

# The Process of Restitution for Children and Women as Victims of Human Trafficking Crime

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## Abstract

In general, human trafficking is a global problem that is very seriously addressed, where the majority of victims are children and women. The research method used is a type of normative juridical source from secondary data by reviewing the legal literature and the Act. The results of the study are the provision of fulfilling the rights of children and women as an effort to form legal protection for children who are victims of crime. Legal protection efforts are children's rights that should be given when becoming victims, namely the rights of children and women to obtain restitution as stipulated in the provisions of the law. The mechanism for submitting and providing restitution for children and women can be carried out based on the laws and regulations that apply, one of which is Law Number 21 of 2007 concerning the eradication of criminal acts of trafficking in persons. In addition, there is also a Government Regulation Number 43 of 2017 in which the submission of restitution is divided into two stages, namely submitted during the process of investigation and prosecution. In this case, the investigator must be notified to the victim of his compensation rights (restitution), after being told then the victim must submit restitution within three days with the requirements for the application file that has been determined in government regulations

**Keywords:** Restitution Process, Children and Women, Human Trafficking.

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## INTRODUCTION

Understanding the law is not merely a matter of law enforcement, but rather on the level of implementation and an understanding of the trafficking of people is not only at the conceptual level but rather at the level of implementation or application of legal awareness. Rules are perceived as a necessity then it will be a legal requirement. The rules of law can be applied as needed and those are not for compulsion. Thus legal and law enforcement purposes will run in accordance with the law's supremacy [1].

Trafficking in persons has been regulated in Law Number 21 of 2007 concerning Crime of Trafficking in Persons and threatened with criminal sanctions, but in its implementation, these acts are still carried out even as a source of income for family life. The human rights law where the perpetrators will be subject to criminal sanctions when viewed from their effectiveness turns out this regulation is not effective [2]. Surely, various reasons for the cause can be caused by other factors, as the ineffective law enforcement process or distrust of the community towards legal institutions, because they think they will not get justice [3].

The majority of victims of human trafficking are children and women in the present news and have been declared a serious global issue, and even have become a global business that gives huge profits to the perpetrators. Up to the time, the practice of human trafficking is increasingly showing quality and quantity. Every year it is estimated that 2 million people are traded and mostly children and women [4].

Victims are always the most disadvantaged. In addition, the victim has suffered loss due to his or her crimes that materially, physically, and psychologically. Victims also have to suffer multiple disabilities because they are often mistakenly treated only as a means of law enforcement for the realization of a legal certainty. Lack of legal protection when compared to the treatment of perpetrators of crime. Human trafficking has a negative impact on the lives of victims. Physically, victims are not infrequently infected with the disease due to the living situation and the impact of their work. In psychic terms, victims lose the opportunity to experience social, moral, and spiritual development.

The position of the victim in criminal justice as a party seeking justice that has been neglected. The victim is not authorized and this is not actively involved in the process of investigation and trial. Such the victim loses the opportunity to fight for the rights and restore his or her circumstances due to a crime. According to Andi Hamzah, the victim of crime in the criminal act of trafficking is a sufferer. In the settlement of criminal matters, often the law overpowers the rights of the suspect or defendant, while the rights of the victim are neglected one of them is the right compensation that requires a person who has acted to harm another person to pay a certain amount of money or goods to the person disadvantaged. So that the loss has been considered to be unprecedented, the damages are actually the realm of civil law, but to realize the principle of austere, quick, and light-weighted damages can be combined with criminal investigations [5].

Provision of restitution for children who are victims of trafficking has been regulated in Government Regulation Number 43 of 2017 concerning the Implementation of Restitution for Children Who Are Victims of Criminal Acts. The rules contained in the government regulation are expected to be able to complement the compensation and restitution mechanism which is not contained in the previous laws and regulations and can cover the gap in the implementation of restitution and compensation for victims of criminal acts charged to the perpetrators. Based on the description above, in this paper, we will discuss the problem of efforts to provide restitution for children and women as victims of criminal acts of human trafficking. With the limitation of the study, namely regarding legal arrangements relating to restitution in Indonesian laws and regulations and the process of submitting and providing restitution for children and women as victims of human trafficking crimes.

