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# Restitution Rights for Child Victims of Sexual Violence: Justice or Legal Certainty

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## Abstract

**The purpose of this study** is to analyze the fulfillment of restitution rights for child victims of sexual violence from the perspective of justice and legal certainty, as well as to examine the obstacles that prevent these rights from being optimally fulfilled in legal practice.

**The method** used is a normative legal approach with descriptive analysis.

**The novelty** of this research is that it emphasizes the need for judges to automatically award compensation to child victims of sexual violence, without waiting for a request from the victim, in order to achieve justice and legal certainty.

**The results of the study** show that although the right to restitution for child victims of sexual violence is regulated in various laws and regulations, its implementation is still far from optimal. This is due to complicated application procedures, the victims' lack of knowledge about their right to restitution, and weak law enforcement, as there are no strict sanctions for law enforcement officials who neglect their duties. Restitution as a form of compensation aims to restore the condition of the victim. However, in practice, this is often ignored by judges in deciding a case, especially if there is no request from the victim. This study highlights the importance of the active role of law enforcement officials in ensuring the fulfillment of the right to restitution without having to wait for a request from the victim, as well as the need for harmonization and confirmation of sanctions in legislation in order to realize justice and legal certainty for child victims of sexual violence.

**The conclusion** is that even though there are various laws and regulations governing restitution, the fulfillment of the right to restitution for child victims of sexual violence still faces normative and practical obstacles in Indonesia. In practice, many judges do not consistently consider the right to restitution, so that victims do not receive adequate compensation, thereby hindering their recovery process. Legal uncertainty is also caused by weak sanctions for negligent law enforcement officials, which means that victim protection depends on individuals rather than the system. The state should make restitution a fundamental legal obligation rather than merely an option to ensure justice and legal certainty for victims.

**Keywords:** Right to Restitution; Children; Sexual Violence

## Abstrak

**Tujuan Penelitian** adalah untuk menganalisis pemenuhan hak restitusi bagi anak korban kekerasan seksual dari perspektif keadilan dan kepastian hukum serta mengkaji kendala-kendala yang menyebabkan hak tersebut belum terpenuhi secara optimal dalam praktik hukum.

**Metode Penelitian** yang digunakan adalah pendekatan hukum normatif dengan metode

analisis deskriptif.

**Kebaruan** penelitian ini yakni menegaskan perlunya pemberian ganti rugi kepada anak korban kekerasan seksual secara otomatis oleh hakim, tanpa menunggu permohonan dari korban, guna tercapainya keadilan dan kepastian hukum.

**Hasil Penelitian** menunjukkan bahwa meskipun hak atas restitusi bagi anak korban kekerasan seksual telah diatur dalam berbagai peraturan perundang-undangan, namun implementasinya masih jauh dari optimal. Hal ini disebabkan oleh prosedur pengajuan yang rumit, kurangnya pengetahuan pihak korban tentang hak atas restitusi, serta lemahnya penegakan hukum, karena tidak ada sanksi yang tegas bagi aparat penegak hukum yang mengabaikan tugasnya. Restitusi sebagai bentuk ganti kerugian bertujuan untuk memulihkan kondisi korban. Namun dalam praktiknya, hal ini sering diabaikan oleh hakim dalam memutus suatu perkara, terutama jika tidak ada permohonan dari korban. Penelitian ini menyoroti pentingnya peran aktif aparat penegak hukum dalam menjamin terpenuhinya hak atas restitusi tanpa harus menunggu permohonan korban, serta perlunya harmonisasi dan penegasan sanksi dalam peraturan perundang-undangan guna mewujudkan keadilan dan kepastian hukum bagi anak korban kekerasan seksual.

**Kesimpulan** bahwa sekalipun telah terdapat berbagai peraturan perundang-undangan yang mengatur terkait restitusi, pemenuhan hak atas restitusi bagi anak korban kekerasan seksual masih menghadapi kendala normatif dan praktis di Indonesia. Dalam praktiknya, banyak hakim tidak secara konsisten mempertimbangkan hak atas restitusi, sehingga korban tidak menerima ganti kerugian yang memadai sehingga proses pemulihannya terhambat. Ketidakpastian hukum juga disebabkan oleh sanksi yang lemah bagi aparat penegak hukum yang lalai, yang berarti bahwa perlindungan korban bergantung pada individu dan bukan sistem. Negara hendaknya menjadikan restitusi sebagai kewajiban hukum yang hakiki dan bukan sekadar pilihan untuk menjamin keadilan dan kepastian hukum bagi korban.

**Keywords** : Hak Restitusi; Anak; Kekerasan Seksual

## 1. INTRODUCTION

The position of victims as parties seeking justice is often marginalized in the criminal justice system and does not receive the attention it deserves. Perpetrators of crimes receive more attention, for example through rehabilitation, reform, and various other efforts. This is a form of injustice towards victims, because they are treated merely as evidence and their human rights are often ignored. As far as victims are concerned, children are the most common victims today. Many children are victims of crime, both minor and serious.<sup>1</sup>

**Table 1. Data on Cases of Violence against Children 2019–2024**

Year	Total Cases of Violence Against Children	Victims of Sexual Violence
2019	11,000 Cases	6,454 Cases
2020	11,264 Cases	6,980 Cases
2021	14,446 Cases	8,730 Cases
2022	16,106 Cases	9,588 Cases
2023	18,175 Cases	10,932 Cases
2024	28,831 Cases	11,771 Cases

Source: Simfoni PPA, KemenPPPA, and national media publications citing official government data.

