



# Implementation of Legal Protection for Child Victims of the Crime of Sexual Intercourse in terms of the Fulfillment of the Right to Restitution

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**Abstract:** The fulfillment of the right of restitution (compensation) for child victims of criminal acts is regulated in Article 71 letter d of Law Number 35 of 2014 concerning Child Protection. In order to make it easier for victims of criminal acts to get compensation without having to go through the usual civil lawsuit process, the state provides a way through merging cases of compensation claims to criminal cases regulated in Articles 98-101 of the Criminal Procedure Code. In fact, the fulfillment of the right of restitution as stated in the provisions has never been applied to children who are victims of the crime of sexual intercourse. Study this aim for analyze implementation protection law to child victim criminal intercourse reviewed from fulfillment right refund and find formulation draft protection expected law \_ capable give protection law through fulfillment right restitution in the future come . Study this use method study Juridical Normative, with approach laws and approaches case. Results of research this are: 1) Protection law in form fulfillment right victim restitution, especially in the Gorontalo District Court in practice not yet implemented with good. This thing because the victim does not know right in Article 98 of the Criminal Procedure Code, and the lack of Settings as well as authority apparatus enforcer law in determine amount loss of nature immaterial. 2) For realization fulfillment right optimal victim restitution, provisions about existing restitution \_ in law Witness and Victim Protection should pour in the Draft Criminal Procedure Code so that there are harmony Settings about procedure submissions and other provisions regarding restitution. The Draft Criminal Procedure Code must also load power force for defendant for pay change make a loss against victims' maximum protection law against the victim through fulfillment right the restitution.

**Keywords:** Juvenile Justice, Child Protection, Intercourse Crime, Restitution, Criminal Justice System

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## A. Introduction

Child is part from generation young as one source power the human who is potential and successor ambition struggle nation, which has role strategic and have features and characteristics special, require construction and protection in skeleton ensure growth and development physical, mental and social by whole, harmonious, and balanced.<sup>1</sup>

Protection to child is right basic must obtained child. Related with Thing In this case, Article 27 paragraph (1) of the 1945 Constitution stipulates that that every citizen at the same time his position in law and government and mandatory respect law and government that with no there is except. Statement from Chapter the show not there is difference position inside law and government for all citizen, fine women, men, adults and children in get protection law. Problem protection law to child, no just problem right basic human, but larger again is problem enforcement law.<sup>2</sup>

Chapter 1 number 2 Law Number 35 Year 20 14 concerning Child Protection determines that:

*“Protection child is all activity for guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally fit with honor and dignity humanity, as well as get protection from violence and discrimination.”*

Activity protection child bring consequence law, ok in relation with law written nor no written. Law is guarantee for activity protection child. Arif Gosita put forward that certainty law need strive for survival activity protection children and prevent the deviation that brings negative consequences that are not wanted in implementation protection child.<sup>3</sup>

Considering the facts, in the jurisdiction there are many Gorontalo District Courts found cases violence and sexual crimes against children. Based on data that has been obtained author on 2017 recorded there is 20 case intercourse to child, year 2018 8 there is 4 cases, in 2019 there were 5 cases, in 2020 4 cases, and in 2021 there were 2 cases of the same.

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<sup>1</sup> Maidin Gultom, *Legal Protection of Children in the Child Criminal Justice System in Indonesia* (Bandung: Refika Aditama, 2006). 4

<sup>2</sup> Maidin Gultom, *Legal Protection of Children and Women* (Bandung: Refika Aditama, 2012). 13

<sup>3</sup> Gultom, *Legal Protection of Children in the Child Criminal Justice System in Indonesia* . 33

Crimes of decency in general are acts or actions that violate decency that intentionally damage decency and are not at the will of the victim, namely by coercion and through threats of violence. Actions that can be categorized as actions that can violate decency are intercourse. As in the opinion of Abdul Wahid and Muhammad Irfan explaining that the problem of sexual violence (copulation is a form of crime that harasses and tarnishes human dignity, and should be categorized as a type of crime against *humanity* or decency.<sup>4</sup>

In the opinion of Dewantara Agung Nanda, he said that at the stage of examining victims of crimes such as victims of sexual intercourse or rape, they did not pay attention to the victims' human rights. Meanwhile, at the stage of imposing the judge's decision, the victim was again disappointed because the verdict handed down on the perpetrator was quite light or far from paying attention to the rights of the child.<sup>5</sup>

According to R. Soesilo that acts of sexual intercourse are all acts that violate decency (politeness) or vile actions, all of which are in the environment of sexual lust, for example kissing, groping the genitals, groping the breasts, and so on. In general, the victims in this case of sexual intercourse are children. It is appropriate for law enforcement officers to provide legal protection to victims such as restitution as well as retribution and compensation to victims of human rights violations such as victims of sexual abuse so that legal processes do not overlap but create a just law.<sup>6</sup>

