



THE POSITION OF THE AMICUS CURIAE IN THE IMPLEMENTATION RIGHTS TO RESTITUTION FOR CHILDREN VICTIMS OF CRIME SERIOUS ABUSE

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Abstract. A child who is a victim of a crime is someone who is not yet 18 years old (eighteen) years, including children who are still in the womb. Maltreatment is a criminal act that is often experienced by young children aged in acts carried out intentionally to cause feelings of pain from injuries to another person's body. Based on this, the aim of this research is to know the position of the Amicus Curiae can provide a basis the judge's legal considerations in deciding the case of abuse being studied from a philosophical, sociological and juridical perspective, so that judges can use it as a basis for consideration in deciding children's cases without having to sacrificing children's rights, including in the Implementation of the Right to Restitution For Children Victims of Crimes of Serious Abuse. In this research the author uses a descriptive type of research, while the approach method uses empirical jurisprudence and interviews are used as data sources addition. Research location in Jakarta, Witness and Victim Protection Agency (LPSK) Jakarta and the South Jakarta District Court.

Keywords: amicus curiae, judge's legal considerations, rights of restitution, children victims of crime, crime of serious persecution

A. Introduction

Children as perpetrators of criminal acts are referred to as children in conflict with the law who have been deemed to have committed an action that is contrary to applicable legal provisions or is considered an act that is against the law.¹ Children who are in conflict with the law as regulated in Law Number 118 of 2012 concerning the Juvenile Criminal Justice System or known as (UUSPPA) confirms that: "children who are 18 (eighteen) years old who have been suspected of committing a criminal act.

The criminal act that is often committed by children is serious abuse, according to R. Soesilo as quoted in the article: acts that include abuse², is defined as intentionally causing unpleasant feelings (suffering, pain, or injury). This includes deliberately damaging people's health. In this case, law enforcers can use a new concept to help as a basis for consideration in deciding children's cases without having to sacrifice children's rights, including in the implementation of the right to restitution for child victims of crime, namely an Amicus Curiae

¹ Romli Atmasasmita, 2011, Legal Protection for Children in Indonesia, Rajawali Pers, Kota Besar, p. 23

² R. Soesilo. The Criminal Code (KUHP) and its complete comments, article by article. Bogor: Politeia, 1991.



concept that has only recently developed in society. from the Roman Empire that developed in a Common Law Country.³

The concept of Amicus Curiae can also be used by the Indonesian State based on Article 859 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power which confirms that: "Constitutional Judges are obliged to explore and understand the legal values and sense of justice that exist in society". When a judge handles a case where there is a lack of clarity, the judge is obliged to handle clarity by building a new law that is as fair as possible.

In this case, judges can use the legal consideration mechanism of judges that has developed in society, namely the concept of amicus curiae using the theories of Racio Decidendi and Obiter Dicta, one of which is the basis for the judge's legal consideration of Amicus Curiae. The concept of Amicus Curiae is a third party who feels an interest in a case who helps examine and clarify the case in court by providing written and unwritten legal opinions to the judge as a basis for consideration in deciding the case.

The concept of Amicus Curiae is very urgently used in deciding children's cases, especially as children who are victims of criminal acts of serious abuse, which can help judges provide basic considerations in deciding children's cases by prioritizing the principles of juvenile justice without having to sacrifice the rights of children.

Children are a trust and a gift from God Almighty, who from the womb have the right to life and independence and receive good protection from parents, family, community, nation and state.⁴ Apart from that, children are the next generation of the Indonesian nation, who have rights and obligations and are able to build the Indonesian state and nation. Children are the development capital that will maintain and sustain the development of the nation.⁵

The crimes caused by humans that result in many disasters are through the will to power, then committing heinous acts such as carrying out severe abuse in the case of Mario Dandy's abuse of the victim David Ozora.