<sup>1</sup>S H M Jannah, S Muchtar, and H A Mirzana, "Restitution Rights for Children of Victims of Sexual Crimes: Between Protection and Reresting," *Cakrawala Journal* ... (scholar.archive.org, 2021), <https://scholar.archive.org/work/hecrpuf2yjgote2isg6tdhochm/access/wayback/https://jurnal.unmer.ac.id/index.php/jch/article/download/4705/pdf>.

Based on data from the Online Information System for Women and Child Protection (Simfoni PPA),<sup>2</sup> the Ministry of Women's Empowerment and Child Protection (KemenPPPA)<sup>3</sup> and national media publications citing official government data,<sup>4</sup> sexual violence is the most prevalent type of violence among all cases of violence against children during the period 2019 to 2024. Sexual violence against children is not only a legal violation but also an urgent social issue due to its severe and long-term impacts on victims, both physically, psychologically, and socially. This situation underscores the urgency of involving various actors in the child protection system, ranging from law enforcement agencies, medical personnel, psychologists, to teachers and parents, to jointly prevent and handle cases of sexual violence against children in a comprehensive and sustainable manner. The number of cases of child rights violations varies from year to year.<sup>5</sup> Victims of crimes against morality are victims of crimes who deserve protection. Cases of sexual violence are a worrying social problem. This is reflected in the increasing number and variety of sexual violence crimes in Indonesia. Sexual violence has a traumatic impact on children and adults.<sup>6</sup>

Sexual violence, especially against children, is a form of sexual abuse often committed by adults or parents, a crime that tramples on the humanity of a child. A crime is an act that inevitably has victims who experience and suffer losses as a result of the crime. According to the annual report of the Witness and Victim Protection Agency (LPSK), in 2023, 7,645 requests for protection were received from the public.<sup>7</sup>

One form of legal protection for children who are victims of sexual violence is the right to compensation. International efforts to protect children's rights are realized through the ratification of the *Convention on the Rights of the Child* by the United Nations, which was ratified by the UN General Assembly on November 20, 1989.<sup>8</sup> The Convention on the Rights of the Child recognizes the need for appropriate guarantees and special care for children before and after birth. Restitution as a form of compensation for victims of crime has long been recognized in industrialized countries such as the United Kingdom, the United States, Australia, and New Zealand. Historically, restitution has been practiced since 1963 and is considered a form of punishment and care for victims, including victims of sexual violence. Restitution is intended to allow perpetrators to acknowledge their actions and compensate victims for the losses they have suffered.<sup>9</sup> The restitution mechanism is expected to enable

<sup>2</sup> MINISTRY OF WOMEN'S EMPOWERMENT, "Ministry of Women's Empowerment and Child Protection," *Kemenpppa.Go.Id*, 2022.

<sup>3</sup> Nafilah Sri Sagita, "DetikHealth | Health News, Diet, Sex, and Consultation Articles," 2023, <https://health.detik.com/>.

<sup>4</sup> P Yewun, "Cases of Violence Against Children in Merauke on the Rise." (databoks, 2025), <https://papua.antaranews.com/berita/456739/kasus-kekerasan-terhadap-anak-di-merauke-meningkat>.

<sup>5</sup> Novandina Izzatillah Firdausi, "Fulfilling the Right to Restitution for Child Victims of Sexual Violence in Pekanbaru City: Thesis," *Kaos GL Dergisi* (2020),

<https://doi.org/10.1016/j.jnc.2020.125798><https://doi.org/10.1016/j.smr.2020.02.002><http://www.ncbi.nlm.nih.gov/pubmed/8100499><http://doi.wiley.com/10.1002/anie.197505391><http://www.sciencedirect.com/science/article/pii/B9780857090409500205>

<sup>6</sup> Fitri, F X D Priyono, and B E Turisno, "Civil Law Aspects of Restitution Rights in Criminal Cases," *JPPI (Journal of Educational Research ...)*, 2023, <https://jurnal.iicet.org/index.php/jppi/article/view/1801>.

<sup>7</sup> Nicholas Bloom and John Van Reenen, "Witness and Victim Protection Institutions," *NBER Working Papers*, 2024, <http://www.nber.org/papers/w16019>.

<sup>8</sup> Muhammad Rifky Darmawan et al., "Implementation of Restitution Rights for Victims of Sexual Violence Crimes," *As-Syar'i: Journal of Family Guidance & Counseling* 6, no. 2 (2024): 1–10, <https://doi.org/10.47467/as.v6i2.6506>.

