

## Implementation of Restitution Rights Policy for Child Victims of Sexual Violence as a Form of Restorative Justice

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**ABSTRACT:** *The phenomenon of sexual violence against children is showing a highly alarming trend. This study aims to analyze the policy regarding restitution rights for child victims of sexual violence as a form of restorative justice. In responding to crimes of sexual violence against children, two primary approaches are generally adopted. The first approach emphasizes the imposition of severe criminal sanctions on perpetrators. The second approach focuses on the recovery of child victims through restitution mechanisms. Developments in criminal law demonstrate that legal reform has the potential to influence social change by ensuring compensation or restitution for child victims of criminal acts. This research aims to examine the implementation of restitution rights for victims of child sexual violence as regulated under Government Regulation of the Republic of Indonesia Number 43 of 2017, as well as to analyze the application of restorative justice through the fulfillment of restitution for child victims of crime. This study employs a normative legal research method based on library research. The findings reveal that restitution, as regulated under PP RI No. 43 of 2017, constitutes a legal right of child victims of crime. Furthermore, the willingness and active participation of victims, perpetrators, and the community in addressing criminal conduct represent fundamental elements in the realization of restorative justice in cases involving child victims.*

Fenomena kekerasan seksual terhadap anak menunjukkan perkembangan yang sangat mengkhawatirkan. Penelitian ini bertujuan menganalisis kebijakan hak restitusi terhadap anak korban kekerasan seksual sebagai wujud keadilan restorative. Dalam praktik penanggulangan tindak pidana kekerasan seksual terhadap anak, terdapat dua pendekatan utama yang digunakan. Pertama, pendekatan represif berupa penerapan sanksi pidana yang berat terhadap pelaku. Kedua, pendekatan yang menitikberatkan pada pemulihan korban, salah satunya melalui pemberian restitusi. Reformasi hukum pidana memiliki potensi untuk menciptakan perubahan sosial dengan memberikan kompensasi atau restitusi kepada anak yang menjadi korban tindak pidana. Penelitian ini bertujuan untuk menganalisis pelaksanaan hak restitusi bagi korban kekerasan seksual anak berdasarkan PP RI Nomor 43 Tahun 2017, serta mengkaji penerapan keadilan restoratif melalui pemenuhan restitusi bagi anak korban tindak pidana. Penelitian ini menggunakan metode penelitian kepustakaan dengan pendekatan normatif. Hasil penelitian menunjukkan bahwa pengaturan restitusi bagi anak korban tindak pidana sebagaimana diatur dalam PP RI No. 43 Tahun 2017 merupakan hak yang melekat pada anak korban. Ketersediaan serta keterlibatan korban, pelaku, dan masyarakat dalam proses pemulihan

tindak pidana merupakan elemen utama dalam penerapan konsep restorative justice terhadap kejahatan yang melibatkan anak.

**Keywords:** *Policy Implementation, Right to Restitution, Victims of Sexual Violence, Restorative Justice.*

## I. INTRODUCTION

Public policy essentially arises from the need to respond to and resolve problems faced by society. Within this framework, stakeholders, particularly the government, play a primary role in formulating and establishing policies oriented toward the interests and welfare of society as a whole. The success of a public policy is measured not only by its normative formulation but also by the impacts that emerge after the policy is implemented. Through implementation evaluation, various deficiencies, weaknesses, and policy errors can be objectively identified.

The public policy process can be understood as a system consisting of several stages, namely input, process, output, and outcome. Policy input reflects issues or agendas that receive the government's attention, while the policy process includes the stages of policy formulation and implementation. Output refers to the policy performance produced by the process, whereas outcome indicates the expected impact or final result for society (Atmasasmita, 2017). To ensure that public policy has binding force and legal certainty, it requires the support of coercive legislation. From this perspective, public policy can be understood as a policy designed and implemented by the government through legal instruments, such as laws and other regulations, with the primary objective of improving public welfare (Godin, 2006).

One social problem requiring serious attention in public policy is violence that threatens human safety and dignity, particularly sexual violence against women and children. Sexual violence, including sexual exploitation and abuse, is experienced not only by adult women but also by children, both boys and girls. This phenomenon demonstrates a serious violation of human values and human rights (Irfan, 2011).

