



## Analysis Economy Against the Law on Sanctions Criminal Restitution Case Crime Sexuality in Children

Harsi Primmitia<sup>1</sup>; Muhammad Rustamaji<sup>2</sup>

<sup>1</sup> Student of Master of Law Program, Faculty of Law, Sebelas Maret University, Surakarta, Indonesia

<sup>2</sup> Lecturer of Faculty of Law, Sebelas Maret University, Surakarta, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v8i11.3407>

### **Abstract**

Criminal sanctions for restitution in court decisions in cases of sexual crimes against children are often substituted with imprisonment. In such conditions, the perpetrators of the crime prefer confinement rather than paying a sum of money to the victim's child. This article uses Richard A Posner's Economic Analysis of Law theory to find out whether the criminal sanction of restitution can be replaced with a criminal sanction of imprisonment. Penalty criminal likened restitution as criminal fine in relation with the principle cost and profit is effective sanctions running however during this restitution still Becomes penalty crime that is not there is coercion, so implementation not enough maximum. This article-use approach-case Number: 85/Pid.Sus/2021/PN.Krg which was decided by the Panel of Judges of the Karanganyar District Court on August 5, 2021 which in Case this restitution no paid by the perpetrator to the victim 's child. This article concludes that there is a number of how to get sanctions criminal restitution can effective, that is first with foreclosure asset defendant to use payment restitution to the victim 's child. Second with method reformulation laws and regulations related to criminal sanctions refund of nature force.

**Keywords:** *Restitution; Victim; Criminal Confinement; Sexuality Crime; Children*

### **A. Introduction**

Observing the immoral behavior of Herry Wirawan (36), a teacher who is also an administrator of the Pesantren foundation in Cibiru, Bandung City, West Java, who has raped 13 of his students until they are pregnant and bear children, is a contemporary example of sexual crimes with child victims. In such a context, often the criminal sanction of restitution, which can actually slightly restore the rights of the victims, does not receive sufficient study or attention. So it is interesting to examine more deeply how such restitution is believed to have a more real effect on victims of under-the-hood sexual crimes (children) if analyzed using Richard a Posner's Economic Analysis of Law theory. This study, which borrows from A Posner's thoughts, is optimized to find out whether the criminal sanction of restitution is appropriate if the opportunity is opened to be replaced with a criminal sanction of imprisonment? Critics what can sent when penalty criminal restitution replaced with criminal confinement? Input solution what can done so that the convict pay restitution to crime-victim child sexual? Based on a number of question rhetorical here issue law thus lifted.

Crime sexual is present reality in life us. Developments that are happening show that perpetrator crime sexual tend to make children as victim, proven prevalence more and more children are victims tall compared with adults. Crime sexual is something actions that include abuse until compel somebody to do connection sexual without the victim 's consent or when the victim wants or no want to achieve needs sexual perpetrator (Abdul Wahid et al., 2001: 32). Case criminal crime sexual is the saddest case among community and always experience enhancement total nor the type. Based on data from the Protection Agency Witnesses and Victims (LPSK), total victim 's child, and daughter crime sex protected by LPSK experience improvement on every year. In 2018, LPSK has protected 401 victims, then 2019 LPSK protected 507 people and in 2020 LPSK has to protect as many as 533 victims of acts criminal crime sex and women. But that data no comparable with a lot case crime sex in society. Based on data from Commission Indonesian Child Protection (KPAI), cases crime sexual experience experienced by children in the period during 2011-2020 as many as 1043 cases (Apriyani et al, 2021:1-10). Temporary that year 2021 to month June case violence sexual to women and children reached 1,902 cases.

In the middle development situation sort of this, the rules the laws used in the process of completion law no capable ensure protection to child from crime sexual and not reflect Justice for child. Child victims of sexual crimes often experience permanent and prolonged trauma so that it is appropriate for perpetrators of sexual crimes against children provide compensation to child victims. Based on Article 71 D of Law Number 35 of 2014 concerning Child Protection, it is stated that children who are victims of criminal acts have the right to apply for restitution which is the responsibility of the perpetrators of the crime. Restitution is character criminal, arise from decision court criminal, and paid by the convict or perpetrator crime, or is form accountability convict. Giving restitution to child victims is considered as a form of social responsibility of perpetrators of sexual crimes to child victims so that it can be said that restitution is not an effective way to help child victims of sexual crimes, but has a function as a means to remind perpetrators of sexual crimes as a result of their actions. Done to the victim's child. Furthermore, the government issued Government Regulation (PP) No. 43 of 2017 to regulate technical provisions in providing restitution to child victims of sexual crimes. However, restitution no own nature must or imperative. This is what becomes inconsistency as well as Becomes weakness regulation about Victim Protection, especially in cases of protection child (Achmad Murtadho: 2020).

