

# ANALYSIS OF THE FULFILLMENT OF RESTITUTION RIGHTS FOR CHILD VICTIMS OF SEXUAL VIOLENCE CRIME

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## Abstract

*Victims of a crime are often children, especially crimes of sexual violence. Sexual violence against children will have a detrimental effect. Impact on health problems and prolonged trauma problems. Children who are victims of criminal acts of sexual violence can cause physical and psychological injuries that must be healed and cared for. The form of legal protection for children who are victims of criminal acts of sexual violence is to provide the right of restitution as the perpetrator's responsibility to fulfill the rights of children who are victims of criminal acts. Decision of the Tanjung Karang High Court No.133/Pid/2021/PT Tjk, convicting the perpetrators of only half of the demands of the Public Prosecutor. This shows that criminal justice in Indonesia is still only focused on giving law to criminals so that the fulfillment of victims' rights cannot be fulfilled optimally. The results of the research show that there are regulations related to restitution but the regulations doesn't guarantee the rights of children as victims because these regulations are unclear in regulating the mechanism for implementing restitution. So that the obstacle is that law enforcement officers are still focused on the basic punishment rather than the rights of victims.*

**Keywords:** Restitution, Child Protection, Sexual Violence.

## I. INTRODUCTION

Criminal acts always appear in conventional media and social media news in Indonesia, one of which is sexual violence. The crime itself is a problem for humans, which occurs when a person does not use his mind and is added by the urge of lust in carrying out actions, resulting in actions that exceed limits such as sexual violence. Criminal acts of sexual violence or better known as sexual harassment are currently spreading in various forms. All of this will be done if they feel satisfied with their lust, as well as the age of the perpetrators who know no age limit. As long as an individual still has sexual power, from children to adults, it is still very possible to commit acts of sexual violence. In addition to the physical impact, this crime also often has a psychological impact such as trauma and mental or psychiatric disorders on the victim. <sup>4</sup> Violence against women can be defined simply as any form of

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<sup>4</sup> Nyi R Irmayani. "Problematika Penanganan terhadap Anak Pelaku Tindak Kekerasan Seksual Selama Menjalankan Proses Hukum (Kasus di Provinsi Kalimantan Barat)." *Sosio Konsepsia: Jurnal Penelitian dan Pengembangan Kesejahteraan Sosial* 8, no. 3 (2019), p.296

attitude that is tried on women that causes psychological consequences in the form of feelings of worry that result in bodily harm. This very broad definition ranges from intimate harassment in the form of whistling or teasing of women, to the omission by the State of women whose nationals are victims of violence. Intimate violence includes an act that includes intimate harassment to the point of forcing someone to carry out intimate ties without the victim's consent or when the victim wants or does not want to achieve the intimate needs of the actor. Crimes of intimate violence have an impact on the suffering of victims that require serious attention.<sup>5</sup>

Efforts to protect the law against victims must be carried out further so that the rights of victims are not lost and are recognized as equal persons in legal protection. This protection effort is contained in Republic of Indonesia Law No. 39 of 1999 concerning Human Rights in Article 3 paragraph (3) which states that: "Every person has the right to protection of human rights and basic human freedoms, without discrimination." and Article 5 paragraph (1) which states that: "Every person is recognized as an individual human being who has the right to demand and receive equal treatment and protection in accordance with human dignity before the law". Based on this verse, it can be seen that the purpose of creating victim protection is to provide victims' welfare by seeking fair and correct treatment and enforcement. The problem of the importance of adequate legal protection for victims can also lead to international issues so that problems like this need to get serious attention.

Compensation for victims of criminal acts, one of which is restitution, restitution in accordance with the principle of recovery in its original state (*restitutio in integrum*) is an attempt that the victim of a crime must be returned to its original condition before the crime occurred even though it is based on that it is impossible for the victim to return to his condition.<sup>6</sup> This principle emphasizes that the form of recovery for victims must be as complete as possible and cover various aspects arising from the consequences of a crime. The application of efforts to fulfill the right of restitution for victims of criminal acts can be said to be not the best in its implementation in the justice system. Victims of criminal acts have the right to obtain restitution in the form of compensation for loss of wealth or income, compensation for losses incurred as a result of suffering directly related to the crime, and/or reimbursement for medical and/or psychological treatment costs, however, the regulation does not specifically regulate provisions nominal certainty and coercive power for perpetrators of criminal acts to fulfill compensation to victims so that it can cause perpetrators not to carry out obligations that should be carried out optimally so that victims can obtain justice from criminal acts that have occurred.