In Indonesia, the prevalence of rape and sexual violence against children has reached a deeply concerning level. During certain periods, rape cases may occur on average every few hours, with law-enforcement agencies handling thousands of cases each year. These figures do not reflect the actual situation, given that many cases are not reported by victims or their families, a phenomenon known as the dark number (Huraerah, 2018). This reality indicates that sexual violence against children is a latent problem requiring comprehensive treatment.

The handling of children in conflict with the law, whether as victims or offenders, must be based on the principle of the best interests of the child. This principle is consistent with the values of Pancasila and the concept of *parens patriae*, which places the state under an

obligation to provide protection and care for children in the same way that parents care for their children. A similar perspective is found in Islamic teachings, which regard children as a trust and an adornment of worldly life, as affirmed in QS. Al-Kahf verse 46.

In response to the increasing number of cases of sexual violence against children, the government issued Government Regulation in Lieu of Law (Perppu) No. 1 of 2016 concerning the Second Amendment to Law No. 23 of 2002 on Child Protection. The Perppu was subsequently enacted as Law No. 17 of 2016. This regulation introduced aggravated sanctions for perpetrators of sexual crimes against children, including the death penalty, life imprisonment, imprisonment for a maximum of twenty years, and an additional penalty in the form of publication of the perpetrator's identity. The law also created room for additional measures, including the use of electronic monitoring devices and chemical castration. The technical provisions governing these measures were subsequently regulated through Government Regulation of the Republic of Indonesia No. 70 of 2020.

However, upon closer examination, the enactment of Government Regulation No. 70 of 2020 shows that Indonesia's criminal-law approach remains inclined toward punishing perpetrators, with a primary focus on criminalization and deterrence. This approach may overlook victims' interests, particularly their psychological and social recovery. In fact, the objectives of national legal reform and the direction of Indonesia's criminal-law policy should be oriented toward creating peace and justice based on restoration (justice for peace), in accordance with the values of Pancasila. Therefore, criminal law should ideally not be merely retributive but also responsive to restorative-justice principles, which place victims as subjects whose rights must be restored (Kinanthi, 2021).

In addressing sexual violence against children, two main approaches can be pursued. First, law enforcement through the application of firm and severe criminal sanctions against perpetrators. Second, recovery efforts for victims, including restitution, healing services, and rehabilitation. Providing restitution to victims is an important step toward realizing restorative justice because the criminal justice system has historically focused more on offenders, while victim protection has not been optimally implemented. In practice, the purpose of punishment is often considered achieved once the perpetrator has been sentenced, without being accompanied by adequate recovery for the victim (Prima et al., 2025).

To strengthen victim protection, the government issued Government Regulation No. 43 of 2017 concerning the Implementation of Restitution for Child Victims of Criminal Offenses. This regulation implements the mandate of Article 71D paragraph (2) of the Child Protection Law and aims to realize justice and legal benefits for victims. The regulation marks a reform in national criminal law, particularly in recognizing victims' rights to obtain restitution. Consistent with Roscoe Pound's view of law as a tool of social engineering, restitution regulation is expected to encourage a paradigm shift among society and law-enforcement officials in viewing the position of crime victims (Manao, 2025).

Based on the foregoing, this article focuses on two main aspects: the implementation of restitution rights for child victims of sexual violence under Government Regulation of the Republic of Indonesia No. 43 of 2017, and the application of restorative-justice principles through the fulfillment of restitution for victims of crimes against children.

## II. METHOD

This study employs library research using a normative juridical approach. This approach is used to examine legal norms related to the research object through an examination of legislation, legal doctrines, and relevant legal principles.

The data sources consist of secondary data comprising primary, secondary, and tertiary legal materials. Primary legal materials include legislation concerning child protection and restitution for victims of criminal offenses. Secondary legal materials include textbooks, scientific journals, research findings, and opinions of legal experts relevant to the issues under study. Tertiary legal materials are used as supporting materials, such as legal dictionaries, encyclopedias, and other sources that assist in explaining particular legal terms or concepts (Pramesti & Ambarwati, 2024).

Data were collected through library research by examining, reviewing, and inventorying various legal materials related to the research focus. The collected data were then analyzed using qualitative analysis with deductive reasoning, namely drawing conclusions from general legal rules toward their application to specific legal problems.

