

Restitution in Juvenile Criminal Cases: A Proposed Amendment to Government Regulation No. 43/2017 in Light of International Legal Principles

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Abstract

This article analyses how Government Regulation Number 43/2017 shall be amended on international human rights law. It is needed since this regulation does not further regulate the offender's responsibility due to the offender's economic inability. The article implements normative research based on the UNCRC, the Chorzow Factory Case, jurisprudence from the ECHR Case Law, and the UNGA Resolution 40/34. This article consists of three discussions. The first discussion implements the provisions of the UNCRC in proposing how the government regulation shall be amended. Meanwhile, the second discussion suggests how the regulation shall be amended based on international case laws. Finally, the third discussion enhanced the previous two discussions by implementing the UNGA Resolution 40/34. Indonesia shall amend the provisions under Articles 19-22 of the regulation to ensure the full reparation of the victim and the perpetrator's responsibility is fulfilled. This article also suggests that Indonesia shall consider the offender's and the victim's conflicting interests. The third discussion suggested the LPSK to be the authorized organ to pay the restitution to the victim in the case where the offender or convicted is unable to fulfill the responsibility.

I. Introduction

A child always plays a vital role in the future of a nation. However, the United Nations Human Rights Council (UNHRC) has declared that children around the world remain one of the most marginalized groups, often denied the rights they are entitled to (Children's Rights and the 2030 Agenda for Sustainable Development, n.d.). The Council, in its 2030 Agenda for Sustainable Development, identifies violence and systemic misalignment as the root causes of this universal problem. Violations of natural rights, also known as human rights, must be addressed by redefining how states are obliged to protect and fulfill children's rights. Furthermore, states must also respond seriously to acts of violence committed by children.

As a legal state, Indonesia upholds human rights protection and is committed to enforcing regulations and court decisions that align with human rights principles (Jurdi, 2016). In terms of child protection, Indonesia has enacted Law No. 23 of 2002 on Child Protection (UUPA), consolidated by Law No. 35 of 2014 (Panggabean et al., 2024). In addition, Indonesia also adheres to Law No. 39 of 1999 on Human Rights and Law No. 12 of 2005 on the Ratification of the International Covenant on Civil and Political Rights (ICCPR) (Razqi & Widodo, 2022). These legal instruments ensure the protection of children's rights.

The European Court of Human Rights has stated that balancing the fundamental rights of one person with those of another is a key practice in the implementation of international human rights law (Spano, 2021). This idea prompts the main inquiry of this article: what if the rights of an individual either a child or an adult are violated as a result of deliberate or negligent actions by a child?. This question emerges amid a disruptive era of digitalization that poses negative impacts on children (Reza & Siregar, 2023). Technological advancements have led children to engage in morally inappropriate behavior that violates legal norms, particularly criminal law.

Indonesia, as a country that guarantees human rights protection, has adopted procedural laws to address criminal acts committed by children. The obligation to protect the human rights of victims of juvenile crimes is outlined in Law No. 11 of 2012 on the Juvenile Criminal Justice System (UUSPPA) which incorporates a diversion system based on a restorative justice approach (Sugama et al., 2024). This approach requires the involvement of both the victim and the perpetrator in order to

repair the harm caused (Utomo & Saefudin, 2023). However, despite these legal provisions, the regulation of restitution in cases involving juvenile offenders remains inadequate due to the lack of clarity regarding its implementation.

This article seeks to address this gap by analyzing Government Regulation No. 43 of 2017 on Restitution for Children Who Are Victims of Crime (GR No. 43/2017). Article 2 of the regulation states that restitution shall be granted to child victims and their families (Gustinanda, 2022). Despite its noble intent, the implementation of this regulation risks being ineffective due to its vague and incomplete provisions particularly Articles 19 to 22, which address the enforcement of court orders for restitution. These articles fail to provide prosecutors with clear guidelines for executing court decisions requiring offenders to fulfill restitution obligations. Moreover, the regulation lacks mechanisms for enforcing restitution in cases where the child offender or their family is unable to bear the financial burden.

As a member of the United Nations, Indonesia is obligated to implement the provisions of the United Nations Convention on the Rights of the Child (UNCRC) (Argent, 2021b). Therefore, the absence or inadequacy of legal provisions regarding restitution may result in Indonesia neglecting or even violating its international obligations under the principle of *pacta sunt servanda*, as stated in Article 26 of the 1969 Vienna Convention on the Law of Treaties (VCLT), a principle that has acquired the status of general international law under Article 38(1) of the Statute of the International Court of Justice. Failure to comply with this principle not only breaches international law but also denies justice and legal certainty to both victims of crimes committed by children and children who themselves are victims of crime (Walter, 2018). This article aims to discuss how Government Regulation No. 43 of 2017 should be revised in line with international legal standards concerning children's fundamental rights and victims' rights to restitution. Before formulating the legal issues to be addressed, this background presents a review of relevant previous research to establish the article's state of the art.

