

## Rights of Restitution to Child Victims Under Law No. 35 of 2014 Concerning Child Protection

Lidya Rahmadani Hasibuan<sup>1</sup>, Syaravina Lubis<sup>2</sup>

<sup>1</sup>Legal Studies, Universitas Pembangunan Panca Budi

<sup>2</sup>University of Bristol, Inggris

\*Corresponding Author: [lidya.hsb@gmail.com](mailto:lidya.hsb@gmail.com)

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### ABSTRACT

Restitution is the compensation paid by a perpetrator, as determined by a court with a final legal decision, to cover the material and/or immaterial losses suffered by the victim or their heirs. In cases involving child victims, restitution becomes obligatory for the perpetrator to compensate the victim for their losses. This demonstrates the perpetrator's responsibility for actions that have harmed the victim, their family, or heirs, in accordance with Article 71 D Paragraph (2) of Law Number 35 of 2014, which amends Law number 23 of 2002 concerning Child Protection. Restitution, as a form of compensation for victims of crimes, aligns with the Principle of Restoration to its Original Condition (*restitutio in integrum*), aiming to restore victims to their state before the crime, although complete restoration may not be possible. It emphasizes a holistic recovery approach, addressing various aspects resulting from the crime's consequences. Through restitution, victims can recover their freedom, legal rights, social status, family life, citizenship, residence, employment, and assets. The research will be conducted at the Belawan Police, Medan LPSK, and Bagan Deli Belawan Village. **Keyword:** Right to Restitution, Child Victims, Child Protection

### ABSTRAK

Restitusi adalah kompensasi yang dibayarkan oleh pelaku, berdasarkan keputusan pengadilan yang memiliki kekuatan hukum tetap, untuk menutupi kerugian materiil dan/atau imateriil yang diderita oleh korban atau ahli waris mereka. Dalam konteks kejahatan yang melibatkan korban anak, restitusi menjadi persyaratan wajib bagi pelaku untuk mengganti rugi korban atas kerugian yang diderita. Hal ini merupakan manifestasi dari pertanggungjawaban pelaku atas tindakan yang telah menyebabkan kerugian pada korban, keluarga, atau ahli waris mereka, sejalan dengan Pasal 71 D Ayat (2) Undang-Undang Nomor 35 Tahun 2014, yang mengubah Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak. Restitusi, sebagai bentuk kompensasi bagi korban tindak pidana, sesuai dengan Prinsip Restorasi ke Keadaan Semula (*restitutio in integrum*). Prinsip ini menekankan bahwa korban harus dikembalikan ke keadaan mereka sebelum terjadinya kejahatan, meskipun pengembalian sepenuhnya mungkin tidak mungkin. Namun, prinsip ini menekankan pendekatan pemulihan komprehensif, mencakup berbagai aspek yang berasal dari konsekuensi kejahatan. Melalui restitusi, korban dapat mendapatkan kembali kebebasan, hak-hak hukum, status sosial, kehidupan keluarga, kewarganegaraan, tempat tinggal, pekerjaan, dan aset. Penelitian akan dilakukan di Polres Belawan, LPSK Medan, dan Desa Bagan Deli Belawan.

**Keyword:** Hak Restitusi, Korban Anak, Perlindungan Anak



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### 1. Introduction

Child protection aims to create circumstances where children can enjoy their rights and fulfill their duties. Based on the principle of "parens patriae," where the state provides care and protection to children

similar to parents, the handling of children in conflict with the law should prioritize their best interests and be in accordance with the values of Pancasila.<sup>1</sup>

The IV Amendment of the 1945 Constitution of the Republic of Indonesia, in Article 34, underscores the State's responsibility to care for poor and neglected children, demonstrating the government's serious commitment to child protection. Islamic law also offers insights into the value of children. It considers wealth and children as the adornments of worldly life, while good deeds that last eternally are the best reward from the Lord and the best hope (QS. Al-Kahf 18:46).<sup>2</sup>

Preliminary data indicates that more than 7,000 children become involved in the criminal justice system as offenders each year. As of July 2010, there were a total of 6,273 children in detention and prisons across Indonesia. This figure includes 3,076 children with detainee status, 3,197 child prisoners, and 56 state children.<sup>3</sup> This suggests that the sanctions outlined in the Juvenile Justice Law are still considered mild. The significant number of court rulings for prison terms rather than rehabilitation for delinquent children does not align with the principles of punishment in juvenile criminal law. In 2023, the KPAI handled 1800 reported cases of child complaints, primarily involving crimes against children.<sup>4</sup> Restitution refers to the compensation paid by a perpetrator, as mandated by a court with a final legal decision, to cover the material and/or immaterial losses suffered by the victim or their heirs. In the context of child victims of crime, restitution is a mandatory requirement for the perpetrator to compensate the child for the incurred losses. This serves as an acknowledgment of the perpetrator's accountability for their actions, which caused harm to the victim, their family, or heirs. This requirement is in line with Article 71 D Paragraph (2) of Law Number 35 of 2014, which amends Law Number 23 of 2002 concerning Child Protection.

