

Restitution for Child Victims of Sexual Violence Crimes

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Abstract

This study explores the legal dimensions of restitution for child victims of sexual violence in Indonesia within the framework of legal protection and restorative justice. It aims to analyze the normative legal framework and examine judicial considerations in court decisions related to restitution enforcement. Using a normative juridical approach, the research reviews legal instruments such as Law No. 35 of 2014, Law No. 31 of 2014, and Government Regulation No. 43 of 2017, as well as selected court decisions. Although prior studies have identified challenges in implementing restitution in general, this study highlights a specific gap in analyzing judicial reasoning in sexual violence cases involving children. The findings show that while the legal framework is comprehensive, enforcement remains inconsistent due to limited understanding among law enforcement and weak inter-institutional coordination. Notably, only a few judges applied restitution substantively and progressively, especially in decisions that detailed enforcement mechanisms. This study offers a novel contribution by critically analyzing inconsistencies in judicial application and interpreting how judges integrate the principle of restorative justice. It concludes that practical implementation must be reinforced to ensure restitution fulfills its role as a tool for justice and recovery for child victims.

INTRODUCTION

Children are the main factor in the continuity of a family's life and also the nation, which will later be responsible for the sustainability of the country and the nation itself.¹ Children have one of the important roles in the Indonesian constitution, which is to guarantee every child's right to survival, growth, and protection from violence and discrimination.² Children are not infrequently victims of sexual violence, exploitation, and human trafficking.³ Children are often seen as helpless and highly reliant on adults, making them particularly vulnerable to sexual exploitation.⁴ This issue is not just a legal concern but also a profound social and psychological challenge.⁵ Legal protections for victims of crime, including children, can be implemented through various means, such as restitution and compensation, which serve as tangible forms of victim protection. The key difference between restitution and compensation is their origin: restitution is recovered directly from the perpetrator, whereas compensation comes from the state.⁶

In the criminal justice system, ensuring the rights of child victims, such as restitution and compensation, aligns with the restorative justice principle, which aims to return the victim's condition as close as possible to the state before the crime.⁷ One form of assistance, viewed through a human and human rights perspective, is known as compensation. Compensation stands as a form of aid that does not depend on court outcomes or decisions, and the source of funds can also come from the government or the public.⁸

The Indonesian government has implemented several regulations to safeguard the rights of children who have been victims of sexual violence. Law Number 31 of 2014 on

¹ Siswanto, Yayan Agus, and Fajar Rachmad Dwi Miarsa. "Upaya preventif sebagai bentuk perlindungan hukum dari kejahatan kekerasan seksual pada anak." *Jurnal Kolaboratif Sains* 7, no. 5 (2024): 1651-1667.

² Bakhtiar, Handar Subhandi, and HUKUM ACARA. "Penerapan sanksi pidana dan tindakan terhadap anak menurut UU No. 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak." *Universitas Muslim Indonesia* (2015).

³ Prastini, Endang. "Kekerasan terhadap anak dan upaya perlindungan anak di Indonesia." *Jurnal Citizenship Virtues* 4, no. 2 (2024): 760-770.

⁴ Amalia, Mia. "Kejahatan Kekerasan Seksual (Perkosaan) Terhadap Anak, Dampak, Dan Penanganannya Di Wilayah Hukum Kabupaten Cianjur," *Jurnal Mimbar Justitia* 2, no. 1, (2016): 648-667.

⁵ Asqia, Nurul & Rahma, Miftahul. "Dampak Kekerasan Seksual Pada Anak Usia Dini," *Murhum: Jurnal Pendidikan Anak Usia Dini* 5, no. 2, (2024): 1135-1145.

⁶ Daniel, Bony. "Restitusi Dan Kompensasi Dalam Kasus Tindak Pidana Yang Pelakunya Tidak Dapat Dipidana," *Pengadilan Negeri Serang*, (2024): 1-7.

⁷ Lisnawati, Dewi. "Implementasi Restitusi Anak Sebagai Bentuk Perlindungan Hukum Bagi Anak Korban Tindak Pidana Di Provinsi Riau," *JURNAL PANJI KEADILAN: Jurnal Ilmiah Nasional Mahasiswa Hukum* 3, no. 1 (2020): 26-42, <https://doi.org/10.36085/jpk.v3i1.1179>.

⁸ Tamtomo, Adi Tyas. "Penerapan Hak Restitusi Bagi Anak Korban Tindak Pidana di Indonesia." PhD diss., Universitas Hasanuddin, 2023.

Witness and Victim Protection creates a legal basis for offering restitution and compensation to crime victims. Additionally, Law Number 35 of 2014, that amends Law Number 23 of 2002 on Child Protection, acts as a legal measure to safeguard children across a range of criminal violations, particularly sexual abuse.⁹ In addition, Government Regulation Number 43 of 2017 specifically regulates how restitution is carried out for children that are victims of criminal acts.¹⁰ This regulation affirms the country's commitment to protecting and restoring the rights of child victims. However, in practice, the implementation of these provisions still faces various challenges.

Although regulations have been established, implementation in the field still faces various obstacles. Data shows that out of 2,559 rulings related to criminal acts against children in Indonesia from 2018 to 2020, only 5 rulings included granting restitution rights to the child victims.¹¹ This indicates that restitution rights for children affected by criminal acts remain inadequately fulfilled.

Additionally, the process for submitting and awarding restitution often fails to function effectively. Difficulties in the restitution application process arise because many law enforcement officers still do not realize that restitution is a victim's right that can be claimed for any criminal act that causes harm.¹² The complex application process and lack of socialization regarding victims' rights are the main obstacles in the realization of restitution and compensation.¹³ This condition results in many child victims of criminal acts not receiving their rights optimally. Moreover, there is a clear distinction between restitution and compensation, in which restitution is the offender's responsibility, whereas the state offers compensation if the offender cannot pay damages to the victim.

In a country that upholds civilization, the legal system plays a vital role in safeguarding children from sexual harm abuse.¹⁴ In the context of sexual violence,

⁹ Santoso, Heri. "Perlindungan Hukum Bagi Anak Korban Tindak Pidana Pelecehan Seksual," *LEX JOURNAL: Kajian Hukum & Keadilan* 3, no. 2 (2020): 1-21.