The first prior study applied in this article is a journal titled "*Perlindungan Korban Melalui Kompensasi Dalam Peradilan Pidana Anak*" (Victim Protection Through Compensation in Juvenile Criminal Justice) by Hafrida and Helmi. This article analyzes the failure of Law No. 11 of 2012 on the Juvenile Criminal Justice System (UUSPPA) to provide adequate compensation to victims of crimes committed by

children. This failure persists despite the consistent application of restorative justice principles under the law. Hafrida and Helmi emphasize that the state must provide fair and appropriate compensation for victims of crimes committed by children (Hafrida & Helmi, 2020). This article adopts the concept of state responsibility discussed in the prior study and argues that restitution is the most appropriate legal term in the context of the state's obligation to restore the rights of victims of criminal acts or human rights violations.

The second prior study referenced in this article is a journal article titled "*Penjatuhan Hukum Berupa Restitusi Korban Tindak Pidana Pembunuhan oleh Anak Dalam Perspektif Keadilan*" (Sentencing Restitution for Victims of Murder by Juveniles from a Justice Perspective) by Elvira Destianti. This study broadly discusses how Law No. 1 of 2023 on the Indonesian Criminal Code (KUHP) does not contain provisions regarding restitution for victims of murder committed by children. The author highlights that Indonesian judges tend to base their decisions on varying court precedents, commonly ordering the offender or the offender's family to pay restitution in the amount of IDR 15,000,000 (approximately USD 1,000). Based on these findings, the author concludes that the Criminal Code should be amended to include restitution provisions. However, unlike Destianti's position, this article proposes revising Government Regulation No. 43 of 2017 instead, arguing that revising a regulation is procedurally simpler than amending a statute, which requires approval from both the President and the House of Representatives (Hamja, 2020).

Lastly, and equally important, the third prior study examined in this article is a journal article titled "*Pengaturan Pembebanan Restitusi Terhadap Pelaku Anak Sebagai Bentuk Pertanggungjawaban Kerugian Terhadap Korban Tindak Pidana*" (The Regulation of Restitution Burden on Juvenile Offenders as a Form of Accountability for Victims' Losses) by Satriadjie Abdee Yossafa. This study emphasizes the application of restitution as a concrete expression of the principle of *restitutio ad integrum*. The descriptive legal research provides a comprehensive overview of all Indonesian legal instruments governing restitution and highlights the significance of Government Regulation No. 7 of 2018 concerning Compensation, Restitution, and Assistance for Witnesses and Victims (Yossafa, 2023). In contrast to this descriptive study, the present article adopts a prescriptive approach and aims to critique the weaknesses of Government Regulation No. 43 of 2017, particularly its provisions governing the implementation of restitution obligations.

Drawing on the three aforementioned prior studies, this article seeks to examine how Government Regulation No. 43 of 2017 should be revised in accordance with a series of public international legal norms governing children's rights and the right of victims to restitution. The first section of the discussion analyzes how this regulation must be amended in accordance with applicable public international law and international human rights law. The second section examines how the regulation should be revised based on findings from international legal cases. Lastly, the third section analyzes the regulation through the lens of United Nations General Assembly Resolutions concerning the rights of victims to restitution for crimes and abuses of power.

2. Research Method

This study employs a normative legal research method aimed at formulating recommendations for amending Government Regulation No. 43 of 2017 in accordance with applicable international human rights law. This research is doctrinal in nature, focusing on the analysis of legal norms and their application in practice. The study systematically examines primary international legal instruments such as the United Nations Convention on the Rights of the Child (UNCRC), the Chorzów Factory Case, case law from the European Court of Human Rights (ECHR), and UNGA Resolution 40/34 on the rights of victims of crime and abuse of power.

Legal materials used in this study include primary legal sources, such as international treaties and resolutions; secondary legal materials, including scholarly articles, legal commentaries, and academic journals; and tertiary legal materials, such as legal dictionaries and encyclopedias. These materials were obtained through library research.

The data are analyzed using a qualitative normative approach, which involves interpreting international legal norms, evaluating gaps in domestic law particularly Articles 19–22 of Government Regulation No. 43/2017 and formulating prescriptive solutions to align Indonesia's legal framework with its international obligations on child rights and victim restitution.

3. Results and Discussion

Revision of Government Regulation No. 43 of 2017 Based on Provisions in International Human Rights Law

The implementation of international human rights treaty obligations related to restitution for

victims of crimes committed by children is not merely a matter of complying with international agreements. This article first explains the distinctive characteristics of international human rights treaties before elaborating on the importance of applying these international legal norms. As international treaties that share regulatory characteristics with international humanitarian law, the implementation of international human rights treaties is inseparable from Immanuel Kant's doctrine of the *categorical imperative*. In this doctrine, Kant asserts that such treaties must be implemented regardless of whether they possess a reciprocal nature or whether other state parties to the treaty uphold their obligations in return. This concept can be illustrated by the notion that the enforcement of treaty obligations by one party may not necessarily benefit other parties, and violations by one member do not always result in direct harm to the rights of other state parties (Paulinus Chikwado Ejeh & Ujah, 2022).

It is thus evident that human rights treaties differ fundamentally from international treaties within the regime of international economic law specifically, treaties in the fields of trade and investment (Szwedo, 2024). The implementation and enforcement of such multilateral and regional treaties are strongly influenced by the principle of reciprocity (Parisi, 2024). This principle implies that the benefits and disadvantages experienced by treaty members are directly related to the active or passive conduct of other parties (Shodiq & Kautsar, 2022). Accordingly, violations committed by parties to human rights treaties generally do not result in retaliatory measures from other members (Paulinus Chikwado Ejeh & Ujah, 2022). This statement is made without prejudice to the role of the Universal Periodic Review (UPR) mechanism under the auspices of the United Nations Human Rights Council, which applies non-punitive sanctions such as *naming and shaming* as a consequence for states that fail to respect, protect, and fulfill the human rights of their citizens or residents (Kim, 2023).