To request restitution, a child victim of a crime can submit an application, accompanied by a parent/guardian, heir, or through the Witness and Victim Protection Agency. The application should include the applicant's identity file, the perpetrator's identity, a description of the criminal act, details of the losses suffered, the amount of restitution requested, and the form of restitution requested.<sup>5</sup>

Introducing restitution as a novel concept in criminal justice requires time, particularly in a legal system with deep-rooted traditions. Moreover, pragmatic considerations often influence the mindset of law enforcement officials, making it difficult to adopt new approaches, with the Criminal Procedure Code typically taking precedence as the primary reference for law enforcement.<sup>6</sup>

There are several weaknesses in legislation regarding the provision of restitution to crime victims. Firstly, there is a divergence in laws and regulations governing restitution, which can lead to potential conflicts. Secondly, there is overlap in regulations concerning restitution for crime victims. Three regulations address the provision of restitution to witnesses and victims: Presidential Regulation Number 44/2008 on Compensation, Restitution, and Assistance to Witnesses and Victims; Presidential Regulation Number 3/2003 on Compensation, Restitution, and Rehabilitation for Victims of Serious Human Rights Violations; and Law Number 21/2007 on the Eradication of the Crime of Human Trafficking. Thirdly, under Law Number 13/2006, the scope of restitution can include returning property, compensating for loss or suffering, or reimbursing costs for specific actions.<sup>7</sup>

Based on the information provided, a study was undertaken to further explore the Right to Restitution for Child Victims as outlined in Law No. 35 of 2014 regarding Child Protection in Belawan City. The research was conducted at several locations including the Belawan Police, LPSK (Institute for Witness and Victim Protection) Medan, and Bagan Deli Belawan Subdistrict.

Based on the background above, the problems that will be studied later can be formulated as follows:

1. What are the legal arrangements for granting the right to restitution to child victims based on Law no. 35 of 2014 concerning Child Protection?

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<sup>1</sup>Nur Rochaeti, Restorative Justice Model as an Alternative Treatment for Delinquent Children in Indonesia, 2008 MMH Volume 37 No. 4, December, p. 239.

<sup>2</sup>Nazri Adlany et al, Al Quran and Indonesian Translation, 2005, 8th printing, PT. Sari Agung, Jakarta, p. 560.

<sup>3</sup>Orbit Daily, March 11, 2013 ;<http://www.harianorbit.com/jual-menangani-anak-yang-berhadapan-dengan-law/>(accessed on June 6 2014

<sup>4</sup> Bank Data Perlindungan Anak, <https://bankdata.kpai.go.id/tabulasi-data/data-kasus-perlindungan-anak-dari-pengaduan-ke-kpai-tahun-2023>.

<sup>5</sup>Ibid.

<sup>6</sup>Tempo Magazine Thursday 24 January 2013 Edition p. 25.

<sup>7</sup>Ibid.

2. How is the Right to Restitution Implemented for Child Victims Procedurally and Practically?
3. How to Implement the Right to Restitution Based on Law no. 35 of 2014 concerning Child Protection?

## 2. Methods

This research will use Empirical Legal Research Methods with a qualitative descriptive approach. The empirical legal research method is used to observe how the law functions in society, focusing on the interactions of people within their societal contexts, making it a form of sociological legal research. It involves examining legal aspects based on existing facts in society, legal entities, or government agencies.

The qualitative descriptive approach is chosen to address real-world issues, particularly current problems. It involves collecting and organizing data, providing explanations, and analyzing the data to present an objective representation of the phenomena being studied.

## 3. Result and Discussion

Victims, who suffer losses due to criminal law violations, are often only involved in providing testimony as witnesses. As a result, they may feel dissatisfied with the criminal charges or judicial decisions, as these may not align with their sense of justice. The criminal justice system primarily focuses on prosecuting offenders, viewing criminal acts as offenses against the state rather than against individual victims. Therefore, the system prioritizes state and societal interests over the personal interests of victims. This can leave victims to bear their losses without much support from the criminal justice system, as its primary function is not to compensate victims for their losses. In Law no. 13 of 2006, provisions regarding restitution are only regulated in one article as follows:

### Article 7

1. Victims through LPSK have the right to apply to court in the form of:
  - a. the right to compensation in cases of serious human rights violations;
  - b. the right to restitution or compensation for losses that are the responsibility of the perpetrator of the criminal act.
2. Decisions regarding compensation and restitution are given by the court.
3. Further provisions regarding the provision of compensation and restitution are regulated by Government Regulations.

