

RATIO DECIDENDI IN DETERMINING RIGHTS TO RESTITUTION FOR CHILDREN AS VICTIMS OF RAPE

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Abstract

This study discusses the legal regulations and basis for judges' considerations (*ratio decidendi*) in determining the right to restitution for children as victims of rape. The granting of restitution is often inconsistent due to differences in judges' interpretations of applicable legal norms, particularly the Child Protection Law and the Law on Sexual Violence. This study uses a normative juridical method with a qualitative approach through a review of the Cikarang District Court Decision Number 225/Pid.Sus/2024/PN.Ckr and the Padang District Court Decision Number 327/Pid.Sus/2019/PN.Pdg. The results of the study indicate that the judges in both decisions based their restitution determination on the principles of protecting victims' rights, restorative justice, and comprehensive recovery for the victims' physical, psychological, and social losses. In the Cikarang District Court Decision, restitution was awarded in the amount of Rp 29,800,000 and Rp 15,183,000 to the two child victims, while in the Padang District Court Decision the restitution awarded was much larger, namely Rp 194,125,000 to the victim's parents. The difference in nominal values occurred due to differences in the details of the proof of losses and the lack of standard technical guidelines in calculating restitution. From these findings, it can be concluded that although restitution has been recognized as an inherent right of child victims, the practice of determining restitution remains diverse and has the potential to create legal uncertainty. Therefore, clearer synchronization of regulations and technical guidelines is needed to optimize the fulfillment of restitution and ensure the protection and restoration of victims' human rights.

Keywords: *restitution, child victims, rape, ratio decidendi, restorative justice, child protection*

INTRODUCTION

Child rape is an extraordinary crime with complex and multidimensional impacts. Children as victims experience profound physical, psychological, social, and moral trauma. The state should not only punish the perpetrator but also assume the responsibility to provide full protection and recovery to the victim. One legally recognized form of recovery is restitution, which is compensation that the perpetrator must pay to the victim or their family for the losses incurred as a result of the crime. However, the practice of enforcing the right to restitution in Indonesia is far from ideal. Many court decisions demonstrate inconsistencies in granting restitution, both in terms of amount, legal considerations, and implementation. This demonstrates that restitution as part of justice for child victims has not yet become an established practice in the national criminal justice system.

In some cases, judges do grant restitution to child victims of sexual violence. However, the rationale, or *ratio decidendi*, used to determine the amount of restitution is often not explained in detail or even tends to be ignored. For example, in Padang District Court Decision Number 327/Pid.Sus/2019, the judge only ordered restitution of IDR 40,000,000 to the victim's parents, even though the LPSK (Lembaga Penyiasan Wisnu Kendari) had proposed a much higher amount of IDR 194,125,000. Conversely, in Cikarang District Court Decision Number 225/Pid.Sus/2024, the judge granted the restitution requests submitted by Social Services officers, amounting to IDR 29,800,000 and IDR 15,183,000 for two male victims sodomized by the perpetrator. These discrepancies indicate that there is no uniform legal reference or parameter for determining restitution. This inequality opens up space for critical analysis of how the

ratio decidendi is formed and used by judges in the context of child protection.¹ The urgency of this research stems from concerns over the suboptimal legal protection of child rape victims in terms of recovery. If the legal system focuses solely on imposing criminal sanctions on perpetrators without considering the victim's comprehensive recovery, the desired justice will not be fully realized. Restitution is not merely an administrative matter, but concerns the victim's fundamental right to recover from the trauma and loss they have experienced. Restitution is a concrete form of restorative justice that focuses on recovery, not merely retribution. Therefore, the ratio decidendi used by judges must reflect a bias toward the victim, and not solely the formal aspects of procedural law. The rationale for this research is also based on the importance of promoting criminal law reform that is more sensitive to the needs of victims, particularly children. The lack of standards for calculating restitution and inconsistencies between decisions pose serious challenges to guaranteeing victims' rights. By analyzing these two court decisions, it is hoped that patterns in judicial reasoning will be identified that can serve as references for formulating more appropriate policies. Furthermore, this research aims to demonstrate that fulfilling children's rights as victims relies not solely on legal texts, but also on the judge's sensitivity and courage to side with victims through progressive legal considerations.²

