
Legal Review Concerning the Right to Restitution for Child Victims of Crime of Sexual Crimes According to Children's Protection Law



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ABSTRACT: Every year the number of sexual abuse experienced by children in Indonesia continues to increase; this attracts the author's attention to study more deeply about legal protection for child victims of sexual crimes. In the Elucidation of Article 71 D Paragraph (1) of the Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection as amended by Law of the Republic of Indonesia Number 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Law Number 1 the Year 2016, "Restitution" is the payment of compensation charged to the perpetrator based on a court decision with the permanent legal force for material and/or immaterial losses suffered by the victim or his heirs. From this study, it was found that there is legal protection for children who are victims of sexual crimes, namely through the Republic of Indonesia Law Number 17 of 2016 concerning the Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection. Became Law. The law regulates the right of restitution for child victims of sexual crimes. The implementation of granting restitution rights for child victims of sexual crimes is held in Article 71D paragraph (1) of the Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection as amended through Law of the Republic of Indonesia Number 17 of 2014 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016. It is further stated that the implementation of the right to restitution is precisely regulated in Government Regulation 43 of 2017 concerning the Implementation of Restitution for Children Who Are Victims of Crime. The performance of the right to restitution has obstacles. Three factors affect the effectiveness of the implementation of the right to restitution of children: legal, law enforcement, and community.

KEYWORDS: Restitution, Child, Sexual crimes.

I. INTRODUCTION

A. Research Background

Children are the nation's next generation and are human resources with great potential for national development. Protection of children is all activities to guarantee and protect children and their rights so that they can live, grow and develop, participate optimally, and obtain protection from violence and discrimination.¹ Children are vulnerable to becoming victims of criminal acts, including sexual crime. The crime of sexual crimes against children is increasingly worrying. This phenomenon is so worrisome to the community, so it needs special attention.

The 1945 Constitution has regulated the rights and obligations of every citizen, including the right to recognition, guarantees, protection, and legal certainty.² Every child has the right to survival, growth, development, and protection from violence and discrimination. Sexual crimes against children have tremendous physical, psychological, and sociological impacts. Physically, children who are victims of sexual crimes will experience pain, the possibility of contracting venereal diseases, experience disabilities, and even loss of life. In contrast, psychologically, children who are victims of sexual abuse will have mental health problems. This issue is what makes the protection of child victims of sexual crimes significant.

At the normative level, the protection of children is considered necessary even though it will inevitably encounter many obstacles in its implementation. Many events show that justice and legal certainty do not get serious attention. Issues of justice and human rights in the enforcement of criminal law related to the legal protection of child victims of sexual abuse.³

One of the rights of child victims of sexual harassment is the right to restitution. In criminal law, restitution is a payment of compensation that shows an understanding of the suffering of the victim of a crime,⁴ in this case, the child victim of a sexual

¹ Article 1 Paragraph (2) Law Number 35 of 2014 about first change of Law Number 2 of 2002 about Child Protection

² Article 28D Paragraph (1) Constitution of 1945

³ Dikdik M. Arief Mansur dan Elisatris Gulton, 2007, *Urgensi Perlindungan Korban Kejahatan, Cetakan Pertama*, Jakarta : PT. RajaGrafindo Persada, pp. 23 - 24.

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crime. The dimension of compensation for the suffering of victims when it is associated with a system of restitution, in the sense of victimization, is related to the repair or restoration of physical, moral, property, and rights losses of victims caused by criminal acts. The main character of restitution indicates the responsibility of perpetrators of criminal acts of child abuse for demands for criminal restitutive actions.⁵

Giving punishment to perpetrators of sexual crimes against children is not enough if it is not followed by restitution or compensation. Every year the number of sexual crimes that afflict children in Indonesia continues to increase, and this attracts the attention of the author to examine in more depth the granting of the right to restitution for children who are victims of sexual crimes in a juridical context by using the norms in Law No. 35 of 2014 Regarding Amendments to Law Number 23 of 2002 concerning Child Protection as amended by Law of the Republic of Indonesia Number 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection to become Laws.

B. Research Problem

1. What is the form of legal protection for children against sexual crimes in Indonesia?
2. How is the implementation of the right to restitution for child victims of sexual crimes in the RI Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection as amended by RI Law No. 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection to become a law?

