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Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

The Urgency of Restitution as an Effort to Restore the Rights of Children as Victims of Sexual Violence in Semarang City

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Abstract. *The issue of vague regulations regarding restitution for child victims of sexual violence has resulted in the violation of their rights and justice. The approach used is a sociological juridical method, where law in this study is conceptualized as the ideas, culture, and views of society regarding legal regulations implemented in the social environment. Based on the research conducted, it is known that the implementation of protection and rehabilitation for child victims of sexual violence is ineffective. This is demonstrated by the minimal implementation of restitution for child victims of sexual violence, which ultimately hinders the rehabilitation of child victims of sexual violence. Another obstacle is the lack of clear and explicit legal regulations regarding the implementation of restitution. This culturally hinders the restitution system for child victims of sexual violence.*

Keywords: *Children; Restitution; sexual; Violence.*

1. Introduction

The issue of restitution has been clearly regulated in the United Nations Declaration on the Prosecution and Assistance of Crime Victims, in point 4, part 1 of the General Principles. The United Nations Declaration states:¹

Reparation by the offender to the victim shall be an objective of the justice process. Such reparations may include (1) the return of stolen property, (2) monetary payment for loss, damages, personal injury psychological trauma, (3) payment for suffering, and (4) service to the victim. Reparation should be encouraged by the corrective process.

¹Romli Atmasasmita, Writing a Scientific Paper on the Problem of Compensation for Victims of Crime, National Legal Development Agency, Department of Justice, Jakarta, 1992, p. 4.

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Meanwhile, the regulation of restitution in national law is clearly regulated in Law Number 31 of 2014 concerning the Protection of Witnesses and Victims. Article 1 number 11 of Law Number 31 of 2014 states that "restitution is compensation given to the victim or their family by the perpetrator or a third party." Furthermore, Article 7A number 1 of Law Number 31 of 2014 states that:

Victims of criminal acts have the right to receive restitution in the form of:

- (a) compensation for loss of wealth or income;
- (b) compensation for losses incurred as a result of suffering directly related to the criminal act; and/or
- (c) reimbursement of medical and/or psychological care costs.

Furthermore, Article 3 of Government Regulation of the Republic of Indonesia Number 43 of 2017 concerning the Implementation of Restitution for Children Who Are Victims of Crime states that:

Restitution for children who are victims of crime in the form of:

- (a) compensation for loss of property;
- (b) compensation for suffering as a result of a criminal act; and/or
- (c) reimbursement of medical and/or psychological care costs.

Then, regarding the implementation of restitution for victims of sexual violence, it is also regulated in Article 37 of Law Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims, which states:

(1) Witnesses and/or victims of serious human rights violations, acts of terrorism, acts of human trafficking, acts of torture, acts of sexual violence and serious abuse are entitled to receive assistance.

(2) The assistance referred to in paragraph (1) is in the form of:

- a. medical assistance; and

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b. psychosocial and psychological rehabilitation assistance.

(3) The request for assistance as referred to in paragraph (21) is submitted by the Witness and/or Victim, Family, or their attorney.

(4) The request for assistance as referred to in paragraph (3) must be submitted in writing in Indonesian on stamped paper to the LPSK.

(5) Medical assistance as referred to in paragraph (2) letter a for victims of acts of terrorism is excluded from the provisions as referred to in paragraph (3).

In its development, the implementation of restitution for the recovery of child victims of sexual violence has not been effective. This is because both Article 7 of Government Regulation of the Republic of Indonesia Number 43 of 2017 and Article 37 of Law Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims still contain administrative requirements that still make it difficult for victims, so that the authorities should be able to facilitate the fulfillment of administrative requirements as regulated in Article 7 of Government Regulation of the Republic of Indonesia Number 43 of 2017 and Article 37 of Law Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims. In addition, perpetrators of criminal acts are reluctant to pay restitution on the grounds of economic inability, this becomes even more unfair because the perpetrator's inability to pay restitution is only replaced with a subsidiary sentence in the form of imprisonment for 2 to 3 months. This is evident in decision No. 07/Pid.Sus-Anak/2019/PN Smg, which imposed a restitution fine on the perpetrator of the crime of Rp. 60,000,000 (Sixty Million Rupiah). The judge's primary consideration was that the perpetrator should be able to compensate the victim for their losses, with a portion of the restitution paid to cover appropriate rehabilitation costs. However, in reality, the fine was replaced with a three-month prison sentence.² Furthermore, the time it takes for child victims of sexual violence to receive restitution is quite long, given the lengthy judicial process, not to mention the perpetrators being in detention or facing the death penalty, which can then be used as reasons for not receiving restitution. This situation is further complicated by the fact that the types of sanctions threatened in Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection for

²Anjar Wirawan Dwi Sasongko, Data on the Number of Sexual Violence Cases at the Semarang City District Court, Data obtained through data provided by the clerk of the Semarang City District Court on April 12, 2024.

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perpetrators of sexual violence against children do not include the threat of criminal compensation.

Various cases of sexual violence against children are fundamentally the result of various societal issues, particularly economic ones. Poverty leads poor communities to neglect their environment and their families, the smallest social base. This situation leads to the neglect of moral education, which ultimately leads to low morale. This low morale in the current era of information technology advancement is exacerbated by the rise of pornography crimes in cyberspace.³This is what then triggers the high number of cases of sexual violence.⁴In addition, high poverty rates can also trigger the emergence of various child trafficking crimes, including the trafficking of children as commercial sex workers.

