

Original Research Article

Legal Study of Substitute Sanctions for Restitution not Paid by Perpetrators of Sexual Violence against Children

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Abstract: Sexual violence against children is a serious crime that causes long-lasting physical, psychological, and social impacts. Therefore, it requires an effective mechanism for restoring victims' rights, one of which is through Restitution, a modern criminal law instrument designed to restore victims' conditions as close as possible to their original State. However, in law enforcement practice, the implementation of Restitution often encounters obstacles, particularly when perpetrators fail to fulfill their restitution payment obligations as ordered by the court. This is exacerbated by the lack of comprehensive and synchronized regulations between Law Number 35 of 2014 concerning Child Protection and Law Number 12 of 2022 concerning Crimes of Sexual Violence regarding substitute sanctions for Restitution. This study aims to examine the legal regulations regarding substitute sanctions for Restitution for child victims of sexual violence, analyze the gaps in norms and legal dualism in both laws, and assess their implications for the fulfillment of victims' rights and legal certainty. Using normative legal research methods through statutory, conceptual, and case-based approaches, the research results indicate that although Restitution has been recognized as a right of child victims, neither the Child Protection Law nor the Sexual Violence Crime Law explicitly, clearly, and operationally regulates substitute sanctions for Restitution if the perpetrator is unable or does not act in good faith to pay. This creates a legal vacuum, resulting in the suboptimal fulfillment of victims' rights and potentially creating legal uncertainty. Therefore, it requires harmonization and regulatory reform to ensure the protection and restoration of the rights of child victims of sexual violence in a just manner.

Keywords: Sexual Violence, Child Protection, Restitution, Legal Certainty.

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1. INTRODUCTION

Every Child has the right to receive rights and protection from all forms of threats and violence for the sake of their survival, namely, growth and development. Children are the embodiment of love and the gifts that God gives to families. Children have the right to survival, development, and protection, which is the obligation and responsibility of the State in maintaining and protecting the Human Rights (HAM) of its citizens, which has been stated in Article 28B of the 1945 Constitution of the Republic of Indonesia which reads, "Every child has the right to survival, growth and development and has the right to protection from violence and discrimination" (Ikhsan *et al.*, 2020). Children also have the right to participate in community life (participation), which is implemented with the principle of non-discrimination, the principle of what is best for the Child (best interest of

the Child), the principle of the right to life, survival, and development, and the principle of respect for the views of the Child.

That the basic principles of Children's Rights are stated in the Convention on the Rights of the Child dated November 20 1987 which was then ratified through Presidential Decree Number 36 of 1990 concerning the Ratification of the Convention on the Rights of the Child which was signed by the Government of the Republic of Indonesia in New York, United States, on January 26 1990 as a result of the United Nations General Assembly session which was accepted on November 20 1989 with the statement (Arsawati *et al.*, 2020), by ratifying the Convention on the Rights of the Child, Indonesia agrees that all children's rights are the human rights of a child that are equal (Rizki *et al.*, 2016).

The State will also make every effort to ensure that all these rights are respected, protected, and fulfilled. Indonesia has achieved this by developing a relatively progressive legal framework to advance children's rights.

A child is someone who is not yet 18 (eighteen) years old, including a child who is still in the womb (Pratama *et al.*, 2017). Based on these categories, it can be concluded that children are immature individuals who, physically, psychologically, and socially, require assistance, supervision, and protection from adults to achieve optimal growth and development. Children receive protection through the Law. Since its enactment in 2002, the Child Protection Law has been amended twice in response to the increase in crimes against children, particularly sexual violence, as well as overlapping regulations and suboptimal protection for children with disabilities. The first amendment, Law Number 35 of 2014, emphasized the need for regulatory harmonization and strengthened child protection, while the second amendment, Law Number 17 of 2016, emphasized increased criminal sanctions and fines for perpetrators of sexual crimes against children in order to create a deterrent effect and support victim recovery (Suryawan *et al.*, 2024). However, because these repressive policies have not been effective in reducing the number of sexual violence cases against children, the State then adopted a more comprehensive approach through preventive efforts in the form of implementing chemical castration, installing electronic detection devices, and rehabilitating perpetrators, as more optimal prevention and child protection measures.

The National Commission on Violence Against Women initiated the Draft Law on Sexual Violence in response to the increasing number of cases of sexual violence in Indonesia. This was then ratified on April 12, 2022, as Law Number 12 of 2022 concerning Sexual Violence. This Law aims to prevent and address all forms of sexual violence through the handling, protection, and recovery of victims, effective law enforcement, and rehabilitation of perpetrators to create an environment free from sexual violence and ensure non-recurrence (Nurahlin, 2022). This Law requires the State to uphold the rights of victims to treatment, protection, and rehabilitation from the time the crime occurs, with implementation tailored to the victim's needs. This rehabilitation is realized through the perpetrator's obligation to pay Restitution as compensation for the suffering or certain costs experienced by the victim, through a mechanism that confiscates the convict's assets if Restitution is not paid (Jamaludin, 2021). If the convict's assets are insufficient, the State can provide compensation through the Victim Trust Fund, as determined by a court decision.

