

## APPLICATION OF RESTITUTION CRIME IN CASES OF MOLESTATION OF MINORS



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**Abstract.** The provision of restitution rights as a form of compensation to children victims of criminal acts of molestation is becoming an interesting issue related to child protection because sexual violence is a type of violence with a high number every year. In this study, the author made 2 (two) problem formulations, namely: how to apply the criminal restitution in the crime of child molestation and what are the obstacles to the implementation of the provision of restitution. This study took a verdict in 2021 regarding cases of sexual abuse that positioned children as victims. The legal research method used is normative juridical which is qualitative to obtain descriptive results. The following are the results of the research that the author has found: The provision of restitution to children victims of criminal acts of abuse is the right of children of victims of criminal acts based on Article 7A of Law Number 13 of 2006, Article 71D of Law Number 35 of 2014 and Article 3 of Government Regulation Number 43 of 2017. An application for restitution can be submitted at the time before the judgment or after the judgment has obtained permanent legal force. So that the provision of restitution to the victim's child is not fundamental. Furthermore, the author found that there was a provision of restitution in the verdict so that the defendant was burdened with the obligation to pay restitution in the amount of Rp.331,527,186.00 (three hundred and thirty-one million five hundred and twenty-seven thousand one hundred and eighty-six rupiah) to the victim's children who had applied for restitution as many as 12 restitution applications. The Panel of Judges upholds procedural principles and does not look at the aspect of child protection.

**Keywords:** Restitution, Child Protection, Criminal Acts of Abuse

## INTRODUCTION

olestation is an interaction between a child and an adult where the child is used for sexual stimulation by the perpetrator or another person who is in a position of power or control over the victim. This includes inappropriate physical contact, making a child see sexual acts or pornography, using a child to create pornography or exposing adult genitalia to a child. Obscenity is an indecent desire or act that leads to sexual acts that are carried out to achieve self-satisfaction from outside the marriage bond.<sup>1</sup>

<sup>1</sup>R: Soesilo, *The Criminal Code (KUHP) and Commentary The Complete Commentary Article by Article*, (Bogor: Politeia, 1988), p. 212.

In line with various problems of child abuse, a simple form of child protection is to try so that every child's rights are not harmed. Children have the right to survival, growth and development, participation and the right to protection from all forms of discriminatory treatment. Children's rights protected by law are a form of responsibility of all parties, both families, communities and the state. Support to provide protection for children is very necessary, both regarding institutions and legal instruments that are more stable and adequate.

Many criminal acts of obscenity have been investigated in court, but from that case, the perpetrator was not sentenced to the maximum sentence in accordance with the provisions of the law. Barda Nawawi Arief argues that to overcome crime requires a rational effort from the community, namely: <sup>2</sup>*"By means of criminal politics, policies or efforts to overcome crime are essentially an integral part of efforts to protect society (social defence). Therefore, it can be said that the main goal of criminal politics is the protection of society to achieve welfare."*

So to try to counter a criminal act, the state must make a law so that a sense of security is created in the community and the community gets protection from an act that violates criminal provisions. The reason why many cases of abuse are not reported by victims to law enforcement officials to be processed in court is due to several factors, including the victim feeling embarrassed and not wanting the disgrace that befell him to be known by others, or the victim feeling afraid because he has been threatened by the perpetrator that he will be killed if he reports the incident to the police. This of course affects the mental/psychiatric development of the victims and also affects the law enforcement process itself to realize a sense of justice for victims and the community. So children are very vulnerable to becoming victims of abuse because of various reasons that are factors that children do not want to share information with others, especially to law enforcement officials. In addition, there is also a lack of understanding of children about the various or motive of abuse that can happen to the child. This perception causes a silent or passive attitude from the community around the child, so that the culture Sexual violence against children continues and children's survival will be increasingly threatened.

