

# Juridicial Review of Restitution For Children Impacted by Criminal Act Based on: Government Regulation Number 43 Of 2017 Concerning the Implementation of Restitution For Children to Become Criminal Victims

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## ABSTRACT

The issue of criminal crime because the times are increasingly rife. This raises a priority for the people and also the government, especially criminal crimes against Children or Minors. Deficiencies of the Law governing penalties for the perpetrators of those crimes, the government made efforts to issue regulations or laws that are expected to cut back crime from these crimes, namely Government Regulations of the Republic of Indonesia Number 43 of 2017 which regulates the rights for a restitution of child victims of a criminal offense within the sort of compensation for rights within the style of money or materially because of the responsibility of the perpetrators of the crime. The results of the study showed that the government regulations have provided regulations on the rights of child victims of crime, the procedure for filing restitution, and therefore the procedure for granting restitution to children who were victims of criminal acts or their heirs. There is a deficiency of this regulation that has to be improved, namely regarding criminal liability of perpetrators or criminal imposition of restitution that cannot be paid, if there are alternative regulations for perpetrators / defendants / convicts unable to require responsibility for implementing court decisions that have permanent legal force regarding the implementation of restitution. And it's expected that within the future, a restitution rule is made within the matter of the law in the order that its position as a law is stronger. namely regarding criminal liability of perpetrators or criminal imposition of restitution that cannot be paid, if there are alternative regulations for perpetrators / defendants / convicts unable to require responsibility for implementing court decisions that have permanent legal force regarding the implementation of restitution. And it's expected that within the future, a restitution rule is made within the matter of the law in the order that its position as a law is stronger. namely regarding criminal liability of perpetrators or criminal imposition of restitution that cannot be paid, if there are alternative regulations for perpetrators / defendants / convicts unable to require responsibility for implementing court decisions that have permanent legal force regarding the implementation of restitution. And it's expected that within the future, a restitution rule is made within the matter of the law in the order that its position as a law is stronger.

**Keywords:** *Restitution, Compensation, Children or Minor, Criminal Act or Criminal Offense*

## 1. INTRODUCTION

### 1.1. Background

Indonesia is a country ruled by law, regulated in Article 1 (3) of the Constitution of the Republic of Indonesia in 1945, which can be interpreted as all aspects of Indonesian society or all aspects of life based on the rule of law and subject to its jurisdiction (Rechtsstaat).<sup>1</sup> Like a country governed by law, Indonesia must be based on a law marked by justice and decisiveness, and must not discriminate against each other. Company law is a law that is truly true and implemented properly in accordance with the provisions

of the decree, which is actually democratic. To achieve justice with the law means to achieve the law of justice.

High priority and support is needed to fulfill certain interests, including the interests of the authorities, people and groups. The law is a set of specific statements containing rules for achieving community life from children to parents to the lifestyle of the country's community, and to have a strong nature by imposing sanctions on lawbreakers.<sup>2</sup>

Children and future generations who are heirs to the ideals of the state must be protected and entitled to protection of criminal behavior. To be protected,

<sup>1</sup>Indonesia, the 1945 Constitution concerning the rule of law, Article 1 paragraph (3)

<sup>2</sup> Mochtar Kusumaatmadja and Arief Sidharta, Introduction to Legal Studies, (Bandung: PT. Alumni, 2009) p. 4

according to every child defended, children can easily become victims of criminal violations because they are part of human rights and therefore human dignity and rights.

Such protection is real, but the vulnerability of children makes it easier for children committed by various social groups in the world to commit crime. The types of crimes committed by children include child trafficking, pornography, murder, and physical and sexual violence against children. Children are a group that is easily classified as victims of crime.<sup>3</sup>

More and more such cases have attracted the attention of the government, so it is necessary to treat them as serious cases. The increase in criminal cases against children caused by various reports is caused by various problems, such as an unstable economy that leads to abnormal thinking, which reflects the problem of bad social environment, internal and external conflicts, and legal concerns.<sup>4</sup>

The results of these factors and the increasing number of cases against children have pushed the government to achieve individual protection, especially children, and thus formulate child protection regulations. Protecting children is an effort to achieve asylum and justice in the community, and to make it easier for children to live in society and the country.