The purpose of this study is to gain a deeper understanding of how Indonesian positive law regulates the mechanism for determining restitution for child victims of sexual violence. This study also aims to analyze the ratio decidendi, or the judge's basis for determining restitution, as reflected in Decision Number 327/Pid.Sus/2019/PN Pdg and Decision Number 225/Pid.Sus/2024/PN Ckr. Using a normative juridical approach and qualitative analysis techniques on decision documents, this study is expected to present a comprehensive picture of the weaknesses and strengths in the application of restitution in juvenile criminal justice, as well as provide policy recommendations for strengthening a just child protection system. Based on the background, urgency, and objectives, this study begins with two fundamental questions formulated as problem formulations. First, how are the regulations governing the determination of restitution rights for child victims under Indonesian positive law? This question is important to answer to determine the extent to which existing regulations guarantee protection for child victims, and whether there are legal loopholes that cause restitution to be frequently ignored or reduced in the trial process. Second, what is the ratio decidendi of judges in determining the restitution rights of child victims of rape as reflected in Decision Number 327/Pid.Sus/2019/PN Pdg and Decision Number 225/Pid.Sus/2024/PN Ckr? This question aims to critically explore the legal considerations used by judges in deciding restitution cases and assess the extent to which these considerations reflect the principles of restorative justice oriented towards victims, especially children.³

LITERATURE REVIEW

Child protection in the criminal justice system is a legal issue that has been widely discussed in national and international legal literature. One of the main focuses of this discussion is how the state guarantees the rights of child victims, particularly when they are victims of sexual crimes that significantly impact their physical and psychological well-being. In this context, restitution, as a victim's right, receives special attention because it involves direct and concrete recovery. Restitution is considered a form of perpetrator accountability and state recognition of the victim's suffering. Although it is regulated in various regulations, its practice still faces many challenges. Therefore, this literature review will analyze the concept of restitution, the ratio decidendi in judicial deliberations, and the theoretical framework underlying progressive legal thinking in child protection. Normatively, restitution in Indonesia is regulated in Law Number 31 of 2014 concerning Witness and Victim Protection, which is an amendment to Law Number 13 of 2006. Article 7A paragraph (1) of this Law states that restitution is given for losses suffered

¹Setiyawan, D., Ramli, M., & Rahmad, N. (2022). The position of the judge's ratio decidendi in fulfilling the right to restitution to victims of child sexual crimes. *Jatijajar Law Review*, 1(22).

²Maesaroh, S. (2024). Ratio decidendi of judges towards child perpetrators of sexual crimes (Study of Decision Number 17/Pid.Sus Anak/2022/PN. Pwt). Sultan Agung Islamic University, Semarang.

³Luthfiah, R. (2024). Fulfillment of restitution rights for victims of sexual violence crimes (Study of Decision Number 64/Pid.B/2023/PN Blp). UIN Syarif Hidayatullah Jakarta.

by victims or their heirs as a result of criminal acts. Furthermore, Article 67 states that restitution can be submitted by the Witness and Victim Protection Agency (LPSK) or directly by the victim. In addition, Law Number 35 of 2014 concerning Child Protection also emphasizes that the state has an obligation to provide restitution to child victims of violence. In Article 59 paragraph (2), it is stated that children who are victims of crime have the right to receive special protection, including assistance, rehabilitation, and compensation or restitution. Thus, from a formal legal perspective, restitution has become part of Indonesia's positive legal system. However, in judicial practice, restitution is often not given serious attention by law enforcement officials, especially judges. A study conducted by the LPSK (Lembaga Penitentiary and Victim Protection Agency) (2021) shows that few court decisions explicitly accommodate restitution for victims, even though a request has been submitted. This indicates a gap between norms and implementation. One contributing factor is the lack of established standards or technical guidelines for judges in determining the amount of restitution. As a result, the amount of restitution awarded is often far below the requested amount, and there are even cases where restitution is rejected without clear legal justification. This phenomenon raises critical questions about the legal reasoning mechanism, or *ratio decidendi*, used by judges.⁴

In legal literature, *ratio decidendi* is defined as the legal reasoning or logical basis that forms the primary foundation of a judge's decision. According to Ronald Dworkin in *Law's Empire*, *ratio decidendi* is an expression of the legal principles used by judges in constructing just and reasoned decisions. *Ratio decidendi* differs from *obiter dictum*, which is supplementary. In the context of restitution, *ratio decidendi* should reflect the judge's efforts to fulfill substantive justice and consider the best interests of the child as the victim. However, in reality, many juvenile criminal decisions actually marginalize the restitution aspect and emphasize criminal sanctions against the perpetrator. This indicates that *ratio decidendi* in juvenile cases has not been consistently directed to support a restorative justice approach. The concept of restorative justice itself is a new paradigm in modern criminal law that emphasizes victim recovery, perpetrator responsibility, and community involvement. This theory emphasizes that resolving criminal conflict involves more than just punishment, but also reparation for the harm suffered by the victim. Zehr (2002) in his work, "The Little Book of Restorative Justice," states that restorative justice places greater emphasis on dialogue, reparation, and reconciliation. In the context of restitution, the restorative approach is highly relevant because it focuses on concrete recovery for victims. However, the application of this concept in the Indonesian criminal justice system remains partial and has not yet been integrated into juvenile criminal justice policy.⁵