The absence of regulations regarding restitution creates difficulties for victims of criminal acts in submitting requests for restitution. Firstly, victims are unsure about the types of losses for which they can seek restitution. Secondly, they are unclear about the timing of submitting restitution requests: whether it should be done immediately after the crime, before the public prosecutor files charges, or before the judge issues a verdict. Thirdly, victims lack information about the process to follow if the perpetrator is unable or unwilling to pay the requested compensation. Lastly, victims are unaware of the timeframe within which they can expect to receive restitution from the perpetrator, starting from the issuance of a final and binding court order requiring the perpetrator to compensate the victim.<sup>8</sup>

The rules for the right to restitution are regulated in Article 71D. Article 71D paragraph (1) states, *"Every child who is a victim as intended in Article 59 paragraph (2) letters b, d, f, h and j has the right to apply to the court for the right to restitution which is the responsibility of the perpetrator of the crime"*. Meanwhile, paragraph (2) states, *"Further provisions regarding the implementation of restitution as regulated in paragraph (1) by Government Regulation."*

The regulation also focuses on strengthening and expanding the scope of special protection, as stated in Article 59, paragraph (2). The previous Child Protection Law did not address the scope of material substance. For example, it did not cover children who are victims of sexual crimes, victims of pornography, victims of HIV/AIDS, victims of terrorism networks, children with deviant social behavior, and children who are victims of stigmatization due to labels related to their parents' condition.<sup>9</sup>

Restitution is defined as the payment of compensation charged to the perpetrator based on a court decision that has permanent legal force for material or immaterial losses suffered by the victim or their heirs.

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<sup>8</sup>Loc. cit. Matter. 59.

<sup>9</sup> www. Hukumononline.com accessed on 25 November 2016.

This is a form of responsibility of the perpetrator for their actions, as stipulated in Article 71 D Paragraph (2) of Law 35/2014 concerning Amendments to Law 23/2002 concerning Child Protection.<sup>10</sup>

The research focused on examining the implementation of the Right to Restitution for child victims, specifically evaluating the impact of the legal process on children in court, including decisions made by the children's police regarding the right of restitution for child victims of criminal acts at the Sector Police. Data collection regarding the granting of the Right to Restitution to child victims was conducted at the Protection Institutions for Witnesses and Victims (LPSK) in Medan City. Additionally, the study included an assessment of the conditions in the Bagan Deli Belawan Community, a village area supported by the UNPAB Faculty of Computer Science. As a result, all data collection activities, including interviews and observations, were primarily carried out in these specified areas. The research team conducted fieldwork and compiled the results into a descriptive analysis report, presenting a collaborative analysis of the data and findings obtained throughout the research process.

### 3.1 Medan Sector Police

The Medan Sector Police clarified that Law No. 34 of 2014 applies to all cases involving children, including the right to restitution, which is a new aspect in the criminalization process involving child victims. Procedures for restitution are in line with the Child Protection Law and relevant Government Regulations. However, there have been no instances of children utilizing the Right of Restitution in the Medan Police sector. This is because many child cases are resolved by penalizing the children without providing compensation to the victims. Similarly, the Belawan Sector Police cannot provide data or cases related to the Right to Restitution, as child cases typically result in the punishment of the child without compensating the victims.

### 3.2 Helvetia Medan Village

In the Helvetia sub-district community, there have been no reported cases involving children, and the implementation of the Right to Restitution has not yet occurred, as it is a relatively new component in the compensation system for child cases. Consequently, no children in the Helvetia sub-district have received the Right to Restitution. Therefore, there is a need for community socialization and support to raise awareness and provide guidance in situations where children may be eligible for the Right to Restitution. The people of Medan generally lack knowledge in legal matters, highlighting the importance of assistance from various parties, particularly academics and practitioners, to empower the community in asserting their rights, especially concerning children.

### 3.3 PKPA (Center for Child Study and Protection) Medan

PKPA Medan City, a Non-Governmental Organization (NGO) actively involved in assisting and studying children, provides valuable information regarding the right to restitution for child victims. The organization consistently advocates for the rights of child victims, including restitution, by actively participating in submitting requests on behalf of the victims.

One major obstacle to implementing the right to restitution for child victims is the lack of knowledge among law enforcement officials. PKPA stresses the importance of comprehensive and continuous outreach to educate police, prosecutors, and judges about the right to restitution under Law No. 34 of 2014 concerning Child Protection. The organization hopes that such efforts will enable all law enforcement officials to fully grasp the implementation of the right to restitution, in accordance with the expectations outlined in the Child Protection Law.

## 4. Conclusion

This research has not yet gathered data on child victims who have been granted the Right to Restitution. In cases where there are child victims but the new Child Protection Law has not been applied, these victims only receive rehabilitation and psychological assistance. The main challenge in implementing the right to restitution for child victims is the lack of knowledge among law enforcement officials, especially the police. Consequently, data on child victims who have received the right to restitution could not be found in this research. Therefore, more comprehensive research is needed, and the research scope should be expanded beyond the city of Belawan to obtain a more complete understanding.

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<sup>10</sup>Ibid.

So far, the effective implementation of the Child Protection Law in people's lives has been lacking, as evidenced by the absence of cases where children have invoked the Right of Restitution for child victims in Belawan City—a district with a large area and substantial legal issues in Medan City. To address this, it is crucial to conduct outreach programs and enhance the understanding of law enforcement officers, particularly the police, so they can facilitate and educate the public about the right to restitution. Additionally, immediate improvements in infrastructure and human resources are essential for the efficient and effective implementation of restitution rights for child victims. Community involvement is also crucial, requiring ongoing supervision and support to ensure the optimal realization of the juvenile justice system in the future.

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