However, settings in PP No. 43 of 2017 still could cause a number of problem law, one of them Settings in PP No. 43 of 2017 which has not yet load rule or mechanism if restitution no paid. So that in practice many found that dropping punishment restitution by a Court that does not follow payment restitution by the perpetrator act criminal because and more choose to undergo criminal confinement as criminal replacement restitution. Based on search Author on the Directory site-page Decision Supreme Court throughout 2020, cases protection incoming child to realm judiciary and their restitution could be observed as listed in table below this:

Table 1: List of Decisions Court Case Loading Child Protection Penalty Refund 2020

No	Defendant's Name	Decision	Origin Case
1	Mamat Afifan Bin Sobiyanto	Drop criminal to Defendant Mamat Afifan Bin Sobiyanto because of that with criminal jail for 10 (Ten) Years and a fine in the amount of Rp. 100,000,000.00 (One hundred million rupiah) with provision if fine the no paid replaced with criminal confinement for 3 (Three) months as well as an obligation to pay restitution to the Child Victim in the amount of Rp. 6,364,000.00 (six million three hundred and six twenty-four thousand rupiah) with provision of restitution the no paid replaced with criminal confinement for 2 (Two) months;	PN Wonosobo Number: 26/ Pid.Sus /2020/PN Wsb July 13, 2020 Wonosobo District Court Number: 26/ Pid.Sus /2020/PN Wsb July 13, 2020

2	Kisut bin Wiryorejo	<p>Drop criminal to Defendant the above because that with criminal jail for 12 (two twelve) years as well as a criminal fine of Rp. 1,000,000.000-, (one billion rupiah) with provision if criminal fine no paid replaced with criminal confinement for 4 (four) months;</p> <p>Punish Defendant for pay Restitution to the victims of the name of the DEFENDENT KORBAN Binti as Report Evaluation LPSK Restitution (Protection Agency Witnesses and Victims) No. Register: 1198/P.BPP-LPSK/XII/2020, January 20, 2021 in the amount of Rp. 1,356,500.00 (one million three hundred and fifty-six thousand five hundred rupiah);</p>	PN Wonosobo Number XX/ Pid.Sus /2020/PN.Wno
3	Marwansyah	<p>-State The defendant Marwansyah on has proven by legitimate and convincing guilty do act criminal do " by " together same with on purpose compel children do intercourse with him ";</p> <p>-Drop criminal because that to Defendant with criminal jail for 13 (three twelve) years IDR 1,000,000.000.- (one billion Rupiah) if fine no paid so replaced with criminal confinement for 6 (six) months;</p> <p>-Set application Requested refund through a letter from the Protection Agency Witnesses and Victims (LPSK) with letter Number:</p> <p>R-1048/5.2HSKR/LPSK/11/2019 dated 26 November 2019</p>	PN Stabat No. 621/ Pid.Sus /2019 dated January 29, 2020 in conjunction with PT Medan Number 279/ Pid.Sus /2020/PT MDN
4	Perpetrator's Child	<p>-Drop action against the child because that with placing the perpetrator 's child in the Work Training Center/ BLK Prov. Bengkulu, for 2 (two) months; Punishing Children for pay Restitution for Child Victim Victims in the amount of IDR 5,898,000.00 (five million eight hundred nine twenty-eight thousand rupiah) as letter from LPSK (Institution of Protection) Witnesses and Victims) No. R-00/1.5.1.HSMPP/LPSK/04/2021 dated April 00, 2021 regarding submission application restitution;</p>	Bengkulu District Court Number 00/ Pid.Sus -Anak /2021/PN Bgl June 00 2021 in conjunction with PT Bengkulu Number 00/ Pid.Sus-Anak/2021/PT.BGL
5	Dian Ansori bin M Soleh	<p>Punish Defendant for pay Restitution to the Child Victim Noviyani 7,700,000.00 (seven million seven hundred thousand rupiah) in time of 30 (three) twenty days after decision this has strength law permanent with provision if in grace time that, the Defendant to pay Restitution then the Child Victim Noviyani or expert the heir tell Case the to Sukadana District Court and Sukadana District Court will give letter warning by written to Defendant for quick fulfill obligation to give Restitution to the child victim Noviyani. In Case letter warning from Sukadana District Court the not implemented in time 14 (four twelve) days, Sukadana District Court instructs Prosecutor General for confiscate treasure riches Defendant and auctioning treasure the for payment restitution, if Defendant no capable pay restitution the so should be replaced with criminal confinement for 3 (three) months;</p>	Sukadana District Court has drop Decision Number: 287/ Pid.Sus /2020/ PN.Sdn., February 9, 2021 in conjunction with PT Tanjungkarang, Lampung Number: 42/ Pid. / 2021 / PT TJK March 16, 2021