Law Number 35 Year 2014 concerning Amendments to Law Number 23 Year 2002 concerning Child Protection has provided rules that pay attention to the Protection of children who break the law, especially victims of children, children who have been exploited economically, children children who are victims of pornography, children who have been abducted, sold and / or trafficked, children who have experienced physical and / or psychological abuse and those who have suffered sexual violations. The offender's child or child due to a crime, or the victim loses in the form of compensation from the offender or the offender's parents.

Until now, children's crimes have suffered many losses, especially material losses, which can be calculated, but the most influential is intangible, that is, it cannot be calculated, because it will affect psychological and psychological stigma and loss of self esteem. , Reputation and anxiety. Excessive and traumatic symptoms. The results of this loss must be borne by criminals in the form of compensation, at the expense of the suffering suffered by the child victims of crime.

These laws and regulations regulate the protection of victims of child crime, in October 2017 the

government issued Government Regulation No. 43 of 2017, which involved the implementation of restitution for children who were victims of crime. Refunds are based on permanent decisions made by permanent judges on crime victims, which can cause significant and / or insubstantial losses, and provide restitution to victims of crime.

After the promulgation of government regulations, there is a legal vacuum or lack of legal certainty. Regulations do not achieve the desired effect. If the offender does not pay attention, the regulations in "Government Regulation" have no other law enforcement efforts or actions. For example, expected work is an attempt to confiscate assets based on the amount of damage suffered by the victim or compensation mechanism. Compensation or relevant compensation mechanism is Government Regulation No. 44/2008 concerning Provision of Compensation, Restitution and Assistance to Witnesses and Victims. According to government regulations, victims receive compensation in the form of compensation. However, this compensation only applies to victims of serious human rights violations (Government Regulation Number 44 of 2008, Article 2 (1)).

## *1.2. Formulation of the problem*

1. How is the restitution of the perpetrators of the crime in accordance with Government Regulation No. 43 of 2017 and the form of legal protection against children?
2. What is the responsibility of the perpetrators for dropping the restitution of child victims of a criminal offense decided by a judge of permanent legal force?

## *1.3. Research methods*

### *1. Types of research*

Research in this article is normative or theoretical legal research. Quoting from Peter Mahmud Marzuki's book, the definition of legal research is as follows:

Literature research is a study that provides a systematic statement of the rule of law, which regulates certain categories of legal aspects and analyzes the relationship between regulations and existing library resources.

### *2. Nature of Research*

The nature of this research is descriptive, because this research is a description or legal description of facts,

<sup>3</sup>) Nashriana, *Criminal Law Protection for Children in Indonesia*, (Jakarta: Raja Grafindo Persada, Jakarta, 2011), p. 13

<sup>4</sup>) Arif Gosita, *The Problem of Criminal Victims*, (Jakarta: CV Academics Pressindo, 1993), p. 14

which applies to facts at a certain time and place, or to overcome legal problems in society. In this case, the author tries to explain the picture and the problems related to returns specified in Government Regulation Number 43 of 2017.

### 3. Data Type

In the study there are several types of data obtained, can be obtained directly from the community and from library materials and legislation are primary data, while those obtained from other materials are secondary data related to the issues to be discussed. Sources of data in this study were taken based on primary data sources and secondary data.

- a. Primary legal material, which is legal material related to this research, is binding with the laws. The primary legal materials include: the Criminal Code (KUHP); Government Regulation Number 43 of 2017 concerning Implementation of Restitution for Children, Act Number 35 of 2014 concerning Child Protection Act Number 11 of 2012 concerning the Child Criminal Justice System, Government Regulation Number 44 of 2008 concerning Provision of Compensation, Restitution and Assistance to Witnesses and Victims, Law Number 39 Year 1999 concerning Human Rights (HAM).
- b. Secondary Legal Materials, Secondary legal materials are related legal materials or documents, which provide an explanation of the main legal materials that describe research, such as books, articles, journals, literature, and the work of legal experts.
- c. The third type of legal material, namely tertiary, legal material which provides an explanation of the first type of legal material, and the second type of legal material, including documents, dictionaries, the internet, and newspapers.

