

## ***Realizing Restitution Justice for Child Victims of Sexual Assault***

**Wahab Aznul Hidayah, A. Sakti R.S. Rakia, Paulinus Kora,  
Muhammad Ali, Hadi Tuasikal**

Faculty of Law, University Muhammadiyah Sorong, Sorong, Indonesia  
wahabaznulhidaya@um-sorong.ac.id

### ***Abstract***

*Children who are victims of crime often face severe challenges in their recovery after the incident. In the context of the Indonesian criminal justice system, protecting their rights is still an issue that has not been fully resolved. This study aims to analyze the procedures and considerations of judges in determining the amount of compensation for victims, especially children, who are victims of crime. The normative method examines relevant legal regulations and related legal principles. The analysis shows that the regulation on restitution for child victims has provided a systematic framework to ensure fair compensation. However, there are still challenges in effectively implementing restitution, especially in cases of sexual assault, where offenders often struggle to fulfill their restitution obligations. It creates injustice for victims, who have to bear the brunt of financial and emotional losses. In this context, the role of the judge is crucial in determining the amount of restitution appropriate to the loss suffered by the victim. The protection of child victims of crime is not only the responsibility of the criminal justice system but also of the entire society. Therefore, further measures are needed to increase public awareness and support in victim recovery, as well as to ensure that the criminal law system is more humane and progressive in protecting the rights of victims, especially the rights of children.*

**Keywords:** *Child; Restitution Justice; Sexual Assault; Victim of Crime*

### **1. INTRODUCTION**

In their growth process, children are greatly influenced by the social and physical environment in which they live.<sup>1</sup> Environmental influences can vary from positive to negative.<sup>2</sup> At first, the punishment system in Indonesia was based on retributive justice, where the aim was to retaliate for the crimes committed by the offender.<sup>3</sup> Criminal offenders are considered responsible for their actions and must face the consequences, which are criminal punishment. However, this concept of retributive justice has developed over time, where punishment not only aims to take revenge but also improves prisoners' behavior through guidance and rehabilitation.<sup>4</sup>

Although Law Number 35 of 2014 on Child Protection (Child Protection Law) has regulated child protection,<sup>5</sup> especially in cases of sexual assault such as rape, its implementation has not been fully effective in providing optimal protection to child victims. The law currently only stipulates criminal sanctions for offenders without providing specific

---

<sup>1</sup> Deni Setiyawan, Muhammad Ramli, And Noor Rahmad, "Kedudukan Rasio Decidendi Hakim Dalam Pemenuhan Hak Restitusi Kepada Korban Kejahatan Seksual Pada Anak," *Jatijajar Law Review* 1, No. 1 (2022): 38, <https://doi.org/10.26753/Jlr.V1i1.729>.

<sup>2</sup> H. C. Sry Wahyuni, "Pelaksanaan Diversi Dalam Penyelesaian Perkara Anak Yang Berhadapan Dengan Hukum," *Jurnal Cendekia Hukum* 4, No. 1 (2018): 117–128.

<sup>3</sup> Dandy Rahardiyana Saputra Et Al., "Tujuan Ideal Pemidanaan Paradoks Terhadap ( The Purpose Of Criminal Law Paradox To The Optimization Of The Role Of)," *Ncols*, 2020, 978–79.

<sup>4</sup> Ahmand Zaki Dan Diyan Yusri, "Rehabilitasi Menuju Rekonsiliasi (Kasus Kelompok Rentan Berhadapan Dengan Hukum)," *Jurnal Ilmu Pendidikan* 7, No. 2 (2020): 809–20.

<sup>5</sup> W. A Hidayah, "Penyidikan Anak Pelaku Tindak Pidana Dalam Perspektif Undang-Undang No 35 Tahun 2014," *Justisi* 7, No. 1 (2021): 26–37, <https://doi.org/10.33506/Js.V7i1.1156>.

provisions regarding the rights of children as victims, especially rights after a criminal offense. One form of protection needed is the provision of compensation or restitution to victims, which has not been regulated in the law. Article 81, paragraph (1) of the Child Protection Law only regulates two types of punishment imposed on the offender or defendant: corporal punishment and fines.<sup>6</sup>

Victims of crime as individuals who suffer from violations of the law are often only involved in providing testimony as witnesses.<sup>7</sup> As a result, victims often feel dissatisfied with the criminal charges filed by the public prosecutor or the verdict imposed by the judge because it is considered that it does not meet the standards of justice according to the victim's view. It is due to the criminal justice system's focus on prosecuting offenders rather than serving the interests of victims. The criminal justice system operates to uphold the law and the interests of the state and society, not to meet the needs of private individuals. Therefore, the harm suffered by victims of crime is often considered a calamity that must be borne by the victim alone, as it is not the primary purpose of the criminal justice system to address it.<sup>8</sup>

However, in Indonesia, victim protection is regulated in Law Number 31 of 2014 on the Amendment to Law Number 13 of 2006 on Witness and Victim Protection, commonly referred to as the Witness and Victim Protection Law.<sup>9</sup> This protection includes all efforts to fulfill victims' rights and provide assistance to provide security to them, which must be carried out by the Witness and Victim Protection Agency (*LPSK*) or other institutions per applicable regulations. Restitution is one form of protection provided to victims as part of fulfilling their rights.

