

## Effectiveness of Protection and Recovery Implementation for Child Victims of Sexual Violence

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### Abstract

*In its development, the criminal justice system in Indonesia only positions child victims of sexual violence as reporters and witnesses. This is clearly unfair to victims who suffer material and non-material losses. The urgency of this research is that the regulation of restitution for child victims of sexual violence has resulted in the violation of rights and justice for children victims of sexual violence. This article aims to determine and analyze the effectiveness of implementing restitution for child victims of sexual violence. The type of approach used is the normative juridical method. The results of the research show that the effectiveness of implementing the protection and recovery of child victims of sexual violence has not been effective, This is due to the lack of implementation of restitution for child victims of sexual violence which ultimately also hinders the implementation of rehabilitation for child victims of sexual violence. The obstacles that influence this are legal regulations which still do not explicitly and clearly contain the implementation of restitution. This culturally also hinders the system of implementing restitution for child victims of sexual violence. Solutions that can be implemented are efforts to provide counseling, improve facilities and infrastructure in efforts to prevent and eradicate sexual abuse against children, the need for a safe house for child victims of sexual abuse during the legal process, provide understanding to victims regarding their rights, and it is necessary to regulate the amount of restitution for child victims of sexual violence.*

### I. Introduction

Legal protection of the human rights of every group of Indonesian society, as regulated in Article 28B paragraph (2) and Article 28G of the 1945 Constitution of the Republic of Indonesia. It is very clear that the proof of the existence of a rule of law is the guaranteed recognition and protection of Human Rights. Human (HAM) every existing group of society. However, in reality, not all

human rights possessed by marginalized groups in Indonesia can be realized, including in this case the protection of children.

Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Children's rights, regulated in Article 1 point 12, that children's rights are part of human rights which must be guaranteed, protected and fulfilled by parents, families, communities, the state, government and regional governments.

In the preamble to the Child Protection Law, it is stated that children are a trust and gift from Almighty God, in whom the honor and dignity of being a complete human being is inherent. Children are the shoots, potential, and successors of the young generation to the ideals of the nation's struggle, have a strategic role and have special characteristics and traits that guarantee the continued existence of the nation and state in the future. That in order for every child to be able to bear these responsibilities, he or she needs to have the widest possible opportunity to grow and develop optimally, both physically, mentally and socially, and to have noble character, it is necessary to make efforts to protect and realize children's welfare by providing guarantees. towards the fulfillment of their rights and treatment without discrimination.<sup>1</sup>

Children as creatures of God Almighty and social creatures, from the womb until birth have the right to life and independence and receive good protection from parents, family, community, nation and state. Juridical child protection can include legal protection of children in the field of civil law and in the field of public law. Every child has human rights, just like the rights that adults have, not many parties think about it and are willing to take concrete steps to protect children's rights. It is very easy for children to become victims of all forms of violence or crime because children are not yet able to do things to protect themselves properly.<sup>2</sup>

<sup>1</sup> Junaidi, Legal Protection of Children's Rights in Indonesia, Journal of Law, Society, and Civilization, Faculty of Law, Sebelas Maret University, Surakarta, 2021, p. 2, <https://jurnal.uns.ac.id/JoLSIC/index>

<sup>2</sup> Purwanto, Legal Protection for Children as Victims of Crime in the Indonesian Positive Legal Perspective, Jurnal Idea Hukum (e-ISSN: 2442-7241 , p-ISSN: 2442-7454) is published by Master of Legal Science, Faculty of Law, Jenderal University Soedirman, Vol 6, No 1, 2020, p. 36. <http://jih.fh.unsoed.ac.id/article>vi>

Protection of children is the responsibility of parents, families and the surrounding community. The protection given to children is to guarantee and protect children and their rights to be able to live, grow, develop and also be able to socialize in the surrounding environment. Children are a gift and a trust from Almighty God that we should look after and protect.<sup>3</sup>

The issue of the criminal justice system in cases of sexual violence in Indonesia is very interesting to discuss. The criminal justice system in Indonesia has so far ignored child victims of sexual violence. Victims as parties seeking justice are not given space in the investigative and investigative processes as well as justice. This results in victims having little opportunity to fight for their rights and recover from their situation as a result of violence.

