on the restitution right's existence for children as victims of sexual crimes. Considering that most of the people in the legal area of the North Maluku High Prosecutor's Office still lack an awareness of the existence of restitution rights, the party of the victim also lacks the awareness to propose the application of restitution rights. <sup>27</sup>

Article 14 of the Governmental Regulation No. 43 of 2017 states that during the prosecution stage, the general prosecutor informs the party of the child victim on restitution rights as well as the guidelines on how <sup>25</sup> apply for it. Apart from that, Guidelines of the Republic of Indonesia's Supreme Court No. 1 of 2021 on the Access of Justice for Women and Children in Handling Criminal Cases Chapter V Letter A Number 6 also states that in

the initial meeting, the general prosecutor informs about the right of the victim to apply for restitution as well as the guideline on how to apply for it.<sup>31</sup>

### 3.2 Challenges in Fulfilling the Restitution Rights of Children as Victims of Sexual Crimes in Ternate City, Especially in North Maluku High Prosecutor's Office

Restitution is a right owned by criminal victims. For the party of the victim, the granting of restitution rights will be more meaningful compared to the penalty of imprisonment for perpetrators, especially for victims who experienced harm in the form of medical and psychological trauma, such as children as victims of sexual crimes. The rights of children are guaranteed and protected so that they can grow and develop according to their capabilities. Therefore, there must be efforts to protect the rights of children as sexual crime victims to achieve the goal of the law, namely to give justice.<sup>32</sup>

The prosecution of restitution rights is also one of the general prosecutors' capabilities. If general prosecutors do not desire or include the existence of restitution right demands in their demand order, the demand of restitution cannot be carried out. The lack of prosecution over the efforts to fulfill the restitution rights for children as sexual crime victims in the legal area of the North Maluku High Prosecutor's Office was caused by some hindrances that the general prosecutor faced. These were the hindrances of restitution rights efforts for children as sexual crime victims faced by general prosecutors:

Challenges in the application of restitution include social challenges (the lack of people's knowledge on restitution rights), procedural challenges (limited time availability to demand and process it), and coordination challenges (the lack of coordination between investigators and prosecutors in demanding restitution). This will ease readers on understanding various existing systematic obstacles in restitution application that needs to be well explained.

The main cause of this lack of coordination includes mindset and sectoral ego. From the aspect of the police force, most police officers who process rape cases are high school graduates who do not understand the law. Thus, they cannot follow the development of law. Meanwhile, from the side of senior police officers' development, they tend to be focused on the Criminal Code. Thus, it can be said that they highly understand the materials of the Criminal Code. Next, from the side of the prosecutor, they await more detailed implementation instructions considering that in the attorney, there is a commanding system, making implementation instructions crucial. A good coordination will only happen if these two institutions carry out internal improvement. For instance, in the police force, there should be training on "police investigation report with restitution". Then, in the attorney, implementation instructions are given on how to make demands with restitution for child rape cases.

#### 3.2. A Society lacks information on the existence of restitution rights

24

<sup>31</sup> R. Sari, S. A. Nulhaqim, and M. Irfan, "Pelecehan Seksual Terhadap Anak," *Prosiding Penelitian Dan Pengabdian Kepada Masyarakat* 2, no. 14 (2015). <https://doi.org/10.24198/jppm.v2i1.13230>.

<sup>32</sup> A. Purwanti and M. Hardiyanti, "Strategi Penyelesaian Tindak Kekerasan Seksual Terhadap Perempuan Dan Anak Melalui RUU Kekerasan Seksual," *Masalah-Masalah Hukum* 47, no. 2 (2018). <https://doi.org/10.14710/mmh.47.2.2018.138-148>.