In handling crimes of violence against children, there are two main legal instruments used: Law Number 35 of 2014 concerning Child Protection and Law Number 12 of 2022 concerning Crimes of Sexual

Violence. The Child Protection Law serves as a general legal basis that regulates and guarantees protection, fulfillment of rights, prevention of violence, and the imposition of sanctions for perpetrators of violence against children as a vulnerable group (Risal, 2022). Meanwhile, the Law on Sexual Violence Crimes is a special legal instrument that provides more comprehensive and detailed regulations regarding sexual violence, including forms of violence based on power relations and non-physical ones, and emphasizes victim recovery through Restitution, rehabilitation, and support services (Nurisman, 2022). Thus, the two laws complement each other in providing comprehensive legal protection for children as victims of violence, both in terms of prevention, handling, and restoration of their rights.

Normatively, the Child Protection Law and the Sexual Violence Crime Law have the same objective, namely, to provide maximum protection for victims, especially children, as a vulnerable group. However, in practice, their enforcement has the potential to create overlapping norms and legal dualism (Angelia & Purwanti, 2020). The Child Protection Law serves as a special *lex generalis* for children, providing general protection against various forms of violence. However, its regulation of sexual violence crimes is relatively limited due to its emphasis on the dominant relationship between adults and children. In contrast, the Sexual Violence Crime Law serves as a *material lex specialis*, regulating sexual violence more broadly and in detail, including violence based on power relations, dependency, and non-physical violence. It also introduces a comprehensive victim recovery mechanism through a restorative approach, including Restitution, rehabilitation, psychological support, legal aid, and long-term protection. This approach is rooted in the concept of restorative justice, which views crime not only as a violation of the State but also as harm to individuals and social relationships, emphasizing victim recovery, the perpetrator's responsibility to repair the harm, and the community's role in supporting recovery and reintegration.

The Child Protection Law places greater emphasis on the protection and psychological rehabilitation of child victims and the provision of social services. However, it does not yet regulate comprehensive and sustainable victim recovery, particularly regarding the restitution mechanism, which is not reinforced with substitute sanctions if the perpetrator is unable or lacks good intentions to pay compensation, so that victims' rights are often not fulfilled in practice. In contrast, the Sexual Violence Crime Law regulates restorative measures in a more comprehensive and structured manner with a victim-centered approach, which places the victim as the center of recovery through the obligation of Restitution for the perpetrator for material and immaterial losses, including loss of income, suffering, medical care costs, and

psychological and educational impacts, with provisions for substitute imprisonment if Restitution is not paid, without exceeding the threat of the principal penalty.

Restorative measures are needed because violence against women and children causes long-term psychological impacts that cannot be recovered from only by sentencing the perpetrator to prison (Lira, 2023). A retributive-oriented criminal justice system has not been able to automatically restore victims' psychological, social, or personal well-being, thus preventing them from achieving substantive justice. Therefore, an integrated, victim-oriented recovery mechanism is needed, encompassing Restitution, psychosocial rehabilitation, legal assistance, protection from threats or intimidation, and social reintegration, as stipulated in the Law on Sexual Violence Crimes, as an effort to fulfill victims' rights, emphasizing healing, recovery, and restoring the victim's dignity.

Decision Number 47/Pid.Sus/2025/PN Nga in the name of convict Ismi Azis Keraf demonstrates the weak guarantee of restitution fulfillment under the Child Protection Law regime. The Public Prosecutor demanded an 8-year prison sentence, a fine of Rp 100,000,000, subsidiary to 6 months' imprisonment, and Restitution of Rp 39,220,000, based on calculations by the Witness and Victim Protection Agency, with the provision of a substitute prison sentence if not paid. However, the judge imposed a lighter sentence, namely 6 years' imprisonment, only granted partial Restitution of Rp12,420,000, and did not specify a substitute sentence if the Restitution was not paid. This case demonstrates that the Public Prosecutor employed a legal construction approach by applying the paradigm of the Sexual Violence Crime Law to address the gap in norms within the Child Protection Law, which recognizes the right to Restitution but does not explicitly regulate substitute criminal sanctions. As a result, the implementation of Restitution is highly dependent on the interpretation of law enforcement officials and has the potential to be ineffective. This situation confirms that the Child Protection Law remains retributively oriented and weak in ensuring the recovery of victims. At the same time, the Sexual Violence Crime Law is more progressive and restorative because it explicitly regulates alternative punishments such as Restitution, as reinforced by Supreme Court Regulation Number 1 of 2022. Then there is Decision Number 11/PID.SUS/2025/PT. DPS in the criminal appeal case on behalf of the Defendant Muhammad Fakhrur Rozi, which shows that regarding the crime of sexual intercourse against child victims, with proof of articles in the Child Protection Law, but accompanied by provisions for substitute criminal sanctions if Restitution is not paid, with a prison sentence that does not exceed the main criminal threat.

Based on the overall description, it is clear that the restitution provisions in the Child Protection Law and the Law on Sexual Violence Crimes still face problems

that directly impact the fulfillment of victims' rights, especially children, as the most vulnerable group. There is a legal incompleteness in the Child Protection Law. The Child Protection Law provides a normative basis for Restitution, but does not provide a mechanism for coercion and substitute punishment if the perpetrator does not pay Restitution. As a result, victim recovery is often declarative and ineffective. This contrasts with the Law on Sexual Violence Crimes, which presents a more comprehensive approach, combining retributive and restorative aspects, including a more transparent, more measurable, and effectively enforceable restitution mechanism through provisions for substitute punishment. This demonstrates a regulatory gap and a paradigm difference between the two laws, which ultimately can hinder the State's constitutional goal of providing adequate protection for children as victims of crime, as described.