## LITERATURE REVIEW

### Restitution

Initially, the use of the term restitution was only stated by the use of the term "compensation." This can be found in various legal books in Indonesia. According to Ter Haar, giving compensation to victims of a crime is actually no stranger to the Indonesian nation, because customary law has known it through sanctions for restoring the situation [6].

The context of the recovery of victims in the form of restitution also contains several principles of legal principles as follows: a) The principle of benefit, which means that the protection of victims of crime is not only indicated for the attainment of benefits, both materially and spiritually for crime victims, but also for the public interest. Especially in an effort to reduce the number of criminal acts and create public order. b) The principle of justice, which means that the application of the principle of justice in an effort to protect the victims

of crime is not absolute because it is also constrained by a sense of justice that should be given to offenders. c) The principle of balance, which means that the purpose of the law in addition to providing certainty and protection of human interests, also to restore the disturbed balance of the public order for restitution in integrum, the principle of balance has an important place in efforts to restore victims' rights. d) The principle of legal certainty, which means that this principle can provide a strong legal foundation for law enforcement officers when carrying out their duties in an effort to provide legal protection to victims of crime [7].

### Criminal Victim

Regarding the notion of victims themselves listed in Article 1 paragraph 3 of Law No. 31 of 2014. The Amendment Act No. 13 of 2006 on Witness and Victim Protection stating that the victim is a person experiencing physical, mental, and / or economic losses caused by a criminal act. Meanwhile, Law Number 27 Year 2004 on the Truth and Reconciliation Commission Article 1 paragraph 5 and Regulation No. 3 of 2002 Article 1 paragraph 3 defines that the victim is an individual or group of individuals who have suffered physical, mental or emotional, economic loss or neglect, reduction, or the deprivation of their basic rights, as a result of human rights violations are severe, including the victim's heirs.

According to Arif Gosita, the victims are those who suffer physically and mentally as a result of the actions of others as opposed to self or others seeking the fulfilment of self or others contrary to the interests of human rights suffer [8]. Meanwhile, according to Romli Atmasasmita, explained that the victim was a person who was hurt and his suffering was ignored by the State. While victims have tried to prosecute and punish the perpetrators of the violence [9].

Then, according to Mendelson, based on the degree of error the victim is divided into five types, namely the one who is not guilty, who is the victim because of his negligence, which is equally wrong with the perpetrator, who is more guilty than the perpetrator, and the one who is guilty (in terms of this is a free agent). Furthermore, Muliadi claimed the victims were people who either individually or collectively have suffered harm, including physical harm or mental, emotional, economic, or the substantial disruption of their rights are fundamental, through act or commission which violates the criminal laws in each country, including the abuse of power [10].

### Human Trafficking

The definition of human trafficking in Maidin Gultom's book means that human trafficking is an activity of recruitment, transportation, transfer, hiding or receiving someone, with threats or use of violence or other forms of pressure, kidnapping, forgery, fraud or

fraud, or abuse of power or position vulnerable, or acceptance or payment, or benefits so as to obtain approval from the person holding control of the person to be exploited, which at a minimum includes exploitation through prostitution or other forms of sexual exploitation, forced labor or service, slavery or practices that like it, illegal adoption or collection of organs [11].

The United Nations (UN) provides a definition of trafficking is as the recruitment, transportation, transfer, harboring or receipt of persons, by threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or vulnerability, or a member or receiving of payments or benefits to obtain the consent of an authorized person over another person for the purpose of exploitation [12].