The dynamics that operate within an institution, government or country will determine the form and characteristics of children's problems. Therefore, children's problems include several things, namely:<sup>4</sup>

1. A vision of development that is in favor of children's interests and that prioritizes the best interests of children is integrated into development systems and models.
2. The child protection legal system has not been fully integrated into positive legal norms and child law enforcement has not been optimal.
3. The reality of children in difficult situations such as child labor, street children, children victims of violence, child abuse, child prostitution, and a number of other children's problems requires special intervention, because it is increasingly evident in Indonesian society and the state.

Apart from the problems above, the issue of child protection also occurs in the legal aspect. In its development, the criminal justice system in Indonesia only positions child victims of sexual violence as reporters and witnesses. This is clearly unfair to victims who suffer material and non-material losses.<sup>5</sup> Meanwhile, the position of perpetrators of criminal acts is receiving more

<sup>3</sup> Valeria Rezha Pahlevi, Legal Protection for Children Who Are Victims of Crime, Journal of the Faculty of Law, Atmajaya University, Yogyakarta, 2016, p. 1., <https://e-journal.uajy.ac.id/11229/1/JURNAL.pdf>

<sup>4</sup> Muhammad Joni and Tanamas Zulchaina Z, The Concept of Protecting Children's Human Rights in the Indonesian Legal System, Gramedia, Pustaka Utama, Jakarta, 2004, p. 23

<sup>5</sup> Didik Arief Mansyur and Elistaris Gultom, The Urgency of Protection of Crime Victims Between Norms and Reality, PT. Raja Grafindo Persada, Jakarta, 2007, p. 26-27

attention in the criminal justice system in this country, this is demonstrated by the implementation of treatment of offenders, social readjustment, correctional, remission, amnesty, rehabilitation and abolition.<sup>6</sup>This situation is clearly unfair because the suffering experienced by the victim is only a basic instrument for imposing punishment on the perpetrator, while the victim's suffering cannot truly be recovered in the development of the criminal justice system.

Furthermore, various problems that arise as a result of the unfairness of the criminal justice system for victims of sexual violence have come to a light, the implementation of restitution is an alternative in an effort to protect and restore the rights of victims who have been injured as a result of criminal acts of sexual violence.

In its development, the implementation of restitution for the recovery of child victims of sexual violence has not been effective. This is because both Article 7 of Government Regulation of the Republic of Indonesia Number 43 of 2017 and Article 37 of Law Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution and Assistance to Witnesses and Victims still contain administrative requirements that still makes things difficult for victims. Apart from that, criminal perpetrators are reluctant to pay restitution for reasons of economic incapacity. This becomes even more unfair because the perpetrator's inability to pay restitution is only replaced by subsidiary crime. This can be seen in decision Number 07/Pid.Sus-Anak/2019/PN Smg which imposed a restitution fine of Rp. 60.

Based on the description above, the aim of this research is to determine the effectiveness of implementing protection and recovery for child victims of sexual violence?

## **2. Research Method**

This research is a type of normative legal research. Normative research is a process of discovering the supremacy of law, legal principles, and legal

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<sup>6</sup> Maya Indah S., *Victim Protection, A Victimology and Criminology Perspective*, Kencana, Jakarta, 2014, p. 97

doctrines to answer the legal problems faced.<sup>7</sup>More than one approach can be used in research. While collecting research materials, research is carried out by studying data related to problems obtained from secondary data which is supported by primary data in the form of interviews with informants. Secondary data is data obtained from the material library.<sup>8</sup>

### **3. Results and Discussion**

Gender and child-based violence is increasing, both in number and in increasingly diverse forms and modes of operation. The factors that cause gender-based violence are very complex and interrelated. These factors include legal instruments that have not been able to provide protection to victims, the concept that women are family property (assets), media that do not support reporting about violence against women and children, public services that are not yet optimal, customs that sometimes legalize violence, problems of poverty, wrong interpretations of religious teachings, all of which are wrapped up in patriarchal culture.<sup>9</sup>

