

**LEGAL REVIEW OF THE ROLE OF ADVOCATES IN LEGAL PROTECTION  
FOR THE FULFILLMENT OF RESTITUTION RIGHTS FOR VICTIMS OF  
CHILDREN-RELATED CRIMINAL ACTS IN THE JURISDICTION  
OF THE SINGARAJA DISTRICT COURT**

Kadek Lenny Endrawati<sup>1</sup>  
Universitas Mahendradatta

H Nurianto RS<sup>2</sup>  
Universitas Mahendradatta

I Made Mulyawan Subawa<sup>3</sup>  
Universitas Mahendradatta

Correspondence : Kadek Lenny Endrawati ([lennyoliepartana@gmail.com](mailto:lennyoliepartana@gmail.com))

Submitted : 10-05-2025, Accepted : 09-06-2025, Published : 08-07-2025

**Abstract**

The principle of the rule of law demands a guarantee of equality for everyone before the law. Violations of the law occur when certain legal subjects do not carry out the obligations that should be carried out or violate the rights of other legal subjects. An advocate is a person whose profession is providing legal services, both inside and outside the Court that meets the requirements based on the provisions of the Law. An advocate has the right to assist and provide legal knowledge to the community. The formulation of the problem raised in this study is 1. how is the fulfillment of the right to restitution for child victims of crime in the judicial process in Indonesia? and 2. what is the role of Advocates in legal protection for the fulfillment of the right to restitution for child victims of crime? Where this type of research is Empirical, where in empirical legal research there is a gap between theory and implementation in the field. The results obtained in this study are that children as victims of crime have the right to receive Protection, as well as complete fulfillment of the law, including the right to restitution as a form of compensation borne by the perpetrator. However, in practice, the fulfillment of the right to restitution for child victims still faces various obstacles. And the role of advocates in providing legal protection to children as victims of criminal acts, especially in fulfilling the right to restitution, is very important and strategic.

**Keywords:** Role of Advocates, Legal Protection, Criminal Acts

**Introduction**

The principle of a state based on law demands a guarantee of equality for everyone before the law (equality before the law). Therefore, the Constitution also mandates that everyone has the right to recognition, guarantee, protection and certainty of fair law and equal treatment before the law. The concept of a state that adheres to the principle of protecting human rights, the law should function as a protection of human interests, so that human interests are protected, the law must be implemented. The implementation of the law can be carried out normally and peacefully.

Violations of the law occur when certain legal subjects do not carry out the obligations that should be carried out or violate the rights of other legal subjects. Therefore, legal subjects whose rights are violated must receive legal protection. Legal protection for the people is a universal concept, where each country has its own way of realizing legal protection and to what extent legal protection is provided. Likewise, in the world of justice, victims are also seen as needing protection.

One of the consequences of being a state based on law is that Indonesia has a responsibility to provide protection for victims of crime or victims of criminal acts. The state is responsible for protecting victims of crime and providing restitution, as well as ensuring their rights. The definition of a victim is someone who suffers physically and mentally as a result of the actions of others who seek self-fulfillment or that of others that are contrary to human interests and rights. This definition is in line with the definition of a victim as regulated in Article 1 number 2 of Law Number 13 of 2006 which has been amended by Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims which states that "A victim is someone who experiences physical, mental and/or economic suffering caused by a criminal act". The position of the victim in criminal justice as a party seeking justice has so far been neglected. The victim is not given authority and is not actively involved in the investigation and trial process so that he loses the opportunity to fight for his rights and restore his condition due to a crime. In relation to the examination of a criminal act, the victim is often only positioned as a witness, as a reporter in the investigation process, and as a source of information, or as one of the keys to resolving the case. When examined from the purpose of punishment in positive criminal law, criminals receive more attention such as rehabilitation, treatment of offenders, social readaptation, correctional, and others.

An advocate is a person whose profession is to provide legal services, both inside and outside the court that meets the requirements based on the provisions of the Law. The duties of

an advocate are to provide legal consultation, provide legal assistance, exercise power, represent, accompany, defend, and take other legal actions for the legal interests of his clients.

An advocate has the right to help and provide legal knowledge to the community. In this case, an advocate has an important role in helping victims of sexual violence involving children in obtaining restitution. This is because an advocate has been equipped and has sufficient legal knowledge so that these advocates will later greatly assist the community in obtaining their rights.