### III. RESULT AND DISCUSSION

#### Implementation of Restitution Rights for Child Victims of Sexual Violence

Based on Article 1 paragraph (1) of Law No. 35 of 2014 concerning the Amendment to Law No. 23 of 2002 on Child Protection, a child is defined as every person under 18 (eighteen) years of age, including a child still in the womb. This provision establishes the legal age limit for children and simultaneously distinguishes them from adults within the legal system. Meanwhile, the definition of a victim refers to Article 1 point 2 of Law No. 13 of 2006 concerning the Protection of Witnesses and Victims, namely a person who suffers physical or mental harm and/or economic loss as a result of a criminal offense.

In criminal law, restitution is an instrument of victim protection intended to recover losses suffered as a result of a criminal offense. Restitution is understood as the obligation of a criminal offender to compensate for material and/or immaterial losses suffered by the victim or the victim's heirs based on a final and legally binding court judgment. Thus, restitution for child victims of sexual violence constitutes a concrete form of perpetrator accountability oriented toward restoring the victim's rights, rather than merely punishing the offender (Yuliawan et al., 2025).

Children who become victims of criminal offenses require special legal protection, given their physical and psychological vulnerability and their lack of legal independence. Legal protection of children encompasses protection of children's human rights, including the right to security, welfare, and recovery from the effects of the crime they have experienced. In this regard, restitution is a form of protection with strategic value in ensuring the restoration of child victims' rights.

Arif Gosita argues that protection of crime victims must comprehensively address victims' rights. These include the right to receive compensation or restitution for suffering experienced; the right to refuse restitution in the victim's interests; the right of heirs to obtain restitution if the victim dies; the right to rehabilitation and guidance; the right to recover property; the right to protection from intimidation; the right to legal assistance; and the right to pursue legal remedies. This view positions victims as legal subjects possessing equal rights within the criminal justice process (Azzam et al., 2025).

Government Regulation No. 43 of 2017 concerning the Implementation of Restitution for Child Victims of Criminal Offenses constitutes a further implementation of the mandate of Articles 59 and 71D of the Child Protection Law. This regulation specifically governs the mechanism for applying for and granting restitution through the criminal justice process. Structurally, it consists of four chapters and twenty-three articles covering general provisions, procedures for submitting restitution applications, procedures for granting restitution, and closing provisions. Article 2 paragraph (1) expressly states that every child who becomes a victim of a criminal offense has the right to obtain restitution, while the forms of restitution are further regulated in Article 3.

The provisions of Government Regulation No. 43 of 2017 demonstrate relatively comprehensive regulation of restitution, ranging from definitions and application procedures to implementation mechanisms. Article 1 point 1 affirms that restitution is compensation imposed on the perpetrator based on a final and legally binding court judgment. Chapters II and III constitute the core provisions governing the technical implementation of restitution for child victims of criminal offenses, including victims of sexual violence.

Chapter II, which contains provisions on procedures for submitting restitution applications, consists of 17 articles and reflects the serious attention of the regulation's drafters to fulfilling the rights of child victims. This chapter regulates in detail the categories of child victims entitled to restitution, procedures for submitting written applications, the obligation of investigators and public prosecutors to inform victims of their restitution rights, the period for examining applications, the role of the Witness and Victim Protection Agency (LPSK) in calculating the amount of restitution, as well as the submission of restitution during the diversion process and its inclusion in the indictment.

Meanwhile, Chapter III regulates the procedure for granting restitution, consisting of Articles 19 through 22. These provisions affirm that restitution is granted based on a final and legally binding court judgment and is executed by the public prosecutor as the executor. The victim or the victim's guardian is also required to report the implementation of restitution to the court within the prescribed period. These provisions aim to guarantee legal certainty and the effectiveness of restitution implementation.

Conceptually, Government Regulation No. 43 of 2017 reflects both a policy-oriented approach and a value-oriented approach. Each provision not only functions as a technical rule but also represents the values of justice, child protection, and victim recovery. From the perspective of criminal-law policy, this regulation forms part of criminal-law reform efforts that place victims at the center of the criminal justice system (Firosyiah et al., 2024).

