

## Concept of Restorative Justice in Criminal Acts of Sexual Violence with Child Perpetrator and Victims

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### ABSTRACT

**Keywords:**  
*Restorative  
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Restitution,  
Children*

*This article aims to clarify the idea of restorative justice in situations of sexual violence where children are both the perpetrator and the victim. This study uses normative legal research with a statute and conceptual approaches. The results show that law enforcement against children as perpetrators of crimes of sexual violence with child victims must still pay attention to the principle of proportionality. This principle seeks to limit punitive consequences and restrain public responses so that they stay proportionate to juvenile perpetrators of sexual violence. In addition to focusing on activities, this idea also considers the child's environment. In the meantime, law enforcement that cannot be conducted through diversion must nevertheless regard the rights of the child, so that when children are criminalized, only half of the adult punishment is imposed, so that they can return to society appropriately and be equipped with skills.*

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### 1. INTRODUCTION

Children are the nation's next generation, the foundations of the succession for the States future. Article 28 (B) of the Indonesian Constitution, which stipulates that "Every child has the right to survive, growth, and is entitled to protection from violence and discrimination," was added by the Indonesian government to help fulfill these objectives. Globalization presents a challenge in educating students to become the country's future leaders, nevertheless. Children's behavior is affected negatively by globalization, one of which is that they may engage in unethical behaviors against others. This is demonstrated by the numerous immoral acts perpetrated by children, including rape and other forms of sexual violence. According to the Indonesian Child Protection Commission's (KPAI) Report, there were about 123 instances of children committing crimes as offenders in 2020, of which 28 (twenty-eight) involved sexual violence. Given that children should have the best possible opportunities to thrive physically, mentally, and socially, this

number is quite concerning.<sup>1</sup> Given the increasing number of instances of child sexual abuse, both as perpetrators and as victims, it is important to take the resolution process into account so that children, both as perpetrators and as victims, continue to be granted their legal rights in accordance with applicable laws.<sup>2</sup>

Against children who are in conflict with the law, the formal justice system that places children in convict status has major consequences in the child's life. Meanwhile, in Indonesia the majority of criminal cases are resolved through the criminal justice system. According to Mardjono Reksodiputro, the criminal justice system is the network of government and private agencies intended to manage accused and convicted criminals. The criminal justice system is comprised of multiple interrelated pillars, consisting of academia, law enforcement, forensic services, the judiciary, and corrections. In fact, the criminal justice system is not working as expected, because it fails to provide sufficient space for the interests of potential victims and potential defendants. In other words, the current conventional criminal justice system in various countries in the world often creates dissatisfaction and disappointment.

Restorative Justice is a paradigm that aims to answer dissatisfaction with the work of the current criminal justice system. This concept is used as a strategy for handling criminal cases involving the community, victims and perpetrators of crimes to achieve Justice for all parties so that it is expected to create the same conditions as before the crime and prevent further crimes. Restorative Justice is a way to respond to criminal behaviour by balancing the needs of victims, perpetrators and society. Restorative Justice is a concept that continues to evolve and has led to various interpretations in different countries, so there is no perfect consensus on a formal definition of the concept. In addition, because of the difficulty in translating the concept into different languages, various other terms are often used, including communitarian Justice, making amends, positive Justice, relational Justice, reparative Justice and community justice.<sup>3</sup>

In Indonesia, arrangements regarding restorative justice for every case involving children and perpetrators as victims are contained in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter abbreviated as SPPA). One of the regulated restorative justice approaches is diversion. Essentially, the goal of diversion is to provide a child offender a second opportunity by avoiding them from getting a criminal

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<sup>1</sup> Mardjono Reksodiputro, *Sistem Peradilan Pidana Indonesia, (Peran Penegak Hukum Melawan Kejahatan) Dalam Buku Hak Asasi Manusia Dalam Sistem Peradilan Pidana Kumpulan Karangan Buku Ketiga* (Jakarta: Pusat Pelayanan Keadilan dan Pengabdian Hukum Lembaga Kriminologi Universitas Indonesia, 2007), 84.