The distinctive features of this international legal regime provide a solid basis for further questioning Indonesia's compliance with international human rights treaties, particularly those concerning juvenile criminal offenses and the protection of children's rights. The answer to this question can be found in the *1945 Constitution of the Republic of Indonesia (UUD NRI 1945)*. Article 28H paragraph (2) of the Constitution stipulates that every person has the right to legal certainty founded on justice. (Rohmah et al., 2021) Furthermore, the principle of "a just and civilized humanity," derived from the Second Principle (Sila Kedua) of *Pancasila*, as enshrined in the Preamble of the 1945 Constitution, must also be upheld (Priasih et al., 2023). This analysis is therefore aligned with *Pancasila* as the source of all sources of law, as stipulated in Article 3 of Law No. 12 of 2011 on the Formation of Laws and Regulations (UUP3) (Hadi, 2021). This article thus asserts that both international legal obligations and the foundational principles of the Indonesian state mandate the protection and fulfillment of the rights of every person within its jurisdiction, including the fundamental rights of children, which are closely linked to the

obligation to provide restitution.

This discussion applies a series of primary obligations under the UNCRC while also analyzing the weaknesses of Government Regulation (PP) No. 43/2017. Article 3 of the UNCRC obliges each member state to ensure adequate protection for children (Khairunnisa & Mahfud, 2023). This discussion applies a series of primary obligations under the UNCRC while also analyzing the weaknesses of Government Regulation (PP) No. 43/2017. Paragraph 2 further states that the parties to this convention must ensure that child protection considers the rights and obligations of parents, guardians, or other parties who assume responsibility for the child's care (Livingstone et al., 2024). Based on these provisions, a series of legislative and administrative instruments appropriate for child protection must be established and implemented by Indonesia.

The regulation concerning restitution under PP No. 43/2017 is far from reflecting an adequate legal standard, and this assertion aligns with the provisions of Articles 19 to 22 of the regulation. Article 19 requires the court registrar to submit the court decision on restitution obligations to the public prosecutor (Government Regulation Number 43 Year 2017 concerning The Restitution on Child(s) Victim to An Offence, 2017). Based on this provision, the public prosecutor is responsible for executing the court's ruling that compels the perpetrator of a criminal act, including juvenile offenders, to fulfill their restitution obligations. Article 20 of PP No. 43/2017 obliges the public prosecutor to deliver a copy of the court's decision to both the child offender and the child victim (including the victim's parents or guardians. Article 21 then mandates the offender or the offender's parents to fulfill the restitution obligation within 30 (thirty) days after receiving the court's decision. Finally, Article 22 of PP No. 43/2017 obligates the offender, including juvenile offenders, to report to the court and the public prosecutor that they or their parents/guardians have fulfilled the restitution obligation (Government Regulation Number 43 Year 2017 concerning The Restitution on Child(s) Victim to An Offence, 2017).

Notwithstanding the mandate granted by Government Regulation No. 43 of 2017 to public prosecutors, it must be acknowledged that this set of provisions does not further regulate the procedure for fulfilling restitution obligations in situations where the perpetrator especially in cases involving juvenile offenders and their parents or guardians are unable to fulfill such obligations (Simatupang et al., 2023). This legal gap creates a disconnect between *das sollen*, the normative expectation of restitution as a victim's right, and *das sein*, the reality of the offender's inability to take responsibility for their actions. This disconnect raises the fundamental question: who should bear the burden of restitution when the offender cannot? Furthermore, what steps should be taken when neither the child offender nor their parents or guardians are capable of fulfilling this obligation?

This discussion proceeds by analyzing the obligations set forth in Article 12 of the United Nations Convention on the Rights of the Child (UNCRC) before addressing the two questions posed above. The first paragraph of this article obliges state parties to ensure that every child has the right for their interests to be considered in legal proceedings. This right to be heard in legal settings must take into account the child's level of maturity (Cuevas-Parra, 2023). The second paragraph mandates each state party to incorporate national legal provisions that guarantee the protection and fulfillment of children's rights through their domestic legal systems (Cuevas-Parra, 2023). It is understood that Article 2 of Government Regulation No. 43 of 2017 grants child victims of crime the right to claim restitution from the perpetrator through a court decision (Sabri & Tasman, 2023). However, the provisions under Articles 19 to 22 of this regulation effectively hinder the realization of children's rights to restitution when the perpetrator or the child offender's parents or guardians are unable to fulfill such obligations (Government Regulation Number 43 Year 2017 concerning The Restitution on Child(s) Victim to An Offence, 2017). In other words, this shortcoming undermines the child's right to be heard before the law and results in the failure to achieve reparation for the harm suffered.