## RESEARCH METHOD

In accordance with the title of this study, the method used is the normative juridical study that approximates the empirical juridical. This empirical normative legal research method is basically a merger between normative legal approaches with the addition of various empirical elements. A normative research method on the implementation of normative law in its action on any particular legal event occurring within a society. The data instruments used are secondary data comprising: primary legal materials, secondary legal materials and tertiary legal materials, then from the literature review relevant to the research object.

The data was collected using library research, the research is still largely theoretical acquired through books, modules, dictates, law journals, research results, documents, legislation, internet and data obtained relevant and related to the research. After collecting data, either with a literature study, the data were analyzed qualitatively [13], namely the observation data obtained and connect every data acquired with the provisions related to the problem studied with inductive logic, the thought of a special thing to be more general, by using the normative, the interpretation and construction law and subsequently analyzed by means of qualitative methods that can be deduced by the deductive method that results in a conclusion that is common to the investigated.

## RESULTS & DISCUSSION

### Legal Arrangements Relating to Restitution under the laws of Indonesia

Restitution is the payment of compensation charged to the offender by a court decision that is

legally binding for any loss or material and immaterial in the suffering of victims and their heirs. In the legislation in Indonesia alone, there are currently several laws regulating the restitution or compensation such as contained in Law Number 8 of 1981 on the Code of Criminal Procedure.

In addition, in Law Number 21 of 2007 concerning the Eradication of Non-Criminal Trafficking in Persons, Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, Law Number 13 of 2006 concerning Witness Protection and Victim, Law No. 26 of 2000 concerning the Court of Human Rights and Government Regulation Number 44 of 2008 concerning the provision of compensation, restitution, and assistance to witnesses and victims.

The regulation regarding compensation is contained in the Criminal Code, hereinafter referred to as the Criminal Code, contained in Article 14 C which states that "if the judge imposes a trial sentence, then in addition to the general stipulation that the convict will not commit a crime, specified conditions that the convicted within a certain time, which is shorter than the probationary period, must replace all or as a loss caused by the crime."

The Article formulations contained in the Criminal Code are still oriented towards the perpetrators, the Criminal Code has not explicitly formulated provisions that concretely or directly provide legal protection for victims, for example in criminal convictions must be considered the effect of criminal acts on victims or families, so that in the Criminal Code there is also no formulation regarding the type of criminal restitution that can benefit victims and/or families of victims.

Furthermore, in the Criminal Procedure Code, the law also regulates more about the protection of suspects than the protection of victims of crime. In the Code of Criminal Procedure formulate a process of compensation payment to be provided and received by victims of crime can be done more quickly, by combining the criminal case with the compensation which was essentially a civil case. The right to claim compensation for damages which are essentially civil matters. The right to demand compensation for damages suffered from the consequences of criminal acts in its capacity as the injured party set out in the Criminal Code that is actually closer to the system of compensation which is civil in nature can be found in Article 98 through to Article 101 Criminal Procedure Code.

The principle of combining compensation cases in criminal cases can be mentioned as follows:

- It is a law enforcement practice based on the creation of the Criminal Procedure Code itself for

the proceedings (criminal with civil) for broadcasting in Indonesia. The Criminal Procedure Code provides a legal procedure for a victim (or several victims) of a criminal offense, to sue for civilian-style compensation against the accused along with ongoing criminal proceedings

- Collection of examinations and claims for compensation in criminal cases, as well as in accordance with the principle of balance referred to in the Criminal Procedure Code.

Merger of compensation claim cases must pay attention to the following conditions:

- It must be in the form of and is a loss experienced by another person including the victim (victim witness), as a direct result of the crime committed by the defendant
- The amount of compensation that can be requested is only limited to the amount of material loss suffered by other people, including the victim.
- That the subject matter of the laws of the parties was the defendant.
- The claim for compensation combined with the criminal case can only be submitted no later than before the public prosecutor submits a criminal request (requisitor)
- In the event that the public prosecutor is not present, the claim is submitted no later than before the judge decides.
- The criminal case caused harm to others. Losses for others include losses to victims.
- The prosecution of compensation claims that are combined in the criminal case does not need to be submitted through the clerk of the district court, but can be directly submitted to a court hearing through a panel of judges / judges
- The compensation claim in article 98 paragraph (1) of the Criminal Procedure Code is, must be as a result of the losses arising from the defendant's actions and not regarding other losses.