On May 2019, the Kompas daily newspaper noted that the level of economic inequality reached 0.389.⁵These problems and conditions result in the failure to achieve social welfare and social justice, which are the mandate of the state's objectives as stated in the fourth paragraph of the 1945 Constitution. This includes the failure to achieve the protection of children's human rights as regulated in Article 28B number 2 and Article 28G of the 1945 Constitution of the Republic of Indonesia and Article 52, Article 53, Article 57, Article 58, Article 64, Article 65, and Article 66 of Law Number 39 of 1999. Then in 2020 the Ministry of Child Protection and Women's Empowerment through the daily newspaper Kompas noted that there had been 2,556 cases of sexual violence against children.⁶This is quite high, and it can be estimated that 2,556 child victims of sexual violence are unable to receive restitution, given the existence of compensatory damages. The number of cases of sexual violence against children can also be seen in the daily report from lokadata.id, which states:⁷

Despite the lack of improvement in early 2020, several cases of sexual violence against children continued to surface. Among them were cases of sexual harassment against 12 elementary school students in Seyegan District, Sleman, Yogyakarta Special Region (DIY) by a teacher (48).

³Ira Alia Maerani, Implementation of the Idea of Balance in the Development of Indonesian Criminal Law Based on Pancasila Values, Journal of Legal Reform, Volume II No. 2 May - August 2015, pp. 330-331.

⁴Mohammad Teja, Socioeconomic Conditions and Sexual Violence Against Children, Brief Social Welfare Info Magazine, Vol. VIII, No. 09, May 2016, pp. 10-11, Accessed Through www.slideshare.net, On May 12, 2018.

⁵The data has decreased, in March 2017 the economic inequality rate reached 0.393 and then the economic inequality figure decreased in the September quarter of 2017, dropping to 0.391. Kompas' daily data regarding economic inequality reached this level is measured from inflation in 82 major cities in Indonesia. See: Kompas, Village Population Increasing, Thursday edition, August 2, 2018, p. 1.

⁶Kompas.com, accessed on May 12, 2024.

⁷<https://lokadata.id/artikel/2020-kekerasan-pada-anak-tak-menurun>, accessed on May 12, 2020.

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The case was revealed by the police in January 2020, but had been going on since August 2019. Previously, the Indonesian Child Protection Commission (KPAI) explained that from January to October 2019, the number of cases of sexual violence against children in schools increased. KPAI recorded 17 cases of sexual violence in educational environments with 89 children as victims, consisting of 55 girls and 34 boys. "The complaints we received actually decreased. However, the level of violence actually increased significantly. And what is rather frightening is sexual violence because there has been an increase," explained KPAI Commissioner for Education Retno Listyarti in the Workshop on Prevention and Handling of Violence in Educational Units, Monday (9/12). Of the 17 recorded cases, 88 percent were committed by teachers and 22 percent by school principals. 64.7 percent or 11 cases occurred in elementary schools, 23.53 percent or 4 cases in junior high schools, and 11.77 percent or 2 cases in high schools. These cases occur because children do not understand sexual activity and therefore do not realize that they are victims of sexual violence. Responding to Jokowi's instructions regarding reforming the reporting system for cases of violence against children, Retno explained that the public can use the LAPOR application to report cases of violence. Although indeed, the application does not only serve reporting cases of violence against children, but also other public service areas.

Cases of sexual violence against children in Semarang City reached 101 cases in November 2022. This is considered high, while efforts to eradicate child predators are still relatively limited.⁸The various cases above demonstrate that legal protection for child victims of sexual violence is inadequate to guarantee compensation from the perpetrator, leaving the victim unable to pay rehabilitation costs. This situation results in both material and psychological losses. Therefore, it is clear that the existence of compensatory damages, coupled with the difficulty of legal restitution, has resulted in the inability to provide fair restitution to child victims of sexual violence.

2. Research methods

The type of approach used is the sociological juridical method where law in this research is conceptualized as ideas, culture, and views of society regarding legal regulations implemented in the social environment of society.⁹

⁸<https://regional.kompas.com/read/2022/11/03/230559378/sepanjang-2022-ada-1125-kasus-kekerasan-di-jateng-87-persen-korban?page=all>, accessed November 12, 2024.

⁹Johnny Ibrahim, *Normative Legal Research Theory & Methodology*, Bayumedia Publishing, Malang, 2013, p. 40.

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3. Results and Discussion

3.1. The Urgency of Restitution as an Effort to Restore the Rights of Children as Victims of Sexual Violence in the City of Semarang

As explained in the introduction, victims of crime in the criminal justice system tend to be forgotten and receive less attention (in the context of recognizing their basic rights). Attention to victims is not commensurate with the attention and recognition of the rights of perpetrators. However, in the context of law enforcement in a country based on the rule of law, the state should pay equal attention to perpetrators and victims of crime, in accordance with the constitutional mandate, which affirms that all citizens are equal before the law.¹⁰ Basically, the issue of the imbalance of rights between victims and perpetrators must be viewed fairly in the context of realizing universal human rights protection on both a national and international scale.¹¹ From a national and international human rights perspective, legal protection for victims is considered very urgent.

Therefore, victims must be granted legal and special protection rights. Experts have formulated arguments regarding the urgency of legal protection for victims. According to Black's Law Dictionary:

*Protection is (1) a. the act of protecting: defense; shelter of evil; preservation from loss, injury or annoyance; as we find protection under good laws and an upright administration; b. an instance of this; (2) one who or that which protects.*¹²

Legal protection is a matter or action to protect legal subjects based on applicable laws and regulations accompanied by sanctions if someone commits a breach of contract.¹³ The definition of legal protection is the guarantee of human rights and obligations in order to fulfill one's own interests and in relations with other humans.