Victims are individuals who are harmed materially or immaterially due to the crime they have received. In cases of severe abuse of the victim, it results in losses experienced by the child victim in the short and long term which require the child's condition to be restored. Law Number 13 of 2006 in conjunction with Law Number 31 of 2014 concerning Witness and Victim Protection has accommodated restitution. In this law, victims of criminal acts have the right to obtain restitution in the form of compensation for loss of wealth or income, compensation for losses incurred as a result of suffering directly related to the crime, and/or reimbursement for medical and/or psychological treatment costs. Providing restitution is charged to perpetrators of criminal acts based on court decisions that have permanent legal force, this is regulated in Article 7A of Law Number 13 of 2006 in conjunction with Law Number 31 of 2014 concerning Protection of Witnesses and Victims, as is the case in the case of serious abuse of Mario Dandy towards victim David Ozora. The victim's family (David Ozora) applied for restitution through the Witness and Victim Protection Agency (LPSK) in the amount of IDR 120 billion, but in the decision of the Panel of Judges at the South Jakarta District Court (PN), the restitution was set at IDR 25 billion, and this was confirmed by appeal decision Number 245 /PID/2023/PT.DKI.

³ S. Chandra Mohan, Volume December 2010, The Amicus Curiae Friends No More, National University of Singapore Faculty of Law, p.4.

⁴ Abdussalam, Child Protection Law, Restu Agung, Jakarta, 2007, p. 1.

⁵ Arif Gosita, Child Protection Issues, Pressindo Academy, Jakarta, 1985, p 124



The implementation of providing restitution to victims of criminal acts of serious abuse has not been optimal, especially regarding the implementation of restitution that can be given to victims. This can be seen in the report from the Witness and Victim Protection Agency (LPSK), which states that there were 533 (five hundred and thirty three) requests for restitution for criminal acts of serious abuse of children.⁶ However, there are only 162 (one hundred and sixty two) cases of restitution paid in 2022⁷ Various problems such as awareness of the legal structure in seeking restitution, public knowledge of restitution, and the perpetrator's ability to be charged with restitution in the crime of serious abuse of children. Therefore, in this research the researcher will examine the position of Amicus Curiae in the legal considerations of judges determining the right to restitution and legal regulations as well as obstacles in implementing the right to restitution for child victims of crimes. crime of serious abuse, with the research title The Position of Amicus Curiae in the Implementation of the Right to Restitution for Children Victims of Crimes of Serious Abuse.

B. Methods

1. Research Approach Metho : Social legal research
2. Research design : Observational studies and documentation studies
3. Research Specifications : Descriptive
4. Research sites : Witness and Victim Protection Agency (LPSK) Jl.
: Raya Bogor KM.24 No.47-49, RT.6/RW.1, Susukan,
: Kec. Ciracas, East Jakarta City, Special Capital
: Region of Jakarta 13750 and South Jakarta District
: Court Jl. Ampera Raya No. 133, RT.05/RW.10,
: Ragunan, Kec. Ps. Sunday, South Jakarta City,
: Special Capital Region of Jakarta 12550
5. Data Types and Sources : Primary data and secondary data
6. Data Processing Methods : Data reduction, Display data
7. Data Presentation Method : Narrative text and tables
8. Data analysis method : Qualitative methods, Content Analysis Method and Constant

C. Results And Discussion

1. The position of Amicus Curiae in the judge's legal considerations determining the right to restitution in decision Number 297/PID.B/2023/PN JKT.SEL

The use of Amicus Curiae is commonly applied in countries with a common law system. This does not mean that it prohibits the use of amicus curiae from being applied in the civil law system. The use of Amicus Curiae is usually used in cases that are in the appeal stage and are legal issues relating to public interests, such as social issues or civil liberties at issue. Judges in making their decisions will also have a broad impact on people's rights. In this case there are three categories related to Amicus Curiae, namely:

⁶ Sriyana, Handari, etc., 2020 annual report of the Witness and Victim Protection Agency, LPSK, 2022, p. 46.

⁷ Ibid



- a. Submit an application for permission to become an interested party in the trial;
- b. Submitting his opinion at the request of the judge; or
- c. Submit information or opinions on your own case.

In Indonesia, the concept of *Amicus Curiae* is not widely known and applied, either by academics or practitioners. In the Supreme Court regulations, the Indonesian judiciary does not have regulations that directly discuss *Amicus Curiae*, but Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power explains that judges and also constitutional justices are required to explore, follow and understand the legal values and sense of justice that exist in society. There are other supporting regulations, namely Article 14 of the Constitutional Court Regulation Number 06/PMK/2005 which explains that related parties who indirectly have an interest are "parties whose statements, because of their position, main duties and functions, need to be heard" or "parties who are required to the statement is heard as ad informandum, namely a party who, because of their rights or authority, is not directly affected by the subject of the petition but because they care about the application in question. It could be said that the concept of *Amicus Curiae* has been partially adopted by the Constitutional Court in its regulations.