¹⁰ Qorib, Fathan. "Ini Poin-poin PP Pelaksanaan Restitusi Bagi Anak Korban Tindak Pidana." *Hukumonline*, October 24, 2017, <https://www.hukumonline.com/berita/a/ini-poin-poin-pp-pelaksanaan-restitusi-bagi-anak-korban-tindak-pidana-lt59eef5e356c54>.

¹¹ Novrianto, Muhammad, and Mada Apriandi Zuhir. "Implementasi Hak Restitusi Bagi Anak Yang Menjadi Korban Tindak Pidana Dalam Proses Penyidikan Penuntutan Dan Putusan Pengadilan," *Lex LATA* 4, no. 2 (2020): 210-19, <https://doi.org/10.28946/lexl.v4i2.1552>.

¹² Sulistiani, Lies. "Problematisasi Hak Restitusi Korban Pada Tindak Pidana Yang Diatur KUHP Dan Di Luar KUHP," *Jurnal Bina Mulia Hukum* 7, no. 1 (2022): 81-100.

¹³ Ransun, Alvianto. "Mekanisme Pemberian Kompensasi Dan Restitusi Bagi Korban Tindak Pidana," *Lex Crimen* 1, no. 1 (2012): 60-72.

¹⁴ Cahyadi, Silvia, and Rasji Rasji. "Perspektif Hukum Terhadap Perlindungan Anak Korban Kekerasan Seksual Dalam Undang-Undang Nomor 12 Tahun 2022," *UNES Law Review* 6, no. 4 (2024): 10304-10311, <https://doi.org/10.31933/unesrev.v6i4>.

children not only lose their sense of safety but also often experience injustice in the process of restoring their rights. Additionally, peace efforts in cases of sexual violence still involve adult perpetrators who violate legal norms.¹⁵ The Chairperson of the Indonesian Child Protection Commission (KPAI) stated that the number of violence cases against children reaches 3,700 annually, averaging 15 cases per day.¹⁶ Of that amount, 58 percent are sexual crimes against children.¹⁷ The research conducted by Tamtomo (2022) entitled *"Penerapan Hak Restitusi bagi Anak Korban Tindak Pidana di Indonesia"* focuses on a juridical analysis of the implementation of restitution rights for child victims of criminal acts in general. Tamtomo identifies several obstacles to the implementation of restitution rights, including a lack of understanding among law enforcement officers and the absence of an effective technical mechanism to ensure that victims' rights are fulfilled. The primary focus of this study lies on norms and policies at a macro level, and it does not specifically address cases of sexual violence or judicial considerations in rulings.

Meanwhile, Lisnawati (2020), in her research titled *"Implementasi Restitusi Anak sebagai Bentuk Perlindungan Hukum bagi Anak Korban Tindak Pidana di Provinsi Riau"* conducted an empirical study at the regional level, focusing on the application of restitution policies in practice. Lisnawati identified various administrative obstacles, weak support from child protection institutions, as well as low awareness among law enforcement officers and the public regarding the restitution rights of child victims. Her methodological approach leans towards being implementative and contextual within a specific area.

Comparative Aspects	Tamtomo (2022)	Lisnawati (2020)	This Study (Research Now)
Focus	Restitution for children who are victims of criminal acts in general	Implementation of restitution in a region (Riau)	<i>Restitution for children who are victims of sexual violence specifically</i>
Method	Juridical-normative	Empirical field study	<i>Juridical-normative with court decision analysis</i>
Object Analysis	National norms and policies	Local administrative constraints	<i>The legal considerations of the judge in a court ruling</i>

¹⁵ KPAI, Humas. "Laporan Tahunan KPAI, Jalan Terjal Perlindungan Anak: Ancaman Serius Generasi Emas Indonesia." February 11, 2025, <https://www.kpai.go.id/publikasi/laporan-tahunan-kpai-jalan-terjal-perlindungan-anak-ancaman-serius-generasi-emas-indonesia>.

¹⁶Herculanus, Elyas, and Nining Yurista Prawitasari. "Perlindungan Hukum Bagi Anak Korban Kejahatan Seksual (Studi Putusan Perkara PN Limboto Nomor 197/PID. SUS/2020/PN. LBO)." *Jurnal Risalah Kenotariatan* 5, no. 2 (2024): 262-273.

¹⁷ *ibid*

Level of Analysis	General and macro	Local and administrative	<i>Juridical and interpretative regarding the practice of justice</i>
Contribution	Recommendations for improving coordination and understanding	Identification of regional implementation barriers	<i>Theoretical contributions to restorative justice and judicial interpretation</i>

Unlike the previous two studies, this study presents novelty in two main aspects:

1. A specific focus on sexual violence against children, rather than general criminal acts, narrows the scope for a more in-depth and relevant analysis of the particular vulnerabilities of child victims.
2. Emphasis on the analysis of judges' legal reasoning, rather than merely evaluating norms or administrative obstacles. This approach opens up space to assess how the principles of restorative justice and child protection are truly interpreted and implemented in criminal justice practice.

Based on the background outlined, this study aims to examine and analyze how the legal system in Indonesia handles restitution for children who are victims of sexual violence, as well as to review the implementation and enforcement of the law through judicial considerations in several court decisions, in order to understand the extent to which the principles of restorative justice have been realized in protecting the rights of child victims. Research on restitution for children who are victims of sexual violence crimes is highly urgent because it involves the fulfillment of fundamental rights of children as socially, psychologically, and legally vulnerable victims. Although a strong legal basis exists through Law No. 31 of 2014 and Government Regulation No. 43 of 2017, its implementation in practice remains very limited, as evidenced by only 5 out of 2,559 court decisions including the provision of restitution. This condition indicates a gap between legal norms and practice. Therefore, this study is important for analyzing the causes of weak restitution implementation, reviewing judges' legal considerations, and contributing to the strengthening of the concept of restorative justice and providing more optimal legal protection for child victims of sexual violence.