Previous studies have addressed the issue of restitution from various perspectives. For example, a study by Tania Hudayana (2018) stated that the main obstacle in determining restitution is the judge's lack of technical competence in accurately and comprehensively calculating victims' losses. On the other hand, Nur Azizah (2020) revealed that in some cases, judges did not even consider restitution requests submitted by the LPSK (Lembaga Masyarakat Pemberdayaan Masyarakat, Witness, and Victim Protection Agency) because they were deemed not legally binding. However, the LPSK's role has been strengthened by law and should serve as a valid basis for assessing victims' losses. Meanwhile, Yuliana and Setiawan (2021) emphasized the need to reformulate the evidentiary system in cases involving child victims so that psychological and social losses can be recognized as a legitimate part of the restitution value. Several debates have also emerged within academic circles regarding who should determine the amount of restitution: judges, prosecutors, or other institutions such as the LPSK (Lembaga Penitentiary and Victim Protection Agency). Some argue that restitution calculations should be carried out by professional institutions such as the LPSK or forensic psychologists, with judges solely responsible for approving and assessing its appropriateness. However, a more conservative view holds that judges remain the sole authority to determine the amount of restitution, as it relates to the principles of prudence and judicial

⁴Carolina, R. (2024). Juridical analysis of the discrepancy between the charges and demands in relation to the *ratio decidendi* of child rape verdicts. Sultan Agung Islamic University, Semarang.

⁵El Zuhdi, AM, Sulthanarif, TM, Dini, DM, Bagas, MA, & Yuningsih, H. (2023). Critical analysis of restitution burden to the state (Study of Herry Wirawan). *Sriwijaya Crimen and Legal Studies*, 144–158.

independence. This debate demonstrates the lack of a well-established consensus within the Indonesian legal system regarding the ideal procedure for determining restitution for victims, particularly children. The lack of norms and differing approaches in court practice indicate a serious gap in the legal literature regarding restitution for child victims of sexual crimes. The existing literature has not specifically examined how the ratio decidendi in court decisions is formulated and its relevance to restorative justice that favors victims. Further study is needed to uncover how judges truly consider aspects of restitution, including supporting documents, the victim's social context, and the child's psychological recovery capacity. This study addresses this need by comparing two relevant criminal decisions and in-depth analyzing the legal basis, arguments, and considerations of judges in awarding restitution to child victims of rape. Thus, there remains a significant gap between positive legal provisions and the reality of judicial practice. While much of the previous literature has discussed child protection and restitution in general, there has been no specific study that explores the legal logic or ratio decidendi of judges in criminal cases involving child rape victims. This research aims to fill this gap, with the goal of contributing to the development of progressive law and the fulfillment of child victims' rights in the Indonesian criminal justice system. By thoroughly examining judges' considerations, it is hoped that in the future, the legal system will no longer position restitution as an additional element, but rather as an absolute, non-negotiable right in every decision involving child victims.⁶

METHOD

This research uses a qualitative approach with a literature study method as the primary basis for examining the problem. This approach was chosen because it is relevant for exploring, understanding, and deeply analyzing legal documents, laws and regulations, and court decisions that are the object of the study. The literature study in this research not only functions as a secondary data collection tool but also as an analytical method that allows researchers to examine the normative and argumentative aspects of court decisions regarding restitution for children as victims of rape. This research focuses on two court decisions, namely Decision Number 327/Pid.Sus/2019/PN Padang and Decision Number 225/Pid.Sus/2024/PN Cikarang, which are analyzed comparatively to see differences in approach, legal basis, and ratio decidendi in granting the right to restitution. The design of this research activity began with determining the study's focus, namely the practice of granting restitution in cases of sexual violence against children. Based on this focus, relevant documents such as court decisions, laws and regulations, and scientific publications discussing child protection, restitution, and restorative justice were collected. The primary target of this study is the juvenile criminal justice system and the enforcement of child victims' rights in the judiciary. The intended audience academically includes legal researchers, law students, victim protection agencies, and policymakers. Practically, this research is aimed at providing input for judges, prosecutors, and witness and victim protection agencies so they can develop case-handling strategies that are more sensitive to the needs of child victims.⁷

The primary tool used in this research is document analysis, which includes data coding techniques, thematic classification, and legal argument mapping. No laboratory tools or field surveys were used because this research is normative and documentary in nature. The primary data sources are court decisions, relevant regulations, and supporting documents from institutions such as the Witness and Victim Protection Agency (LPSK), the Ministry of Women's Empowerment and Child Protection (KPPPA), and academic publications from legal journals. Furthermore, legal theories such as ratio decidendi, restorative justice, and child protection are used as analytical frameworks to interpret the data obtained. Data collection was conducted using the documentation method. Researchers accessed secondary data sources through official court decisions uploaded to the Supreme Court website and the district court information system. Additionally, a literature search was conducted using search engines for scientific journals, campus

⁶Rochmah, L. (2024). Position of Supreme Court Regulation Number 1 of 2022 concerning Procedures for Settling Applications and Granting Restitution and Compensation to Victims of Crime. University of Gresik.