Judging from the provision of fines that the defendant must pay to the state and the corporal punishment that must be served in the Correctional Institution, this is considered unfair to the victim. The provision of compensation to the victim by the offender of the crime is a form of criminal liability based on fault.<sup>10</sup> However, in the reality of law enforcement, especially in cases of rape crimes, court decisions only fulfill the element of legal certainty from the three elements of legal objectives, namely justice, certainty, and expediency. However, from the point of view of justice and expediency, it still feels unfair because the legal benefits have yet to be fully fulfilled, even though legal certainty has been realized. These decisions only affect the defendant or offender, while victims' rights are

---

<sup>6</sup> Wahab Aznul Hidayat, "Penerapan Diversi Dalam Sistem Peradilan Pidana Anak," *Justisi* 5, No. 2 (2019): 84–96, <https://doi.org/10.33506/Js.V5i2.543>.

<sup>7</sup> Ni Putu Rai Yuliantini, "Kedudukan Korban Kejahatan Dalam Sistem Peradilan Pidana Di Indonesia Berdasarkan Kitab Undang-Undang Hukum Acara Pidana (KUHAP)," *Jurnal Komunikasi Hukum* 1, No. 1 (2015): 1576–80.

<sup>8</sup> Marasabessy Fauzy, "Restitusi Bagi Korban Tindak Pidana: Sebuah Tawaran Baru," *Jurnal Hukum & Pembangunan* 45, No. 1 (2015), <https://scholarhub.ui.ac.id/jhpavailableat:https://scholarhub.ui.ac.id/jhp/vol45/iss1/3>.

<sup>9</sup> Wahab Aznul Hidayat, "The Role Of Witness And Victim Protection Agency For Imekko Tribe In Criminal Justice System In Sorong" 8, No. 2 (2023): 176–91, <https://doi.org/10.23917/Laj.V8i2.2363>.

<sup>10</sup> Irwandi, "Penegakan Hukum Pemberian Hak Restitusi Terhadap Korban Tindak Pidana Perdagangan Orang Dalam Perspektif Kearifan Lokal Di Aceh," *Al Ilmu : Jurnal Keagamaan Dan Ilmu Sosial* 08, No. 2 (2023): 1–23.

neglected.<sup>11</sup>

Various efforts have been made to change the criminal law system to be more progressive and humanist in fulfilling the rights of victims, one of which is the implementation of Government Regulation Number 43 of 2017 on the Implementation of Restitution for Children who are Victims of Crime. However, despite this regulation, there is no detailed provision regulating the amount of compensation for victims, especially children who are victims of sexual assault.<sup>12</sup>

The responsibility of offenders towards victims of crimes, including sexual assault, as well as how these victims obtain their rights from the offenders for their actions, needs to be considered. Therefore, the role of judges who have the authority to determine the amount of compensation for victims by prioritizing justice for victims is needed<sup>13</sup>. The urgency of the study is visible injustices in the legal system, especially regarding protecting victims of crime. The study can identify gaps in the system and provide recommendations for legal reform to ensure better protection for victims, especially children. The novelty of the study could be conducted to formulate more detailed and comprehensive guidelines in determining the amount of compensation for victims of sexual assault, especially children. These guidelines could consider factors such as the severity of the act, psychological impact, financial loss, and the victim's recovery needs.

The difference with the previous research lies in its focus. The previous research only reviews the influence of the social and physical environment on children's development, as well as how a bad environment can affect children's behavior and increase the risk of their involvement in legal problems. On the other hand, the author's research focuses on protecting the rights of children who are victims of crime in accordance with Indonesian Government Regulation Number 43 of 2017. This research also has the advantage of presenting a historical overview and evolution of the concept of justice from a retributive approach to rehabilitation, providing a more comprehensive perspective on the purpose of punishment, as well as emphasizing the importance of protecting victims' rights in the criminal justice system and the need for legal reform to ensure fair restitution.

The purpose of the author's research is to investigate how the protection of the rights of child victims of crime is regulated in accordance with Government Regulation Number 43 of 2017, as well as to expand the understanding of the purpose of the punishment system, which includes restitution and rehabilitation, in response to crimes against children.

---

<sup>11</sup> Irwan Safaruddin Harahap, "Perlindungan Hukum Terhadap Anak Korban Kejahatan Seksual Dalam Perspektif Hukum Progresif," *Jurnal Media Hukum* 23, No. 1 (2016): 37–47, <https://doi.org/10.18196/Jmh.2015.0066.37-47>.

<sup>12</sup> Miszuary, "Pelaksanaan Restitusi Bagi Anak Yang Menjadi Korban Tindak Pidana Sebagai Bentuk Pembaruan Hukum Pidana Berdasarkan Peraturan Pemerintah Nomor 43 Tahun 2017," *Soumatera Law Review* 2, No. 1 (2019): 115–34, [http://scioteca.caf.com/bitstream/handle/123456789/1091/Red2017-Eng-8ene.Pdf?Sequence=12&Isallowed=Y%0ahttp://Dx.Doi.Org/10.1016/J.Regsciurbeco.2008.06.005%0ahttps://Www.Researchgate.Net/Publication/305320484\\_Sistem\\_Pembetulan\\_Terpusat\\_Strategi\\_Melestar](http://scioteca.caf.com/bitstream/handle/123456789/1091/Red2017-Eng-8ene.Pdf?Sequence=12&Isallowed=Y%0ahttp://Dx.Doi.Org/10.1016/J.Regsciurbeco.2008.06.005%0ahttps://Www.Researchgate.Net/Publication/305320484_Sistem_Pembetulan_Terpusat_Strategi_Melestar).