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<sup>5</sup> Maria Novita Apriyani. "Implementasi Restitusi Bagi Korban Tindak Pidana Kekerasan Seksual." *Risalah Hukum* 17, no. 1 (2021), p.4

<sup>6</sup> *Ibid*, p.5

Protection of children in Indonesia has been guaranteed by the constitution which has mandated that children have the right to be protected from all forms of violence including sexual violence. As stated in article 28B paragraph (2) of the 1945 Constitution which states that: 'every child has the right to survival, growth and development and is entitled to protection from violence and discrimination'. Children are very important for families and the country because children are the future generation of the country. Criminal acts committed against children as victims not only cause physical and psychological suffering but can also affect the growth and development and quality of life of children, besides that they also cause material and immaterial losses to the victim's family. The government provides special protection through Article 71 D paragraph (1) of the Law of the Republic of Indonesia No. 35 of 2014 concerning Amendments to Law no. 23 of 2002 concerning Child Protection (Child Protection Law) which states that every child who becomes a victim has the right to apply for restitution rights which are the responsibility of the perpetrator to court. Children as victims of criminal acts whose rights have been impaired must get appropriate justice from the perpetrators so that their recovery is fulfilled as a form of compensation. Children as victims of criminal acts have the right to get appropriate justice. The government issued Government Regulation No. 43 of 2017 concerning the Implementation of Restitution for Children who are Victims of Crime. This regulation is an implementing regulation for the Child Protection Law. In this regulation, children who are victims of criminal acts can apply for compensation to the perpetrator for material and immaterial losses or physical and non-physical losses experienced by the victim.

Tanjung Karang High Court Decision No. 133/Pid/2021/PT Tjk, declared the defendant legally and convincingly guilty of continuing the crime of rape, and sentenced the defendant to 6 (six) years' imprisonment, and sentenced the defendant to pay restitution to the victim in the amount of Rp.8,575 000,- (eight million five hundred and seventy five thousand rupiah). The application letter outlines the application for restitution of Rp. 17,535,000 (seventeen million five hundred thirty-five thousand rupiah) by the public prosecutor in the claim letter. However, even though restitution has been successfully included in the lawsuit, fulfillment of the victim's rights cannot be replaced optimally where in the judge's decision only punishes the perpetrator by paying restitution for only half of the demand. This shows that the criminal justice system in Indonesia only focuses on giving law to criminals so that the fulfillment of victims' rights cannot be fulfilled optimally, even though child victims of sexual violence are the ones who suffer the most.

## II. DISCUSSION

### Restitution Concept

Restitution is a payment of compensation that is charged to the perpetrator based on a court decision that has permanent legal force for the material and or immaterial losses suffered by the victim or his heirs.<sup>7</sup> Restitution is defined as an act of doing good things or giving the same amount for the loss, damage or injury suffered by the victim. In fulfilling restitution, the perpetrator is required to pay a sum of money to the victim, if the victim suffers a loss. Restitution can be in the form of a sum of money or the value of an object taken by the offender, funeral expenses, loss of salary, support and payment for medical expenses, counseling or therapy. Restitution can only be claimed by the victim if the perpetrator of the crime has been proven guilty.<sup>8</sup>

The function of law is to provide protection where the law grows and is needed by humans precisely based on the product of human research to create conditions that protect and promote human dignity and to enable humans to live a life that is reasonable in accordance with their dignity. Sajipto Rahardjo said that law exists in society to integrate and coordinate interests that may collide with one another. The coordination of these interests is carried out by limiting and protecting these interests.<sup>9</sup>

Restitution is not only as legal protection but also as the rights of victims of criminal acts as appropriate which aims to restore the victim's condition to its original state. In order for the purpose of restitution to be achieved, Burt Galaway put forward four benefits of restitution as follows:<sup>10</sup> a. restitution as a condition for imposing a suspended sentence allows the court to circumvent imposing a heavy sentence, b. restitution orders help renew the perpetrator's self-respect by holding him responsible for what he has done; c. restitution as a criminal sanction and a cheaper alternative to imprisonment; and d. Restitution is able to provide the victim with material fulfillment and psychological satisfaction.