⁷Dhananjaya, B. (2024). A legal analysis of the fulfillment of restitution rights for victims of child sexual violence crimes from the perspective of legal justice at the Madiun District Court. Sultan Agung Islamic University, Semarang.

libraries, and national legal databases. The collected documents were then selected based on their relevance to the research focus. Researchers selected documents containing explicit information about restitution, the process of restitution applications by victims or institutions, and the judge's response to these requests in the verdict. The data analysis technique in this study uses a content analysis model, which aims to uncover the implied meaning and logical structure within legal documents. The analysis was conducted by thoroughly reading the court decision, identifying the legal reasoning (*ratio decidendi*), and comparing it with the provisions of applicable laws and regulations. The data were then classified into themes such as: the legal basis for restitution, the value of restitution granted, the reasons for granting or rejecting it, and the extent to which the judge considered the psychological and social aspects of child victims. The results of this analysis were then compared between the two decisions to identify similar or different patterns of consideration, while also evaluating the consistency between norms and practices. The performance of the literature study method in the context of this legal research is considered highly productive in exploring the normative and argumentative context of a decision. Although it does not involve respondents or field observations, this approach is able to produce a deep understanding of the issues studied, particularly in identifying gaps between legal texts and judicial practices. The results of this study are expected to provide theoretical contributions to the literature on juvenile criminal law and offer practical recommendations for more victim-friendly criminal justice reform. This research method was systematically designed to explore the issue of restitution for child victims of sexual violence from the perspective of legal documents and the underlying theoretical framework. This approach enabled the researcher to comprehensively answer the research questions and develop strong and relevant arguments in support of legal protection for child victims in the Indonesian criminal justice system.⁸

RESULTS AND DISCUSSION

A. Regulation of Restitution Rights for Children as Victims in Indonesian Positive Law

The right to restitution is one of the fundamental rights granted to victims of crime under the Indonesian legal system. Restitution differs from compensation because the payment comes from the perpetrator, not the state. In the context of child victims of sexual violence, restitution is a crucial instrument for fulfilling the principles of restorative justice. This relates not only to economic losses but also to the psychological, social, and moral impacts suffered by children as the most vulnerable. Normative provisions for restitution are contained in several laws. First, Law Number 31 of 2014 concerning the Protection of Witnesses and Victims, which is an amendment to Law Number 13 of 2006. Article 7A paragraph (1) states that restitution is compensation imposed by the perpetrator on the victim or the victim's family as a result of a criminal act. This law stipulates that restitution can be submitted through the Witness and Victim Protection Agency (LPSK) and can be part of the judge's verdict in court. Second, Law Number 35 of 2014 concerning Child Protection, which in Article 59 paragraph (2) emphasizes that child victims of crime have the right to special protection. This protection includes rehabilitation, assistance, and recovery, including in the form of restitution. In practice, this provision requires the active involvement of institutions such as the Ministry of Women's Empowerment and Child Protection (KPPPA) and the LPSK (Lembaga Penida Dalam Negeri) to ensure that children's rights are truly fulfilled.⁹ However, despite having a sufficient legal basis, in court practice, restitution has not yet achieved equal standing with criminal penalties. Many judges' decisions do not optimally accommodate restitution requests. One major obstacle is the lack of an agreed-upon assessment standard or formula for calculating restitution. This results in the restitution amount being highly dependent on the judge's subjectivity and the completeness of the victim's or their legal representative's evidentiary documentation.

⁸Burhanudin, SR (2023). Disparity in the enforcement of restitution rights for victims of sexual abuse who give birth to children. UIN Syarif Hidayatullah Jakarta.

⁹Romadhani, S. (2025). Restitution policy for child victims of crimes involving physical violence (Case study of Decision Number 155/Pid.Sus/2023/PN Smn). Atma Jaya University Yogyakarta.

In the restorative justice theory introduced by Howard Zehr, the legal system should not only punish the perpetrator but also restore the victim. Restitution is a concrete form of the restorative approach, as it allows victims to regain the socio-psychological and economic conditions lost due to the crime. The emphasis on restoration, active victim participation, and perpetrator responsibility are at the heart of this approach. Furthermore, Satjipto Rahardjo, in his concept of progressive law, criticized legal practices that are overly rigid and formalistic. He emphasized that the law must side with weak and vulnerable victims, including children. Therefore, in matters of restitution, judges should not focus solely on formal documents but must exercise empathy and moral courage in issuing decisions that favor the recovery of child victims. In practice, we can see significant variation in court decisions regarding restitution for child victims, as will be explained below through a review of two court decisions.¹⁰

B. Ratio Decidendi for Determining the Right to Restitution of Children as Victims of Rape in Decisions Number 225/Pid.Sus/2024/PN Cikarang and Number 327/Pid.Sus/2019/PN Padang