In addition to the victim must also suffer by psychic , traumatized, got a label from Public as woman who has no holy , he is also burdened with cost nurse the content until childbirth, then possibility cost for raise child , and maintenance his health permanent Becomes the responsibility so that the importance Settings criminal in the form of gift restitution in something regulation legislation in order to have nature imperative or force (must) for perpetrator for permanent responsible on his deed to the victim as the aggrieved party , isn't it ? only as citizens who violate something rule certain. Then, already should replace make a loss upgraded status as criminal

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<sup>4</sup> Abdul Wahid. Muhammad Irfan, *Protection of Victims of Sexual Violence (Advocacy for Women's Human Rights)* (Bandung: Refika Aditama, 2001). 2

<sup>5</sup> Andre Gunawan and Ridwan Ridwan, "Legal Protection Against Children Victims of Forced Sexual Intercourse Perpetrated by Children (Case Study: Decision Number 13/Pid.Sus-Anak/2019/ PN.Srg) " *Yustisia Tirtayasa: Journal of Final Project* 1, no. 2 (November 22, 2021): 14–23, <https://doi.org/10.51825/yta.v1i2.11966>. page 17

<sup>6</sup> Gunawan and Ridwan.

additional (adjacent with criminal basically) with thereby protection against the victim in a deeper sense large could accommodated.<sup>7</sup>

Furthermore, the restitution to child victim criminal sexual now has set in Article 71D of the Law Number 35 of 2014 concerning Changes to the Law Number 23 of 2002 concerning Child Protection, namely:

- (1) Every child who becomes a victim as meant in Article 59 paragraph (2) letter b, letter d, letter f, letter h, letter i, and the letter j is entitled submit to court in the form of right on restitution that becomes not quite enough answer perpetrator crime.*
- (2) Provision more carry on about implementation restitution as referred to in paragraph (1) is regulated with Regulation Government.*

Everyone who experiences loss caused something act criminal, for get right restitution and for make it easier for the person, the state provides Street for get change loss without must through the lawsuit civil normal, but with through merging case lawsuit change loss to case regulated crime in Article 98 of the Book of the Criminal Code ( KUHAP ), namely:

- (1) If an act that forms the basis of an indictment in an examination of a criminal case by a district court causes harm to another person, then the presiding judge of the trial at the request of that person may decide to combine the lawsuit for compensation in the criminal case.*
- (2) The request as referred to in paragraph (1) can only be submitted no later than before the public prosecutor files a criminal charge. In the event that the public prosecutor is not present, the request is submitted no later than the judge renders a decision.*

Furthermore, the country is increasingly given room for victims of crime criminal for get right get change make a loss with more reach \_ large with Secrete Constitution Number 13 of 2006 concerning Protection of later Witnesses and Victims replaced with Constitution Number 31 of 2014 concerning Change on Constitution Number 13 of 2006 concerning Protection of Witnesses and Victims. The same is also arranged in Article 7 letter a of

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<sup>7</sup> Barda Nawawi, *Problems with Law Enforcement and Criminal Law Policy in Crime Prevention* (Jakarta: Kencana Prenada Media Group, 2007). 64

the Law Number 31 of 2014 concerning Protection of Witnesses and Victims, namely:

- (1) Victims of criminal acts are entitled to Restitution in the form of:
  - a. compensation for loss of property or income;
  - b. compensation caused by suffering directly related as a result of a criminal act; and/or
  - c. reimbursement of medical and/or psychological treatment costs.*
- (2) The criminal act as referred to in paragraph (1) is determined by the Decree of the Witness and Victim Protection Agency (LPSK).*
- (3) The submission of a request for restitution can be made before or after a court decision that has obtained permanent legal force through LPSK.*
- (4) In the event that the application for restitution is submitted before a court decision that has obtained permanent legal force, LPSK may apply for restitution to the public prosecutor to be included in its claim.*
- (5) In the event that the application for restitution is submitted after a court decision has obtained permanent legal force, LPSK may apply for restitution to the court for a determination.*
- (6) In the event that the victim of a crime dies, restitution is given to the victim's family who are the heirs of the victim.*

Provision more carry on about implementation gift restitution against the victim is also arranged in Article 20 Regulation Government Number 44 of 2008 concerning Giving Compensation, Restitution and Assistance to Witnesses and Victims that:

- (1) Victims of crime have the right to receive restitution.*
- (2) The application to obtain Restitution as referred to in paragraph (1) shall be submitted by the Victim, Family, or their proxies with a special power of attorney.*
- (3) (2) The application to obtain Restitution as referred to in paragraph (2) shall be submitted in writing in Indonesian on paper with sufficient stamp duty to the court through LPSK.*