Restitution is a form of legal protection in order to restore the victim's condition or obtain compensation for material or immaterial losses experienced by the victim, both physically and mentally, which are borne by the perpetrator due to a crime.<sup>11</sup> Romli Atmasasmita explained that in the Middle Ages, when primitive laws still applied to the people of the nations of the world, personal reparation or a

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<sup>7</sup> Muhammad Mitra Lubis, Pemenuhan Hak Restitusi Terhadap Anak Korban Tindak Pidana Kejahatan Seksual (Studi Penelitian Pengadilan Negeri Meda Kelas I-A Khusus), *Jurnal dan Kemasyarakatan Al-Hikmah*, Vol.1 no.1, (September 2020), p.185

<sup>8</sup> Mahrus Ali dan Ari Wibowo, "Kompensasi dan Restitusi yang Berorientasi Pada Korban Tindak Pidana." *Yuridika*, vol. 33, no.2 (2018), p.267

<sup>9</sup> Satjipto Rahardjo, *Ilmu Hukum*, (Bandung: Citra Aditya Bakti, 2000), hlm. 53

<sup>10</sup> Mahrus Ali dan Ari Wibobo, *Op.cit*, p.268

<sup>11</sup> Gesty Permatasar dan Handri Wirastuti Sawitri, "Pelaksanaan Pemberian Restitusi Terhadap Korban Tindak Pidana Perdagangan Orang (Studi Kasus di Kejaksaan Negeri Indramayu)" *DIVERSI: Jurnal Hukum* 6, No. 1 (2020), p.52

kind of compensation payment was applied, which was carried out by someone who had committed a crime or an offender or his family against a victim who had been harmed as a result of the crime.<sup>12</sup>

As a victim who has suffered physically, he has the right to receive restitution and compensation for the suffering he has experienced. This is stated in the Declaration of Principles of Power (UN General Assembly Resolution No. 40/34, 29 November 1985) which regulates:<sup>13</sup> a. the victims are entitled to compensation for all the losses they have suffered, b. they must be informed about their rights to obtain compensation, c. the perpetrators or third parties must provide fair restitution for the victims and their families, d. when compensation is not fully obtained from the perpetrators of other sources the State must try to provide financial compensation, e. victims must receive the necessary material, medical, psychological and social support and assistance.

Article 7A paragraph (1) Law No. 31 of 2014 concerning Witness and Victim Protection (Witness and Victim Protection Law) where restitution is submitted through the Witness and Victim Protection Agency, victims of criminal acts are entitled to receive restitution which can be in the form of compensation for loss of income or wealth; Compensation arising from suffering which results directly from a crime and/or reimbursement for both medical and/or psychological treatment costs. Submission of requests for restitution for victims of criminal acts under Article 7A paragraph (3) of the Witness and Victim Protection Law can be submitted before a court decision that has permanent legal force or after a court decision that has obtained permanent legal force through the Witness and Victim Protection Agency. Article 19 of Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution and Assistance to Witnesses and Victims as an implementing regulation of the Law on Witness and Victim Protection stipulates that victims of criminal acts have the right to obtain legal protection, namely restitution in the form of: a. compensation for loss of property or income, b. compensation for losses incurred as a result of suffering directly related to a crime, and/or c. an application to obtain restitution as referred to in Paragraph (1) shall be submitted by the victim, his family or his proxies.

### **Efforts to Fulfill the Right to Restitution for Child Victims of Crimes of Sexual Violence**

The crime of sexual violence in the eyes of the law is a matter of relationship (intercourse) between a man and a woman. Sexual violence is a sexual crime which in general is an act that violates decency that damages decency and the act is not of

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<sup>12</sup> Bambang Waluyo, *Viktimologi Perlindungan Korban dan Saksi* (Jakarta: Sinar Grafika, 2011), p.15