<sup>2</sup> Henny Saida Flora, "Pendekatan Restorative Justice Dalam Penyelesaian Perkara Pidana Dalam Sistem Peradilan Pidana Di Indonesia," *Jurnal Law Pro Justitia* II, no. 2 (2017): 41–60.

<sup>3</sup> David Miers, "An International Review of Restorative Justice," *Office of Justice Programs*, 2001; Sriwiyanti Sriwiyanti, Wahyu Saefudin, and Siti Aminah, "Restorative Justice for Juvenile Offenders in Indonesia: A Study of Psychological Perspective and Islamic Law," *JIL: Journal of Islamic Law* 2, no. 2 (2021): 168–96, <https://doi.org/10.24260/jil.v2i2.335>.

record and by addressing the underlying causes of their criminal behavior through a suitable diversion program or intervention. The application of diversion is limited to certain criminal acts, in accordance with the provisions in Article 7 paragraph (2) of the SPPA, which are crimes under seven years old, and are not a repetition of a crime.<sup>4</sup>

Law Number 17 of 2016 concerning Child Protection (hereinafter referred to as the UUPA) contains the rules from the perspective of the victimized child in Articles 76(D) in conjunction with Article 81 for criminal acts involving children and Article 76(E) in conjunction with Article 82 for criminal acts Crime of Child Abuse. These articles' provisions specify the minimum punishment that will be given as well as a maximum penalty of more than seven years. The pros and cons of criminal acts of sexual violence against children continue to divide the community, particularly activist groups for women's and children's rights who want the harshest penalties possible for those who commit such crimes in light of the seriousness of the harm such crimes cause to children. According to Ivo Noviana, sexual violence on children has a lasting effect that extends beyond short-term health issues to long-term trauma that can last until adulthood. However, from the perspective of children who commit sexual violence, facing legal action and jail can have very serious repercussions, especially for their future as the nation's youth.<sup>5</sup> This article aims to clarify the idea of restorative justice in situations of sexual violence where children are both the perpetrator and the victim.

## 2. RESEARCH METHOD

The method used normative legal research with a statute approach and conceptual approach. The statute approach evaluates all applicable laws and regulations related to the legal problems faced.<sup>6</sup> Because it is not always governed by legislation, this study also takes a conceptual approach. Furthermore, the data analyzed qualitatively and presented descriptively.

## 3. RESULTS AND DISCUSSION

### 3.1. The Juvenile Justice System in Indonesia

The government's policy on juvenile Justice issues is to protect children against the Law, the first is legal protection in the justice system, and the second is the Law that specifically regulates juvenile Justice. Law Number 3 of 1997 concerning Juvenile Court was later replaced by Law Number 11 of 2012. It is proclaimed for development to protect children undergoing court proceedings, both as perpetrators and as victims in criminal

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<sup>4</sup> Randy Pradityo, "Restorative Justice Dalam Sistem Peradilan Pidana Anak," *Jurnal Hukum Dan Peradilan* 5, no. 3 (2016): 319, <https://doi.org/10.25216/jhp.5.3.2016.319-330>.

<sup>5</sup> Ivo Noviana, "Kekerasan Seksual Terhadap Anak: Dampak Dan Penanganannya Child Sexual Abuse: Impact and Hendling," *Sosio Informa* 1, no. 1 (2015): 14, <http://ejournal.kemsos.go.id/index.php/Sosioinforma/article/download/87/55>.

<sup>6</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (jakarta: Kencana Prenada Media Group, 2011).