<sup>9</sup> Ahmad Sofian, "Restitution in Indonesian Positive Law," *Binus University Business Law*, 2018, <https://business-law.binus.ac.id/2018/05/30/restitusi-dalam-hukum-positif-indonesia/>.

victims to recover from the suffering caused by a crime.<sup>10</sup>

In Indonesia, restitution was first formally regulated in Articles 98–101 of the Criminal Procedure Code (KUHP), which governs the procedures for providing compensation to victims of criminal acts.<sup>11</sup> However, in practice, restitution is more common in civil law and has only recently developed rapidly in criminal law with the emergence of the restorative justice paradigm, which emphasizes the restoration of victims' rights.<sup>12</sup> Since then, restitution has been adopted in various laws and regulations, such as Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, Law Number 31 of 2014 concerning Witness and Victim Protection, Law No. 12 of 2022 on Sexual Violence Crimes, Supreme Court Regulation No. 1 of 2022 on the Procedures for Resolving Requests and Granting Restitution and Compensation to Victims of Criminal Acts ( ), Government Regulation No. 35 of 2020 amending Government Regulation No. 7 of 2018 on the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims, and Government Regulation No. 43 of 2017 on the Implementation of Restitution for Children who are Victims of Criminal Acts.

So far, the State has facilitated legal protection for child victims of sexual violence by enacting legislation governing restitution, so that child victims of sexual violence receive compensation for the consequences of the crimes they have experienced.<sup>13</sup> However, the fulfillment of the right to restitution for child victims of sexual violence in cases that have occurred has not been in line with the ideals behind the enactment of this legislation. There are still many cases that are decided without any consideration of the victim's right to restitution. An example of the problem of implementing the right to restitution for child victims of crime can be found in Court Decision Number 141/Pid.Sus/2024/PN Unh. The defendant, Andy Kasman, committed the crime of molesting his own granddaughter from the age of 12 to 13, resulting in the victim suffering severe trauma that caused her to fear the defendant and refuse to go to school. In addition, the victim also suffered pain in her genitals. The Unaha District Court sentenced the defendant to 15 (fifteen) years in prison and a fine of Rp. 500,000,000.00 (five hundred million rupiah), with the provision that if the fine is not paid, it will be replaced with a maximum imprisonment of 6 (six) months. The child who was the victim in this case was a victim of sexual violence and was entitled to compensation in accordance with applicable laws. However, the right to restitution that should have been granted to the child victim of the crime was not considered because there was no request from the victim. Even if the victim does not file a claim for compensation, law enforcement officials, from the police to the courts, should strive to uphold the rights of child victims of sexual violence to restitution.<sup>14</sup>

One crucial factor that hinders the fulfillment of the right to restitution for child victims of sexual violence is the absence of a restitution request from the victim. In most cases, this is

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<sup>10</sup>T Saputra and Y A Nugraha, "Fulfilling the Right to Restitution: Efforts to Rehabilitate Victims of Crime," *Krtha Bhayangkara*, 2022, <https://ejurnal.ubharajaya.ac.id/index.php/KRTHA/article/view/1190>.

<sup>11</sup> Muhammad Fatahillah Akbar, "The Renewal of Restorative Justice in the Indonesian Criminal Justice System," *Jurnal Restorative* 51, no. 2 (2022): 199–208, <https://doi.org/10.14710/mmh.51.2.2022.199-208>.

<sup>12</sup> *Loc. cit.*

<sup>13</sup> Marikas Bertha Suitela and Marlyn Jane Alputila, "Granting Restitution Rights to Children as Victims of Sexual Violence Crimes," *Jurnal Restorative Justice* 7, no. 1 (2023): 56–70, <https://doi.org/10.35724/jrj.v7i1.5238>.

<sup>14</sup>R Andayani, T Y Chandra, and ..., "The Application of Restitution as a Form of Legal Protection for Women Victims of Sexual Violence Crimes,"... : *Journal of Research and...*, 2025, <http://manggalajournal.org/index.php/cendekia/article/view/929>.

due to the complicated restitution procedure and the victim's lack of knowledge about their rights. Article 31 paragraph 1 of Law Number 12 of 2022 concerning Sexual Violence Crimes clearly states that "*Investigators, public prosecutors, and judges are obliged to inform victims and the LPSK of their rights to restitution.*" If implemented optimally, this mandate will if implemented optimally, will contribute significantly to reducing victims' ignorance of their rights, particularly their right to restitution. However, the implementation of this provision has not been effective because there are still law enforcement officials who do not carry out their obligations as stipulated in the relevant article. This cannot be enforced because there are no provisions regarding sanctions for law enforcement officials who do not carry out these obligations.

In the context of law, a mandatory or imperative norm loses its validity if it is not accompanied by provisions on sanctions. A *dwingendrecht* ( ) legal norm that is not followed by the threat of sanctions in the event of a violation generally does not have a *deterrent effect* on the legal subjects concerned. This can lead to legal uncertainty and weak law enforcement and can result in the norm becoming *lex imperfecta*, i.e., an imperfect legal norm because it does not regulate the consequences or legal sanctions for its violation. Therefore, even if a legal command is formulated as an obligation, without providing sanctions, its practical implementation can be ignored without concrete legal consequences. This can weaken legal authority and interfere with the achievement of the objectives of the law itself, namely certainty, justice, and benefit.