Based on the table above, no there is the convict who carried out penalty criminal restitution that. They more choose to undergo criminal confinement than should emit some money for pay restitution, so that need there is draft sentencing new or something how to get convict want to pay restitution to the victim's child. This is next discussed in the article this. This article analyzes Decision Karanganyar District Court, Central Java Number: 85/Pid.Sus/2021/PN.Krg which in the decision contains restitution to be paid by the perpetrator of the crime to the child of the victim but not paid by the perpetrator.

## ***B. Research Methods***

Methodically, this study was prepared using a case approach. The case approach in normative research aims to study the application of legal norms or rules carried out in legal practice, especially regarding cases that have disconnected as can see in jurisprudence to things that become focus research (Johnny Ibrahim, 2012:57). First part from this post explains about penalty criminal restitution in decision case crime sexual with child victims. Penalty criminal this often replaced with criminal so that restitution becomes no there is function. second part of this article explains the connection between Economic Analysis against the Law with penalty criminal reimbursed with criminal confinement that. In part this explained by the detail necessary things \_ noticed if taker policy to apply principle economy in policy law criminally general trusted During this in policy formation crime that is 'trusted' (not proven) efficient. Last part gives a number of input for sanctions criminal restitution the can effective run.

## ***C. Discussion***

### **1. Restitution and Criminal Confinement**

In context system Justice criminal, function-law criminal is for giving protection to rights and interests to individual nor collective good perpetrator act criminal as well as victims of crime, rights, and interests Public including witness as well as the rights and interests of the state represented by the Government. Leave from understanding that the victim is the party who is most harmed, then the victim should be get guarantee from the country through embodiment change loss, material nor rehabilitation. Based on Government Regulation Number 43 of 2017 concerning Implementation Restitution For Children Who Become Victims of Action Criminal, Restitution is payment-change loss charged to perpetrator based on decision-powerful court of law permanent on loss material and/ or immaterial suffered by the victim/ expert his heir. As for the mechanism submission restitution can be shared to in two Step that is could submitted at the stage investigation and prosecution. At stage investigation, the investigator should tell the victim about right restitution the then after notifying, the victim must submit restitution in time 3 (three-day), then after the file next victim's request examined by investigators in period 7 days time after declaring complete so will continue at stage prosecution if no complete so will return to the victim. Furthermore, the victim can also submit a refund at the time prosecution, the stage of prosecution almost same with the stage of investigation only just Prosecutor General given time for inspect completeness file submission of victims during 3 (three) days. Although at first with the publication of this PP suspected capable fill in emptiness law related mechanism submission restitution However behind it still there are a number of things to be obstacles inside application restitution that alone. In this PP to arrange about rule if the perpetrators act criminal no pay restitution, this PP is also regulated about various considered requirements could incriminate the victim with the difficulty of the application process, then no existence rule about calculation change loss by real Becomes obstacles for full right child as a victim of action criminal.

This article-use approach-case Number: 85/Pid.Sus/2021/PN Krg which was decided by the Panel of Judges at the Karanganyar District Court on August 5, 2021. Case this drag defendant SW in case protection child. At first, SW often deliver IK victim child aged 17 (seven mercy year) to his house after school. Over time, with persuade seduce SW the victim's child was fucked by SW until IK victim's