Based on this background, this research focuses on the regulation of substitute sanctions for unpaid Restitution by perpetrators against child victims of violent crimes. Specifically, this research analyzes the mechanism and legal basis for substitution sanctions under Law Number 23 of 2002 concerning Child Protection. It compares them with the provisions in Law Number 12 of 2022 concerning Sexual Violence, which more explicitly stipulates the legal consequences if perpetrators fail to fulfill their restitution obligations to child victims of sexual violence.

2. METHOD

The type of research used is normative juridical. Normative jurisprudence is an approach that involves examining theories and concepts, as well as reviewing laws and regulations related to the research. Normative research was chosen because this approach refers to applicable and established legal regulations, focusing the research on the content of the Law, its application, and scope. The normative approach focuses on analyzing laws and regulations, legal doctrine, and court decisions. This approach provides a strong theoretical basis for researchers to understand and interpret applicable legal norms. The main advantage of the normative approach is its ability to create a clear and structured legal framework.

3. RESULTS AND DISCUSSION

3.1. Compensatory Sanctions for Restitution for Child Victims of Violent Crimes Under the Child Protection Law

Based on the verdict of the convict in the name of Ismi Azis Keraf, Number 47/Pid.Sus/2025/PN Nga, the judge imposed a lower sentence than the Public Prosecutor's demands, namely 6 (six) years' imprisonment, compared to the prosecutor's demand of 8 (eight) years' imprisonment. Then, the judge granted partial Restitution in the amount of Rp. 12,420,000,- (twelve million four hundred and twenty thousand rupiah) without any provisions for a substitute sentence

if the Restitution is not paid. In analyzing the research results on the decision, namely by using the Criminal Law Policy Theory and the Legal Protection Theory, which is based on the Criminal Policy Theory, crime prevention by means of penal means has several functional or operational steps through several policies, namely the determination of legislative policies, judicial policies, and executive policies, these three stages of policy are interrelated in a complete system (Muladi & Arief, 2010).

However, the most important and strategic step in operationalizing criminal Law is legislative policy, as it can reform regulations toward a more progressive direction. Rapid social changes can lead to the emergence of new criminal patterns, making them increasingly visible. The proliferation of various crimes in Indonesia requires the development of legal instruments to adapt to current developments, ensuring effective crime prevention and control.

The case involving Defendant Ismi Azis Keraf is a vivid illustration of the challenges in implementing criminal law policy, particularly regarding sexual crimes against children. This case illustrates how the three stages of policy legislation, adjudication, and execution interact, while also highlighting the imperfections at each stage that directly impact the effectiveness of child protection for vulnerable groups. We can analyze that from a legislative policy perspective, norms regarding child protection and Restitution are actually available through the Child Protection Law, the Witness and Victim Protection Law, PP 43/2017, PP 7/2018, and PERMA 1/2022. However, this legal framework still shows shortcomings because:

- a. The Child Protection Law does not yet regulate an independent and comprehensive restitution mechanism; thus, it relies on witness and victim protection regulations.
- b. The restitution mechanism places greater emphasis on concrete losses that are certain and have already occurred, making it insufficiently adaptive to accommodate the long-term recovery needs of victims of sexual violence, including the need for projective (estimated) medical recovery, although indeed necessary for child victims.

This situation illustrates that, at the legislative stage, criminal law policy has not been fully progressive in addressing the dynamics and characteristics of sexual crimes against children, which are complex, multidimensional, and have long-term impacts. This suggests that regulatory reforms need to be directed toward a more restorative, responsive, and victim-centered restitution system.

From a judicial policy perspective, the judge in this case has applied positive legal provisions by declaring the defendant guilty of committing the crime

of "persuading a child to engage in sexual intercourse," imposing a prison sentence and a fine, and determining Restitution for the victim. However, there are several important notes, including the judge's decision showing several weaknesses from a criminal policy perspective and victim protection, because the prison sentence imposed is lower than the prosecutor's demand, thus not reflecting a repressive approach and deterrent effect in cases of sexual violence against children. In addition, the granting of Restitution, which is only partially based on the recommendations of the Witness and Victim Protection Agency, is procedurally correct but substantially overlooks the long-term nature of victim recovery, thereby not optimally achieving the function of Restitution as a means of recovery. On the other hand, although the judge emphasized that Restitution should not be replaced with imprisonment, the lack of an effective enforcement mechanism to guarantee the payment of Restitution actually creates legal uncertainty. It has the potential to harm the rights of child victims.

At the executive policy stage, obstacles can arise when Restitution is left to the defendant's ability, without a guarantee mechanism or payment scheme. This situation makes the fulfillment of victims' rights highly dependent on the perpetrator's economic factors, rather than on the State's obligation to ensure the recovery of the victim's Child. Judges have protected victims' fundamental rights through Restitution, but the reduction of restitution components and the lack of certainty about payment result in suboptimal protection. As a result, legal protection becomes substantively ineffective, even though legal protection is essentially all efforts to ensure the fulfillment of the rights of victims who suffer most from criminal acts.

