

Legal Protection in the Form of Restitution of Victims of Severe Abuse Linked to Child Protection Law (Case Study of David Ozora)

Nadira Umar Bajaber¹⁾ & Yuliana Yuli Wahyuningsih²⁾

¹⁾Faculty of Law, Universitas Pembangunan Nasional "Veteran" Jakarta, E-mail: 2210611018@mahasiswa.upnvj.ac.id

²⁾Faculty of Law, Universitas Pembangunan Nasional "Veteran" Jakarta, E-mail: yulianayuli@upnvj.ac.id

Abstract. *The legal protection in the form of restitution for child victims of serious abuse, highlighting the case of David Ozora as a concrete study. The main focus is directed at the inequality of the criminal justice system, which tends to be perpetrator-oriented, while the position of the victim is often neglected. Restitution is seen as an important instrument in realizing restorative justice that emphasizes the restoration of victims' rights, not only through criminal sanctions for the perpetrators. This study uses a normative juridical method, combining a legislative approach and case studies. The research findings indicate that legal protection for child victims has been regulated through the Child Protection Law, the Witness and Victim Protection Law, and Government Regulation Number 43 of 2017, which specifically regulates the procedures for granting restitution. In the case of David Ozora, the court not only sentenced the perpetrator to prison but also determined a large amount of restitution, indicating the state's recognition of the victim's right to restitution. However, the application of excessively high restitution also creates a dilemma when the perpetrator is a child, as it has the potential to conflict with the principles of restorative justice in the juvenile criminal justice system. Thus, this study emphasizes the importance of implementing proportional restitution that prioritizes the best interests of children, both as victims and perpetrators, to achieve substantive justice consistent with humanitarian values.*

Keywords: Abuse; Crime; Legal; Protection; Restitution.

1. Introduction

Criminal law should ideally not only focus on upholding justice from the perspective of the perpetrator, such as by imposing severe sanctions as a form of retribution or deterrent, but should also seriously consider justice for the victims

who have suffered real suffering as a result of the crime. While imposing a severe sentence is often seen as a form of psychological satisfaction for the victim, as it reflects that the perpetrator has received a just reward, this is not the only or even the most important expectation of the victim. In many cases, what the victim needs most is concrete reparation for the losses they have suffered, whether physical, psychological, or material (Nurul Hidayah, 2024). Victims want real protection and recovery, not just symbolic punishment for the perpetrator.

Therefore, the criminal law system should develop a more holistic and victim-oriented approach, such as restorative justice, not only emphasizing revenge against the perpetrator but also providing space for the victim's recovery as part of complete and humane justice (Sukardi, 2020). The current criminal justice process is still strongly influenced by the retributive justice approach, which emphasizes the punishment of perpetrators as a form of retribution for their actions. This approach tends to place perpetrators at the center of the justice system, from investigation and prosecution to sentencing, while the position and interests of victims are often ignored or merely treated as witnesses. Through a victimology perspective, critical reflections emerge on the criminal law system, which focuses too much on perpetrators and raises a fundamental question: why is justice given more to violators of the law than to victims whose rights have been violated and who have suffered directly as a result of the crime?

This question reflects the imbalance in the enforcement of justice, where victims are seemingly ignored in the legal process, even though they are the ones most impacted. Therefore, it is time for criminal law to shift its paradigm to a more balanced and humane one, by not only considering the rights of perpetrators, but also providing adequate space for the restoration of victims' rights as a form of substantive justice. The imbalance in the criminal justice system's focus on perpetrators rather than victims not only impacts the fulfillment of victims' sense of justice but also risks giving rise to errors in the application of legal protection principles, particularly when the perpetrator is a child. An overly retributive approach without considering the perpetrator's full condition and capacity, including their age, can result in decisions that contradict the spirit of restorative justice upheld in the juvenile criminal justice system (Muhammad Pujiyono Ghoni, 2024). This has the potential to conflict with legal protection for children in the juvenile criminal justice system (Law No. 11 of 2012 concerning the Child Protection System), where children should not be treated with equal responsibility to adults in terms of compensation.