However, it turns out many problem happened in implementation provision change make a loss for victims of crime crime, in particular act criminal intercourse to child, well arranged in the Criminal Procedure Code and in Constitution Protection of Witnesses and Victims. As previously

explained, in terms of protection for victims, especially victims' rights to obtain restitution from perpetrators of criminal acts, the Criminal Procedure Code has provided a mechanism for combining claims for compensation in Articles 98-101. In reality, things this seldom very applied even almost no once because constrained in Thing role apparatus enforcer law In this case, the Public Prosecutor (JPU) still not yet maximum in realize or help victims to know and use right restitution with at best.

This thing proven from amount things that have powerful law still the author gets it at the Gorontalo District Court, for all case act criminal intercourse to child from year 2 017 until year 2021 no there is things done \_ merging lawsuit change loss (claim) right restitution). This means Article 98-101 of the Criminal Procedure Code regarding merging lawsuit change loss not optimally utilized by the victim. If still many people who haven't know will right restitution that, of course role apparatus enforcer law (JPU) as representative from the victim in the judicial process criminal law is urgently needed so that the rights of victims of crime criminal could fulfilled with good.

Apart from that, replace the loss that was given turned out to be only loss of nature material. Judge 's decision only limited about decisive acceptance replacement costs that have been issued by the aggrieved party. This is means big change loss just as big as amount loss real or loss material course, outside loss real, like loss that is immaterial, no could submitted in merging case. Compensation of a nature immaterial only could submitted with procedure lawsuit civil proceedings convoluted.

Same thing with provision about existing restitution in Law Number 31 of 2014 concerning Protection of Witnesses and Victims. If observed with carefully terms about restitution this still contain amount problem. Law No. 31 of 2014 indeed already accommodate a number of provisions about mechanism restitution for victims of crime the previous crime set in Government Regulation No. 44 of 2008 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims so that could could said that now provision the parallel with the Criminal Procedure Code. With So, officers enforcer law now could use mechanism arranged refund in Law No. 31 of 2014 that reach restitution more many than the Criminal Procedure Code because provision mechanism restitution the now have strength as when set in the Criminal Procedure Code. With so form change the loss that will obtained by the victim will covers loss material and immaterial in accordance Article 7A paragraph (1) of the Law Number 31 of 2014 concerning Protection of Witnesses and Victims.

However, in Constitution there is a provision new one actually limit right restitution for victims of crime criminal law . Article 7A paragraph (2) states that: that act criminal as meant in paragraph (1) is set with LPSK Decision. this means right get restitution no could apply for all victims of crime criminal rights the only apply for victims of crime criminal certain that the stipulation is not clear because only declared "set" by LPSK's decision". In section explanation, verse this declared enough clear, though no there is clarity about paragraph this remember not there is provision like that in Law no. 13 of 2006 and PP No. 44 of 2008. In terms of even the submission, through Constitution this the process too complicated and consuming long time. That thing precisely compared to backwards with destination establishment of LPSK for protect witnesses and victims' crime in Indonesia. More carry on could said that Thing the of course is setback for effort protection for victims of crime criminal.

From both rule the above also not arrange about power force for perpetrator act criminal for Fulfill not quite enough the answer against the victim. So, no there is meaningful sanctions if perpetrator no Fulfill right victim restitution as has been decided by the judge in the trial process.

Existence exact setting limiting the victim crime , in particular child victim criminal intercourse to get right on restitution , of course will more good for victims of crime criminal when the officers enforcer law use mechanism arranged refund in the Criminal Procedure Code because all victims of crime criminal could get same opportunity \_ for get right on restitution . However, future rights will obtain of the process only a little compared if sued \_ based on Constitution Number 31 of 2014 concerning Protection of Witnesses and Victims. For that need existence harmony Among second regulation so that the rights restitution for crime victim's criminal sexual violence (intercourse). This is means that child below age could be channeled with good to use achievement protection optimal law against child that.

Based on the foregoing, it can be formulated the problem, namely (1) How? implementation protection law to child victim criminal intercourse reviewed from aspect fulfillment right restitution and (2) How formulation draft protection expected law capable give protection to child victim criminal intercourse in the context of fulfillment right restitution in the future.

## B. Method

This type of research is research Juridical Normatively , to obtain the necessary data, the authors conducted research by taking the location at the Gorontalo District Court, because there were sufficient data needed for the preparation of this research. The approach used in this research is the *statute approach* and the *case approach* . The legal materials used are Primary legal materials, Secondary legal materials, and Tertiary legal materials. The data collection technique is done by interview direct against judges at the Gorontalo District Court , search library , reading various related literature with study this as well as browsing sites on the internet for looking for related data with research that will done . Based on nature study this one uses method study character prescriptive analysis, analysis of the data used is approach qualitative to primary data and secondary data.