According to the provisions of criminal law outside the Criminal Code, the protection of crime victims can also be seen in laws outside the Criminal Code. The law in question is Law No. 13 of 2006 concerning the Protection of Witnesses and Victims in Article 5 concerning

<sup>2</sup>Barda Nawawi Arief, *Flower Potpourri Criminal Law Crimes*, (Bandung: Citra Aditya Bakti, 2002), pp.1-2.

the protection and rights of witnesses and victims which is affirmed regarding the protection of victims for their personal security, family and property and free from all forms of threats related to the testimony to be given. The crime that is rampant in the community is the crime of obscenity, Ledeng Marpaung said that<sup>3</sup>

Against children and increasingly prevalent with various motives for perpetrators to commit these obscene acts, the victims are children who do not understand the situation they are experiencing. Acts of violence against children are often not easy to uncover, because violence against children is essentially personal. Protection for victims of crime and the fulfillment of rights for victims of crime in Indonesia have been regulated in several laws and regulations. Regulations related to the protection of victims of criminal acts are contained in Law of the Republic of Indonesia 31 of 2014 concerning the Protection of Witnesses and Victims. The protection in question is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and/or victims that must be carried out by the Witness and Victim Protection Institute (LPSK) or other institutions in accordance with the provisions of the relevant Law. In addition, there is also Government Regulation of the Republic of Indonesia Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims as one of the supporting regulations to strengthen efforts to protect witnesses and fulfill victims' rights. One form of protection for victims as an effort to fulfill the rights of victims is restitution. Restitution is compensation given to the victim or his family by the perpetrator or a third party as regulated in Article 1 number 11 of Law of the Republic of Indonesia Number 31 of 2014 concerning the Protection of Witnesses and Victims. One of the victims of crimes that should be protected is the victim of moral crimes. Cases of sexual violence are a concern in society. This is shown by the increasing prevalence and variety of acts of violence in Indonesia. Based on the records of the Witness and Victim Protection Institute (LPSK), as many as 533 victims of child and female sexual violence are protected. The number of requests for protection has increased, where previously in 2019 a total of 507 were protected and in 2018 a total of 401 were protected. Cases of sexual violence can be committed by anyone, anytime without knowing the time and place. Cases of sexual violence are rampant in the environment around us, such as cases of molestation of minors. in the educational environment and the workplace. So far, the suspension in the Criminal Code

3Leden Marpaung, *Kejahatan Terhadap Kesusilaan Dan Masalah Prevensinya*, (Jakarta : Sinar Grafika, 1996), Hlm. 81

(KUHP) has not fully protected victims of sexual violence. The Criminal Code (KUHP) only focuses on punishing the perpetrators without thinking about the best legal remedies for victims of sexual violence, besides that it also does not cover the forms of sexual violence that continue to develop today. The position of the victim in the Criminal Code seems to be not optimal compared to the position of the perpetrator. <sup>4</sup> The position of the victim as a subject of law has an equal position before the law (*equality before the law*).<sup>5</sup>

According to Article 20 paragraph (1) of Government Regulation Number 44 of 2008 concerning the Provision of Compensation, Restitution and Assistance to Witnesses and Victims, non-criminal victims are entitled to restitution. In the explanation section, the verse is stated quite clearly even though there is no clarity about what criminal acts can be submitted to the victim for restitution. In a case that occurred in the Bandung City area, especially in the area of the Marga Satwa Foundation Complex, Pasir Biru Village, Cibiru District, there has been a criminal act of violating the Bandung City District Court Decision number 989/Pid.Sus/2021/PnBdg. With many victims committed by the defendant from 2016 to 2021, there are legal consequences, namely the crime of obscenity based on article 81 paragraph (1), paragraph (3), paragraph (5) jo article 76D of Law Number 23 of 2002 concerning Child Protection as last amended by Law Number 17 of 2016 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into law jo article 65 paragraph (1) of the Criminal Code, Government Regulation Number 43 of 2017 concerning the Implementation of Restitution for Children Who Are Victims of Criminal Acts, and Law Number 8 of 1981 concerning the Criminal Procedure Law and other laws and regulations. Therefore, from this background, the writing is interested in continuing his research with the title: **"The Application of Criminal Restitution in the Case of Molestation of Minors Case Study No.989/Pid.Sus/2021/PNBDG"**

Based on the background of the problem, the formulation of the problem related to this study should be a clear study, namely the first is how the form of the application of the criminal act of restitution in the case of the crime of molesting minors and the second is the obstacle to the application of the criminal restitution to the crime of molestation of minors?