### 4. Data collection technique

In data collection techniques, the author uses various techniques to conduct this research, namely, literary research by reading, quoting data from books and regulations, and classifying data related to the subject. Literature research is done by analyzing and reviewing institutional and official literature related to research questions. And the authors conducted interviews with various informants to meet the factual data that was accompanied by a variety of questions.

### 5. Data analysis

In normative research, there are several approaches used in legal writing, namely as follows:

- a. Statutory or statutory approach
- b. Historical approach
- c. Conceptual approach
- d. Case approach

Through the various methods listed above, the author decides to use the legal method (statute approach) and the conceptual method (conceptual approach).

Implement the law by analyzing and reviewing laws and other regulations relating to the problem being investigated and legal cases. Reflect the practical and academic use of normative methods in research methods. The conceptual approach is based on ideas and doctrines developed in law.

## 2. DISCUSSION

### 2.1. Restitution of Criminal Actors in Accordance with Government Regulation No. 43 of 2017 and the Form of Legal Protection Against Children

Reviewing Law Number 35 Year 2014 Article 71 D This includes that every child injured by a criminal offense has the right to sue in court in the form of the right to compensation, which is the responsibility of the perpetrator. Further regulations regarding restitution are regulated by government regulations. Right on October 17, 2017, the government issued "Government Regulation Number 43 of 2017", which involves the recovery of children who are victims of crime. Children are people who are not yet 18 (eighteen) years old, including children who are still in the womb. Article 2 (1) states that every child injured by a criminal offense is entitled to get compensation. In this case, "refund" is compensation received from the perpetrator in accordance with a court decision, which has a permanent legal effect on the significant and / or insignificant loss suffered by the victim or his heir.

Crime victims mentioned in Article 2 (2) above include: Children who break the law, children who are economically and / or sexually exploited, children who are victims of pornography, children who are abducted , human trafficking and / or trafficking in children, children who suffer physical violence and / or children who are victims of sexual crimes.

Crime or criminal behavior, or more commonly referred to as crime, means criminal behavior that is prohibited and threatened by those who are capable and responsible for law violations relating to error. In this case, prohibited and threatened acts and criminal acts of sexual abuse or rape of children are included in victims who have the right to be returned by adults. The author takes the example of a child victim of a criminal offense who experienced sexual violence or a victim of sexual intercourse where the victim is still a minor or can be called a child under the age of 18 in accordance with the provisions of Law Number 35 Year 2014 Article 1 paragraph 1 wherein said child is a person or

individual who is not yet 18 years old including a child who is still in the womb.

Child victims in this study, according to the authors, can be categorized as innocent victims, which are victims that tend to occur in children and they do not realize or do not have the mindset when they are victims. Therefore, in terms of responsibility, it must be with the victim and / or perpetrator. An example is that minors date until obscene behavior occurs, which consciously and according to preference does have bad intentions so that committing these criminal acts against children who are deemed not to have the power to fight offenders makes it easy for the perpetrators to commit the crime.

The act of intercourse includes other acts such as physical violence, economic exploitation, sexual abuse, pornography with children including criminal offenses according to the provisions stipulated in article 71D of Law Number 35 of 2014 and also see article 2 of Government Regulation Number 43 of 2017 which may harming child victims in economic as well as psychological and child health aspects. From this act the victim is entitled to get restitution and can apply for restitution to the perpetrators through the witness and victim protection agency or can be referred to as LPSK in accordance with article 5 paragraph 3 of Government Regulation Number 43 of 2017. Every child victim who experiences these things is entitled to get and get Restitution.