## C. Results and Discussion

### 1. Implementation Legal Protection for Child Victims Criminal Intercourse reviewed from Aspect Fulfillment Right restitution

#### a. Implementation Fulfillment Right Restitution in Victim Perspective Criminal Intercourse

Based on the concept of *parents patriae* , namely the state gives attention and protection to children as parents do to their children, the handling of children who are in conflict with the law must also be carried out in the best interests of the child and based on Pancasila values.<sup>8</sup>

The rise of criminal acts involving children, then a crime can be said as an act against the law as a result of not obeying what has been regulated in the law or regulations set by the government, the perpetrators of these crimes can be subject to sanctions as stipulated in the law. in it. Such legal conditions result in the protection and respect of human rights in Indonesia is still apprehensive which can be seen from various human rights violations, including in the form of acts of violence, discrimination, and arbitrariness.<sup>9</sup>

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<sup>8</sup> Ratna Pertiwi, "Rights for Restitution of Children Victims of Sexual Crimes," *Pancasila and Law Review* 1, no. 1 (September 10, 2020): 35–44, <https://doi.org/10.25041/plr.v1i1.2039>. page 37

<sup>9</sup> IR Sumirat, "Legal Protection of Women and Children Victims of the Crime of Human Trafficking," *Journal of Gender and Child Studies* 3, no. 1 (2016): 19–30, [https://scholar.google.co.id/citations?view\\_op=view\\_citation&hl=en&user=nV5JT34AAA-AJ&citation\\_for\\_view=nV5JT34AAAAJ:u5HHmVD\\_uO8C](https://scholar.google.co.id/citations?view_op=view_citation&hl=en&user=nV5JT34AAA-AJ&citation_for_view=nV5JT34AAAAJ:u5HHmVD_uO8C). page 20

The Criminal Procedure Code's attention to victims of crime is related to the acceleration of a series of activities in obtaining compensation experienced as a result of the suspect's actions through the merger of his criminal cases and compensation lawsuits which are basically civil cases. Compensation in the criminal realm is defined as an obligation imposed on people who have acted against the law and caused harm to others because of their mistakes. The complexity of the current legal problem certainly requires special attention from law enforcement officials, the government, and the community in an effort to enforce the law and overcome various criminal acts, including realizing justice and welfare for the community, especially for victims of crime. Protection of victims is not only limited to providing compensation /restitution but also to restoring children's rights to be able to grow and develop and to obtain their rights in the fields of education, social and culture.<sup>10</sup>

In connection with the submission of claims for compensation in Article 98-101 of the Criminal Procedure Code, the parties need to pay attention to the following matters: 1) Losses that must be inflicted by the crime itself; 2) Losses caused by criminal acts or other people who suffer losses (victims) as a direct result of the crime; 3) The claim for compensation resulting from the crime was addressed to "the perpetrator of the crime" (the defendant); 4) The claim for compensation submitted to the defendant was combined or examined and decided at the same time at the examination and decision of the criminal case charged against the defendant and in the form of a decision.<sup>11</sup>

In the process of submitting merging lawsuit change make a loss naturally need share from the victim's side alone. In accordance with the author 's information get that the Gorontalo District Court has not once there is none the thing that demands Restitution or change make a loss through Article 98 of the Criminal Procedure Code. This thing influenced by several sure thing results in Article 98 of this Criminal Procedure Code no utilized with best by the victim of the act criminal intercourse. For this reason, the author also interviewed several children who had been victims of the crime of

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<sup>10</sup> Gatra Yudha Pramana, "Claims for Compensation in Criminal Acts to Achieve Justice for Victims," *Ius Poenale* 1, no. 1 (2020): 39–50, <https://doi.org/https://doi.org/10.25041/ip.v1i1.2066>. Pg 41

<sup>11</sup> Rianda Prima Putri SH.,MH, "Implementation of the Examination of the Merger of Compensation Claims in Criminal Cases at the District Court Class 1B Bukittinggi," *Soumatara Law Review* 1, no. 1 (2018): 176–97, <https://doi.org/10.22216/soumlaw.v1i1.3348>. page 183

sexual intercourse, whose cases had permanent legal force from the Gorontalo District Court, with the following results:

1. K victim no utilise Article 98 of the Criminal Procedure Code for demand right restitution ( replace loss ) in particular in act criminal intercourse to child is because of the victim or party victim 's family knowing or no understand right those who exist in Article 98 of the Criminal Procedure Code. Besides the victim wants the case fast done and not protracted. one the most important reason is because the victim 's family considers if they drag on in solution case that, same just with open shame family. They feel shy and not want to open shame in advance general, as well as of the victim alone there is a sense of trauma and not want to remember return incident ever experienced it. There are also victims who don't want to demand right change make a loss because the victim wants existence not quite enough answer from perpetrator for marry and not want to remember return events.
2. K victim or the victim's family is reluctant to apply for compensation because they feel that the case at hand is a family disgrace that does not deserve to be known by many people due to the long trial process if they apply for compensation, so they want the case to be completed quickly. believe in the legal process itself, because in the end the results will they get no will in accordance with what is desired , and the no will can complete and return victim 's condition beginning so that they feel apathetic to provision that. Because the most important for they are perpetrator who did intercourse the get proper law on his deeds. And how method restore trust victim and repair life the child in question.

### ***b. Implementation Fulfillment Right Restitution Victim at Prosecution Stage***

In the practice of criminal justice in Indonesia, the interests of victims, which include losses and suffering for the crimes they have experienced, are often neglected. Victims of crime are placed only as evidence, namely only as witnesses, so that the possibility for victims to gain freedom in fighting for their rights is small. The interests of victims who have been represented by the Public Prosecutor, in an effort to prosecute perpetrators of criminal acts, have been considered as legal protection efforts for victims and the wider

community. In reality, however, the losses suffered by the victims are neglected.<sup>12</sup>

In the conventional criminal justice process, there is restitution or compensation for victims. Restitution is compensation given to the victim or his family by the perpetrator or a third party, it can be in the form of returning property, paying compensation for loss or suffering, or reimbursement of costs for certain actions. ) is an effort that the victim of a crime must be returned to its original condition before the crime occurred even though it is based on the fact that it is impossible for the victim to return to his original condition. This principle emphasizes that the form of recovery for victims must be as complete as possible and cover various aspects arising from the consequences of the crime. With restitution, the victim can be restored to his freedom, legal rights, social status, family life and citizenship, return to his place of residence, restore his job, and recover his assets.<sup>13</sup>

Based on the existing laws and regulations (Articles 98-101 of the Criminal Procedure Code) the victim is given the opportunity to submit a request for a merger of compensation claims to obtain the right of restitution through the Public Prosecutor. In this regard, the author interviewed a Child Prosecutor from the Gorontalo High Court, with the following results:

So far, there has never been a victim of a criminal act of sexual intercourse against a child who has submitted a request for a merger of claims for compensation at the prosecution stage using the provisions of Article 98 of the Criminal Procedure Code. This is based on several factors, namely:

- a) Never handle the application for merging a claim for compensation based on Article 98 of the Criminal Procedure Code because in general the public is still unfamiliar with the provisions of Article 98 of the Criminal Procedure Code. Even if anyone knows about this provision, then they know about it from legal advisors or lawyers who handle their cases. If there is no initiative or request from the victim to apply for compensation, then it will not be included in the claim. This will be processed if there is a request from the victim.
- b) Most of the victims were satisfied with the sentence imposed on the perpetrator without any request for compensation (restitution) through the provisions of Article 98 of the Criminal Procedure Code.

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<sup>12</sup> Josephin Mareta, "Implementation of Restorative Justice through Fulfillment of Restitution for Victims of Child Crime," *Indonesian Legislation Journal* 15, no. 4 (2018): 309–19. page 311

<sup>13</sup> Fauzy Marasabessy, "Restitution for Victims of Crime: An Offering New Mechanism," *Journal of Law & Development* 45, no. 1 (2015): 53–75, <https://doi.org/10.21143/jhp.vol45.no1.9>. page 55

- c) If there is a victim who files a lawsuit for compensation in accordance with the provisions of Article 98 of the Criminal Procedure Code, the Prosecutor will have difficulty determining the amount of loss suffered by the victim. Because losses that are immaterial in nature such as the loss of chastity, self-esteem, and the future are very difficult to be assessed in nominal terms.
- d) There is no regulation that specifically regulates the procedures for implementing Article 98 of the Criminal Procedure Code that relates to the legal rights and interests of victims of criminal acts. Law enforcement officers, especially prosecutors and judges, in practice still have difficulties in implementing these provisions.