children are pregnant and give birth. In the claim, Prosecutor from Karanganyar State Prosecutor demanding that SW is legally and convincingly proven guilty of committing a crime: "On purpose Persuading Children to Do Intercourse With him", as regulated and punishable by criminal Article 81-Paragraph (2) RI Law No. 17 of 2016 concerning Determination Regulation Government In lieu of Law Number 1 of 2016 concerning Change Second, on the Republic of Indonesia Law No. 23 of 2002 About Child Protection with criminal principal and restitution. Besides criminal the main thing is in the form of criminal prison for 9 (nine) years, fully deducted from the length of time the defendant has been detained, and stipulates that the defendant remains in custody and fines as big as Rp. 50,000,000,- (fifty million rupiah) subsidiary 6 (six) months confinement, the Prosecutor also demands defendant for pay restitution to the child victim of Rp. 26,547,620,- (twenty-six million five hundred forty seven thousand six hundred twenty-rupiah) with provision if after the judge 's decision has strength law fixed and it turns out that the defendant did not pay the restitution, so replaced with criminal confinement During 1 (one) year. Next court judges Karanganyar through decision Number: 85/Pid.Sus/2021/PN Krg August 5, 2021 decides the case on name-defendant SW who is legally and convincingly proven guilty of committing a crime: "On purpose Persuading Children to Do Intercourse with him ", as regulated and subject to criminal sanctions in Article 81 Paragraph 2 of the Republic of Indonesia Law no. 17 of 2016 concerning Determination Regulation Government In lieu of Law Number 1 of 2016 concerning Change Second, on the Republic of Indonesia Law No. 23 of 2002 About Child Protection other than criminal basically also include penalty criminal restitution to the victim 's child of Rp. 26,547,620,- (twenty six million five hundred forty-seven thousand six hundred twenty-rupiah) with provision if after the judge 's decision has strength law fixed and it turns out that the defendant did not pay the restitution, so replaced with criminal confinement During 6 (six) months. However, after the past of 30 (three twenty days), SW states no can pay obligation restitution that and finally replaced with criminal confinement for 6 (six) months.

By Article 12 paragraph (1) Government Regulation (PP) Number 43 of 2017 concerning Implementation Restitution for Child Victims Criminal, after Defendant accept copy decision court and minutes of implementation decision court must doing decision caught the to give restitution as listed in decision to party child victim maximum 30 (three twenty) days. However, in Law No. 31 of 2014 concerning Changes to the Law Number 13 of 2006 concerning Protection Witnesses and Victims as well as in Government Regulation (PP) Number 43 of 2017 concerning Implementation Restitution for Child Victims Criminal related criminal replacement in the form of confinement if the defendant no can pay restitution to the victim child no set. As for the amount restitution, based on calculation from the Protection Agency Witnesses and

Victims (LPSK) number: R-159/1a.5.HSKR/LPSK/06/2021 dated June 30, 2021 which includes component in the form of lost parent's income because case this, cost transportation as well as cost consumption During follow the judicial process as well as suffering entered from projection cost recovery psychology. If look from long criminal confinement as replacement restitution of Rp. 26,547,620,- (twenty six million five hundred forty seven thousand six hundred twenty-rupiah) for 6 (six) months really not comparable with losses that have been experienced victim 's child. Amount criminal restitution with criminal confinement as replacement no balanced because purpose restitution none other than for develop justice and prosperity victim 's child. Reject measuring implementation restitution is to give opportunity to the victim for give rights and obligations as human (Lukman Hakim, 2020:43-58). However problem about power force gift restitution in case crime sexual to children this not yet there is a definite arrangement in the law the form. So that the panel of judges took the decision for replace it with criminal confinement if the defendant no can pay restitution. Criminal confinement is shaping the nature of the punishment same as prison, that is purposeful punishment limit room motion from perpetrator crime. Criminal confinement limit independence from a convict, with close convict it's inside institution penitentiary and that person should obey all regulated rules and regulations in an institution correctional that. In short, criminal confinement could interpret as plunder independence However lighter compared with criminal prison (PAF Lamintang, Theo Lamintang, 2012:35). Following difference criminal prison and criminal confinement (SR Sianturi, 2022:471).

- a. Convicts who were sentenced punishment criminal confinement own gun rights that is right or opportunity for could stage food and place to sleep on cost alone. (Article 23 of the Criminal Code);
- b. The convict's prison and convict confinement both of them you're welcome required to do jobs social. However, for convict confinement profession the more light if compared with convict prison. (Article 19 paragraph (1) of the Criminal Code));
- c. Maximum threat criminal confinement is 1 (one) year and if there is weight criminal so could add until never can more than 1 year 4 months. (Article 18 of the Criminal Code);
- d. There is separation Among the place confinement Among convict prisons and convicts who were sentenced criminal confinement thing done if second convict the locked up in the same Penitentiary (Article 28);
- e. Implementation punishment criminal confinement implemented in area domicile from convict that alone. If referring to to SR Sianturi's book, the domicile in question with provision here is district the place convict stay (Article 21).