acts. The amendments to the legislation concerning the Juvenile Criminal Justice System were ratified directly by the President and the Representative Council at the end of July 2012. The purpose of the current replacement is Law No. 11 of 2012 so that juvenile Justice is more effective in protecting children caught in the Law with an integrated criminal justice system.<sup>7</sup> The Law on Juvenile Court was replaced because the regulation did not pay attention and guarantee the child's interests, both the child as the perpetrator, the child as a witness, and the child as the victim. The Child Protection Act only protects children as victims, while children as perpetrators are sometimes positioned the same as adult perpetrators. This Juvenile Criminal Justice System Act emphasizes the judiciary that is very concerned about the interests of the child, and the welfare of the child. At each stage of the Investigation by the police, prosecution at the prosecutor's office, and examination of the case in court, it is obligatory to seek Diversion based on Article 7 (1) Law Number 11 of 2012. The term juvenile criminal justice system is a translation of the term The Juvenile Justice System, which is a term used to define a number of institutions incorporated in the courts, which include the police, public prosecutors and legal advisors, supervisory agencies, child detention centers, and health facilities, child development.<sup>8</sup>

The Law is not only enforced as a form of retaliation against criminals, and the absolute theory is that punishment is an absolute consequence that must exist as a form of retaliation. So that the basis for the justification of the crime lies in the existence or occurrence of the crime itself.<sup>9</sup> However, this theory of retaliation is insufficient to calculate the losses suffered by the victim and is not effective enough to restore the perpetrator's actions to become a better human being and can be accepted by society. Children in conflict with the Law as regulated in the Child Protection Act are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of having committed a crime.

### **3.1.1. Restorative Justice Approach**

Restorative Justice is a model of approach to resolving criminal case disputes that have emerged since 1970 to resolve criminal cases.<sup>10</sup> Restorative Justice is a form of conflict resolution that is determined to utilize deliberation between the victim/his family, the perpetrator/his family and the community.<sup>11</sup> The term restorative justice was

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<sup>7</sup> Susana Andi Meyrina, "Restorative Justice in Juvenile Justice System Based on Law No. 11 of 2012," *Jurnal Penelitian Hukum De Jure* 17, no. 1 (2017): 92–107.

<sup>8</sup> Emy Rosna Wati, "Penanganan Anak Yang Berkonflik Dengan Hukum," *Justitia Jurnal Hukum* 1, no. 2 (2017), <https://doi.org/10.30651/justitia.v1i2.1162>.

<sup>9</sup> Santoso Santoso, "Implementation Balancing Idea in the Development of Criminal Law in Indonesia," *QIJIS (Qudus International Journal of Islamic Studies)* 3, no. 1 (2015): 1–22.

<sup>10</sup> Josephin Mareta, "Penerapan Restorative Justice Melalui Pemenuhan Restitusi Pada Korban Tindak Pidana Anak," *Jurnal Legislasi Indonesia* 15, no. 4 (2018): 309–19.

<sup>11</sup> Leni Dwi Nurmala, Nevey Varida Ariani, and Tinuk Dwi Cahyani, "The Position of the Child in the Juvenile Justice System," in *Advances in Social Science, Education and Humanities Research*, vol. 590, 2021, 7–13.

introduced by Albert Eglash when a crisis occurred in the criminal justice system. Eglash offers an alternative paradigm to replace the punitive paradigm often practised in the criminal justice system. Eglash distinguishes three types of Justice in criminal Justice: retributive, distributive and restorative. Retributive Justice focuses on punishing perpetrators for what they did. Distributive Justice focuses on the rehabilitation of criminals.<sup>12</sup> Meanwhile, restorative Justice focuses on the perpetrators' responsibility to restore the suffering of the victims without neglecting the interests of rehabilitation of the perpetrators as well as creating and maintaining public order. Eglash stated that retributive and distributive focus on criminal acts and ignores the participation of victims in the judicial process. While the third type focuses on efforts to reverse the harmful effects of these actions and actively involve all parties in the criminal process. According to Eglash, Restorative Justice provides an opportunity for perpetrators and victims to restore their relationship and simultaneously provides an opportunity for perpetrators to come up with certain means to repair the losses suffered by the victim.<sup>13</sup>

According to Daniel Van Ness, the restorative justice component consists of several parts including:<sup>14</sup>

- a. Encounter is a direct involvement of the litigants, a process where psychologically, the parties feel represented because of empowerment.
- b. Providing compensation, the Facilitator encourages violators to take concrete and measurable steps to inflict harm on the victim based on an agreement previously reached.
- c. Unification of the disputing parties. Collective responses to violations often involve stigmatization aimed not only at the offender but also the victim, and a fundamental feature of the restorative approach is to reunite them as a unit into their community.
- d. Re-acceptance of offenders as part of the community. The ultimate goal of the restorative process is to provide a safe social space for offenders and victims so that they can function again as whole subjects.