Moreover, Indonesia may be in violation of the set of provisions contained in Article 19 of the UNCRC, which addresses the physical and psychological protection of children. This article obliges state parties to adopt and implement domestic laws safeguarding children's rights from physical and mental violence (Cuevas-Parra, 2021). The second paragraph of this provision mandates judicial and social institutions to actively participate in enforcing these legal protections (Cuevas-Parra, 2021). In this regard, Article 3 of Government Regulation No. 43 of 2017 classifies the losses experienced by child victims of crime into material and immaterial damages (Government Regulation Number 43 Year 2017 concerning The Restitution on Child(s) Victim to An Offence, 2017, p. 43). As previously discussed, the constraints imposed by Articles 19 to 22 of this regulation render Article 3 inapplicable in certain circumstances.

Government Regulation No. 43 of 2017 also prevents Indonesia from fully implementing several provisions of its national human rights legislation. Article 3 paragraph (2) of the Human Rights Law (UU HAM) stipulates that every individual, including children, has the right to fair treatment in order to achieve legal certainty and equal treatment before the law (Riswinarno & Suratman, 2018). While this provision is intended to ensure that criminal offenders are held accountable including the obligation to provide restitution, (Undang Undang Republik Indonesia Nomor 39 Tahun 1999 tentang Hak Asasi Manusia, 1999) it is important to note that the principle contained in Article 3 of the Human Rights Law must also be interpreted as a guarantee of justice and legal certainty for victims of crime, including child victims. The notion of achieving a balanced approach between the rights of offenders and victims will be elaborated in the second section of this article. For the purpose of this section, it is crucial to recognize that

the shortcomings in implementing Government Regulation No. 43 of 2017 result in Indonesia's failure to ensure justice and legal certainty for children who are victims of crime, particularly those harmed by juvenile offenders.

The implementation of restitution under Government Regulation No. 43 of 2017 also hinders the enforcement of Article 5 paragraph (1) of the Human Rights Law. In a broader context, this regulation was intended to establish the legal standing of children as victims of crime, including those harmed by child offenders, as stated in Articles 2 and 3. (Government Regulation Number 43 Year 2017 concerning The Restitution on Child(s) Victim to An Offence, 2017) Nevertheless, such protection remains incomplete in the absence of clear provisions addressing the responsibility of offenders or their parents who are financially incapable of paying restitution. Consequently, Government Regulation No. 43 of 2017 falls short of fulfilling the mandate of Article 5 paragraph (1) of the Human Rights Law, which guarantees that every individual has the right to seek or obtain legal protection to safeguard their dignity and integrity under the law (Ligua et al., 2024).

Finally, the set of restitution provisions under Government Regulation No. 43 of 2017 fails to fulfill Article 17 of the Human Rights Law. This article guarantees the right to legal recognition before the law in both criminal and civil matters, and the right to fair and just treatment based on judicial decisions (Undang Undang Republik Indonesia Nomor 39 Tahun 1999 tentang Hak Asasi Manusia, 1999). It must be emphasized that Government Regulation No. 43 of 2017 was enacted with the aim of guaranteeing restitution rights for children who are victims of crime (Martanila, 2018). However, the failure to provide legal certainty as mandated by Article 17 of the Human Rights Law demonstrates that this regulation is inadequate in protecting the legal rights of child victims, particularly in cases involving juvenile offenders.

This first section highlights that Indonesia has not fully implemented the provisions of the UNCRC and the Human Rights Law, despite the adoption of Government Regulation No. 43 of 2017 for the purpose of protecting children and ensuring accountability in juvenile crime. As it currently stands, the enforcement of these two legal frameworks is only effective when the juvenile offender or their parent/guardian is capable of fulfilling the restitution obligation. However, the opposite occurs when the perpetrator or their guardian is unable to do so. Based on this initial analysis, the article recommends that the right to restitution for victims of crime particularly those harmed by juvenile offenders and the accountability of such offenders must be fully realized through a revision of the existing legal framework. This recommendation leads into the second section of the article, which discusses the need for a balanced approach.

Revision of Government Regulation No. 43 of 2017 Based on the United Nations General

Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (UNGA Resolution 40/34)

The government regulation referred to in this article essentially emphasizes provisions concerning the rights of children who are victims of criminal acts, regardless of whether the perpetrator is a child or an adult. As a consequence of this regulation, Government Regulation No. 43/2017 mandates that perpetrators of criminal acts, including juvenile offenders, fulfill their restitution obligations based on court orders. Article 20 paragraph (2) of Government Regulation No. 43/2017 stipulates that this regulation governs the responsibility of criminal offenders toward children, including criminal acts committed by children (Government Regulation Number 43 Year 2017 concerning The Restitution on Child(s) Victim to An Offence, 2017). In other words, when the offender is a child, this regulation mandates that the child's parent or guardian is responsible for the restitution. This wording indirectly implies that adult offenders bear full responsibility for restitution in cases where they are proven guilty of harming a child (Government Regulation Number 43 Year 2017 concerning The Restitution on Child(s) Victim to An Offence, 2017). This statement implicitly conveys that an adult offender holds full liability for fulfilling the restitution obligation stemming from the criminal offense committed against the child victim.

This section highlights the importance of revising Government Regulation No. 43/2017 to distinguish between restitution obligations for child offenders and adult offenders. Legal reform is necessary to align the regulation with the balance approach advocated in this article. This argument is supported by the findings in the *Chorzow Factory Case* adjudicated by the Permanent Court of International Justice. Furthermore, this idea is consistent with the balance approach grounded in a series of decisions by the European Court of Human Rights.

