

The Value of Restitution and Diversion in the Law Enforcement of Criminal Sexual Violence Against Children

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Abstract : *The process of shifting the criminal justice system's case resolution process for offenses involving minor sexual assault to an outside location is known as diversion. One kind of diversion is returning money to victims of child sexual abuse; nevertheless, diversion and restitution are typically used less frequently in the criminal justice system. For this study, the following question was posed: Does law enforcement adhere to the juvenile criminal justice system when it comes to enforcing diversion and providing compensation for offenses involving sexual abuse of children? The study's technique is juridical-normative and follows the law. The study's findings show that law enforcement officers at all levels still stray from advised procedures even in the face of attempts to implement diversion within the criminal justice system. In order to make diversion mandatory during police investigations, public prosecutors' prosecutions, and judicial panel trials, rules and regulations that offer legal certainty are required.*

Keywords : *Child, Crime, Diversion, Sexual Violence, Restitutions*

Abstrak : Diversi merupakan pengalihan proses penyelesaian kasus dalam sistem peradilan pidana untuk pelanggaran terhadap anak-anak termasuk Tindak Pidana Kekerasan Seksual terhadap dunia luar. Diversi dan restitusi terkadang dilaksanakan dengan buruk dalam sistem peradilan pidana; Meski begitu, mengembalikan uang kepada korban Tindak Pidana Kekerasan Seksual Anak merupakan salah satu bentuk pengalihan perhatian. Penelitian ini mengajukan pertanyaan berikut: Apakah penegak hukum memberikan restitusi dan diversi penggunaan untuk pelanggaran yang melibatkan pelecehan seksual terhadap anak sesuai dengan sistem peradilan pidana anak? Teknik kajiannya bersifat yuridis-normatif karena menggunakan pendekatan perundang-undangan. untuk pelanggaran terhadap anak-anak termasuk Tindak Pidana Kekerasan Seksual terhadap dunia luar. Diversi dan restitusi terkadang dilaksanakan dengan buruk dalam sistem peradilan pidana; Meski begitu, mengembalikan uang kepada korb Tindak Pidana Kekerasan Seksual merupakan salah satu bentuk pengalihan perhatian. Penelitian ini mengajukan pertanyaan berikut: Apakah penegak hukum memberikan restitusi dan diversi penggunaan untuk pelanggaran yang melibatkan pelecehan seksual terhadap anak sesuai dengan sistem peradilan pidana anak? Teknik kajiannya bersifat yuridis-normatif karena menggunakan pendekatan perundang-undangan. Kesimpulan penelitian ini menunjukkan bahwa, meskipun terdapat upaya untuk memasukkan diversi ke dalam sistem peradilan pidana, berbagai tingkat aparat penegak hukum masih menyimpang dari kriteria penerapannya. Perlu adanya Peraturan Perundang-



undangan yang memberikan kepastian hukum agar diversi menjadi wajib dilaksanakan pada tingkat penyidikan Kepolisian, penuntutan Penuntut Umum, dan pada tingkat pemeriksaan Pengadilan oleh Majelis Hakim.

Kata kunci : Anak, Diversi, Kekerasan Seksual, Restitusi, Tindak Pidana

I. INTRODUCTION

Sexual assault against kids is an extremely concerning crime. Just a few victims and their families notified the authorities about the occurrence. Furthermore, the media keeps the majority of incidents that are reported to the police under wraps. Sexual assault against kids is the kind of crime that has the greatest negative impact on society and causes the most distress. Of course, the psychology and development of other children who are victims of sexual violence against minors will be impacted by this crime.

In actuality, rape is a phenomenon in which male offenders, who may be one or more persons, commit acts of sexual assault, coercion, or threaten to have sex with female victims, who may also be one or more individuals. Rape can take the form of penetration of the penis (perpetrator) – vagina (victim) or extend as a form of entering any object into any part of the victim's body, regardless of the victim's age, without prior or at the time the victim consented to the incident. Rape can occur between the perpetrator and victim who are bound by the institution of marriage or not, which takes place at a certain place, time and under certain laws.¹

Sexual violence against children is not merely an act of rape. Rape itself is defined as sexual violence in which the victim's genitals are damaged. This is related to the destruction of symbols of sexuality and women's reproductive organs. In criminal law, rape is included in the heaviest crime of morality.

