



Compensation and restitution principles of child sexual crime victims based on justice value

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Abstract

In the body of the Indonesia's 1945 Constitution the Second Amendment, Article 28-C paragraph (2) states that every child has the right to develop themselves through meeting his basic needs. One of the problems that still often occurs is sexual crimes against children. In addition to violating the rights of children, the existence of child sexual victims can also have a devastating effect on the child itself both psychologically and physically, even fearing it could disrupt the future of children who should have a better life. Revamping the condition of victims of sexual crimes against children is a necessity especially for the Indonesian people. Victims of sexual crimes against children must receive the full attention of the government and need to be made one of the development priorities.

The research paradigm is a framework of thinking that explains how researchers view the facts of social life and researchers' treatment of science or theory. In this paper using the constructivism paradigm. In this study, researchers used three approaches, namely: Conceptual Approach (Conceptual Approach), Statutory Approach, statutory approach carried out by examining all regulations relating to the legal issues being handled. The legislation approach in normative legal research with descriptive analytical data analysis.

The results showed that the principle of regulating compensation and restitution of victims of criminal acts in Indonesia's positive law in the Criminal Code and Criminal Procedure Code is very simple and partial in that the victim is only entitled to compensation, then in the Witness and Victim Protection Act (UU PSK), the rights to develop very broadly. However, the implementation of the protection of victims' rights in the CSWs Act is experiencing problems due to LPSK's own limitations. Furthermore, Government Regulation (PP) Number 7 of 2018 in terms of implementation needs to be further studied, because PP Number 7 of 2018.

Keywords: compensation, restitution, child sexual crime, justice value

1. Introduction

Children as the mandated by God their inherent dignity, dignity and human rights must be upheld. Children are the future of the nation, the children are expected to become the nation's future potential, strong, have the spirit of nationalism imbued with noble character and strong will to maintain the unity and integrity of the nation. To realize these ideals, the obligation of parents, family, community, government and the state to provide children's rights optimally early on.

Indonesia has laid the foundation and purpose of the establishment of the Republic of Indonesia, which is to protect the entire Indonesian nation and all of Indonesia's blood, and to advance public welfare, educate the nation's life and participate in carrying out world order based on independence, lasting peace and social justice. In the body of the 1945 Constitution the Second Amendment, Article 28-B paragraph (2) states that every child has the right to survival, growth and development and is entitled to protection from violence and discrimination. While Article 28-C paragraph (2) also states that every child has the right to develop themselves through meeting his basic needs. This shows that the Indonesian State recognizes the basic rights of children. The commitment of the Indonesian people to realize public welfare and educate the nation's life is very much in line with the commitment of the global community to build and realize the future without the burden of

suffering psychologically or physically over the sexual crimes that children receive.

Children are the next generation of the nation's ideals and are the most important part of the national development process as a human investment that should get protection from both the government and the people of a country. However, the chaotic social, political, cultural and economic conditions of the country result in sexual exploitation and abuse against children.

Indonesia is one of the countries that ratified the United Nations Convention on the Rights of the Child, through Presidential Decree (Keppres) No. 36 dated August 25, 1990. With the ratification of the convention, the state should legally be obliged to protect and fulfill the rights children, both social, political, cultural and economic.¹ However, in reality the state is still unable to fulfill its obligations to fulfill the rights of children.

One of the problems that still often occurs is sexual crimes against children. In addition to violating the rights of children, the existence of child sexual victims can also have a devastating effect on the child itself both psychologically and physically, even fearing it could disrupt the future of children who should have a better life.

¹ Hardius Usman dan Nachrowi Djalal Nachrowi, *Pekerja Anak di Indonesia: Kondisi, Determinan dan Eksploitasi*, Grasindo, Jakarta, 2004, p. 1

Revamping the condition of victims of sexual crimes against children is a necessity especially for the Indonesian people. Victims of sexual crimes against children must receive the full attention of the government and need to be made one of the development priorities. Nowadays, developed countries pay more attention to the welfare and life of children. Despite the many concerns that have arisen, the problem of victims of sexual crimes against children in Indonesia cannot be addressed with compensation and restitution for victims of sexual crimes that are not in favor of children (victims).