Another regulation that has the opportunity to allow the use of the *Amicus Curiae* concept in the criminal justice system in Indonesia is Law Number 8 of 1981 concerning the Criminal Procedure Code which is explained in Article 180 paragraph (1) of the Criminal Procedure Code that in cases where it is necessary to clarify the situation In cases that come to trial, the presiding judge may ask for expert information and may also request the submission of new material by those who have an interest. Indirectly, this article has the opportunity to allow the concept of *Amicus Curiae* in the trial process of criminal cases in Indonesia.

If we look at several rules that are the basis for considering the application of the *Amicus Curiae* concept, it can be said that this concept has been partially adopted in the laws and regulations in force in Indonesia, even though it is not explained in a rigorous and concrete manner. It could be said that the concept of *Amicus Curiae* is an informal recognition, because there is no legal basis that clearly regulates and recognizes the concept of *Amicus Curiae*.

The application of the *Amicus Curiae* concept is only limited to expressing opinions or legal opinions. This concept is not mentioned in the evidence in the Criminal Procedure Code, because the power of evidence is in Article 183 of the Criminal Procedure Code. In this article, the judge who decides on a case is not allowed to impose a sentence without a basis based on at least two pieces of evidence that are considered valid with confidence based on that evidence.⁸

The judge is the main pillar and is the last place to seek justice in the justice process. As one of the many elements of judicial power that accepts, examines and decides cases, judges are asked to provide justice for justice seekers.⁹ The task of a judge in justice is to maintain the legal order and determine matters determined by law on a matter. In this way, his main task is to receive, examine, adjudicate and resolve cases submitted by him.

Judges are not allowed to refuse to hear a case. As explained in Article 1 paragraph (9) of the Criminal Procedure Code, judges cannot reject cases on the grounds that there are no legal

⁸ Tolib Effendi, *Criminal Justice System: Comparison of System Components and Processes Judiciary in Several Countries*, Pustaka Yustitia, Yogyakarta, 2013, p.173

⁹ Mujahidin A. Latief, *Legal Reform Policy: A Recommendation (volume II)*, Commission Republic of Indonesia National Law, Jakarta, 2007, p. 283.



regulations or the legal regulations are unclear. Therefore, judges are considered to know the law (*ius curiae novit*). If the legal rules are deemed unclear, the judge is asked to interpret them.¹⁰

Judges are state officials and law enforcers who are obliged to explore and understand the values of law and justice that exist in society. On the other hand, judges also need to consider the good and evil characteristics of the defendant. In Article 30 Paragraph (1) of Law no. 4 of 2004 Jo. Law Number 48 of 2009 explains that judges are obliged to resign from the trial if they are related by blood or marriage up to the third degree, a husband and wife relationship even if they are divorced from the chairman, one of the member judges, a prosecutor, an advocate and/or a clerk.

The provisions of Article 14 paragraph (2) of Law Number 48 of 2009 explain that in a deliberative session, each judge must submit written considerations or opinions on the case he is examining and this is an inseparable part.

The judge's decision is a reflection of the values of justice; ultimate truth; human rights; mastery of the law or facts in an established, valid and factual manner, as well as a reflection of the ethics, mentality and morality of the judge himself.¹¹ In Article 1, point 11 of the Criminal Procedure Code, it is explained that a court decision is a statement from a judge made during an open court session which takes the form of a sentence, acquittal, or release from all legal demands in terms and according to the method regulated by law. This. Court decisions are considered valid and have legal force if they are pronounced at a hearing that is open to the public.

Lilik Mulyadi is of the opinion that a judge's decision is a decision stated by a judge because of his position at a criminal case trial which is open to the public after the process and procedural law of criminal procedure in general which has a sentence of punishment, acquittal or release from all legal demands made in writing to case resolution.¹²

The Indonesian evidentiary system adheres to the Negative *Wettelijk Stelsel* which is included in Article 183 of the Criminal Procedure Code which explains that a judge cannot impose a sentence on a person unless with at least two valid pieces of evidence he is convinced that a crime actually occurred and that the defendant is guilty of committing it. . This evidence is "limited" legal evidence as regulated by the law contained in Article 184 paragraph (1) of the Criminal Procedure Code, namely: Witness Statement, Expert Statement, Letters, Instructions and Defendant's Statement.