Looking at some of the inhibiting factors above, in the author's opinion, the implementation of victim protection or the protection of the rights of children who are victims of the crime of sexual intercourse at this stage of the prosecution does not seem to be optimal either. Based on the reasons above, apart from the main case, it means that the Prosecutor will not act to merge the claim for compensation if the victim does not report the request to the Prosecutor. Victims of criminal acts must be active in fighting for the right to compensation independently, outside the agenda of the trial that examines and adjudicates criminal acts committed by the defendant. For this reason, the victim must first file a claim for compensation before the public prosecutor submits a criminal complaint to the court. With the victim's ignorance of their rights, this should require the sensitivity of the Public Prosecutor to communicate to the victim about their rights which can be pursued through incorporating claims for compensation without having to go through a civil prosecution process. Victims did not take the initiative to apply for compensation because they did not know about it.

Therefore, the Public Prosecutor should use the condition of the victim as one of the indicators in proposing this matter without waiting for the initiative of the victim himself. So that the prosecutor's demands in the main case submitted to the trial will automatically represent the interests of the victim himself by pouring a request for a merger of compensation claims in it and the victim will get the right of restitution without having to file a separate claim in civil court.

Based on the principle of criminal procedural law itself, namely the principle of fast, simple, and low-cost justice, law enforcement officials can carry out properly. So that the performance of law enforcement institutions can get a positive assessment in the eyes of the community, and it is hoped that they will be able to reduce the burden on victims and provide

opportunities for victims to recover their condition and carry out their activities as quickly as possible as usual.

### ***c. Implementation Fulfillment Right Restitution Victims at the Trial Stage***

Regarding cases of criminal acts of sexual violence, law enforcement officers focus not only on punishing the perpetrators of sexual crimes, but also keep in mind that victims have rights in the form of compensation (restitution) due to the crime of sexual violence. The community and all interested parties need to also pay attention to the rights of victims of sexual violence. Restitution given to victims of sexual violence crimes takes various forms, ranging from reimbursement of medical and psychological treatment costs, to assistance to victims of sexual violence in court.<sup>14</sup>

The terminology of compensation in the implementation of restitution will not be separated from the discussion of the function of the existence of compensation in the Criminal Procedure Code which is regulated in Article 98 paragraph (1), it is stated that if an act which is the basis for an indictment in an examination of a criminal case by a district court causes harm to a person. otherwise, the judge presiding over the trial at the request of that person may decide to combine the lawsuit for compensation to the criminal case. However, the arrangement in the Criminal Procedure Code still has several shortcomings regarding the filing procedure which is not simple because the application for compensation (restitution) can only be made through a claim for compensation combined with the main examination of the criminal case. In addition, in its implementation through this mechanism, it is imperative for victims who become criminal acts to be more active in dealing with law enforcement regarding the process of filing for material compensation, in which the public prosecutor accommodates the need for compensation rights before court. However, if an application for immaterial compensation is submitted by the victim, then the judge declares that the lawsuit is not accepted (*niet on valijeke*).<sup>15</sup>

Based on the data and information that the author got at the Gorontalo District Court, that so far or from the period 2017 to 2021 there were many

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<sup>14</sup> Maria Novita Apriyani, "Implementation of Restitution for Victims of Sexual Violence," *Legal Treatise*, vol. 17, 2021, <https://doi.org/https://doi.org/10.30872/risalah.v17i1.492>, page 5

<sup>15</sup> Misbahul Ilham Sapti Prihatmini, Fanny Tanuwijaya, Dina Tsalist Wildana, "Submission and Granting of Restitution Rights for Children Who Are Victims of Sexual Crimes," *RechtIdee* 14, no. 1 (2019): 108–26, <https://doi.org/https://doi.org/10.21107/ri.v14i1.4768>, page 120

cases of criminal acts of sexual intercourse against children who entered. However, of all the cases that came in, there was not a single victim who filed a lawsuit for compensation based on Article 98 of the Criminal Procedure Code. This was also confirmed by several judges at the Gorontalo District Court based on the results of the author's interview, with the results that:

So far, there has not been a single case that has filed a lawsuit for compensation, especially in cases of criminal acts of sexual intercourse with children. This happened due to the victim's ignorance of the existence of Article 98 of the Criminal Procedure Code. Once there was one victim who consulted about it, but the judge advised not to take steps to obtain compensation rights through Article 98 of the Criminal Procedure Code, but through civil channels or through the LPSK (Witness and Victim Protection Agency). Because later the judge will find it difficult to prove and determine the amount of loss suffered by the victim. In the provisions of the Criminal Procedure Code to determine the amount of loss there must be real evidence of the loss. Meanwhile, for victims of sexual intercourse, it is very difficult to determine the amount of the loss.

The thing that causes victims to be reluctant to apply for a combined claim for compensation through Article 98 of the Criminal Procedure Code, apart from their ignorance of these provisions, victims also feel ashamed because the case they are experiencing is a family disgrace that does not need to be known by many people and through protracted case resolution. -late. In addition, for follow-up on the responsibility of the perpetrator for the fulfillment of the right of restitution to the victim, there will be obstacles, namely because not all perpetrators of criminal acts are able to pay restitution to the victim. On average, perpetrators of sexual crimes, especially sexual intercourse with children, are people who are classified as financially underprivileged.