1. Analysis of Decision Number 225/Pid.Sus/2024/PN Cikarang

The verdict sentenced defendant RZ to indecent acts and sodomy against two boys being cared for at a tahfidz (Islamic memorization) center. During the trial, the Bekasi Regency Social Services Agency (Sekolah Sosial Berskala Wajib) filed for restitution, supported by an assessment from the Witness and Victim Protection Agency (LPSK). The total restitution requested was Rp29,800,000 for the first victim and Rp15,183,000 for the second victim. In its deliberations, the panel of judges stated that the restitution request was based on actual expenses incurred by the victim, such as psychological costs, legal assistance, transportation, and medical treatment. The judges noted that the request was submitted by the party legally representing the child (as he is still a minor), and that the LPSK's calculations were deemed reasonable and relevant. The ratio decidendi in this decision emphasizes substantive justice and victim protection. The judge recognized the child victim's right to recovery, not only physically but also psychologically. This consideration aligns with restorative justice theory, which focuses primarily on how to alleviate the victim's suffering. Furthermore, the judge appeared open to formal non-legal evidence, such as psychological assessments and applications from the Social Services Department, demonstrating a progressive and responsive legal approach to the victim's needs. This decision exemplifies how restitution is not merely symbolic but is actually used as a tool to concretely rehabilitate child victims. This demonstrates progress in judicial practice that integrates restorative justice principles into the ratio decidendi of criminal decisions.¹¹

2. Analysis of Decision Number 327/Pid.Sus/2019/PN Padang

In contrast, in Padang District Court Decision No. 327/Pid.Sus/2019, restitution was the issue. In this case, the LPSK (Lembaga Penitentiary and Institutional Services Agency) filed a restitution request of Rp194,125,000 on behalf of two daughters who were raped by defendant WR, who is a close relative of the victim. The panel of judges granted only a small portion of the request, namely Rp40,000,000. In their deliberations, the judges stated that the LPSK's proposed amount lacked concrete evidence of expenditure, and that some of the restitution requested was estimated and not legally proven. The ratio decidendi of this decision demonstrates that the judge still prioritizes a legal-formalistic and procedural approach, where restitution is only granted if there is solid proof of receipts or documentary evidence. Psychological aspects, trauma, and intangible costs such as lost learning opportunities or social pressure are not recognized as part of the losses that can be restituted.

¹⁰Wardhani, DW (2023). Restitution as a form of legal protection for child victims of sexual violence with perpetrators of a biological father based on the principles of justice. *Technium Social Sciences Journal*, 40, 166.

¹¹Carolina, R. (2024). Juridical analysis of the discrepancy between the charges and demands in relation to the ratio decidendi of child rape verdicts. Sultan Agung Islamic University, Semarang.

This is in stark contrast to the principles of restorative justice and the principle of the best interests of the child, as affirmed in the Convention on the Rights of the Child. If judges only consider quantitative evidence, many children's suffering that cannot be represented in formal documents will be overlooked. In the context of progressive law, this is a serious weakness because the law fails to act as an instrument of protection for the vulnerable.¹²

3.1 Comparison of Decision Number 225/Pid.Sus/2024/PN Cikarang and Decision Number 327/Pid.Sus/2019/PN Padang

ASPECT	CIKARANG DISTRICT COURT NO. 225/PID.SUS/2024	PADANG DISTRICT COURT NO. 327/PID.SUS/2019
RESTITUTION NOMINAL	Rp. 29,800,000 & Rp. 15,183,000	Rp. 194,125,000
RECIPIENT SUBJECT	Directly to child victims	Parents of the victim
DETAILS OF LOSSES	Brief, limited to LPSK applications	More details: medical, educational, psychological recovery
LEGAL BASIS	Child Protection Law & PP 43/2017	Child Protection Law & PP 43/2017
APPROACH	Direct loss recovery	Comprehensive recovery, including long-term impacts

Table 3.1 Comparison of Decision Number 225/Pid.Sus/2024/PN Cikarang and Decision Number 327/Pid.Sus/2019/PN Padang

In general, there are similarities between the two decisions, namely:

1. Both referred to the LPSK's restitution request as the basis for the amount of restitution. In the Cikarang District Court's ruling, the judge granted the LPSK's restitution request of Rp 29,800,000 for victim Ahdan Ridho Sugiarto and Rp 15,183,000 for victim Naizar Abdul Awwab. Meanwhile, in the Padang District Court's ruling, the judge determined restitution of Rp 194,125,000 for the victim's parents based on the LPSK's more detailed application documents detailing the losses suffered by the victim.
2. Using the same legal basis, namely the Child Protection Law and PP 43 of 2017. Both decisions based their ratio decidendi on Articles 7A-7D of the Child Protection Law and Article 19 of the TPKS Law, which emphasize that restitution is the victim's right.
3. Considering the principle of the child's best interests as the basis for fulfilling the right to restitution, both decisions recognize that restitution is part of child protection and post-traumatic recovery for victims.