The developments that occur show that sexual offenders tend to make children victims, as evidenced by the higher prevalence of child victims compared to adults. In the midst of this kind of situation, the laws and regulations used in the legal settlement process are unable to guarantee protection of children from sexual crimes and do not reflect justice for children.

Based on that the author feel that Compensation And Restitution Principles Of Child Sexual Crime Victims should be researched further Based On Justice Value and it will be the main problem discussed in this article.

Method Of Research

the paradigm used In this paper are constructivism paradigm, namely the Reconstruction of regulations on child sexual crimes that have not been based on the value of justice². In this study, researchers used three approaches, namely: Conceptual Approach (Conceptual Approach), Statutory Approach, Statutory Approach conducted by examining all regulations relating to the legal issues being addressed. The legislative approach in normative legal research has practical and academic uses.³

The results of this study are expected to provide a descriptive analytical description. The type of data needed in this research is primary data and secondary data. Analysis of the data used in this research is qualitative data analysis. Then the results of the analysis of the data are interpreted in the form of inductive conclusions which are answers to problems based on the results of the study. The type of triangulation used in this study is data triangulation, situational and data collection methods. Data triangulation is done by taking data from various situations, times and places.

Research Result and Discussion

1. The Guaranteed Legal Protection for Victims of Child Sexual Crimes

The crimes occurred in Indonesia vary among teachers molesting their students, a grandfather molested his grand daughter, a brother raping his brother, a father raped his son who was in elementary school, children kill her biological father and delinquency. This is a picture of the phenomenon of crime in Indonesia today.⁴ Therefore children need to be protected by law. Factors to be a victim of a crime and the

perpetrators of a crime that need to be protected, namely:

- a. Children still need parental guidance
- b. Children have physical weakness
- c. Children have unstable conditions
- d. Children cannot choose which is good and which is bad
- e. Children have a minor age
- f. Girls are more often victims
- g. Children need education and school
- h. Children have relationships
- i. Children are still able to be influenced by mass media

Sociologically Speaking, legal protection to victims were also interpreted as a state efforts to create harmony relationship of trust to its citizens to realize the service guarantee in the form of law enforcement is fair to its citizens refrain from any threat or act of vigilantism. As in the theoretical conception of social contracts, the state is given the right to manage and regulate its citizens based on a contract of free will of its citizens on the condition that the state can provide guarantees for the protection of its citizens. Besides that, functionally, legal protection for victims must also be interpreted as a major part of the crime prevention and management policy. It is not possible to properly prevent and deal with crime , if it does not pay attention to the victim's exact problems. Because crime is basically the result of a relationship ^[5] between the phenomenon of the perpetrators of crime on the one hand and victims of crime on the other side. Therefore, if the victim does not get the right treatment from the state, it will naturally cause apathy and cynicism towards the legal and judicial system, which then in qonditio sine quanon will cause crime will be difficult to overcome. Crimes are often revealed because there are reports from victims to law enforcement officials. So if the Victim is no longer given protection by law, then the Victim is not eager to report to law enforcement, then of course the prevention and prevention of crime will experience obstacles.