As stated by Barda Nawawi Arief, criminal-law policy cannot be separated from its social, philosophical, political, and cultural dimensions. Criminal-law reform must be directed toward achieving substantive justice and protecting society. In this context, restitution for child victims of criminal offenses constitutes a concrete manifestation of criminal-law policy oriented toward victim protection and social welfare.

The use of criminal law as a means of combating crime also cannot be separated from the primary objectives of criminal-law policy, namely protecting society and realizing public welfare. Therefore, regulating restitution for child victims of criminal offenses is a strategic step for balancing the interests of perpetrators and victims in the criminal justice process.

Accordingly, Government Regulation No. 43 of 2017 can be understood as an instrument of criminal-law policy that shifts the old paradigm, which was overly focused on offenders, toward a new paradigm more oriented toward victim protection and recovery. Detailed

restitution regulation is expected to provide a fairer legal position for child victims of criminal offenses and ensure their future in a more humane and equitable manner.

### **Application of Restorative Justice through the Fulfillment of Restitution for Child Crime Victims**

The development of legal politics in Indonesia demonstrates a significant paradigm shift, particularly following the enactment of Law No. 12 of 2011 concerning the Formation of Laws and Regulations, which replaced the colonial legacy of *algemene bepalingen van wetgeving*. This fundamental change is reflected in the structure and hierarchy of national legislation, in which Pancasila is explicitly affirmed as the source of all sources of state law. The law also formulates principles for the formation of legislation and determines the substantive content of legal regulations based on ten fundamental principles: protection, humanity, nationality, kinship, the archipelagic principle, *Bhinneka Tunggal Ika*, justice, equality before the law and government, order and legal certainty, and balance, harmony, and conformity.

The establishment of the 1945 Constitution of the Republic of Indonesia was not initially intended merely to build a rule-of-law framework, but also embodied a broad vision and purpose of realizing national welfare. In practice, however, this vision of a rule-of-law state has not been fully realized over several decades. This is attributable to two main factors. First, conceptually, the development of criminal law had previously remained oriented toward criminal events that had already occurred (*ex post*), without adequately considering the social and humanitarian impacts of applying criminal law, and without sufficiently applying the principles of efficiency, balance, and optimization. Second, empirically, criminal-law enforcement emphasized success indicators in the form of outputs, such as punishment and proof of material truth, rather than outcomes in the form of social benefits, victim recovery, and long-term impacts on society.

The modern criminal-law paradigm requires an approach that is not solely punishment-oriented but also considers the effects of law enforcement on perpetrators, victims, perpetrators' families, and society at large. In this context, the concept of restorative justice gains relevance as an alternative approach that emphasizes restoring conditions rather than merely imposing retaliation. Restorative justice prioritizes dialogue and participation among perpetrators, victims, and community elements to achieve a fair, proportional resolution oriented toward restoring social relationships (Jufri et al., 2019).

Restorative justice can be understood as an approach to resolving criminal cases that facilitates meetings between perpetrators and victims to discuss the criminal act, the losses caused, and possible recovery measures. The main objective is to restore conditions as closely as possible to those existing before the crime occurred. Such restoration may take the form of restitution or compensation, an apology, and agreements on preventive measures to ensure that the perpetrator does not repeat the offense. This concept

emerged in response to the limitations of the conventional criminal justice system, which is considered not yet fully capable of creating substantive justice for victims and society.

Within the relationship between perpetrators and victims, restitution is an important instrument within the restorative-justice framework. Restitution serves not only as a means of recovering victims' losses but also as a form of resocializing the perpetrator's responsibility toward society. Through the obligation to provide restitution, perpetrators are expected to recognize the social consequences of their actions and develop a sense of moral responsibility for the losses caused. Thus, the value of restitution lies not only in its material benefit to victims but also in its educational and rehabilitative function for perpetrators.

The concept of restitution has been widely applied in various countries as a compensation mechanism for crime victims. Within this framework, victims and their families are entitled to fair and appropriate compensation from perpetrators or other responsible parties. Such compensation may include reimbursement for medical expenses, psychological recovery services, property losses, and other forms of compensation relevant to the suffering experienced by victims.