The decision of the Permanent Court of International Justice in the *Chorzow Factory Case* involved the German government as the plaintiff and the Polish government as the defendant. The dispute arose as a consequence of the application of the *Geneva Convention on Upper Silesia*, which governed the transfer of sovereignty from Germany to Poland after World War I (Morris, 2020). This bilateral treaty allowed the Polish government to nationalize the property of German citizens or legal entities residing in Upper Silesia under certain conditions (Yusuf, 2024). Articles 2 and 3 of the Geneva Convention required the Polish government to provide compensation to German individuals or legal entities whose properties were nationalized. In this case, Poland committed an internationally wrongful act by expropriating the property of *Oberschlesische Stickstoffwerke AG* and *Bayerische Stickstoffwerke*, namely the Chorzow Factory

(Ferguson*, 2021). The expropriation carried out by the Polish government led the German government to challenge this action before the Permanent Court of International Justice (Morris*, 2021).

To connect this case to the argument of the article, three legal questions must be addressed in this discussion. First, is a state internationally responsible for actions taken against the assets of foreign nationals, specifically through expropriation? Second, can the actions of a government agency or institution be attributed to the state under international responsibility law? Third, what is the relationship between primary international legal rules and the secondary obligation of reparation for resulting damages?

The findings of the *Chorzow Factory Case* provide important insight into state responsibility for acts not accompanied by adequate reparation. It is evident that the nationalization or expropriation of the Chorzow Factory by the Polish government did not directly harm the German state (Yusuf, 2024). However, it did harm *Oberschlesische Stickstoffwerke AG* and *Bayerische Stickstoffwerke*, German legal entities. Serangkaian tindakan tersebut bertentangan dengan pengaturan pada *Articles 2, 3, and 6 of the Geneva Convention* (Torres, 2021). These actions violated Articles 2, 3, and 6 of the Geneva Convention, which required the Polish government to provide fair compensation for the nationalization or expropriation of property belonging to German citizens or legal entities (Torres, 2021).

The expropriation was carried out by a Polish state institution, the State Treasury (*Skarb Państwa*) (Ferguson*, 2021). The fact that the Polish government had mandated this institution to act resulted in Poland's international responsibility. This responsibility remains even if the expropriation was not directly executed by the executive branch (in the narrow sense) or the Polish government itself (Fitzmaurice, 2022). State responsibility based on actions by state-mandated institutions is further elaborated in the third discussion of this article.

The causal relationship between the violation of international legal norms by the Polish government and the obligation to make reparations is explained through the findings of the Permanent Court of International Justice, which addressed asset seizure. The Court stated that the essence of an unlawful act is intrinsically linked to the international obligation to repair or make amends for the resulting harm (*Factory At Chorzow*, 1927). Furthermore, such reparations should, as far as possible, eliminate all consequences arising from the wrongful act and restore the situation to the status quo ante as if the act had never occurred (*Factory At Chorzow*, 1927). This reparation should be made through restitution, and if restitution is not feasible for full

recovery, the responsible state must provide compensation (Radi, 2021).

State Responsibility in Providing Remedies as Discussed in the Above Findings is Highly Relevant in Arguing How the Indonesian Government Even the State as a Whole Must Be Present to Ensure the Full Implementation of Restitution Obligations Owed by Juvenile Offenders. Referring to the provisions of Articles 19–22 of Government Regulation No. 43 of 2017, as explained in the first section, Indonesia has failed to ensure that restitution can fully realize comprehensive recovery (Government Regulation Number 43 Year 2017 concerning The Restitution on Child(s) Victim to An Offence, 2017). The causal relationship between the violation of individual rights and the obligation to provide remedies, in this case through restitution, as illustrated by the Chorzów Factory case, clearly demonstrates that Government Regulation No. 43/2017 must be revised immediately. Thus, Indonesia, as a state bearing international responsibility under human rights treaties, must be able to ensure that restitution for victims of juvenile crime can fully repair the harm suffered by these individuals.

This article continues the discussion on the proposed revision of Government Regulation No. 43/2017 by referring to three legal cases from the European Court of Human Rights (ECHR) that examine the *balancing approach*. The first case discussed is *Keegan v. the United Kingdom*. In this case, the European Court of Human Rights reviewed the actions of the Merseyside Police, who damaged the Keegan family's property based on a warrant to search for a criminal suspect.(PHRP, 2006) The Court assessed the claim brought by the Keegan family with reference to findings in *Olsson v. Sweden*, which considered conflicting interests. The interests in question involved the right to family life (peaceful domestic life) and the efforts to combat criminal activity (PHRP, 2006). The dispute did not challenge the procedures carried out by the British police in collecting evidence related to a crime, but rather the lack of any connection between the applicants (the Keegan family) and the alleged offender, which became the central issue in this case.(PHRP, 2006) The European Court of Human Rights subsequently ruled that the United Kingdom had violated Article 8 of the European Convention on Human Rights (ECHR), which guarantees the right to security and peaceful enjoyment of one's home (PHRP, 2006). This violation demonstrated that the actions of the police had not been carried out with due diligence.