Therefore, an in-depth review of legal regulations and judicial considerations in granting restitution to child victims of sexual violence is necessary. This study will focus on a normative analysis of the legal provisions on restitution and the examination of several cases to observe how the enforcement of restitution law is implemented, taking into account the judicial considerations in criminal court practices in Indonesia. In this

study, the analysis is directed at cases involving children as victims of sexual violence offenses, in order to assess the extent to which restitution rights can be realized under the positive law in Indonesia. Accordingly, the author is interested in conducting a deeper study on this issue, entitled "RESTITUTION FOR CHILD VICTIMS OF SEXUAL VIOLENCE CRIMES."

METHODS

This study employs a normative juridical method, which is legal research focusing on the study of positive legal norms, legal principles, and doctrines in legal literature to examine the consistency, application, and conformity of existing legal provisions with the practice of restitution for child victims of sexual violence crimes. The approaches used include the Statute Approach, analyzing Law No. 31 of 2014 on the Protection of Witnesses and Victims, Law No. 35 of 2014 on Child Protection, and Government Regulation No. 43 of 2017 on the Implementation of Restitution for Child Victims of Criminal Acts, as well as the Case Approach, through the review of court decisions addressing issues related to the implementation of restitution. The selection of cases is based on three main criteria: substantive relevance (directly related to sexual violence against children and restitution aspects), variation in application (differences in interpretation or application of restitution), and court level (to observe the dynamics between the District Court and the High Court). Based on these criteria, four decisions were selected, namely the Padang High Court Decision No. 5/Pid.Sus-Anak/2022/PT.PDG, Tanjung Karang District Court Decision No. 29/Pid.Sus-Anak/2022/PN.Tjk, Makassar District Court Decision No. 661/Pid.Sus/2021/PN.Mks, and Surabaya High Court Decision No. 738/Pid.Sus/2023/PT.Sby. The sources of legal materials consist of primary legal materials in the form of legislation and court decisions, as well as secondary legal materials such as legal literature, scientific journals, theses, dissertations, and other relevant studies. Data analysis is conducted prescriptively by interpreting legal norms and comparing them with judicial practices to formulate legal arguments regarding the extent to which restitution norms have been applied consistently and fairly in cases of sexual violence against children.

RESULTS AND DISCUSSION

1. Legal Regulations Concerning Restitution for Child Victims of Sexual Violence Crimes in Indonesia

Restitution for children who are victims of criminal acts, especially sexual violence, is a crucial tool in efforts to ensure legal protection for victims. Considering that children

are a vulnerable group, the state has an obligation to provide special protection. In the Indonesian legal framework, restitution is acknowledged as the victim's entitlement to recover damages caused by criminal acts.

Regulations on restitution for children affected by sexual violence are founded on various related national legal frameworks. These encompass Law Number 31 of 2014 on Witness and Victim Protection (UUPSK), Law Number 35 of 2014 on Child Protection (UUPA), and Government Regulation Number 43 of 2017 on the Implementation of Restitution for Child Victims of Crimes (PP). These three regulations establish a legal basis affirming that every child who is a victim of a crime has the right to fair compensation, whether charged to the perpetrator through restitution or provided by the state through compensation.

Restitution is the victim and their family's right to obtain material compensation via the criminal process, as outlined in the UUPSK.¹⁸ The law is a significant milestone in Indonesia's victim protection system, including child victims of sexual violence crimes. This regulation expands the concept of legal protection not only to witnesses but also explicitly grants substantive rights to victims to obtain recovery through mechanisms of restitution and compensation. The formation of these norms reflects a shift in Indonesia's criminal law paradigm, which is not solely focused on punishing offenders (retributive justice), but also considers victim recovery as part of restorative justice. The courts impose sentences on offenders with the aim of restoring the victim's condition as much as possible to the state before the criminal event occurred.¹⁹ This is what makes restorative justice seem like bringing justice amidst the chaos of Indonesia's judicial process.²⁰

The most relevant article in the context of this discussion is Article 7A, which directly regulates the victim's right to restitution. Victims are entitled to restitution that includes monetary compensation for physical and psychological treatment costs, suffering caused by the crime, loss of property or income, and direct suffering resulting from the crime. These provisions indicate that restitution not only covers material losses but also includes psychological suffering and health recovery costs for the victim. In cases where children are victims of sexual violence, this aspect becomes very important considering the effects that arise not only physically but also psychologically and socially. Therefore, restitution functions as a means of comprehensive recovery of the victim's rights and dignity.

¹⁸ Mukti, Shindu P. and Abd. Wachid Habibullah. "Prosedur Hukum Dalam Mendapatkan Hak Pemulihan Bagi Korban". *Federalisme: Jurnal Kajian Hukum Dan Ilmu Komunikasi* 2, no. 3, (2025):24-36.

¹⁹ Syahrin, M. Alvi. "Penerapan prinsip keadilan restoratif dalam sistem peradilan pidana terpadu." *Majalah Hukum Nasional* 48, no. 1 (2018): 97-114.

²⁰ Maulana, Irvan, and Mario Agusta. "Konsep Dan Implementasi Restorative Justice Di Indonesia." *Datin law jurnal* 2, no. 11 (2021): 46-70.

The UUPSK states that the Witness and Victim Protection Agency (referred to as LPSK) operates independently and reports to the President.²¹ Additionally, Article 7A paragraphs (3) and (4) specify how restitution requests can be made either before or after a court decision becomes final. If submitted prior to the decision, LPSK can file a restitution claim with the public prosecutor for inclusion in the criminal indictment. If the request is made afterward, LPSK directly petitions the court for a ruling. This process provides procedural flexibility to ensure victims' rights are protected without being constrained by the judicial process timeline.

Additionally, Article 7B emphasizes that government regulations further govern the procedures for requesting and granting restitution. This is then implemented through Government Regulation No. 43 of 2017, which includes technical guidelines on how the restitution rights for child victims of criminal acts are carried out. The relationship between these two regulations shows that the Law on the Protection of Victims of Crime (UUPSK) serves as the main legal basis, while Government Regulation No. 43 of 2017 functions as the implementing regulation that operationalizes these legal norms practically.