In addition to rape, this idea is associated with other moral transgressions, such as sexual relations. Sexual violence against women without intercourse is sexual harassment and obscene acts. Sexual harassment is psychological or sexual violence that forces someone or places them as an object of unwanted sexual attention. Obscene acts themselves are another form of non-violent sexual violence. All of these behaviours are carried out with the clear intention of having sexual relations or obtaining sexual pleasure and violate the dignity of modesty. All these acts are carried out with the clear aim of having sex with someone or obtaining sexual pleasure and violate the dignity of honour.²

Sexual abuse against children is defined as a general offense by Law No. 1 of 1946 Concerning Criminal Law Regulations, often known as the Criminal Code (KUHP). Applicable to offenses against minors; see Book II, Chapter XVI, Articles 281 to 303 bis. The Criminal Code expressly governs the offense of sexual assault against minors and the regulation of sexual interactions with young women under Articles 286 to 288.

¹ Agus Purwadianto, *Perkosaan sebagai Pelanggaran Hak Asasi Manusia (Kajian Filosofis Metodologi Pembuktian Hukum)*, *Disertasi UI*, 2003, hal. 97

² Purwadianto, *Perkosaan*, hal. 80-81

The stages of investigating, prosecuting, and making decisions in situations of child sexual abuse may be challenging. The limitations noted above are not only problematic, but it may be difficult to prove some crimes, such as rape or indecent behaviour, which are often committed in private³

Mely G. Tan pointed out that the primary category of violence in Indonesia is the quantity of rapes. There were 3167 recorded incidents of violence against women in 2001. Of the 3167 incidents, 1023 (32.3%) were cases of rape and 228 (7.2%) were cases of sexual assault or harassment. Following Jakarta, which reported 500 rape instances, were Yogyakarta and East Java, which each reported 356 cases—albeit from quite different demographics.⁴

Wismayanti et.al (2019) researched the difficulty of handling sexual violence against children. In Indonesia, societal constraints and economic fragility have been linked to child sexual abuse, according to (Wismayanti et.al, 2019). There is still a taboo in Indonesia about disclosing this disaster, which reduces reporting of cases. The sensitive nature of these crimes sometimes prevents victims and their families from reporting or publicizing the crimes for fear of stigma. This case is considered a disgrace for the victim and his family. The majority of victims in Indonesia wait until they are adults to reveal or report their incidents. Some even decide not to reveal it to anyone.⁵

The concept of an Indonesian criminal justice system that is utilized to carry out the country's laws is defined by the development of institutional and functional ties, particularly the collaboration of different subsystems according to their respective functions and jurisdictions. authorities governed by rules and regulations pertaining to criminal procedure. This demonstrates how the phases of inquiry, prosecution, trial investigation, and carrying out a judge's instructions are all included in the criminal justice system.

The legal system has a detrimental psychological impact on children who are victims of criminal acts of sexual violence. Because they will experience pressure and stigma in the judicial process, to address criminal acts of sexual abuse against children, the well-being and well-being of victims must be the basis for all decisions taken by police, prosecutors, judges and other authorities in the best interest of children.

The criminal justice system is primarily responsible for enforcing both criminal enforcement law and formal and material criminal law. According to the criminal court system, sexual assault, particularly against minors, is on the rise in Indonesia and keeps becoming worse every year. Due to their inability to express their ideas, weakness, and

³ Leden Marpaung, *Kejahatan Terhadap Kesusilaan Dan Masalah Prevensinya*, Jakarta, Sinar Grafika, 1996, hal. 81

⁴ Mely G. Tan, *Dimensi Sosial dan Kultural Kekerasan Berdasarkan Jender di Indonesia: Dari Penjulukan ke Diskriminasi ke Kekerasan*, *Jurnal Antropologi Indonesia*, Vol. 71 tahun 2003, hal. 48