Thus, this case illustrates that while the criminal justice system has attempted to address crime through penal means, its effectiveness is still heavily influenced by the consistency, courage, and victim-centered perspective of law enforcement. Furthermore, the increasingly complex patterns of sexual crimes against children require more progressive criminal law policy reforms, particularly in integrating restitution mechanisms, sentencing standards, and comprehensive rehabilitation schemes.

Based on the Theory of Legal Protection, legal protection can be divided into two, namely Preventive Legal Protection, which is protection provided by the government to prevent violations before they occur, contained in statutory regulations to prevent violations, and provide orders and prohibitions that regulate the order of a society and must be obeyed by that society (Indriati *et al.*, 2018). Repressive legal protection is the final protection in the form of sanctions such as fines, imprisonment, and additional penalties given when a dispute has occurred or a violation has been committed which aims to provide a deterrent effect on the perpetrator, restore the victim's losses, restore the

victim's physical, psychological, and social conditions, so that through this repressive legal protection, an important point regarding Restitution as the victim's right is achieved.

Strengthening child protection cannot operate optimally without a restitution mechanism, which serves as a means of restoring victims' rights (Putri, 2024). Restitution is not merely financial compensation, but a form of responsibility between the State and the perpetrator to restore the Child's dignity, sense of security, and future. Given the complexity of child protection issues and the increasing number of cases of violence and exploitation against children, it is clear that protection efforts cannot stop at the prevention stage or punishing the perpetrator. Ideal protection requires comprehensive recovery for the child victim, including physical, psychological, social, and economic aspects. In this context, there is a need to strengthen victim-oriented repressive legal protection mechanisms. One of the most important instruments for victim protection is Restitution, namely, compensation that the perpetrator must provide to the child victim. Restitution is not only part of restoring justice but also a concrete manifestation of the State's responsibility to ensure that the Child's future is not lost due to criminal acts.

So far, when a crime occurs against a child, the victim not only bears the material losses (which can be calculated) and immaterial losses (which cannot be calculated), including losses in the form of shame, loss of self-esteem, low self-esteem, and/or excessive anxiety of a traumatic nature (Saodana *et al.*, 2023). This loss should also be borne by the perpetrator in the form of Restitution as a form of compensation for the suffering experienced by the Child who is a victim of a crime. Restitution that the perpetrator of a crime must pay is intended not only to compensate for the loss of property, compensation for suffering as a result of the crime, and/or reimbursement of medical and/or psychological treatment costs as a form of responsibility for the crime committed, but also to alleviate the suffering and uphold justice for the Child who is a victim of a crime as a result of the crime committed by the perpetrator of the crime (Saimima, 2020). Restitution for children who are victims of crime must be carried out appropriately, accurately, and without misuse. Restitution must be given and received by the child victim or the victim's party in accordance with the losses and conditions of the child victim.

That in the verdict of the Convict in the name of Ismi Azis Keraf, Number 47/Pid.Sus/2025/PN Nga shows that the Public Prosecutor has carried out legal construction by borrowing the paradigm of the Law on Sexual Violence Crimes, because the Child Protection Law does not provide an explicit normative basis regarding substitute restitution. The Child Protection Law provides the right to Restitution but does not clearly regulate substitute punishment, so its implementation

depends on the interpretation of law enforcement officials. This illustrates the practical consequences of the Child Protection Law's normative weakness in ensuring that Restitution is actually paid. At the same time, the Law on Sexual Violence Crimes is more progressive, because it forces the perpetrator to be responsible both criminally and for the victim's recovery. This emphasizes that the orientation of justice under the Child Protection Law is still predominantly retributive (focused on punishing the perpetrator), not restorative (victim recovery) (Farels *et al.*, 2023). At the normative level, the Child Protection Law regulates the victim's right to obtain Restitution, especially as outlined in Article 71D of Law Number 35 of 2014 concerning Child Protection, and further detailed in Government Regulation Number 43 of 2017. However, the Child Protection Law does not explicitly regulate substitute criminal sanctions if the perpetrator does not pay Restitution. This differs from the Law on Sexual Violence Crimes, which states that if the perpetrator fails to pay Restitution, it can be replaced with additional punishment in the form of imprisonment, as stated in Supreme Court Regulation Number 1 of 2022, Article 30, Paragraph (13).

Therefore, the author argues that the Child Protection Law still contains legal incompleteness, as it does not provide the right to Restitution through Government Regulation Number 43 of 2017 concerning the Implementation of Restitution and Assistance for Victims. However, there is no regulation of substitute criminal sanctions as a means of coercion if Restitution is not paid, so this makes Restitution not the center of recovery as a fundamental right of victims, so that the certainty of recovery of children as victims of violent crimes is not guaranteed. Therefore, when the Public Prosecutor demands Restitution by "borrowing" the paradigm of the Law on Sexual Violence Crimes, it shows that law enforcement officers are aware of normative weaknesses in the Child Protection Law so that children as victims of violent crimes have the potential not to receive recovery, the rights of victims that the State should guarantee become ineffective due to incomplete regulations, so that they do not fulfill the elements of legal protection.