Human Rights, abbreviated to Human Rights, is the result of the development of a theory called Legal Protection and the adoption of this theory from the 19th abab. The proposed concept is to review legal protection based on the recognition and protection of human rights based on the limited existence and distribution of community obligations and government, the proposed concept is the protection of human rights law based on recognition and protection, including Reviews. And determine the level of community and government obligations.<sup>5</sup>

Being called a guardian gate that provides security for people who have been harmed by other people from the human rights in other words human rights and security as well as the protection given to

the community in essence to fight for and enjoy the rights that are subscribed by law or as a legal endeavor given to law enforcement officials to guarantee physical and mental security from various threats from the crime. This was concluded as a form of Legal Protection.<sup>6</sup>

Sampling of Salmond by Fitzgerald protects the law that unifying and harmonizing as the goal of the law for various interests in society because in a later cross-interest, the protection of certain interests is carried out with the border of various interests of various parties. The interests of various regulated and protected human beings are required by law which will be the highest authority in determining these interests is the legal interest. The entire convention of the people is part of the protection of the law, given by the provisions and legal regulations seen from the agreement of the community, with an important goal that is regulating between individuals in the community and the government which is considered as a representative of the community.<sup>7</sup>

Furthermore, a statement from Phillipus M. Hadjon, the deterrence or preventive and repressive action of a government is considered to be the government's action in promoting legal protection.<sup>8</sup>

The preventive nature of directing towards the opponent of the dispute, making it as a reference for the government in picking decisions including discretion and protection repressively directs a protection to the judiciary so that it is in conflict with the dispute. Law is the embodiment and function of a project that is projecting and antipative and flexible with a highly adaptive position.<sup>9</sup>

Understanding that can result in a legal protection as an illustration of the activities, performance and functionality of the law aims at the law that is realized. Justice, expediency, and legal certainty are the protection provided by legal protection to legal subjects according to the rule of law, consisting of their preventive and repressive nature and adapting to written and unwritten regulations.

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<sup>5</sup> Luthvi Febryka Nola, "Integrated Legal Protection Efforts for Indonesian Workers", found in [journal.dpr.go.id> index.php](http://journal.dpr.go.id/index.php) (state journal of law vol.7 no.1 \_Rev\_3\_27\_Juli\_2016.3.3), accessed on March 27, 2020

<sup>6</sup> Satjipto Rahardjo, Administration of Justice in a Changing Society, Journal of Legal Issues 1993.

<sup>7</sup>Satjipto Raharjo, Legal Studies, (Bandung: PT. Citra Aditya Bakti, 2000), p. 53

<sup>8</sup>Philipus M. Hadjon, Protection for the People in Indonesia, PT. Bina Ilmu, Surabaya, 1987, p. 1-2

<sup>9</sup> Lili Rasjidi and IB Wya Putra, Law as a System, (Bandung: Teen Rusdakarya. 1993) p. 118.

Children are the next generation of the nation, the result of the strength of the love of husband and wife as a gift to create happy and prosperous peaceful household relations, is a hope to be a substitute for the previous generation to become more advanced and innovative.

Children need full love, the best guidance, and protection from their parents, which is in line with human rights regulations. If parents do not exist or cannot meet the child's needs and cannot fulfill their obligations and responsibilities to the child, the other party is the responsibility of the other party because of their own desires or legal provisions (such as adopting the child as a family member). If there are no other political parties, then children can be the responsibility of the state, because children are the country's potential, the germ of the country and the next generation. They have many strategic and more innovative roles in the future development of the country.

Regarding the legal protection of children or victims, it can be seen from two aspects that can be interpreted as legal protection for victims of crime (protection of individual legal rights), as well as losses suffered by victims of crime. Providing guarantees of protection. Therefore, it can be said that the form of collateral lost is compensation for material compensation and non-material compensation. In addition, the focus is on understanding the protection of the second victim, especially the legal protection of the victim's child.

Article 1 of the 1989 United Nations Convention on the Rights of Children states that children are humans or individuals who have not yet reached the age of 18 unless according to the Law that applies to children it is determined that the adult age is earlier or later. In connection with the Convention, Law Number 35 Year 2014 in article 1 number 1 also states that someone who is not yet 18 is still categorized as a child, including those who are still in the womb.