The compensation is also regulated in civil law, namely Article 1365 of Civil Code until 1380, as a result of a breach in an engagement, either because of an agreement or because of legislation. Article 1365 of the Civil Code states that "each act violating the law, which is due to publish the loss was his fault, replace these losses". The articles above all regulate compensation claims in the sense of violating the law. If a person has violated an illegal act and has proven a crime, then he can be prosecuted for compensation."

According to Munir Faudy, acts against the law are as a collection of legal principles that aim to control or regulate hazard behaviour, to give responsibility or a loss incurred from the social reaction, and to provide compensation to the victim with an appropriate claim [14].

The definition of unlawfulness (*onrechtmatige daad*) is defined as an act or negligence, or contrary to the rights of others, or contrary to the legal obligations of the perpetrator or contradictory, whether with morality, whether life is related to other people or objects, whoever is as a result of his actions have brought losses to others, shall pay compensation" [15].

The regulation regarding restitution in Law Number 26 of 2000 concerning the Human Rights Court is only explicitly stipulated in Article 35 which reads "every victim of gross violation of Human Rights and or their heirs can obtain compensation, restitution and rehabilitation." The next paragraph states that "compensation, restitution and rehabilitation as referred to in paragraph (1) shall be included in the ruling of the Human Rights court." At the end of the article, namely paragraph (3), this provision states that provisions concerning compensation, restitution and rehabilitation are further regulated in government regulations. In this legislation, it is clearly stated that restitution can only be given to victims of severe human rights violations. The provisions regarding Compensation, Restitution and Rehabilitation in Law Number 26 the Year 2000 are further regulated in Government Regulation Number 3 of 2002 concerning Compensation, Restitution and Rehabilitation for victims of severe human rights violations, which can also be given to victims or families who are their heir.

Regulations concerning Restitution are also regulated in Law Number 31 of 2014 concerning amendments to Law Number 13 of 2006 concerning the protection of Witness Victims in Article 7 paragraph b which reads "The right to restitution or compensation which is the responsibility of the criminal offender." In Law, it is stated that the victim can submit this matter through LPSK. The decision regarding this restitution will be given by the court. In Article 7 paragraph 3 it is also said that further provisions regarding the provision of compensation and Restitution are further regulated by government regulation.

In addition, Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection has also regulated the provision of restitution for children victims of criminal offenses as stipulated in Article 71 D that reads "Every child who is a victim as intended in article 59 paragraph (2) letter b, letter d, letter h, letter i, and letter j have the right to submit to the court in the form of the right to restitution which is the responsibility of the perpetrator of the crime.

Government Regulation Number 44 of 2008 concerning Provision of Compensation, Restitution, and Assistance to Witnesses and Victims is regulated in Article 20 to Article 33. In this government regulation, it regulates the provision of restitution by offenders to victims and/or families of victims as a form of

protection against the suffering he had experienced. Granting of restitution is carried out by submitting an application by the victim, the family of the victim or his proxy, to the court through the Witness and Victim Protection agency.

The court referred to in this government regulation is the District Court that has the authority to examine, hear, and decide the criminal offence concerned. An application for restitution is submitted based on a court decision that has obtained permanent legal force and the court has stated that the perpetrator is a guilty criminal. The Witness and Victim Protection Agency submits the request along with decisions and considerations to the District Court to get a determination. Requests for restitution are submitted before the claim is read, the Witness and Victim Protection Agency submits the request along with its decisions and considerations to the public prosecutor. Then the public prosecutor in his claim includes a request for restitution along with a decision and consideration to obtain a court decision.