However, there are fundamental differences that indicate a lack of uniformity in practice:

1. The restitution amounts differed significantly. The Cikarang District Court awarded limited restitution (Rp 29,800,000 and Rp 15,183,000), while the Padang District Court set a much higher amount (Rp 194,125,000) taking into account the long-term losses suffered by the victims.
2. Details of losses. The Padang District Court outlined the components of losses in more detail, including medical costs, psychological recovery, education, and the victim's living expenses. In contrast, the Cikarang District Court only stated the amount proposed by the LPSK without a detailed breakdown of the components of the recovery costs.
3. Restitution recipients. In the Cikarang District Court, restitution is given directly to child victims, while the Padang District Court designates the victim's parents as recipients for the benefit of the child's recovery.

These differences indicate that there is no uniform technical standard for calculating the amount of restitution, leaving judges' decisions highly dependent on individual interpretation. This uncertainty can

¹²Sari, DY, Suartini, S., & Flambonita, S. (2023). Protection of children as rape victims who undergo abortion. *Journal of Master of Law*, 8(1), 36–50.

impact the fulfillment of child victims' rights and undermine the principle of restorative justice, which should be the primary goal.

When compared, these two decisions demonstrate two different strands of legal thinking. The Cikarang District Court's decision prioritizes justice and direct victim restitution through restitution to the child, while the Padang District Court's decision places greater emphasis on legality, formal prudence, and a thorough analysis of losses. While both stem from the same norm, the difference in ratio decidendi leads to very different outcomes.

This disparity highlights weaknesses in Indonesia's criminal justice system, where there are no established technical standards or established jurisprudence for determining restitution, particularly for child victims of sexual violence. Reliance on judges' personal interpretations without substantive guidelines has the potential to cause injustice to victims.¹³

As a reflection, ideally, the ratio decidendi should not be based solely on legal texts, but should also be grounded in humanitarian values and a commitment to the victim. In the context of children, all parties involved in the justice system must understand that the impact of rape not only causes visible harm but also leaves deep and lasting psychological scars. Therefore, judges should employ a holistic recovery approach that considers the victim's long-term needs, such as psychological counseling, social rehabilitation, and educational continuity.

Furthermore, the need to establish measurable technical guidelines for calculating restitution is urgent. These guidelines must include clear parameters regarding the components of losses (medical costs, psychological costs, educational losses, living expenses, and other immaterial losses) so that judges do not only refer to the figures proposed by the LPSK, but are also able to make a more objective and fair assessment of the victim's suffering (Law No. 35 of 2014 in conjunction with Law No. 17 of 2016, Government Regulation No. 43 of 2017).

3.2 Evaluation of Decision Number 225/Pid.Sus/2024/PN Cikarang and Decision Number 327/Pid.Sus/2019/PN Padang

The differences in restitution determinations in the Cikarang and Padang District Court decisions indicate fundamental problems in the Indonesian criminal justice system. The lack of standard technical guidelines and the gap in judges' understanding of the principles of the child's best interests and restorative justice have resulted in disparities in restitution amounts and legal uncertainty for child victims. Therefore, a more systematic intervention is needed. The Supreme Court needs to immediately issue a Supreme Court Circular (SEMA) or a Supreme Court Regulation (Perma) that can serve as a reference for judges in determining the amount of restitution. These guidelines must include components of compensable losses, both material (medical costs, psychological rehabilitation, education, living expenses) and immaterial (psychological trauma, loss of sense of security, social stigma), as well as a formula or minimum value range that judges must consider based on the severity of the crime and its impact on the victim. Furthermore, special restitution distribution procedures for child victims should be established, for example through parents or guardians, or through a special account supervised by the state to ensure that it is used for the child's recovery. Furthermore, harmonization of the Child Protection Law, the Sexual Violence Crimes Law (TPKS), the LPSK Law, and Government Regulation No. 43 of 2017 is necessary to avoid overlapping procedures. This synchronization should result in a unified mechanism for submitting and implementing restitution that is simple and does not burden victims. In this regard, the LPSK needs to be given stronger authority to determine recommendations for restitution amounts that are binding or at least serve as a baseline for judges. The LPSK also needs to strengthen its methodology for calculating losses by using legally accountable assessment standards, including taking into account the long-term psychological and social impacts on child victims.

¹³Sari, DY, & Flambonita, S. (2021). Protection of children as rape victims who undergo abortion. Al Azhar University Indonesia.