Children are included in the subject of law and have inherent human rights from birth or from the womb. The rights regulated in the Convention on the Rights of the Child in 1989 which have been ratified by Presidential Decree Number 36 of 1990 concerning Children's Rights, include:

- a. The right to protection from all matters of discrimination
- b. The right to national security or public order protection, or public health or morals.
- c. The right to obtain nationality, identity, and the right to know parents.
- d. Freedom of expression
- e. Freedom to express opinions

- f. Freedom to think
- g. The right to obtain legal protection due to physical, mental, neglect, exploitation and sexual violence
- h. The right to social security
- i. The right to health care
- j. The right to get special care for children with disabilities
- k. The right to protection of economic exploitation
- l. The right to legal assistance both inside and outside the court

One of the universal rights of children mentioned above is the right to obtain protection due to physical, mental, exploitation, sexual abuse, crime, and discrimination. This shows that the above criminal acts which are universally applicable often occur throughout the world and not a small number of children who experience these things so that it encourages law enforcers to create a regulation in order to improve the lives of children from criminal acts.

Criminal acts against children that occur in Indonesia are often not easily disseminated or advanced into the realm of law because some of the cases that occur are personal and some are also unknown because they occur in remote areas. This also gave rise to public perceptions that the problems that occurred were personal problems that were not worth interfering with. This perception raises the attitude of silence, passivity and ignorance of the community towards children, so that criminal acts can be easier and take place causing the lives of children more threatened.

In democratic countries including Indonesia, individual rights are always protected by people's democratic laws. Individual protection is the responsibility of the state and is always the main responsibility. Such personal protection must be legally referred to as equality for all citizens, including children, without exception or can be termed Equality before the law.

Child protection is protecting children by efforts to ensure the survival of children and protect their rights to survival, growth, development and participation in accordance with human dignity, and to make the most effective use of legal protection against violence and discrimination.

## 2.2. The Responsibility of Perpetrators on the Falling of Restitution of Children Victims of Criminal Acts Decided by Judges To Non-Repayable Actors

Regarding the responsibility of the offender for dropping the restitution of child victims of a

criminal offense decided by the judge to the offender, there are several things that can be done by the offender. According to Article 71D of Law Number 35 Year 2014, every child has the right to submit to court in the form of the right to restitution which is the responsibility of the perpetrators of crime. Further provisions regarding the implementation of restitution are regulated by government regulations.

PP Number 43 Year 2017 in article 1 states restitution is payment of compensation which is charged to the perpetrator based on a court decision with permanent legal force, article 2 paragraph (1) states that every child who is a victim of a criminal offense is entitled to receive Restitution. The intended child can obtain the restitution in article 2 paragraph (2), namely the child who is a victim of a criminal offense includes:

- a. Children in conflict with the law
- b. Children who are exploited economically and / or sexually
- c. Children who are victims of pornography
- d. Child victims of abduction, sale and / or trafficking
- e. Child Victims of physical violence
- f. Child victims of sexual crimes

Restitution plays an important and very precise role in the punishment of the perpetrators of the crime, because the crime is not only to seek justice for the perpetrators of the crime, but it should also lead to justice for the victims of a crime, and the victim of the crime is also a child.

In the case of granting restitution, the judge is guided by the demands of the public prosecutor because the amount of the nominal restitution to be given to the victim is not clearly regulated by law and will be based on the assessment of the Witness and Victim Protection Agency (LPSK) in practice so that the judge is also guided by the letter provided by the Witness and Victim Protection Agency (LPSK) which has been submitted through the public prosecutor.

In this case the judge handed down the ruling and granted the request for restitution in accordance with the demands of the public prosecutor is a very appropriate step because according to Article 59 of Law No. 35 of 2014,

Statement Everyone has the responsibility to protect children from violence that can affect their survival, growth and development. Crimes against children not only cause physical or psychological pain that affects children's growth and quality of life, but also cause material and non-material harm to the family.

Then if the restitution responsibility cannot be paid or replaced by the perpetrators of crime, there are various opinions and sources. According to interviews with Mr. Erlangga Simatupang, SH, MH, Advocate from Saragi Sameko Budiawan & Rasyidi Law Firm, Problems with implementing regulations restitution regulated in these government regulations should be carried out further or more complete regulations and made into law regulations so that the position in the law is stronger, according to him. All cases related to restitution are also still unknown because of the lack of supervision of legal institutions and child protection. Taking a case of a crime against a child, for example, is not too widespread or can be said to be not viral, which is usually mentioned in the language of the media, then the case according to his observations may be incomplete or incomplete due to lack of supervision and when taking restitution which is a right victims may also take excessive time and the difficulty of the procedure for filing restitution.