Meanwhile, victims' rights to restitution have been explicitly recognized and guaranteed in legislation. The most fundamental legal basis for this is Law No. 31 of 2014, which amends Law No. 13 of 2006 concerning Protection of Witnesses and Victims, better known as the Witness and Victim Protection Law (Wahyu Mulyana, 2021). The law is an important milestone in strengthening the position

of victims in the criminal justice system, which previously focused more on the perpetrator. Article 7A paragraph (1) emphasizes that victims of criminal acts have the right to restitution, including compensation for losses due to loss of property and income, compensation for suffering arising directly from the crime, and reimbursement for medical or psychological treatment costs. This regulation emphasizes that restitution is not only limited to material losses, but also includes immaterial losses related to the psychological and emotional condition of the victim, including children as victims of crime. Therefore, if a child experiences suffering due to a crime, the state is obliged to ensure that the perpetrator is subject to proportional restitution obligations as a form of comprehensive recovery.

This provision is further reinforced by derivative regulations such as Government Regulation No. 43 of 2017 and the LPSK Regulation, which more technically regulate the procedures for requesting and implementing restitution. Therefore, the existence of this regulation provides an important foundation for law enforcement officials to prioritize restitution as a fundamental right of victims, including children, in order to realize restorative justice that is oriented towards recovery, not merely retribution. Decisions imposing such large amounts of restitution in Indonesia constitute an interesting and relatively rare precedent in criminal justice practice. Generally, requests for restitution—where compensation must be paid by the perpetrator to the victim—are often relegated to the civil realm, or, if granted in criminal cases, the amount is relatively small and does not form a central part of the verdict. However, in several cases, restitution has been directly imposed in the criminal process and explicitly included in the verdict, demonstrating the criminal justice system's efforts to more concretely monitor victims' rights. A more unique and controversial aspect is the threat of a seven-year prison sentence if restitution is not paid. This deviates from common practice, because substitute punishment is usually applied as a fine, not as restitution, which is actually restorative, not punitive. When linked to restitution for children as victims of crime, this type of ruling can be a double-edged sword. On the one hand, it demonstrates a commitment to victims, including children, by ensuring reparation for the suffering they have experienced (Sukardi, 2020).

However, on the other hand, if the perpetrator is a child, then the application of large amounts of restitution and the threat of imprisonment if not paid can conflict with the principles of child protection in Indonesian law—especially as managed by Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA), which emphasizes a restorative justice approach and protection of child development, including matters of criminal accountability and recovery. Therefore, in cases where children are perpetrators, it is important for law enforcement officials to consider the child's economic capacity, psychological well-being, and moral responsibility proportionally, so that restitution truly becomes a form of recovery for the victim without harming the future of the

perpetrator's child. This regulation serves as a legal basis for both the public and law enforcement officials to provide protection for children, especially those facing legal proceedings. The regulation also establishes a diversion mechanism as an alternative resolution for criminal cases involving children, and emphasizes the application of restorative justice to encourage the process of restoring relationships between perpetrators and victims, leading to improved outcomes (D Rakhmatika, 2023).

In every writing, there will certainly be research that has previously discussed the same topic. Ghoni and Pujiyono's research discussed the retributive and restorative approaches in child punishment, and emphasized the importance of integrating restitution as a form of restorative justice. Then there is Hidayah's research which also adds that protection for victims of crime must be viewed from a victimology perspective, placing victims as subjects who have the right to obtain a sense of security, rehabilitation, and restitution. In addition, Anggraini's research emphasizes the importance of strengthening integrated services that connect medical, psychological, and legal aspects so that restitution can truly be accessed effectively by child victims. Based on the previously outlined issues and previous research on a similar topic, there is an urgency and interest in conducting an in-depth study of the legal aspects governing all matters concerning the granting of restitution rights to children who are victims of a crime. This study is important considering that children as victims are in a vulnerable position and require comprehensive legal protection. The focus of the discussion is directed at how positive legal provisions in Indonesia, especially the existing laws and regulations, regulate the right to restitution; what form of legal protection is provided to victims of serious child abuse according to the provisions of the Child Protection Law and Government Regulation Number 43 of 2017, and how the application of protection in the form of the right to restitution in the case of serious abuse experienced by David Ozora's child from the perspective of criminal law and child protection in Indonesia. This discussion is expected to be able to provide a comprehensive picture of the effectiveness of regulations and their application in providing justice and proper recovery for children as victims of crime.