⁵ Yanuar Farida Wismayanti, *Child Sexual Abuse: A Systematic Review of Literatur, Law and Policy*, *Child Abuse & Neglect*, VOL. 95, 2019, hal. 7-8

vulnerability to abuse and human rights abuses, children are frequently the most marginalized members of society.⁶

Widyaningrum (2018) described that “In terms of the right of citizen, they are closely related to the obligations of the state to fulfill the right of citizens in the civil, political, and socio-cultural fields”⁷. As a sovereign nation, Indonesia is obligated to uphold the rights of its people, which includes protecting the legal rights of individuals who were sexually abused as minors. Under UU No. 11 of 2012 governing the Juvenile Justice System, children with legal issues are protected by the state. Because of this law, the Criminal Justice System for Juveniles is solely responsible for handling issues involving minors who break the law. Procedures inside the Structure Juvenile justice continues from the inquiry stage to the counseling stage after the punishment has been served.

The Juvenile Justice System Law recognizes the notion of diversion. This concept allows children's issues to be moved from the criminal justice system to extra-system mechanisms for resolution.⁸ The diversion procedure is given precedence in all criminal justice proceedings from the Police, Prosecutor's Office, and Judiciary. The goals of diversion are outlined in UU No. 11 of 2012 about the Juvenile Justice System as follows:

- a. achieving harmony between victims and children;
- b. settle custody battles without going to court;
- c. prevents children from deprivation of liberty;
- d. inspires others to take part; And⁹
- e. gives children a sense of responsibility

One type of legal defence available to adolescents who have been sexually abused during the commission of a crime is restitution. Restitution, also referred to as compensation, is the sum of money required of victims of child sexual abuse in order to make up for the losses they endured in terms of money. Since the inception of criminal law, restitution has been viewed as a kind of punishment for unlawful activities. In this instance, there is sufficient room for the victim and the offender to come to an agreement mandating that the offender pay the victim, the victim's family, or the victim's heirs. Victim recovery needs to be as broad as possible, taking into account every component that results from a crime. Victims can reclaim their freedom, rights, social standing, and familial ties through restitution.

According to reports, this is still extremely uncommon and is only applied in very few instances of criminal sexual abuse of minors that entail the victim's claim to compensation. Restitution needs to be the answer to issues that come up in order to protect the rights of people whose rights have been violated due to their involvement in crimes involving the abuse of children. The author brings up the following issue in light

⁶ Arif Gosita, *Masalah Perlindungan Anak*, Cetakan Ke-1, Jakarta, Akademika Pressindo, 1989.

⁷ Tuti Widyaningrum dan Khalimi, *The Democratization Of The Organizational Registration Of Indigenous Beliefs For Fulfilling The Right Of Citizens*, *Jurnal Dinamika Hukum*, Vol.21 Issue 1, January 2021.

⁸ Pasal 1 ayat 7 dari Undang-Undang Nomor 11 tahun 2012 tentang Sistem Peradilan Anak

⁹ Pasal 6 dari Undang-Undang Nomor 11 tahun 2012 tentang Sistem Peradilan Anak

of the justification provided above for implementing diversion and providing restitution for crimes involving child sexual abuse: Do law enforcement officials use diversion and compensate victims of child sexual abuse in accordance with the juvenile criminal justice system?

II. RESEARCH METHOD

This study employed a style of research known as juristic-Normative, which examines legal concepts, legal systematics, legal history, and legal synchronization. According to Soerjono Soekanto, "legal research conducted solely through the study of secondary data or library sources is defined as normative legal research or library legal research." This definition aligns with his perspective.

The study employs the Legislative Regulations (Statute Approach)¹⁰ methodology in conjunction with conceptual approach methodologies. By using the Statute Approach method, all statutory requirements relating to the crime of sexual assault against children are examined. The conceptual approach method (Conceptual Approach) is used to examine and understand the concepts of cases of sexual violence

III. RESULT AND DISCUSSION

Indonesia is one of the nations where the law may be implemented; there, the law governs community and government activities to prevent arbitrary government acts and people behaving as they choose. One traditional element of the supremacy of law is the recognition of human rights that the state is required to protect. As a sovereign nation, Indonesia has a responsibility to compensate victims of adult sexual abuse and to vigorously defend the rights of those children.