¹⁰In accordance with the principle of equality before the law, as emphasized in Article 28 D paragraph 1 which reads: "Everyone has the right to recognition, guarantees, protection and certainty of fair law and equal treatment before the law"

¹¹International provisions that guarantee the rights of victims, including guarantees of non-discrimination, guarantees of equality before the law and guarantees of respect for human dignity as also guaranteed by the 1945 Constitution, for example: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

¹²Bryan A Graner. Black's Law Dictionary Eighth Edition. St. Paul. West Thomson, 2004. p. 1446

¹³Soedikno Mertokusumo, Understanding Law (An Introduction), Liberty, Yogyakarta. 1997. p. 9

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Barda Nawawi Arief stated that the meaning of protection for victims of crime can be seen from two meanings, namely:¹⁴

- a) Can be seen as legal protection to avoid becoming a victim of a crime (meaning protection of human rights or a person's legal interests);
- b) It can be interpreted as protection to obtain legal guarantees/compensation for the suffering/loss of people who have become victims of criminal acts (thus synonymous with victim assistance). The form of compensation can be in the form of restoration of good name (rehabilitation), restoration of mental balance (including forgiveness), provision of compensation (restitution, compensation, social welfare guarantees/compensation), and so on.

Mardjono Reksodiputro said that from a criminological approach, there are several reasons why crime victims need attention, namely:¹⁵

- 1) The criminal justice system is considered to pay too much attention to the problems and role of the perpetrator (offender-centered);
- 2) There is potential for information from crime victims to clarify and complement our interpretation of crime statistics (especially those from the police); this is done through victim surveys;
- 3) It is increasingly recognized that in addition to victims of conventional crime (street crime), it is no less important to pay attention to victims of non-conventional crime (including corporate crime and white collar crime) as well as victims of abuse of power (abuse of economic power and/or public power).

Passive legal protection consists of external measures (other than the judicial process) that provide recognition and guarantees in the form of regulations or policies related to the rights of perpetrators and victims. Active legal protection, on the other hand, can involve actions related to efforts to fulfill these rights. Active legal protection can be further divided into preventive and repressive legal protection. Preventive legal protection encompasses rights granted by the perpetrator, which must be accepted by the victim in relation to the implementation of legal regulations or government policies. Repressive legal protection encompasses demands made to

¹⁴Barda Nawawi Arief, *Problems of Law Enforcement and Criminal Law Regulation in Crime Prevention*, Jakarta, Prenada Media Group, 2007, p. 61

¹⁵Mardjono Reksodiputro, *Human Rights in the Criminal Justice System: A Collection of Essays*, Third Book, Center for Justice Services and Legal Service, University of Indonesia, 1994, p. 102

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the government or law enforcement officials regarding regulations or policies that have been implemented against the victim that are deemed detrimental.¹⁶

Protection can be divided into two types: legal protection and special protection against threats. Legal protection can take the form of immunity granted to reporters and witnesses, preventing them from being sued or prosecuted in civil court as long as they testify or report in good faith or are not the perpetrators of the crime. Other legal protections include prohibitions on anyone disclosing the reporter's name or the obligation to keep the reporter's name confidential, accompanied by the threat of criminal penalties for violations. All witnesses, reporters, and victims require this legal protection. Meanwhile, special protection for witnesses, reporters, and victims is provided by the state to address potential threats that endanger themselves, their lives, and their property, including their families. Not all witnesses, reporters, and victims of criminal acts require this special protection, as not all face threats.¹⁷

The issue of protecting victims of crime is one of the issues that has attracted international attention. This can be seen from the discussion of the issue of protecting victims of crime at the 7th UN Congress in 1985 on "The Prevention of Crime and The Treatment of Offenders" in Milan, Italy: It was stated that "Victims' rights should be perceived as an integral aspect of the total criminal justice system." (Victims' rights should be an integral part of the entire criminal justice system). In this UN Congress, a draft Resolution on Victim Protection was submitted to the UN General Assembly. This draft Resolution later became UN General Assembly Resolution No. 40/34 dated 29 November 1985 on the "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power."

Victims of child sexual abuse often experience feelings of shame, self-loathing, and depression. To cope, they resort to excessive drug use and even self-harm to express their pain. This can lead to a mental health disorder known as "post-traumatic stress disorder." However, children as victims have the right to receive medical assistance and psychosocial rehabilitation. Psychosocial rehabilitation is assistance provided by psychologists to victims suffering from trauma or other mental health issues to restore their mental health.

Victim protection can include abstract (indirect) and concrete (direct) forms of protection. Abstract protection is essentially a form of protection that can only be enjoyed or felt emotionally (psychologically), such as a sense of satisfaction (gratification). Concrete protection

¹⁶Philip M. Hadjon Legal Protection for the People, Dissertation, Airlangga University, Surabaya, 1987, p. 23

¹⁷ Alvianto RV Ransun. Mechanism for Providing Compensation and Restitution for Victims of Crime. Lex Crimen Vol.I/No.1/Jan-Mrt/2012. Sam Ratulangi University, Manado, 2012, p.63.

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is essentially a form of protection that can be enjoyed in real terms, such as the provision of material or non-material benefits. Protection for victims in the criminal justice system was initially stated in the Criminal Procedure Code, namely Articles 98 to 101 of the Criminal Procedure Code. However, in the Criminal Procedure Code, it is only limited to the consolidation of cases. In essence, in its development, the Criminal Procedure Code is less able to provide complete protection for victims, even though the existence of witnesses and/or victims of a crime in this case is very necessary and also something that must be considered as a whole in the examination process in criminal justice.

In principle, the protection of a person's rights as a witness has been accommodated in the Criminal Procedure Code, but considering the increasingly diverse types of criminal acts and the effects or consequences for the safety of the lives of witnesses/victims or their families, in 2006 the Indonesian government issued Law Number 13 of 2006 concerning the Protection of Witnesses and Victims. In Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, various rights granted by the State to victims of a crime have been regulated which were previously not or were not regulated in the Criminal Procedure Code.