**Commented [REVIEWER7]:** Penulis dapat menyusun bagian ini dengan urutan yang lebih sistematis. Mulailah dengan menjelaskan peraturan dasar (GR No. 43 of 2017) yang relevan khusus untuk anak sebagai korban, kemudian jelaskan bagaimana peraturan lainnya (seperti GR No. 7 of 2018 dan Supreme Court Regulation No. 1 of 2022) memberikan dukungan atau memperjelas penerapan restitusi dalam konteks kasus yang diteliti.  
Jawaban: telah ditambahkan dalam POINT 3. Sub 3.1 dengan warna merah

Penulis dapat menambahkan analisis yang lebih kritis terhadap kelemahan peraturan hukum yang ada. Misalnya, kritik terhadap ketiadaan mekanisme yang memaksa pelaku untuk membayar restitusi atau kurangnya sanksi bagi pelaku yang tidak membayar restitusi. Jelaskan implikasinya terhadap perlindungan hak korban dan keadilan hukum.  
Jawaban: telah ditambahkan dalam POINT 3. Sub 3.1 dengan warna Hijau

Penulis dapat menambahkan contoh kasus spesifik dari wilayah North Maluku yang menunjukkan tantangan dalam implementasi restitusi, misalnya kasus di mana restitusi tidak diberikan karena pelaku menolak atau alasan teknis lainnya. Jelaskan bagaimana hal ini menunjukkan kelemahan dari mekanisme yang ada.  
Jawaban: peneliti menambahkan kasus spesifik dengan warna kuning di Poin 3, Sub Poin 3.1

Jelaskan lebih mendalam peran aparat penegak hukum, khususnya jaksa, dan bagaimana tindakan atau kelalaian mereka memengaruhi hak korban. Misalnya, deskripsikan mengapa jaksa tidak aktif dalam menuntut restitusi, dan bagaimana hal ini menunjukkan kurangnya pemahaman tentang urgensi perlindungan hak anak.  
Jawaban: telah di tambahkan di Poin 3 Sub Poin 1, dengan warna ungu

Sdr penulis dapat menguraikan bagaimana prinsip restitusi ini integum dipenuhi dalam kasus restitusi untuk anak korban kejahatan seksual di North Maluku. Apakah restitusi yang diberikan benar-benar berupaya mengembalikan kondisi korban seperti sebelum kejahatan terjadi? Berikan contoh-contoh nyata.  
Jawaban: telah ditambahkan, karena hanya ada satu kasus divonis restitusi. Pemulihan korban seperti ke psikiater dan dokter telah dilakukan sebagai upaya memulihkan korban dari luka dan depresi (di warna merah)

**Commented [rr8]:** Dapat dijadikan sebagai sub sub bab  
Jawaban: dijadikan sub bab

Based on the observation that was carried out for this paper, in the North Maluku High Prosecutor's Office there has almost never been a direct demand for restitution rights from the party of children as sexual crime victims to the general prosecutor during the prosecution stage. Therefore, general prosecutors seldom strive to demand it during the trial as they deem that victims do not need their rights for restitution or redressal. General prosecutors suggest that restitution rights are rights that are proposed by the party of the victims themselves. Apart from that, restitution is a right. Therefore, it does not have to be fulfilled if the party of the victims did not apply for it. Thus, if the party of the victims did not apply for their restitution rights, the general prosecutor only focuses on the principal punishment.<sup>56</sup>

The success of law enforcement is perceived from three aspects of the legal system, namely legal substance, legal structure, and legal culture. In the legal culture aspect, the police institution is too focused on former regulations (such as the Criminal Code) but lacks attention to laws with *lex specialis* characteristics. Another legal culture in society is that society tends to give judgement or insults to rape victims. As a result, not all victims have the courage to speak up and sue the perpetrator in the legal route. This unhealthy legal culture in society needs to be changed.

From these three aspects, what gained special attention was the legal structure aspect in the judicial, attorney, police force, lawyer, and correctional institution sectors. If there are issues in this legal structure, it will make society lose trust towards the law. Thus, the role of the general prosecutor highly influences whether or not law enforcement will become successful, just like the efforts to apply for victims' restitution rights. Apart from that, the perception of society and law-enforcing apparatuses influence the fulfillment of restitution rights.