In the realm of legal practice itself, the implementation of restitution is still classified as very minimal and lack of strict law enforcement for perpetrators of criminal acts. Implementation of restitution or compensation carried out by the state is still relatively difficult to implement. On average, according to him, the perpetrators of the crime have done their own way that is pairs of bodies or arguably ready to carry out all the sentences such as imprisonment, castration punishment, and others than the perpetrators pay compensation or restitution on the victim's child criminal act.

He emphasized that the government regulations could be revised or perhaps reinforced and improved the quality of victims and child protection institutions so that all malpractices that occurred could be removed and could bring about justice, legal certainty, and correct legal objectives. The responsibility that cannot be paid by the offender can be accounted for by the state as a whole, in terms of financing

psychotherapy, material reimbursement, and education costs in order to achieve justice and improve the welfare of the child victims of the crime.

Meanwhile, another opinion was also given by Dr. Benedictus B Nurhadi, SH, MH Lecturer in Criminal Law at the Faculty of Law, University of Tarumanagara, Restitution as stipulated in Government Regulation No. 43 of 2017 concerning The implementation of restitution for children who become victims of crime is still new or situational and conditional. According to him, in article 10 of the Criminal Code which reads:

Criminal consists of:

1. Criminal principal: Criminal death, Criminal imprisonment, Criminal confinement, Criminal fines, Criminal closure
2. Additional crimes: Revocation of certain rights, Confiscation of certain items, Announcement of the judge's decision

It concludes that restitution or compensation is "unknown" in the criminal law order or politics. In that case it means that Restitution is still new in the world of Indonesian Criminal Law because it is not known in the Criminal Code and the legal position is outside the Criminal Code so that in practice something happens outside the thinking of the drafting or the makers of the Act. This matter of restitution is *Lex Specialis* which means that the law is special and is outside the Indonesian Penal Code.

Understanding the situational and conditional restitution referred to in his statement above is that the restitution itself can be developed depending on the factual situation which is a development from outside the provisions of the applicable law or is implemented flexibly. With criminal cases that involve compensation in general, for example in the case of a traffic accident that takes casualties can be done through mediation or negotiation or can also pass the legal process. If going through the mediation route indicates that the heirs or family members of the victim have given up and received compensation.

In general law, from the point of view of the Criminal Procedure Code, articles 98 to 101, the procedure for granting compensation is the incorporation of civil cases into criminal cases while still heeding the provisions in the realm of civil law, so that it is very complicated and difficult, hence the birth of government regulations this is a shortcut for victims to get their rights. Both of these legal grounds only apply in general and do not specifically regulate the matter of child restitution.

But compensation or restitution of children

in particular Law Number 35 Year 2014 concerning Amendment to Law Number 23 Year 2002 concerning Child Protection which regulates the restitution of its implementing regulations which subsequently lies in Government Regulation Number 43 Year 2017 concerning the Implementation of Restitution for Children who are Victims of Crime have not facilitated the subsequent regulations. and the absence of legal certainty regarding the impact of the inability of the decision or penalty for restitution by the offender.

Next, the results of the interview with the Assistant Commissioner of the Indonesian Child Protection Commission (KPAI) Fajar Putra Wahyudi, M.Sc. According to He said that restitution was still faced by obstacles. In current practice, there is no guarantee that restitution can be immediately paid to the victim. It usually happens that the offender is unwilling to pay and is unable to pay, except in the case of the Criminal Act of Trafficking in Persons (TPPO) concerning restitution regulated by Law Number 21 of 2007 concerning Eradication of the Criminal Act of Trafficking in Persons. This is because there is a coercive mechanism that can be given to the perpetrators, for example, confiscation of assets, whereas in Government Regulation No.43 of 2017, the only criminal imprisonment that can be imposed for 2-3 months as a subsidiary of additional crimes.

Situations like this create chaos because victims who are children can not get financial compensation and greatly affect the performance of the government regulation. The solution given is still considered to be very raw as stated in the government regulation because there are no alternatives and solutions if the restitution is not paid.