<sup>13</sup> A. Sakti R.S. Rakia And Wahab Aznul Hidayat, "Aspek Feminist Legal Theory Dalam Peraturan Perundang-Undangan Di Indonesia," *Amsir Law Journal* 4, No. 1 (2022): 69–88, <https://doi.org/10.36746/Alj.V4i1.104>.

## 2. METHOD

This study focuses on exploring the amount of compensation stipulated in Government Regulation Number 43 of 2017 on the Implementation of Restitution for Child Victims of Crime, as well as understanding the role and consideration of judges, or *ratio decidendi*, in determining the amount of compensation for victims. This study adopts a normative method with a normative juridical approach, which is suitable for legal study because it examines legal regulations, doctrines, and principles relevant to the problem under study.<sup>14</sup>

The data of the study as follows: a) Primary legal materials include laws and regulations relevant to the study topic, including Government Regulation Number 43 of 2017 and other relevant laws; b) Secondary legal materials, which consist of legal literature, articles, journals, and other legal writing sources that support the research's analysis and argumentation, including opinions of legal experts, juridical reviews, and case analysis; c) Tertiary legal materials can be legal dictionaries and other supporting sources that assist in understanding legal terms or concepts.

The study aims to provide a deeper understanding of how government regulation is applied in legal practice, especially in determining the amount of compensation for child victims of criminal acts, as well as clarifying the position and considerations of judges in the related legal process.

## 3. RESULTS AND DISCUSSION

### 3.1 Government Regulation of the Republic of Indonesia Number 43 of 2017 on the Implementation of Restitution for Children who are Victims of Crimes

Government Regulation Number 43 of 2017 on the Implementation of Restitution for Child Victims of Crime plays an important role in efforts to protect and restore the rights of child victims of crime. This regulation's structure, divided into four chapters and 23 articles, demonstrates the government's systematic efforts to ensure that children injured by crime can receive proper compensation and assistance for their recovery.

The restitution provided to victims of crime, including the crime of rape committed by adults against children, is an important part of the recovery and justice efforts for victims. In criminal law, the term "*delik*" or "*strafbaar feit*" refers to behavior that violates the law and is punishable by punishment. In this case, the crime of rape committed by an adult against a minor is one of the offenses prohibited by the law.<sup>15</sup>

Furthermore, Rape, as described in Article 285 of the Criminal Code, refers to the act of forcing a woman to have sexual intercourse outside of marriage by using force or threat of force. In the context of the crime of assault of a child, victims are usually vulnerable individuals and unable to give valid consent due to their age or circumstances. Therefore, restitution provided to victims in these cases is important to aid their recovery and compensate them for the harm they have suffered due to the act.

---

<sup>14</sup> Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Surabaya: Bayumedia, 2005).

<sup>15</sup> Febriyanti Uma Yulianti Ningsih Cahyani, Alfa Galih Verdiantoro, "Perlindungan Hukum Bagi Korban Tindak Kekerasan Seksual Kaum Tunarungu Dalam Perspektif Hukum Pidana," *Mimbar Keadilan* 13, No. 2 (2020): 218–28.

The application of restitution in criminal law is a breakthrough that aims to provide justice to victims of crime, especially in cases of sexual assault. However, to ensure its effectiveness, the government must pay attention to the amount of compensation regulated in Government Regulation Number 43 of 2017 on the Implementation of Restitution for Children who are Victims of Criminal Acts. It is essential so that the responsibilities of offenders of sexual crimes can be fulfilled and the rights of victims of sexual assault can be respected following the principles of justice in law.

Many court decisions have included sexual assault cases in restitution sentences, both as a form of fulfilling victims' rights and as an additional penalty for the offender's accountability to the victim.<sup>16</sup> It shows that restitution not only acts as financial compensation but also as a form of recognition of the losses suffered by victims and as a mechanism to ensure that the offender is responsible for his actions.<sup>17</sup> Thus, understanding and applying restitution in the context of sexual crimes is essential to achieve complete justice for victims and society in general.

There are indeed many court decisions that are considered inadequate in fulfilling the losses suffered by victims of sexual assault. The limitation of the offender in fulfilling the cost of compensation set by the judge is often a severe problem. Hence, the offender tends to serve an additional sentence in the form of an additional period of detention rather than paying compensation to the victim.<sup>18</sup>

Then, it raises a dilemma where even though the offender is subject to additional penalties, the victim's rights are still not fully fulfilled because they do not receive adequate compensation for their losses. The fulfillment of the rights of victims of sexual assault is not only limited to the financial aspect but also to the recognition and accountability of the offender for his actions.<sup>19</sup>

In the face of these challenges, the justice system must strive to find more effective and equitable solutions to ensure victims get proper justice. It could involve revisiting the process of determining the compensation that takes more into account the economic capabilities of the offender, implementing alternative mechanisms to ensure the fulfillment of victims' rights, as well as increasing public awareness of the importance of supporting victims of sexual violence in their recovery process. Thus, continuous efforts are needed to improve protection and justice for victims of sexual assault in the criminal justice system.

---

<sup>16</sup> Josephin Mareta, "Penerapan Restorative Justice Melalui Pemenuhan Restitusi Pada Korban Tindak Pidana Anak," *Legislasi Indonesia* 15, No. 4 (2018): 309–19.

<sup>17</sup> Achmad Murtadho, "Pemenuhan Ganti Kerugian Terhadap Anak Yang Menjadi Korban Tindak Pidana Pencabulan," *Jurnal Ham* 11, No. 3 (2020): 445, <https://doi.org/10.30641/Ham.2020.11.445-466>.