The findings in the case of *Keegan v. the United Kingdom* are relevant to the review of regulations concerning restitution and juvenile crimes, particularly with reference to the European Court of Human Rights' analysis of the application of a precautionary approach within the context of balancing the legal interests of both offenders and victims (Addo, 2024). Similar to the

conflict between the Keegan family and the Merseyside Police, the tension between juvenile offenders and their victims reflects a clash of interests. On one hand, this article does not contest the provisions of Government Regulation No. 43/2017 concerning the authority of public prosecutors to execute court decisions mandating restitution by offenders, especially juvenile offenders. This position aligns with the stance taken in *Keegan v. the United Kingdom*, where the legality of the police search warrant was not in question (PHRP, 2006). However, this article does raise concerns regarding how Government Regulation No. 43/2017 was formulated without due caution. Specifically, Articles 19–22 of this regulation fail to consider, on the one hand, the interests of offenders who are unable to fulfill restitution obligations, and on the other, the interests of victims who are entitled to full recovery through this mechanism (Gustinanda, 2022).

The second case examined in discussing the balancing approach is *Hatton and Others v. the United Kingdom*, which emphasizes the importance of the state in considering the interests of all parties involved. Unlike *Keegan v. the United Kingdom*, which concerned criminal law, this case pertains to environmental issues and public order. The applicants in this case were residents living near an airport, who claimed that their right to rest was disturbed by nighttime flight activities (United Nations Environment Programme, 2003). The Court held that the UK government must conduct a series of comprehensive assessments to formulate policies that appropriately balance the interests of the parties affected. Taking into account the Open Approach adopted by the UK Government which involved accepting various studies (position papers) before the residential and airport areas were developed, the European Court of Human Rights found no reason to conclude that the respondent had failed to balance the interests of the parties, namely the airport operators and the local residents (United Nations Environment Programme, 2003).

This article highlights the success of the UK Government in safeguarding both its own interests and those of the aviation service providers involved in *Hatton and Others v. the United Kingdom*. The approach taken by the government in managing the airport operation considered independent studies (position papers) from all relevant stakeholders as the foundation for formulating a truly proportional policy. The findings of this case can certainly be applied in arguing that Government Regulation No. 43/2017 was drafted without fully considering the interests of relevant parties, namely, children who are victims and offenders of criminal acts, including juvenile crimes (Government Regulation Number 43 Year 2017 concerning The Restitution on Child(s) Victim to An Offence, 2017). More precisely, this regulation should take into account the interests of offenders, especially juvenile offenders and their parents or

guardians who may lack the capacity to pay restitution obligations. Furthermore, the regulation must ensure that victims' rights to material and immaterial recovery through restitution are fully upheld (Sabri & Tasman, 2023).

Lastly, and no less important, this article applies the findings of the European Court of Human Rights in the case of *Chapman v. the United Kingdom*. Ms. Sally Chapman, the applicant, brought her case before the European Court of Human Rights after her request for caravan parking in the Green Belt Area was denied on the grounds of environmental protection (ESCHR NET, 2008). As a member of the Gypsy community, which constitutes a minority group, she claimed that the actions of the UK Government violated her rights under Article 8 of the European Convention on Human Rights (ECHR), arguing that the respondent should have balanced those rights with environmental protection policies (ESCHR NET, 2008). The Court held that the UK Government did not violate Article 8 of the ECHR. This judgment was based on the fact that the UK national authorities had made reasonable efforts to balance environmental policy considerations with human rights concerns relevant to the policy, and that this balancing effort did not exceed the margin of appreciation afforded to states in environmental matters (ESCHR NET, 2008).

The concept of the *margin of appreciation* in policymaking is the main point highlighted by this article in relation to *Chapman v. the United Kingdom*. Government Regulation No. 43/2017 only addresses perpetrators of crimes against children and the children who are victims of such crimes. Moreover, there is no clear provision regarding the inability of the perpetrator or their parents or guardians to fulfill the restitution obligations as stipulated in the regulation. Therefore, this article also recommends that a revision of this government regulation should include differentiated sanctions for perpetrators who are minors versus those who are adults. In other words, the maturity level of the offender should serve as a basis for determining alternative sanctions in cases where restitution cannot be fulfilled to the child victim. In concluding this second part of the discussion, it is important to note that the findings of the Permanent Court of International Justice mentioned earlier underscore that a failure to provide full restitution to victims constitutes a breach of Indonesia's primary international obligations under the United Nations Convention on the Rights of the Child (UNCRC). Consequently, Indonesia must adopt legal norms that can fully enforce reparations through restitution for children who are victims of criminal acts, thereby ensuring that such remedies are implemented to their fullest extent. Furthermore, the aforementioned cases from the European Court of Human Rights illustrate the importance of the Indonesian government adopting regulatory measures that carefully balance the interests of both offenders and victims.

Revision of Government Regulation No. 43 of 2017 Based on the United Nations General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (UNGA Resolution 40/34)

Unlike the first and second parts of this article, this discussion introduces an analysis grounded in international legal sources not enumerated in Article 38 paragraph (1) of the ICJ Statute namely, unilateral acts of international organizations (Yasuaki, 2022). This unique feature, however, does not diminish the significant role of such international sources in influencing Indonesia's standing as a sovereign state. As products of international organizations, these legal rules are only considered valid insofar as their substance aligns with the mandates granted to the issuing organizations (Argent, 2021a). The relationship between such actions and international agreements that confer authority upon international organizations reflects a hierarchical feature of international law, despite the general characterization of this legal domain as coordinative in nature (Argent, 2021a). In other words, international treaties serve as the legal foundation for the organs of international organizations issuing unilateral measures, and these treaties must be regarded as higher norms (*lex superiori*) than the unilateral actions themselves (Simbolon, 2023).