From an institutional perspective, Article 12A, letter j explicitly states that the Witness and Victim Protection Agency (LPSK) has the authority to assess costs for granting restitution and compensation. This means that LPSK is not only a body that provides physical and legal protection for victims but also a technical agency that ensures victims' financial rights can be fulfilled. This represents an institutional innovation that strengthens LPSK's position within the criminal justice system, while also guaranteeing that victims, especially children, do not lose access to economic and psychological recovery due to criminal acts. Based on UUPSK, LPSK's decisions are made through deliberation to reach consensus, and if no agreement is reached, the majority vote determines the outcome.²²

Looking at Article 6 paragraph (1), the scope of victims entitled to protection and assistance has been expanded to include victims of sexual violence. Victims have the right to medical assistance and psychosocial and psychological rehabilitation according to that article. This provision has a direct correlation with the right to restitution, as the costs of medical and psychological recovery can be included as part of the restitution components

²¹ Sabri, Fadillah, Zahara Zahara, and Tasman Tasman. "Perlindungan Hukum Dengan Restitusi Terhadap Anak Yang Menjadi Korban Tindak Pidana." *UNES Journal of Swara Justisia* 6, no. 4 (2023): 398-414.

²² Arliman, Laurensius. "Kedudukan Lembaga Perlindungan Saksi dan Korban terhadap Perlindungan Hak Anak yang Bekelanjutan di Indonesia." *Lex Jurnalica* 14, no. 1 (2017): 145567.

as regulated in Article 7A paragraph (1) letter c. Thus, protection, assistance, and restitution form a comprehensive protective system for child victims of sexual violence..

UUPSK plays a key role in enhancing the right to restitution for children affected by sexual violence by integrating regulations across normative, procedural, and institutional levels. A more just criminal justice system that focuses on victim recovery will emerge if these articles are applied consistently. Conversely, if these provisions are not effectively implemented, the main goal of protecting victims within the framework of restorative justice will only remain a normative concept without substantive realization in the field.

One important aspect of Law Number 35 of 2014 concerning Child Protection is regulating the basic rights of children, including the right to well-being, education, safety from brutality, and protection from sexual harassment as outlined in Articles 8 and 9.²³ The law highlights that all children have the right to the human rights guaranteed, protected, and fulfilled by the state, local authorities, citizens, families, and parents. This protection is not only preventive but also repressive and curative. One aspect is realized through the child's right, as a victim of a criminal act, to seek restitution as a means of recovering the losses incurred.

The provisions regarding restitution are explicitly regulated in Article 71D of the Child Protection Law. According to this article, it is stated that every child victim of a crime has the right to seek restitution, which is the responsibility of the perpetrator.²⁴ In paragraph (2) of the article, it is emphasized that government regulations will further govern the implementation of restitution. Therefore, this Law grants children who are victims of sexual violence the legal authority to seek financial compensation from the perpetrators, as part of restorative justice recognized by the Indonesian legal system.

This provision substantially indicates a legal shift toward a restorative approach, which emphasizes restoring the rights and dignity of victims, especially children. Not only is it understood as material compensation, but restitution is also used as an instrument of justice that recognizes the suffering of the victim. This is consistent with Article 59 paragraph (2) point j, which states that children who experience sexual crimes are entitled to special protection. This includes religious and moral education, social rehabilitation, and psychosocial support during recovery. They are protected and

²³ Suryantoro, Dwi Dasa. "Analisis Perlindungan Hukum Terhadap Anak Menurut Undang-Undang Nomor 35 Tahun 2014 Tentang Perlindungan Anak." *Legal Studies Journal* 4, no. 2 (2024): 138-146.

²⁴ Yuliawan, Bogi, Hartanto Hartanto, and Teguh Satya Bhakti. "Efektivitas Kebijakan Restitusi dalam Perlindungan Hak Anak Korban Kejahatan Seksual: Studi Kasus Putusan Nomor 112/Pid. Sus/2022/PN. Bnr." *Binamulia Hukum* 14, no. 1 (2025): 33-42.

accompanied throughout the legal examination process, from investigation to court decision, which also becomes their right.

From a normative perspective, the regulations in Law No. 35 of 2014 demonstrate the state's efforts to strengthen legal guarantees for the fulfillment of the rights of children who are victims of sexual violence. Restitution becomes a concrete manifestation of the perpetrator's responsibility for their actions, as well as part of a legal mechanism that ensures the victimized child is not only treated as a subject of the case but also as a legal subject entitled to justice. Furthermore, Article 71E states that it is the responsibility of both the government and local authorities to provide funding for child protection services, including financing the restitution process if the perpetrator cannot compensate. This shows that the state has a subsidiarity duty to protect the rights of child victims, even when the perpetrator is unable to pay restitution. In this context, restitution is not only viewed as a private right dependent on the perpetrator's ability but also as a public obligation that must be guaranteed by the state to achieve substantive justice.

Following the mandate of Article 71D paragraph (2) of the UUPA and Article 7B of the UUPSK, the government issued Government Regulation No. 43 of 2017. This regulation serves as the implementing rule that details the process for providing restitution to children who are victims of criminal acts, including sexual violence. This regulation affirms the state's commitment to operationalize the principles of restorative justice and ensure that the rights of victims, especially children, can be effectively realized through a clear, measurable, and accessible legal mechanism. This regulation serves as an important bridge between the norms in UUPA and the mechanisms regulated in UUPSK. PP No. 43 of 2017 provides a procedural framework that governs how these rights can be proposed, processed, and realized. The relationship among these three regulations is hierarchical and functional: UUPA establishes the basic rights of child victims; UUPSK regulates the rights and authority of institutions that protect victims; while PP No. 43 of 2017 details the implementation mechanisms.

Restitution, as outlined in Article 1 paragraph (1) of Government Regulation No. 43 of 2017, refers to compensation financed and imposed on the perpetrator by a court decision with permanent legal force. It relates to the harm or loss experienced by the victim or their heirs, covering both tangible and intangible aspects. This definition clarifies the scope of restitution as the legal responsibility of the perpetrator for the physical, mental, and economic damages suffered by the victim. The term 'child,' as defined in Article 1 paragraph 2, includes all individuals under 18 years old, extending to unborn children, and thereby ensuring a wide scope of protection.

Article 2, paragraph (1) states that all children affected by criminal acts are entitled to restitution. Paragraph (2) specifies the categories of victims, including children exploited sexually, subjected to physical or mental violence, involved in sexual offenses, or affected by human trafficking. This provision highlights that children who suffer from sexual violence are among the primary recipients of restitution.