The basis for considering the need for a law that regulates the protection of crime victims (witnesses) to be clearly drafted can be seen in the considerations section of this law, which among other things states: law enforcers often experience difficulties in seeking and finding clarity about the criminal acts committed by the perpetrator because they cannot present witnesses and/or victims due to threats, both physical and psychological from certain parties. Even though we know that the role of witnesses or victims in a criminal justice process occupies a key position in efforts to seek and find clarity about the criminal acts committed by the perpetrator.

The existence of witnesses and victims was undervalued before 2006. The Criminal Procedure Code itself, as a form of *Hir/Rbg*, tends to protect the rights of citizens who are suspects, defendants, and convicts.¹⁸ But we often forget that the process of proof requires testimony from witnesses or victim witnesses (victims who testify). The existence of both is often ignored by law enforcement and law enforcement officials in Indonesia. In certain cases, the safety of both individuals and their families is at stake, depending on their testimony.

Protection and rights for witnesses and victims are provided from the beginning of the investigation until its completion, as stipulated in laws and regulations. Furthermore, if testifying

¹⁸Rocky Marbun. *Smart and Tactical in Facing Legal Cases*. (Jakarta: Visi Media, 2010, p. 86.

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in court would put their lives at risk, the law provides protection for witnesses, victims, or their families by testifying without the perpetrator present at the hearing.

However, it is not uncommon for someone who experiences losses, both materially and immaterially, due to a criminal act that has befallen him, not to use the rights that should be obtained for various reasons, for example in sexual crimes. Someone who is a victim of a sexual crime will have a feeling of fear in the future if the community becomes aware of the incident that happened to him, because a sexual crime is a disgrace for him and his family so that the victim is better off hiding or the victim refuses to apply for compensation because it is feared that the process will become longer and more protracted which can result in prolonged suffering.¹⁹

In its development, guarantees of protection for witnesses and victims have a very important role in the criminal justice process so that with statements from witnesses and victims given freely from fear and also free from threats, a criminal act can be revealed, which then, to increase efforts to fully reveal a criminal act, especially in transnational organized crimes, it is also necessary to provide protection to witnesses, perpetrators, reporters, and also experts. Several provisions in Law Number 13 of 2006 concerning Witness and Victim Protection must be adapted to evolving legal needs in society. Therefore, Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Witness and Victim Protection was enacted.

Furthermore, in addition to the Criminal Procedure Code and Law No. 31 of 2014, regarding child victims of crime, the handling of child victims is generally regulated in Law No. 11 of 2002 concerning the Juvenile Criminal Justice System (UU SPPA). Providing protection to child victims of crime is one of the goals of the juvenile criminal justice system.²⁰ In Law Number 11 of 2012 concerning the Child Protection System (SPPA), children who are victims of criminal acts are referred to as Child Victims.²¹ Then the implementation of restitution in 2020 is regulated by Government Regulation of the Republic of Indonesia Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims.

Article 1 number (5) of the Government Regulation of the Republic of Indonesia Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning the

¹⁹ Didik M Arif Mansur and Elistaris Gultom, op.cit., p. 52.

²⁰ Yulia, Rena. Victimology of legal protection for crime victims. Yogyakarta: Graha Ilmu, 2010, p. 62.

²¹ Article 1 number 6 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

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Provision of Compensation, Restitution, and Assistance to Witnesses and Victims states that "restitution is compensation given to the Victim or his/her Family by the perpetrator or a third party." However, the amount of restitution and the parties authorized to regulate the implementation of restitution are not clearly stated in the Government Regulation of the Republic of Indonesia Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims.

Sociologically, legal protection for victims is also interpreted as the state's effort to create harmonious relationships of trust with its citizens by ensuring fair law enforcement, preventing citizens from making threats or resorting to vigilantism. As conceptualized in social contract theory,²²The state is granted the right to manage and regulate its citizens based on a contract delegating the free will of its citizens, with the requirement that the state guarantee protection for its citizens. Therefore, if the state violates this contract of protection, the mandate of the citizens will be distorted. It is therefore not surprising that citizens become disillusioned and no longer respect the state.

Furthermore, functionally, legal protection for victims must also be understood as a key component of crime prevention and response regulations. Effective crime prevention and response is impossible without adequate attention to the victims' issues. Crime is fundamentally the result of a relationship.²³The phenomenon of perpetrators of crime on one hand and victims of crime on the other. Therefore, if victims do not receive appropriate treatment from the state, apathy and cynicism toward the legal and judicial system will inevitably arise, which will inevitably make crime difficult to combat. Crimes are often uncovered through reports from victims to law enforcement. Therefore, if victims are no longer provided with legal protection, and are then reluctant to report to law enforcement, crime prevention and response efforts will undoubtedly be hampered. Therefore, legal protection for victims is crucial for crime prevention and response efforts.

²²Jean Jacques Rousseau was the initiator of the social contract theory. In Rousseau's teachings on society and the state, there is a conflict. On the one hand, the freedom of each individual is emphasized, while on the other hand, the power of the state is emphasized. This latter occurs because, according to Rousseau, it is in the state that the general will (*volonte generale*) is realized, namely the will of the people themselves which cannot be violated. In the name of this general will, individual rights are sacrificed. See Theo Huijbers, *Philosophy of Law in the Trajectory of History*, Yogyakarta, Kanisius, 1992, p. 9

²³Arif Gosita, *Op Cit*, p.98

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Protection for crime victims, theoretically there are two regulatory models, namely: (1) the procedural rights model and the services model.²⁴

a. Procedural rights model; victims are given the right to play an active role in the process of resolving criminal cases, such as the right to file criminal charges, assist the prosecutor or the right to be heard at every stage of the case examination where their interests are involved, including the right to be consulted before being granted conditional release, as well as the right to make peace.

b. Service model: Standards for the guidance of crime victims, which can be used by the police, for example, guidelines for modifying the procedures for victims and/or prosecutors in handling their cases, providing compensation as a restitutive criminal sanction, and the impact of statements made by victims before the sentence is imposed. Victims are seen as special targets who must be served in law enforcement activities or the resolution of criminal cases.