Furthermore, in order to obtain the right to restitution, a request must be submitted by the victim through a rather complicated procedure. Restitution is compensation paid to victims for material and immaterial losses, such as loss of property, psychological suffering, medical expenses, and rehabilitation. Restitution aims to restore the victim's material, psychological, and social condition, as well as provide legal recognition of the victim's rights.<sup>15</sup> The principle of restoration to the original state, *restitutio in integrum*, states that victims of crime must be restored to their original state immediately after the incident, unless there is evidence that restoration to the original state is impossible. According to this principle, the restoration of victims must be as complete as possible and take into account all aspects of the impact of the crime.<sup>16</sup> In fact, if we review the history of the emergence of restitution and the objectives of its regulation as stated in the relevant laws and regulations, there should no longer be a need for victims to file a request to obtain restitution. This should be a mandatory consideration in every judge's decision, without the need to wait for a request and/or claim by the victim. As in the jurisprudence in case number 64/Pid.B/2023/PN Blp , the judge decided on a restitution payment sanction for the perpetrator without a request and/or claim from the victim. Differences in decisions across various court institutions reflect a lack of uniformity in their application. The Indonesian legal system does not have binding precedents like the Anglo-Saxon legal system, so even when referring to the same rules, different decisions often arise.

Various efforts have been made to modernize the criminal justice system and create progressive and humane law enforcement as protection for the rights of victims. These include

<sup>15</sup> Bogi Yuliawan and Teguh Satya Bhakti, "The Effectiveness of Restitution Policy in Protecting the Rights of Child Victims of Sexual Crimes: A Case Study of Decision Number 112/Pid. Sus/2022/PN. Bnr" 14 (2025): 33–

<sup>16</sup> Ghina Afifah, "Legal Certainty in Restitution Disputes Against Victims of Child Rape Crimes," *SUPREMASI: Jurnal Hukum* 6, no. 01 (2023): 76–87, <https://jurnal.usahid.ac.id/index.php/hukum/article/view/1704%0Ahttps://jurnal.usahid.ac.id/index.php/hukum/article/download/1704/787>.

the enactment of Government Regulation No. 43 of 2017 concerning the implementation of restitution for child victims of crime and the revision of Law No. 12 of 2022 concerning Sexual Violence Crimes. However, these laws and regulations do not clearly and comprehensively regulate the fulfillment of the restitution rights of child victims of sexual violence, particularly with regard to the role of judges in ensuring the fulfillment of restitution rights for child victims of sexual violence. Judges are obliged to inform victims of their restitution rights and are also obliged to determine the amount of restitution as stipulated in Law Number 12 of 2022 concerning Sexual Violence Crimes ( ). Furthermore, Article 63 of the TPKS Law also stipulates that judges are obliged to consider the recovery of victims in deciding cases. However, the absence of sanctions in the regulation means that when judges fail to carry out their obligations, it certainly causes injustice for victims and legal uncertainty. This is an aspect that needs to be addressed immediately in order to ensure the achievement of legal objectives, particularly in the context of fulfilling the rights of children as victims of sexual violence crimes.

This study differs from previous studies, which tended to focus on the normative aspects of the rights of child victims of crime to restitution. In contrast, this study emphasizes the need to affirm the obligation of judges to decide on restitution without a request from the victim, as a form of active protection for child victims. *The novelty* of this study is the argument that the fulfillment of restitution rights should be a legal responsibility that is automatically carried out by law enforcement officials, not only based on requests. Thus, this study contributes to strengthening the progressive legal paradigm and restorative justice for child victims of sexual violence.

## **2. METHOD**

This study uses a normative legal approach with descriptive analysis methods. The normative legal approach is a legal research method that focuses on the study of written legal norms, whether in the form of legislation, doctrine, or court decisions that have permanent legal force. Therefore, this study examines how applicable legal provisions regulate an issue and how these norms are applied in practice. The descriptive analysis method is used to systematically describe and analyze the legal issues that arise in this study and then relate them to the relevant legal provisions so that conclusions can be drawn based on the results of the analysis.<sup>17</sup>

The data collection method in this study uses secondary data in the form of primary legal materials, namely laws and regulations and court decisions that have permanent legal force, as well as secondary legal materials in the form of academic research journals and legal literature compiled by experts. Through this method, the study aims to provide a comprehensive overview of the legal issues being examined and their resolution based on applicable legal norms.

## **3. DISCUSSION**

### **3.1 Fulfillment of Restitution Rights for Child Victims of Sexual Violence**

Restitution is compensation awarded to perpetrators of criminal acts based on court

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<sup>17</sup> Liantha Adam Nasution, Fatimah Islamy Nasution, and Siti Aminah, "Pardon for Corruptors: An Examination of Repentance Criminal Law Restitution in Islamic," *Justisi* 11, no. 31 (2025): 719–31, <https://ejournal.um-sorong.ac.id/index.php/js/article/view/4365/2256>.

decisions that have permanent legal force (*Inkracht*).<sup>18</sup> Restitution as a concept of restoring the rights of victims must be carried out to return victims to their condition prior to the criminal act. The principle of restoration to the original condition (*restitutio in integrum*) is a fundamental principle in law that prioritizes restoration for victims of criminal acts, including child victims of sexual violence, to their original condition prior to the criminal act, to the extent possible legally and practically. In the context of the right to restitution for child victims of sexual violence, this principle provides the basis for ensuring that restitution is not only symbolic but comprehensive, covering the recovery of material, immaterial, physical, psychological, and social losses, as well as the legal status of victims.