When the case process (sexual intercourse with a child) starts from investigators, public prosecutors and judges, investigators can actually direct victims to use their rights to obtain restitution by preparing everything needed to prove that the victim has indeed suffered losses due to the perpetrator's actions. For example, as a result of this action the victim is no longer in school, his future is unclear, prolonged trauma, and the excessive fear he experiences. This can be used as a benchmark for calculating the losses suffered by victims. However, this of course requires a special rule that can support investigators in obtaining the authority or right to do so.

Another alternative that can be taken by the victim to obtain the right of restitution is through LPSK. In the structure of the LPSK, they have a

special team to measure the value of the loss suffered by the victim, which will then be submitted to the Court for examination by the judge, both before the main case is decided, or after the main case is decided. This can also be used by Investigators to cooperate with LPSK in assisting victims in determining the amount of losses they have suffered, especially losses of an immaterial nature. But for now, LPSK not all regions in Indonesia have branches in every region. So like it or not, the victim must use Article 98 of the Criminal Procedure Code to claim compensation, or take the civil route so that the value of compensation that can be obtained can be material or immaterial.

To further maximize legal protection for victims (children) of the crime of sexual intercourse, the regulation regarding the right of restitution for victims should start from the investigation stage. Because the investigator is the party who best knows the ins and outs of a case that is currently in the process of being investigated. So it is they who should facilitate victims to be able to exercise their rights in obtaining restitution. Because if the case has gone to court, the judge only knows to accept, examine and hear the case. Therefore, investigators should be authorized by law for this purpose, and conduct socialization to the public about their rights to obtain restitution rights. So that the public will know and understand their rights and make the best use of the provisions in Article 98 of the Criminal Procedure Code.

## **2. Policy Formulation of Legal Protection for Child Victims of the Crime of Sexual Intercourse through Fulfillment of the Right to Restitution in the Future**

In the further context, the victim protection in such crime, thing must first notice that is essence loss suffered by the victim. Essence loss the not only is material or suffering physique just but also psychological. This thing in form of "trauma of loss "*trust to society and order general*". Symptoms from syndrome the could in the form of anxiety, suspicion, cynicism, depression, loneliness and behavior avoidance other.<sup>16</sup>

Article 98 of the Criminal Procedure Code states that: if something the act that becomes base indictment inside \_ something inspection case criminal offense in a district court that gives rise to loss for others, then the presiding judge hearing on that person 's request could set for combine case lawsuit change make a loss to case criminal. From the formula Article 98 of the

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<sup>16</sup> Muladi, *Human Rights, Politics and the Criminal Justice System* (Semarang: Diponegoro University Publishing Agency, 2002). page 177

Criminal Procedure Code can be listened to the meaning that for got it merging case this required three requirements, namely:

1. There is an action defendant.
2. There is an action defendant as condition first the must cause loss for others.
3. There are requests and parties who feel harmed to Court for combine case change the loss.<sup>17</sup>

For this reason, the processes and procedures of the regulatory substance are considered to contain weaknesses. Regarding these weaknesses, R. Soepomo argues as follows:

- a. The merger system is felt to have not approached the nature of the purpose of the compensation itself;
- b. Claims for compensation by other people who suffer direct losses or the victim's party to obtain the amount of compensation are limited only to material losses that are clearly incurred by the person who is directly harmed. So, KUHAP in its provisions limits rights;
- c. For *non-material losses*, namely *immaterial losses*, they are forced to file again with a separate ordinary civil lawsuit, which may take a long time;
- d. Conditions like this mean to waste the original intent of the merger itself, which aims to simplify the process;
- e. There are obstacles in the implementation of the problem of paying the compensation;
- f. *immaterial* compensation, the result will be nil, because the decision always states that the claim for *immaterial* compensation is declared unacceptable, because it is not based on law;
- g. The Panel of Judges must be careful, because it always separates between financial and *immaterial* losses , so that it is not efficient;
- h. Claims for compensation in criminal cases are only *assessors* , and
- i. In every civil decision, the victim/plaintiff in the amalgamation of the compensation case always relies on the defendant or the Public Prosecutor, if they want to appeal, thus eliminating their right to appeal as a legal remedy.<sup>18</sup>

Based on the explanation that the author has described previously, seeing the existence of one of the provisions in the Law on the Protection of