Furthermore, on October 16, 2017, the President of the Republic of Indonesia has signed Government Regulation Number 43 of 2017 concerning the implementation of Restitution for children who are Victims of Criminal Acts. Government Regulation Number 43 of 2017 concerning the implementation of Restitution for children who are victims of Criminal Actions is a step forward in ensuring children get state legal protection. The perpetrators of child crimes are currently not subject to prison sentences and/or fines, but also, perpetrators of child crimes are required to pay restitution to victims and their heirs in the form of material and immaterial damages. This government regulation itself consists of 4 (four) chapters and 23 (twenty-three) of this article concerning procedures for submitting requests for restitution to regulating the provision of restitution for children who are victims of criminal acts.

### **The Submission and Restitution Process for Children and Women as a Victim of Trafficking in Human Trafficking**

The victim as a person suffering from suffering and loss, of course, the victim has the rights that can be obtained as a victim. The rights of victims according to Van Boven are the right to know, the right to justice and the right to rehabilitation, which is the right that refers to the type of recovery both material and nonmaterial for victims of human rights violations. These rights have been incorporated into the applicable human rights instruments and are also in the jurisprudence of international human rights committees as well as human rights regional courts [8].

The victims' rights have been contained in Article 6 of Law Number 31 Year 2014 Amendment to Law Number 13 of 2006 concerning Protection of

Witnesses and Victims, which states that obtaining protection for personal, family and property security, and free from threats relating to testimonies that will, are, or have been given, participate in the process of selecting and determining the form of security protection and support, giving information without pressure, getting an interpreter, free from ensnaring questions, obtaining information about the development of the case, getting information about court decisions, obtain information in the event that the convict was released, kept his identity confidential, got a new identity, got a temporary residence, got a new residence, obtained transportation costs as needed, received legal advice, obtained temporary living expenses until the protection deadline ended; and / or get assistance.

Meanwhile, according to Arif Gosita, the victims' rights include: getting compensation or suffering. The compensation shall be in accordance with the ability to compensate the party and the degree of involvement of the victim in the occurrence of such crimes and delusions, refusing restitution for the benefit of the perpetrator (refused to be reinstated for not requiring it), obtaining restitution / compensation for the beneficiary if the victim died the world because of such actions, obtaining guidance and rehabilitation, obtaining the right to return, getting protection from the perpetrators' threats when reporting and witnessing, getting help from legal counsel and using legal remedies (*rechtmiden*) [8].

Government Regulation Number 43 of 2017 concerning the implementation of Restitution for children who become Victims of Criminal acts is the mandate of Article 71D paragraph (2) of Law Number 35 Year 2014 concerning the amendment of Law Number 23 Year 2002 concerning Child Protection in which it states that Further provisions on further restitution actions will be regulated in government regulations. With the existence of several customary sanctions resembling compensation, customary fines, shame closets, etc. as mentioned above, it indicates that victims who suffer from the pain or pain caused by the act of the perpetrator, by a regulation or sanctions regulated in the life of the community certain can be alleviated by the possibility of a replacement loss.

Further developments, among the public, arise a need or desire to take action against those who have caused a loss to the interests of the person, namely, with the awareness that acts that harm the interests of the individual are in fact a violation of the interests of society. In order to terminate the reversal of revenge or the occurrence of the *ius talionis* principle (law of revenge), it is decided by the community that a person who has caused loss to the interests of the other person, shall compensate the harmed person at the same time to the community. This, according to L.H.C Hulsman, has taken place from the Middle Ages to the thirteenth

century, where most of the human conflicts are resolved in order to compensate [16].