If the Child as a Victim requires immediate assistance, the Investigator, without a social report from a Professional Social Worker, can immediately refer the Child as a Victim to a hospital or institution that handles matters related to child protection according to the condition of the Child as a Victim.²⁵ What is meant by "requiring immediate medical attention" is a condition where a child is suffering, either physically or psychologically, and needs to be addressed immediately.²⁶

Children as Victims and/or Children as Witnesses in Need protection to obtain protection from institutions that handle witness and victim protection or social protection houses in accordance with the provisions of laws and regulations.²⁷ When examining a child as a victim and/or a child as a witness, the judge may order the child to be taken out of the courtroom.²⁸ Children as Victims and/or Children as Witnesses have the right to all protection and rights regulated in statutory regulations.²⁹

Basically, victims have a central position in the criminal justice system.³⁰ Therefore, victims must be given the utmost care. The rights granted in Law Number 11 of 2012 concerning the Child

²⁴ Muladi, *Human Rights, Politics and the Criminal Justice System*, Semarang, BP Undip, 1997, p. 178.

²⁵ Article 91 paragraph (2) of Law Number 11 of 2012 concerning SPPA.

²⁶ Explanation Article 91 paragraph (2) of Law Number 11 of 2012 concerning SPPA.

²⁷ Article 91 paragraph (4) of Law Number 11 of 2012 concerning SPPA.

²⁸ Article 58 paragraph (1) of Law Number 11 of 2012 concerning SPPA.

²⁹ Article 89 of Law Number 11 of 2012 concerning SPPA.

³⁰ Lilik Mulyadi, *Compilation of Criminal Law from the Perspective of Theory and Practice*. Bandung: Mandar Maju, 2007, p. 165

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Protection System (SPPA) are crucial. Given the victim's crucial role in uncovering crimes, the diversion process allows victims to understand why they were victims of a crime and to seek compensation from the perpetrator. must be given to restore the situation to its original state, the state before the crime that befell the victim occurred. This is known as restorative justice. As stated by Tony Marshall, as quoted in the chapter II, that the restorative concept emphasizes justice that can restore.³¹This concept has been accommodated by the SPPA Law regarding the protection of Child Victims as stated in Article 90 and Article 91 of the SPPA Law.

However, more specifically related to child protection regulations, Indonesia also has Law Number 23 of 2002 concerning Child Protection. This law also regulates the types of children who are victims of a crime, namely: children who are victims of abuse of narcotics, alcohol, psychotropics, and other addictive substances (napza), children as victims of kidnapping, sale, trade, children as victims of violence, both physical and/or mental, children with disabilities, and children as victims of mistreatment and neglect.³²children as victims of riots, children as victims of natural disasters,³³and children as victims of criminal acts.³⁴

The issue of the criminal justice system in cases of sexual violence in Indonesia is also very interesting to discuss. The various explanations above demonstrate the need for all parties to side with the victims. The Indonesian criminal justice system has historically neglected child victims of sexual violence. Victims, as those seeking justice, are denied access to justice during the investigation, inquiry, and trial. This leaves victims with little opportunity to fight for their rights and recover from the consequences of sexual violence.

In its development, the Indonesian criminal justice system only positions child victims of sexual violence as reporters and witnesses. This is clearly unfair to victims who suffer both material and non-material losses.³⁵Meanwhile, the position of criminals receives more attention in the criminal justice system in this country, this is shown by the implementation of treatment of offenders, social readaptation, correctional institutions, remission, amnesty, rehabilitation, and abolition.³⁶This situation is clearly unfair because the suffering experienced by the victim only

³¹ Zehr, H & Mika, H, "Fundamental concepts of Restorative Justice", Contemporary Justice Review 1, 1998, pp. 47–55

³² Article 1 paragraph (15) of Law Number 23 of 2002 concerning Child Protection

³³ Article 60 of Law Number 23 of 2002 concerning Child Protection

³⁴ Article 64 paragraph (1) of Law Number 23 of 2002 concerning Child Protection

³⁵ Didik Arief Mansyur and Elistaris Gultom, The Urgency of Protecting Crime Victims Between Norms and Reality, PT. Raja Grafindo Persada, Jakarta, 2007, pp. 26-27.

³⁶ Maya Indah S., Victim Protection, A Victimology and Criminology Perspective, Kencana, Jakarta, 2014, p. 97.

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becomes a basic instrument for sentencing the perpetrator, while the victim's suffering cannot really be restored in the development of the criminal justice system.

Furthermore, various problems that arise as a result of the unfairness of the criminal justice system for victims of sexual violence have found a bright spot, namely the implementation of restitution.³⁷ Restitution is an alternative effort to protect and restore the rights of victims injured by sexual violence. The issue of restitution has been clearly regulated in the United Nations Declaration on the Prosecution and Assistance of Crime Victims, in point 4, part 1, of the General Principles. The United Nations Declaration states that:³⁸

Reparation by the offender to the victim shall be an objective of the justice process. Such reparations may include (1) the return of stolen property, (2) monetary payment for loss, damages, personal injury psychological trauma, (3) payment for suffering, and (4) service to the victim. Reparation should be encouraged by the corrective process.

Meanwhile, the regulation of restitution in national legal regulations is clearly regulated in Law Number 31 of 2014. Article 1 number 11 of Law Number 31 of 2014 states that "restitution is compensation given to the victim or his family by the perpetrator or a third party." Furthermore, Article 7A number 1 of Law Number 31 of 2014 states that:

Victims of criminal acts have the right to receive restitution in the form of:

(d) compensation for loss of wealth or income;

(e) compensation for losses incurred as a result of suffering directly related to the criminal act; and/or

(f) reimbursement of medical and/or psychological care costs.