C. Research Objectives

1. To determine the form of legal protection for children against sexual crimes in Indonesia.
2. To identify the implementation of the right to restitution for child victims of sexual crimes in Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection as amended by Law of the Republic of Indonesia Number 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Law No. 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection to become Law.

II. RESULTS AND DISCUSSION

1. Legal Protection for Children Against Sexual Crimes in Indonesia

In the 1945 Constitution Article 1 Paragraph (3) reads: "Indonesia is a rule of law country." This means that Indonesia is a country based on law. By itself legal protection becomes an essential element as well as a consequence in a constitutional state and the state is obliged to guarantee the legal rights of citizens.⁶ Children are a mandate that must always be guarded where they have dignity and rights that must be upheld. Every child has rights attached to him from birth.

Efforts to protect the law against child victims of sexual crimes have 2 aspects, namely related to policies and laws and regulations that regulate the protection of the rights of child victims of sexual crimes and the second aspect regulates the implementation of policies from laws and regulations.⁷ In Law of the Republic of Indonesia No. 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection as amended by Law of the Republic of Indonesia Number 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection Becomes Law explained that child protection is all activities in an effort to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity, and obtain protection from violence and discrimination. In the old Law on Child Protection, namely Law Number 23 of 2002 on Child Protection, it only provides protection in the form of imposing a criminal sentence on criminals, while there is no regulation on children's rights.⁸ While in RI Law No. 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, it has been regulated regarding the right to restitution for children, while regulations implementing the right to restitution are regulated in Government Regulation Number 43 of 2017 concerning Implementation of Restitution for Children Who Become Victims of Crime.

Since 1979, Indonesia has established a regulation to place children in safe protection institutions, namely in Law Number 4 of 1979 concerning Child Welfare which expressly formulates: "Every child has the right to care and protection from the time he is in the womb to after he is born". Then Indonesia has signed the Convention on the Rights of the Child as a result of the UN

⁴ Theodora Syah Putri, 2006, *Upaya Perlindungan Korban Kejahatan*, Jakarta : UI Press, pp. 7.

⁵ Hendrojono, 2005, *Kriminologi : Pengaruh Perubahan Masyarakat dan Hukum*, Jakarta : PT. RajaGrafindo, pp. 173

⁶ Diana Yusyanti, 2020, Perlindungan Hukum Terhadap Anak Korban Dari pelaku Tindak Pidana Kejahatan seksual, *Penelitian Hukum Journal : De Jure*, Vol. 20, No.4, pp. 621.

⁷ Nashriana, 2011, *Perlindungan Hukum Pidana Bagi Anak di Indonesia*, Jakarta : Rajawali Press, pp. 3.

⁸ Septi Prihatmini, Fanny Tanuwijaya, dkk., 2019, Pengajuan dan Pemberian Hak Restitusi Bagi Anak yang Menjadi Korban Kejahatan Seksual, *Repository Jember University*, Vol. 14, No. 1, Jember University, pp. 109, <https://journal.trunojoyo.ac.id/rechitdee/article/view/4768>, accessed 11/11/2022.

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General Assembly on January 26, 1990 and ratified by Presidential Decree No. 36 of 1990 concerning Ratification of the Convention on the Rights of the Child (Convention Rights of the Child). The status of the Convention on the Rights of the Child, child protection has not been well organized because the Convention on the Rights of the Child has only been ratified by Presidential Decree Number 36 of 1990 concerning the Convention on the Rights of the Child as the basis for its consideration, including RI Law Number 23 of 2002 concerning Child Protection which has now been amended by Law Number 35 of 2014 concerning Child Protection, this Law has made a second amendment to Law Number 17 of 2016 concerning the Stipulation of Perppu Number 1 of 2016. Regarding the criminal act of sexual crimes against children, the regulations can be found regulated in Articles 76D and 76E of the Republic of Indonesia Law No. 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection as amended by RI Law Number 17 of 2016 concerning Stipulation of Substitute Government Regulations Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection to Become a Law.