2. Research Methods

This research method utilizes a normative juridical method, where legal research focuses on the study of relevant laws and regulations, doctrines, and legal principles. The main focus of this study is to examine legal norms that provide protection for children, particularly as stipulated in Law No. 35 of 2014 concerning Child Protection and Government Regulation Number 43 of 2017 concerning the implementation of restitution for child victims of crime. With this approach, this research not only describes legal regulations normatively but also evaluates the extent to which these regulations are effective in providing comprehensive protection for children as victims of crime.

3. Result and Discussion

3.1. The Forms of Legal Protection Provided to Child Victims of Serious Abuse According to the Provisions of the Child Protection Law

Legal protection provided to children who are victims of serious abuse can be interpreted as a constitutional mandate, meaning it is the responsibility of the state, as managed by the national legal framework, particularly in Law No. 35 of 2014 concerning Child Protection (Law No. 35 of 2014). According to the provisions of Article 1 number 1, what is meant by a child is every individual who is under 18 years of age, including fetuses who remain in the womb. This law emphasizes that children are legal subjects who have basic rights, such as the right to live, grow and develop, participate actively, and receive protection from all forms of violence and discrimination.

In the context of serious abuse, these legal provisions regulate protection that is not only limited to the process of enforcing criminal law against the perpetrator, but also includes fulfilling the victim's right to a sense of security, a physical and psychological recovery process, and guaranteeing that the principle of justice is fulfilled. Legal protection provided to victims of crime through legal aid serves to encourage courage and reduce the fear experienced by victims when they want to provide information and show evidence that a crime has occurred.

Furthermore, protection in the form of medical services and assistance also plays a crucial role, particularly for victims of criminal assault. These services are not solely intended for post-mortem examinations (*visum et repertum*) but also encompass treatment and recovery until recovery, with costs borne by both the perpetrator and the government. Furthermore, this protection, including restitution and compensation, aims to ensure a sense of justice for victims of criminal acts facing physical, psychological, material, and immaterial suffering resulting from the crime.

The Child Protection Law also provides opportunities for victims to obtain restitution or compensation. This form of restitution can include medical treatment costs, psychological rehabilitation, and compensation for the suffering experienced by the victim. This provision aligns with Government Regulation Number 43 of 2017 concerning the Implementation of Restitution for Child Victims of Crime. With this regulation, child victims of serious abuse are not only placed as witnesses in the judicial process but are also recognized as parties entitled to comprehensive recovery. This form of restitution can include:

- a. Return of ownership rights,
- b. Provision of compensation for losses or suffering experienced,
- c. Burial costs and condolence payments (Nova Ardanti Suryani, 2020).

Repressive protection is provided to children who have been victims of serious abuse. This protection involves law enforcement against perpetrators, with the imposition of heavier and more stringent criminal sanctions. Article 76C in conjunction with Article 80 of the Child Protection Law states that anyone committing violence against children can be subject to imprisonment with a heavier penalty. The implementation of sanctions against perpetrators is not only intended to deter perpetrators but also to provide a sense of justice for victims of these crimes. Law No. 35 of 2014 concerning Child Protection states that every child has the right to protection from all forms of violence (Law No. 35 of 2014).

In the context of serious abuse, various forms of legal protection are crucial because the impact faced by victims of this crime is not only physical suffering, but also long-term psychological trauma that may disrupt their thinking patterns and development. Overall, various forms of legal protection for child victims of serious abuse, as regulated by the Child Protection Law, include legal action against perpetrators, recovery and rehabilitation efforts for victims, and preventative measures through education and family and community involvement. This protection plays a crucial role in ensuring that child victims are able to obtain justice and the opportunity to recover from the traumatic impacts they experience.

As legal practice evolves, protection for child victims of serious abuse no longer focuses solely on criminal enforcement but also includes social and psychological dimensions. Rehabilitation for child victims is now considered an integral part of legal protection itself (Lilis Setyowati, 2024). The approach is in line with the principle of the best interest of the child, placing the interests of the child as the main priority in every policy and legal process (Nurul Hidayah, 2024).