As known that law Indonesian criminal law adheres to principle deep (*schuld*) error Case this accountability criminal is consequence happening deed perpetrator act the crime he committed. When the victim and or his family have got satisfaction Justice on convicted maker crime, it's also comparable with suffering maker the evil lurking behind bars iron. Restitution know about suffering perpetrator evil inside bars iron However about continuation life victim's child. Perpetrator crime can just repent in bars iron with eat and drink provided by the State, while crime victim child sexual permanent should continue his life in a world in need cost much consequence deed perpetrator crime. For that's restitution with criminal fine no things that can compared. Fine will enter to the state treasury in the form of PNBP (Non- State Revenue Tax) while restitution will be paid to child victims of crime who have connection causality that is very era between crime and losses experienced child victim criminal. Refunds are also considered aggravating maker crime (convict) while criminal confinement replacement restitution profitable perpetrator.

## 2. Analysis Economy Against the Law on Sanctions Criminal Restitution Case Crime Sexuality in Children

Implementation restitution aim for give benefit against victims of crime criminal in line with Genre Utilitarianism which is theory thoughts that give well-being for Public by broad, deep Case this for measure Justice is how much big the benefits for well-being-human (human welfare). Genre utilitarianism developed by philosophers Jeremy Bentham (1748–1832) and philosopher John Stuart Mill (1806–1873). Thinking utilitarianism by Jeremy Bentham move punishment criminal to have a purpose to perpetrator nor to society. But Bentham's thinking stop until 1960, and new growing at the beginning 1970, with spearheaded by thoughts from Ronald Coase (1960), with the article that discusses problem externalities and responsibilities answer law; Becker (1968), with the article that discusses crime and enforcement law; Calabresi (1970), with the book about law accident; and Richard A Posner (1972), with book his text entitled "Economic Analysis of Law". Theory Economic Analysis of Law or analysis economy to law that developed in the United States by Richard Posner, a judge at the Court of Appeals for the Seventh Circuit then develop to mainland Europe. In context Thus, Posner developed the idea of analysis economy in laws that develop and include transaction cost of economy, economy institution, and public choice. Transaction cost of economy related with efficiency regulation partial law big regarding with law private. Economy Institution related with action man including regulation formal laws, informal customs, traditions, and rules social. And Public Choice related with the decision process by democratic with consider microeconomy methods and their trade (Erman Radjagukguk, 2011). Through principle economics, Posner hopes could Upgrade efficienclaw, including efficiency in Upgrade well being social (Muhammad Rustamaji, 2013:101).

Although impressed new, actually analysis economy to law already discussed by academics law a long time ago in Indonesia. Unfortunately, analysis of the relative no so growing in Indonesia (Andreas Nathaniel Marbun et al: 127-167) because a study on theory-criticism or doctrine on something paradigm

or approach certain in study law not enough interested. Experts less law in Indonesia enthusiastic in do browsing theoretical on various paradigm in knowledge law or taking doctrine seriously (Ady Irawan, 2017). Analysis economy on law is look aspect efficiency in determination something choice in life human. Draft about choice and rationality result in people having to emit cost because should leave one choice for Chase other options he considers better. Approach this close relation with Justice in law. Justice Becomes something standard economy based on 3 (three) elements base that are value (value), usability (utility), and efficiency (efficiency) with rationality purposeful human upgrade interest general as wide as possible (maximizing overall social utility).

Basically, analysis economy to law by general postulate that everyone is normal, to the point certain, we will do the counting profit and loss to actions taken, including in do crime. According to Posner "that use principles Knowledge Economy in use law because" Economic is a powerful tool for analyzing a vast range of legal question" (Richard A. Posner, 1992:26-27). Posner explained that existence law in the middle like this, basically as device regulation or purposeful sanctions for arrange real human behavior wish for Upgrade satisfaction, as Case this part from the economy. Law because that created and used for the purpose Upgrade interest general as wide as possible, because from corner look economy, product capable law accommodate means progressive product, apply effective, work efficient, and responsive to developments and demands era (Nurlely Dervish, 2016). The economic analysis to law offer three helpful approaches formulate the optimal punishment is (Fajar Sugianto, 2013: 93-94).

- a. All sanctions at least should same with profit for perpetrators (sanctions equal to the wrongdoer's gains). In Case this measure profit for the perpetrator basically no could be measured, however Case this could be seen from a loss or injury (damage) from a party the victim. Assumptions depicted is loss or injury / damage from more victims big from profit a perpetrator.
- b. Essence punishments as application-act-based rules or harm-based rules. Harm-based rules have the same essence with optimal punishment based on victim loss.
- c. In Case this deterrent will be considered more efficient for reduce repetition act criminal, because the perpetrators realize that punishment on act the crime he committed heavier than expected the advantage.