Law on Child Protection Number 23 Year 2002 regarding Child Protection in its implementation has many shortcomings including:

- a. There has yet been any explanation about the notion of violence, but it is very important to d ijabarkan, what things are classed as an act of child abuse.
- b. In the school environment, children have not received protection from violence perpetrated by school teachers or school friends,
- c. In the case of a child being separated from his parents in the best interests of the child, this law does not provide an explanation of the extent of the role of parents during coaching.
- d. The custodians are not mentioned in the efforts for the protection of children, means that The custodian of the said child have no obligation to provide protection to children
- e. There is no protection for children as victims of exual crimes
- f. There has yet no existence of an effort of restitution from the offender to the core tire, for example on the victim of sexual abuse

The rise of acts of crime which involves children are victims

² Guba & Lincoln, the Sage Handbook of Qualitative Research Third Edition, Sage Publication, London,2005. p. 89-115

³ Peter Mahmud Marzuki. *Penelitian Hukum*. Prenada Media Group, Jakarta, 2005, p. 136.

⁴ Sapto Budoyo, Gunarto, Jawade Hafidz, Desperate needs of teacher's law protection as a professional educator in Indonesia, International Journal of Multidisciplinary Research and Development, Vol. 4, Issue 7 (2017).p.192.

⁵ Arief Gosita. *Masalah Korban Kejahatan*. Akademika Presindo, Jakarta, 1993, p.98

of sexual crimes whether committed by the parents themselves, others have done, and done by people who are not known then encourage government The Indonesian Government immediately make changes to ratify law Act No. mor 35 Year 2014 concerning the Amendment to the Undang Act No. mor 23 of 2003 regarding Child Protection. Penalties sanctions for sex offenders that have been regulated in Law No. 35 of 2014.

For maximum protection of children, it is necessary to coordinate cooperation between the government, the community and also parents^[6]. Protection of children is a shared obligation, but if those who are supposed to protect children will actually commit crimes against children, then they should get more punishment.

For children who are victims of criminal offenses, for the Government, both the Regional Government, and also other state institutions are obliged and also responsible for providing a Special Protection. In other words, a child who is a victim of a criminal offense has rights that are regulated in Law Number 35 of 2014, namely a right to obtain special protection. What is meant by special protection is a form of protection that is acceptable to the child in certain situations and conditions of a child to get a guarantee of a sense of security against threats that can endanger himself and his soul in the growth and development.

Special forms of protection that can be given to children who are victims of a criminal offense are carried out through rapid treatment, including treatment and / or physical, psychological and social rehabilitation, as well as the prevention of diseases and other health problems; psychosocial assistance from the time of treatment to the time of recovery; providing a social assistance for children who come from poor families; and providing protection and assistance in every court process.

Based on the description of the above, Law Act No 35 2014 specifically to provide protection to children as victims of sexual crimes. Perlindungan form of late given to children as victims of sexual crimes had been quoted earlier as provided for in Article 69 ALaw Act No. mor 35 2014 in the form of :

- a. Education about reproductive health, religious values, and also moral values ;
- b. Social rehabilitation for children ;
- c. Psychosocial assistance from the time of treatment to the time of recovery; and also
- d. Providing a protection as well as assistance at each level of the examination starting from the investigation process, the prosecution process, to the examination process at the court hearing.

Of some rules concerning children and child victims of sexual crimes such as Law Act No 11 Year 2012 regarding the SPPA, Law Act No 31, 2014 regarding Witness Protection and potential Victims protection and Law Act No 35 In 2014 concerning child protection, can be seen in Table 1 below :

Based on Table that it can be seen Ihat the rights are granted and protected by the State through the law No 31, 2014, through the law No 11 Year 2012 and through the law No 35 year 2014, pretty much.

In Law No 31 of 2014 contain victims' rights in general without seeing whether the victim is a child or an adult. While law No 11 year 2012 began providing protection for the Child Victims of crime in general, but not specific to the type of criminal acts. more details can be seen in law no 35 year 2014 that has been set up specifically distinguish the rights of child victims of certain crimes. Compared with other law, it seems that law No 35 of 2014 gave more protection of children as victims of criminal acts of sexual crimes.