Crime for perpetrators of sexual crimes against children who commit violence or threats of violence force children to have intercourse with them or with other people as stated in Article 76D of RI Law No. 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection as amended by law RI Number 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection to Become a Law, is regulated in Article 81 of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection as amended by RI Law Number 17 of 2016 concerning the Stipulation of Government Regulations in lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection Becomes Law. Criminal threats for perpetrators of sexual crimes against children who commit violence or threats of violence force children to have intercourse with them or with other people, namely imprisonment for a minimum of 5 years and a maximum of 15 years, but in the case of the crime referred to is committed by parents, guardians, people who have family relations, nannies, educators, education personnel, officials who handle child protection, or are committed by more than one person together, the penalty is added to 1/3 (one third) of the maximum criminal threat, and if the sexual crime results in serious injury, mental disorder, infectious disease, impaired or loss of reproductive function, and/or the victim dies, the perpetrator shall be sentenced to death, life imprisonment or imprisonment for a minimum of 10 (ten) years and a maximum of 20 (twenty) year. The maximum fine that can be imposed on a sex offender is IDR 5,000,000,000.00 (five billion rupiah). In addition to being subject to the punishment as listed above, the offender may be subject to additional punishment in the form of announcing the identity of the perpetrator, up to being subject to action in the form of chemical castration and installation of electronic detection devices.

For perpetrators of criminal acts of sexual abuse of children, as stipulated in Article 76 E of the Republic of Indonesia Law No. 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection as amended by RI Law Number 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection to Become a Law, can be subject to imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of IDR 5,000,000,000. 00 (five billion rupiah) according to Article 82 paragraph (1) Government Regulation in lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection as amended by RI Law Number 17 of 2016 concerning Stipulation of Substitute Government Regulations Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection to Become an Law. However, in the event that a crime is committed by parents, guardians, people who have family relations, caregivers, educators, educational staff, officials who handle child protection, or is committed by more than one person jointly, then the penalty is added 1 /3 (one third) of the maximum criminal threat. In addition, perpetrators can be subject to additional punishment in the form of announcement of the perpetrator's identity and rehabilitation as well as the installation of electronic detection devices.

In the Criminal Code, arrangements regarding sanctions for sexual crimes against children are regulated in article 288 of the Criminal Code, where it is stated that whoever has intercourse with a woman who he knows or should reasonably suspect that the person concerned is not yet ready to marry is threatened with imprisonment for a maximum of four years, if the act causing injury, but if said act results in serious injury then a maximum imprisonment of eight years may be imposed or the perpetrator may be sentenced to a maximum imprisonment of twelve years if the said act results in death. Here it can be seen that the Child Protection Law provides for heavier sanctions than the Criminal Code. The Criminal Code itself does not regulate the rights of children as victims and their relation to obtaining legal guarantees as a result of the sexual crimes they have experienced. In addition, the categories of child age limits in the Criminal Code and several other laws and regulations are not the same. For this reason it is necessary to establish rules in the Criminal Code.⁹

⁹ *Ibid*, pp. 619.

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According to Arif Gosita, there are several things that must be considered related to child protection related to a case such as children as victims of sexual crimes have the right to obtain restitution and compensation for their suffering according to the ability of the perpetrator based on the involvement, participation and role of the victim in the occurrence of a crime or deviation committed perpetrator. Children as victims of sexual crimes have the right to receive guidance and rehabilitation, as well as protection from threats by the perpetrator if the victim reports or gives information at trial as a witness. Child victims of sexual crimes also have the right to obtain legal assistance and assistance from authorized institutions and can take legal action that has been determined based on applicable regulations.¹⁰

In article 1 paragraph (2) RI Law No. 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection as amended by RI Law Number 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning Second Amendments to the Law Law Number 23 of 2002 Concerning Child Protection Becomes Law, it is stated that the state has guaranteed that children's rights are part of human rights that must be protected. The purpose of protection is intended to guarantee and protect children and their rights so that children continue to live, grow and develop and in order to be able to provide maximum participation, this is intended so that children receive protection from violence and discrimination. Thus, legal protection for children has been regulated in Republic of Indonesia Law No. 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection as amended by RI Law Number 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment On Law Number 23 of 2002 concerning Child Protection Becomes Law, when compared to the Criminal Code which only provides criminal sanctions for perpetrators of sexual crimes against children and does not regulate the rights of children as victims to obtain legal guarantees that can mitigate losses due to sexual crimes. In Law of the Republic of Indonesia No. 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection as amended by Law of the Republic of Indonesia Number 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection Becomes Law sanctions for perpetrators of sexual crimes against children have a minimum prison sentence of 5 years to the death penalty accompanied by additional punishment. However, in terms of protection for children, both the Law on Child Protection and the Criminal Code have nothing in common regarding age limits.