Recently, in various media such as print media and online media, there have been many reports of cases of violence involving children as victims, one of which is sexual violence against children. It turns out that reports of cases of sexual violence against children are still increasing, making many people sad and angry at the perpetrators.<sup>10</sup>There are so many phenomena of violence and criminal acts against children that have become a strong focus from various

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<sup>7</sup> Hidayat, BR, Aprilianda, N., & Endrawati, L. Legal Implications of Stopping the Investigation Because the Forced Defense (Noodweer) and Emergency Defense Exceed the Limits (Noodweer Excesses). *International Journal of Multicultural and Multireligious Understanding*, 9 (2), 2022, p. 244. <https://doi.org/10.18415/ijmmu.v9i2.3405>

<sup>8</sup> Arrohim, MB, & Wahyuningsih, SE Analysis of Judicial Application of Criminal Penalty Against Notary / Land Deed Officials Conducting Making Crime of the Fake Authentic Deed in State Court of Semarang. *Deed Journal*, 7 (2), 2020, p. 183. <https://doi.org/10.30659/akta.v7i2.7891>

<sup>9</sup> Taufiq, Legal Sanctions Against Perpetrators of Violence Against Women and Children, *Pena Justisia: Vol. 19, no. 1, June, 2020*, p. 36. See also Aldila Arumita Sari&Ani Purwanti, Law Enforcement of Criminal Acts of Violence Against Women in Demak City, *Legal Issues*, Volume 47 No.3, July 2018, p. 318.

<sup>10</sup> Diana Yusyanti, Legal Protection of Child Victims from Criminal Actors of Sexual Violence (Legal Protection of Children Victims from Criminal Actors of Sexual Violence), *De Jure Legal Research Journal*, Volume 20, Number 4, December 2020, p. 620. <https://ejournal.balitbangham.go.id/index.php/dejure/article/view/1429/pdf>

circles. This is considered an indicator of poor legal and child protection instruments.

The government has stipulated Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which in Article 20 states that those who are obliged and responsible for implementing child protection are the state, government, community, family and old people. Furthermore, regarding child protection due to violence, it is specifically regulated in Article 59 paragraph (2) letter i of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 which explains that this special protection is regulated to be given to child victims of violence, by physical or psychological. The special protection is as follows:<sup>11</sup>

1. Quick treatment with medication or physical, psychological and social rehabilitation, and prevention of other health disorders.
2. Psychosocial assistance while undergoing treatment and also until the victim recovers.
3. Providing social assistance for sacrificial children from poor families.
4. Providing protection and accompanying children during the judicial process.

Even though regulations regarding child protection already exist, implementation in the field has not gone as expected. There are so many legal issues regarding child protection, especially protection from sexual violence against children. Legal protection is provided so that children do not become victims because they are sacrificed for certain purposes and interests by certain people or groups (private and government). A child is called a victim because he or she experiences mental, physical or social suffering or loss due to someone else committing violence against the child.<sup>12</sup>

The implementation of protection for children must meet the requirements, among others: the development of truth, justice and the welfare of children. As a victim, for a child, it is closely related to the mental attitude in receiving treatment from law enforcers to optimize the implementation of the

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<sup>11</sup>Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child protection.

<sup>12</sup>Arif Gosita, *Child Protection Issues*, Akademika Pressindo, 1985, Jakarta, p. 35

rights that exist for him and it is not appropriate to be equated with adults, therefore guarantees for child protection must absolutely be implemented in the best interests of development. and the child's growth. Examining human rights (including children's rights), their applicability is universal in that those who have these rights are humans as human beings, and not because of certain characteristics they have that must be treated in certain appropriate ways. The foundation of human rights and the second and deeper foundation, namely God himself who created humans. So it's quite understandable. That human rights concern all aspects of human life which are a reflection of human nature as individuals, members of society and creatures of God, which must be respected and guaranteed legal protection. So, a contrario, if basic human rights, including the rights of children, are violated, what will happen is that society will become less good or it can be said that the authorities will not carry out their duties properly. which must be respected and guaranteed legal protection. So, a contrario, if basic human rights, including the rights of children, are violated, what will happen is that society will become less good or it can be said that the authorities will not carry out their duties properly. which must be respected and guaranteed legal protection. So, a contrario, if basic human rights, including the rights of children, are violated, what will happen is that society will become less good or it can be said that the authorities will not carry out their duties properly.<sup>13</sup>