<sup>18</sup> Halomoan Freddy Sitingjak Alexandra, "Pemberian Restitusi Dan Kompensasi Bagi Korban Tindak Pidana Berdasarkan Nilai Keadilan Halomoan," *Jurnal Pendidikan Dan Konseling* 4 (2022): 1349–58.

<sup>19</sup> Shelvi Rusdiana, Tantimin, And Suryani Ling, "Tinjauan Yuridis Terhadap Tindak Pidana Physical Sexual Harassment Yang Dialami Perempuan," *Jurnal Hukum Samudra Keadilan* 18, No. 2 (2023): 281–96.

Judges have a crucial role in exercising their ratio decidendi rights in every case they decide,<sup>20</sup> especially in ensuring the fulfillment of victims' rights adequately based on the principles of legal justice. Although the form of restitution that children who are victims of criminal acts are entitled to is regulated in Article 3, which states that restitution includes compensation for loss of wealth, suffering, and medical and/or psychological treatment costs, its implementation often poses challenges.

The elucidation in this government regulation underlines that so far, victims have not only suffered material and immaterial losses alone but have also experienced emotional suffering such as shame, loss of self-esteem, and traumatic anxiety. The offender should also bear these immaterial losses through restitution as a form of compensation for the suffering experienced by the victim. Restitution is intended not only to compensate for material and medical losses but also to alleviate the suffering of victims and uphold justice for them.

Therefore, judges must consider carefully and relatively in determining the amount of restitution following the losses suffered by victims, both material and immaterial. Thus, the use of ratio decidendi rights by judges must prioritize the interests and recovery of victims and create true justice in the criminal justice process.

### **3.2 Protection of Children Rights who are Crime Victims is Regulated by Government Regulation of the Republic Number 43 of 2017**

The enactment of a Government Regulation in October 2017 regulating restitution rights for child victims of crime, particularly rape, is an essential step in the evolution of criminal law policy in Indonesia. This success demonstrates the long struggle of human rights experts and advocates. It reflects a change in the mindset and perspective of the government, lawmakers, law enforcement officials, and society. The Government Regulation is a positive legal instrument and reflects a more humane penal policy. The concept of penal policy emphasizes the importance of formulating better legal regulations to provide clear guidelines to lawmakers, courts, and court decision implementers. Thus, applying this penal policy not only changes the law formally but also leads to practical changes in law enforcement and the protection of human rights.

Along with the enactment of the Government Regulation, it is expected that there will be an increase in public awareness about the rights of crime victims, including the right to restitution for child victims of rape. In addition, the government and law enforcement officials are expected to be more proactive in providing protection and support to victims and enforcing the law fairly and justly.<sup>21</sup> Thus, the enactment of the Government Regulation on restitution for child victims of crime, especially rape, is an essential step in fighting for

---

<sup>20</sup> Romi Librayanto Et Al., "Penataan Kewenangan Mahkamah Konstitusi Dalam Memperkuat Independensi Kekuasaan Kehakiman," *Amanna Gappa* 27, No. 1 (2019): 45, <https://journal.unhas.ac.id/index.php/agjl/article/view/7312/4018>.

<sup>21</sup> Daniel Sahata Silaban, "Peran Hukum Dalam Menanggulangi Perdagangan Manusia Di Indonesia," *Tugas Mahasiswa Hukum* 1, No. 2 (2024): 1–11, <https://www.bps.go.id/news/2021/01/21/405/bps--270-20-juta-penduduk-indonesia-hasil-sp2020.html>.

the rights of victims and improving the Indonesian criminal law system as a whole. However, it is essential to remember that this is only the beginning of a more significant effort to ensure protection and justice for all citizens, including victims of crime.

A view of the criminal justice system that describes the totality of its supporting subsystems, such as the police, prosecutors, courts, correctional institutions, and advocates, is an important concept in understanding how the criminal law system operates as a whole.<sup>22</sup> Understanding the criminal justice system as a totality that seeks to transform inputs into outputs that are fit for purpose is key in ensuring that the rights of individuals, including the rights of child victims of crime, are well protected. In the context of Government Regulation Number 43 of 2017, the rights of child victims of crime, including the right to restitution, are recognized as an essential part of the criminal justice system's efforts to provide justice. Restitution, which is defined as the payment of compensation imposed on the offender based on a court decision with permanent legal force for material and/or immaterial losses suffered by the victim or their heirs, is an important mechanism to ensure that victims of criminal acts, including children, are compensated for the losses they experience.<sup>23</sup> The implementation of this Government Regulation is, therefore, an important step in ensuring that the rights of child victims of crime are effectively recognized and fulfilled by the criminal justice system. However, it is crucial to continue to monitor and evaluate the implementation of this regulation to ensure that restitution truly has a positive impact on victims, including children, in their recovery process from the traumatic impact of the criminal offense they experienced.

Article 3 of the Government Regulation describes the forms of restitution that child victims of criminal offenses are entitled to receive. These forms of restitution include a) Compensation for loss of property: Which refers to material losses suffered by the victim, such as financial losses due to theft or property damage; b) Compensation for suffering: This refers to Compensation for immaterial losses suffered by the victim, such as emotional suffering, trauma, or stress caused by the crimes. c) Reimbursement of medical and/or psychological treatment: This covers the cost of medical or psychological treatment and care required by victims for their physical and mental recovery after being a victim of a crime.