Restorative Justice provides remedies for victims who suffer material and immaterial losses, provides understanding and opportunities for perpetrators to be responsible for the crimes committed. In the restorative justice approach, the main victim for the occurrence of criminal acts is not the state, as in the criminal justice system that has occurred so far which prioritizes retributive Justice. In restorative Justice, crime

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<sup>12</sup> Gordon Bazemore and Mark Umbreit, "Rethinking the Sanctioning Function in Juvenile Court: Retributive or Restorative Responses to Youth Crime," *Crime & Delinquency*, 1995, <https://doi.org/10.1177/0011128795041003002>.

<sup>13</sup> Jeff Latimer, Craig Dowden, and Danielle Muise, "The Effectiveness of Restorative Justice Practices: A Meta-Analysis," *The Prison Journal* 85, no. 2 (2005): 127–44, <https://doi.org/10.1177/0032885505276969>.

<sup>14</sup> Gerry Johnstone and Daniel W. Van Ness, *Handbook of Restorative Justice* (Canada: Willan Publishing, 2017).

victims must get their rights as victims. The crime that occurs provides an obligation to fix the damaged relationship due to the occurrence of a crime. Justice is no longer measured as the amount of retaliation from the victim to the perpetrator, physically and psychologically. Still, the proceeds of a crime can be healed by providing support to the victim, and punishing the perpetrator, both with the help of his family and the community. The concept of restorative Justice is important in handling every case, especially cases related to children. Against criminal acts committed by children with child victims, the concept of restorative Justice has a goal in terms of recovery, both for child perpetrators to be able to improve themselves and for child victims to obtain their rights as child victims. The explicit meaning of restorative Justice in the formulation of Article 1 Number (6) of Law Number 11 of 2012 states that punishing children is not for retaliation (*ius talionis*). The firm formulation, not retaliation, confirms that Diversion is a way of resolving child cases.

### ***3.1.2. Diversion on The Restorative Justice Approach***

Diversion is the embodiment of the concept of restorative Justice which is reduced and contained in the SPPA. The concept of restorative Justice leads to dignified Justice, with the Law as a manifestation of the soul of a nation.<sup>15</sup> The form of the restorative justice approach in cases involving children as perpetrators and children as victims is subject to the procedural Law regulated in the Criminal Justice System Law Number 11 of 2012. The concept of restorative Justice is imposed on child perpetrators through Diversion. Meanwhile, the definition of Diversion based on Article 1(7) "Diversion is the transfer of the settlement of children's cases from the criminal justice process to a process outside the criminal justice system".

In the juvenile criminal justice system, Diversion is attempted starting from the level of Investigation, prosecution and examination of cases in court. The purpose of pursuing Diversion is enshrined in Article 6, namely:

- a. Achieving peace between victims and children;
- b. Resolving child cases outside the judicial process;
- c. Preventing children from deprivation of liberty;
- d. Encouraging communities to participate; and
- e. Instil a sense of responsibility in children.

Regulations related to diversion procedures are regulated in Article 15 Law Number 11 of 2012 and the Regulation of the Supreme Court of the Republic of Indonesia Law Number 4 of 2014 concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice system. In addition, it is contained in the Regulation of the

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<sup>15</sup> Susan C Hascall, "Restorative Justice in Islam : Should Qisas Be Considered a Form of Restorative Justice?," *Berkeley Journal of Middle Eastern & Islamic Law* 4, no. 1 (2011): 35–78, <https://doi.org/10.15779/Z385P40>.

Attorney General of the Republic of Indonesia No. Per-006/A/J.A/04/2015 concerning Guidelines for Implementing Diversion at the prosecution level. From some of these regulations, before the diversion process is carried out, it is necessary to know the requirements to be able to take Diversion as stated in Article 7(2) Law Numer 11 of 2012, including being threatened with a sentence of no more than 7 (seven) years, and not a repetition criminal act.