<sup>13</sup> Atikah Rahmi, "Pemenuhan Restitusi Dan Kompensasi Sebagai Bentuk Perlindungan Bagi Korban Kejahatan Sekual Dalam Sistem Hukum Di Indonesia" *De Lega Lata*, Vol. 4 No. 2,(Juli-Desember 2019), p.152

the will of the victim through threats of violence. Sexual violence can be interpreted as an act or act that intimidates someone related to intimacy or sexual relations carried out by an actor by force. Such actions can cause the victim to suffer physically and psychologically. Sexual violence or better known as sexual harassment is defined as behavior of a sexual nature that is unwanted and unwanted by the recipient or victim and results in disturbing the recipient of the harassment, his behavior which can be classified as an act of sexual harassment such as coercion to carry out sexual activities, degrading statements that are sexually oriented, jokes that are sexually oriented, requests to perform sexual acts that the perpetrator likes and speech or behavior that has a sexual connotation, these actions can be conveyed directly or indirectly.<sup>14</sup>

Article 1 of the Declaration on the Elimination of Violence Against Women states that what is meant by violence against women is any action based on gender differences that results in or is likely to result in misery or suffering for women physically, sexually or psychologically, including threats of certain actions, whether occurring in public or in private life. The term sexual violence is very foreign to use in society, the term that is more often used is sexual harassment. Losses experienced by victims such as experiencing physical suffering if their body experiences pain, injury or disability as a result of the crime that occurred and psychological suffering experienced by the victim if the crime that occurred to him resulted in psychological or psychological disorders, starting from the mildest level to the most severe.<sup>15</sup>

Sexual violence does not only happen to adults who become victims, children are also vulnerable to becoming victims of sexual violence, causing losses to children who often have to accept a 'label' from society that can affect their social life. This kind of suffering is often experienced by women who are victims of sexual violence who are then labeled as sluts or women who are no longer chaste. This will greatly impact children who are victims of sexual violence, this impact will interfere with the child's mentality which will cause embarrassment to peers and other social environments.

Article 1 point 2 of the Child Protection Law explains that a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb.<sup>16</sup> Child protection in the Child Protection Law is defined as all activities to guarantee and protect children and their rights so that they can live, grow, develop and participate optimally in accordance with human dignity and receive protection from violence and discrimination. Getting protection is the right of every child, and realizing protection for children means realizing justice in a society.<sup>17</sup> The losses received by child victims as objects of criminal acts need to be considered in order

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<sup>14</sup> Rosania Paradias dan Eko Soponyono. "Perlindungan Hukum Terhadap Korban Pelecehan Seksual." *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (2022), p.62

<sup>15</sup> *Ibid.*

<sup>16</sup> Nikmah Rosidah, *Sistem Peradilan Pidana Anak*, (Bandar Lampung: Aura, 2019), p.10

<sup>17</sup> Setyowati Irma, *Aspek Hukum Perlindungan Anak*, (Jakarta: Bumi Askara, 1990), p.47

to obtain social and legal protection, either from the perpetrators of the crime itself or from the government which has the obligation to protect the rights of its citizens. The initial basis for filing the right to restitution is needed, so that the perpetrator pays the loss from the victim as the object of the crime. Victims' rights can be fulfilled with restitution which will benefit the victims in their recovery. In line with the integrative aim of punishment, that a crime is a disturbance to balance, harmony and harmony in people's lives. The purpose of punishment is to repair the individual and social damage caused by a crime.

Arif Gosita explained that the rights of victims of criminal acts include:

- a. Victims are entitled to compensation or restitution for their suffering, according to their ability to provide compensation;
- b. Has the right to refuse compensation or restitution in the interests of the victim-maker (if compensation is not required);
- c. Has the right to receive compensation for his heirs if the victim dies because of this action;
- d. The right to receive coaching and rehabilitation;
- e. Has the right to recover his property rights;
- f. The right to use legal remedies (*rechtsmiddelen*).