³⁷Restitution is the restoration of the rights of victims of a criminal act in society. Galeway states that the purpose of restitution is to restore the losses suffered by victims due to a crime, namely by providing appropriate sanctions to the convict and preventing retaliation against the victim. In Indonesia, the restitution system adopted is a procedural rights approach system, this is clearly seen in Law Number 31 of 2016 and Government Regulation Number 44 of 2008. The weakness of this restitution system is that the legal rights of the victim are difficult to determine due to the unclear separation between the victim's personal interests and the public interest, and the next weakness is that the restitution system adopted in Indonesia tends to be easy to abuse. See: Ahmad Sofyan, Providing Restitution to Victims of Crime in the Indonesian Criminal Justice System, Accessed Through business-law.binus.ac.id, On May 12, 2018.

³⁸Romli Atmasasmita, Writing a Scientific Paper on the Problem of Compensation for Victims of Crime, National Legal Development Agency, Department of Justice, Jakarta, 1992, p. 4.

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Furthermore, Article 3 of Government Regulation of the Republic of Indonesia Number 43 of 2017 concerning the Implementation of Restitution for Children Who Are Victims of Crime states that:

Restitution for children who are victims of crime in the form of:

(d) compensation for loss of property;

(e) compensation for suffering as a result of a criminal act; and/or

(f) reimbursement of medical and/or psychological care costs.

In its development, the implementation of restitution for the recovery of child victims of sexual violence has not been effective in 2017. This is because Article 7 of the Government Regulation of the Republic of Indonesia Number 43 of 2017 still contains administrative requirements that are still difficult for victims, so that the authorities should be able to facilitate the fulfillment of administrative requirements as regulated in Article 7 of the Government Regulation of the Republic of Indonesia Number 43 of 2017. In addition, the perpetrators of criminal acts are reluctant to pay restitution on the grounds of economic inability, this becomes increasingly unfair because the inability of the perpetrator to pay restitution is only replaced with a subsidiary sentence in the form of imprisonment for 2 to 3 months. In addition, the time for receiving restitution by child victims of sexual violence is also quite long considering the long judicial process, not to mention the perpetrators who are in detention or sentenced to death which can then be a reason for not making restitution.

Then in 2018, the government issued Government Regulation Number 7 of 2018 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims. However, in its development, implementing compensation as an alternative to restitution is also not easy, this is because there is no institution designated in the Government Regulation to interpret the extent of the losses suffered by victims. In addition, there is also no clear regulation of which state institution is authorized to distribute compensation from the state to child victims of sexual violence. Furthermore, the administrative requirements for submitting compensation applications by victims are so complicated, which will also be a problem for victims.

Furthermore, when discussing crimes of sexual violence against children, the Criminal Procedure Code (KUHP) is typically used in court, which does not explicitly address compensation for child victims. Law Number 35 of 2014 also does not specifically address restitution and compensation for child victims of crimes, including sexual violence.

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As previously explained, the consequences of sexual violence against children, including acts of sexual violence, can result in physical and psychological harm. To date, it cannot be said that compensation and restitution can restore the psychological harm suffered by child victims of sexual violence. This is because psychological violence can have both short-term and long-term impacts. Short-term impacts include threats to the child's safety, damage to the family structure, and mental and psychological disorders. Long-term impacts include the child's involvement as a perpetrator of violence in adulthood. Trauma and the experience of being a victim of violence can lead children to become perpetrators of violence in adulthood. This can be seen in symptoms of aggression, phobias, insomnia, low self-esteem, and depression. These various factors can lead children to become involved in violence in intimate relationships in adulthood.³⁹

The next alternative is imprisonment for perpetrators of sexual violence, which is inherently fraught with various problems. One such issue is the interaction between perpetrators in prison, which produces criminals with new skills through the social interaction process within the prison cell. Erwin H. Sutherland and D. Cressey state that crime is an action learned through interaction.⁴⁰ This clearly means that many perpetrators of sexual violence against children, including child sexual violence, are not effectively deterred and cannot change into good human beings, considering that this condition is also exacerbated by the problems of poverty and low education.

Furthermore, the paradigm of imprisoning perpetrators of child sexual abuse has undoubtedly led to other problems, including the increasingly unrepresentative capacity of correctional institutions (LAPAS). As of January 2018, the number of inmates reached 233,662, while the capacity of Indonesian prisons was only 123,117.⁴¹ This can clearly have an impact on conflicts in prisons, which can lead to various issues of control of prisons by inmates who feel neglected by the government. The final alternative is to optimize the Victim and Witness Protection Agency. Basically, the implementation of victim protection is regulated in an integrated manner with witness protection and is regulated in Law Number 13 of 2006 in conjunction with Law Number 31 of 2014 concerning Witness and Victim Protection. Article 33 of Law Number 13 of 2006 in conjunction with Law Number 31 of 2014 concerning Witness and Victim Protection states that:

³⁹Maria Advianti, KPAI: Perpetrators of Violence Against Children Increase Every Year, Accessed via www.KPAI.go.id, May 12, 2018. See also: Margaretha, Rahmaniar Nuringtyas, and Rani Rachim, *Childhood Trauma and Violence in Intimate Relationships*, Makara Social Humanities Series, 2013, p. 34.

⁴⁰Ahmad Usman, Prison = Place of "Repentance" or Rather "School of Crime", Accessed via inipasti.com, May 12, 2018.

⁴¹Era.id, Causes of Conflict in Prisons, Capacity and Facility Competition, Accessed May 12, 2018.