Article 3 of Government Regulation No. 43 of 2017 states that restitution for child victims of criminal acts covers property loss, suffering resulting from the crime, and expenses for medical and psychological treatment.²⁵ This provision is in accordance with Article 7A paragraph (1) of the Criminal Justice System Law (UUPSK), which contains three similar categories of compensation, demonstrating consistency among regulations in governing the substance of victims' rights. Restitution encompasses both the economic loss and the psychological recovery of the victim, which is particularly important for children in their post-trauma rehabilitation.

The procedure for applying for restitution is regulated in Articles 4 through 18, detailing the application process, including who is eligible to apply, the timing of the application, and the stages of investigation and prosecution. According to Article 4 paragraph (1), the victim (who can be represented by parents, guardians, heirs, or legal representatives) may submit a restitution request. Article 5 paragraph (2) states that the application can be submitted from the investigation or prosecution stage, and it can even be submitted through the Witness and Victim Protection Agency (LPSK) as regulated in Article 6. This reinforces the connection with Law No. 31 of 2014, where LPSK has the authority to assess the amount of restitution and submit it to the court..

Articles 9 to 12 demonstrate a proactive obligation of law enforcement officers to inform victims of their restitution rights. Investigators and prosecutors are required to notify victims about their right to file for restitution and assist in the application process. This provision represents a new paradigm in criminal procedure law that is more victim-friendly and aligns with the spirit of child protection in the UUPA. Articles 19 to 22 establish the duty of prosecutors to enforce restitution orders after they have obtained permanent legal force, and Article 21 states that offenders must pay restitution within a maximum of 30 days after receiving a copy of the court decision. If the offender is a child, this responsibility is borne by their parents. This method ensures a balance between the legal responsibility of the offender and the victim's right to recovery.

²⁵ Rizky, Ali, Oheo Kaimuddin Haris, and Fuad Nur. "Penyitaan Harta Benda Pelaku Tindak Pidana sebagai Sarana Restitusi dalam Rangka Perlindungan Anak." *Halu Oleo Legal Research* 6, no. 2 (2024): 299-311.

Government Regulation No. 43 of 2017 grants children who are victims of crimes the opportunity to apply for restitution. This allows offenders to be held accountable for what the victim experienced as a result of their own actions.²⁶ This regulation not only clarifies administrative procedures but also establishes restitution as a legal obligation that must be enforced concretely. The synergy between the UUPA, UUPSK, and Government Regulation No. 43 of 2017 reflects a unified legal system that provides guarantees of protection, recovery, and justice for children affected by sexual violence. The three complement each other: laws establish rights, expand institutional coverage, and government regulations ensure their implementation in the field. Nevertheless, the success of this system relies on law enforcement officials' awareness, competence, and dedication to enforce the provisions consistently and prioritize the child's best interests as a victim of crime

2. The Enforcement of Restitution Law by Considering Judicial Legal Reasoning

This discussion will explore how effectively restitution laws for child victims of sexual violence are enforced in judicial practice, by analyzing the legal considerations of judges in several court decisions. Judicial considerations serve as the legal basis for the arguments used as the foundation for each decision made.²⁷ This study focuses on the analysis of the juridical arguments used by judges in determining whether restitution requests are granted, the amount approved, and the conformity of these decisions with the applicable positive law in Indonesia. The decisions discussed include the PT Padang Decision No. 5/Pid.Sus-Anak/2022/PT.PDG, the PN Tanjung Karang Decision No. 29/Pid.Sus-Anak/2022/PN.Tjk, the PN Makassar Decision No. 661/Pid.Sus/2021/PN.Mks, and the Surabaya High Court Decision No. 738/Pid.Sus/2023/PT Sby. Through these four rulings, the researcher aims to assess how judges interpret, consider, and apply the legal provisions of restitution in cases of sexual violence against children as a concrete form of justice enforcement oriented towards victim recovery. For this purpose, the four rulings are categorized into three typologies of restitution application: (1) rulings without any consideration of restitution, (2) rulings with a procedural formalistic approach, and (3) rulings with a substantive-progressive approach in line with the principles of restorative justice.

²⁶ Palijama, Pricilia Triana, Hadibah Zachra Wadjo, and Jetty Martje Patty. "Pemenuhan Hak Restitusi Terhadap Anak Korban Tindak Pidana Pemerkosaan." *SANISA: Jurnal Kreativitas Mahasiswa Hukum* 5, no. 1 (2025): 15-25.

²⁷ Holle, Muhammad Syafri Bahtra, Sherly Adam, and Yanti Amelia Lewerissa. "Pertimbangan Hukum Hakim dalam Putusan Perkara Tindak Pidana Penganiayaan." *Syntax Literate; Jurnal Ilmiah Indonesia* 10, no. 4 (2025): 4193-4201.

Based on the review of Decision No. 5/Pid.Sus-Anak/2022/PT.PDG, this case highlights the weak implementation of restitution rights for child victims of sexual violence in Indonesia. The case involves a 15-year-old who was proven to have committed sexual violence against a three-year-nine-month-old girl. As stipulated in Article 81 paragraph (1) of Law No. 17 of 2016 in conjunction with Article 76D of the Child Protection Law, the judge of the Padang District Court at the first instance found the perpetrator guilty of statutory rape of a minor. However, the sanction imposed was limited to returning the child to their parents, rather than imprisonment or rehabilitation measures in a juvenile correctional institution.

This decision was subsequently upheld by the Padang High Court after the public prosecutor filed an appeal. The Public Prosecutor had previously demanded a sentence of 3 years imprisonment and 3 months of training at the LPKA, but the appellate judge maintained the original ruling on the grounds that there was a reconciliation letter between the offender's parents and the victim's family, as well as a family relationship between the two parties. The judge considered this reconciliation to be in line with the principles of restorative justice as stipulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, which emphasizes imprisonment as a last resort (*ultimum remedium*).