Some nations, like Indonesia, have welfare laws, which means that state objectives, such creating a wealthy and just society, are the reason behind government management. Democracy and the welfare state go hand in hand. The welfare state guarantees that everyone is treated equally before the law and government and that their rights, sovereignty, and human rights are respected.¹¹ As a welfare state, Indonesia has an obligation to protect the rights of children who are the victims of criminal acts of sexual assault.

It is possible for a youngster to do crimes that injure people and cause victims. A youngster who commits a crime has the responsibility to make amends by not jeopardizing his future, even though the offense may have negative effects on society.¹² It

¹⁰ Amirudin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, PT. Raja Grafindo Persada, Jakarta, 2016, hlm. 164.

¹¹ Tuti Widyaningrum, *Program Doktor Ilmu Hukum Universitas 17 Agustus 1945 Jakarta*, Pusat Penelitian Fakultas Hukum Universitas 17 Agustus 1945 Jakarta, *Pengaturan Hak Kebebasan Berkeyakinan Penghayat Kepercayaan Terhadap Tuhan Yang Maha Esa Dalam Perspektif Negara Hukum Demokratis Indonesia*, Vol 1, 2018, hlm. 25.

¹² Beniharmoni Harefa dan Vivi Ariyanti, *Seputar Perkembangan Sistem Peradilan Pidana Anak & Tindak Pidana Narkotika di Indonesia*, Jogjakarta: Deepublish, 2016.

is improper to hold children accountable through formal justice since it leads to incarceration, which will negatively affect the child's survival and physical and mental health.¹³

This concept of restitution is truly provided and developed for every crime victim in almost every country. According to this concept, victims and their families must receive fair and reasonable compensation from the perpetrator. What is at stake in terms of compensation is payment for the loss or damage experienced by the victim, reimbursement of costs incurred as a result of a criminal act, and the victim's right to obtain recovery.¹⁴

Hence, regardless of whether they are the offenders or the victims, it is imperative to safeguard children, and the processes by which children are held responsible for their crimes must consider their fundamental rights and best interests. Widyaningrum (2018) revealed that “The fundamental rights of children are divided into 4 categories as follows: 1. Survival rights; 2. Protection rights; 3. Development rights; and 4. Participation rights”¹⁵ to ensure that child victims of sexual violence receive legal protection, the state must provide them with the right to protection.

Among other things, community protection involves giving minors who are sexually harassed legal protection. This can be accomplished in a number of ways, such as by providing victims with medical attention, legal assistance, and compensation and restitution. Victim protection is shaped by two attributes: the first is concrete (direct), and the second is conceptual (indirect). Abstract defence is essentially a kind of protection that exists exclusively on an emotional (psychic) level, such as in situations where a person feels fulfilled (satisfaction). Concrete protection is essentially a type of real-world protection, whether it be non-material or material.¹⁶

Restitution is not always poor for victims of child sexual abuse, particularly when considering the victim's entitlement to compensation. Lack of public education about restitution, the possibility that offenders may be charged with restitution for crimes involving child abuse, ignorance of the legal procedure for seeking compensation, and the possibility that offenders may be asked to pay back damages for their actions.

Predicting the potential consequences of criminal sexual assault on children and their experiences with the criminal justice system is related to restitution. One way to address and resolve issues concerning victims of sexual abuse against minors outside of the judicial system is to put policies into place or take other appropriate measures. Based on this, the government established Law Number 11 of 2012, often known as the SPPA

¹³ Muhammad Joni, Wilfun Alfian, dan Abdul Muis, *Penjara (Bukan) Tempat Anak*, Jakarta: Perhimpunan Advokasi Anak Indonesia, 2012.