The criminal justice system in Indonesia has so far ignored child victims of sexual violence. Victims as parties seeking justice are not given space in the investigative and investigative processes as well as justice. This results in victims having little opportunity to fight for their rights and recover their situation as a result of crimes of sexual violence. In its development, the criminal justice system in Indonesia only positions child victims of sexual violence as reporters and witnesses. This is clearly unfair to victims who suffer material and non-material losses.<sup>14</sup> Meanwhile, the position of perpetrators of criminal acts is receiving more attention in the criminal justice system in this country, this is demonstrated by

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<sup>13</sup>Tini Rusmini Gorda, 2017, Law on the Protection of Child Victims of Pedophilia, Setara Press, Malang, p. 76.

<sup>14</sup>Didik Arief Mansyur and Elistaris Gultom, The Urgency of Protection of Crime Victims Between Norms and Reality, Raja Grafindo Persada, Jakarta, 2007, p. 26-27.

the implementation of treatment of offenders, social readjustment, correction, remission, amnesty, rehabilitation and abolition.<sup>15</sup>

This situation is clearly unfair because the suffering experienced by the victim is only a basic instrument for imposing punishment on the perpetrator, while the victim's suffering cannot truly be recovered in the development of the criminal justice system. Furthermore, various problems that arise as a result of the injustice of the criminal justice system for victims of sexual violence have come to a light, the implementation of restitution is an alternative in an effort to protect and restore the rights of victims who have been injured as a result of criminal acts of sexual violence. Regarding restitution in its development, it has been clearly regulated in the United Nations Declaration on the Prosecution and Assistance of Crime Victims in point 4, part 1 of the General Principles. In the United Nations declaration it was stated that:<sup>16</sup>

*Reparation by the offender to the victim shall be an objective of the justice process. Such reparations may include (1) the return of stolen property, (2) monetary payment for loss, damages, personal injury psychological trauma, (3) payment for suffering, and (4) service to the victim. Reparation should be encouraged by the corrective process.*

Meanwhile, regarding the regulation of restitution in national legal regulations, it is clearly regulated in Law Number 31 of 2014. In Article 1 number 11 of Law Number 31 of 2014 it is stated that "restitution is compensation given to the victim or his family by the perpetrator or party third."

Furthermore, Article 7A number 1 states that victims of criminal acts have the right to receive restitution in the form of:

- (a) compensation for loss of wealth or income;
- (b) compensation for losses incurred as a result of suffering directly related to criminal acts; and/or
- (c) reimbursement for medical and/or psychological care.

Furthermore, Article 3 of Government Regulation Number 43 of 2017 concerning the Implementation of Restitution for Children Who Are Victims of

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<sup>15</sup>Maya Indah S., Victim Protection, A Victimology and Criminology Perspective, Kencana, Jakarta, 2014, p. 97

<sup>16</sup>Romli Atmasasmita, Writing Scientific Papers Concerning the Problem of Compensation for Victims of Crime, National Legal Development Agency, Ministry of Justice, Jakarta, 1992, p. 4.



Criminal Acts states that restitution for children who are victims of criminal acts takes the form of:

- (a) compensation for loss of wealth;
- (b) compensation for suffering as a result of non-criminal action; and/or
- (c) reimbursement for medical and/or psychological care.