The explanation in the government regulation emphasizes that so far, victims of criminal acts, especially children, often have to bear material and immaterial losses themselves. Restitution is needed as a form of compensation for the suffering experienced by victims, including losses that are difficult to measure financially, such as shame, loss of self-esteem, and excessive anxiety that is traumatic. Restitution that the offender of the crime must pay is not only to compensate for material losses but also to alleviate suffering

---

<sup>22</sup> Muladi, *Hak Asasi Manusia Politik Dan Sistem Peradilan Pidana* (Jakarta: Gramedia Pustaka, 2002).

<sup>23</sup> Nur Rochaeti, "Implementasi Keadilan Restoratif Dan Pluralisme Hukum Dalam Sistem Peradilan Pidana Anak Di Indonesia," *Masalah-Masalah Hukum*, 2015, <https://doi.org/10.14710/Mmh.44.2.2015.150-160>.

and uphold justice for victims.<sup>24</sup> This reflects the moral and legal responsibility of offenders of criminal acts to repair the negative impacts they have caused on victims, especially children who are vulnerable and need special protection.

The importance of providing restitution to children who are victims of criminal acts appropriately, without mistargeting, and without abuse is something that cannot be doubted. Restitution must be tailored to the loss suffered by the victim and their condition after becoming a victim of a crime.<sup>25</sup> It is essential to ensure that the objectives of the legislator, as well as the objectives of the penal policy to protect society, are appropriately achieved.

From the article's description in Chapter II of the Government Regulation, it can be seen that government regulators pay attention to the technical aspects of implementing the application for restitution for child victims of criminal acts. They compiled articles with details clarifying the procedures that must be followed in applying for and providing restitution. Several things can be concluded from this description, as follows: a) Procedures for Submitting an Application for Restitution: Article by article outlines the procedure for submitting a restitution application, including the requirements that must be met in the application letter, the institution authorized to assess the value of the restitution application, the stages of applying, as well as the submission deadline and the deadline for studying the application; b) Procedures for Granting Restitution: There are details regarding the procedure for granting restitution, where the court, through the court clerk, is responsible for sending a copy of the court decision that has permanent legal force to the public prosecutor, which contains an order for the payment of restitution by the offender to the victim. In addition, there are provisions regarding the preparation of minutes of the implementation of the decision by the prosecutor, the obligation of the victim to report the implementation of restitution payments, and the obligation of the court to announce the implementation of restitution payments through the media; c) Emphasis on Transparency and Fairness: Through detailed and elaborate procedures, the legislators emphasize the importance of transparency and fairness in applying for and awarding restitution. It aims to ensure that victims of crime, especially children, receive fair treatment and that the process is transparent and accountable.

### **3.3 Guarantee of Legal Certainty in the Judge's Decision in the Provision of Restitution to Children who are Crime Victims in the Future (Principle of Law Formation)**

Legal certainty is one of the main objectives of the legal system, along with expediency and justice.<sup>26</sup> With apparent legal certainty, achieving justice becomes easier, and the law's benefits can be felt optimally. With legal certainty in the implementation of

---

<sup>24</sup> Eko Nurisman, "Risalah Tantangan Penegakan Hukum Tindak Pidana Kekerasan Seksual Pasca Lahirnya Undang-Undang Nomor 12 Tahun 2022," *Jurnal Pembangunan Hukum Indonesia* 4, No. 2 (2022): 170–96, <https://doi.org/10.14710/jphi.v4i2.170-196>.

<sup>25</sup> Anis Mashdurohatun Kismanto, "Keadilan Hukum Anak Korban Tindak Pidana Kekerasan Seksual Di Kabupaten Kendal," *Jurnal Hukum Khaira Ummah* 12, No. 1 (2017): 39–48.

<sup>26</sup> Sulardi And Yohana Puspitasari Wardoyo, "Kepastian Hukum, Kemanfaatan, Dan Keadilan Terhadap Perkara Pidana Anak," *Jurnal Yudisial* 8, No. 3 (2015): 251–68.



restitution for children who are victims of criminal acts, especially in the case of rape crimes regulated by government regulations, it is hoped that these victims can feel justice. It is also expected to guide prosecutors in criminal prosecution and judges in handing down verdicts, including restitution to defendants given to victims, by the verdict.

The restitution of children who are victims of criminal acts is one form of implementation of the principle of social justice for all Indonesian people, which is contained in the fifth principle of Pancasila. By providing restitution to victims, the state supports and protects those who have suffered losses due to criminal acts while ensuring social justice is realized.<sup>27</sup>

The legal basis governing the provision of restitution to victims of criminal acts is also strengthened by the mandate in the Preamble of the 1945 Constitution, which emphasizes the state's commitment to protect all citizens and promote public welfare. Therefore, implementing government regulations governing restitution for victims of criminal acts is an integral part of the state's efforts to achieve the goals of public welfare and social justice, as stated in Pancasila and the 1945 Constitution.

The imposition of punishment in the form of restitution for children who are victims of criminal acts is in line with the mandate of Article 9, paragraph 1 of Law Number 14 of 1970 on Basic Provisions of Judicial Power.<sup>28</sup> This study provides a basis for victims to obtain compensation and rehabilitation in a judge's decision with permanent legal force. It includes situations where victims have suffered harm due to arrest, detention, or prosecution without a strong legal basis.

In the context of providing restitution to child victims of criminal offenses, this will be reflected in the form of additional punishment. The main punishment can be corporal punishment or fine, following the applicable provisions, as stipulated in the Article, which is the legal basis of the case. For example, in the case of the criminal offense of rape against a child as regulated in Article 81 paragraph (1) of Law Number 35 of 2014 on Child Protection.