Restitution or compensation can be requested by a child who is a victim of a crime, if the victim suffers a loss. Children as victims of criminal acts of sexual violence if the victim feels a sense of loss, the child victim can apply for compensation and is entitled to compensation, namely in the form of: a. compensation for economic loss of wealth and income, b. compensation for the consequences arising when the victim experiences suffering that is directly related to the impact of a crime; and/or c. medical treatment physically and/or psychologically as well as psychologically in the form of reimbursement of costs received.<sup>18</sup>

Government Regulation No. 43 of 2017 regulates procedures for filing restitution for child victims of criminal acts, guidelines for investigators, public prosecutors and courts in fulfilling victims' rights to compensation received, up to the implementation of court decisions, namely granting restitution from perpetrators to victims. This government regulation was made as a basis for implementing the provisions of Article 71 D paragraph (2) of the Child Protection Law. Article 71 D states in Article 1 that every child who becomes a victim as referred to in Article 59 paragraph (2) letter b, letter d, letter f, letter h, letter i, and letter j has the right to apply to court in the form of a right to restitution which becomes the responsibility of the offender. Followed by Article 2 which states that further provisions regarding the implementation of restitution as referred to in paragraph (1) are regulated by a Government Regulation.

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<sup>18</sup> Achmad Murtadho, "Ganti Kerugian Terhadap Anak Korban Tindak Pidana Pencabulan." *Veritas et Justitia* 7, no. 1 (2021), p.247

Article 59 of the Child Protection Law referred to above can be described as paragraph (1) states that the Government, Regional Governments and other State Institutions are obliged and responsible for providing Special Protection to Children. Then in paragraph (2) of the Child Protection Law confirms that children who are victims of criminal acts state that special protection for children as referred to in paragraph (1) is given to children in emergency situations, children in conflict with the law, children from minority and isolated groups, children who are exploited economically and/or sexually, children who are victims of abuse of narcotics, alcohol, psychotropics and other addictive substances, children who are victims of pornography, children with HIV/AIDS, children victims of kidnapping, selling and/or trading, children victims of physical and/or psychological violence, children victims of sexual crimes, children victims of terrorist networks, children with disabilities, children victims of abuse and neglect, children with behavioral social deviance, and children who are victims of stigmatization from labeling related to the condition of their parents.

Submission of an application for restitution is explained in this government regulation in Article 2 paragraph (1) which states that children who can apply for the right of restitution are:

- a. Children who are in conflict with the law;
- b. Children who are economically and or sexually exploited;
- c. Children who are victims of pornography;
- d. Child victims of abduction, sale and or trade;
- e. Child victims of physical and/or psychological violence;
- f. Child victims of sexual crimes.

Requests for restitution can be made before or after a court decision has permanent legal force, this is explained in Article 5 paragraph (2) of Government Regulation No. 43 of 2017 states that requests for restitution to the court submitted before a court decision can be submitted through the investigation or prosecution stage. Then in paragraph (3) it is stated that apart from going through the investigation or prosecution stage, requests for restitution can be submitted through the Victim Witness Protection Agency in accordance with statutory provisions. The Witness Victim Protection Agency is an institution appointed by the government that has the duty and authority to provide protection and other rights to witnesses and/or victims in accordance with statutory provisions. In addition to the Witness Victim Protection Agency appointed by the government to assist children who are victims of crime, children also need help from parents or guardians.

Based on Government Regulation No. 43 of 2017 and Article 31 Paragraph (4) of Government Regulation No. 7 of 2018 concerning Provision of Compensation, Restitution and Assistance to Witnesses and Victims which has been amended by Government Regulation No. 35 of 2020, it is regulated that further provisions

regarding technical the implementation of examination of requests for restitution is regulated by a Supreme Court Regulation. Based on the above regulations, the Supreme Court established Supreme Court Regulation No. 1 of 2022 concerning Procedures for Completing Applications and Providing Restitution and Compensation to Victims of Crime, in Article 7 paragraph (1) explains that perpetrators of criminal acts and/or third parties make restitution payments during the examination process or before a Court decision has permanent legal force, money Restitution is deposited at the court clerk. If restitution can be paid before the Court's decision then this can be a relief to the perpetrator in imposing criminal sentences. However, it does not explain which institute has the right to determine the nominal amount of restitution if it is paid before the court decision has permanent legal force.

Court Judgement No.133/Pid/2021/PT.Tjk which the Tanjung Karang High Court Judge found the perpetrator legally and convincingly guilty of committing the crime of rape which was carried out continuously by imposing a prison sentence of 6 (six) years and ordering the defendant to pay restitution to the victim witness in the amount of Rp. 8,575,000, - (eight million five hundred and seventy five thousand rupiah).