¹⁴ Fauzy Marasabessy. “Restitusi Bagi Korban Tindak Pidana : Sebuah Tawaran Mekanisme Baru”, terdapat dalam http://www.researchgate.net/publication/301740740_RESTITUSI_BAGI_KORBAN_TINDAK_PIDANA_SEBUAH_TAWARAN_MEKANISME_BARU_Terakhir_tanggal_16-12-2019.

¹⁵ Sunnah dan Tuti Widyaningrum, *Review Of The Juvenile Justice System For Children With Disabilities As Juvenile Offender In Indonesia*, volume 499, 2020.

¹⁶ Nurini Aprilianda, *Perlindungan Anak Korban Kekerasan Seksual Melalui Pendekatan Keadilan Restoratif*, terdapat dalam <https://arenahukum.ub.ac.id/index.php/arena/article/view/354/272.htm>. Diakses tanggal 15-06-2020.

Law, which deals with the juvenile justice system. This law was passed because children have too frequently been mistreated and turned into objects of the court system.¹⁷ Thus, as explicitly mentioned in SPPA Law Article 7 paragraph (1), "Diversion actions must be carried out at the level of investigation, prosecution and District Court examination of cases involving minors." The diversion process is carefully carried out by including community counsellors, children and their parents/guardians, as well as professional social workers, in accordance with the restorative justice concept.

According to the Beijing Regulations: United Nations Minimum Standards Guidelines for the Management of Juvenile Justice, the United Nations Standard Minimum Rules for Administration of Juvenile Justice (the Beijing Rules) describe the practice of giving law enforcement authority to handle or resolve issues involving juvenile offenders through formal action, such as temporarily suspending or stopping the criminal justice process, known as diversion, releasing the offender from custody, returning the offender to the community, or participating in other social service activities. Diversion can be used at any stage of the examination process to lessen the detrimental effects of young people being involved with the judicial system.¹⁸

Law No. 11 of 2012 Concerning the Juvenile Criminal Justice System regulates diversion. This statute discusses the goal and significance of diversion and is still in force today. Perma Number 4 of 2014 contains rules for authorizing legal professionals to perform diversion as well as guidelines for implementing diversion in the juvenile criminal justice system.

The government issued Government Regulation Number 65 of 2015 in 2015 as a follow-up to the diversion statute included in the SPPA statute. This regulation outlines procedures for managing minors under the age of twelve and carries out diversion. This PP restates Article 7 paragraph (1) of the SPPA Law and emphasizes the necessity for all investigators, public prosecutors, and courts to employ diversion while scrutinizing adolescents. It is thought that via diversion, children may learn responsibility, remain free, interact with society, get along with victims, and have their issues settled outside of the legal system.

The diversion procedure consists of three stages: prosecution, trial, and investigation. These phases are outlined in Government Regulation Number 65 of 2015, Articles 12 through 66, which govern policies for managing children under the age of twelve (twelve) and the application of diversion. Government Regulation Number 65 of 2015 contains laws controlling the use of diversion at all phases of an inquiry. It also governs recommendations for treating minors under the age of twelve and implementing diversion. This regulation's articles 12 through 30 governs this procedure. At the investigation stage, the community advisor acts as a representative facilitator and the investigator leads the diversion discussion. The victim, child victim, parent or guardian of the child, and/or licensed social worker are present at this discussion. To obtain a court

¹⁷ Jefferson B Pangemanan, "Pertanggung jawaban Pidana Anaka Dalam Sistem Peradilan Pidana Indonesia, Vol. III, 2015.

¹⁸ Setya Wahyudi, *Implementasi Ide Diversi Dalam Pembahasan Sistem Peradilan Pidana Di Indonesia*, Yogyakarta, Genta Publishing, 2021.

decision, the investigator provides a Diversion Agreement Letter and Diversion Minutes to the Head of the District Court, direct superior, and investigator. If diversion discussions are successful at this point. Investigators then sent an order to stop the investigation (SP3). If an agreement cannot be reached temporarily, after that the investigator will complete the criminal justice process by sending the case files to the public prosecutor.