The provision of restitution as an additional punishment will be included in the criminal charges and the judge's decision.<sup>29</sup> Restitution will no longer be part of the conditional punishment, where the offender or defendant can avoid serving the main punishment if they pay restitution. Instead, restitution in this context will become part of the criminal charges that must be fulfilled by the offender or defendant following the judge's decision that has permanent legal force. Article 14c of the Criminal Code, which regulates conditional punishment, is no longer applicable in providing restitution to child victims of crime.

---

<sup>27</sup> Andri Winjaya Laksana, "Keadilan Restoratif Dalam Penyelesaian Perkara Anak Yang Berhadapan Dengan Hukum Dalam Sistem Peradilan Pidana Anak" Iv, No. 1 (2017): 57–64.

<sup>28</sup> A. Sakti R. S. Rakia, Muhammad Ali, Laode Muhammad Taufiq Afoeli, Wahab Aznul Hidayat, Seguito Monteiro, "Principles Of Legal Compliance On The Constitutional Court Decisions Adoption In Legislation," *Jurnal Jurisprudence* 14, No. 1 (2024).

<sup>29</sup> Siti Afyah Deni Setiawan, Wahab Aznul Hidayat, Hadi Tuasikal, "Green Restorative Justice: Environmental Enforcement And Justice," 2024, 1–22.

The distinction between Article 14c of the Criminal Code and Government Regulation Number 43 of 2017 concerns the approach to providing restitution in the criminal context.<sup>30</sup> Here are some key differences, as follows; a) The Role of Restitution in the Implementation of Conditional Punishment: Article 14c of the Criminal Code makes the provision of restitution a condition for implementing conditional punishment. The main punishment must not be executed if the offender or defendant pays restitution. On the other hand, Government Regulation Number 43 of 2017 positions restitution as an additional punishment. Although restitution has been made, the offender or defendant will not abolish or avoid the main punishment; b) Legal Orientation: The approach of Article 14c of the Criminal Code emphasizes the interests of the offender or defendant by providing incentives in the form of a reduction in punishment and Government Regulation Number 43 of 2017 is more oriented towards the victim's interests by positioning restitution as an additional punishment that the offender or defendant must fulfill without reducing the primary punishment; c) Crime Settlement: Criminal case settlement that includes aspects of compensation, guidance, and follow-up is regulated in more detail in Government Regulation Number 43 of 2017. This allows the same judge in a criminal trial to make decisions regarding punishment, compensation, and follow-up for the benefit of the person concerned and This approach is expected to save energy, finances, and time in resolving crimes and provide better assistance to the parties involved quickly and efficiently.

By regulating the procedure for submitting an application for restitution by the victim or his/her heirs in this Government Regulation, combining cases of compensation claims as regulated in Article 98, Article 99, Article 100, and Article 101 of the Criminal-Law Procedural Code can be simplified. Victims no longer need to file separate civil lawsuits to claim restitution or compensation for their losses. It follows the principles of criminal procedure that emphasize simplicity, speed, and affordable costs in case settlement. Restitution provision in the judge's ruling begins with including a request for restitution in the prosecutor's indictment. This step is important so that the process of applying for restitution follows the established mechanism. Suppose the mechanism is not followed, and the restitution provision appears suddenly in the judge's verdict. In that case, it can be considered a decision that exceeds the charges filed (*ultra petita*), violating basic legal principles. Therefore, this Government Regulation regulates the procedure for submitting a request for restitution by requiring that the request for restitution must be submitted in the charges filed by the Public Prosecutor. This aims to ensure that established procedures grant restitution and do not violate fundamental principles in law enforcement.

Making restitution as an additional punishment along with the main punishment imposed on the offender is expected to bring justice to children who are victims of criminal acts, especially assault. This step is expected to provide legal certainty for child victims to claim their rights to the offenders, as well as provide consideration for the community to

---

<sup>30</sup> Rini Anggreini, "Pemberian Restitusi Sebagai Upaya Perlindungan Hukum Bagi Anak Korban Tindak Pidana Perdagangan Orang" 7, No. 1 (2019): 76–85.

consider their actions because of the multiple punishments for this crime. Enacting this Government Regulation is also a shortcut for victims to claim compensation without going through the process of civil lawsuits that require costs to file. The examination of the main case and the application for restitution or compensation can be decided by the same panel of judges who know the subject matter of the case. It allows the amount of the request for restitution or compensation to be considered directly by the judge following the severity of the case. The placement of compensation or restitution as an additional punishment in the judge's decision is in line with the Concept of the National Criminal Code, which also places compensation as an additional punishment. It shows the harmony between government regulation and the broader legal concept of improving justice and protection for victims of crimes.

The researcher's concern about the shortcomings in this government regulation is related to sanctions against offenders who refuse or do not comply with their obligations to pay or provide restitution to victims or their heirs. As with most additional punishments listed in the judge's ruling, it is usually accompanied by a substitute punishment if the additional punishment is not implemented. However, in Government Regulation Number 43 of 2017, no provisions govern substitute punishment as found in other regulations, such as Law Number 31 of 1999 on the Eradication of Corruption and Law Number 21 of 2007 on the Eradication of Human Trafficking. Due to the absence of coercive provisions or clear sanctions for offenders who do not implement court decisions with permanent legal force, this government regulation is considered less effective in ensuring the implementation of restitution. It may complicate the implementation of court decisions regarding the provision of restitution to child victims of criminal acts, as well as reduce the certainty for victims to receive restitution from offenders. In this context, strict and clear sanctions for offenders who do not comply with their obligations to pay restitution are essential to ensure compliance with court decisions and provide better protection for victims.