In the context of child protection, one form of compensation is also regulated in Article 71D of the Child Protection Law. This article states that child victims of crime have the right to file for compensation in court. Article 71D paragraph (2) of the Child Protection Law also regulates Implementing Regulation Number 43 of 2017 concerning the Implementation of Compensation for Child Victims of Crime. Compensation is an integral part of recovery efforts, especially for child victims of sexual violence.<sup>19</sup>

In Indonesia, the implementation of restitution is part of efforts to protect and restore the rights of victims of criminal acts, especially victims of serious crimes such as sexual violence. Procedurally, victims or their families can submit a restitution request to the Witness and Victim Protection Agency (LPSK) or directly to investigators, prosecutors, or the court, depending on the status of the ongoing process. However, the fulfillment of restitution in Indonesia still faces various obstacles. Studies show that the fulfillment of restitution tends to be *sub-optimal*, especially with regard to the holistic needs of victims. The main obstacles include complicated and time-consuming application procedures, victims' lack of knowledge about their rights to recovery from the suffering caused by the crime they experienced, and a lack of consideration for intangible losses such as psychological trauma. In addition, monitoring of the implementation of restitution decisions is often inadequate, which means that victims' rights are not fully protected.

According to Stephen Schafer, restitution is a consequence of a criminal court decision that imposes an obligation on the perpetrator to provide compensation as a form of accountability for their criminal acts.<sup>20</sup> This is in line with Article 63 of Law Number 12 of 2022 concerning Sexual Violence Crimes, which states that "*the panel of judges is obliged to consider the recovery of victims in the verdict as stipulated in the Law*". The obligation of judges to consider the recovery of victims as mandated by this article is a form of state recognition of the rights of victims, especially for child victims of sexual violence, because

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<sup>18</sup> Erica Flora Feronica, "COMPENSATION FOR CHILDREN AS VICTIMS OF SEXUAL ABUSE (A STUDY OF SIX DECISIONS)," *Gloria Jurtitia Journal* 4, no. 1 (2022): 1–23. <https://doi.org/10.25170/gloriajustitia.v2i2.3920>

<sup>19</sup> Yuliawan and Bhakti, "The Effectiveness of Restitution Policy in Protecting the Rights of Child Victims of Sexual Crimes: A Case Study of Decision Number 112 / Pid . Sus / 2022 / PN . Bnr."

<sup>20</sup> Andini Indriawati and Subekti, "Analysis of the Implementation of Restitution for Child Victims of Crime," *Jurnal Recidive* 9, no. 3 (2020): 203–11, <https://doi.org/10.20961/recidive.v9i3.47411>.



children are one of the most vulnerable groups of victims in cases of sexual violence. Victims of crime often do not enjoy the same legal protection as perpetrators. Victims are brought to court to provide information or testify about the crime they have experienced. As a result, victims have little opportunity to freely defend their rights as victims of crime. Therefore, there needs to be a clear and firm legal formulation to guarantee the fulfillment of their rights, especially the right to restitution as a form of justice and legal certainty for the victim's recovery.

According to Aristotle, justice is an action that lies between giving too much and giving too little, which can be interpreted as giving everyone something according to their rights.<sup>21</sup> In the context of restitution, this means that judges must ensure that compensation for children who are victims of crime is commensurate with the material and immaterial impacts they have suffered, without being excessive or infringing on their rights. The principle of distributive justice put forward by Aristotle requires that victims who suffer as a result of a crime receive compensation commensurate with the suffering and losses they have endured.

Furthermore, in the Law on Sexual Violence Crimes (TPKS Law), restitution is no longer viewed as charity, the payment of which depends on the goodwill of the perpetrator. The Law on Sexual Violence Crimes (TPKS Law) guarantees the fulfillment of victims' rights to restitution through the Victim Assistance Fund mechanism (*Victim Trust Fund*), which aims to ensure the fulfillment of victims' rights to restitution, as explained in Article 1 point 20 of the TPKS Law, which states that *"Restitution is the payment of compensation imposed on the perpetrator or a third party based on a court decision or ruling that has permanent legal force, for material and/or immaterial losses suffered by the victim or their heirs."* Furthermore, Article 16 paragraph (1) stipulates that perpetrators of sexual violence crimes who are subject to a minimum of four years imprisonment are obliged to provide compensation in the form of restitution to the victim. In addition to imposing imprisonment, fines, or other sanctions, judges are also obliged to determine the amount of restitution to be paid by the perpetrator.<sup>22</sup> If this article is implemented properly, it will certainly provide legal certainty for victims of crime. Quoting Lawrence M. Wriedman, Professor at Stanford University, who stated that in order to achieve legal certainty, it must be supported by the following elements: legal substance, legal apparatus, and legal culture.<sup>23</sup> Sudikno Mertokusumo explains that legal certainty is one of the prerequisites for law enforcement because it can counteract arbitrary practices and, in certain circumstances, enable a person to achieve their expectations.<sup>24</sup> The essence of legal certainty is realized when the implementation of laws and regulations follows

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<sup>21</sup>I Gde Suranaya Pandit, "The Concept of Justice in the Perception of Public Administration Bioethics," *Public Inspiration*, 2018, 2–3. <https://doi.org/10.22225/pi.1.1.2016.14-20>.