The implementation of Government Regulation No. 43 of 2017 under the purview of the reality of crime against children not only causes physical and psychological suffering that affects the growth and quality of life of the child. However, materially and materially impair the family. Therefore, it is appropriate that the definition of restitution is defined as payment of compensation which is charged to the perpetrator based on the court ruling that has the legal force remaining on material and/or material losses suffered by the victim or his heirs as mentioned in article 1 paragraph (1) of PP that is. Any child victimized by the Criminal Court is entitled to a refund. Furthermore, in the provision of Article 2 paragraph (2) of the PP it is also mentioned that the child who has the right to obtain restitution as a result of the offence is a child under the age of 18 who are dealing with the law, child kidnapping, child trafficking and trafficking, child victims of violence sexual exploitation, economically and sexually exploited children, and children of victims of sexual violence.

The granting of restitution to children who become victims of a criminal offence must be implemented appropriately, not misinterpreted, and not in use. Restitution shall be granted and received by the Child who becomes a victim of a crime or victim according to the loss and condition of the child being a victim of a crime. This government regulation governs the procedures for filing and restitution of children who become victims of criminal acts, hoping to clarify the requirements for the victim to apply for a Restitution that has been implemented since the case was under investigation and prosecution. In addition, to clarify the investigator or the general adjutant to help the children who are victims of the crime and the victims to obtain the right to obtain restitution.

Government Regulation Number 43 of 2017 concerning the Implementation of Restitution for children who are Victims of Crime, while the main points of discussion are as follows:

### Form of Restitution

Article 3 Government Regulation Number 43 of 2017, the form of restitution for children who are victims of criminal acts can be given in the form of a) Replace compensation for loss of wealth; b) Compensation for suffering as a result of a crime; c) Reimbursement of medical and/or psychological care costs.

The amount of the Restitution paid by the perpetrator to the victim will be determined by the court examining it. However, until now there has been no stipulation that stipulates whether the determination of the amount of restitution can be appealed or not. Then,

Law Number 21 of 2007 concerning the Crime of Trafficking in Persons is regulated in Articles 48 to 50, which states that:

- Every criminal act of human trafficking or his heir has the right to obtain restitution.
- Restitution, as referred to in paragraph (1), has several compensations for a) Loss of wealth or income; b) Suffering; c) Costs for medical and/or psychological care measures; and / or; d) Other losses suffered by victims as a result of trafficking in persons.
- The restitution is given and included at the same time in the court decision about the case of criminal trafficking in persons.
- Provision of restitution as referred to in paragraph (1) shall be carried out since the decision of the first level court is imposed.
- Restitution as referred to in paragraph (4) can be deposited first in the court where the case is decided.
- The granting of restitution shall be carried out within 14 (fourteen) days as from the date of notification of the decision which has obtained permanent legal force.
- In the event that the offender is decided freely by the court of appeal or cassation, then the judge orders in the decision so that the money for the refund is returned to the concerned.

Article 49 reads:

- The execution of the restitution is reported to the chairman of the court who decides the matter, accompanied by a demonstration of the execution of the restitution.
- After the chairman receives the evidence as intended in paragraph (1), the chairman of the court shall announce the execution on the notice board of the court concerned.
- A copy of the evidence of the implementation of the restitution as referred to in paragraph (1) shall be submitted by the court to the victim or his heir.

Article 50 reads:

- In the case of the execution of restitution to the victim is not fulfilled until beyond the time limit referred to in Article 48 paragraph (6), the victim or his heirs inform the court.
- The court as referred to in paragraph (1) gives a written warning letter to the grantor of the restitution, to immediately fulfill the obligation to give restitution to the victim or his heirs.
- In the case of a warning letter as referred to in paragraph (2) shall not be executed within 14 days, the court orders the public prosecutor to seize the property of the convicted and auctioned the property for the payment of restitution
- If the perpetrator fails to pay the restitution, the offender shall be subject to a maximum of 1 (one) year.