The judge has courage in carrying out his considerations. Then, in issuing an order at a trial, a judge is obliged to exercise his authority to provide considerations which must be carried out wisely. A judge is also expected to give his consideration regarding whether a person is guilty or not regarding the truth of the incident to determine the law. It can be seen that legal traffic is increasing rapidly, judges are considered to know the law (*ius curiae novit*).

Therefore, judges have many ways to make observations before giving considerations. Everything the judge sees, whether intentionally or not, can be used as a reference in deciding

¹⁰ Ibid, hal. 122

¹¹ Lilik Mulyadi, *The Face of Judges' Decisions in Indonesian Criminal Procedure Law*, PT. Citra Aditya Bakti, Bandung, 2010, p. 129.

¹² Ibid, hal. 131



a case. So, whatever the judge sees is not binding on the judge, including the Amicus Curiae. There are 3 (three) aspects that must be considered by the judge when deciding the case:¹³

- a. Legal Justice, which is related to the facts and existing evidence.
- b. Social Justice, namely the impact of the case and the judge's decision on society. The important thing is to provide a deterrent effect for the perpetrator so that no one dares to imitate this behavior.
- c. Moral Justice, namely human values.

Based on the results of interviews conducted by the author online using the zoom meeting application with Mr. Alimin Ribut Sujono, S.H., M.H. The Banjarmasin High Court judge (previously the presiding judge in the Mario Dandy case at the South Jakarta District Court) on August 1 2024 stated that the Indonesian Judiciary in the Supreme Court does not have written rules regarding Amicus Curiae, but the legal basis for the crime of Amicus Curiae is supported by Article 180 of the Criminal Procedure Code which explains each paragraph, namely:

- a. In the event that it is necessary to clarify the issues that are present at the court hearing, the presiding judge at the hearing can ask for expert information and can also request that new material be submitted by interested parties.
- b. In the event that a reasonable objection arises from the defendant or legal advisor to the results of the expert's testimony as described in paragraph (1), the judge orders that research be carried out again.
- c. The judge, because of his position, can order research to be carried out again as intended in paragraph (2)
- d. The re-examination referred to in paragraph (2) and paragraph (2) is carried out by the original agency with a different personnel composition from other agencies that have that authority.¹⁴

The researcher chose Decision Number 297/PID.B/2023/PN JKT.SEL, the defendant Mario Dandy Satriyo Alias Dandy was legally and convincingly guilty of committing an act of Serious Torture with prior planning which can be analyzed as a discussion in this research. The choice of this decision was based on this decision which attached Amicus Curiae as the judge's consideration in making the decision, because basically Not all Amicus Curiae made by organizations or individuals can be accepted by judges as considerations in decisions.

Mario Dandy Satrio (MDS), who is the 20 year old son of an official at the Directorate General of Taxes, abused the 17 year old victim David. This case occurred on February 20 2023 at 20.30 WIB in front of the house of David's friend with the initials R, or more precisely in the Grand Permata Cluster Boulevard Complex, Ulujami Village, Pesanggrahan District. The witnesses were R and his parents. The chronology of events is as follows: After receiving information about David's whereabouts, MDS, using his vehicle with A and another friend with

¹³ Aisyah Kahar, Legal review regarding amicus curiae in Indonesia (case analysis of decisions No.13/PK/PID/2011 and No.225/PK/PID.SUS/2011), published thesis, Depok, University of Indonesia, 2015, p. 53

¹⁴ Results of interviews conducted by the author online using the zoom meeting application with Mr. Alimin Ribut Sujono, S.H., M.H. Judge of the Banjarmasin High Court (previously the presiding judge in the Mario Dandy case at the South Jakarta District Court) on 01 August 2024