Police investigators have hurdles when trying to implement the notion of diversion at the investigative stage. Victims or relatives of criminal acts of sexual violence against minors cannot accept diversionary measures based on restorative justice or non-violent approaches. Because diversionary tactics need the cooperation of victims of criminal acts of sexual abuse against children, police investigators find it challenging to implement them. Consequently, the diversion process continues to be less effective.

As stated in Articles 31 to 48 of Government Regulation Number 65 of 2015 Governing Guidelines for Implementing Diversion and Handling Children Under 12 (twelve) Years of Age, the Public Prosecutor is responsible for overseeing the prosecution phases of diversion operations. The Public Prosecutor offers the victim, parents, guardian, and/or kid to settle the case through diversion within seven x 24 hours after the child and the evidence have transferred responsibility. If the Public Prosecutor accepts the offer, the community adviser will serve as deputy facilitator and the Public Prosecutor will lead the diversion talks in the role of facilitator. If a diversion agreement is made, the public prosecutor must give his immediate supervisor a copy of the Diversion Agreement Letter and Diversion Minutes. Subsequently, the Public Prosecutor decides to end the prosecution after providing the Chairman of the District Court with the Diversion Agreement Letter and diversion minutes from the Public Prosecutor's immediate superior for confirmation. If, however, the diversion negotiations fail to produce a resolution, the Public Prosecutor will bring this case before the courts.

The implementation of diversion at the prosecution stage has obstacles faced by the Public Prosecutor in realizing the idea of diversion at the prosecution stage, including:

- a. There is no amicable arrangement between the abuse victim and the offender. Peace talks were place throughout the conversation process between the authorities, those who committed crimes of child molestation, and victims of criminal acts of violence against minors. This frequently occurs when the Public Prosecutor handles diversion, taking into account that the victim or family wants the offender to receive the harshest punishment possible because they have suffered both material and intangible losses as a result of the offender's child molestation crime.
- b. Under Government Regulation Number 65 of 2015, which explains the Guidelines for Implementing Diversion and Handling Children Under Twelve Years, the Public Prosecutor must start diversion search processes no later than seven (seven) days. The diversion event must be finished within 30 (thirty) days of the start of the diversion after obtaining the case file from the Police Investigator. Prosecutors must move quickly because of limited time to carry out diversion at the prosecution stage, but in fact the time limit given by the

Regulation is still not able to enable the Prosecutor to complete the diversion efforts properly, this is due to the time limit for implementing diversion provided by the Regulation. It is not enough for prosecutors to carry out the process of implementing diversion in the prosecution process.

- c. Factors that impede the diversion process are extremely serious because, as per Supreme Court Regulation Number 4 of 2014 regarding the Implementation of Diversion in the Juvenile Criminal Justice System, Article 3 stipulates that the maximum sentence for a criminal offense is seven years in prison. This makes these factors serious barriers to the diversion process.

At the court examination stage, attention diversion techniques go on to the next phase. Seven days after the Chief Judge chooses the Chief Judge, appoint judges. A judge leads the diversion conversation, with assistance from a community adviser serving as co-facilitator. After receiving the judge's diversion letter and minutes, the Chairman of the District Court issues a diversion agreement if one is agreed. If no agreement is achieved, the trial phase will begin. Some judges utilize diversion in court because they take into account circumstances involving adolescents who have been sexually assaulted as victims and families who are not prepared to use diversion.

The judges' panel encountered the following challenges when adopting diversion at the court level:

- a. The parties involved in the process of implementing diversion—not only the victims and their families, but also the perpetrators and their families, non-governmental organizations (NGOs), social workers, psychologists, educators, law enforcement, and community leaders who are concerned about the use of diversion—have differing perspectives about what justice is.
- b. It is unable to implement diversion because it fails to comply with Law No. 11 of 2012's regulations governing the juvenile criminal justice system, notably Article 7 paragraph (2) letter a, which permits the use of diversion only for offenses carrying sentences of less than seven years.