Furthermore, current child protection policies emphasize the application of restorative justice, namely a mechanism that does not only emphasize punishing the perpetrator, but also restoring the victim's condition as a whole (Ghoni, 2022). The application of restorative justice is considered relevant considering that serious abuse often has long-term impacts, including psychological trauma, feelings of insecurity, and obstacles to child development. Therefore, the state's role in providing rehabilitation, psychological support, and restitution is not optional, but rather a legal obligation that must be fulfilled.

It should also be noted that in practice, child victims of serious abuse often experience obstacles in obtaining justice, both due to limited access to legal aid and a lack of support from law enforcement officials. To address this issue, recent research emphasizes the importance of increasing the capacity of authorities to be more responsive to children's vulnerabilities, as well as the need to strengthen integrated services that connect child protection agencies with medical, psychological, and legal services (Dian A. Maharani, 2020).

Thus, legal protection for child victims of serious abuse under the Child Protection Law must be understood comprehensively, which includes: (i) firm law enforcement against the perpetrator; (ii) recovery of the child's physical, psychological, and social condition; and (iii) participation of the family, community, and state in supporting the victim's rehabilitation. The implementation of this protection not only reflects constitutional obligations but also serves as an indicator of Indonesia's commitment to guaranteeing children's rights in accordance with national and international standards.

3.2. The Implementation of Legal Protection in Cases of Serious Abuse Experienced by Child Victim David Ozora from a Criminal Law Perspective

The case of severe abuse experienced by child victim David Ozora by Mario Dandy Satriyo in 2023 attracted considerable public attention, especially among the local community. The incident resulted in severe physical injuries and serious psychological impacts that affected the victim's future and quality of life. From a criminal law perspective, this act of severe abuse is categorized as a crime against the body, as regulated by the Criminal Code and the Child Protection Law. In terms of legal protection, the provision of legal protection for victims is not limited to imposing punishment on the perpetrator but also establishes the importance of protecting child victim David Ozora. The Child Protection Law has emphasized that every child victim of a crime has the right to receive special protection such as rehabilitation services, psychological recovery, and guarantees for the continuation of their education. This was then reinforced through Government Regulation Number 43 of 2017 concerning the Implementation of Restitution for Child Victims of Crime, which provides victims with the right to receive restitution in the form of medical treatment costs, recovery, and compensation for losses suffered.

The application of protection for child victims in cases of criminal abuse states that positive criminal law, along with child protection instruments, are applied simultaneously in both retributive and restorative aspects. From a normative perspective, Law No. 35 of 2014 states that the state is responsible for guaranteeing children's rights to receive protection from violence and the right to recovery, which then becomes the basis for judges' considerations in assessing the serious impact experienced by victims and the need for long-term recovery. From the application of this norm, it has been stated in the Decision of the South Jakarta District Court Number 297/Pid.B/2023/PN Jkt.Sel, that Mario Dandy as the defendant was proven to have committed the crime of serious abuse against the child victim David Ozora and was sentenced to 12 years in prison and obliged to pay restitution to the child victim in the amount of IDR 25,140,161,900 (JDIH MA, 2023). The determination of restitution is considered to be sufficient to reflect the function of legal protection which is not only limited to imposing punishment on

perpetrators of criminal acts but also ensuring the implementation of recovery for child victims as stipulated in Law No. 35 of 2014.

At the same time, the panel of judges made a fairly critical assessment of the LPSK's calculation, which reached around 120 billion rupiah, with components derived from the estimated suffering of the victim. However, in the end, the panel of judges determined the amount of restitution that was considered more reasonable and had a clear causal relationship to the victim and all the needs for the victim's recovery. Then, at the cassation level, the Supreme Court, through case number 101 K/Pid/2024, decided to reject the cassation, so that the 12-year criminal sanction and the obligation to pay restitution of IDR 25,140,161,900 were legally binding. Based on juvenile criminal justice which specifically stipulates settlement from investigation to criminal and guidance stages, it is stated that child victims are children under the age of 18 who face economic, mental and physical losses resulting from criminal acts, as in the following case, namely David Ozora was 17 years old during the incident, so he is entitled to all rights and protections that have been stipulated in the law.