The issuance of this Government Regulation is indeed an important point in efforts to improve the protection of children who are victims of criminal acts. It is hoped that the imposition of additional punishment in the form of restitution to victims can be implemented and carried out by the expectations that the government has mandated, legislative institutions, and the community at large. The absence of specific regulations on restitution for child victims of criminal offenses has previously been a shortcoming that needs to be addressed. This Government Regulation is expected to provide legal certainty to the general public and victims or their heirs in particular. It is also expected to provide a solid foundation for fairer and more effective law enforcement in criminal offenses involving children as victims. An exemplary implementation of this regulation will bring significant benefits to victims, ensure that their rights are recognized and protected, and send a strong signal that the law will not tolerate criminal acts against children. All parties are expected to work together to realize the goal of better protection for Indonesian children.

#### 4. CONCLUSION

The conclusion of this study shows that the protection of the rights of child victims of crime in Indonesia, in accordance with Government Regulation Number 43 of 2017, shows progress in ensuring that child victims receive proper protection and a fair legal process. The focus on restitution and rehabilitation as part of the punishment system shows an evolution from the traditional retributive approach towards a more rehabilitative and restorative approach.

#### REFERENCES

- A. Sakti R. S. Rakia, Muhammad Ali, Laode Muhammad Taufiq Afoeli, Wahab Aznul Hidayah, Seguito Monteiro. "Principles Of Legal Compliance On The Constitutional Court Decisions Adoption In Legislation." *Jurnal Jurisprudence* 14, No. 1 (2024).
- Anggreini, Rini. "Pemberian Restitusi Sebagai Upaya Perlindungan Hukum Bagi Anak Korban Tindak Pidana Perdagangan Orang" 7, No. 1 (2019): 76–85.
- Daniel Sahata Silaban. "Peran Hukum Dalam Menanggulangi Perdagangan Manusia Di Indonesia." *Tugas Mahasiswa Hukum* 1, No. 2 (2024): 1–11. <https://www.bps.go.id/news/2021/01/21/405/bps--270-20-juta-penduduk-indonesia-hasil-sp2020.html>.
- Deni Setiyawan, Wahab Aznul Hidayah, Hadi Tuasikal, Siti Afiyah. "Green Restorative Justice: Environmental Enforcement And Justice," 2024, 1–22.
- Halomoan Freddy Sitinjak Alexandra. "Pemberian Restitusi Dan Kompensasi Bagi Korban Tindak Pidana Berdasarkan Nilai Keadilan Halomoan." *Jurnal Pendidikan Dan Konseling* 4 (2022): 1349–58.
- Hidayah, W. A. "Penyidikan Anak Pelaku Tindak Pidana Dalam Perspektif Undang-Undang No 35 Tahun 2014." *Justisi* 7, No. 1 (2021): 26–37. <https://doi.org/https://doi.org/10.33506/js.v7i1.1156>.
- Hidayah, Wahab Aznul. "Penerapan Diversi Dalam Sistem Peradilan Pidana Anak." *Justisi* 5, No. 2 (2019): 84–96. <https://doi.org/10.33506/js.v5i2.543>.
- . "The Role Of Witness And Victim Protection Agency For Imekko Tribe In Criminal Justice System In Sorong" 8, No. 2 (2023): 176–91. <https://doi.org/10.23917/laj.v8i2.2363>.
- Ibrahim, Johnny. *Teori Dan Metodologi Penelitian Hukum Normatif*. Surabaya: Bayumedia, 2005.
- Irwandi. "Penegakan Hukum Pemberian Hak Restitusi Terhadap Korban Tindak Pidana Perdagangan Orang Dalam Perspektif Kearifan Lokal Di Aceh." *Al Ilmu :Jurnal Keagamaan Dan Ilmu Sosial* 08, No. 2 (2023): 1–23.
- Kismanto, Anis Mashdurohatun. "Keadilan Hukum Anak Korban Tindak Pidana Kekerasan Seksual Di Kabupaten Kendal." *Jurnal Hukum Khaira Ummah* 12, No. 1 (2017): 39–48.
- Laksana, Andri Winjaya. "Keadilan Restoratif Dalam Penyelesaian Perkara Anak Yang Berhadapan Dengan Hukum Dalam Sistem Peradilan Pidana Anak" Iv, No. 1 (2017): 57–64.
- Librayanto, Romi, Marwati Riza, Muhammad Ashri, And Kasman Abdullah. "Penataan Kewenangan Mahkamah Konstitusi Dalam Memperkuat Independensi Kekuasaan Kehakiman." *Amanna Gappa* 27, No. 1 (2019): 45.