For this reason, the Indonesian Child Protection Commission believes that the rules regarding restitution and compensation for victims should be regulated in a separate law as a solution or other alternative pathway so as to achieve legal certainty and justice for child victims affected by these behaviors.

LPSK or witness and victim institutions are institutions that can receive complaints from residents and victims in the case of requests for restitution submitted by the victim, her parents or guardians responsible for the victim. This

regulation is regulated in Government Regulation No. 7 of 2019 concerning Granting Compensation, Restitution, and Assistance to Victim Witnesses. Victims in the regulation of this Government Regulation are entitled to get Restitution in the form of:

- a. Compensation for loss of wealth or income;
- b. Compensation for losses incurred due to suffering directly related to crime and / or
- c. Reimbursement of medical and / psychological treatment costs.

Victims who are disadvantaged by the perpetrators can submit a request for restitution as stipulated in the Victim Protection Agency Regulation No. 1 of 2010 concerning the Standard Operating Procedure for the Application and Implementation of Restitution for the Witness and Victim Protection Institution. According to him, legal protection for child victims of crime that can be guaranteed at this time so that the restitution can be paid or at least replace part of the amount of restitution in the form of:

- a. Treatment of children humanely in accordance with the dignity and rights of children,
- b. confidentiality of the victim's identity to avoid stigmatization and labeling.
- c. psychological and psychosocial rehabilitation
- d. legal, psychological and medical assistance
- e. petition for restitution accompanied by the Indonesian Child Protection Commission

If seen comprehensively, the responsibility of the perpetrators of crimes basically replaces material or non-material losses suffered by the victim is a regulation that governs the forms of accountability of the perpetrators of criminal acts that are appropriate and regulated in the Government Regulation for the Implementation of the Restitution and the Law on Child Protection or Prison Criminal Prison and nominal penalties.

The disadvantage that the author identifies is the imposition of restitution on the offender who does not account for his obligation to submit payments or carry out restitution to victims or heirs but cannot be concluded or solved the problem so that there are obstacles because the position as an additional criminal should be included in the verdict, the judge

typically includes criminal substitute if the additional crime is not carried out. From the inclusion, it can be in the form of a prison for a long time if the substitute crime does not exceed the principal crime. As it should, the regulation regarding restitution as in Article 50 paragraph (4) of Law no. 21 of 2007 concerning Eradication of Trafficking in Persons which states that if the perpetrators cannot commit criminal acts can be replaced with imprisonment for 1 year ago also Article 1 number 4 PP No. 44 of 2008 regulates that "compensation is a compensation given by the state, because the perpetrators cannot provide full compensation, which is his responsibility ". However, this compensation only applies to victims of gross human rights violations (Article 2 Paragraph (1) Government Regulation No. 44 of 2008). It was concluded that Government Regulation number 43 of 2017, in the position of strength as a rule is still weak because of and losing coercive efforts so that it can provide a more deterrent effect if in a momentum if the disbeliever does not want to pay restitution and is only replaced by imprisonment with a relative time brief or unable to carry out his sentence by paying compensation or restitution to the victim. The purpose of the coercive effort like a legal regulation so that these provisions can be effectively implemented.

At present and in the future, difficulties in providing legal certainty will haunt the court ruling causing the restitution to be regarded only as a weak matter in the absence of coercive efforts, accountability and certainty for child victims to get the restitution they deserve to reflect justice into an expectation empty and mere.

The issuance of this regulation is expected to produce results of massive expectations, concerning the imposition of restitution that can be applied and likened to law enforcement, government, legislative or legislators, and others and the community. Until now the creation and the special arrangements regarding the restitution of child victims have also not been reached and are designed by the creators of the law. So that the legal certainty that can be given to the child victim or heir.