The diversion discussion agreement may result in community service, training or education at educational institutions or LPSK for a maximum of 3 (three) months, peace with or without payment, or ownership to parents or legal guardians, among other things. One of the outcomes of the diversion discussion agreement included in Government Regulation Number 43 of 2017 about the Implementation of reparation for Child Victims of Crime is reparation, which might involve peace or loss. This regulation is an attempt to put the requirements of Article 71D paragraph (2) of Law No. 35 of 2014 into effect in relation to modifications to Law Number 23 of 2002 concerning Child Protection. This demonstrates the government's commitment to protecting crime victims' rights, particularly those of minors.

Government Regulation Number 43 of 2017 concerning the Implementation of reparation for Child Victims of Crime lays out the steps involved in awarding and acquiring reparation rights for children who have been victims of crime. The main objective of this act is to compensate persons who have been injured by crimes,

particularly those that include child abuse, for their recovery. The government paid little attention to the process of fulfilling restitution prior to the issuance of regulations regarding retribution. Whether it was in the form of compensating victims for their losses, the goal of this compensation was to force the perpetrator to give it to the victim as an act of contrition for the behaviour that caused the victim's suffering and loss.

Facilitating the filing of restitution claims in court, victims will find it simpler to comply with Government Regulation Number 43 of 2017 about the Restitution Implementation for Child Victims of Crime. To make up for the losses incurred by the victim, the offender must make restitution. Steps to safeguard children from mental and psychological decline and to fulfil or restore their rights are frequently disregarded by the government or law enforcement personnel. Criminal punishment for offenders or retaliation against them is often the focus of the government or law enforcement.

Regarding the implementation of restitution for child victims of criminal acts, Government Regulation Number 43 of 2017 states that minors who are victims of criminal acts of sexual violence have the right to receive restitution. There are several exceptions to criminal acts for which restitution can be submitted. Some of these exceptions are regulated in Article 2 point 2 explaining children who are not yet 18 years old and are having problems with the law in several categories. Fulfilment of restitution for children must be carried out appropriately and according to targets or not be misused. When sexual abuse of children or families occurs, it is a crime that requires retaliation. When a person violates the law by sexually abusing a kid, they must compensate the victim and his family for their losses and address their situations.

Explaining the sorts of restitution and what victims are entitled to, Article 3 of Government Regulation Number 43 of 2017 controls the execution of reparations for young victims of criminal crimes. One prevalent issue in society is that child sexual abuse is illegal and can be conducted for a number of reasons, such as evading punishment, compensating the victim, or meeting one's legal duties to make amends. When it comes to situations involving child sexual abuse, most criminals prefer to substitute criminal penalties for jail terms. This is due to the fact that the majority of the offenders and their families have low-income origins, which makes them extremely hesitant to make the meagre reparations. In addition, victims are required to provide any lost or damaged possessions they may have as well as any supporting documentation.

If they are the victims of sexual assault, children have the right to be compensated for the damages they endure. When it comes to implementation, restoration must follow the principle of returning anything to its original state. Restitution also includes attempting to put the victim back in the same circumstances as before the event. While it is true that treatment cannot bring victims of crime back to their pre-crime state.¹⁹ The possibility of providing restitution offers protection for victims and helps relieve the trauma of the crime they were victims of.²⁰ In this case, restitution can take the form of payments for

¹⁹ Mario Novita Apriyani, "Implementasi Restitusi Bagi Korban Tindak Pidana Kekerasan Seksual", *Risalah Hukum*, Vol. 17, 2021.

²⁰ Christofel Tahuleding, "Restitusi Bagi Anak yang Menjadi Korban Tindak Pidana", *Lex Crimen* Vol. 10, 2012.

material or other losses suffered by the victim as a result of the crime, as well as payments for pain and suffering, lost wages, and other bills related to medical or psychiatric care.²¹

Victims have the right under positive law to demand compensation or hold the guilty person accountable for losses. Indonesia's Positive Criminal Law has the following provisions regarding victim protection:²² According to the Criminal Code, Article 14c, paragraph (1) provides implicit protection for victims of crime (KUHP). The document states: "In the order mentioned in Article 14 a, except in the case of a fine being imposed, then together with the general condition, that the person convicted will not commit a criminal act, the judge may make a special condition that the person convicted will replace losses incurred due to the criminal act, all or part of it, will be determined in that order as well, which is less than the probation period." Judges may impose exceptional restrictions on convicted individuals under the Criminal Code (KUHP) as a form of punishment for their crimes and as a way to make up for the harm they have done to children who have been sexually abused. The Criminal Code's Articles 14 c and 14 b have these clauses.