<sup>22</sup>S Mazumah, "Restitution as an Obligation of Perpetrators in the Law on Sexual Violence Crimes," *UNES Law Review*, 2024, <https://review-unes.com/index.php/law/article/view/2075>.

<sup>23</sup>Siti Halilah and Fakhurrahman Arif, "The Principle of Legal Certainty According to Experts," *Jurnal Hukum Tata Negara* 4, no. December (2021): 56–65, <http://www.ejournal.an-nadwah.ac.id/index.php/Siyasah/article/view/334/275>.

<sup>24</sup> *Ibid.*



established legal principles and rules.<sup>25</sup>

In addition, based on the principle of restorative justice adapted from the Convention on the Rights of the Child, judges must consider several aspects. The most important right of victims is the right to recovery, which upholds the principle of human rights, *The Right to a Remedy and Reparation for Gross Human Rights Violations*.<sup>26</sup> A similar principle is also reflected in the United Nations General Assembly Declaration on November 29, 1985, through Resolution 40/34 on *the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, which affirms that victims of crime, including child victims of sexual violence, must be treated with respect and compassion for their dignity and that they have the right to access justice and receive immediate compensation for the suffering they have experienced. This declaration states that victims must be given, among other things, the right to access justice, payment of compensation by the perpetrator, compensation from the state if the perpetrator is unable to pay restitution, as well as material, medical, psychological, and social assistance.

### **3.2 The Role of Judges in Fulfilling the Right to Restitution for Child Victims of Sexual Violence**

The implementation of compensation for children who are victims of sexual violence is a crucial issue in Indonesia that must harmonize the objectives of justice and legal certainty. Although there are regulations to protect victims and guarantee restitution, their practical implementation remains problematic. The challenges include unclear and complicated legal procedures, a lack of awareness, and inadequate support from law enforcement agencies. This often results in victims not receiving the restitution to which they are entitled.

Currently, the fulfillment of restitution rights for child victims of sexual violence causes various ambiguities in practice. Victims who suffer and are harmed by criminal law violations are usually only involved as witnesses. Therefore, victims are often dissatisfied with the prosecutor's demands and/or the judge's decision, which are considered not in line with the principles of justice that should be given to victims. The majority of judges' decisions in sexual violence cases impose fines on perpetrators, while the victims' right to restitution is not mentioned at all. This shows that the criminal justice system is more oriented towards bringing perpetrators to court than towards guaranteeing the protection of victims' rights. The main focus of this system is on the interests of the state and society in general, not on the interests of individual citizens. Thus, the losses suffered by victims of crime are a calamity that must be borne by the victims themselves.

Furthermore, imposing fines on defendants that must be paid to the state in addition to the physical punishment served in prison is a very unfair act towards victims. The payment of compensation by the perpetrator to the victim is also a form of criminal liability (*liability based*

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<sup>25</sup> Hidaya, Wahab Aznul, et al. "Realizing Restitution Justice for Child Victims of Sexual Assault." JURNAL USM LAW REVIEW 7.3 (2024): 1484-1497. <https://doi.org/10.26623/julr.v7i3.9697>

<sup>26</sup> H S Muaja and R R Lembong, "The Effectiveness of Provisions on Restitution Rights as a Form of Legal Protection for Child Victims of Crime," *Academic Nuances: Journal of Development ...*, 2024, <https://jurnal.ucy.ac.id/index.php/nuansaakademik/article/view/2511>.

on fault). The decision to impose a fine on the perpetrator without considering compensation for the victim is a legal deviation and ignores the principle of restorative justice. Indirectly, law enforcement officials have marginalized the rights of victims to obtain compensation for the suffering they have experienced.

Referring to the case studies that the author has conducted, the difficulty in fulfilling this right to restitution is usually caused by the absence of a request from the victim to demand restitution payments from the perpetrator, which results in the right to restitution not being considered in the judge's decision. When deciding a case, the panel of judges should consider the material rights of victims related to the right to restitution as an effort to restore the condition of victims based on the international human rights instrument "*The Right to a Remedy and Reparation for Gross Human Rights Violations*," which obliges the State to provide effective restoration to victims in order to guarantee legal certainty and obtain compensation for losses as a result of violations committed by perpetrators of crimes.

The right to material fulfillment for victims of sexual violence is part of the human rights guaranteed by the state as an effort to ensure protection, recovery, and fulfillment of justice for victims after experiencing sexual violence. Based on Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (TPKS Law), these material rights cover three main areas, namely the right to treatment, the right to protection, and the right to recovery for victims. The absence of a restitution request by the victim should not cause law enforcement officials, especially judges, to ignore restorative justice for victims. Judges should be able to use *their ratio decidendi* position as an effort to provide the fairest possible verdict for victims because the absence of restitution requests from victims is often caused by victims' ignorance of their right to restitution and the complicated request procedure. The application process is considered quite complicated for victims seeking restitution, as it takes a long time and imposes a heavy burden. This is considered impractical and does not fulfill the purpose of the judicial system to make it easier for victims to assert their rights. Furthermore, this makes it difficult for children who are victims of sexual crimes. The general public generally lacks understanding of the application process when dealing with the law.<sup>27</sup>