### **Restitution Application Procedure**

This restitution can be submitted by the victim including the parent or guardian of the child who is a criminal victim, the heir of the child who is a victim of a crime and the person authorized by a parent, guardian, or guardian of the heir who is a victim of a crime with a special power of attorney. Requests for restitution can also be submitted by the institution. In the case of submitting a request for restitution, it can be submitted in writing using the Indonesian language on paper bearing the court. The submissions must at least contain the applicant, including a) The Applicant's identity, which must be accompanied by photocopy of the child's identity being a victim of criminal offence authorized by the competent authority; b) The identity of the perpetrator; c) Description of the criminal event suffered; d) Description of the loss suffered, it must also be accompanied by proof of legitimate loss; e) Quantity or amount of restitution

The identity of the applicant must also be filled in and explained the relationship between the applicant and the child who is a victim of a criminal act. Furthermore, what is meant by the identity of children who are victims of criminal acts must also be proven by birth certificates, birth recognition letters, diplomas, baptismal letters from religious leaders, children's identity cards, children's findings from the police, or certificates from the village/head local village. Regarding the valid proof of loss as referred to in Article 7 paragraph (2) letter b, it is mandatory to be included in the application because if it is not attached, it will be difficult to calculate the amount of loss to be requested, if there is no evidence of such loss, then only immaterial losses are proposed.

Some things that must be attached to the application for the restitution are as follows:

- 1) If a child who is a victim of a criminal offence must attach a photocopy of the death certificate that has been authorized by the competent authority; and
- 2) Proof of special power of attorney if the application is submitted by the power of Parents, Guardians and Children who are victims of a criminal act.

### **Restitution Application Process**

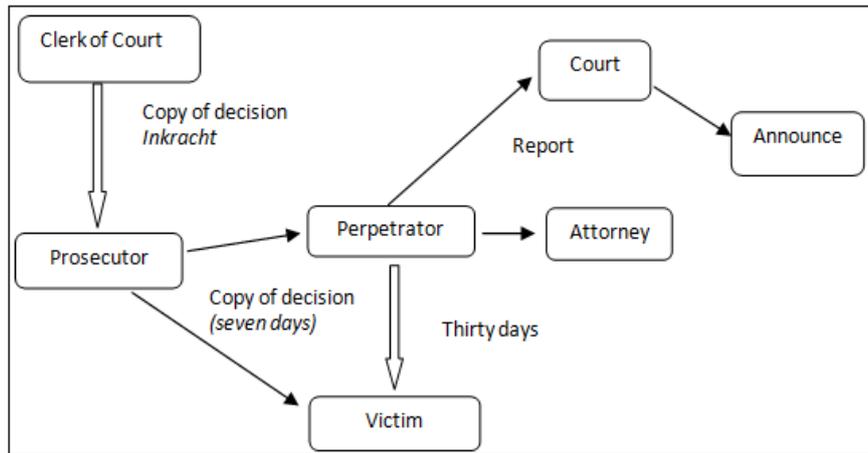
The process of requesting restitution is stated in the provisions of Article 10 through Article 18. In Article 11 it is explained that in carrying out the process of requesting restitution the investigator must inform the victim at the stage of investigation regarding the rights of children who are victims of criminal acts to obtain restitution and order how to submit. Upon this notification, the victim has a maximum of three days to

submit a request for restitution. Furthermore, the investigator checks the completeness of the application file no later than seven days from the date of receipt of the application. If there is a lack of completeness, the request for the investigator informs the applicant that the application is completed. In this case, the time for the applicant to complete the application is three days from the receipt of the notification. If the application is not completed, the applicant is deemed not to have submitted an application.