In fact, approach economy not solely limited to considerations of economy for complete something problem. Approach economy means pulling a use tool or draft or technique common analysis used by experts economy. Analysis economy about law criminal is strength new can improve legal morals criminal to use by efficient and meaningful could Upgrade well-being society. According to Posner, whose background behind is as a judge, a judge is a rational person and has the motives he says maximize "utility" and effectively economical use rational direction for reach purpose complex from his decision in the Court (Romli Atmasasmita et al, 2016:39). Court has bi-function; first, interpret agreements interest groups. Why group the can usually affix the draft legislation. Second, provide service for Public lay in solve contentious issue. One importance court no only enforce regulation legislation will but interpret Constitution the so that could help in Upgrade efficiency economy.

Theory efficiency in economy (efficiency theory) is something theory that emphasizes the benefits something thing. Efficiency refers to the connection Among whole profit from something situation with whole expenditure from the situation that. Analysis cost and profit are very important in relation with the effort to deal with crime. Problem countermeasures crime related close with allocation available budget, while analysis costs and benefits are also related with how mmansource power must be allocated for cope crime it. Analysis economy related with principle efficiency this is connected with dropping penalty criminal for perpetrator crime, the first to have noticed is shapes penalty criminal what only what is available will drop to him. Then, from shapes penalty existing criminal law, analyzed which one is the most efficient seen from principle costs and profits. Generally, the forms penalty criminal in the form of criminal death, criminal lifetime life, crime prison, and a criminal fine. In context analysis economy shape penalty the most efficient and suitable criminal used in relation with the principle cost and

profit is criminal death and punishment fine. Whereas criminal jail seen from analysis economy on law criminal not enough appropriate.

Background poster behind as a Judge, a judge is someone who is rational and has the motives he says maximize "utility" and effectively economical use rational direction for reach purpose from the decision in Court. Restitution for enforcer law still likened to as criminal fine, which is the shape penalty finance (monetary sanctions). Criminal fine considered efficient because the drop no need cost whatever; he only related with obligation perpetrator for pay amount of money to the State. Own country no emit cost whatever when drop penalty criminal fine. Because of that, efficiency criminal fine no doubtful in analysis economy on law criminal. However thus, for determined that criminal penalty fine said efficient and able to prevent the perpetrator for do crime, depends on five factors. First assets owned perpetrator. The smallest existing assets the lowest fine for prevent violator do crime. Second possibility perpetrator no will warn penalty criminal. The biggest possibility this, then the highest sanctions the sentence imposed for prevent happening crime. If possible no worn penalty criminal this is half percent (1/2 %) by weight fine should duplicated. If the probability one third (1/3 %) by weight fine triple and so on. Third level profit from crime. The biggest profit the tallest penalty necessary punishment for prevent crime and bigger possibility imposition fine on treasure wealth owned perpetrator. Fourth possibility harm inflicted by crime and fifth quantity losses (Mahrus Ali, 2001).

Enforcer law should start changing pattern, think about dropping penalty criminal restitution this. Restitution has change philosophy reinstatement of punishment retributive or as revenge on actions that have been done should change Becomes purposeful restorative do improvement in all good party perpetrator as well as victims. Problems that occur between the victim and the perpetrator solved together for reassuring heart for all party. Restorative aim focus Justice for victims according to desires and interests personal, not the state that determines. Temporary restitution Becomes something penalty efficient restorative punishment by economical for perpetrators and child victims of crime, sexual if applied with good. More again if seen from the aspect economy, the cost must be issued moment restitution replaced with criminal confinement Becomes larger (social cost). Moment somebody imprisoned (convicts), the state must provide cost and facilities coaching in Correctional Institutions. The more many prisoners will ceiling budget and realization budget for ingredient food. Even though based on Article 14 paragraph (1) of Law Number 12 of 1995 concerning Correctional, giving logistics is right from prisoners However permanent just problem logistics the need many cost in effort fulfillment by the state. Besides that, the phenomenon overcapacity in Correctional Institutions (Lapas) in Indonesia. Prisons in Indonesia which on average experience overcapacity make condition jail the more no worthy for inhabited.