In addition to legal certainty, the fulfillment of aspects of justice and the benefits of the law for children as victims of crime in their efforts to demand and enforce their rights in court must also be properly fulfilled. The losses suffered by victims cannot be remedied solely by criminal punishment of the perpetrators. Therefore, restitution is necessary as a form of redress for victims and restoration of their original condition (*resitue in integrum*). This is in line with the main purpose of restitution, which is to compensate victims for their losses in order to restore their condition as far as possible. Therefore, to support the implementation of this objective, all elements of law enforcement are mandated to establish a more humane criminal justice system and maintain balance in efforts to fulfill human rights, including the rights of victims to recovery. In this regard, all elements of the criminal justice system are expected to

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<sup>27</sup>A A Pratama, "Reformulation of Children's Restitution to Guarantee Their Constitutional Rights," *Constitutionale*, 2023, <https://jurnal.fh.unila.ac.id/index.php/constitutionale/article/view/2943>.

have a high capacity to carry out their functions.<sup>28</sup>

One piece of jurisprudence that can be used as a reference for judges in deciding restitution is the decision of the Belopa District Court judge number 64/Pid.B/2023/PN Blp, in which the judge who examined the case sentenced the perpetrator to pay restitution to the victim as an effort to restore the victim to their original condition, without any demands from the public prosecutor, based on the consideration that, according to the panel of judges, the content of Law Number 12 of 2022 concerning Sexual Violence does not only focus on punishing the perpetrator, but also emphasizes the restoration and enforcement of the rights of the victim as the party most harmed by the crime, and then prioritizes the role of the perpetrator who is responsible for the victim's losses. Furthermore, based on Article 2 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, the regulation of criminal acts of sexual violence is based on the principle of the best interests of the victim. Furthermore, Article 63 of Law Number 12 of 2022 concerning Sexual Violence Crimes stipulates that the panel of judges must consider the recovery of the victim in their decision. Article 70 paragraph (1) states that the victim's right to compensation includes restitution and/or compensation.

Furthermore, Article 16 paragraph (1) states that: *"In addition to imprisonment, fines, or other penalties in accordance with the provisions of the Criminal Code - Law, the judge must determine the amount of restitution for Sexual Violence Crimes punishable by imprisonment of 4 (four) years or more"* (in this case, the defendant was proven to have committed the crime referred to in Article 6 letter a, which carries a maximum penalty of 4 (four) years imprisonment). 's psychiatric (clinical psychology) examination report shows that the victim experienced symptoms/signs of severe depression and deep trauma. The psychologist stated in his statement that the victim's condition indicated symptoms of mental disorder which, if not treated seriously, would lead to mental disorder. The victim clearly suffered significant losses as a result of the defendant's crime.

Based on these considerations, the judge ruled that the defendant must pay restitution, even though the public prosecutor did not request it. This can be a reference for judges out there to realize the mandate of Law Number 12 of 2022 concerning Sexual Violence Crimes, namely that in deciding a case, judges must be progressive, meaning that they must not only adhere to the text of the law (legal positivism), but also incorporate values of justice, morality, and humanity in their considerations. Judges can utilize *their ratio decidendi* position as an instrument to provide substantive justice, especially for parties who are vulnerable or experience injustice in the formal legal system.<sup>29</sup>

This supports Satjipto Rahardjo's idea that "Law is for Humans, not the other way

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<sup>28</sup> Lies Sulistiani, "Problems with Restitution Rights for Victims of Crimes Regulated by the Criminal Code and Outside the Criminal Code," *Jurnal Bina Mulia Hukum* 7, no. 1 (2022): 81–101, <https://doi.org/10.23920/jbmh.v7i1.948>.

<sup>29</sup>D Setiawan, M Ramli, and N Rahmad, "The Position of the Decidendi Ratio of Judges in Fulfilling the Rights of Restitution to Victims of Sexual Crimes Against Children," *Jatijajar Law Review*, 2022, <http://ejournal.unimugo.ac.id/JLR/article/view/729>.

around."<sup>30</sup> This phrase has a profound meaning regarding the purpose and function of law in society. Law is not fundamentally created as a rigid and oppressive system, but as an instrument for the protection of human rights and the enforcement of justice for each individual. Law serves humanity by ensuring fair treatment, respect for the dignity of every person, and protection of their freedoms and rights. Therefore, law must be flexible and responsive to the needs and developments of society, not an instrument of restriction or enslavement. This concept emphasizes that human values such as justice, equality, and humanism must be the basis for the design and application of law.

Therefore, law is not the ultimate goal, but a means to create a harmonious social order, where people can live safely, prosperously, and be respected. If the law loses this focus and instead becomes something that suppresses or even ignores human rights, then the law has failed in its primary purpose. Therefore, the recognition that the law exists to create prosperity and welfare for the people requires every lawmaker and everyone who enforces it to always prioritize human values in all legal decisions and policies that are created.

Furthermore, in Canada, judges are required to consider restitution in every criminal case, and if they refuse, they must clearly provide the basis for their decision.<sup>31</sup> Criminal justice agencies must ensure that offenders pay the restitution ordered by the court, as victims of crime have the right to be adequately compensated for the losses they have suffered. Although restitution cannot heal crime victims holistically, it is an important mechanism for them. If it is mandatory and fulfilled, it can increase crime victims' overall satisfaction with the criminal justice system. It is also important that restitution gives recognition to the personal interests of victims who have been harmed by a crime.