Then regarding the implementation of restitution for victims of sexual violence is also regulated in Article 37 of Law Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning Providing Compensation, Restitution and Assistance to Witnesses and Victims which states:

- (1) Witnesses and/or victims of serious human rights violations, criminal acts of terrorism, criminal acts of human trafficking, criminal acts of torture, criminal acts of sexual violence and serious abuse are entitled to receive assistance.
- (2) Assistance as intended in paragraph (1) is in the form of:
  - a. medical assistance; And
  - b. psychosocial and psychological rehabilitation assistance.
- (3) Requests for assistance as referred to in paragraph (21) are submitted by witnesses and/or victims, families or their proxies.
- (4) The request for assistance as intended in paragraph (3) is submitted in writing in Indonesian on paper with sufficient stamp duty to LPSK.
- (5) Medical assistance as intended in paragraph (2) letter a for victims of criminal acts of terrorism is excluded from the provisions as intended in paragraph (3).

In its development, the implementation of restitution for the recovery of child victims of sexual violence has not been effective. This is because both Article 7 of Government Regulation Number 43 of 2017 and Article 37 of Law Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning Providing Compensation, Restitution and Assistance to Witnesses and Victims still contain administrative requirements that are still difficult. victims, so the authorities should be able to facilitate the fulfillment of administrative requirements as regulated in Article 7 of the Government Regulation of the Republic of Indonesia Number 43 of 2017 and Article 37 of Law

Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution , and Assistance to Witnesses and Victims.

Apart from that, criminal perpetrators are reluctant to pay restitution for reasons of economic inability. This becomes even more unfair because the perpetrator's inability to pay restitution is only replaced by a subsidiary punishment in the form of imprisonment for 2 to 3 months. This can be seen in decision Number 07/Pid.Sus-Anak/2019/PN Smg which imposed a restitution fine of Rp. 60,000,000,- (Sixty Million Rupiah).<sup>17</sup> Most of the judge's considerations are that the victim's losses can be compensated by the perpetrator, where part of the restitution paid can be paid for appropriate rehabilitation costs. However, in reality the criminal compensation for damages was replaced by imprisonment for 3 months.<sup>18</sup> Apart from that, the time for receiving restitution by child victims of sexual violence is also quite long considering the lengthy judicial process, not to mention the perpetrators who are in detention or subject to the death penalty which can then be a reason for not making restitution.

This situation is made even more complicated by the fact that the types of sanctions threatened in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection for perpetrators of sexual violence against children do not contain the threat of criminal compensation. In its development, the implementation of compensation as an alternative to restitution is also not easy, this is because there is no institution appointed in the Government Regulation to interpret the magnitude of losses suffered by victims, apart from that it is also not clearly regulated which state institution has the authority to distribute compensation from the state. to child victims of sexual violence. Apart from that, the administrative requirements for submitting compensation applications by victims are very complicated and will also be a problem for victims.

Furthermore, when talking about criminal acts of sexual violence against children, then when proceeding in court, of course we use the Criminal Procedure Code which does not clearly contain matters regarding compensation

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<sup>17</sup> Decision Number 07/Pid.Sus-Anak/2019/PN Smg

<sup>18</sup> *ibid.*

for child victims of criminal acts. Law Number 35 of 2014 also does not specifically address restitution and compensation for child victims of criminal acts, including criminal acts of sexual violence. It has been previously explained that the consequences of sexual violence against children, including acts of sexual violence, can result in physical and psychological harm. Until now, it cannot be said that compensation and restitution can restore the psychological losses of children who are victims of sexual violence.

This is because psychological violence can have short or long impacts. Short impacts include threats to children's safety, damage to family structures, and mental and mental disorders. Meanwhile, the long-term impact is in the form of children's involvement in adulthood as perpetrators of acts of violence. Traumatic experiences and experiences of being victims of violence result in children becoming perpetrators of violence in their adulthood. This can be seen by symptoms of aggression, phobia, insomnia, low self-esteem and depression. These various things result in children being involved in violence in intimate relationships in their adulthood.<sup>19</sup>

This clearly means that many perpetrators of sexual violence against children, including child sexual violence, are not effectively deterred and transformed into good human beings, considering that this condition is also exacerbated by problems of poverty and low education. Apart from that, the existence of a paradigm regarding imprisoning perpetrators of child sexual violence will of course result in other problems, another problem is the issue of the capacity of prisons (correctional institutions) which are increasingly unrepresentative. It was recorded that in January 2018 the number of prisoners reached 233,662 people, while the capacity of prisons in Indonesia only reached 123,117 people.<sup>20</sup>