Furthermore, referring to Article 90 (1), child witnesses and victims also have the right to easily obtain information regarding case developments, social security, mental, physical and child safety, as well as social and medical rehabilitation. However, due to the victim's child's severe brain and head injuries, the victim was unable to obtain information regarding the progress of the case or provide testimony without pressure, due to unconsciousness and emotional instability, so his family represented him. David Ozora's right to protection for the security of his property, family, and personal life has been fulfilled, as indicated by the absence of threats to testify for the family or the victim. The victim's child has also received protection from questioning, but there is no right to use language translation, as the evidence presented in the trial is deemed comprehensible and understandable (Audit Board of Indonesia, 2016).

The right to confidentiality of identity is not fully fulfilled for all parties, especially child victims even though the child is under the age of adulthood, and the right to obtain a new residence is not fulfilled because the assessment of the Witness and Victim Protection Agency (LPSK) stated that temporary housing is sufficient, with funding of IDR 9,108,900.00 to the victim's family, accompanied by the fulfillment of the right to obtain assistance, the right to assistance with living costs for the suffering experienced of IDR 12,000,000,000.00, the right to obtain reimbursement of legal counsel costs of IDR 700,000,000.00, and the right to obtain transportation costs of IDR 6,818,000.00 which is then included in the restitution payment. Thus, protection for child victims based on the perspective of criminal law has been partially fulfilled, especially in the restitution application submitted to LPSK, this is because the assessment of the panel of judges revealed that there are components that should not be requested and focused on

consideration of Law No. 31 of 2014, namely adequate and fair protection for victims and witnesses(BPK, 2014).

This has been stated explicitly in the legislation in 28D (2) and 24 (1) which is explicitly different compared to the legal certainty that exists in countries with legal positivism, so that justice and legal truth have been realized if the judge's decision is in line with the legislation, and justice is not only based on legislation which is one of the sources of law, but also explores all the values of justice that exist in the community, as thought by Gustav Radbruch which is intended as a balance between the aspects of benefits, legal certainty, and justice, which has the potential to trigger tension between each aspect, because it allows for conflict between justice with benefits and legal certainty, thus as an anticipatory step, Radbruch proposed a way out by providing a benchmark in deciding cases, namely justice as the main priority, then benefits, and legal certainty as the last aspect(Martin Borowski, 2024).

In the David Ozora case, the LPSK (Lembaga Penita Satpol PP) recommended the amount of restitution, taking into account both the material and immaterial losses suffered by the victim. However, the panel of judges then decided on a restitution amount deemed more reasonable and balanced. This condition reflects the function of checks and balances between victim protection agencies and the courts to ensure justice can be realized more objectively for children as victims of crime. Furthermore, the application of legal protection is also in line with international legal standards, particularly the United Nations Convention on the Rights of the Child (UNCRC), which Indonesia ratified through Presidential Decree Number 36 of 1990. This convention affirms the obligation of state parties to provide special protection for child victims of crime and guarantee comprehensive recovery, both physical and psychological. Thus, fulfilling the rights of child victims of serious abuse is not only a constitutional obligation, but also part of Indonesia's responsibility in implementing international commitments that place the principle of the best interest of the child as a primary basis.

4. Conclusion

Through research and analysis, the Child Protection Law provides legal protection for child victims of serious abuse, encompassing repressive, preventive, and rehabilitative measures. Repressive protection is realized through criminal law enforcement with strict sanctions against perpetrators, while preventive protection is implemented through educational efforts, family involvement, and active community participation in preventing violence against children. Rehabilitative protection is provided through medical services, psychological rehabilitation, legal aid, and restitution and compensation to ensure a sense of justice for victims. The application of this legal protection is also evident in the David Ozora case, where the court not only imposed a heavy sentence on the perpetrator but also imposed a substantial restitution obligation for the victim's

recovery. This demonstrates that the state, through national legal instruments, is committed to placing children as legal subjects with the right to life, growth, development, and freedom from all forms of violence. Thus, the legal protection provided is not merely oriented towards punishment but also guarantees the comprehensive restoration of the rights of child victims to achieve justice and legal certainty based on humanitarian values.