The right to restitution means that children who are victims of crime, as well as their families or third parties, are entitled to compensation for the crime they have experienced, which must be paid by the perpetrator. This is intended to make the perpetrator aware of their crime and to provide a deterrent effect so that they do not repeat the offense.<sup>32</sup> As several studies from other countries have shown, such as the experimental study in Clayton County, Georgia,<sup>33</sup> and the correlational and experimental studies in the United States<sup>34</sup>, paying restitution reduces recidivism rates. Most importantly, restitution can repair the financial damage and possibly also the relational damage caused by the crime. Restitution aims to make offenders productive members of society through sanctions related to the crime and to place victims in the position they were in before the crime occurred. Although restitution does not

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<sup>30</sup>H .A. Malthuf and Ismail Marzuki Siroj, "Progressive Law Enforcement: Efforts to Achieve Substantive Justice," *Journal: Hakam* 1, no. 2 (2017): 237–60. <https://ejournal.unuja.ac.id/index.php/hakam/article/download/76/70>

<sup>31</sup> Fall, "Special Report on Restitution for Victims of Crime in Canada 2021 - Canada" (Canada.ca, 2021).

<sup>32</sup> Muaja and Lembong, "The Effectiveness of Provisions on Restitution Rights as a Form of Legal Protection for Child Victims of Crime."

<sup>33</sup> Anne L. Schneider and Peter R. Schneider, "The Impact of Restitution on Recidivism of Juvenile Offenders: An Experiment in Clayton County, Georgia," *Criminal Justice Review*, 1985, <https://doi.org/10.1177/073401688501000101>.

<sup>34</sup> Susan Jacobs and David C. Moore, "Successful Restitution as a Predictor of Juvenile Recidivism," *Juvenile and Family Court Journal* 45, no. 1 (February 14, 1994): 3–14, <https://doi.org/10.1111/j.1755-6988.1994.tb00930.x>.

resolve the psychological problems of victims, it can help them overcome some of the financial problems they may face as a result of the crime.<sup>35</sup>

Therefore, to resolve the obstacles that arise in fulfilling the right to restitution in Indonesia, stricter regulations and effective mechanisms are needed to ensure that restitution decisions are properly enforced. In addition, Indonesia also needs to strengthen the role of the state and/or victim protection agencies, such as the LPSK, to ensure that victims' rights are protected, including the payment of restitution if the perpetrator is unable to pay. Currently, the responsibility for providing restitution largely remains in the hands of the perpetrator, which often disadvantages the victim. Therefore, the state must intervene if the perpetrator is unable to pay restitution as proof of the government's commitment to providing recovery for victims after a criminal act as stipulated in various relevant laws and regulations, with the support of judges in issuing final decisions on cases of that occur.

This is certainly not just a meaningless formality, but rather an instrument that is strictly regulated in legislation to realize the values of justice for society, especially victims of crime, because in terms of legal justice, the fulfillment of restitution rights for child victims of sexual violence has not been carried out as envisioned by the state through the establishment of legislation regulating restitution. The majority of court decisions do not include the victims' right to restitution, so that achieving justice for the rights of child victims of sexual violence to restore their condition is still far from what is needed. Furthermore, many victims and their families are unaware of their right to restitution, which certainly illustrates the ineffectiveness of compliance with the law. Law enforcement officials have not optimally carried out their obligations as mandated by legislation.

Likewise, if we look at it from the perspective of legal certainty, regulations governing victims' rights to restitution already exist, but there are still various obstacles to their fulfillment. This is certainly partly due to the lack of instruments in the legal regulations related to restitution, regarding the coercive power of law enforcement officials to carry out their obligations. There are no sanctions for them if these obligations are ignored. Thus, the state's goal of providing legal certainty for the rights of victims of crime through existing regulations cannot be fully achieved. This is because everything depends on the awareness and integrity of law enforcement officials, especially judges when deciding on a case. This legal vacuum demonstrates the urgent need for systemic reform to ensure that law enforcement officials not only have authority but also measurable accountability. The absence of strict sanctions has the potential to undermine the credibility of the state's commitment to providing protection to victims, especially children who are victims of sexual violence.

#### **4. CONCLUSION**

The fulfillment of the right to restitution for child victims of sexual violence still faces normative and practical obstacles, even though it has been regulated in several laws and regulations, such as Law Number 12 of 2022, Government Regulation Number 43 of 2017, and other laws and regulations. In practice, the implementation of these regulations has not been

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<sup>35</sup> *Op. Cit.*

able to guarantee substantive justice and legal certainty, as many court decisions do not award restitution to victims, even though the legal requirements for restitution ( ) have been met. Victims are often only used as witnesses and do not receive protection and fulfillment of their rights to appropriate material and immaterial compensation. The inadequate implementation of legal norms and low accountability of officials mean that victim protection relies more on individual efforts than on a reliable system. Therefore, legal reform is needed to strengthen the responsibility of the state and law enforcement officials so that compensation becomes a genuine obligation to ensure the comprehensive and fair restoration of victims' rights.

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