The implementation of restitution requires targeted execution, and the reparations that are granted must be utilized appropriately. In order for the issue to be settled, restitution must be given or received by the parents, legal guardians, or victims' children.²³ Restitution, or restoring children who have been the victims of crime to their pre-crime states, is the ultimate goal.

Based on implementing regulations, victims of sexual harassment must submit a request for restitution in order to exercise their right to retribution, namely PP Number 43 of 2017. Before there is a court decision, requests for restitution for minor victims of criminal acts can be made through the stages of investigation, prosecution and submission. through the Witness and Victim Protection Agency (LPSK), in accordance with Government Regulation Number 43 of 2017 Article 5 Paragraph 2 concerning Implementation of Restitution. Implementing restitution is frequently remains challenging, notwithstanding the success of diversionary tactics. One of the many factors that lead to the failure to carry out restitution is disagreements among law enforcement officers on demands for restitution.

Discrepancies in the opinions of law enforcement personnel over restitution requests. Implementation of Restitution for Child Victims of Crime: The procedure for carrying out restitution is delineated in PP Number 43 of 2017. Restitution, according to certain parties, cannot be asked for during the diversion process in order to have the claim dismissed. Some, on the other hand, contend that one meaning of restitution is compensation for damages, and that diversion is subject to regulations pertaining to

²¹ Atika Rahmi, "Pemenuhan Restitusi Dan Kompensasi Sebagai Bentuk Perlindungan Bagi Korban Kejahatan Seksual Dalam Sistem Hukum di Indonesia", *De Lega Lata*, Vol. 4, No. 2, 2019.

²² Lilik Mulyadi, *Kapita Selekta Hukum Pidana Kriminologi Dan Viktimologi*, Jakarta, Djambatan, 2004, hal. 135-144

²³ Miszuarthy, "Pelaksanaan Restitusi Bagi Anak yang enjadi Korban Tindak Pidana Sebagai Bentuk Pembaruan Hukum Pidana Berdasarkan Peraturan Pemerintah Nomor 43 Tahun 2017".

compensation. This is possible as the Prosecutor's Office does not now control how reparation is carried out.²⁴

IV. CONCLUSION

When conducting an investigation, law enforcement officials who commit crimes involving sexual assault against juveniles do not follow the proper procedures for using the criminal justice system. Since victims and their families are averse to peaceful or restorative justice techniques, it is challenging to apply the notion of diversion to assist victims and families of criminal acts of sexual abuse against children. For diversion to take place, victims of criminal acts of sexual assault against children must express their consent. The Public Prosecutor's use of diversion still does not meet the requirements of the Criminal Justice System's Application of Diversion Criteria. The severity of the case and the short time frame provided by Government Regulation Number 65 of 2015 concerning Guidelines for the Implementation of Diversion and Handling of Children are factors that hinder the Public Prosecutor's ability to apply the concept of diversion in the prosecution process in the absence of a peaceful agreement between the perpetrator and the victim of child abuse. not quite a year old. Twelve years old. Because the court also considers matters relating to the situation of minors who have experienced sexual violence and their families, there are judges who have implemented diversion and there are also judges who have not. This demonstrates the Court's use of diversion. The judge will not carry out diversion if the court determines that the kid is a victim of sexual abuse and the family is unable to do so.

²⁴ Mochamad Rafi Al Alwan, "Pemenuhan Restitusi dalam Proses Diversi Terhadap Anak Korban Tindak Pidana Kekerasan Fisik di Kejaksaan Negeri Batu", Sultan Jurisprudence Jurnal Riset Ilmu Hukum, Vol. 2, No. 1, 2022.

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