The provisions of these regulations on the crime of sexual violence are regulated in several regulations including the Criminal Code, which is regulated in Article 281-287, Article 289, Article 290, Article 294, Article 295 of the Criminal Code. Meanwhile, sexual violence with child victims is specifically regulated in the Child Protection Act, in Article 76 D Jounto Article 81 in terms of - against children, and Article 76 E Jounto Article 82 in terms of child abuse. The Child Protection Act itself does not specifically define sexual violence with a detailed explanation, but in this Law it criminalizes acts that fall into the category of sexual violence against children, which include obscenity. Against criminal acts that result in child victims are regulated in Article 76 D Law Number 35 of 2014 concerning the child protection act, which states: "Everyone is prohibited from committing violence or threats of violence to force children to do it - with him or with other people".

### **3.2. Law Enforcement with a Restorative Justice Approach Against Children as Perpetrators of Child Sexual Violence.**

Law enforcement against children as perpetrators must still pay attention to the principles that prioritize the child's interests. Likewise, if the victim of a child perpetrator is a child, of course, they must accommodate the interests of the child victim to restore their rights. This concept is known as restorative Justice. The threat of punishment for those who violate Article 76 D Law Number 35 of 2014, is regulated in Article 81. In addition to children, the criteria for sexual violence regulated in the Child Protection Act are in the form of "Child Abuse" whose provisions are contained in Article 76 E are: "Everyone is prohibited from using violence or threats of violence, coercing, deceiving, committing a series of lies, or persuading children to commit or allow obscene acts to be carried out."

Based on the provisions regarding the crime of sexual violence against children contained in the Child Protection Act above, which is associated with the provisions of the criminal act settlement process with a restorative justice approach through Diversion, it cannot be carried out, due to the threat of a sentence of more than 7 (seven) years. Although the concept of restorative Justice in criminal acts of sexual violence with child perpetrators and victims cannot be pursued through Diversion, the constitution regulates that every law enforcement against children must still consider that the perpetrator is still a "children" who has the right to improve himself and develop his potential. Therefore,

in every process, whether Investigation, prosecution or decision, the fulfillment of the rights as child perpetrators is still considered. Sudarto stated that in juvenile Justice there are activities of examining and deciding cases that are focused on the interests of the child, namely all activities carried out by the police, prosecutors, judges and other officials, must be based on a principle that is for the welfare of the child and the interests of the child.<sup>16</sup>

Law enforcement against children as perpetrators of criminal acts of sexual violence with child victims must still pay attention to the principle of proportionality. This principle aims to curb punitive sanctions, in addition to pressing the community's reaction to remain proportional to child perpetrators who commit antisocial acts such as sexual violence, which is not only based on the weight of the act, but also pays attention to the child's environment, such as social status, family environment and social status. the surrounding community, as well as other factors that make children commit antisocial acts. The essence is that the reaction to antisocial actors must be done fairly. Fair in the sense that both the treatment of child perpetrators and the punishment imposed on child perpetrators must be in accordance with the applicable provisions in the Juvenile Criminal Justice System Law, the punishment of children as perpetrators is contained in Article 79 and Article 81 Law Number 11 of 2012, that the main criminal provisions in the form of imprisonment or restrictions on freedom which are applied to children as perpetrators are (half) of the adult penalty and no special minimum punishment is applied. In addition to the main crime, there is the imposition of fines in the crime of sexual violence against children. The application of additional fines imposed on child perpetrators is replaced with criminal actions in the form of actions to improve the behavior of child offenders. The forms of action sanctions given to children in conflict with the Law include:

- a. Return to parents/family;
- b. Submission to someone;
- c. Treatment in a mental hospital;
- d. Treatment in Social Welfare Institutions
- e. The obligation to attend formal education and/or training held by the government or private;
- f. Revocation of driving license;
- g. Correction of the consequences of a criminal act.