the initials S, came to David. In front of R's house, A contacted David, but he said he was reluctant to leave R's house. "Then the suspect also communicated with the victim. Finally, the victim came out and went next door to Mr. R and Mr. N's house. He got behind the suspect's car, which was a black Robicon. At that time, MDS confirmed whether it was true or not that David had done something bad to his ex-girlfriend, A. As a result, there was an argument. "Finally there was an incident of violence against the child by the perpetrator kicking the victim's leg so that the victim fell, then the perpetrator hit the victim several times using the perpetrator's right hand. Then when the victim had fallen, the perpetrator kicked the victim in the head. Then kicked the victim in the stomach. A few moments later, the parents of David's friend, whose initials were R, and Mrs. N, who were around the crime scene, came to try to help the victim. Mr R then contacted the complex security guard. The security guard then went to the scene and contacted the Pesanggrahan Police. After receiving a report from security officers or security guards at Grand Permata Cluster Boulevard, police officers from Pesanggrahan Police came and immediately arrested the people at the scene, namely sister A, the MDS perpetrator, and also witness S. "Then they were taken to the Sector Police, The vehicle was also taken and then inspected. Then investigators went with the Kebayoran Lama Police Chief at that time because the location of the Medika Permata Hijau Hospital was in Kebayoran Lama. From the actions of the defendant Mario Dandy Satrio (MDS) he was charged under Article 355 paragraph (1) of the Criminal Code in conjunction with Article 55 paragraph (1) 1 of the Criminal Code for the act of Serious Assault with premeditation.¹⁵

Furthermore, in the complaint, the Public Prosecutor requested that the defendant be burdened with paying restitution. This restitution is based on a request from Yonathan Wegiq who represents victim David Ozora at Register: 0664/P.BPP-LKPSK/II/2023 dated March 17 2023, based on a request for a restitution calculation from the victim's family in the Decision of the LPSK Leadership Court Session Number A.0821. R/KEP/IV 2023 dated 3 April 2023, amounting to: Rp. 52,313,545,000; (fifty-two billion three hundred thirteen million five hundred and forty-five thousand rupiah) for compensation components for transportation, consumption, loss of income, attorney's fees and suffering. Regarding the receipt of the request for calculating restitution from the victim's family by LPSK, it was recalculated in LPSK Letter Number: R-1307/5.1 HSPP/LPSK/04/2023 dated 04 April 2023 in the amount of Rp. 120,388,911,030; (one hundred twenty billion three hundred eighty eight million nine hundred eleven thousand thirty rupiah), calculation of restitution by LPSK in accordance with the family's request, instructions from the Prosecutor's Office to calculate restitution then coordination with Investigators and components contained in Government Regulation of the Republic of Indonesia Number 43 of 2017 concerning the Implementation of Restitution for Children Who Are Victims of Crime and Supreme Court Regulation Number 1 of 2022 concerning Procedures for Completing Applications and Providing Restitution and Compensation to Victims of Crime as follows:

¹⁵ <https://www.scribd.com/document/651767248/Surat-Tuntutan-Mario-Dandy>, accessed on Tuesday 06 August 2024 at 21.00 WIB.



NO	TYPE OF COMPENSATION	Total (Rp)
1	Compensation for loss of wealth (transportation and consumption, there are a series of activities, especially transportation that must take the victim to move to hospital, family costs for transportation back and forth while accompanying the victim in hospital, lodging costs while accompanying the victim while being treated at Mayapada hospital)	18.162.000
2	Compensation for medical and/or psychological treatment (That the cause is greater due to projected calculations greater healing over 54 years; == The team requested details from Mayapada Hospital regarding treatment costs for medical treatment for the victim for 1 year amounting to Rp. 2,187,120,000,-; Then the Team calculated the time period by referring to age data based on BPS website data for life expectancy in the Province DKI Jakarta is 71 years; Next, the team calculated 71 years, the average age of the DKI Jakarta population minus the victim's age of 17 years. This means that the victim will suffer for 54 years, then multiply it by the calculation of the cost of medical treatment from the Mayapada 54 hospital X Rp. 2,187,120,000, - so the amount becomes Rp. 118,104,480,000,-	118.104.480.000
3	Compensation for suffering as a result of a criminal act (The victim suffered from diffuse axonal injury, then the team looked for references as a result of diffuse axonal injury, only 10% managed to recover while 90% could not recover. Regarding the diffuse axonal injury being cured, we cannot predict the decision doctor, and it is the victim's right to receive compensation)	1.315.650.000
4	Other losses suffered by the victim as a result of criminal acts (legal process and legal team costs, loss of income of the victim's father)	950.619.030
5	If Defendant Mario Dandy is unable to pay restitution, the prosecutor stated that restitution could be replaced by imprisonment for (7) seven years.	
Total number		120.388.911.030