### 3. CONCLUSION

#### 3.1. Conclusion

Based on the main problems that have been described previously, the conclusions that can be drawn are:

Basically, the matter of restitution or compensation for victims of criminal acts is unknown in the politics of criminal law and in articles 98 to 101 of the Criminal Procedure Code, the regulation on compensation only regulates the merging of compensation cases. Therefore Law No.31 of 2014 is the law that regulates it on the constitution. Then specifically with the restitution of child victims of criminal offenses a Law No. 35 of 2014 has been developed which regulates the restitution of child victims of crime with further regulations stipulated in PP No. 43 of 2017 concerning Implementation of Restitution for Children Who Become Victims of Criminal Acts. The regulation is explicitly stipulated in the Regulation which starts from the understanding of the procedure for the submission and granting of recitals as well as by fostering in the provision of such restitution to the child victims of a criminal offense. Because the Constitution is the right of victims to achieve justice and protection for children victims of crime, and is based on the obligations and responsibilities of violators granted by court decisions with permanent legal effect. The rights of children violated by criminal acts as regulated in this "Government Regulation" do not accommodate the rights of all children violated by criminal acts, because chapter II explains the procedure for restoring original conditions one by one, and chapter III discusses how to allow solos even , it only regulates the procedure for providing compensation to victims of crime. There is still a lack of regulation, which is the responsibility of the offender to provide compensation to the children of victims of criminal offenses, if the offender is unwilling or unable to pay or replace the imprisonment by the judge who inkracht van gewisjde or translates into a decision of permanent legal force. The lack of decisiveness of a

government regulation becomes the main factor that intervenes in the judge's decision to ensure legal certainty about restitution because there is a very prominent shortcoming, namely the lack of a substitute criminal if the decision to grant restitution is not authorized by the perpetrator or an alternative to the imposition of restitution the. There is still a lack of regulation, which is the responsibility of the offender to provide compensation to the children of victims of criminal offenses, if the offender is unwilling or unable to pay or replace the imprisonment by the judge who inkracht van gewisjde or translates into a decision of permanent legal force. The lack of decisiveness of a government regulation becomes the main factor that intervenes in the judge's decision to ensure legal certainty about restitution because there is a very prominent shortcoming, namely the lack of a substitute criminal if the decision to grant restitution is not authorized by the perpetrator or an alternative to the imposition of restitution the. There is still a lack of regulation, which is the responsibility of the offender to provide compensation to the children of victims of criminal offenses, if the offender is unwilling or unable to pay or replace the imprisonment by the judge who inkracht van gewisjde or translates into a decision of permanent legal force. The lack of decisiveness of a government regulation becomes the main factor that intervenes in the judge's decision to ensure legal certainty about restitution because there is a very prominent

shortcoming, namely the lack of a substitute criminal if the decision to grant restitution is not authorized by the perpetrator or an alternative to the imposition of restitution the. if the perpetrator is unwilling or unable to pay for or replace the overturning of the said constitution by a judge who is inkracht van gewisjde or translated into a decision of permanent legal force. The lack of decisiveness of a government regulation becomes the main factor that intervenes in the judge's decision to ensure legal certainty about restitution because there is a very prominent shortcoming, namely the lack of a substitute criminal if the decision to grant restitution is not authorized by the perpetrator or an alternative to the imposition of restitution the.

### 3.2. Suggestion

Suggestions that the author can give are:

Government Regulations No. 43 of 2017 concerning Implementation of Restitution for Children Victims of Crimes need to be explicitly regulated regarding accountability for restitution that cannot be paid and for additional coercion efforts so that there is a guarantee of legal certainty in the decisions of judges that have permanent legal force. In addition, if the offender is unable to pay the restitution, then the need for restitution is also seen as criminal to the offender, so that an implementing regulation is stipulated that the state will take over to pay the restitution or if possible, the offender can be bailed out by the State but considered to be indebted to the State for an amount of restitution money paid by the State to the victim.

Regulations regarding restitution of victims should be regulated in a separate law as a solution or other alternative pathway so as to achieve legal certainty and justice for child victims affected by these behaviors. Furthermore, the compatibility between the criminal justice system and legal efforts to protect children as victims of crime, the need to be regulated in detail and in detail in the Criminal Code and Criminal Procedure Code as the main regulations and the main criminal

law regulations related to the consideration that restitution is a crime. This includes how the mechanism of counting, prosecution, until the execution of restitution.

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