

## Fulfillment of Victims' Restitution Rights Child Sexual Violence Crimes in the Perspective of Legal Justice

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**Abstract.** *The aim of fulfilling the right to restitution of victims of criminal acts of child sexual violence in the perspective of legal justice. The research method used is sociological research which studies the influence of society on law, the extent to which symptoms in society can influence the law and vice versa and departs from the paradigm of empirical science. The results of the research regarding the fulfillment of the right to restitution for victims of criminal acts of child sexual violence were deemed not to have fulfilled the values of justice for victims of acts of child sexual violence, it was proven that the request for restitution was not in accordance with what was requested by the victim's parents, so this decision was felt to have paid little attention to compensation for victims*

**Keywords:** *Justice; Restitution; Sexual.*

### 1. Introduction

The Republic of Indonesia upholds human rights, including the right of every citizen to receive protection from violence and the right to be free from torture or degrading treatment, which is guaranteed in the 1945 Constitution of the Republic of Indonesia..

The presence of children is an inseparable part of human survival and the sustainability of a nation and state. In order to be able to be responsible for the sustainability of the nation and state, every child needs to get the widest possible opportunity to grow and develop optimally, both physically, mentally, and socially. For this reason, it is necessary to make protection efforts to realize the welfare of children by providing guarantees for the fulfillment of their rights without discriminatory treatment.<sup>1</sup>

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<sup>1</sup>Beniharmoni Harefa. (2016). Selected Chapters on Legal Protection for Children. Yogyakarta: Deepublish, p.1

Action kSexual violence is treatment that degrades a person's dignity, is contrary to the principles of humanity and God, and threatens the security of society.<sup>2</sup>There is a guarantee of protection and fulfillment of Children's Rights which is strengthened through the ratification of the international convention on the Rights of the Child, namely the ratification of the Convention on the Rights of the Child through Presidential Decree Number 36 of 1990 concerning the Ratification of the Convention on the Rights of the Child (convention on the rights of the child).<sup>3</sup>

Quoting Article 28 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, it explains that "Every child has the right to survive, grow and develop and has the right to protection from violence and discrimination". However, it is only right that parents, society and the government provide fair and adequate protection to child victims of criminal acts.<sup>4</sup>Because sexual violence cases may be the most concerning criminal cases. How could it not be, in addition to the increasing number of cases, the profiles of the perpetrators and victims and their methods are increasingly slicing our conscience. In fact, not infrequently, cases of sexual violence occupy trending topics on several social media platforms so that they become public attention.<sup>5</sup>

Sexual harassment in the Criminal Code (KUHP) is categorized as an act of morality. The word "morality" means morality, morality has the meaning of good manners, politeness, civility, customs and order.<sup>6</sup>Meanwhile, from the societal perspective, morality is about right or wrong behavior, especially in matters related to sexual events.<sup>7</sup>

The form of protection for children who are victims of sexual violence must include compensation for losses and support for physical and psychological healing.<sup>8</sup>Giving children who experience sexual violence the right to restitution is

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<sup>2</sup>Explanation of the Republic of Indonesia Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence

<sup>3</sup>Explanation of the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection

<sup>4</sup> "The Criminal Law Enforcement on the Criminal Act of Employment". *Journal of Legal Sovereignty* Vol 4, No 1 (2022). url:<https://jurnal.unissula.ac.id/index.php/ldj/article/view/20620>, accessed 21 October 2024.

<sup>5</sup> <https://Ssk.Lpsk.Go.Id/Tindak-Pidana-Kekerasan-Seksual-Apa-Saja-Bentuknya> Accessed June 29, 2024 at 10.03 WIB.

<sup>6</sup>Department of Education and Culture. (1986). Big Indonesian Dictionary, Jakarta: Balai Pustaka, p. 86

<sup>7</sup>Laden Marpaung. (1996). Crimes Against Morality and the Problem of Prevention. Jakarta: Sinar Grafika, p. 3

<sup>8</sup>Deni Setiyawan, Muhammad Ramli, Noor Rahmad. The Position of the Judge's Decidendi Ratio in Fulfilling the Right to Restitution to Victims of Sexual Crimes against Children. *Jatijajar Law Review* Vol.01 No. 22 of 2022, Url:<http://ejournal.unimugo.ac.id/JLR/article/view/729>, accessed November 20, 2024

one way to provide legal protection to child victims.<sup>9</sup>The provision of restitution is an act of the perpetrator of the crime to compensate for the losses suffered by the victim or his heirs, both material and immaterial losses. With this restitution, the victim regains his legal rights, social status, and family stability.<sup>10</sup>So that providing protection for children who experience sexual violence is a depiction of the function of law, namely the concept where law can provide justice, order, certainty, benefit and peace.<sup>11</sup>