The judge's consideration emphasized the recommendation from the Probation Office (Bapas), which suggested resolving the matter through family mediation, and only if this fails, proceeding with institutional guidance. Based on this, the judge decided that returning the child to the parents was sufficiently fair, given that the offender is still young, has expressed remorse, and the family relationship is deemed capable of supporting the child's moral rehabilitation. However, it should be noted that parents are not part of the legal system, and therefore cannot be held responsible for supervising the child. Consequently, they must make normative efforts to ensure that their child is present when any measures are carried out.²⁸

In the content of the verdict, there is not a single discussion regarding the victim's restitution rights. In fact, pursuant to Article 7A paragraph (1) of the Child Protection Law (UUPSK) and Article 71D of the Criminal Justice System for Children Law (UUPA), child victims have the right to file a claim for material or immaterial compensation to be borne by the perpetrator. Government Regulation No. 43 of 2017 explicitly stipulates that all child victims of criminal acts have the right to receive restitution, and law enforcement

²⁸ Rukmana, Reza, and Nursiti Nursiti. "Efektivitas Sanksi Pengembalian Kepada Orang Tua Bagi Anak Pelaku Tindak Pidana." *Jurnal Ilmiah Mahasiswa Bidang Hukum Pidana* 2, no. 1 (2018): 112-121.

officials are obliged to inform them of this right. In the prosecution process and the judge's considerations, no assessment of the victim's losses, restitution requests from the family, or recommendations from the LPSK (Witness and Victim Protection Agency) as mandated by the legislation was found. The judge also did not provide an explanation regarding the absence of restitution, as if the aspect of victim recovery was completely ignored. The absence of restitution considerations in this case is evidence of the weak application of restitution law in Indonesia, particularly in cases of child sexual abuse. This case represents the first pattern, namely the 'absence of restitution,' which reflects a systemic failure to uphold the principle of 'the best interests of the child' as promoted by the Convention on the Rights of the Child (CRC), especially Article 39, which emphasizes a child's right to recovery and rehabilitation. The victim in this case is still very young (3 years old), and therefore, both morally and legally, should receive special attention in the form of restitution for physical and psychological suffering, as well as medical recovery costs.

The judge's consideration, which focuses solely on reconciliation and the age of the offender, without taking into account the suffering of the victim, demonstrates a distorted understanding of the principles of restorative justice. Victims and offenders are directly involved, and this restorative justice replaces the criminal case resolution process with the aim of mitigating all weaknesses in the criminal justice system.²⁹ In the modern legal paradigm, restorative justice should encompass three components: victim recovery, offender accountability, and community involvement. In this case, the first aspect, namely victim recovery, did not appear at all. The comparison between the prosecutor's demand (3 years imprisonment) and the judge's ruling (return to parents) shows a significant reduction in the deterrent effect of the law. This raises concerns that a conciliatory approach to serious crimes such as child sexual abuse could potentially weaken legal protection for victims and give an impression of impunity for the offenders.

In the Tanjung Karang District Court Decision No. 29/Pid.Sus-Anak/2022/PN.Tjk, a juvenile offender named Wahyu Fadlah Sardi Bin Saryadi was found guilty of molesting a minor named Rahmat Farel Bin Wagiran. Based on the psychological examination conducted by expert Octa Reni Setiawati, S.Psi., M.Psi., the victim exhibited severe depression due to deep trauma from the abuse experienced. The expert explained that the child victim has severe psychological disorders, including loss of motivation to live

²⁹ Sari, Gholin Noor Aulia, Wahyu Sinta Dewi Pramudita, Raden Muhammad Muhklasin, Dewi Sulistianingsih, and Martitah Martitah, "Tinjauan Filosofis Keadilan Restoratif Dalam Lensa Teori Keadilan," *Bookchapter Hukum Dan Politik Dalam Berbagai Perspektif* 3 (2024): 253–91, <https://doi.org/10.15294/hp.v3i1.210>.

and feelings of worthlessness. Achieving improvement in self-confidence and reintegration will require a long period, ranging from less than one year to several years.³⁰ These findings indicate that the impact of sexual crimes on children is not only physical but also psychological and social, which should serve as a strong basis for judges in considering restitution as a form of comprehensive recovery for the victims.

However, during the trial process, although the LPSK along with the victim's biological sister, Yunita Sari, had submitted a restitution request on July 14, 2022, the judge ruled that the request could not be accepted. The reason was that the request was submitted late, namely after the defense counsel for the child had delivered their plea. Based on the judge's considerations, this was not in accordance with the provisions of Perma No. 1 of 2022 concerning Procedures for the Settlement of Requests and the Granting of Restitution and Compensation to Victims of Criminal Acts, particularly Article 8 paragraph (2). This article stipulates that in cases where a restitution request is submitted through an investigator or LPSK, the request file and the LPSK's decision regarding the amount of restitution must be provided to the public prosecutor before the case file is submitted to the court, or at the latest, when the charges are read by the public prosecutor. Thus, the judge assessed that since the submission was made beyond the prosecution stage, the petition is legally inadmissible.

Nevertheless, judges also allow victims to reapply for restitution after the decision has become legally binding, either directly to the court or through the LPSK, as stipulated in Article 12 paragraph (1) of Supreme Court Regulation No. 1 of 2022. This means that even if restitution is ruled inadmissible at the trial stage, victims still retain the right to seek compensation through post-judgment mechanisms. This approach by judges demonstrates an effort to maintain a balance between adherence to legal procedures and the protection of victims' rights.

This ruling demonstrates that the judge applied positive law strictly in accordance with procedural rules stipulated in Supreme Court Regulation No. 1 of 2022. However, based on the Victim and Witness Protection Law (UUPSK), every victim of criminal acts is entitled to restitution, whether it is requested before or after the court decision obtains permanent legal force. This provision provides procedural flexibility so that victims do not lose their rights merely due to administrative delays. On the other hand, the Child Protection Law (UUPA) affirms that child victims of crime, particularly sexual violence, have the right to special protection as well as comprehensive rehabilitation, including psychological recovery and financial compensation. Therefore, an overly formalistic

³⁰ M. Mundakir, *Keperawatan Psikososial*, UM Surabaya Publishing, 2024.

application of the law has the potential to disregard the fundamental essence of restitution itself, namely the restoration of the victim's rights and dignity. Punishment remains the main focus, without taking into account the direct impact on the victims and the community.³¹ This decision reflects the second pattern, namely the 'procedural formalistic approach,' in which the fulfillment of victims' rights is hindered by administrative rigidity, without taking into account the victims' substantial needs for comprehensive recovery.