Law No 35 of 2014 regarding Child Protection has given much to provide protection to the child, even before a crime occurs However the fact shows otherwise as For example in sexual crimes committed by education efforts about reproductive health, religious values, and also the values of decency. This is done so that children can understand more about their reproductive organs, so they can avoid if there are signs of people wanting to do something unnatural on their reproductive organs. Then emphasized the value of religion and politeness, this is a way of life for humans. Religion will certainly protect every human being who follows the instructions taught through his books (in Islam such as the Koran, or Christians like the Bible). For example, such as Islam which forbids two people of the opposite sex to sit, or just walk together. Because it is feared that temptations can be overtaken which can then trigger sexual intercourse. When the kids knew it and then practice it, they can avoid the invitation of friends or family to be alone running-walking or doing other activities. Because sexual crimes often occur where the perpetrators are family, friends or relatives of the victims themselves.

However, when seen in law no 35 2014 which is specialized in the relevant rules governing the restitution, it appears that the formulation of the rule is less reflects a *restorative justice*. Of formulation, mentioned in Article 71D of law No 35 of 2014, namely that the victim was entitled to apply to the court in the form of rights to restitution which has become the responsibility of the perpetrators. Then it is explained that a compensation payment which is charged to the perpetrator is based on a court decision that has permanent legal force for the material and / or immaterial losses suffered by the victim or his heir. This is in contrast to the law no 11 year 2012 especially in article 5 that said that the juvenile justice system shall give priority to use restorative justice approaches.

Table 1. Comparison of the Indonesia's Protection of Child as Victims of Sexual Violence in the Law Act No 31, 2014, Law Act No 11 2012 and Law Act No 35 2014 (Rights Granted and Protected)

⁶ Maidin gultom, *Perlindungan Hukum Terhadap Anak dalam Sistem Peradilan Pidana Anak di Indonesia*. Bandung: Rafika Aditama, 2006, p. 35.

Table 1: Comparison of the Indonesia’s Protection of Child as Victims of Sexual Violence in the *Law Act No 31, 2014, Law Act No 11 2012 and Law Act No 35 2014 (Rights Granted and Protected)*

Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning Protection of Witnesses and Victims	Law No. 11 of 2012 concerning the Children’s Criminal Justice System	Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection
Article 5	Article 9, 60,61,89, 90,97	Article 69, 71
<p>a. Get protection for his personal, family, and property security, and be free from threats relating to the testimony that he will, is, or has given;</p> <p>b. participate in the process of selecting and also determining the form of protection and support of a security;</p> <p>c. provide an expression without pressure;</p> <p>d. get a translator;</p> <p>e. free from questions that can ensnare;</p> <p>f. get all information regarding case developments;</p> <p>g. get all information regarding court decisions;</p> <p>h. get all information in case the convict is released;</p> <p>i. kept all his identities confidential;</p> <p>j. get a new identity;</p> <p>k. get a temporary residence;</p> <p>l. get a new residence;</p> <p>m. get reimbursement of transportation costs as needed;</p> <p>n. get legal advice;</p> <p>o. get temporary living expenses assistance until the deadline Per protection expires; and / or</p> <p>p. get mentoring. (in addition to victims of gross human rights, criminal acts of terrorism, criminal acts of trafficking in persons, sexual violence and serious persecution</p> <p>q. get medical help;</p> <p>r. get psychological and psychological rehabilitation assistance .</p> <p>s. Get Compensation (Victims of gross violations of human rights and Victims of criminal acts of terrorism in addition to obtaining the rights mentioned earlier, also entitled to Compensation)</p> <p>t. Get Restitution</p>	<p>a. unpublished identity;</p> <p>b. obtain the assistance of parents / guardians and persons trusted by the Children;</p> <p>c. obtain health services; and</p> <p>d. obtain other rights in accordance with statutory provisions</p> <p>e. The right to participate in the diversion process</p> <p>f. In certain cases the Victim’s Child is given the opportunity by the Judge to submit an opinion on the case in question</p> <p>g. medical rehabilitation and social rehabilitation efforts, both inside and outside the institution</p> <p>h. safety assurance, both physical, mental, and social</p> <p>i. ease in getting information regarding case developments</p> <p>j. social reintegration of institutions or agencies dealing with child protection</p> <p>k. obtain protection from institutions that deal with the protection of witnesses and victims / social protection houses</p>	<p>Potential Threat Measure Specifically through an effort of :</p> <p>a. prompt handling, including physical, psychological and social treatment and / or rehabilitation, as well as prevention of diseases and other health problems;</p> <p>b. psychosocial assistance at the time of treatment until recovery;</p> <p>c. providing social assistance for children who come from disadvantaged families; and</p> <p>d. providing protection and assistance in every court process</p> <p>Special protection for child victims of sexual crimes is carried out through efforts to:</p> <p>a. education about reproductive health, religious values, and moral values</p> <p>b. social rehabilitation</p> <p>c. psychosocial assistance during treatment until recovery</p> <p>d. providing protection and assistance at every level of the examination starting from the investigation, prosecution</p> <p>e. examination at a court hearing</p> <p>Special intestinal protection for children who are exploited economically and / or sexually is done through:</p> <p>a. dissemination and / or dissemination of statutory provisions relating to the Protection of Children who are exploited economically and / or sexually</p> <p>b. panorama a link, reporting, and sanctions; and</p> <p>c. the involvement of various companies, trade unions, non-governmental organizations, and the community in the elimination of exploitation of children economically and / or sexually</p> <p>Special protection for children who are victims of pornography is carried out through:</p> <p>a. Efforts for coaching, mentoring, and social recovery, physical and mental health</p> <p>b. Coaching, mentoring, and social recovery, physical and mental health</p>
		<p>The Right to Receive by restitution</p> <p>Every child who becomes a victim as meant in Article 59 paragraph (2) letter b (Children dealing with the law), letter d (Children who are exploited economically and / or sexually), letter f (Children who are victims pornography), letter h, letter I (Child victims of physical and / or psychological violence), and letter j (Child of a sexual crime victim) have the right to submit to court the right to restitution which is the responsibility of the criminal</p>

Demanding material and immaterial losses as a form of restitution in Law Number 35 Year 2015 will be very difficult to do in practice. Because immaterial losses are very difficult to find benchmarks. In a position like this that seems only vengeance. As is characteristic of *retributive justice* that criminal purposes are solely for retaliation ^[7].

2. Arrangement for Compensation and Restitution for Criminal Victims

⁷ Lilik Mulyadi, *Kompilasi Hukum Pidana dalam Perspektif Teori dan Praktik*. Bandung: Mandar Maju, 2007, p. 103

Restitution is more directed at the responsibility of the offender for the consequences caused by the crime so that the main target is to overcome all losses suffered by the victim ^[8].

According to Galeway, the purpose of the obligation is to compensate for losses to ^[9]

- a. Relieve the suffering of victims,

⁸Rena Yulia. *Viktimologi Perlindungan Hukum terhadap Korban Kejahatan*, Graha Ilmu, Yogyakarta, 2010, p. 60

⁹Farhana. *Aspek Hukum Perdagangan Orang di Indonesia*. Sinar Grafika, Jakarta, 2010, p. 121

- b. As an element that alleviates the sentence to be handed down.
- c. As one way to rehabilitate convicted persons,
- d. Facilitate the judicial process,
- e. Can reduce the threat or public reaction in the form of revenge

The Criminal Code, the provisions governing the protection of victims of crime through compensation can be seen in Article 14 c of the Criminal Code which essentially states: in the case of a judge dropping a conditional criminal, the judge can set specific conditions for the convicted person to compensate, either all, or a part of them that arise as a result of criminal acts committed. Even though the Criminal Code includes aspects of victim protection in the form of compensation, this provision does not escape various obstacles in its implementation, namely:

Determination of compensation cannot be given by the judge as an independent sanction in addition to the principal crime, so only as a "special condition" for the implementation or execution of the principal crime imposed on the convicted person;

- b. Stipulation of special conditions in the form of compensation can only be given if the judge impose a maximum sentence of one year or a substitute criminal;
- c. Specific conditions in the form of compensation according to the Criminal Procedure Code are only facultative, not imperative.