The absence of substitute sanctions for Restitution in the Child Protection Law means that Restitution is only declarative in nature, meaning it does not have a coercive instrument, so that it cannot be implemented effectively operationally, because the legal system does not provide a sanction mechanism if the perpetrator avoids the obligation to pay (Ali *et al.*, 2018). Restitution without coercive power is a barrier to the effective implementation of criminal policy. Without a coercive mechanism, Restitution remains merely a declarative norm, lacking implementable power, which results in a breakdown in the chain of criminal policy at the judicial and enforcement stages. This situation deprives the criminal justice system of its restorative

function, as victims' rights cease at the verdict with no guarantee of their fulfillment. As a result, victim recovery depends entirely on the perpetrator's will. It is not under the control of the State, shifting the burden of Restitution from the State to the victims themselves.

Thus, Restitution plays a role in realizing victim-oriented criminal justice. The development of psychological and criminological research shows that child victims are at high risk of experiencing depression, PTSD (Post-Traumatic Stress Disorder), anxiety, behavioral and developmental disorders, decreased academic achievement, social stigma and isolation, and dependence on family or the State. Therefore, regarding the long-term impact of criminal acts on children, Restitution serves to provide resources for the recovery process, so that children's rights to grow and develop can still be fulfilled. Government Regulation Number 43 of 2017 concerning the Implementation of Restitution for Child Victims of Crime further emphasizes that Restitution is a right of child victims that must be calculated, proposed, decided, and implemented in real terms. Thus, the urgency of Restitution is not only a moral reason but also a positive legal mandate and a state obligation. Although Restitution has an important position as a fundamental right of child victims, a crucial problem that arises in practice is the absence of alternative criminal sanctions if the perpetrator does not pay Restitution (Cahya *et al.*, 2023). This normative weakness is clearly visible in the Child Protection Law and Government Regulation No. 43 of 2017, which positions Restitution solely as an obligation for the perpetrator, with no additional criminal consequences if it is not met. As a result, perpetrators who have been sentenced to Restitution can avoid paying without facing the threat of further punishment, unlike the fine mechanism, which provides for alternative imprisonment.

The absence of alternative sanctions significantly impacts the effectiveness of victim recovery. First, Restitution has the potential to become merely a symbolic decision because it does not provide sufficient legal pressure on the perpetrator to fulfill their payment obligation. The perpetrator simply states their inability to pay, and there is no compulsion mechanism (a mechanism by which the State forces someone to fulfill their legal obligations). Hence, the burden of the loss falls back on the victim and their family. Second, the State is not given the authority to enforce collection, as in criminal fines or civil executory mechanisms, leaving victims solely dependent on the perpetrator's good faith.

The most serious consequence of the lack of substitute sanctions is the obstruction of children's right to Restitution, even though Restitution is an integral part of repressive legal protection that should guarantee certainty and real recovery. This emphasizes that the legal system remains perpetrator-oriented through punishment, but has not fully adopted a victim-oriented

justice approach, as the guarantee of recovery remains uncertain.

Furthermore, the absence of alternative sanctions creates a disharmony between the concept of Restitution as a mandatory right for children and the reality of its implementation, which lacks coercive power (a non-executable right). This lack of synchronicity often leads to Restitution not being paid even after a judge has awarded it. In many cases, victims ultimately resort to civil lawsuits as an alternative enforcement measure, which ironically adds to the psychological burden, costs, and lengthy process for child victims, contradicting the principle of the best interest of the Child.

Thus, the absence of alternative criminal sanctions for non-payment of Restitution is one of the root causes of the weak protection of child victims in Indonesia. This legal loophole must be criticized because it has the potential to thwart the goal of Restitution, which is to ensure the Child returns to a better condition and receives substantive justice. Therefore, in the context of future legal reform, stricter regulations are needed regarding the mechanism for executing Restitution, including the possibility of adopting alternative criminal penalties, confiscation of the perpetrator's assets, or an active role for the State as guarantor and collector of Restitution.

3.2. Substitute Sanctions for Restitution for Child Victims of Sexual Violence Crimes Based on the Law on Sexual Violence Crimes

The Panel of Judges in Decision Number 117/Pid.Sus/2024/PN Nga stated that the defendant Muhammad Fakhrur Rozi was legally and convincingly proven guilty of committing the crime of sexual violence against children, in the form of acts of intentionally committing violence or threats of violence that forced children to have sexual intercourse, as charged in the first alternative indictment of the Public Prosecutor. For these actions, the defendant was sentenced to 18 years in prison and a fine of Rp. 80,000,000, with the provision that if the fine is not paid, it will be replaced with a prison sentence of 6 months. In addition, the Panel of Judges ordered the defendant to pay Restitution to the victim in the amount of Rp. 85,240,000, which, if not paid, will be replaced with a prison sentence of 6 months.

Decision Number 117/Pid.Sus/2024/PN Nga was analyzed using the theory of criminal responsibility and the theory of Restitution, where, based on the theory of criminal responsibility, Defendant Muhammad Fakhrur Rozi was fully fulfilled because he had the capacity to be legally responsible, proven by the absence of mental disorders or other conditions that eliminate criminal responsibility. His actions were carried out intentionally, repeatedly, and accompanied by abuse of power relations as a stepfather towards the victim's Child, thus indicating an element of guilt. These actions are clearly unlawful because they violate the provisions

of the Child Protection Law and Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence. Furthermore, no justification or excuse could eliminate the unlawful nature or guilt of the Defendant, so that criminal responsibility is imposed in full.