### **Barriers to Fulfilling the Right to Restitution for Victims of Sexual Violence**

The meaning of law enforcement can be interrelated with various kinds of problems that occur. However, all of this comes back to the awareness of various parties, both the wider community and law enforcement officials, about the level of awareness of each party. The purpose of law enforcement is to realize the concepts of justice, legal certainty and social benefits.<sup>19</sup> The essence and meaning of law enforcement lies in the activity of harmonizing the relationship of values which are spelled out in definite legal principles and the attitude of action as a series of final stages of value translation to create, maintain and maintain peace in social life.<sup>20</sup>

Soerjono Soekanto stated that there were 5 (five) factors that influenced the law enforcement process. These factors include: legal factors, law enforcement factors, facilities and infrastructure factors, community factors, and cultural factors.<sup>21</sup> While Lawrence M Friedman, there are at least 3 (three) factors that influence law enforcement. These factors include the following:<sup>22</sup>

a. Substance factors

What is meant by substance here are rules, norms, patterns of real human behavior that are different in that system. Substance also means

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<sup>19</sup> Maya Shafira, dkk, *Sistem Peradilan Pidana* (Bandar Lampung: Pusaka Media, 2022), p.72

<sup>20</sup> Soerjono Soekanto, *Faktor-faktor yang Mempengaruhi Penegakan Hukum* (Jakarta: Rajawali Pers, 2007), p.5

<sup>21</sup> *Ibid*, p.20

<sup>22</sup> Sirajudin, *Komisi Pengawas Penegakan Hukum: Mampukah Membawa Perubahan* (Malang: Malang Corruption Watch dan YAPPIKA, 2007), p.25-26

the products produced by people who are in the legal system, including the decisions they issue, the new rules they draft. Substance also includes living law, and not just the suggestions contained in the statute book.

b. Structural factors

It is the part that endures, the part that gives a kind of shape and boundary to the whole. When discussing the structure of the system in Indonesia, what is discussed includes the structure of law enforcement institutions such as the Police, Prosecutors and Courts and also includes structural elements of the number and types of courts of jurisdiction.

c. Cultural factors

In this case the human attitude in the law-belief, the value of thought and expectations. In other words, legal culture is a social mood that determines how law is used, avoided, or misused. Without a legal culture, the law is powerless, like a dead fish lying in a basket and not like a fish swimming in the open ocean.

M Friedman, if related to obstacles in fulfilling the right of restitution for child victims of sexual violence, then there is an analysis as follows:

1. Substance factors

This factor is the main factor in the success of achieving the fulfillment of the right of restitution for child victims of sexual violence. Where the legal substance in this case is statutory regulations, namely the Law of the Republic of Indonesia No. 31 of 2014 concerning Protection of Witnesses and Victims in Article 7A paragraph 3 states that the application for restitution can be made before or after a court decision that has obtained permanent legal force through LPSK. Paragraph 4 states that in the event that a request for restitution is filed before a court decision has obtained permanent legal force, the LPSK may apply for restitution to the public prosecutor to be included in its claim.

The word 'may' in this article is contrary to the principle that the formulation of a crime must comply with the legal principle that it must be written (*lex scripta*), must be interpreted as it is read (*lex stricta*), and not have multiple interpretations (*lex certa*). The use of the word 'can' in Appendix II of Law No. 12 of 2011 concerning Formation of Legislation is explained to state the discretionary nature of an authority given to a person or institution. According to the legal dictionary, discretion means the freedom to make decisions in every situation faced according to one's own opinion. So that it becomes an option for law enforcement officials to carry out restitution or not, even though in Law No. 31 of 2014 concerning the Protection of Witnesses and Victims Article 7A paragraph 1 victims of criminal acts have the right to obtain restitution in the form of compensation for loss of wealth or income, compensation for incurred as a result of suffering that is directly related as a

result of a crime, and reimbursement for medical and/or psychological treatment costs. Where rights are something inherent in the victim that must be given.

The Child Protection Act and its implementing regulations, namely Government Regulation No. 43 of 2017, Law no. 31 of 2014 concerning Protection of Witnesses and Victims with implementing regulations, namely Government Regulation no. 7 of 2018, both of them do not regulate the nominal amount of restitution for losses that are material or immaterial as the basis for the LPSK and public prosecutors in submitting requests for restitution.