On the other hand, the state needs to establish guidelines for psychological and social assessments that can serve as a basis for assessing immaterial losses. These guidelines must be integrated into the criminal justice process so that victims are not burdened with proving their psychological suffering. Furthermore, judges, prosecutors, and investigators need to undergo ongoing training that prioritizes the principles of the child's best interests and restorative justice. This will strengthen the humanitarian perspective in judges' ratio decidendi, resulting in more progressive decisions that are sensitive to victims' rights. The next step is for the Supreme Court, along with the Judicial Commission, to conduct periodic evaluations of restitution decisions to prevent disparities. This evaluation can generate jurisprudence that serves as a national reference for determining the amount of restitution. With these steps, it is hoped that restitution determinations will no longer rely on the judge's personal interpretation and will establish national standards that provide optimal protection for child victims in accordance with the principles of restorative justice.¹⁴

C. Comprehensive Analysis of Comparison of Ratio Decidendi, Loss Parameters, and Legal Gaps in the Decisions of the Cikarang District Court and the Padang District Court

A comparison between the Cikarang District Court Decision Number 225/Pid.Sus/2024 and the Padang District Court Decision Number 327/Pid.Sus/2019 shows a striking disparity in the enforcement of restitution for child rape victims. Although both are based on identical legal bases, namely the Child Protection Law, the Sexual Violence Crime Law (TPKS), and Government Regulation No. 43 of 2017, the final results of the decisions demonstrate a ratio decidendi approach that differs in direction and intensity. The Cikarang District Court's decision granted restitution of Rp29,800,000 and Rp15,183,000 based on claims from the LPSK and the Social Services Agency accompanied by evidence of actual expenses, while the Padang District Court granted restitution of Rp194,125,000 to the victim's parents based on a breakdown of long-term losses that include medical expenses, education, psychological recovery, and living expenses. This nominal difference is not merely an administrative difference, but rather a reflection of the difference in the structure of the judge's legal reasoning in formulating the ratio decidendi.¹⁵

The ratio decidendi should not stop at normative elaboration or formal assessment of evidence, but rather be an expression of legal reasoning grounded in substantive justice. In the context of child rape victims, the ratio decidendi should ideally be enriched by the principles of restorative justice, as proposed by Howard Zehr, who emphasizes that victim recovery is a top priority of the criminal justice system. Restitution is a concrete form of state recognition of the victim's suffering. Unfortunately, in the Cikarang District Court's decision, restitution was limited to quantitative aspects, limited to expenses that can be concretely proven, such as transportation and short-term psychological services. This reflects a legal-formalistic approach that contrasts with the essence of restorative justice, which prioritizes holistic recovery, including the psychological, social, and future aspects of the victim.¹⁶ In contrast, the Padang District Court demonstrated a more progressive approach to affirming the immaterial losses experienced by victims. Although the amount of restitution granted was not as large as the LPSK's proposal, it acknowledged the emotional, psychological, and social pressures experienced by victims of sexual violence. Unfortunately, in neither the Cikarang District Court nor the Padang District Court, the ratio decidendi explicitly referred to the theory of victimology or the principle of the best interest of the child as stipulated in the Convention on the Rights of the Child. This reflects the weak integration between international legal norms and domestic judicial practice, even though Indonesia is a party to the convention and has ratified it through Presidential Decree No. 36 of 1990. The absence of a standard method for calculating restitution also exacerbates the inconsistency of jurisprudence. The losses experienced by child victims are not only material but also immaterial, such as the loss of a sense of security, prolonged trauma,

¹⁴Sholehudin, M., & Maharani, S. (2025). Indonesia's violence against children: The challenges of using the best interest principle in court decisions. *Journal of Progressive Law and Legal Studies (JPLLS)*, 3(1), 135–147.

¹⁵Setiawan, D., Ramli, M., & Rahmad, N. (2022). The position of the judge's ratio decidendi in fulfilling the right to restitution to victims of child sexual crimes. *Jatijajar Law Review*, 1(22).

¹⁶Saputra, RA, Aurellia, AA, & Maharani, AB (2023). Providing ideal restitution to rape victims based on the principle of justice. *Formosa Journal of Multidisciplinary Research*, 2(8), 1495–1502.

social dysfunction, and the loss of a decent future. In civil law literature, these immaterial losses are often compensated through punitive damages or general damages calculated based on the value of statistical life approach. This theory is commonly used in countries such as the United States and Canada to assess suffering that cannot be proven with receipts, as explained in the work "Valuing Damages: Empirical and Normative Foundations" by Posner and Sunstein (2005). However, in the two Indonesian decisions, such an approach is not yet apparent. In fact, neither decision included the expert opinions of forensic psychologists, legal economists, or child sociologists in the restitution decision-making process, which should serve as important references for the panel of judges.¹⁷ From a progressive legal theory perspective, Satjipto Rahardjo states that the law must side with the weak and vulnerable. The law should not be limited to the wording of articles but must be lived within social realities. In this context, child victims of sexual violence are legal entities unable to fight for their own rights, so a ratio decidendi that relies solely on formal evidence will fail to provide substantive justice. Therefore, judges require moral courage to formulate a ratio decidendi that is rooted not only in normative articles but also in social sensitivity and human empathy. When judges reject or reduce the amount of restitution simply because there is no receipt, the legal system has essentially failed to fulfill its function as a protector of victims.