Coercion payment restitution to perpetrator crime of course already should start applied. So from that need there is rule new in system Justice criminal about restitution with purpose the victim 's child gets fulfillment his rights, more again crime victim child sexual often is at in relation lame power in Justice with perpetrator crime so that need protection especially so that the victim 's child is able to face her world again after the thing revealed. Need there are policy and reformulation penalty criminal restitution so that you can walk effective and efficient. One method for full payment restitution to the crime victim child sexual can do with foreclosure asset defendant with more formally do search assets at stage preprosecution case. Although no easy for done effort force confiscate treasure that, still should strive for since beginning steps procedural confiscate treasure riches that. Start from tracking asset, freeze account savings, and foreclosure from existing assets. Asset acts criminal is all thing move or thing no move form and have Mark economical, obtained, or suspected originated from act Criminal Steps the is effort from every Step enforcement of the law must implement so that the victim's child can get restitution. Foreclosure asset can do moment execution case with base letters foreclosure from The local District Court which has attached in file case. Basically foreclosure including in one effort force (dwang middle) potentially violate Right, basic Human (HAM). Related with the procedure or implementation confiscation by general has set conditions in Article 38 to with Article 46 of the Criminal Procedure Code and includes all goods/ things as goods Proof or as tool Proof crime (including provision Article 184 of



the Criminal Procedure Code), or in the form of goods/ things or assets results deed corruption that will doplunder after existence decision the court that has inkracht. Based on Article 38 of the Criminal Procedure Code (KUHAP) for confiscation can do to things as following:

- 1) Object or bill suspect or the entire defendant or part suspected obtained from act criminal
- 2) Things that have been used by direct for do act criminal
- 3) Items used for hinder investigation act criminal
- 4) Special items made or destined to act criminal
- 5) Other objects that have a connection direct with act crime committed.

In Case this also becomes Duty addition prosecutor for prove that assets carried out foreclosure in skeleton pay restitution is really owned by perpetrator. Goods confiscation in the form of money or savings in the account (beginning with with blocking) will be collected in an account shelter owned by the Prosecutor Republic of Indonesia. Whereas if in non-money forms (goods) are stored in the Evidence and Goods Building loot owned by attorney or saved at Home State confiscated goods storage (Rupbasan). Foreclosure also works for secure goods move because easy move place and move hand. Next, what if in the inspection the trial judge considers need done foreclosure to something thing then to use necessity the judge may issue a determination containing order to prosecutor general continued to investigator Police for do confiscation. The judge's determination as provision in Article 13 jo. Article 14 letter a of the Criminal Procedure Code. Foreclosure then of course just should have strength strong law at the time done execution confiscate treasure results act criminal crime definite sexual just have to pay attention to the principle law that protection law on right owned by material someone new could be done if treasure the obtained by legitimate. This thing means if proven in the judge that treasure acquired wealth by illegal no worthy got protection law. After doing confiscation, Prosecutor as executor to auction goods that 's then results the auction useful for pay restitution to child victims of crime.

A commodity, restitution as criminal useful addition \_ need Keep going built and maintained the quality. Availability umbrella law restitution along with regulation implementation by clear and definite in skeleton provide and facilitate crime victim child sexual for got the rights is a very urgent matter. In Draft Criminal Code (RUU KUHP), criminal law confinement start removed. Criminal confinement accused reduce effectiveness implementation criminal fine. Not balance Among total criminal fine with long criminal confinement make criminal fine no walk maximum. Convicts who have been in prison so much year, of course no problem added criminal confinement a number of month course. Based on Article 84 paragraph (2) of the Criminal Code Bill, assets thing nor income convict will be robbed for made payment fine. R restitution introduced in the Criminal Code Bill with term payment change loss, and is one of the type criminal additional. Criminal addition basically only could drop together with criminal tree, because his position "assessor". Maker law law start to pay attention to the victim criminal to give change loss to the victim or his family, which when Case the no executed, criminal change loss the will return to criminal prison, with term criminal jail replacement, at least 1 (one) day. Provision about payment change loss that is not paid, same with provision criminal fines that are not paid (Iskandar Wibawa, 2017) The Criminal Code Bill also mentions that convicts who do not can pay fines are also plundered treasure whereas if treasure convict already no there is again for confiscated, then replaced with criminal work social or criminal supervision or criminal prison.