In addition, these laws and regulations do not regulate if in practice the perpetrators of sexual violence against children who have been found guilty by the Court for carrying out their obligations by paying the right of restitution to child victims of sexual violence do not pay it. The absence of further regulation of mechanisms regarding this matter makes it uncertain for child victims of criminal acts to obtain their rights. With regard to laws and regulations, if sanctions are too weak or sanctions can be compromised so that legal protection for child victims of criminal acts becomes something that can be underestimated and may not even be implemented.<sup>23</sup>

The obligation of the government to protect children's rights so that the role of the government is very important in order to ensure that the rights of children victims of criminal acts are given optimally. One of them is the provision of compensation is something foreign because the compensation mechanism has not yet been regulated for victims of criminal acts whose right to restitution has not been paid by the perpetrator. The government's role is to regulate and accommodate the provision of this compensation, so that the rights of children who are victims of criminal acts are maximized so that a sense of justice emerges.

Based on Court Decision No. 133/Pid/2021/PT Tjk, there is a decision in which the High Court Judge of Tanjung Karang decided and determined that the defendant must pay restitution in the amount of Rp. 8,575,000.- (eight million five hundred and seventy five thousand rupiah). But does not determine a subsidiary or substitute if the main thing does not occur. The same thing was conveyed by Abdul Siboro, according to him the problem is not only the nominal amount if there is no subsidiary in the decision so that it is very possible for the defendant to have the potential not to pay it because there is no binding power and force to compel it, if in civil terms it is like the term 'win on paper'. Furthermore, Abdul Siboro felt that it was very difficult for the Judge to determine the nominal amount of restitution because immaterial losses

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<sup>23</sup> Interview Results with Martha Riananda, Lecturer in the Constitutional Law Section, Faculty of Law, University of Lampung, 13 December 2022

could not be calculated using real data. This is in accordance with what is an obstacle to the substance of the law where the legislation has not regulated it.<sup>24</sup>

## 2. Structural factors

In addition to the legal substance factor, as another factor in the obstacles in efforts to fulfill the right of restitution for child victims of sexual violence, law enforcement factors are also one of the factors. Structural law or law enforcement which is an important element in the application of law is expected to be the cornerstone of a regulation that has been made, law enforcement is a tool so that the law remains upright and implemented properly. In accordance with the opinion of Martha Riananda who said that although arrangements regarding legal protection in this case are restitution for child victims of sexual violence crimes, they already exist, but to what extent are the wishes of law enforcement officials to take preventive action or after the incident by taking firm action. The weakness of law enforcers is that they are still not serious in handling child cases, in some cases law enforcers' children prioritize settlement in a family manner.<sup>25</sup>

The lack of public awareness of the rights of victims of criminal acts requires law enforcement to play an active role in efforts to fulfill the right to restitution. However, if you look at the explanation above that there are still many obstacles in the implementation of this right of restitution, the paradigm of punishment that focuses on recovering victims by fulfilling the rights of victims as the aim of the Witness and Victim Protection Law has also not been achieved, because law enforcers are still focuses on punishing the perpetrators of criminal acts only.

Apart from that, Abdul Siboro said that the inhibiting factor at court was that the obstacle to restitution was not far from economic conditions. It was difficult for judges to see or assess the condition of the defendant so that he could fulfill compensation for the victim because the judge could not deal directly with the victim and the defendant. Abdul Siboro further said that the obstacles were in the case of children and women where there should have been an assistance agency, but in practice not all assistance agencies were active in an area so that it was still not maximal in accommodating victims' rights, according to him, the assistance agency, namely LPSK should be able to accompany victims in the trial process and can be asked for information to consider the nominal amount of restitution for child victims of crimes of sexual violence.<sup>26</sup> The same thing was conveyed by Bonar Harianja who was of the

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<sup>24</sup> Interview Results with Abdul Siboro, High Court Judge of Tanjung Karang, 5 October 2022

<sup>25</sup> Interview Results with Martha Riananda, Lecturer in the Constitutional Law Section, Faculty of Law, University of Lampung, 13 December 2022