## **Methods**

Method is a basic process regarding the procedure for finding a way out of a problem, while research is a careful examination of a sign in order to obtain human knowledge, then the research method can be interpreted as the basis for the procedure for finding a way out of the problem that exists in conducting research. This research is a type of empirical research, where in empirical legal research there is a gap between theory and implementation in the field. The gap between theoretical conditions and legal facts and or the existence of a situation of ignorance that is studied to fulfill academic satisfaction.

## **Results and Discussion**

### **Fulfillment of the right to restitution for victims of child crimes in the judicial process in Indonesia**

In the process of resolving cases in general courts, the parties involved have the hope of obtaining a judge's decision that has permanent legal force. However, in reality, not all judges' decisions are able to fulfill a sense of justice and substantive truth. This is because judges, as humans, are not free from the possibility of making mistakes or errors in considering and deciding cases, and even have the potential to take sides. Therefore, laws and regulations provide a legal mechanism for parties who feel aggrieved or dissatisfied with the decision, namely by filing certain legal remedies as a means to refute or correct errors in the judge's decision. Legal standing is a translation of the term *personae standi in iudicio*, which means the

right or authority of a party to file a lawsuit or petition before a judicial institution. Generally, legal standing can be proven in several ways: 1. If an individual or legal entity experiences a direct loss due to the enactment of a law or certain disputed action. The loss is ongoing and can only be stopped or restored if the court issues a decision, such as granting compensation, determining that the disputed legal provisions do not apply to the party concerned, or stating that the provisions are invalid and legally revoked.

2. The party filing the lawsuit did not suffer a direct loss, but had a reasonable or relevant relationship to the circumstances that gave rise to the loss. If this situation is allowed to continue, then the potential for similar losses can befall other parties who do not have the ability or access to seek justice through the court mechanism.

3. A party is declared to have legal standing based on provisions in laws and regulations that explicitly provide the right to file an application or lawsuit with the court.

According to the legal provisions in force in Indonesia, it is explained that every individual has the potential to become a legal subject in carrying out legal actions. However, based on laws and regulations, there are legal subjects who are considered not fully competent. In other words, this imperfection is related to a person's legal ability to act or carry out legal acts. From a legal perspective, individuals who have not reached adulthood or are still minors are considered not yet competent to act and cannot be held accountable for their actions. Therefore, by law they are required to receive assistance and representation from parents, guardians, or other adults to ensure protection of their rights. Therefore, children who are victims of criminal acts (Child Victims) in submitting legal efforts must be represented by their parents (in accordance with Article 64 J of the Law) or their guardians (in accordance with Article 33 paragraph (1) of the Law), and may also be represented by their legal representative. If the Child Victim continues to submit legal efforts independently without representation from a party with legal capacity, then these efforts will be rejected because the Child Victim does not yet have legal legitimacy.

According to Sudikno Mertokusumo, legal efforts are actions taken to prevent or correct errors in a court decision. Meanwhile, Andi Hamzah is of the opinion that legal efforts are an instrument for parties who do not accept the court's decision or decision because they are dissatisfied. Based on several definitions, it can be concluded that legal efforts are steps taken by parties who feel aggrieved in order to realize the objectives of the law so that it runs in accordance with the principles of justice. In principle, referring to the provisions of Article 71D of the Child Protection Law, it is emphasized that every child who is a victim of a crime of sexual violence has the right to file a restitution application to the court, where the obligation to pay compensation is borne by the perpetrator of the crime. If until the court decision has

permanent legal force the victim has not filed a restitution against the defendant, then the victim can still file the application either directly or through the Witness and Victim Protection Agency (LPSK) to the court that examines and tries the perpetrator, as regulated in Article 7A paragraph (5) of the LPSK Law in conjunction with Article 3 of the Supreme Court Regulation on Restitution. The application must be submitted within a maximum period of 90 (ninety) days from when the victim or applicant is aware of the court decision that has permanent legal force.

Furthermore, in addition to these mechanisms, child victims can also take the civil lawsuit route through the District Court if there are losses that have not been submitted in the form of a restitution application, or have been submitted but not considered by the panel of judges in the decision (based on Article 9 of the PERMA concerning Restitution). The lawsuit can be filed in the form of a lawsuit for an unlawful act (*onrechtmatige daad*) as referred to in Article 1365 of the Civil Code (*Burgerlijk Wetboek/BW*), which states:

"Every act that violates the law and causes harm to another person, requires the perpetrator who due to his fault causes the loss to provide compensation."