In addition to the regulation of restitution in the Criminal Code and the Criminal Procedure Code, special laws and regulations outside the Criminal Code also contain provisions on compensation and restitution, including

- a. Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection
The Child Protection Act in Article 71 D paragraph (1) explains that: "every child who is a victim as referred to in Article 59 paragraph (2) letter b, letter d, letter f, letter h, letter i, and letter j are entitled submit to court the right to restitution which is the responsibility of the perpetrator ^[10]. Then Article 71 D Paragraph (2) of the Child Protection Act states that: "Further provisions regarding the implementation of restitution as referred to in paragraph (1) shall be regulated by government regulations" Explanation of Article 71 D Paragraph (1) of the Child Protection Act provides a definition of restitution as follows :
"Restitution is the payment of compensation which is charged to the offender based on a court decision that has permanent legal force for material and / or immaterial losses suffered by the victim or his heir. Especially for children who are dealing with the law that is entitled to get restitution is the victim's child. "
b. Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims.
Law Number 31 Year 2014 Concerning Amendments to

Law Number 13 Year 2006 Concerning the Protection of Witnesses and Victims article 1 number 11 as follows: "Restitution is compensation for the loss given to the victim or his family by the perpetrator or a third party. "Furthermore, in article 7 A paragraph (1) of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims explains the types of restitution that are entitled to be received by victims of criminal acts as follows :

Article 7A Verse (1)

"Victims of a criminal offense are entitled to a restitution in the form of:

1. Compensation for loss of wealth or income
2. Compensation for losses incurred due to suffering directly related as a result of criminal offenses; and / or
3. Reimbursement of medical and / or psychological care costs."

c. Law Number 21 of 2007 concerning Eradication of Trafficking.

The Law on Combating Trafficking (PTTPO Law) regulates the protection of witnesses and victims as an important aspect of law enforcement. The PTTPO Law pays attention to victims due to trafficking in the form of restitution rights that must be given by perpetrators as compensation for victims and regulates victims' rights to medical, psychological, and social rehabilitation.

d. Government Regulation Number 43 Year 2017 Regarding Restitution Implementation For Children Who Are Victims of Criminal Acts

This Government Regulation is an implementing regulation of Article 71 D paragraph (2) of Law Number 35 Year 2014 concerning Amendment to Law Number 23 Year 2002 concerning Child Protection. This PP explains that Restitution is a compensation payment charged to the offender based on a court decision that has permanent legal force for material and / or immaterial losses suffered by the victim or his heir ^[11]. The types of restitution stipulated by the Regulation. The procedure for submitting a request for restitution is explained more fully by this government regulation compared to the previous law. According to article 4 PP No. 43 of 2017 the request for restitution is submitted by the victim ^[12] written in Indonesian on paper stamped to the court.

The types of restitution that are entitled to be accepted by victims are:

1. compensation for loss of wealth or income;
2. Compensation for losses incurred due to suffering directly related as a result of criminal offenses; and / or
3. reimbursement of medical and / or psychological care costs.

3. Mechanisms for granting compensation and restitution to victims of child sexual crimes

The mechanism for providing compensation and restitution

¹⁰ Referred to in Article 59 paragraph (2) letter b: children in conflict with the law, letter d: Children who are exploited economically and / or sexually, letter f: children who are victims of pornography, letter h: Children abducted, sold, and / or trafficking, letter i: child victims of physical and / or psychological abuse, and letter j: child victims of sexual crimes.