In the Makassar District Court Decision No. 661/Pid.Sus/2021/PN.Mks, the perpetrator Wirawansa Mandala Putra, also known as Wira, together with another perpetrator, was sentenced to 11 years in prison and ordered to pay restitution amounting to IDR 5,000,000 to the victim, Anissa Azzahrany, a 16-year-old child who also has autism. Previously, the public prosecutor demanded that the defendants pay restitution of IDR 16,012,200, but the panel of judges decided to reduce this amount due to the financial condition of the defendant as a daily freelance worker. The judges considered Government Regulation No. 43 of 2017, which states that restitution is compensation that must be paid by the perpetrator to the victim for losses caused by the perpetrator, whether material or immaterial. The judge stated that the filing of restitution in this case is valid because it was carried out through the LPSK (Witness and Victim Protection Agency), considering the power of attorney from the victim's parents at the prosecution stage, thereby fulfilling the formal requirements as stipulated in Articles 4 and 5 of the regulation.

However, in terms of substance, the judge's decision to reduce the amount of restitution to Rp. 5,000,000 is open to question. Juridically, the UUPSK and Government Regulation No. 43 of 2017 do not provide leeway for judges to assess the appropriateness of restitution based on the perpetrator's economic condition. Restitution is a victim's right based on actual losses and is not an additional form of punishment that can be negotiated. Restitution, in line with the Principle of Restitution to the Original State (*restitutio in integrum*), advocates that the victim should be restored to the condition prior to the incident. This applies even if, in reality, it is impossible to return the victim to their original state.³² Consideration of the offender's financial capability should only be relevant if the restitution implementation mechanism encounters obstacles, not during

³¹ Fauzi, Agvin, Wazir Arwani, Rini Fidiyani, and Sudijono Sastroatmodjo. "Melindungi Anak dari Predator Seksual: Sinergi Keluarga, Komunitas, dan Hukum untuk Keadilan Sosial." *Bookchapter Hukum dan Politik dalam Berbagai Perspektif* 3 (2024): 576-625.

³² Marasabessy, Fauzy. "Restitusi Bagi Korban Tindak Pidana: Sebuah Tawaran Mekanisme Baru." *Jurnal Hukum & Pembangunan* 45, no. 1 (2016): 53-75.

the stage of determining the restitution amount. Furthermore, judges do not impose additional sanctions if the offender fails to pay restitution within a certain period, so in practice there is no legal guarantee for the victim to receive the restitution. This decision model lies between formalistic and substantive approaches but tends to be biased toward the "feasibility of the offender," rather than the victim's loss, which contradicts the principles of international restorative justice as explained by Daly (2006), stating that the primary focus should be on "putting things right" for the victim, not on mitigating consequences for the offender. In an ideal practice, judges could establish legal consequences, such as seizing the offender's assets or involving the Witness and Victim Protection Agency (LPSK) and the public prosecutor in enforcing the execution.

The Surabaya High Court Decision No. 738/Pid.Sus/2023/PT.Sby concerning the defendant Ahmad Fauzi Mustofa (Gus Fa) provides an effective illustration of the application of restitution rights for child victims of sexual violence in Indonesia. The Gus Fa case demonstrates a relatively more comprehensive application of restitution law compared to other rulings, as it includes substantive considerations regarding the victims' suffering, the involvement of the LPSK as a protective institution, and the clarity of the payment and execution mechanisms of restitution. In this case, the defendant was an educator who was legally proven to have committed sexual violence against more than one of his students, and as a result of his actions, the victims experienced profound physical and psychological trauma.

In its indictment, the public prosecutor from the Tuban District Attorney's Office demanded that the perpetrator be sentenced to 17 years in prison, fined IDR 200,000,000, and required to pay restitution amounting to IDR 8,950,000 to the victim, Pitasari binti Jasdi, based on the review conducted by the LPSK. This amount was calculated based on the breakdown of medical expenses, psychological costs, and other losses suffered by the victim. In its verdict, however, the Tuban District Court imposed a lighter sentence of 8 years in prison and granted the restitution request, but in a different amount, namely IDR 36,700,000. The first-level judge considered that this amount was more appropriate for the victim's recovery needs based on the actual losses revealed during the trial, including a psychological report indicating that the victim suffered emotional, social, and severe depressive disturbances as a result of the incident.

In its considerations, the judge referred to the UUPSK, where the victim is granted the right to compensation in the form of restitution for suffering and losses resulting from criminal acts, as well as Government Regulation No. 43 of 2017, which regulates the procedures for implementing restitution for children who are victims of criminal acts. In the ruling, the judge assessed that since the restitution request was submitted through

the LPSK and signed by the victim's parents, it legally fulfills the provisions stipulated in the articles of the Regulation. The judge also emphasized that restitution is an integral part of the victim's recovery, not an additional form of punishment for the perpetrator. Without effective restitution, the burden of recovery rests entirely on the victim, while the perpetrator is not fully held accountable for the damage caused.³³ The panel of judges explicitly detailed the mechanism for restitution payments, which represents progress compared to other cases that generally stop at the verdict ordering payment without subsequent enforcement. The verdict stated that the prosecutor must issue a payment order within 14 days if the defendant fails to pay restitution within 30 days of the verdict being pronounced, and if still not carried out, the prosecutor is ordered to seize and auction the defendant's assets to fulfill the restitution payment. If insufficient, the restitution will be converted into six months of imprisonment. This provision aligns with the principle stipulated in Article 21 of Government Regulation No. 43 of 2017, which states that restitution payments must be made by the perpetrator no later than 30 days after receiving a copy of the verdict, and in the event of non-compliance, the prosecutor may execute the seizure and auction of the perpetrator's assets.