Article 12 Government Regulation states that "investigators may request an assessment of the amount of the application for restitution submitted". This can only be asked by the provider if the request for restitution of the applicant is declared complete or the Witness and Victim Protection Agency submits the results of the assessment of the size of the request for restitution based on the documents submitted by the investigator no later than seven days after the application for the evaluation. Then the restitution statement that is stated complete is sent by the investigator with an attachment in the case file to the public prosecutor. If the request for restitution is at the prosecution stage, the public prosecutor informs the victim to obtain the restitution and procedure for submitting it before and/or during the trial process. If the perpetrator is a child, the public prosecutor notifies the rights of the child who is the victim of a crime to get restitution during the diversion process. The time of application until the lack of completeness of the application at the prosecution stage is the same as the stage of the investigation. If the application is deemed complete, then the public prosecutor in his claim must then include the request for restitution in accordance with the facts of the trial supported by evidence.

### **Procedures for Granting Restitution**

The grant of restitution is affirmed in the provisions of Article 19 up to Article 22 of Government Regulation No. 43 of 2017, which regulates some provisions of the procedure of the realization of granting restitution as: a) The court clerk sends a copy of the court's verdict that has obtained a permanent legal force which includes giving a refund to the prosecutor; b) Within seven days of receipt of the verdict, the prosecutor must submit to the perpetrator and the victim; c) The perpetrator is obliged to give restitution to the corrupt party within 30 (thirty) days of receipt of the copy of the decision, in the News of the Declaration of Implementation. If the perpetrator is a child then the granting of restitution is performed by his or her parents'; d) After the perpetrator gives restitution to the victim, he is obliged to report to the court and the prosecutor; e) The court then announced the implementation of restitution, either through electronic and non-electronic media.



**Fig-1: Procedures for Granting Restitution**

Regarding how to provide restitution for victims of trafficking in persons can be seen from the following chart:

The authorized institution to assist in the submission of restitution, as contained in the sound of Article 4 paragraph (3), is said that "in the case of the victim as referred to in paragraph (2) letters a and b as a criminal offender, a request for obtaining a Restitution can be submitted by the institution." In this case, the child as a criminal offense can be accompanied by an institution related to the protection of the Child, as stated in the explanation of article 4 paragraph (3) which refers to the institution in this provision, including the Witness and Victim Protection Agency, Legal Aid Agency and the agency that handles child protection.

The submission of the request for restitution has never been initiated from the victim but always from the accompanying institution or the judge agrees when the facilitator conveys that the restitution is requested by the companion. Furthermore, it was stated that the submission of the restitution process at the policemen level, and the prosecution stage in court. The authority of investigators and prosecutors to be able to provide information about the right to submit restitution to victims, and to regulate the technical implementation of restitution by prosecutors has not yet proceeded as regulated by Government Regulation No. 43 of 2017. The mechanism for submitting and giving restitution itself is regulated in Government Regulation Number 43 of 2017 that the investigator must inform the victim that he has the right to apply for restitution, then each investigator must do so in accordance with the laws and regulations that regulate it.

## CONCLUSION

Based on the results and discussion above, the authors draw the conclusion that the regulation of the fulfilment of children's rights is an effort to form legal protection for children and women who are victims of crime. Efforts to protect the law are one of the rights

that children have that must be given when they become victims, namely the rights of children and women to obtain restitution. The process or mechanism for submitting and providing restitution for children and women as victims of trafficking in persons is carried out based on the prevailing laws and regulations, namely Law Number 21 of 2007 concerning Eradication of Crimes against Trafficking in Persons, Law Number 35 of 2014 concerning Amendments to Laws Law Number 23 of 2002 concerning Child Protection, Law Number 31 Year 2014 concerning changes to Law Number 13 of 2006 concerning Protection of Witnesses and Victims in addition to that there is also Government Regulation Number 43 of 2017 in which the submission of restitution is divided into two stages which is submitted during the process of investigation and prosecution. During the investigation phase, the educator must be notified to the victim of the right to restitution, after being told then the victim must submit a refund within 3 days with the requirements for the application file specified in government regulations. Then in the stage of the prosecution the victim can submit a refund at the time of the prosecution, this stage is almost the same as the investigation stage only the difference in the prosecution stage is given time to check the completeness of the file for the victim's submission for three days.

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