2. Implementation of The Right to Restitution for Sexual Crimes Against Children in the Law on Child Protection

The Law on Child Protection regulates the right to restitution. Children are entitled to the right to restitution because the suffering they receive is in accordance with the ability of the perpetrator based on the involvement of the perpetrator in committing a deviation.¹¹ Rights are something that is right, belongs to, has the authority and power of a person to do something because it has been regulated in laws and regulations or regulations.¹² While restitution is a payment of compensation that is charged to the perpetrators of criminal acts based on a court decision that has incracht for material and immaterial losses suffered by victims or their heirs.¹³ Restitution is a form of material legal protection.¹⁴ The right to restitution is a power because it has been regulated in laws and regulations in the form of payment of compensation that is charged to the perpetrator, in this case the perpetrator of child sexual abuse.

Regarding the right to restitution, it has not been specifically regulated in a statutory regulation, but in various legal regulations related to children, this right of restitution has been regulated, namely in RI Law No. 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection as has been amended by RI Law Number 17 of 2016 concerning Stipulation of Government Regulation in lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection to Become Law, Law Number 11 of 2012 concerning the Juvenile Justice System, and Government Regulation Number 43 of 2017 for restitution for children as victims.¹⁵ Based on these laws and regulations, the problem of the right to restitution for victims of sexual crimes, not only regulates legal guarantees to obtain the right to restitution, but also regulates the mechanism for granting restitution rights to victims, so that it is hoped that victims can get their rights properly.

The mechanism for submitting restitution is carried out since the child as a victim of a sexual crime or his representative reports the case he has experienced to the local police and is handled by the investigator together with the handling of the crime committed.¹⁶ The concern for children who are victims of sexual crimes is suffering both physically and psychologically for

¹⁰ Lilik Mulyadi, 2010, *Kompilasi Hukum Pidana Dalam Perspektif Tertulis dan Praktek Peradilan*, Bandung : Mandar Maju, pp. 19.

¹¹ Sapti Prihatmini, *et.al.*, 2019, *Op.cit.*

¹² Agostiono, 2010, *Implementasi Kebijakan Publik Model Van Meter dan Van Horn*, <https://kertyawitaradya.wordpress.com/2010/04/13/implementasi-kebijakan-publik-model-van-meter-van-horn-the-policy-implementation-process/>, accessed 11/11/2022.

¹³ Government Regulation of Republic Indonesia Number 43 of 2017 about Implementation of Restitution for Children which Become Victim of Crime.

¹⁴ Bambang Waluyo, 2011, *Viktimologi Perlindungan Korban dan saksi*, Jakarta : Sinar Grafika, pp. 15.

¹⁵ Ahmad Sofian, *Restitusi Dalam Hukum Positif Indonesia*, Universitas Bina Nusantara, <https://business-law.binus.ac.id/2018/05/30/restitusi-dalam-hukum-positif-indonesia/>, accessed 11/11/2022.

¹⁶ Muhammad Mitra Lubis, 2020, Pemenuhan Hak Restitusi Terhadap Anak Korban Tindak Pidana Kejahatan Seksual (Studi Penelitian Pengadilan Negeri Medan Kelas I-A Khusus), *Hukum dan Kemasyarakatan Journal*, Vol. 1, No. 1, pp. 190.

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children. Besides that, the child will be the party who experiences material and immaterial losses, while the loss can be in the form of feelings of shame, low self-esteem and loss of self-esteem, besides that the child is also faced with the risk of good name and undergoing justice with costs that must also be borne by him and his family. Losses experienced by children who are victims of sexual crimes should also be borne by the perpetrator through compensation or restitution.