The reality in society is still found where a child who becomes a sexual crime does not get his full rights, both in terms of rehabilitation and compensation. Victims of sexual crimes against children are the most disadvantaged in such a crime. Explanation of Article 71D(1) Every child who is a victim as referred to in Article 59 paragraph (2) letters b, d, f, h, i, and j has the right to file a claim with the court for the right to restitution which is the responsibility of the perpetrator of the crime. Further provisions regarding the implementation of restitution as referred to in paragraph (1) are regulated by Government Regulation. The Government has made Legislation which contains rules regarding restitution for children who are victims of criminal acts, namely PP No. 43 of 2017 concerning the Implementation of Restitution for Children Who Are Victims of Criminal Acts.<sup>12</sup>

Through restitution, criminals realize that their actions have harmed the victims, so that the perpetrators have an obligation to restore the rights of the victims that have been violated. Criminals are required to pay fines, receive principal and/or additional penalties, and bear the costs of losses suffered by the victims.<sup>13</sup> PThis research aims to find out fulfillment of victims' restitution rights child sexual violence crimes from the perspective of legal justice.

## 2. Research Methods

The writing method used is sociological research that studies the influence of society on law, to what extent the phenomena that exist in society can influence

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<sup>9</sup> Muhammad Ridwan Lubis, The Settlement of Child Cases in Conflict with the Law in the Concept of Restorative Justice, *Journal of Legal Sovereignty Volume 5 Issue 4, December 2022*, Url: <https://jurnal.unissula.ac.id/index.php/RH/article/view/24357> accessed November 24, 2024.

<sup>10</sup> Fauzy Marasabessy, Restitution for Victims of Crime: A New Mechanism Offered, *Journal of Law & Development Vol. 45 No. 01 Year 2023*. Url: <https://scholarhub.ui.ac.id/jhp/vol45/iss1/3/> accessed June 13, 2024 at 08.03 WIB.

<sup>11</sup> Uti Ilmu Royen. (2009). *Legal Protection of Humanity*. Jakarta: Rajawali Pers, p. 52

<sup>12</sup> Ira Alia Maerani, Siti Rodhiyah Dwi Istinah. "The Formulation of the Idea of Forgiveness in Indonesian Criminal Law Policy (A Study Based on Restorative Justice & Pancasila Values)." *Journal of Legal Sovereignty Vol.5 No. 4 (2022)*, Url : <http://jurnal.unissula.ac.id/index.php/RH/article/view/24290/7688>, accessed November 28, 2024.

<sup>13</sup> Palguna Pelayun, Cokorda Gede Agung Tri, I Dewa Gede, Dana Sugama. Granting Restitution to Children Who Are Victims of Criminal Acts, *Kertha Wicara: Journal of Legal Science*, Vol. 11, No. 06 of 2022. Url: <https://jurnal.harianregional.com/kerthawicara/id-84542> accessed November 23, 2024.

law and vice versa and is based on the paradigm of empirical science.<sup>14</sup>This approach aims to find out and describe the implementation of fulfilling victims' restitution rights.child sexual violence crimes from the perspective of legal justice.

Specification Analytical descriptive research takes a problem or focuses on a problem when the research is conducted and the results are processed and analyzed. Data sources consist of primary and secondary data. Legal material sources consist of primary, secondary, and tertiary legal materials.

The data collection method consists of three stages. First, researchers collect data through observation and questions; second, they conduct library research by reading, reviewing, and processing literature, laws and regulations, articles, or writings related to the research topic.<sup>15</sup>

Data analysis method is done qualitatively and presented in the form of words or sentences. Qualitative data is analyzed using a deductive approach. One way to make specific conclusions about general things The author uses an interactive analysis model. So, the qualitative data analysis method collects and selects data from literature studies.<sup>16</sup>

### 3. Results and Discussion

Children should be given as many opportunities as possible to develop physically, mentally and socially. Parents are responsible for educating children according to their abilities, talents, and interests and providing protection for children's rights, which are part of Human Rights (HAM). This is done because children are the next generation who will lead the country.<sup>17</sup>

Child protection is an activity carried out with the aim of ensuring children's rights. Children's rights such as the right to grow and develop properly, the right to live, participate optimally in accordance with human dignity and receive protection from violence and discrimination.<sup>18</sup>