Furthermore, based on the Theory of Restitution, Restitution is the victim's right to recovery, which aims to return the victim's condition as far as possible to its original condition (restorative) (Kelibia, 2023). In this context, the Panel of Judges acted appropriately and in line with the principle of victim protection by determining the obligation to pay Restitution to the Defendant. The Panel of Judges' considerations, guided by Government Regulation Number 43 of 2017 concerning the Implementation of Restitution for Child Victims of Crime and Supreme Court Regulation Number 1 of 2022 concerning Procedures for Resolving Applications and Granting Restitution and Compensation to Victims of Crime, demonstrate concrete efforts to ensure the fulfillment of victims' rights, particularly child victims of sexual crimes.

However, during the trial, it was revealed that the Defendant and/or his Legal Counsel stated that the Defendant was unable to pay Restitution and intended to provide educational costs for the Child Victim after the Defendant served his sentence. From the perspective of restitution theory, this statement cannot nullify the obligation of Restitution, because Restitution is a victim's right that is direct, definite, and executable, not dependent on the perpetrator's good faith in the future. Fulfillment of Restitution cannot be replaced by unilateral promises or commitments, especially in cases of sexual violence against children, where the relationship between the perpetrator and victim has been tarnished by the crime committed. Therefore, the Defendant's inability to pay Restitution should be understood as a technical issue of execution, not as a reason to eliminate or delay the fulfillment of the Child Victim's right to Restitution. This confirms that Restitution in cases of sexual violence against children is not merely an additional instrument of punishment, but rather an integral part of efforts to restore victims and realize victim-oriented justice, as is the main objective of the formation of the Law on the Crime of Sexual Violence.

The sexual violence crime law is expected to establish a new system that better protects victims from a law enforcement perspective and encourages the State to be more responsible in victim recovery efforts and the prevention of future sexual violence. Furthermore, this Law is a breakthrough in accommodating the needs and interests of victims of sexual violence, especially those of victims of sexual violence. It is hoped that it will become a legal umbrella that will provide clarity and legal certainty, as well as breakthroughs and specific regulations for the prevention of sexual violence, the

handling of sexual violence cases, and the protection and recovery of victims. Through these regulations, it is hoped that this Law will become a social engineering tool to transform society's legal culture, shifting from one that still blames the victim to one that prioritizes the interests of the victim (Kasuma *et al.*, 2020). As a social engineering tool that guides what law enforcement officers should do in handling cases of sexual violence, it will transform the Criminal Justice System to become more trusted in fulfilling justice and rehabilitating victims.

The Law on Crimes of Sexual Violence classifies crimes of sexual violence into four categories, namely crimes that are directly regulated in the Law on Crimes of Sexual Violence, crimes of sexual violence that are regulated outside the Law on Crimes of Sexual Violence, other crimes that are expressly stated as Crimes of Sexual Violence in statutory regulations, and other crimes related to Crimes of Sexual Violence as regulated in Article 19 of the Law on Crimes of Sexual Violence (Kifli *et al.*, 2022). In addition to these groupings, the Law on Sexual Violence Crimes presents several important breakthroughs, including expanding the recognition of types of sexual violence crimes in various laws and regulations, comprehensive procedural law arrangements from the investigation stage to trial by upholding human rights and the dignity of victims, strengthening the rights of victims to treatment, protection, recovery, and Restitution as a state obligation, and affirming that cases of Sexual Violence Crimes cannot be resolved outside the judicial process, except for child perpetrators.

As a follow-up to the mandate of Article 56 of the Law on Sexual Violence Crimes, the Attorney General of the Republic of Indonesia has issued Guideline Number 1 of 2024 concerning Preliminary Meetings in Handling Sexual Violence Crimes. Sexual violence crimes in this Guideline are all acts that fulfill the elements of a crime as regulated in Article 4 paragraph (1) and other acts of sexual violence as regulated in Article 4 paragraph (2) of Law Number 12 of 2022 concerning Sexual Violence Crimes. The Attorney General's guidelines above show that the Crime of Sexual Violence, both those contained in the Law on Crimes of Sexual Violence and those outside the Law on Crimes of Sexual Violence "apply" the criminal procedure provisions contained in the Law on Crimes of Sexual Violence, furthermore regarding criminal sanctions, the Crime of Sexual Violence outside the Law on Crimes of Sexual Violence still applies its criminal provisions (does not apply criminal sanctions in the Law on Crimes of Sexual Violence but other sanctions "can" apply sanctions in the form of restitution payments by the accused and/or additional penalties as regulated in Article 16 of the Law on Crimes of Sexual Violence and/or actions as regulated in Article 17 of the Law on Crimes of Sexual Violence.

There are several forms of sexual violence crimes that are regulated by Law, namely non-physical sexual harassment, physical sexual harassment, forced contraception, forced sterilization, forced marriage, electronic-based sexual violence, sexual torture, sexual exploitation, sexual slavery, as well as the existence of a form of state compensation for victims of sexual violence crimes, namely a victim assistance fund (Victim Trust Fund) and the obligation of the perpetrator to pay Restitution as a form of good faith to compensate for material and/or immaterial losses suffered by the victim or his/her heirs.