In the process of filing this lawsuit, child victims have the right to demand compensation both materially and immaterially from the perpetrator of the crime of sexual violence. A copy of a criminal decision that has permanent legal force (*inkracht van gewijsde*) can be used by the victim as evidence in a lawsuit for an unlawful act in court.

### **The role of advocates in legal protection for the fulfillment of restitution rights for child victims of crime**

As a society living in a legal order, of course we are familiar with the term advocate. The advocate profession is a profession that is free, independent, and responsible in enforcing the law, so its existence needs to be guaranteed and protected by laws and regulations to ensure the achievement of the principle of the supremacy of law. The Law on Advocates defines an advocate as someone who works in providing legal services, both inside and outside the court, who has met the qualifications in accordance with applicable legal provisions. The legal services in question include providing legal advice, legal assistance, exercising power of attorney, assistance, representation, defense, and various other legal actions for the benefit of his clients. Thus, the services provided by an advocate are broad, namely covering the fields of litigation (in court) and non-litigation (outside the court). The advocate profession is now increasingly recognized for its existence as one of the elements of law enforcement that is equal to other law enforcement officers such as the police, prosecutors, and the judiciary. Advocates

have a strategic function in realizing law enforcement and justice. Therefore, an advocate is required to have professional competence in handling cases and always uphold the principles of truth and justice in every legal action.

Advocates have an important role in handling various types of cases, both criminal and civil, including criminal cases involving children as victims. In this context, the presence of an advocate is not only as a legal defender, but also as a mediator who bridges between the victim and the perpetrator in order to achieve a peaceful settlement outside the court. The professionalism of advocates is greatly needed, especially in cases of children as victims of criminal acts, considering the importance of protecting children as the next generation of the nation who require special attention and handling.

Advocates are seen as guardians of the constitution as well as enforcers of human rights who are always at the forefront in rejecting the formation of an authoritarian government. Therefore, Shakespeare in his work quoted by Ishaq expressed the famous statement: "Let's kill all the lawyers" in the Cade's Rebellion scene. This expression illustrates that in order to build a totalitarian regime, the initial step that is considered important is to get rid of advocates because they are known as protectors of constitutional values and justice.

From the opinion above, it is clear that the duties and responsibilities of advocates in carrying out their duties and functions as law enforcers are very heavy, the role of advocates is very crucial in law enforcement and justice including legal development, according to Ropaun Rambe in Ishaq explaining that:

“Legal development is encouraging and directing legal development through the preparation and formation of laws and the formation of customary law that is in accordance with the demands of the needs of society (resing demand) which are developing towards modernization.”.

The development of law is certainly a policy, in criminal law it is a criminal policy, according to Sudarto in Barda Nawawi Arief put forward three meanings regarding criminal policy, namely:

- a. In a narrow sense, it is the entire principle and method that is the basis for the reaction to violations of the law in the form of criminal acts;
- b. In a broad sense, it is the entire function of the law enforcement apparatus, including the working methods of the courts and police;
- c. In the broadest sense (which he took from Jorgen Jepsen), it is all policies, carried out through legislation and official bodies, which aim to uphold the central norms of society. On another occasion, he put forward a brief definition, that criminal policy is "a rational effort by society to overcome crime".

In another statement, he gave a brief definition that criminal policy is "a rational effort by society to overcome or deal with crime".

Advocates have a strategic role in providing legal protection for children who are victims of crime, especially in fighting for the right to restitution. As part of independent law enforcement, advocates are tasked with accompanying, defending, and representing the legal interests of child victims at every stage of the judicial process. In criminal cases involving children as victims, advocates not only act as defenders of the victim's rights before the law, but also as a bridge of communication between children, families, and law enforcement officers, including in the process of submitting applications for restitution.

Restitution, as a form of compensation borne by the perpetrator to the victim, is a right guaranteed by laws and regulations, as regulated in Article 71D of the Child Protection Law and Perma Number 1 of 2022. However, in practice, many victims, especially children, do not understand the legal mechanism for obtaining these rights. This is where the role of advocates becomes very important, namely providing legal education, helping to prepare applications for restitution, and ensuring that the rights of child victims are not ignored during the legal process.