A victim, according to Stanciu, is someone who suffers from injustice. Therefore, there are two basic (inherent) characteristics of a victim: suffering or injustice.<sup>19</sup> The suffering and justice in question arise as a result of the actions of the perpetrators of the crime. The perpetrators of the crime only think about how to get satisfaction or personal gain rather than the consequences or risks of their

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<sup>14</sup> Johnny Ibrahim. (2013). Normative Legal Research Theory & Methodology. Malang: Bayumedia Publishing, p. 40

<sup>15</sup> Abdulkadir Muhammad. (2004). Law and Legal Research, First Edition, Bandung: Citra Aditya Bakti, p. 50

<sup>16</sup> Ibid,

<sup>17</sup> Yuliantini, NPR, & Mangku, DG S, Legal Protection for Child Victims of Sexual Violence, Scientific Journal of Pancasila and Citizenship Education, Vol. 6 No. 2, 2021, [Url:http://journal2.um.ac.id/index.php/jppk/article/view/24429/9175](http://journal2.um.ac.id/index.php/jppk/article/view/24429/9175) November 14, 2024.

<sup>18</sup> Article 1 Paragraph (2) of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection

<sup>19</sup> Teguh Prasetyo. (2010). Criminalization in Criminal Law. Bandung: Nusa Media, p. 17

actions. Arif Gosita in his book entitled *Problems of Crime Victims*, defines victims as those who suffer physically and mentally as a result of the actions of others who seek to fulfill their own interests or those of others that conflict with the interests and basic rights of the sufferer.<sup>20</sup>

Efforts to provide rights and assistance to provide a sense of security to witnesses and victims. Community protection includes legal protection for victims of crime, which can be provided in various forms, such as restitution, compensation, medical care, and legal assistance. While legal protection for victims has so far been based on Law Number 1 of 1946 concerning Criminal Law Regulations, namely as material law, which uses Law Number 8 of 1981 concerning Criminal Procedure Law, namely as formal law. The Criminal Procedure Code is more dominant in regulating matters concerning suspects than victims.

Article 1 number 2 of Government Regulation Number 7 of 2017 concerning Provision of Compensation, Restitution and Assistance to Witnesses and Victims defines a victim as "A victim is a person who experiences physical, mental, and/or economic suffering caused by a criminal act." However, in Law Number 13 of 2006 concerning Protection of Witnesses and Victims, Article 1 number 2 defines: "A victim is a person who experiences physical, mental, and/or economic suffering caused by a criminal act." Some victims cannot forget what happened to them, causing trauma and difficulty in accepting reality. Victims can experience long-term impacts due to the various kinds of suffering and losses they experience.

Many children are victims of criminal acts or serious or minor crimes. Children who are victims of crime experience psychological, physical, social, and sexual suffering as a result of violations of the law by unauthorized individuals, groups, or institutions.<sup>21</sup> One crime that is prone to happen to a person is sexual crime. Sexual crime is violence that occurs because of sexuality issues. The practice can be just harassment, rape, or even in the form of sodomy. Children are used as tools to satisfy the lust of those who suffer from sexual disorders.<sup>22</sup>

Children as victims of crime are defined as someone who has suffered losses as a result of a crime. The problem of violence against children, both physically and psychologically, that occurs in our country is indeed very concerning. The form of legal protection that has been stipulated in law is the provision of rights to victims.

According to Bambang Waluyo, the rights of victims include the right to justice, the right to know, and the right to recovery, both material and non-material. Not only the prison sentence imposed on perpetrators of sexual crimes against children, but also the fines imposed on the perpetrators. However, this is quite ironic because criminal fines do not accommodate the interests of children as victims but only accommodate the interests of the state, namely as income to the

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<sup>20</sup>Arif Gosita. (1983). *Problems of Crime Victims*. Jakarta: Akademika Pressindo, p. 41

<sup>21</sup>Bambang Waluyo. (2014). *Victimology of Victim and Witness Protection*. Jakarta: Sinar Grafika, p. 74

<sup>22</sup>Abdussalam and Adri Desasfuryanto. (2014) *Child Protection Law*. Jakarta: PTIK, p.1

state treasury, which does not provide benefits for children who are victims of sexual crimes.

The fact is that in the trial the public prosecutor in his demands requested restitution, this proves that the victims had submitted a request for restitution in their demands..The restitution fee requested by the victim's parents through the public prosecutor in the trial is Rp. 50,000,000,- (fifty million rupiah)about events experienced by children. Based onThe descriptions that have been put forward above can be analyzed legally.In the case currently being tried, the defendant whose complete identity was read out at the beginning of the trial and has also been confirmed and acknowledged by the witnesses and the defendant, it turns out that the defendant is a physically and mentally healthy person and is therefore considered capable of being responsible for the actions he has committed.