## **Conclusion**

Based on analysis and discussion above, article this conclude that basically not yet there is rule in law formal about if convict no can pay restitution to crime victim child sexual then the panel of judges handed down criminal confinement as replacement payment restitution. The judge has authority for find law (*rechtsvinding or judge made law*) who will dig values justice that is material and substantive no only rely on justice that is formal and procedural only. As a result, the convict more choose punishment criminal confinement than pay some money to crime victim child sexual because the amount of money

and amount long criminal confinement of course no comparable. Based on analysis economy to law, criminal sanctions likened restitution as criminal fine in relation with the principle cost and profit is effective sanctions run However During this restitution still Becomes penalty crime that is not there is coercion so that implementation not enough maximum. So that there is a number of how to get sanctions criminal restitution can effective that is first with foreclosure asset the later defendant robbed for countries with method auctioned to use payment restitution to the victim's child. Second with method reformulation laws and regulations related to criminal sanctions refund of nature force.

## References

- Abdul Wahid, Muhammad Irfan, dan Muhammad Tholchah Hasan, *Perlindungan terhadap korban kekerasan seksual: advokasi atas hak asasi perempuan*, Bandung: Refika Aditama, 2001.
- Achmad Murtadho, "Pemenuhan Ganti Kerugian Terhadap Anak Yang Menjadi Korban Tindak Pidana Pencabulan", *Jurnal HAM* Volume 11, Nomor 3, Desember 2020
- Ady Irawan, "Analisis Ekonomi Terhadap Hukum dalam Kebijakan Penegakan Hukum Pidana di Indonesia", *Jurnal Pendidikan IPS* vol 7, Januari – Juni 2017
- Andreas Nathaniel Marbun, Revi Laracaka, " Analisa Ekonomi terhadap Hukum dalam Pemidanaan Partai Politik melalui Pertanggungjawaban Korporasi dalam Perkara Tipikor", *Jurnal Antikorupsi Integritas*, 5 (1), 127-167
- Apriyani, Maria Novita, "Implementasi Restitusi Bagi Korban Tindak Pidana Kekerasan Seksual", *Jurnal Risalah Hukum*, volume 17 No 1, Juni 2021.
- Erman Radjagukguk, *Filsafat Hukum (Modul Kuliah)*, Jakarta: Universitas Indonesia, 2011.
- Fajar Sugianto, *Economic Analysis of Law, Seri Analisis Ke-ekonomian tentang Hukum*, Jakarta: Kencana Prenada media; 2013.
- Iskandar Wibawa, "Pidana Kerja Sosial dan Restitusi Sebagai Alternatif Pidana Penjara dalam Pembaharuan Hukum Pidana Indonesia", *Jurnal Media Hukum*, vol 24 No. 2, Desember 2017.
- Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Malang: Bayumedia Publishing, 2012.
- Lukman Hakim "Analisis Ketidak Efektifan Prosedur Penyelesaian Hak Restitusi Bagi Korban Tindak Pidana Perdagangan Manusia (*Trafficking*)", *Jurnal Kajian Ilmiah*, Vol.20 No 1, Januari 2020
- Mahrus Ali, "Penegakan Hukum Pidana yang Optimal (Perspektif Analisa Ekonomi atas Hukum)", *Jurnal Hukum* No. 2 Vol 15 April 2008
- Muhammad Rustamaji, "Menakar Pengawasan Pemberian Bantuan Hukum dalam Pandangan Richard a Posner", *Jurnal Rechvinding*, BPHN, Volume 2 Nomor 1, April 2013.
- Nurlely Darwis, "Menanggulangi Kejahatan dengan Aplikasi Economic Analysis of Law", *Jurnal Ilmiah Hukum Dirgantara*, Volume 6 No.2 Maret 2016.
- P.A.F Lamintang, Theo Lamintang. *Hukum Penitensier Indonesia*. Jakarta : Sinar Grafika, 2012

Romli Atmasasmita, Kodrat Wibowo, *Analisis Ekonomi Mikro tentang Hukum Pidana di Indonesia*, Jakarta: Kencana, 2016

S.R Sianturi, *Azas – Azas Hukum Pidana di Indonesia dan Penerapannya*, Jakarta : Sinar Grafika, 2002

Mahkamah Agung Republik Indonesia, Putusan Pengadilan Negeri Karanganyar Nomor: 85/Pid.Sus/2021/PN Krg tanggal 5 Agustus 2021

Republik Indonesia, UU No.31 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 13 Tahun 2006 Tentang Perlindungan Saksi dan Korban

Republik Indonesia, UU Nomor 1 Tahun 2016 tentang Perubahan Kedua Atas UU RI No. 23 Tahun 2002 Tentang Perlindungan Anak

Republik Indonesia, Peraturan Pemerintah (PP) Nomor 43 Tahun 2017 tentang Pelaksanaan Restitusi bagi Anak Korban Tindak Pidana

### **Copyrights**

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).