In matters related to the implementation of restitution, it has been specifically regulated, namely not only in the Law on Child Protection but has been regulated in Government Regulation Number 43 of 2017 concerning Implementation of Restitution for Children who are Victims of Crime. Based on the provisions in article 3 of Government Regulation Number 43 of 2017 concerning the Implementation of Restitution for Children who are Victims of Crime in this case including sexual crimes, that restitution is as follows:¹⁷

- 1) Compensation for loss of wealth
- 2) Compensation for suffering as a result of a crime and/or
- 3) Reimbursement for medical and/or psychological treatment costs

In the provisions of Government Regulation Number 43 of 2017 concerning the Implementation of Restitution for Children who Become Victims of Crime, are as follows:¹⁸

1. The request for restitution is filed by the victim, the victim's party as referred to consists of the parents or guardians of the child who is the victim of a crime, heirs, persons authorized by the parents, guardians or heirs of the child with a power of attorney;
2. An application for restitution is submitted in writing in Indonesian on stamped paper to the court;
3. The application for restitution to the court as above which was filed before a court decision was made, is submitted through the investigation and prosecution stages;
4. In addition to restitution at the investigation or prosecution stage, requests for the right to restitution can be submitted through the Victim and Witness Protection Agency (LPSK) in accordance with statutory provisions;
5. Regarding requests for restitution that are submitted after a court decision that has obtained legal force can still be submitted through the Witness and Victim Protection Agency (LPSK) in accordance with statutory provisions.

In implementing the right of restitution for child victims of sexual crimes, what needs to be considered is whether law enforcers have carried out their obligations as stated in Government Regulation Number 43 of 2017 concerning the implementation of restitution for children who are victims of sexual crimes. The implementation of the right to restitution for children cannot be fulfilled because the child does not know the rights that can be obtained by child victims of sexual crimes, this is what causes the child not to apply for the right to restitution.

The form of recovery for victims must be complete and cover all aspects arising from sexual crimes against children. It is hoped that with the right of restitution for the victim's child, the child victim's freedom, legal rights, social status, and family life can be restored. Supposedly, the concept of restitution is given to every victim of a sexual crime. In this concept, the victim gets fair and appropriate compensation from the person responsible. Compensation in question is payment for damage or loss suffered by the victim, reimbursement of costs incurred as a result of the crime of sexual crime, rights of recovery for the victim.¹⁹ This right of restitution is a way for child victims of sexual crimes to recover from the trauma they have suffered.

Regarding the guarantee given to the right to restitution for children, it has been regulated in RI Law No. 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection as amended by RI Law Number 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2016. 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection to Become a Law, there it is stated that there are several institutions that have the authority to provide protection for children in Indonesia. The institutions that can guarantee the protection of children's rights, including the right to restitution, are the Child Protection Commission, Child Protection Institutions, and Assistance Agencies, namely the Witness and Victim Protection Agency.

Regarding the implementation of the right to restitution, the state guarantees that state institutions carry out their obligations and responsibilities to protect and fulfill children's rights, including in terms of granting the right to restitution. In article 21 to article 24 of RI Law No. 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection as amended by RI Law Number 17 of 2016 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2016 concerning Second Amendments to Laws Number 23 of 2002 concerning Child Protection Becomes Law, regulated regarding how to respect the rights of children to ensure that children use their rights. The guarantee of the right to restitution has been demonstrated by the presence of Government Regulation Number 43 of 2017. The regulations related to the implementation of the right to restitution

¹⁷ Government Regulation of Republic Indonesia Number 43 of 2017 about Implementation of Restitution for Children which Become Victim of Crime.

¹⁸M. Novrianto, 2022, Implementasi Hak Restitusi Bagi Anak yang Menjadi Korban Tindak Pidana Dalam Proses Penyidikan, Penuntutan dan Putusan Pengadilan, *Thesis : Law Faculty Sriwijaya University*, pp. 8 – 9.

¹⁹Maurizka Khairunnisa, 2020, Pemenuhan Hak Restitusi Terhadap Anak Korban Tindak Pidana Kejahatan seksual di Kota Pekanbaru, *Skripsi : Law Faculty. Islamic Indonesia University*, pp. 27 – 28.

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have been regulated regarding the implementation of the right to restitution for child victims of criminal acts. In this regulation, the right to restitution is emphasized in efforts to provide compensation for recovery for children who are victims of sexual crimes or other crimes. In this government regulation, the institution that has the duty to guarantee restitution is the Witness and Victim Protection Agency (LPSK).