### 3.2. B Hindrances in the form of limited time

Time constraints are caused by the limited time given for the defendant's arrest by the Public Prosecutor, which is only 20 (twenty) days if the documents are deemed complete (P-21). If it has been deemed complete, the contents of the case documents can no longer be added or subtracted by the investigators. Thus, before the documents are deemed complete (P-21), the restitution calculation must already be done and it must already be included in the case documents.

Moreover, there is a stipulation that the time period from Stage II to Stage III is only three days. Thus, it is almost impossible for the general prosecutors to coordinate to strive<sup>18</sup> restitution with the party of the victim. Apart from that, much time is<sup>3</sup> needed to assess the amount of losses suffered by the victim by the Institution for the Protection of Witnesses and Victims. Such factors become the consideration of the general prosecutors to carry out efforts to fulfill restitution rights during the prosecution stage. The hindrance in the form of a limited time makes general prosecutors unable to maximally carry out efforts to demand the restitution rights of children as sexual crime victims during the



prosecution stage. Thus, in carrying out their tasks, general prosecutors are risked experiencing a role failure.<sup>33</sup>

The challenge in the form of a limited time happens when the restitution is applied for during the prosecution stage. On the other hand, if there is a chance for restitution rights to be fulfilled in a case, the application for restitution should be able to be strived for starting from the investigation stage by investigators. This is because during the investigation stage, the period of the perpetrator's arrest is longer, as investigators can arrest the perpetrator for 20 (twenty) days. Then, it can be extended by the Public Prosecutor for 40 (forty) days according to the Criminal Procedural Code. Thus, in the investigation stage, the Institution for the Protection of Witnesses and Victims is given enough time to calculate the restitution.

Apart from that, a better method may be achieved by the party of the victim by directly asking the Institution for the Protection of Witnesses and Victims to calculate the number of losses suffered by the victim that will then be delivered to the investigators. Through this method, the efforts to fulfill restitution rights may effectively and efficiently be carried out. This brings a great opportunity to the success in demanding restitution rights. However, such a method must be supported by the legal awareness of the party of the victim as well as their knowledge of the existence of restitution rights. This is because in reality, most people still do not know about restitution rights, especially the restitution rights of children as sexual crime victims.

### **3.2. C. Frequent lack of coordination between the investigators and the general prosecutors**

Before the courtly decision, restitution may be proposed to the investigation stage or during the prosecution. During the investigation stage, restitution may be proposed to the investigators. But in reality, investigators sometimes do not strive for the fulfillment of restitution rights during the investigation stage. But based on the facts in court, general prosecutors found that there is a chance for the victim to obtain restitution rights. In this case, the general prosecutors will experience difficulties when striving for the fulfillment of restitution rights during the prosecution stage due to the limited time.

Based on the interview results of the researcher with a general prosecutor, it was found that so far, there has not been an education to society in the legal area of the North Maluku High Prosecutor's Office concerning the existence of restitution rights. Law enforcers and social institutions should carry out education to society so that they know of the rights they should obtain. General prosecutors in North Maluku can carry out education through legal service programs to society through the *Jaka Sambung (Jaksa Sambang Kampung/Prosecutor Visits Villages)* program on the existence of restitution rights.

It is not enough to only perceive the legal system from the codes of rules and regulations. But there must also be consideration for the role of legal institutions in carrying out law enforcement. Good coordination between investigators and general

<sup>33</sup> S. Efendi and D. Kasih, "Upaya Penanggulangan Kekerasan Seksual Terhadap Anak Di Aceh Barat Dalam Persepektif Hukum Islam," *Legalite: Jurnal Perundang Undangan Dan Hukum Pidana Islam* 7, no. 2 (2022), <https://doi.org/10.32505/legalite.v7i2.4705>.