¹¹Article 3 Government Regulation Number 43 Year 2017 concerning Implementation of Restitution for Children Who Become Victims of Criminal Acts

¹²The victim referred above are: a. Parents or guardians of children who are victims of crime; b. Child heirs who are victims of criminal offenses; and c. A person who is authorized by a parent, guardian or child heir who is a victim of a criminal offense with a special power of attorney

to victims of criminal acts is regulated in PP No. 44 of 2008 concerning the Provision of Compensation, Restitution and Assistance to Witnesses and Victims which is the implementation of Law Number 13 of 2006. The Witness and Victim Protection Agency which carries out the mechanism of providing compensation, restitution and assistance to victims. Compensation is compensation provided by the state because the perpetrators are unable to provide full compensation which is their responsibility. Restitution is compensation given to the victim or his family by a perpetrator or a third party, which can be in the form of returning property, payment of compensation for loss or suffering, or reimbursement for certain actions. Assistance is a service provided to Victims and / or Witnesses by LPSK in the form of medical assistance and psycho-social rehabilitation assistance.

Provision of restitution has not yet been achieved due to weaknesses related to laws and regulations. This can be seen from the existence of laws and regulations governing mechanisms related to restitution to victims of criminal acts that lack legal certainty and the non-uniformity of the provision for restitution, should be harmonized between the regulations related to restitution. Victims of a criminal offense do not necessarily get the right to compensation for the provision of restitution only covering certain victims of a criminal offense. In this case, law enforcement tends to choose to use the Criminal Procedure Code because the rule of law is considered more certain and effective. The form of compensation has so far been limited to material losses, even though victims also suffered physical or psychological losses. Therefore we need the concept and calculation of immaterial losses to victims. According to the author the rules regarding restitution have not been effectively implemented because the granting of the restitution cannot be applied to various kinds of criminal acts which are detrimental to victims of crime, then in the procedures for administering the restitution it is also not uniform among the rules with each other the form of compensation compensation is also different its nature. As stated by Howard and Mummers. There are eight conditions for the law to be effective. One of them is that the law must be well drafted, the rules that stipulate must be clearly formulated and can be understood with certainty.

In relation to law, the material object is the issue of the value of justice as the core of the principle of legal protection, while the object of the form is a juridical normative perspective with the intention of finding basic principles that can be applied to resolve problems that arise in the field of the use of the intended value of justice. Concerning the value of justice in question especially with respect to the object is the right that must be given to the community members. Usually this right is assessed and treated from various aspects of political and cultural considerations, but the point remains unchanged, namely *suum cuique tribuere*.

The form of implementation of restitution which aims to benefit victims of crime according to the theory of Utilitarianism which is a theory of thought that provides welfare for society at large, where to measure justice is how much the benefits for human welfare ^[13]. In providing

benefits to society at large, the application of utilitarian compensation is more appropriate through compensation where the State takes responsibility and empathizes with the community because it is deemed to have failed in protecting and disciplining its people. Providing compensation to all victims of crime does benefit the victim, but cannot replace all the losses and suffering experienced by the victim and by giving compensation tends to not give a deterrent effect to the perpetrators of the crime. It is better if giving restitution or compensation in a more appropriate form with the Restorative Justice approach (restorative justice) given to each individual victim of a criminal offense, both material and immaterial, it is necessary to implement the obligation for the perpetrator to provide for the rights that have been deprived of the victim criminal acts can be juxtaposed that it will provide benefits or protection for every victim of a criminal offense and the wider community. The form of granting restitution can be done both at the level of non-litigation and litigation, according to the authors in the interest of victims of criminal acts, the provision of compensation resulting from criminal acts can be done before the court / litigation process so as to provide guarantees to victims of criminal acts and also provide benefits or relief for the perpetrators of criminal offenses to obtain a sentence relief for providing compensation to victims of criminal acts.