- <https://journal.unhas.ac.id/index.php/agjl/article/view/7312/4018>.
- Marasabessy Fauzy. "Restitusi Bagi Korban Tindak Pidana : Sebuah Tawaran Baru." *Jurnal Hukum & Pembangunan* 45, No. 1 (2015). <https://scholarhub.ui.ac.id/jhpavailableat:https://scholarhub.ui.ac.id/jhp/vol45/iss1/3>.
- Mareta, Josefhin. "Penerapan Restorative Justice Melalui Pemenuhan Restitusi Pada Korban Tindak Pidana Anak." *Legislasi Indonesia* 15, No. 4 (2018): 309–19.
- Miszuarty. "Pelaksanaan Restitusi Bagi Anak Yang Menjadi Korban Tindak Pidana Sebagai Bentuk Pembaruan Hukum Pidana Berdasarkan Peraturan Pemerintah Nomor 43 Tahun 2017." *Soumatara Law Review* 2, No. 1 (2019): 115–34. [http://scioteca.caf.com/bitstream/handle/123456789/1091/red2017-eng-8ene.pdf?sequence=12&isallowed=y%0ahttp://dx.doi.org/10.1016/j.regsciurbeco.2008.06.005%0ahttps://www.researchgate.net/publication/305320484\\_sistem\\_pembetungan\\_terpusat\\_strategi\\_melestari](http://scioteca.caf.com/bitstream/handle/123456789/1091/red2017-eng-8ene.pdf?sequence=12&isallowed=y%0ahttp://dx.doi.org/10.1016/j.regsciurbeco.2008.06.005%0ahttps://www.researchgate.net/publication/305320484_sistem_pembetungan_terpusat_strategi_melestari).
- Muladi. *Hak Asasi Manusia Politik Dan Sistem Peradilan Pidana*. Jakarta: Gramedia Pustaka, 2002.
- Murtadho, Achmad. "Pemenuhan Ganti Kerugian Terhadap Anak Yang Menjadi Korban Tindak Pidana Pencabulan." *Jurnal Ham* 11, No. 3 (2020): 445. <https://doi.org/10.30641/Ham.2020.11.445-466>.
- Nurisman, Eko. "Risalah Tantangan Penegakan Hukum Tindak Pidana Kekerasan Seksual Pasca Lahirnya Undang-Undang Nomor 12 Tahun 2022." *Jurnal Pembangunan Hukum Indonesia* 4, No. 2 (2022): 170–96. <https://doi.org/10.14710/jphi.v4i2.170-196>.
- Rakia, A. Sakti R.S., And Wahab Aznul Hidayat. "Aspek Feminist Legal Theory Dalam Peraturan Perundang-Undangan Di Indonesia." *Amsir Law Journal* 4, No. 1 (2022): 69–88. <https://doi.org/10.36746/alj.v4i1.104>.
- Rochaeti, Nur. "Implementasi Keadilan Restoratif Dan Pluralisme Hukum Dalam Sistem Peradilan Pidana Anak Di Indonesia." *Masalah-Masalah Hukum*, 2015. <https://doi.org/10.14710/mmh.44.2.2015.150-160>.
- Rusdiana, Shelvi, Tantimin, And Suryani Ling. "Tinjauan Yuridis Terhadap Tindak Pidana Physical Sexual Harassment Yang Dialami Perempuan." *Jurnal Hukum Samudra Keadilan* 18, No. 2 (2023): 281–96.
- Safaruddin Harahap, Irwan. "Perlindungan Hukum Terhadap Anak Korban Kejahatan Seksual Dalam Perspektif Hukum Progresif." *Jurnal Media Hukum* 23, No. 1 (2016): 37–47. <https://doi.org/10.18196/jmh.2015.0066.37-47>.
- Saputra, Dandy Rahardyan, Fakultas Hukum, Universitas Pembangunan, Nasional Veteran, Pondok Labu, And Jakarta Selatan. "Tujuan Ideal Pemidanaan Paradoks Terhadap ( The Purpose Of Criminal Law Paradox To The Optimization Of The Role Of." *Ncols*, 2020, 978–79. <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahukewjr25-nnsh7ahubsmwghds4dpsqfnoeca4qaq&url=https%3a%2f%2fconference.upnvj.ac.id%2findex.php%2fncols%2farticle%2fview%2f1518&usq=Aovvaw3lnk0r4znm5zvwegivtv2q>.
- Setiyawan, Deni, Muhammad Ramli, And Noor Rahmad. "Kedudukan Rasio Decidendi Hakim Dalam Pemenuhan Hak Restitusi Kepada Korban Kejahatan Seksual Pada

- Anak.” *Jatijajar Law Review* 1, No. 1 (2022): 38.  
<https://doi.org/10.26753/Jlr.V1i1.729>.
- Sry Wahyuni, H. C. “Pelaksanaan Diversi Dalam Penyelesaian Perkara Anak Yang Berhadapan Dengan Hukum.” *Jurnal Cendekia Hukum* 4, No. 1 (2018): 117–128.
- Sulardi, And Yohana Puspitasari Wardoyo. “Kepastian Hukum, Kemanfaatan, Dan Keadilan Terhadap Perkara Pidana Anak.” *Jurnal Yudisial* 8, No. 3 (2015): 251–68.
- Yulianti Ningsih Cahyani, Alfa Galih Verdiantoro, Febriyanti Uma. “Perlindungan Hukum Bagi Korban Tindak Kekerasan Seksual Kaum Tunarungu Dalam Perspektif Hukum Pidana.” *Mimbar Keadilan* 13, No. 2 (2020): 218–28.
- Yuliantini, Ni Putu Rai. “Kedudukan Korban Kejahatan Dalam Sistem Peradilan Pidana Di Indonesia Berdasarkan Kitab Undang-Undang Hukum Acara Pidana (KUHAP).” *Jurnal Komunikasi Hukum* 1, No. 1 (2015): 1576–80.
- Yusri, Ahmand Zaki Dan Diyan. “Rehabilitasi Menuju Rekonsiliasi (Kasus Kelompok Rentan Berhadapan Dengan Hukum).” *Jurnal Ilmu Pendidikan* 7, No. 2 (2020): 809–20.