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Assistance as referred to in Article 6 is provided to a witness and/or victim upon a written request from the person concerned and/or the party representing them to the LPSK.

Furthermore, Article 34 of Law Number 13 of 2006 in conjunction with Law Number 31 of 2014 concerning Protection of Witnesses and Victims states that:

- 1) LPSK determines whether witnesses and/or victims are eligible for assistance;
- 2) In the case where witnesses and/or victims are eligible for assistance, LPSK determines the time limit and the amount of costs;

Based on the provisions of the two articles above, the role of LPSK also needs to be reviewed, the existence of written application requirements, determination of eligibility, as well as time limits and the amount of fees will make it difficult for victims and families of victims who do not have good Human Resources, written requirements will make it difficult for families and victims who do not understand the procedures for submitting written application requirements properly, so that these requirements will make families and victims reluctant to want to take care of the LPSK assistance request to the victim. The existence of eligibility determination requirements will also take time and the amount of fees shows that LPSK charges victims which will also burden victims and families of victims who come from low economic backgrounds. This situation results in the recovery and protection of child victims of sexual violence being ineffective. This can be seen from the following research data. According to data from the Semarang City District Court, there have been 10 cases of sexual violence against children that have been entered in the Semarang City District Court in 2019, which were committed by three perpetrators who were still children and seven perpetrators who were adults. Then, in 2020, sexual violence cases filed with the Semarang City District Court decreased to five, with three child perpetrators and two adults. Then, in 2021, cases of sexual violence against children filed with the Semarang City District Court decreased again to four cases, each involving adult perpetrators.⁴²

3.2. Obstacles in the Implementation of Restitution for Child Victims of Sexual Violence in Semarang City Currently

Legal constraints can be seen in the current regulations regarding child protection, regulations regarding chemical castration sanctions, and regulations related to the Draft Law on the Elimination of Sexual Violence. As previously explained, the issue of restitution has been clearly

⁴²Anjar Wirawan Dwi Sasongko, Data on the Number of Sexual Violence Cases at the Semarang City District Court, Data obtained through data provided by the clerk of the Semarang City State Court on November 11, 2021.

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regulated in the United Nations Declaration on the Prosecution and Assistance of Crime Victims, in point 4, part 1 of the General Principles. The United Nations Declaration states:⁴³

Reparation by the offender to the victim shall be an objective of the justice process. Such reparations may include (1) the return of stolen property, (2) monetary payment for loss, damages, personal injury psychological trauma, (3) payment for suffering, and (4) service to the victim. Reparation should be encouraged by the corrective process.

In its development Law Number 23 of 2002 concerning Protection In practice, children have many shortcomings, including:

- a. BThere is no explanation regarding the meaning of violence, even though this is very important to explain, what things are classified as acts of violence against children.
- b. In the school environment, children do not receive protection from violence perpetrated by school teachers or school friends.
- c. In the case of a child who is separated from both parents for the sake of the child's best interests, this law does not explain the extent of the parents' role during the implementation of the guidance.
- d. Guardian parents are not mentioned in efforts to protect children, so if a child is cared for by a guardian, it can be said that the guardian does not have an obligation to provide protection for the child.
- e. There is no protection for children as victims of sexual crimes
- f. There has not been any attempt at restitution from the perpetrator to the victim, for example for victims of sexual crimes.

The increasing number of crimes involving children as victims of sexual crimes, whether committed by their own parents, friends, or strangers, has prompted the government to immediately make changes by ratifying Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2003 concerning Child Protection. It contains several sanctions for as an aggravating sanction for perpetrators of sexual crimes. The aggravating sanctions for perpetrators of sexual crimes as regulated in Law Number 35 of 2014 are as follows:

⁴³Romli Atmasasmita, Writing a Scientific Paper on the Problem of Compensation for Victims of Crime, National Legal Development Agency, Department of Justice, Jakarta, 1992, p. 4.

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1. Everyone is prohibited from committing violence or threatening violence by forcing a child to have sexual intercourse with them or with another person. Anyone who violates this law will be subject to a minimum prison sentence of 5 years.(five) years and a maximum of 15 (fifteen) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah).⁴⁴If the crime is committed by a parent, guardian, child caretaker, educator or education staff, the penalty is increased by 1/3 (one third) of the criminal threat above.⁴⁵

2. Everyone is prohibited from committing violence or threats. Violence, by means of coercion, deception, a series of lies, or persuading a child to commit or allow indecent acts to be committed. Anyone who violates this shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah).⁴⁶If a crime is committed by a parent, guardian, child's caregiver, educator, or educational staff, the penalty is increased to 1/3 (one third) of the criminal threat as mentioned above.⁴⁷

3. Every person is prohibited from placing, allowing, carrying out, ordering to carry out, or participating in any economic and/or sexual exploitation of a child. Any person who violates this provision shall be punished.

To ensure maximum protection for children, there needs to be coordination and cooperation between the government, the community and parents.⁴⁸Protection of children is a shared responsibility, but if those who should be protecting children end up committing crimes against them, they should receive a higher punishment.

Gary Becker put forward several opinions regarding rationality in criminal law:

1) Optimal criminal justice policy. This thinking is related to cost-benefit analysis, which implies an effort to achieve the optimal allocation of resources within society in combating crime. The

⁴⁴ Article 81 paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002

⁴⁵ Article 81 paragraph (3) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002

⁴⁶ Article 82 paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002

⁴⁷ Article 82 paragraph (2) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002

⁴⁸ Maidin Gultom, Legal Protection for Children in the Juvenile Criminal Justice System in Indonesia. Bandung: Rafika Aditama, 2006, p. 35.