The point is that actions that can be imposed on children who commit criminal acts as regulated in the Juvenile Criminal Justice System Act include:

- a. Returned to parents/family/foster parents if, according to the judge's assessment, the child can still be fostered by remaining under the supervision and guidance of the community.

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<sup>16</sup> Sudarto, *Kapita Selektta Hukum Pidana* (Bandung: Alumni, 1981).



- b. It is left to the state if the family cannot carry out the guidance for children. Therefore, it must be submitted to the state, which is then referred to as a child of the state (Article 24 of Law Number 3 of 1997). Children are still placed in correctional institutions equipped with skills
- c. Submitted to the Ministry of Social Affairs or social organizations to assist children by providing educational supplies, skills and so on.

From the application of the Law above, Diversion cannot be taken as an effort to return to its original state with a restorative justice approach. However, the punishment imposed on children is that there is no known special minimum punishment, the punishment imposed is half of the adult's punishment and the imposed fine is replaced with a criminal act, none other than to restore the rights of the child even though the child has committed a wrong action in the hope that there will be behavior improvement towards perpetrators. In essence, improving children's behaviour as perpetrators is one of the purposes of applying the concept of restorative Justice even though the situation is not fully recovered as before, because children as perpetrators of child sexual violence must continue to serve the crime. The main crime that child perpetrators must carry out in criminal acts of sexual violence with child perpetrators and additional penalties in the form of actions instead of fines, these two forms of crime are specifically applied to child perpetrators, which are expected to provide lessons for child perpetrators to improve themselves and when has completed his sentence can return to the community as it should be.

### **3.3. Law Enforcement with a Restorative Justice Approach to Children as Victims of Child Sexual Violence.**

The Child Protection Act which is the basis for the regulation of criminal acts of child sexual violence regulates the concept of restorative Justice which focuses on restoring the rights of victims as stipulated in Article 71 D that: "Every child who is a victim has the right to submit to the court the right to restitution which is the responsibility of the perpetrator of the crime".

Restitution is the payment of compensation charged to the perpetrator based on a court decision that has permanent legal force (*incraht*) for both material and immaterial losses suffered by the victim. Restitution is not only that the victim has the right to receive material compensation for the actions committed by the perpetrator. More than that, restitution is a form of the perpetrator's commitment to repair the damage caused by the crime committed. Even if the restitution is never comparable or fully fulfilled. However, this is where the restorative justice mechanism is implemented as a form of recovery, which empowers the form of responsibility and commitment that grows naturally from the perpetrator for the actions he has committed. Restoring victims is an important part of restorative Justice because it can be expected that forgiveness is part of repairing the

damage to the relationship between the perpetrator and the victim. Although, the criminal acts committed by the perpetrators should not be underestimated and ignored

According to Andi Hamzah, in a criminal case, the victim of a crime is actually the party who suffers the most. In the settlement of criminal cases, the Law often puts too much emphasis on the rights of the suspect or defendant. In contrast, the rights of the victim are ignored, one of which is the right to compensation, which is a right that requires someone who has acted detrimental to another person to pay a sum of money or goods to another person. So losses due to criminal acts are considered to have never occurred. Compensation is the realm of civil Law, but to realize the principle of simple, fast, and low-cost Justice, this compensation can be combined with a criminal examination.

Provisions regarding Compensation or Restitution are contained in Law Number 8 of 1981 the Criminal Procedure Code, Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection act, Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, Law Number 26 of 2000 concerning the Human Rights Court and Government Regulation Number 44 of 2008 which has been changed to Government Regulation Number 7 of 2018 and amended again with Government Regulation Number 35 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims and Government Regulation Number 43 of 2017 concerning Implementation of Restitution for Children Who Become Victims Criminal act.

The submission of restitution as referred to in Government Regulation Number 43 of 2017 is regulated in Article 4 which regulates:

- a. The victim submits the request for restitution
- b. The victim party as referred to in paragraph (1) consists of:
  - a) Parents or families of children who are victims of criminal acts
  - b) Heirs of children who are victims of criminal acts,
  - c) A person who is authorized by a parent, family, or heir of a child who is a victim of a crime with a special power of attorney.
- c. In the event that the victim as referred to in point (2)a and point (2)b is the perpetrator of a criminal act, an application for restitution may be submitted by the Institution."