John Rawls's theory of distributive justice is also highly relevant in this context. Rawls emphasized the importance of distributing the burdens and benefits of the law to those who are least advantaged. In *A Theory of Justice*, Rawls proposed the principle of differential justice, which states that a policy is only just if it benefits the most disadvantaged. Therefore, in the case of child victims of sexual violence, restitution is not merely compensation, but also an affirmation by the state of the victim's suffering, which cannot be quantified economically. A ratio decidendi that fails to consider these aspects will tend to reduce justice to a mere legalistic process, rather than a moral substance. Child protection theory, as developed by Michael Freeman, emphasizes that children have different protection needs than adults due to inequalities in power relations and limited capacity. In "The Moral Status of Children" (2007), Freeman asserts that children not only have negative rights (the right not to be harmed), but also a positive right to be fully restored when their rights are violated. Restitution is a form of fulfilling this positive right. Therefore, the parameters of restitution should not be standardized or simplified into a fixed nominal value, but must take into account the specific circumstances of the victim, including age, level of psychological damage, and social context.¹⁸

From a victimology perspective, restitution is part of recognizing the victim's existence. This theory, developed by Benjamin Mendelsohn and Hans von Hentig, emphasizes the importance of positioning the victim as an active legal subject, not simply an object of the criminal process. Restitution is not only a reparative tool, but also a symbol of recognition. When the restitution amount is set too low or the evidence is presented as unreasonable, the state indirectly implies that the victim's suffering is not worthy of legal consideration. This is a form of legal obscurity, where the law is formally present but fails to address the substance of justice. Based on this description, the author argues that Indonesia needs binding, multidisciplinary technical guidelines for calculating restitution for child victims. These guidelines should combine normative, psychological, and social approaches, and involve experts to avoid subjectivity in decisions. Judges' ratio decidendi should be required to include the scientific and theoretical basis for each component of the restitution granted. Furthermore, international references such as General Comment No. 13 on the Right of the Child to Freedom from All Forms of Violence (CRC, 2011) and the UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (ECOSOC, 2005) should be integrated as moral and legal standards in juvenile justice practices in Indonesia.¹⁹

¹⁷Rahayu, P., & Pramono, B. (2024). Restitution rights for victims of sexual violence. *JILPR: Journal of Indonesian Law and Policy Review*, 5(3), 677–685.

¹⁸Khatami, M.R., Firganefi, F., & Evendia, M. (2023). Analysis of the fulfillment of restitution rights for child victims of sexual violence crime. *Legal Institutions*, 18(1), 60–74.

¹⁹Hidaya, WA, Rakia, ASRS, Kora, P., Ali, M., & Tuasikal, H. (2024). Realizing restitution justice for child victims of sexual assault. *USM Law Review Journal*, 7(3), 1484–1497.

CONCLUSION

Normatively, the right to restitution for child victims of crime is regulated in the Child Protection Law, the LPSK Law, the Sexual Violence Crimes Law (TPKS), and Government Regulation 43 of 2017. Restitution is stipulated as a victim's right that must be decided simultaneously with the criminal verdict based on the principles of the child's best interests and restorative justice. However, these provisions are still general and do not contain detailed technical guidelines regarding the components of losses that can be replaced or how to calculate the amount of restitution. This gap creates wide room for interpretation for judges, potentially giving rise to disparities in decisions. In the Cikarang District Court's ruling, the judge granted the LPSK's restitution request of Rp 29,800,000 for the first victim and Rp 15,183,000 for the second victim, based on Articles 7A-7D of the Child Protection Law and the LPSK's request. The judge emphasized that restitution is an inherent right of victims and cannot be separated from the criminal process. However, the ratio decidendi of this ruling does not elaborate in depth on the components of the victim's losses or the long-term impacts experienced, so the amount of restitution awarded is relatively limited and does not fully reflect the child victim's comprehensive recovery.

In the Padang District Court's ruling, the judge awarded restitution of Rp 194,125,000 to the victim's parents, taking into account more comprehensive considerations. The decision's ratio decidendi detailed the victim's losses, including the costs of medical treatment, psychological counseling, education, and post-traumatic living expenses. The judge emphasized that restitution is a comprehensive recovery instrument that must be fulfilled in the child's best interests. This approach reflects a deeper understanding of the principles of restorative justice and the long-term impact of criminal acts on child victims. An evaluation of the two decisions reveals that, despite both starting from identical legal bases, the differing outcomes demonstrate disparities in judicial practice. The Cikarang District Court decision is considered less progressive because it fails to comprehensively consider losses, while the Padang District Court decision is more sensitive to the needs of child victims for restitution. This disparity highlights the need for national technical guidelines that bind judges in determining the amount of restitution, synchronize relevant regulations, and strengthen the capacity of law enforcement so that the principles of the child's best interests and restorative justice can be consistently realized.

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