This can clearly have an impact on conflicts in prisons which lead to various issues of control of prisons by prisoners who feel that the government is not paying attention. So it can be said that until now there has been no method

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<sup>19</sup>Maria Advianti, KPAI: Perpetrators of violence against children increase every year, accessed via [www.KPAI.go.id](http://www.KPAI.go.id), On 12 May 2020. See also: Margaretha, Rahmaniar Nuringtyas, and Rani Rachim, *Childhood Trauma and Violence in Intimate Relationships*, Makara Social Humanities Series, 2013, p. 34

<sup>20</sup>Era.id, *Causes of Conflict in Prisons, Capacity and Facility Retention*, Accessed on 12 May 2020

of punishment that is truly effective in creating a deterrent effect for perpetrators of criminal acts of sexual violence. Therefore, the appropriate punishment is through the recovery of the victim, both through restitution and compensation, as well as the psychological recovery of the victim, which until now has received little attention due to the criminal law paradigm which places the victim more as a witness, reporter and instrument in the punishment of the perpetrator.

Based on this explanation, it can be seen that in the case of protection for victims of sexual violence, legal certainty exists, meaning there is no legal vacuum. However, there are still issues of legal justice in this case, so it is clear that conflict often occurs between the value of legal certainty and the value of legal justice. Based on the various explanations above, it is clear that in terms of protecting and restoring the conditions and rights of children who are victims of sexual violence, it is not only sufficient to look at it normatively by emphasizing aspects of legal regulations as the main basis for answering the issue of the effectiveness of protecting and restoring the conditions and rights of children who are victims of sexual violence. This also needs to be seen from a legal culture perspective. Lawrence M. Friedman stated that "in discussing law it is not appropriate to only talk about the substance and structure of law, but you must also look at legal culture".<sup>21</sup>

In its development, legal culture is also important to discuss in every legal discussion because legal culture is a pattern that shows how legal regulations are implemented in society, where this is influenced by the knowledge, traditions, customs and agreements of a society. Seeing this view it is clear that the implementation of the law cannot be isolated from the development of community life. The culture of society in the development of law also colors and degrades the concept and system of legal implementation.

In line with this view, as explained above, Chambliss and Seidman stated that whatever actions will be taken by role holders, implementing institutions and law makers are always within the scope of the complexity of social, cultural, economic and political forces and others. etc.

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<sup>21</sup>Lawrence M Friedman, *The Legal System, A Social Science Perspective*, Russell Sage Foundation, New York, 1975, p. 6-9.

#### **4. Conclusion**

The effectiveness of the implementation of protection and recovery for children victims of sexual violence is not yet effective, this is shown by the lack of implementation of restitution for children victims of sexual violence which ultimately also hinders the implementation of rehabilitation for children victims of sexual violence. In its development, the implementation of restitution for the recovery of child victims of sexual violence has not been effective. This is because both Article 7 of Government Regulation Number 43 of 2017 and Article 37 of Law Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning Providing Compensation, Restitution and Assistance to Witnesses and Victims still contain administrative requirements that are still difficult. victim, so that the authorities should be able to facilitate the fulfillment of administrative requirements as regulated in Article 7 of the Government Regulation of the Republic of Indonesia Number 43 of 2017 and Article 37 of Law Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning the Provision of Compensation, Restitution and Assistance to Witnesses and Victims. Apart from that, criminal perpetrators are reluctant to pay restitution for reasons of economic incapacity. This becomes even more unfair because the perpetrator's inability to pay restitution is only replaced by a subsidiary punishment in the form of imprisonment.

In order, this research will explain recommendations:

1. There needs to be reaffirmation regarding clear technical arrangements for the implementation of restitution, compensation and rehabilitation.
2. There needs to be a partnership institution to implement this idea effectively. And it also needs to be regulated in existing legal regulations regarding efforts to prevent acts of sexual violence against children.

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