According to Socrates, justice is created when citizens feel that the government has done its job well. Why is it projected on the government, because the government is the principal leader that determines the dynamics of society. Justice reflects how one sees about human nature and how one treats humans. Likewise the judge has complete freedom to determine the type of criminal and the high and low of a crime, the judge has the freedom to move to the minimum and maximum limits, the criminal provisions in the Act for each crime ^[14].

Some theories about justice as proposed by Stammler, Radbruch and Kelsen emphasize justice as the goal of law. Thus it was concluded that the law that embodies justice is absolutely necessary in the life of the nation and state, without the law of human life becomes disorganized and humans lose the possibility to develop humanely.

In his theory it is stated that there are three things that are the solution to the problem of justice. First the principle of equal freedom for everyone (the principle of greatest equal liberty), about this matter was formulated by John Rawls as follows: This formula refers to Aristotle's formulation of equality, therefore also the similarity in obtaining rights and use based on natural law. This formula is inward with the notion of equal ie equal or equal among fellow human beings. This effort to compare is also indirectly an acknowledgment or confirmation that humans always live together which according to Aristotle is called a social creature, so the determination of rights or justice applied is justice that pays attention to the social environment or in other words must be social justice.

This principle includes freedom to participate in political life, freedom of association and speech including freedom of the press and freedom of religion. The two principles of difference (the difference principle), which he formulated as follows: Social and economic inequalities are to be arranged

¹³ Darji Darmodiharjo dalam Muhamad Erwin. *Filsafat Hukum Refleksi. Kritis Terhadap Hukum*. Jakarta: PT. Rajagrafindo Persada, 2012, hal 229.

¹⁴ Soedarto. *Kapita Selekta Hukum Pidana*. Bandung: Alumni, 1998, p. 78.

so that they are bot (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all ¹⁵. This formula is a modification or counterpart to the first formula that requires equality for all people, this modification applies if it benefits everyone. In addition, this formula also appears to be aimed at modern societies that already have a complete order, even though the intention is to provide equal distribution of employment opportunities or to give an equal and equitable role, but in any case their genuine attention is shown, not to forget and leaving others who find it difficult to gain positions and opportunities in economic activity. So socioeconomic differences, must be regulated so that it provides benefits to disadvantaged citizens. The three principles of fair equality to get the opportunity for everyone (the principle of fair equality of opportunity), namely economic inequality must be arranged in such a way as to provide an opportunity for everyone to enjoy it.

A distinctive feature of the Dignified Justice Theory, namely when compared with other theories. One of the instruments of comparison is the purpose of law. If Gustav Radbruch nominates justice, usefulness and legal certainty, the dignified justice theory proposed by Teguh Prasetyo considers that the three legal ideals or legal values are truly one. These three legal values are integrated into justice, which is called dignified justice. The unification of the three legal values, namely justice, usefulness and legal certainty in justice that distinguishes between Radbruch's legal theory and the legal theory put forward by Teguh Prasetyo namely the theory of dignified justice In answering the research problem to support the comprehensiveness of the answers given so that the citizens can feel that the government has done its job properly.

Conclusion

The results showed that the principle of regulating compensation and restitution of victims of criminal acts in Indonesia's positive law in the Criminal Code and Criminal Procedure Code is very simple and partial in that the victim is only entitled to compensation, then in the Witness and Victim Protection Act (UU PSK), the rights to develop very broadly. However, the implementation of the protection of victims' rights in the CSWs Act was constrained because of LPSK's own limitations. Furthermore, Government Regulation (PP) No. 7 of 2018 in terms of implementation needs to be further studied, because PP No. 7 of 2018 is due to the provision of compensation only to victims of gross human rights violations, so that it has not accommodated other victims of criminal acts such as victims of sexual offenses. Complicated procedure for filing restitution or regulation of administrative mechanisms regulated in PP No. 7 of 2018, as well as proving loss of material value that is sometimes not owned by the victim.

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¹⁵*Ibid*, p. 303.