Furthermore, advocates can also act as parties who encourage a restorative approach, while still prioritizing the best interests of the child. Thus, the role of advocates is not only limited to the litigation aspect, but also to comprehensive protection of the rights of child victims, including the right to recovery and justice.

The Role of Advocates in Legal Protection and Fulfillment of Restitution Rights for children as victims of crime can be seen as follows:

A. As a Legal Aid Provider

1. Providing legal assistance to child victims and their families in the judicial process.
2. Ensuring that the legal process runs according to the principles of child protection and fulfillment of victim rights.

B. Representing Victims in the Restitution Lawsuit Process

1. Submitting a restitution application through LPSK or through a lawsuit in a criminal/civil process.
2. Assisting victims in calculating and compiling details of losses (material and immaterial).

C. Advocating for Victim Rights

1. Monitoring policies and implementation of regulations on restitution.
2. Applying moral and legal pressure on law enforcement officers to side with victims.



#### D. Legal Education for Victim Families

1. Providing legal education to victim families about their rights.
2. Building awareness that restitution is a right that must be fought for, not pity.

Thus it can be said that advocates have a vital role in ensuring that children as victims of criminal acts not only receive justice through punishment of the perpetrators, but also obtain recovery through the right to restitution. This role must be carried out actively, professionally, and oriented towards the best interests of the child.

Based on the facts that occur in the life of society, especially in Singaraja City, cases of sexual violence or criminal acts against children still occur. Then this criminal case is a serious crime because children are very vulnerable to becoming victims of criminal acts, especially sexual violence where children are very weak humans and still need protection.

Buleleng Regency is a regency in the province of Bali, Indonesia, with its capital city being Singaraja. Administratively, it is divided into 9 sub-districts with 129 villages, 19 urban villages, 550 hamlets/banjars and 58 neighborhoods. 9 (nine) sub-districts are Gerokgak, Seririt, Busungbiu, Banjar, Sukasada, Buleleng, Sawan, Kubutambahan and Tejakula sub-districts. Buleleng Regency is a regency nicknamed the City of Education, in Buleleng Regency, precisely in Singaraja City, the government provides education from the age of 6 years to college. But in reality in Buleleng Regency there are still many children under the age of 6 who still cannot taste the bench of Education and there has been no government attention that is evenly distributed for children who do not get an education. Although there is a 12-year compulsory education program, there are still many children who cannot carry out education because the government should have economic factors, giving more attention to educational problems like this so that all children are required to get a minimum education until SMA (Senior High School) so that they at least have insight that they can use in everyday life. Criminal acts against children are a problem that is very disturbing to the community so that it must be handled immediately but in reality in resolving criminal acts, the law often prioritizes the rights of the suspect while the rights of the victim are often ignored. In this case, the Buleleng Regency Government needs to address the problem of criminal acts involving children, especially for law enforcement officers who should be able to provide a picture of how their performance is in dealing with cases of sexual violence committed by the community with cooperation with all parties related to this problem. In this case, it is the Buleleng Police, the Buleleng Regency Social Service and the Population Control, Family Planning, Women's Empowerment, and Child Protection Service in providing protection for children, especially regarding children who are victims of criminal acts.



Regarding the opinion of Ni Made Kushandari, S.H., M.H., Judge of the Singaraja District Court regarding the Urgency of granting restitution to child victims of crime, namely In the development of modern criminal law, the urgency of restitution is very important as a form of "providing justice to child victims", because the development of the current justice system is not only oriented towards the rights of the perpetrator or defendant but also oriented towards the protection of victims, especially children. That the right to restitution is a form of recovery and protection for children who are victims of crime, by ensuring that the perpetrator is responsible for his actions which cause material and immaterial losses to the victim. Restitution, in addition to being financial, can also be in the form of restoring the psychological condition of the child victim and preventing prolonged trauma, in practice according to Ni Made Kushandari, S.H., M.H. in criminal law, the Judge is active in exploring material truth, where the role of the judge is to ensure that victims of crime receive compensation through the restitution process.

## Conclusion

1. Children as victims of crime have the right to receive protection, as well as full legal fulfillment, including the right to restitution as a form of compensation borne by the perpetrator.
2. However, in practice, the fulfillment of the right to restitution for child victims still faces various obstacles. The role of advocates in providing legal protection to children as victims of crime, especially in fulfilling the right to restitution, is very important and strategic.

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