The unilateral action examined in this article is UNGA Resolution 40/34, which addresses the rights of restitution granted to victims of crime and abuses of power by government authorities (Sofian, 2024). This resolution mandates that all UN member states adopt mechanisms for restitution. Paragraph one of UNGA Resolution 40/34 defines a "victim" as a natural person who suffers harm, whether individually or collectively (Phanwichit & Mekkiengkrai, 2022). The harms specified include physical injury, psychological trauma, economic loss, and substantial violations of rights resulting from either acts or omissions (Khatami et al., 2023). Such acts or omissions may constitute violations of national criminal laws or abuses of power carried out through the formulation and enforcement of domestic legal norms (United Nations General Assembly, n.d.).

This discussion further analyzes the provision concerning the treatment of victims as articulated in paragraph four of the resolution 40/34. It states that victims must be treated with compassion and respect for their dignity (Khatami et al., 2023). By applying such an approach, victims whether individuals or groups may attain justice, and their losses may be remedied through mechanisms established under national legislation. Government Regulation No. 43/2017 (PP No. 43/2017) reflects this principle by acknowledging the potential harm suffered by children who are victims of criminal acts. This concern is evident in Articles 2 and 3 of the

regulation, which address both material and immaterial damages inflicted upon child victims and stipulate the perpetrator's liability (Government Regulation Number 43 Year 2017 concerning The Restitution on Child(s) Victim to An Offence, 2017). Nevertheless, the dignity and rights of child victims can only be meaningfully realized if the perpetrator or the child's parent or guardian in the case of juvenile offenders is financially capable of fulfilling the restitution obligations imposed by PP No. 43/2017.

Paragraph five of UNGA Resolution 40/34 further affirms that administrative and judicial institutions in UN member states must ensure full access to victims' rights (United Nations General Assembly, n.d.). These procedures may be conducted through formal or informal channels, based on principles of fairness, expeditiousness, cost-efficiency, and accessibility. Victims must be adequately informed of such procedures to ensure they understand their rights to seek justice and legal certainty (Olevska-Kairisa & Kairiss, 2023). PP No. 43/2017 can be seen as a national legal instrument that establishes a reasonable time frame for perpetrators of crimes against children including juvenile offenders to remedy the harm caused through restitution payments (Government Regulation Number 43 Year 2017 concerning The Restitution on Child(s) Victim to An Offence, 2017). This is consistent with the 30-day period prescribed in Article 21 of PP No. 43/2017, beginning from the date the court decision is received by the perpetrator via the public prosecutor (Government Regulation Number 43 Year 2017 concerning The Restitution on Child(s) Victim to An Offence, 2017). However, this provision fails to ensure justice and legal certainty for child victims in cases where the offender is unable to fulfill the restitution obligation.

This resolution also stipulates the obligation of UN member states to implement restitution mechanisms that guarantee the rights of victims of criminal acts (Nugroho & Adipradana, 2024). Paragraph eight of UNGA Resolution 40/34 requires perpetrators of criminal acts or the parents of such perpetrators to ensure fair restitution is provided to victims, their families, and individuals connected to the victims (United Nations General Assembly, n.d.). Such restitution must consist of asset recovery or compensation for the losses suffered by victims. This recovery or compensation may also include reimbursement of expenses incurred by the victim in order to ensure the full restoration of their rights. (Sofian, 2024) As the concluding point of this discussion, this article recommends that the Indonesian government revise Government Regulation No. 43 of 2017 (PP No. 43/2017) so that it can fully guarantee the restoration of victims' rights and hold perpetrators accountable, particularly in cases where the perpetrator is a child or when the crime involves a child offender.

It is clear from the second part of this article that Indonesia, as a state, must be directly involved in addressing the harm suffered by child victims of criminal acts and victims of crimes committed by children. Furthermore, Indonesia must be capable of ensuring that restitution obligations are fully implemented, either directly or indirectly. The phrase "must be capable of ensuring" is derived from paragraph nine of UNGA Resolution 40/34 (United Nations General Assembly, n.d.). This paragraph obliges states to ensure, either through direct action or the involvement of third parties, that the restitution due to victims of criminal acts is fully fulfilled. Such third parties may include government bodies or private entities authorized under national legal provisions related to restitution. The UN resolution also mandates that the governments of member states evaluate domestic regulations related to criminal sanctions and additional penalties for perpetrators (United Nations General Assembly, n.d.). It is important to note that PP No. 43/2017 qualifies restitution as an additional penalty stipulated in court decisions.

Before explaining the institutions responsible for the implementation of restitution in Indonesia, this article emphasizes that children are among the groups protected and covered under UNGA Resolution 40/34. Paragraph three of this UN resolution states that restitution applies to all individuals without discrimination based on race, skin color, sex, age, language, religion, nationality, political opinion, beliefs, property, birth status, ethnicity, origin, or physical ability (including disabilities). The universal nature of UNGA Resolution 40/34 should be positively responded to by Indonesia by using it as a foundation to revise existing regulations concerning restitution for child victims of criminal acts.