The application for restitution, as referred to, is submitted in Indonesian on paper stamped to the court, which is submitted before the court's decision through the Investigation or Prosecution stage. In addition to going through the investigation or prosecution stage as intended, requests for restitution can be submitted through the Witness and Victim Protection Agency and for restitution filed after a court decision with permanent legal force can also be submitted through the Witness and Victim Protection Agency. Restitution in accordance with the principle of recovery in its original state (*restitutio in integrum*) is an effort that the victim of a crime must be returned to its original condition before the crime occurred, even though it is based on the fact that the victim

can't return to her original condition. This principle emphasizes that the form of recovery for victims must be as complete as possible and cover various aspects arising from the consequences of the crime. Restitution can restore the victim to his freedom, legal rights, social status, family life and citizenship, return to his place of residence, restore his job, and recover his assets.

The imposition of restitution for child perpetrators can be charged to the parents of child perpetrators as stated in Article 21 point (2) Government Regulation Number 43 of 2017, which stipulates, "If the perpetrator is a child, restitution is charged to the child's parents". Therefore, in criminal acts of sexual violence with perpetrators and victims of children, the burden of restitution is given to the parents of the child perpetrators, which must be given to the child as the victim. Even in reality, the provision of restitution for child victims in the crime of sexual violence has experienced many obstacles when the parents of child perpetrators cannot pay compensation for child victims. Often the granting of restitution in the form of material or immaterial losses is accompanied by a stipulation that if the convict does not pay the restitution money within a certain period after the court's decision has permanent legal force, his property can be confiscated by the prosecutor and auctioned off to pay restitution and provided that the convict does not have a property that is sufficient to pay the restitution, it will be replaced with substitute imprisonment for a certain period that the child perpetrator must serve. Based on these obstacles, if the restitution cannot be fulfilled by the parents of the child perpetrator in the crime committed, the concept of restorative Justice will not be achieved, not only providing additional punishment for the child perpetrator who is further away from the goal of restorative Justice but also cannot restore the rights of the victim's child. Missing or unfulfilled. In addition, the bias in the regulation of restitution that often occurs in the field, whether restitution becomes a mandatory crime or just a "non-obligation" option considering there will be many implementation obstacles in the field, is the reason law enforcers do not have an obligation to include restitution in the implementation of both investigations. as well as prosecution, and in the decision. Therefore, in the context of realizing the restoration of victims' rights and achieving restorative Justice for victims, restitution is something that should be made an obligation for perpetrators or parents of child perpetrators who commit crimes of sexual violence, the imposition of which is attached to the principal and additional penalties. The weighting of punishment through the inherent obligation of restitution is certainly an important part of law enforcement against child sexual violence crimes in the context of prevention and deterrence for perpetrators of child sexual violence, both committed by adult perpetrators and child perpetrators, and a form of state protection for children as victims.

#### 4. CONCLUSION

Law enforcement in the Juvenile Criminal Justice System Act is known for the concept of restorative Justice in the form of Diversion. However, for criminal acts of sexual violence against children with child perpetrators, Diversion cannot be carried out based on not meeting the requirements as stated in Law 11 of 2012 article 7(2), which requires a maximum penalty of 7 (seven) years, while for crimes of sexual violence against children with child victims, a sentence of more than 7 (seven) years. Law enforcement against children clearly cannot take Diversion. Still, it must pay attention to children's rights so that in the punishment of children, only half of the punishments for adults apply, with the aim that children can return to society well and be equipped with skills. Additional punishment in the form of actions against child perpetrators is one approach to the concept of restorative Justice to improve child offenders for the better. In addition to additional penalties in the form of actions against children, it can be done through restitution. In the case of the child as the perpetrator, the burden of restitution is the responsibility of the child's parents. The ideal concept of a restorative justice approach in the crime of child sexual violence is the application of restitution.

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