Source : <https://www.youtube.com/watch?v=cnd3VXZ5tFc>

Based on the request for restitution, the Public Interest Lawyer Network (PILNET), an organization that focuses on law enforcement and justice, has submitted itself as an Amicus Curiae or Friend of the Court. PILnet observed law enforcement practices in this case,



especially those shown by the prosecutor's office and the Witness and Victim Protection Agency (LPSK), who have tried to provide an understanding of the values of justice towards David Ozora, the victim in this case. In fact, the restoration of the victims' rights in this case was threatened, especially when the Defendant's father (Rafael Alun Trisambodo) stated his refusal to pay restitution on the grounds that their property was confiscated by the Corruption Eradication Commission (KPK) for alleged criminal acts of corruption.¹⁶ Bimantara Adjie emphasized that this action has the potential to create a bad precedent if the perpetrator of the crime refuses to pay restitution to the victim. Therefore, PILnet presents 3 (three) important points, including:

- a. PILnet believes that restitution is basically compensation given to the victim or their family by the perpetrator or third party. Restitution is the victim's right because they have suffered losses both material and immaterial as a result of the criminal act that occurred.
- b. PILnet sees that according to Civil Law, Marriage Law, Customary Law, customs, culture and religious law, parents still have responsibilities towards their children regardless of any situation. Therefore, Rafael Alun Trisambodo, Mario's father, remains responsible for his son's actions, including the legal impact of Mario's inability to pay restitution to the victim, as demanded by the public prosecutor.
- c. PILnet is of the opinion that criminal punishment against the perpetrator does not automatically result in recovery of the losses experienced by the victim, in this case David Ozora. Therefore, restitution is the perpetrator's obligation to pay. PILnet urges judges to seriously consider restoring victims' rights.

Based on this view, PILnet encourages the South Jakarta District Court Judge who is trying this case to consider and grant the public prosecutor's letter of indictment against Mario Dandy. Apart from that, PILnet also asked the Panel of Judges to contribute to the payment of restitution to the Defendant's parents as a Third Party, with the provision that if restitution is not paid to the victim, the prosecutor must confiscate the assets of the Defendants and the Defendant's parents. Then, auction off the assets to pay restitution, and make efforts to force restitution confiscation of assets belonging to the defendants and the parents of the defendants to pay restitution.

According to Alimin Ribut Sujono¹⁷ The position of Amicus Curiae in the judge's legal considerations determining the right to restitution in decision Number 297/PID.B/2023/PN JKT.SEL, the judge in determining the right to restitution attached considerations to the Amicus Curiae submission submitted by PILnet. On the other hand, the basis for the judge's consideration of including Amicus Curiae was also based on the existing law in force in Indonesia using Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power. So, when reviewed, the judge is allowed to make legal discoveries (*rechtvinding*) to strengthen his considerations in a decision. Although in this case, the judge did not consider the Amicus Curiae as evidence in his decision, but only *ad informandum*, as a reinforcement of the judge's confidence, juridical rationale and its connection or relationship to the case, as stated in decision Number 297/PID.B/2023/ PN JKT.SEL, the application of the Amicus Curiae Public Interest

¹⁶ Bimantara Adjie, member of PILnet, in a written statement given to Tempo on Tuesday, 29 August 2023

¹⁷ *Loc.Cit* Interview results with Alimin Ribut Sujono



Lawyer Network (PILNET) is related to requesting the Panel of Judges to also burden the payment of restitution to the Defendant's parents as a Third Party, with the provision that if the provision of restitution to the victim is not fulfilled then the Prosecutor must confiscate the assets of the The defendant and the defendant's parents. Then, auction the assets to pay restitution, and make efforts to force restitution confiscation of assets belonging to the defendants and their parents. to pay restitution, the Panel considered and included it in the judge's decision, where the facts revealed that Robicon's car had a registration number no. B-2571-PBP 2013, black, Defendant Mario Dandy has controlled the car in such a way as to use the car in his daily life, he has even replaced the Rubicon car plate with the license plate number B 21 DEN which shows complete control of the car, so the Defendant's reason is that the Robicon car belongs to him. his uncle who was entrusted by the Defendant so that he could be offered/sold, apart from contradicting the existing facts, it is also illogical because in fact, if it was really his uncle's car, his uncle would have a greater chance of selling it himself than handing it over to the Defendant, therefore, in the opinion of the Tribunal, Robicon's car has a registration plate nomor B-2571-PBP of 2013 in black, whose number was faked in everyday life to B 21 DEN, was clearly intended to belong to the accused, so it was very natural for it to be sold in public/auction and the proceeds paid to reduce part of the restitution.