4 Azmiati Zuliah Marlina, *The Right to Restitution for Victims of Trafficking in Persons* (Bandung: PT Reflika Aditama, 2015), p. 61.

5 Dikdik M Arief and Elisatris Gultom, *The Urgency of Protecting Crime Victims Between Norms and Reality* (Jakarta: PT RajaGrafindo Persada, 2007), p. 24

## Research Methods

The type of research that will be used by the author is normative juridical research. Normative juridical research which in other words is a type of sociological legal research and can be referred to as field research, which examines the applicable legal provisions and those that have occurred in people's lives. Or in other words, it is a research that is carried out on the actual situation or the real situation that has occurred in society with the intention of knowing and finding the facts and data needed. Obtaining data through legal materials, namely: Primary legal materials, namely data obtained by the author from the field from respondents and informants and secondary legal materials, which are data obtained from books as primary data source equipment. Secondary data sources in this study are data that have been obtained by conducting a literature review<sup>6</sup>.

## Research Results and Discussion

### 1. Implementation of Restitution

In the crime of child molestation, child molestation is a problem that is constantly present in human life. Therefore, this problem is clearly a human problem and can be understood by how humans interact with each other, both structurally and culturally. For example, molestation can be seen by how humans relate to other humans or what can be referred to as social interaction. Through social interaction, humans influence each other through their devices: power in a certain sense. The construction of unequal power relations in patriarchal culture, puts men at the top of the relationship while women under him. Making women, especially girls, very vulnerable. In the results of this study, through the court decision has been applied, the results of the review have obtained cases of molestation against minors that have been handled and the application of restitution as legal protection for children victims of criminal acts of molestation. The case of criminal acts of molestation is a crime that not only has an impact on mere physical suffering, but has a greater impact on the psychological or mental and psychiatric suffering of the victim, especially the victim here is a minor child, where his mental state is still very vulnerable to traumatic events.

For the victims of the crime of molestation, all of whom are minors or minors, the investigating officers, namely the police, have provided legal protection. This can be seen from the explanation given by Novryanto jati vahlevi: Indeed, the provision of legal protection for

6 Amiruddin, *"Introduction to Legal Research Methods"*, (2006; PT. Raja Grafindo Persada), p. 30

children who have been victims of criminal acts of abuse does not exist specifically, but there has been the provision of legal protection for these children, namely by:

1. Keeping the child's identity secret from news in the mass media.
2. Conducting an examination of the child in a closed room.
3. In giving testimony, the child may be accompanied, usually by his parents<sup>7</sup>.

Meanwhile, according to Mustika, stated: "The legal protection given to children who are victims of criminal acts of abuse is by filing the heaviest lawsuit against the defendant who committed the crime of morality."<sup>8</sup>

Based on the above quote, it can be seen that children who are victims of criminal acts of sexual abuse have not been seen to have received special and optimal legal protection and their rights as victims of criminal acts of sexual abuse have not been fulfilled properly as expected from the issuance of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, This is understandable if the 12 children who are victims of criminal acts violation. The legal protection he receives is not fully in accordance with what is regulated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, even though in the law it is expressly determined that every child in particular and children in general who are victims of criminal acts of abuse are entitled to special legal protection either by their parents or the victim's family. the state through its authorized and assigned apparatus for it as well as from the community.

The explanation of Article 35 of Law Number 13 of 2006 provides the definition of restitution, which is compensation given to the victim or his family by the perpetrator or a third party. Restitution can be in the form of: a. Return of property belonging to b. Payment of compensation for loss or suffering or c. Reimbursement for certain actions

In reality, not all actions in the legal protection of children who are victims of moral crimes go as expected and all rights that should be obtained by children who are victims of moral crimes are not fully accepted.