5. References

Journals & Website:

Anggraini, Putri, "Integrated Services for Child Victims of Violence: Strengthening Legal and Social Protection," *Jurnal HAM* 15, no. 1 12, 2024

Badan Pemeriksa Keuangan, "Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 1 Tahun 2016 Tentang Perubahan Kedua Atas Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak Menjadi Undang-Undang," <https://peraturan.bpk.go.id/Details/37575/uu-no-17-tahun-2016#:~:text=Undang-undang%20%28UU%29%20Nomor%2017%20Tahun%202016%20tentang%20Penetapan,Menjadi%20Undang-Undang%2017%20UU%20Jakarta%2009%20November%202016,2016>

Borowski, Martin, "Gustav Radbruch's Theory of Legal Obligation," *In book: Theories of Legal Obligation* 99-122., 2024

BPK, "Perubahan atas Undang-Undang Nomor 13 Tahun 2006 Tentang Perlindungan Saksi dan Korban," <https://peraturan.bpk.go.id/Details/38701/uu-no-31-tahun-2014.>, 2014

Cornelius, Arilasman, dan Beniharmoni Harefa, "Penerapan Restoratif Justice dalam Undang-Undang Sistem Peradilan Pidana Anak," *Jurnal Yuridis* 7, no. 2, 2020, hal. 220–34

Dian A. Maharani, "Trauma Healing for Child Victims of Violence: A Human Rights Perspective," *Indonesian Journal of Human Rights* 3, no. 2 101., 2020

Ghoni, Muhammad Pujiyono, "Imposing Maximum Punishment on Children in Conflict with the Law: Between Retributive and Restorative Approaches," *Journal of Law and Human Rights* 5, no. 1, 2024, hal. 77

Hidayah, Nurul, "Perlindungan Hukum bagi Korban Kejahatan dalam Perspektif Viktimologi," *Kabilah: Journal of Social Community*, Vol. 9, No. 1 (), diterbitkan oleh IAIN Sultan Amai Gorontalo, 2024

Mertokusumo, S, "Penemuan Hukum Sebuah Pengantar," *Yogyakarta: CV. Maha Karya Pustaka*, 2020

Mulyana, Wahyu, "Perlindungan Saksi dan Korban," *Universitas Bhayangkara*

Jakarta Raya, 2021, hal. hal 24

Nurul Hidayah, "Legal Protection for Crime Victims from a Victimology Perspective," *Kabilah: Journal of Social Community* 9, no. 1, 2024, hal. 55

Pengadilan Negeri Jakarta Selatan, "Putusan No. 297/Pid.B/2023/PN Jkt.Sel (Mario Dandy Satriyo)," *Jakarta: JDIH MA*, 2023

Putri, R. A, dan D. S Hartati, "Efektivitas kebijakan restitusi dalam perlindungan hak anak korban tindak pidana kekerasan seksual," *Binamulia Hukum*, 14(1), 33–42, 2025

Rahman, Fitria, "Access to Justice for Child Victims of Crime: Barriers and State Responsibilities," *Journal of Human Rights and Law* 6, no. 2 145., 2022

Rakhmatika, D, "Analisis yuridis penjatuan restitusi terhadap anak sebagai pelaku tindak pidana pembunuhan (Analisis Putusan Nomor: 24/Pid.Sus-Anak/2023/PN Idm)," *PENA: Jurnal Ilmu Pengetahuan dan Teknologi*, 2023, hal. 37(2), 129–138

Setyowati, Lilis, "Legal Protection for Child Victims of Violence in Indonesia: Challenges and Reform Directions," *Jurnal Hukum Ius Quia Iustum* 28, no. 1, 2024

Sukardi, "Konsep Penyidikan Restorative Justice," *Rajawali Pers*, 2020, hal. hlm. 5

Suryani, N. A, "Perlindungan hukum terhadap anak sebagai korban tindak pidana penganiayaan ditinjau dari Undang-Undang Perlindungan Anak," *MEDIA of LAW and SHARIA*, 2(1), 134–145, 2020

Regulation:

Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection," State Gazette of the Republic of Indonesia 2014 Number 297, 2014