The Witness and Victim Protection Agency of the Republic of Indonesia (LPSK) is the institution responsible for ensuring the protection of victims, including guaranteeing their right to restitution. This agency is governed by Law No. 13 of 2006 (LPSK Law), and Law No. 31 of 2014, which amends the previous law (Amendment to the LPSK Law) (Djamaludin & Arrasyid, 2024). Article 12 of the LPSK Law states that the agency is responsible for providing protection and assistance to witnesses and victims (Yusmar, 2021). Article 12A of the Amendment to the LPSK Law expands this authority to include the provision of restitution and compensation for victims.

The provisions of PP No. 43/2017 explicitly relate to the LPSK Law and its amendment. This connection is evident in several provisions of the government regulation. Article 6 of PP No. 43/2017 grants children or their parents/guardians the right to request restitution through LPSK in accordance with LPSK procedures (Government Regulation Number 34 Year 2011

Concerning Anti-Dumping, Countervailing, and Safeguard Measures, 2011). If a restitution request is submitted without going through LPSK, LPSK still holds the authority to access and assess the restitution application file, as stipulated in Article 11 (Government Regulation Number 43 Year 2017 concerning The Restitution on Child(s) Victim to An Offence, 2017). Once the file is complete and has been reviewed by LPSK, it must be forwarded to the public prosecutor in accordance with the procedures outlined in Articles 13 and 14. Article 14 emphasizes that restitution can be granted either after a court ruling is issued by a judge or during the prosecution stage based on a *restorative justice approach* (Government Regulation Number 43 Year 2017 concerning The Restitution on Child(s) Victim to An Offence, 2017).

This article also recommends strengthening LPSK's authority, in addition to offering suggestions for the implementation of restitution obligations under PP No. 43/2017. Strengthening this authority could involve designating LPSK as the institution responsible for ensuring that victims of criminal acts especially child victims receive full restitution, regardless of the financial capability of the perpetrator or their parents/guardians to pay such restitution (Attamimi & Tanudjaja, 2024). In support of the idea presented in the first part of this article, it is also recommended that the Indonesian government allocate state funds to compensate victims or their families/guardians through restitution. This proposal aligns with paragraphs four and five of UNGA Resolution 40/34, which concern the dignity of victims and the implementation of restitution obligations through national legal norms.(United Nations General Assembly, n.d.) Furthermore, the recommendation regarding budget allocation also aligns with paragraph nine of the resolution, which requires the involvement of third parties or the state itself to ensure the fulfillment of restitution obligations (United Nations General Assembly, n.d.)

This discussion concludes by asserting that although UNGA Resolution 40/34 is not a binding source of international law, it plays a highly significant role in reforming Indonesia's criminal procedural law related to the responsibility and protection of children (Zimmermann & Jauer, 2021). By complying with the provisions of UNGA Resolution 40/34, Indonesia can establish stronger legal arrangements for restitution involving both children as victims and children as perpetrators of criminal acts. This strengthening can be achieved by enhancing the role of LPSK in implementing PP No. 43/2017, based on the proposals outlined in this article. This significant role arises because Resolution 40/34 not only provides a substantive legal framework concerning the rights of victims but also establishes the obligations of UN member states to ensure that such rights are protected and fulfilled through restitution mechanisms (United Nations General Assembly, n.d.).

4. Conclusion

The first part of this article demonstrates that Indonesia has not fully implemented its international obligations as outlined in the UNCRC. This assertion is based on the fact that the UNCRC cannot be effectively applied in Indonesia when the perpetrator of a criminal act, or their parent/guardian, is unable to pay the restitution required under Government Regulation (PP) No. 43/2017. Consequently, Indonesia must urgently revise Articles 19–22 of this regulation, which govern the implementation of restitution obligations. These revisions should include the state's presence in restoring the rights of victims, while also imposing appropriate sanctions on perpetrators or convicts who are unable to fulfill their restitution obligations. Through such amendments, Indonesia will be able to fully protect the rights of parties involved in crimes committed by children and crimes committed against children.

The second section of the discussion provides further explanation of the components that should be covered in the amendment of PP No. 43/2017 based on international legal cases. Referring to the Chorzów Factory case, this article recommends that Indonesia, as a subject of international law, should take responsibility for redressing the harm suffered by child victims of crimes—who are also children themselves. Drawing from three relevant cases adjudicated by the European Court of Human Rights, it becomes evident that the revised regulation should also include provisions for substitute sanctions for perpetrators of crimes against children, as well as child perpetrators. These sanctions must be tailored to the age of the offender. With this approach, the revised regulation would consider both the interests of the perpetrator and the rights of the victim simultaneously.

The third section further elaborates on how the obligations outlined in the UNCRC and the Chorzów Factory case can be effectively implemented. By involving the Witness and Victim Protection Agency (LPSK) as the entity that should be allocated funding to pay restitution to victims, the amendment of PP No. 43/2017 must include a requirement for government organs to be present and responsible for providing restitution in the cases described in this article. Strengthening institutional capacity in this manner would guarantee legal certainty for victims, given that LPSK is a state institution mandated to ensure that the damages suffered by victims are fully remedied.

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