Various rights that can be obtained by crime victims, the application of restitution to children victims of molestation crimes in the jurisdiction of the Bandung District Court in 2021 have been carried out, because this is almost felt to be very difficult to implement considering the aspect of the regulation that is not clearly and firmly regulated. Law Number 35 of 2014

<sup>7</sup> Interview with Novryanto jati Vahlevi, SH. Adjunct Prosecutor, Functional Prosecutor of the Cirebon City District Attorney's Office, dated May 17, 2023

<sup>8</sup> Interview with Mustika, Public Prosecutor of the Cirebon City District Attorney's Office, dated May 17, 2023. concerning Amendments to Law Number 23 of 2002 concerning Child Protection, namely about the rules for the implementation of restitution execution which has no legal basis other than the role of the Public Prosecutor is not included in the charges and the panel of judges does not determine the stipulation of the provision of restitution by the defendant to the victim as a form of criminal imposition.

Based on the above descriptions, the following views can be drawn:

1. The implementation of legal protection for children who are victims of criminal acts of molestation in the city of Bandung is basically only limited to keeping the identity of the child secret from mass media reports, allowing a companion when the child is asked for information about the events he has experienced and keeping the child away from the perpetrator of the crime by imposing the heaviest punishment. The application of restitution to children victims of obscenity crimes in the jurisdiction of the Bandung City District Court in 2021 has been carried out.
2. It has been carried out, but with a lot of consideration by the panel of judges, the restitution is charged to the ministry of women's empowerment and child protection of the Republic of Indonesia, not to the perpetrators of criminal acts.

Furthermore, the realization of legal protection through the decision of the Bandung City District Court Based on the quote of the Bandung City District Court Decision, it has indeed been seen that there is the implementation of legal protection for children who are victims of moral crimes, namely by the conviction of the defendant and by the sentence of life imprisonment, but from the excerpt of the decision of the Bandung City District Court mentioned above and can also be known from Law Number 35 of 2014 Regarding the Amendment to Law Number 23 of 2002 concerning Child Protection that has been implemented, it has been applied both by the Public Prosecutor and by the judge of the Bandung City District Court, even though the Prosecutor and the judge are possible to make demands or give court decisions ordering the defendant to provide restitution or provide rehabilitation to



victims of moral crimes so that the rights of children who are victims of moral crimes are more fulfilled both physical and psychological. The criminal imposition is in accordance with Law Number 35 of 2014<sup>13</sup> concerning Amendments to Law Number 23 of 2002 concerning Child Protection because judges still use the Criminal Code and result in children not being protected. According to Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, where these rights can be in the form of:

- a. The right to health services and social security in accordance with physical, mental, spiritual and social needs (Article 8)
- b. The right to obtain protection from exploitative treatment, both economic and sexual (Article 13 paragraph (1) letter b)
- c. The right to personal freedom/personal confidentiality (Article 17 paragraph (2))
- d. The right to legal aid and other assistance (Article 18)
- e. The right to obtain rehabilitation efforts both within the institution and outside the institution, obtain protection from identity reporting through the mass media and avoid leuberization, obtain safety guarantees for victim witnesses and expert witnesses, both physical, mental, and social, and obtain accessibility to obtain information about the development of the case (Article 64 paragraph (3)).

In Article 5 of Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, it is stated that the victim has the right to:

1. Obtain protection for the safety of his or her personal, family and property and be free from threats in relation to the testimony he will give and has given
2. Participate in the process of selecting and determining the form of security protection and support
3. Providing information without pressure
4. Get a translator
5. Free from entangled questions
6. Get information on the development of the case
7. Get information about court decisions
8. Knowing in the event that the convict is released v. Getting a new identity
9. Getting a new place to live
10. Obtain reimbursement for transportation costs according to needs
11. Get legal advice
12. Obtaining temporary living expense assistance until the coverage period ends.