The explanation above is from the decision of the Madiun District Court thatThe above explanation can be seen in terms of fulfilling restitution for children as victims of sexual intercourse committed by the defendant. That the existence of law enforcement officers and victims have an important role in trying to provide this restitution, the rules made by the government, both Laws or Government Regulations relating to restitution for children as victims of sexual intercourse, are one form of government concern for victims.

The implementation of restitution for children as victims of sexual intercourse crimes in Government Regulation Number 43 of 2017 includes compensation for loss of wealth, compensation for suffering as a result of the crime, and/or replacement of medical and psychological care costs, the restitution process can be submitted by the victim, parents or guardians of the victim, heirs who are victims of the crime or people who are authorized by the parents, guardians or heirs of children who are victims of the crime with a special power of attorney, the restitution application can be submitted to the court before the verdict with several stages, namely investigation and prosecution.<sup>23</sup>

The implementation of efforts to fulfill the right to restitution for child victims of sexual violence is not in accordance with the Laws and Regulations, namely that the right to restitution is not given to children who are victims of criminal acts, where in this case the victim is 18 years old when the crime occurred, which means that the victim is entitled to the right to restitution, the request for the right to restitution has been made by the victim or the victim's party and has been included by the public prosecutor in his/her charges. This, in terms of law enforcement at the Madiun District Court, is considered not to have protected victims of sexual violence against children optimally, as evidenced by the request for restitution not being in accordance with that requested by the victim's parents,

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<sup>23</sup>Hanuring Ayu, Itok Dwi, Harjono Harjono, The Quo Vadis Weaknesses in the Corruption Law Enforcement, Law Development Journal Vol. 05 No. 04 Year 2023, Url:<https://jurnal.unissula.ac.id/index.php/ldj/article/view/33483> accessed November 21, 2024.

so this decision is considered to be less considerate in terms of compensation for the victim.

The theory of justice according to Aristotle is that justice also has the meaning of something that is related to attitudes and actions that have a relationship between one person and another, besides that justice can be interpreted as a demand that everyone can carry out their actions in accordance with their rights and obligations.<sup>24</sup> So the author here becomes the basis for achieving justice itself so that in human relations with other humans they know their rights and obligations so that justice is achieved in that relationship. In other words, justice is a priority and this is general.

In numerical equality, every human being is equalized in one unit. For example, everyone is equal before the law. Then proportional equality is giving everyone what is their right, according to their ability and achievement.<sup>25</sup> So in the context of granting restitution rights to child victims of sexual violence cases where the losses felt will occur over a fairly long period of time, this should actually be a concern for all parties, especially those whose victims are children who are still minors.<sup>26</sup>

The presence of restitution shows that criminal law historically aims to deter perpetrators of crimes and protect victims from the consequences of crimes. The existence of Restitution is also evidence that by submitting a legal issue through litigation, the victim also benefits, the victim is no longer positioned as a witness for the sake of a trial, but the victim receives protection in the form of recovery of the victim's condition resulting from the crime.

#### 4. Conclusion

Implementation of fulfillment of victims' restitution rights child sexual abuse crime considered not to fulfill the values of justice for victims of child sexual violence, proven that the request for restitution is not in accordance with that requested by the victim's parents, so this decision is considered less considerate in terms of compensation for the victim. In the trial, the public prosecutor in his demands has requested restitution, proving that the victims have submitted a request for restitution in their demands. The cost of restitution requested by the victim's parents through the public prosecutor in the trial is Rp. 50,000,000,- (fifty million rupiah) for the incident experienced by the child.

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<sup>24</sup>Manullang E. Fernando M. (2007). *Achieving Just Law*. Jakarta: Kompas Book, p. 57

<sup>25</sup>Hyronimus Rhiti. (2015). *Philosophy of Law Complete Edition (From Classical to Postmodernism)* Fifth Printing, Yogyakarta: Atma Jaya University, p. 241

<sup>26</sup> *English: Eko Adi Susanto, Gunarto, Criminal Liability for Using Fake Letters Reviewed from Article 263 Paragraph (2) of the Criminal Code, Jurnal Daulat Hukum Vol 1, No 1 (2018)*. Url :<https://jurnal.unissula.ac.id/index.php/RH/article/view/2558>, accessed November 28, 2024.

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