At the appeal stage, the Surabaya High Court upheld the decision of the Tuban District Court but altered the length of the prison sentence to 12 years. The senior judge assessed that the 8-year prison term was too lenient considering that the defendant is a teacher who should be protecting and guiding children, rather than committing sexual violence against them. This forms the basis for the aggravation of the crime against the subject, particularly for someone who is legally an adult, a professional, namely a teacher, who serves as a key pillar in the educational process.³⁴ The appellate panel's considerations also highlighted the results of the victim's psychological examination, which indicated long-term psychological effects in the form of emotional and social disturbances, as well as profound trauma leading to chronic depressive conditions. Therefore, the panel upheld the ruling regarding restitution of Rp. 36,700,000, as it was deemed to reflect an appropriate compensatory value for the victim's suffering.

Compared to the prosecutor's demand, which only requested restitution of IDR 8,950,000, the amount ultimately imposed by the court increased more than fourfold. This increase can be seen as a progressive step by the judge, who assessed the victim's losses not merely from the perspective of medical and psychological costs, but also considering

³³ Oktadiana, Viri, and Nandang Sambas. "Efektivitas Restitusi Dalam Pencegahan Kekerasan Dalam Rumah Tangga Yang Berulang: Tinjauan Hukum Pidana Dan Perlindungan Korban." *Collegium Studiosum Journal* 8, no. 1 (2025): 349-356.

³⁴ Wardan, Khusnul. *Guru sebagai profesi*. Deepublish, 2019.

the emotional and social suffering that cannot be quantified solely in monetary terms. From a legal standpoint, the judge's approach aligns with the spirit of restorative justice as embodied in Article 71D of the UUPA, which states that every child victim of a criminal act is entitled to restitution that is the responsibility of the perpetrator.

Furthermore, the judge's consideration in this case also demonstrates a good understanding of the principles of child protection as stipulated in Article 59 paragraph (2) letter j of the UUPA, which emphasizes that children who are victims of sexual crimes are entitled to special protection in the form of social and psychological rehabilitation as well as guidance throughout the legal process. Thus, the restitution imposed serves not only as material compensation but also as a symbol of the perpetrator's moral responsibility towards the victim.

Overall, the legal considerations in this decision can be regarded as appropriate and accurate, both in terms of substance and in the application of legal norms. The panel of judges has referred to relevant regulations, namely the Basic Agrarian Law (UUPA), the Child Welfare Act (UUPSK), and Government Regulation No. 43 of 2017, and has interpreted these provisions progressively. This also shows that in Indonesia, criminal law not only pursues legal certainty but also pays attention to the rights and legal protections of children. The detailed regulation of the execution mechanism demonstrates that the judges understand the importance of ensuring that restitution is not merely symbolic but is also implemented in real life. This decision can be categorized under the third pattern, namely 'substantive-progressive,' in which restitution is seen as an integral and measurable mechanism of justice. Such an implementation aligns with the global trend in child-centered restorative justice approaches, which emphasizes the involvement of victims in recovery (Bazemore & Schiff, 2005), as well as making restitution a concrete form of the offender's responsibility and acknowledgment of the victim's suffering.

These four rulings illustrate inconsistencies in the application of restitution for child victims of sexual violence, in terms of procedure, substance, and the understanding of victims' rights. The limited use of approaches based on the best interests of the child and restorative justice in most rulings indicates that the perspective of victim protection has not yet been fully established in criminal justice practice in Indonesia. Compared to international practices, such as the victim-oriented justice systems in Canada and the Netherlands, where restitution is an integral part of the juvenile justice process, the practice in Indonesia remains fragmented and dependent on the initiative of individual

judges.³⁵ To reinforce restitution as a right, Indonesia needs to adopt an approach more in harmony with international standards, as advocated by the United Nations Office on Drugs and Crime (UNODC) in the Handbook on Justice for Victims (2020),³⁶ which emphasizes the need for a compensation and restitution system that is sensitive to the vulnerabilities of child victims in cases of sexual violence.

CONCLUSION

This study concludes that although a comprehensive legal framework regarding restitution for child victims of sexual violence is available in Indonesia, as outlined in Law No. 31 of 2014, Law No. 35 of 2014, and Government Regulation No. 43 of 2017, its implementation in judicial practice remains far from optimal. An analysis of four court decisions reveals inconsistencies and gaps between legal norms and their execution. The majority of rulings still exhibit a formalistic approach or even disregard restitution rights altogether, while only a few interpret and apply restitution progressively as an integral part of child-centered restorative justice. This study contributes by identifying three patterns in the application of restitution by judges (absent, procedural-formalistic, and substantive-progressive), and demonstrates how restitution has not yet been considered an essential element in victim recovery, but rather remains optional and dependent on the initiative of individual judicial officers.

Normatively and institutionally, strategic steps are needed to promote restitution as a right that is mandatory and not solely dependent on the perpetrator's ability. Law enforcers, particularly judges, prosecutors, and investigators, need to be trained and equipped with a victim-oriented justice perspective that prioritizes the recovery of child victims in every stage of the criminal justice process. The LPSK (Witness and Victim Protection Agency) needs to be functionally strengthened to play a role from the initial investigation stage to the execution of restitution decisions. The government, both at the central and regional levels, must develop a restitution financing system based on subsidiarity in cases where the perpetrator is unable to pay, ensuring that the rights of child victims remain protected.

Theoretically, these findings reinforce the argument that the juvenile criminal justice system in Indonesia remains predominantly retributive in approach and has not fully

³⁵ Ivo Aertsen dan J. Willemsens, "The European Forum for Victim-Offender Mediation and Restorative Justice," *European Journal on Criminal Policy and Research* 9, no. 4 (2001): 291-300.

³⁶ Jamal, Sahibzada Yasir. "Preventing Child Trafficking and Sexual Exploitation: A Comparative Legal Analysis of the Palermo Protocol and Islamic Prohibitions on Zina and Human Dignity (Karāmah)." *Social Sciences Spectrum* 4, no. 3 (2025): 597-616.

adopted a child-centered restorative justice framework. In fact, restitution can serve as an important instrument in bridging the interests of justice for victims, perpetrators, and society. Practically, this study provides an argumentative foundation for reforms in child protection policies within the criminal justice realm by promoting restitution as a right actively implemented by the state, rather than merely provided normatively. Therefore, there is a need for a more solid integration of the system between regulations, actors, and implementation to ensure comprehensive, fair, and humane legal protection for child victims of sexual violence.

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