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combined theoretical assumption is that if existing criminal sanctions are severe enough, every criminal will certainly avoid them. possibility of being caught, in this case it will reduce crime.⁴⁹

2) Kan individual's decision about criminal activity. Criminals are rational actors who weigh the costs and benefits, and the time and resources allocated among criminal activities, so that they know which will bring the greatest benefit.⁵⁰All people (not just criminals) are rational actors who subjectively weigh the costs and benefits of their activities. Some people choose activities labeled criminal because, for them, the benefits outweigh the costs. To deter them from committing crimes, the cost is increased, thereby reducing the benefits. This is achieved by increasing the criminal penalties imposed.

As Gerry Becker stated, humans are rational creatures. Therefore, if the sanctions imposed are greater than the results obtained, criminals or potential criminals will avoid the crime. The government's efforts to protect children from sexual crimes, according to Gerry Becker, are the right action. For children who become victims of crime, the government, both local governments and other state institutions, have an obligation and also responsible for providing Special Protection.⁵¹In other words, children who are victims of a crime have rights that have been regulated in Law Number 35 of 2014, namely the right to receive special protection. This special protection will be given to: Children as victims of criminal acts of kidnapping, selling, and/or trafficking; Children as victims of physical and/or psychological violence; Children as victims of sexual crimes; Children as victims of terrorist networks; Children as victims of mistreatment and neglect; and Children who are victims of stigmatization from labeling related to the condition of their parents.⁵²What is meant by special protection is a form of protection that can be received

⁴⁹ William L Barnes Jr, "Revenge on Utilitarianism: Revisiting a Comprehensive Economics Theory of Crime and Punishment", Indiana Law Journal, Vol. 74, No. 627, (1999), in Mahrus Ali, Principles, Theory and Practice of Criminal Law on Corruption. Yogyakarta: UII Press, 2013, p. 246.

⁵⁰ D M. Khan, "Social Influence, Social Meaning, and Deterrence", Virginia Law Review, No. 83, in Mahrus Ali, Principles, Theory and Practice of Criminal Law on Corruption. Yogyakarta: UII Press, 2013, p. 246.

⁵¹ Article 59 paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002

⁵² Article 59 paragraph (2) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 Special Protection for Children as referred to in paragraph (1) is provided to: a. Children in emergency situations; b. Children in conflict with the law; c. Children from minority and isolated groups; d. Children who are exploited economically and/or sexually; e. Children who are victims of abuse of narcotics, alcohol, psychotropics, and other addictive substances; f. Children who are victims of pornography; g. Children with HIV/AIDS; h. Children who are victims of kidnapping, sale, and/or trade; i. Children who are victims of physical and/or psychological violence; j. Children who are victims of sexual crimes; k. Children who are victims of terrorist networks; l. Children with disabilities; m. Children who are victims of mistreatment and neglect; n. Children with deviant social behavior; and o. Children who are victims of stigmatization from labeling related to the condition of their parents

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by a child in certain situations and conditions to ensure a sense of security against threats that could endanger him and his soul in his growth and development.⁵³

The form of special protection that can be given to children who are victims of a crime is carried out through rapid handling, including physical, psychological and social treatment and/or rehabilitation, as well as prevention of diseases and other health disorders; psychosocial support during treatment until recovery; provision of social assistance for children who come from underprivileged families; and provision of protection and support for children who are victims of a crime. every judicial process is underway.⁵⁴

Based on the description above, Law Number 35 of 2014 specifically provides protection for children as victims of sexual crimes. The form of protection provided to children as victims of sexual crimes, as previously cited, is regulated in Article 69A of Law Number 35 of 2014, including:⁵⁵

- 1) Education about reproductive health, religious values, and moral values;
- 2) Social rehabilitation for children;
- 3) Psychosocial support during treatment until recovery; and also
- 4) Providing protection and assistance at every level of examination, starting from the investigation process, prosecution process, to the examination process in court.

In addition to the special protection rights granted to children who are victims of a crime as mentioned above, children who are victims of a crime also have the right to file a lawsuit in court for restitution, which is the responsibility of the perpetrator of the crime. However, not all children who are victims of a crime have the right to restitution. have these rights, those who have the right to submit restitution to the court are:⁵⁶

- a) Children as victims who are exploited economically and/or sexually;
- b) Children as victims of pornography crimes;
- c) Children as victims of criminal acts of kidnapping, sale and/or trafficking;

⁵³ Article 1 number 15 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002

⁵⁴ Article 59A of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002

⁵⁵ Article 69A of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002

⁵⁶ Article 71D paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002

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- d) Children as victims of criminal acts of physical and/or psychological violence;
- e) Children as victims of sexual crimes.

Protecting children is essentially protecting the family, protecting society, and also protecting the nation.⁵⁷ Therefore, child protection is crucial, including the protection of children as victims of crime. The aforementioned children's rights are crucial to protect, especially for child victims of sexual crimes. Punishing a perpetrator of a sexual crime does not erase the trauma the victim endures.⁵⁸ Therefore, the victim's right to seek restitution is crucial. This right to restitution is used to heal the trauma suffered by child victims of sexual crimes.

This long-term protection guarantee is of course provided by law, considering the level of threat to witnesses and victims in exposing a crime, which can have long-term consequences. The agency tasked with and authorized to provide new identities for victims is the Witness and Victim Protection Agency (LPSK). provisions of Article 1 number 3 of the Witness and Victim Protection Law, LPSK is an institution that has the duty and authority to provide protection and other rights to Witnesses and/or Victims.

4. Conclusion

The protection and rehabilitation of child victims of sexual violence remains ineffective. This is demonstrated by the minimal implementation of restitution for child victims of sexual violence, which ultimately hinders the rehabilitation of child victims of sexual violence. Another obstacle is the lack of clear legal regulations regarding the implementation of restitution. This cultural barrier also hinders the restitution system for child victims of sexual violence.

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