Nevertheless, the implementation of restitution faces various obstacles, particularly when perpetrators lack the financial capacity to fulfill compensation obligations. Sudarto (1986) emphasizes that restitution obligations will be effective when perpetrators have the economic capacity to pay, whereas in practice many criminal offenders come from economically disadvantaged groups. This condition presents a serious challenge to implementing restitution as an instrument of restorative justice (Lisnawati, 2025).

In the juvenile criminal justice system, the restorative-justice approach is reflected in the diversion mechanism as regulated in Article 11 of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. The results of a diversion agreement may include returning the child to a parent or guardian, reconciliation with or without compensation, an obligation to participate in education or training, and community service. Such diversion agreements are essentially agreements subject to civil-law principles, particularly Article 1320 of the Indonesian Civil Code concerning the requirements for a valid agreement.

Although children are legally incapable of entering into agreements as regulated in Article 1330 of the Indonesian Civil Code, in the context of diversion, the child's views and interests must still be considered by involving the parent or guardian as the responsible party. If a diversion agreement does not satisfy the requirements for a valid agreement or is not approved by the victim, it may be annulled and the case will proceed to the juvenile criminal justice process.

Legal protection, as stated by Soedikno Mertokusumo, constitutes an effort to protect legal subjects through enforcement of legal norms accompanied by sanctions when violations or breaches of contract occur. In the context of fulfilling restitution, if the perpetrator fails to perform an agreed obligation, the victim may pursue a legal remedy in the form of a

breach-of-contract claim. The Indonesian Civil Code provides a legal basis for victims to demand fulfillment of their rights, including cancellation of the agreement or compensation resulting from the perpetrator's negligence (Azizah & Simangunsong, 2024).

Fulfillment of restitution in juvenile criminal cases does not always have to take the form of monetary payment. The fundamental principle of compensation is to restore the victim, as far as possible, to the original condition, as affirmed in the Hoge Raad decision of 24 May 1918. Article 1365 of the Indonesian Civil Code establishes that the purpose of compensation is to restore the victim to the condition that would have existed had the unlawful act never occurred. Therefore, restitution may be realized through various forms of recovery that are more substantive than merely financial compensation (Slamet, 2013).

Nevertheless, the practical implementation of restitution still faces various obstacles, including the absence of an effective enforcement mechanism, the lack of an explicit obligation for prosecutors always to include restitution in their demands, and inconsistencies in the regulation of restitution under positive law. Unlike the law currently in force, the Draft Criminal Code (RKUHP) has positioned restitution as one form of additional punishment, as regulated in Articles 70 through 72.

The existence of regulations concerning restitution has encouraged a paradigm shift among law-enforcement officials and society. Victims are no longer viewed merely as objects of suffering but as legal subjects whose rights and interests must be protected. Thus, applying restorative justice through the fulfillment of restitution is a strategic step toward realizing a more humane, equitable juvenile criminal justice system oriented toward victim recovery (Octaviani et al., 2024).

#### IV. CONCLUSION

The regulation of restitution for child victims of criminal offenses, as provided in Government Regulation of the Republic of Indonesia No. 43 of 2017, has been expressly established. This regulation covers the definition, procedures for applying for, and granting restitution to child victims of criminal offenses, particularly victims of sexual violence. The special status of child victims of criminal offenses and the obligation of perpetrators to provide restitution are based on a final and legally binding court judgment. The application of restorative justice through the fulfillment of restitution for child victims of criminal offenses represents a shift in the paradigm of Indonesian criminal law, which is no longer solely oriented toward punishing perpetrators but also toward restoring victims' rights and dignity. Restitution is positioned as an important instrument for restoring the balance of the legal relationship between perpetrator and victim, while also serving as a means of resocializing the perpetrator's responsibility for the consequences of the offense. In this context, restitution has not only a compensatory value but also educational and rehabilitative dimensions consistent with the objectives of restorative justice. Normatively, the regulation of restitution for child victims of criminal offenses through Government Regulation of the Republic of Indonesia No. 43 of 2017 demonstrates the state's commitment to providing more comprehensive legal protection for victims, particularly children. The regulation provides a relatively clear mechanism concerning victims' rights, application procedures, and implementation of restitution based on final and legally binding court judgments. These provisions affirm that victims have a legal position equal to that of perpetrators within the criminal justice process, thereby shifting the criminal-law paradigm from its previous focus on perpetrators toward greater victim protection.

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