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<sup>17</sup> Waluyo & Haryo Sulistyantoro, "Merging Lawsuits for Compensation Against the Criminal Code," *Liga Hukum* 1, no. 2 (2009): 76–84, [http://eprints.upnjatim.ac.id/3276/1/2\\_-\\_Waluyo\\_dan\\_Haryo.pdf](http://eprints.upnjatim.ac.id/3276/1/2_-_Waluyo_dan_Haryo.pdf). page 78

<sup>18</sup> Putri SH.,MH, "Implementation of the Examination of the Merger of Compensation Claims in Criminal Cases at the Class 1B Bukittinggi District Court." page 184

Witnesses and Victims which actually limits the rights of the victims themselves. The right of restitution that should be given to the victim for all types of criminal acts as contained in the Criminal Procedure Code, in this law the right of restitution is limited only to certain types of criminal acts which still have to be determined again by the LPSK. So it will be very difficult to harmonize the regulations regarding requests for restitution according to the Witness and Victim Protection Act with the regulations regarding the incorporation of compensation claims in the Criminal Procedure Code. This is because the range of mechanisms offered by the Criminal Procedure Code is very broad, because it is not limited to victims of certain crimes, but to victims of all types of crimes. So of course its application will be preferred by victims and law enforcement officers.

According to the author, rather than harmonizing the two regulations, it would be better if the provisions regarding restitution contained in the Witness and Victim Protection Law were set out in the Criminal Procedure Code Bill. K arena as law formally , the Criminal Procedure Code becomes guidelines and references main chosen by the apparatus enforcer law in doing his job compared to provisions that exist outside the Criminal Procedure Code. Beside that, with the inclusion of restitution in the Law on the Protection of Witnesses and Victims in the Draft Criminal Procedure Code, then provision about restitution will more large scope and space scope, no limited to action criminal certain course. If provision about restitution for victims of crime criminal only set in the Criminal Procedure Code, then will there is similarity of mechanism to implementation by the authority's enforcer law.

In order to maximize the aspect of fulfilling restitution for victims, the Draft Criminal Procedure Code must include provisions regarding coercion for perpetrators of criminal acts to pay compensation to victims of criminal acts (criminal acts of sexual intercourse). If this is not regulated in the Criminal Procedure Code, then if the perpetrator is unable or has no good faith to pay restitution to the victim, this will not have legal consequences and will not have significant sanctions for the perpetrator. However, on the one hand, this will prevent victims from obtaining their right of restitution. Therefore, the Criminal Procedure Code needs to adopt provisions regarding coercion for perpetrators to pay restitution from a special law.

In addition to adopting the provisions of Law Number 21 of 2007, in the event that the perpetrator is unable to pay restitution to the victim, the Criminal Procedure Code can also optimize the provisions regarding compensation in Government Regulation Number 44 of 2008. Where it is

stated that compensation here is compensation given by the state because the perpetrator is unable to provide full compensation for which he is responsible. So in this case the state will take over the responsibility of the perpetrator if the perpetrator is truly unable to pay for the rights of the victim.

This thing needed so that the new KUHAP could be equipped with the rule's victim protection, in particular about restitution, which has not been set in Constitution Number 8 of 1981 concerning the Criminal Procedure Code. With thereby changes to the Criminal Procedure Code in Thing restitution could seen with clear from arrangement formulas Articles which detailed and operational, which can be applied in criminal procedure law in aspect victim protection, start from Step investigation, prosecution, up to decision or judge's determination.

#### **D. Conclusion**

The implementation of legal protection for victims of the crime of sexual intercourse through the fulfillment of the right of restitution, in practice has not been realized properly. This is evidenced by the absence of a single case that has been submitted to the Gorontalo District Court, yet there have been no victims who have applied for compensation through the incorporation of compensation claims in Article 98 of the Criminal Procedure Code, especially in cases of criminal acts of sexual intercourse with children. The formulation of the concept of legal protection for child victims of the crime of sexual intercourse is to include all provisions regarding restitution in Law Number 31 of 2014 concerning Protection of Witnesses and Victims into the Draft Criminal Procedure Code. Because the provisions regarding restitution in the Criminal Procedure Code are still limited. And if the provisions regarding restitution in the Witness and Victim Protection Act are included in the Criminal Procedure Code, the rules regarding restitution will be fully covered in the Criminal Procedure Code.

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## **H. Reference**

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### **Laws and Regulations**

Republic of Indonesia. *Criminal Code (KUHP)*

Republic of Indonesia. Criminal Procedure Code (KUHAP)

Republic of Indonesia. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System

Republic of Indonesia. Law Number 35 of 2014 concerning Child Protection

Republic of Indonesia. Law Number 31 of 2014 concerning Witness and Victim Protection

Republic of Indonesia. Regulation Government Number 44 of 2008 concerning Giving Compensation, Restitution and Assistance to Witnesses and Victims.

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