There is a possibility that there will be obstacles in the implementation of the right of restitution for children who are victims of sexual crimes, in this case including 3 factors that influence the effectiveness of the implementation of the right to restitution for children. The first factor is the legal instruments, in this case the Laws and Implementing Regulations related to the right of restitution for children who do not yet have coercive power against the perpetrators. In this case there is no regulation if later the perpetrator does not pay his obligation to pay restitution to the victim. The second factor is law enforcement, in this case the lack of understanding by law enforcement regarding the importance of granting restitution rights to child victims of sexual crimes. The third factor is society, in this case the lack of will and ability of the perpetrators in terms of granting restitution rights to child victims of sexual crimes.²⁰ Mainly, the problem faced in implementing the right of restitution for child victims of sexual crimes is the victim's ignorance that there is a right of restitution for recovery for child victims of sexual harassment.

III. CONCLUSION

Based on the description above, several conclusions can be drawn, namely that the form of legal protection for children against sexual crimes in Indonesia is related to the laws and regulations that regulate criminal acts for perpetrators of sexual crimes, which are regulated in Article 76D of Law No. 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection as amended by Law of the Republic of Indonesia Number 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law, is regulated in Article 81 Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection as amended by Law of the Republic of Indonesia Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to the Law Number 23 of 2002 Ten Child Protection Becomes Law. Criminal threats for perpetrators of sexual crimes against children who commit violence or threats of violence force the child to have intercourse with him or with other people, namely imprisonment for a minimum of 5 years and a maximum of 15 years, but in the case of the crime as intended by parents, guardians, people who have family relations, child caretakers, educators, education staff, officers who handle child protection, or are carried out by more than one person together, the punishment is increased by 1/3 (one-third) of the most significant criminal threat, and if the sexual crime results in serious injury, mental disorders, infectious diseases, impaired or loss of reproductive function, and/or the victim dies, the perpetrator is sentenced to death, life imprisonment, or imprisonment for a minimum of 10 (ten) years and a maximum of 20 (twenty) years. The maximum fine that can be imposed on perpetrators of sexual crimes is IDR 5,000,000,000.00 (five billion rupiahs). In addition to being subject to the criminal charges listed above, the perpetrator may be subject to additional punishment in the form of announcing the perpetrator's identity, to be subject to actions in the form of left and right, and the installation of electronic detection devices.

For perpetrators of criminal acts of sexual abuse against children, as stipulated in Article 76 E of Law RI No. 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection as amended by Law of Republic of Indonesia Number 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law Number 1 the Year 2016 Concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection Becomes Law, may be subject to imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp. 5,000,000,000. 00 (five billion rupiahs) according to Article 82 paragraph (1) of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection as amended by Law of the Republic of Indonesia Number 17 of 2016 concerning Stipulation of Regulations Government in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection to become Und law. However, suppose parents commit the crime, guardians, people who have family relationships, child caretakers, educators, education staff, or officers who handle child protection or are committed by more than one person together. In that case, the penalty is increased by 1 /3 (one-third) of the maximum criminal penalty. In addition, the perpetrator may be subject to additional penalties in the form of announcing the perpetrator's identity and rehabilitation, as well as installing electronic detection devices. The Child Protection Act, normatively, the author feels, has been able to provide fairly good protection for children. Implementing this policy by law enforcement officers is an inseparable part of efforts to protect the law for child victims of sexual crimes.

²⁰Fachri Arfian Dicka, 2021, Implementasi Pemenuhan Hak Restitusi Terhadap Anak Korban Tindak Pidana Kejahatan seksual (Studi Kasus Nomor 382/Pid.sus/2020/PN.Jkt.Sel., *Skripsi : Syariah and Law Faculty*, State Islamic Syarif Hidayatullah University, Jakarta, pp. 74 – 75.

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The implementation of the right to restitution for child victims of sexual crimes has explicitly been regulated, namely through Article 71D of the Republic of Indonesia Law No. 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection as amended by Law of the Republic of Indonesia Number 17 of 2016 concerning Stipulation of Government Regulations. In lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection, it has even been regulated in Government Regulation 43 of 2017 concerning the Implementation of Restitution for Children Who Are Victims of Crime. The implementation of granting restitution rights to children may not be fulfilled because children do not know the rights that child victims of sexual crimes can obtain. Three factors affect the effectiveness of the implementation of the right to restitution for child victims, namely:

- 1) legal factors related to the lack of coercion for perpetrators if they do not pay restitution;
- 2) law enforcement factors where the law enforcer's understanding of the right to restitution is not maximal;
- 3) community factors where there is no will to grant restitution rights.

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