Based on the description above, it can be stated that the implementation of the protection of victims of child abuse in the jurisdiction of the Bandung District Court has been running fully because the rights that have just been received by children who are victims of criminal acts of abuse have only received a small part of the rights they should have received based on the provisions of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Protection Children and Law Number 13 of 2006 concerning the Protection of Witnesses and Victims. The application of restitution to child victims of molestation crimes in the jurisdiction of the Bandung District Court in 2021 was carried out.

#### **b. Obstacles in the implementation of restitution**

With the increase in the number of protected sexual violence against children and women through the Witness and Victim Protection Institute (LPSK), there are several obstacles and challenges in fulfilling the rights of victims of sexual violence, one of which is restitution (compensation). In the 2020 LPSK Annual Report of the Sexual Violence Protection Program facilitated by the Witness and Victim Protection Institute (LPSK), there are various kinds of rights obtained by victims of sexual violence, including the Fulfillment of Procedural Rights (PHP), medical rehabilitation, psychological rehabilitation, restitution, psychosocial rehabilitation and temporary living expenses. Based on data from the 2020 LPSK annual report, victims of sexual violence who receive restitution have continued to increase over the past 3 years. Restitution and compensation are very important rights for victims who suffer physically as a result of their suffering. Victim protection, especially the victim's right to compensation, is an integral part of human rights in the field of welfare and social security.

In 2018, victims of sexual violence who received restitution amounted to 41 respondents. In 2019, victims of sexual violence who received restitution amounted to 125 respondents. And in 2020, victims of sexual violence who received restitution amounted to 194 respondents. The right of victims of sexual violence to get restitution begins to be understood by the victims of the crime themselves. Although the number of restitution applications is not as protected as sexual violence in the fulfillment of procedural rights which continues to increase every year. Regarding the example, one of the cases of sexual violence accompanied by the Witness and Victim Protection Institute (LPSK) is a case of violence that befell the victim. The violence that befell the victim had a psychological impact in the form of trauma, fear and shame for the victim. The Bandung District Court's decision on January 6, 2021 in a

child abuse case, one of the rulings was the granting of a demand for compensation from the perpetrator for the victim (restitution) by the panel of judges.

The role of the Witness and Victim Protection Institution (LPSK) in assisting the case includes providing advocacy, assistance and psychological rehabilitation for the protected. In addition, the Witness and Victim Protection Institute (LPSK) also provides advocacy to law enforcement officials related to restitution facilities as one of the fulfillment of the rights of victims of sexual violence.

The obstacle experienced by law enforcement officials related to the fulfillment of restitution for victims of sexual violence is that forced efforts for perpetrators of sexual violence have not been regulated. Perpetrators who have been convicted by the panel of judges are asked to pay restitution to the victim but the restitution is charged to the ministry of women's empowerment and child protection of the Republic of Indonesia not to the perpetrator charged. This creates an impression in the community that many restitution decisions cannot be executed because restitution payments are pending. In addition, law enforcement officials have not been too massive in organizing training related to the approach to victims and restitution, especially for victims of sexual violence crimes in order to reach a common understanding and awareness to realize the fulfillment of restitution to the maximum in fulfilling it for victims.

## Conclusion

Based on the discussion above, the author concludes that the application of restitution for victims certainly provides (no norm) in regulating the amount of restitution, namely the limited type and amount of losses that can be requested by victims of criminal acts and also the application of restitution using the process regulated in Law No. 31 of 2014 concerning LPSK. The obstacles in terms of law, namely Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, namely about the rules for the implementation of restitution execution which are unclear, the legal basis for the execution of judges' decisions that provide restitution to victims of criminal acts of obscenity, provides wide opportunities so that restitution payments to victims are not carried out such as implementation rules that do not contradict the spirit of partiality with victims who suffer losses. b. the obstacle to law enforcement, namely the weakness of the law, can be anticipated by the judge's decision, in this case the judge's decision does not affirm that the subsidiary is the final law. The role of the Public Prosecutor to include in the indictment, his demands regarding the application of restitution.

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