<sup>26</sup> Interview Results with Abdul Siboro, High Court Judge of Tanjung Karang, 5 October 2022

opinion that the obstacle faced by the judge in deciding this was determining the nominal amount of restitution itself, because in practice, letters of recommendation from the LPSK often did not describe what losses the victim had suffered. He continued, Bonar Harianja said that what became an obstacle when a decision was made, according to him, was very little the return of the minutes of the implementation of the court decision or the stages of execution so that the court did not know whether or not the rights of victims of criminal acts had been fulfilled.<sup>27</sup>

Without certain means or facilities, it is impossible for law enforcement to take place smoothly. Based on the results of an interview with Yessie Indra, as the Prosecutor at the Lampung High Prosecutor's Office, he feels that this is one of the reasons why very few requests for restitution have been implemented because according to him, the authority to notify the Witness and Victim Protection Agency is the police regarding the application for restitution and only the Witness and Victim Protection Agency. who has the right to determine the amount of the request for restitution. Furthermore, according to him, full fulfillment of victims' rights is better directed through restorative justice solutions.<sup>28</sup>This is because the LPSK is only domiciled in the State Capital so that it will hamper efforts to fulfill the right of restitution because the process requires complete requirements and takes a long time, in submitting a request for restitution to the Court, the victim must obtain a recommendation letter from the Witness and Victim Protection Agency.

### 3. Cultural factors

The cultural factor in the context of fulfilling the right of restitution for child victims of sexual violence is that there has been no outreach from the government to both law enforcement and the community about the importance of the right to restitution for child victims of sexual violence, so that the community and law enforcement officials do not understand regarding the implementation of restitution and information on the existence of the right to restitution to victims cannot be conveyed optimally. Regarding socialization that has not been carried out, this cannot be separated from the inadequate facilities and infrastructure from the government which will support the implementation of this socialization.

There is no willingness or ability of the perpetrators to carry out their obligations to provide restitution rights for child victims of criminal acts. The lack of coercive power contained in the laws and regulations related to this right of restitution has resulted in the implementation of fulfilling this right of restitution ultimately relying on the perpetrator's awareness of the

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<sup>27</sup> Interview Results with Bonar Harianja, High Court Judge of Tanjung Karang, 5 October 2022

<sup>28</sup> Interview Results with Yessie Indra Anggun Dwi Putri, Lampung High Prosecutor's Office, 5 October 2022

consequences of the crime committed against the child victim. The perpetrator in this case means the perpetrator, not only the perpetrator as an individual, but other individuals or family parties who are willing to carry out the perpetrator's obligations in paying restitution rights for child victims of sexual violence.

The application for the right of restitution for child victims of sexual violence has not been optimally achieved because the perpetrators have limited economic capacity to pay restitution. Most perpetrators prefer imprisonment rather than pay compensation. In line with Abdul Siboro's opinion, which said that not a few perpetrators who did not pay restitution penalties preferred prison sentences, according to him, it was not only restitution sentences but also court fees that rarely paid.<sup>29</sup>

### III. CONCLUSION

Efforts to fulfill the right of restitution for child victims of sexual violence crimes in the procedures and regulations already regulated in the Child Protection Act and its implementing regulations, restitution can be submitted through three stages, namely investigation, prosecution, and after the judge's decision. By punishing the perpetrators of sexual violence to pay restitution, it means that there have been efforts to fulfill the child victim's right to restitution, but the fulfillment of the victim's rights has not been able to replace all of the victim's lost rights. The need for renewal of laws and regulations so that they become provisions that can serve as guidelines for law enforcement officials in fulfilling the rights of restitution for victims of criminal acts. Obstacles in fulfilling the right of restitution for child victims of sexual violence in the regulations have not been clearly regulated regarding the amount of loss that can be claimed by the victim and sanctions have not been regulated if the perpetrator refuses or does not pay restitution so that it has binding legal force. The need for renewal of laws and regulations so that they become provisions that can serve as guidelines for law enforcement officials in fulfilling the rights of restitution for victims of criminal acts. As well as the seriousness of law enforcement officials in implementing the fulfillment of the right to restitution for child victims of sexual violence.

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<sup>29</sup> Interview Results with Abdul Siboro, High Court Judge of Tanjung Karang, 5 October 2022

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