Furthermore, Decision Number 117/Pid.Sus/2024/PN Nga has been annulled due to an appeal request from the Public Prosecutor, based on the High Court Decision Number 11/PID.SUS/2025/PT. DPS dated February 26, 2025, it is stated that the *a quo* case is proven as per the first alternative indictment of the Public Prosecutor, with a prison sentence higher than the first instance decision, and imposes a sentence as demanded by the Public Prosecutor based on the aspect of fulfilling the sense of justice in society, and especially for the victim.

The judge's legal considerations in Decision Number 117/Pid.Sus/2024/PN Nga indicates that the Panel of Judges has developed a framework of considerations that aligns with the Principles of Victim Protection as stipulated in Article 3 of Law Number 13 of 2006 concerning Witness and Victim Protection. These principles include Respect for Dignity, Security, Justice, Non-Discrimination, Legal Certainty, Best Interests of the Victim, and Benefit. This decision also demonstrates a shift in criminal justice practices toward more comprehensive victim protection, particularly for children as a vulnerable group in cases of sexual violence.

From a legal perspective, the attitude of the Panel of Judges reflects the application of the principle of *ius curiae novit*, where judges are deemed to be familiar with the Law and have the authority to determine the most appropriate article based on the legal facts (Wicaksana, 2018). The selection of Article 6 letter c in conjunction with Article 4 paragraph (2) letter c in conjunction with Article 15 paragraph (1) letters a, e, and g of the Law on Sexual Violence Crimes is considered more appropriate because the norm explicitly regulates the use of inequality and power relations within the family sphere, which is not fully accommodated in the formulation of the offense in the Child Protection Law as charged by the Public Prosecutor and upholds justice that is oriented towards recovery, therefore the granting of Restitution in the *a quo* case is an appropriate application of the norm and is in line with the theory of Restitution which views Restitution as a means of recovery for victims, not merely a form of revenge against the perpetrator. That then the Panel of Judges based the imposition of a prison sentence instead of Restitution as

per Article 33 Paragraph (7) of Law Number 12 of 2022 concerning Crimes of Sexual Violence, if the confiscated assets of the convict as referred to in paragraph (5) are insufficient to cover the costs of Restitution, the convict is subject to a prison sentence instead of imprisonment not exceeding the principal penalty, therefore the Panel of Judges will impose a prison sentence instead of imprisonment in the verdict, where if this is linked to the principle of justice, a prison sentence instead of Restitution is an effort by the Panel of Judges to ensure that there are legal consequences for the Defendant's non-compliance.

A systematic analysis of these provisions and Article 35 of the Law on Sexual Violence Crimes indicates the existence of a victim protection mechanism oriented toward recovery, particularly through a state compensation scheme if the convict's assets are insufficient to pay Restitution. In such circumstances, the State covers the shortfall in Restitution through the Victim Assistance Fund, which is sourced from the state budget and other legitimate sources, such as philanthropy, community involvement, corporate social responsibility, and other discretionary sources. Further regulations regarding its management and utilization are stipulated in Government Regulations.

Based on this normative construction, in the case of Decision Number 117/Pid.Sus/2024/PN Nga, when the Defendant clearly stated that he was unable to pay Restitution, the State should have been present to guarantee the fulfillment of the victim's rights through a compensation mechanism as referred to in Article 35 of the Law on Crimes of Sexual Violence. This mechanism aligns with the principles of victim protection, particularly the principles of justice, security, and respect for human dignity, as it prioritizes the interests of victim recovery. However, reality shows that the victim's right to state compensation cannot be realized, because until the time this case was decided and executed, there were no implementing regulations that technically regulate the Victim Assistance Fund as mandated in Article 35, paragraph (4) of the Law on Crimes of Sexual Violence. The absence of these derivative regulations rendered the state compensation norm inoperable, so that the victim still did not receive material compensation, despite a court decision that had permanent legal force. This situation demonstrates a structural barrier to protecting victims' rights, where the State's responsibility, as normatively affirmed in the Sexual Violence Crimes Law, cannot be effectively implemented. Consequently, the prison sentence, rather than Restitution, imposed on the defendant has the potential to shift the focus from victim recovery to punishing the perpetrator, without providing any direct benefit to the victim.

Thus, it can be concluded that although the Panel of Judges has attempted to uphold justice by imposing a substitute sentence of Restitution, the absence of a state compensation mechanism as stipulated

in Article 35 of the Law on Sexual Violence Crimes has resulted in the objective of Restitution as an instrument for victim recovery not being optimally achieved. This confirms that protection of victims in cases of sexual violence against children depends not only on the judge's courage in issuing a verdict, but also on the State's readiness to provide adequate implementation instruments.

Government Regulation Number 29 of 2025 concerning the Assistance Fund for Victims of Sexual Violence was only ratified on June 18, 2025. This indicates that at the time, the case of Decision Number 117/Pid.Sus/2024/PN Nga was examined, decided, and implemented; the legal mechanism for the Victim Assistance Fund was not yet available. As a result, the state compensation norm that has been expressly regulated in Article 35 of the Law on Crimes of Sexual Violence has not been implemented, so that the State is not in fact able to cover the shortfall in restitution payments when the perpetrator is unable to fulfill his obligations. This condition shows a gap between the legal norm (das sollen) and the reality of its implementation (das sein). Normatively, the Law on Crimes of Sexual Violence has placed the State's responsibility as the guarantor of recovery for victims of sexual violence. However, empirically, the delay in implementing regulations has resulted in victims' rights to state compensation being delayed, and potentially even unfulfilled. In this context, the prison sentence, rather than Restitution, imposed on the Defendant is unable to replace the State's compensation function, because this sentence does not provide direct Restitution to the victim, but only increases the suffering of the perpetrator.