35

prosecutors has a great influence on the effort to fulfill the restitution rights of children as sexual crime victims. According to this paper, if in a case of sexual crime against children, it is deemed that restitution rights might be strived for, the general prosecutor and investigators as law enforcing apparatuses should carry out these efforts:

### 3.2. D. During the Investigation Stage

If during the investigation stage, investigators assess that this case is suitable to have the victim's restitution rights applied for, then the investigators must strive for it by informing the party of the victim to submit the restitution right application. Concerning the issue of the limited period of the perpetrator's arrest, investigators ask the general prosecutor to extend the perpetrator's arrest for at most 40 (forty) days according to Article 24 clause (2) of the Criminal Procedural Code. Investigators may ask for an extension of the perpetrator's arrest to the general prosecutor under the reason of the interest of completing the investigation process. Investigators will deliver the main reason for this interest in a resume that contains the basic reasons that are truly needed for the examination interest. In this case, it is to strive for the fulfillment of restitution rights by applying for it.

### 3.2. E. During the Pre-Prosecution Stage

If during the pre-prosecution stage, the general prosecutor assesses that this case is suitable to have the victim's restitution rights applied for, then the general prosecutor may inform the investigators to include a case document to strive for the fulfillment of restitution rights by applying for it. The pre-prosecution stage is the stage of case document back and forth between the general prosecutor and the investigator. If the case document is incomplete, it will be returned to the investigator. This is stated in Article 110 clause (2) of the Criminal Procedural Code, which states:

63

"If the general prosecutor suggests that the investigation results are still incomplete, the general prosecutor will immediately return the case document to the investigators, along with the indications of what must be completed."

The main obstacle for a judge /general prosecutor in the North Maluku High Prosecutor's Office in granting restitution for victims of sexual violence crime is the lack of effective application of the technical guidelines on restitution demand, especially in determining the magnitude of the restitution loss value that are demanded by the victim/the victim's family to the perpetrator. The amount of money asked for is still too great compared to the capability of the perpetrator/family of the perpetrator. In the end, the restitution demand becomes useless. Apart from that, in the statute sector, the stipulations on coercive power for sexual violence crime perpetrators have not provided legal implications accommodating protection to the victims.

This article regulates that the application submission must at least contain a description of the losses the victims suffered from as well as the magnitude of the amount of restitution. All these submission requirements are certainly difficult for the victims or the family/guardian of the victims to fulfill. It will certainly be better if this administrative

affair may be facilitated with the help of attorneys or the Institution of Witness and Victim Protection as an institution that victims may come to when asking for help.

#### 4. CONCLUSION

It was found that the restitution fulfillment of children as sexual crime victims in the North Maluku High Prosecutor's Office was still suboptimum as there was only one case in 2022 where the general prosecutor strived to demand restitution. The restitution is regulated in the Governmental Regulation No. 43 of 2017 on the Implementation of Restitution for Children as Criminal Victims and its application is regulated in Guidelines of the Republic of Indonesia's Supreme Court No. 1 of 2021 on the Access of Justice for Women and Children in Handling Criminal Cases. Some obstacles in fulfilling restitution rights in Ternate City include the lack of social awareness of the restitution, limited time, as well as the lack of coordination between the investigators and the general prosecutors. Law enforcing apparatuses and social institutions need to organize an education program on the existence of restitution rights for children as sexual crime victims in the North Maluku Province. The application for restitution should be strived for by law enforcers rather than victims or representatives of the victims that must apply for the fulfillment of the victim's rights starting from the investigation stage so that the amount of restitution can more optimally be calculated as there is more time. It is hoped that law enforcers, especially the North Maluku High Prosecutor's Office become more progressive in striving for the restitution rights of children as sexual crime victims to bring justice to victims.

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Pembahasan mengenai kurangnya koordinasi antara penyidik dan jaksa hanya disampaikan secara deskriptif tanpa ada analisis mendalam mengenai mengapa hal ini terjadi dan bagaimana dampaknya pada korban. Jelaskan lebih lanjut penyebab utama dari kurangnya koordinasi ini, misalnya karena perbedaan pemahaman antara penyidik dan jaksa terkait prosedur restitusi, atau keterbatasan sumber daya. Tambahkan pula bagaimana koordinasi yang lebih baik dapat membantu dalam memenuhi hak restitusi anak korban kejahatan seksual. Jawaban: ditambahkan dalam 3,2 dengan warna silver

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