With the enactment of Government Regulation Number 29 of 2025, the new State normatively has an operational basis to implement the obligation of compensation to victims of sexual violence as mandated by Article 35 of the Law on the Crime of Sexual Violence, which has placed the State's responsibility as a guarantor of recovery for victims of sexual violence. However, for cases decided before the enactment of the Government Regulation, including Decision Number 117/Pid.Sus/2024/PN Nga, victim protection is still not comprehensive and not fully oriented towards recovery, because victims still do not receive state compensation for unpaid Restitution.

That then there is an appeal decision where based on the judge's decision, there is an inconsistency in the application of the legal basis for Restitution, especially regarding the inclusion of imprisonment as a substitute for Restitution, where the Child Protection Law does not explicitly regulate substitute restitution if the convict is unable to pay, so that the inclusion of this provision in the decision does not have a clear normative legal basis. Thus, the inclusion of substitute restitution in this case demonstrates that the Panel of Judges has

carried out an expansion of interpretation that exceeds the authority of judicial policy, as it essentially creates a new norm that should be within the realm of lawmakers. As a result, this practice has the potential to create legal uncertainty, as well as open up space for disparities in decisions between courts, considering the absence of uniform normative standards in the regulation of substitute restitution.

On the other hand, the author also believes that the decision number 11/PID.SUS/2025/PT DPS should be like that and should be considered appropriate, especially when viewed from the perspective of the Principle of Fast, Simple, and Low-Cost Justice. The Principle of Fast, Simple, and Low-Cost Justice is a fundamental principle in the Indonesian justice system, which aims to ensure the implementation of an effective, efficient, and accessible judicial process for all levels of society. This principle is normatively regulated in Article 2, paragraph (4) of Law Number 48 of 2009 concerning Judicial Power, which emphasizes that justice is carried out quickly and at low cost. In relation to court decisions that include Restitution as a substitute punishment, the principle of fast, simple, and low-cost justice can be understood as the basis for judicial considerations to ensure that the right to Restitution is not only declarative, but also practical and executable.

By imposing the threat of substitute punishment, the court attempts to prevent the occurrence of a protracted legal process due to the convict's failure to fulfill his restitution obligations, which would ultimately burden the victim psychologically, in terms of time and costs. Thus, the goal of victim recovery can be achieved more quickly and efficiently. In addition to being viewed from the perspective of the judicial principles, Decision Number 11/PID.SUS/2025/PT DPS is also in line with the principle of the best interest of the Child as stipulated in Article 3 paragraph (1) of the Convention on the Rights of the Child, which emphasizes that in all actions taken by the government, society, legislative bodies, and judicial bodies, the best interests of the Child must be the primary consideration. This principle implies that every decision-making in cases involving children as victims must be oriented towards the protection, recovery, and future of the Child. Therefore, the inclusion of a substitute punishment mechanism for Restitution can be seen as a form of the judge's support for the real and sustainable fulfillment of the rights of child victims, not just a legal formality.

Based on the Institute for Criminal Justice Reform (ICJR), which is an independent research institute that focuses on criminal law reform, criminal justice system reform, and legal reform in general in Indonesia, it provides an official statement (coalition release) Crucial Notes Regarding PP 29/2025 concerning Assistance Funds for Victims of Sexual Violence Crimes (Tongat *et al.*, 2020). The ICJR views the ratification of Government Regulation No. 29 of 2025 concerning the

Assistance Fund for Victims of Sexual Violence as commendable, despite its ratification exceeding the specified deadline. To date, the Victim Assistance Fund, stipulated in Law No. 12 of 2022 concerning Sexual Violence, has not been implemented because implementing regulations for the Fund have not yet been issued. The ratification of the Government Regulation on the Victim Assistance Fund is an initial step by the State in supporting the implementation of the Fund and concretely upholding the advancement of the rights of victims of sexual violence.

4. CONCLUSION

In summary, it can be emphasized that both the Child Protection Law and the Law on Crimes of Sexual Violence still face normative and structural weaknesses in guaranteeing the fulfillment of the right to Restitution and recovery for child victims of sexual violence. The Child Protection Law has not been able to make Restitution an effective recovery instrument, so the criminal justice system still tends to be perpetrator-oriented, as reflected in Decision Number 47/Pid.Sus/2025/PN Nga, which shows a reduction in the amount of Restitution and the absence of a mechanism for coercive payment. On the other hand, although the Law on Crimes of Sexual Violence normatively presents a progressive and restorative paradigm for victim protection, its implementation is hampered by the absence and delays in implementing regulations, particularly regarding the Victim Assistance Fund. The enactment of Government Regulation Number 29 of 2025 provides an operational basis for state compensation; however, various substantial weaknesses and regulatory delays indicate that the victim recovery system is not yet effective, responsive, or sustainable. Therefore, without strengthening derivative regulations, clarity on the restitution execution mechanism, and a real state presence, the goal of protecting and recovering child victims of sexual violence is at risk of not being optimally achieved.

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