Alimin Ribut Sujono¹⁸ said that in his legal considerations the judge's determination of restitution for the defendant Mario Dandy was based on Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, Government Regulation Number 43 of 2017 concerning the Implementation of Restitution for Children who are victims of crime, and Government Regulation Number 7 of 2018 concerning Providing Compensation, Restitution and Assistance to Witnesses and Victims and Perma Number 1 of 2022 concerning Procedures for Settlement of Applications and Providing Restitution and Compensation to Victims of Crime. After paying attention, carefully examining the basis for calculating restitution as calculated by the Witness and Victim Protection Agency (LPSK) with LPSK Letter Number: R-1307/5.1 HSPP/LPSK/04/2023 dated 04 April 2023, amounting to Rp. 120,388,911,030.00 (one hundred twenty billion three hundred eighty eight million nine hundred and eleven thousand thirty rupiah) according to the judge's legal consideration it turned out that several Components that should not be included in the amount of restitution include:

- a. Compensation for Loss of Wealth for transportation and consumption, specifically consumption is calculated at IDR. 30,000 x 3 meals x 3 people (father, mother and children) = Rp. 270,000/day x 41 days = Rp. 11,070,000,- although it is normal for 1 meal to be calculated at Rp. 30,000,- but it would not be right if the victim's child David was also included in the calculation, isn't the victim's child in care so it should be Rp. 180,000,- x 2 people (mother and father) = Rp. 180,000,- x 41 days = Rp. 7,380,000,- (seven million three hundred and eighty thousand rupiah);
- b. Regarding the reduction in parents' income, of course it would not be appropriate to include it in compensation related to the loss of wealth of the child victim David. It is true that the condition of the child victim David was injured in such a way, but it cannot be used as an excuse for the parents losing income, likewise details of the

¹⁸ *Ibid*, Results of an interview with Alimin Ribut Sujono
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- accommodation which includes the DP and house deposit. Of course, whether or not there is an incident related to the child victim David, the DP and house deposit are still required.
- c. Regarding the costs of replacing medical/psychological care outside of stem cell costs, as stated by witness Yonatan, David's parents have been covered and paid for by insurance, therefore, in order to avoid double payments, of course they cannot be included in the calculation of restitution
 - d. The value of compensation for suffering as a result of criminal acts cannot simply be calculated from the projected medical recovery costs from Mayapada Hospital during the month of the examination and simply multiplied by 54 (fifty four) which is obtained from a deduction of 71 (seventy one) Life expectancy is reduced by 17 (the age of David's child), because it is impossible to ensure that the cost of caring for the victim's child will be the same for the next 54 (fifty-four) years.
 - e. Based on expert information, Dr. Jeremiah Tatang, in cases such as those experienced by the child victim David, the chance/hope of recovery is 5% (five percent), so it requires continuous attention and care, and considering the condition of the child victim David, a level of dependence on people around him is needed temporarily. and that requires quite a long time, based on this, in the opinion of the Tribunal, the victim's child David needs to have guarantees of care and guarantees to support life's necessities in the face of uncertainty about the recovery of his health.
 - f. The value of the PRUprime limit booster benefit is IDR. The 12,000,000,000.00 (twelve billion rupiah) which was not received by David's child victim was used as a reference for determining the amount of treatment guarantee in order to restore the health of David's child victim.
 - g. Apart from guaranteeing treatment in the context of health recovery, it is necessary to determine the amount of guarantee to support life's necessities, which is also part of the component of Compensation for Suffering as a Result of a Criminal Act, the amount of which is deemed appropriate, namely equal to 1x (one time) the amount of the guarantee of treatment provided.

Based on the judge's considerations, the child victim David's right to receive restitution is:¹⁹

¹⁹ *Ibid*, Results of an interview with Alimin Ribut Sujono
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NO	TYPE OF COMPENSATION	TOTAL (Rp)
1	Compensation for Loss of Wealth; House rental payments, Somerset Hotel and JS Luwansa Hotel	9.108.900
2	Reimbursement of Medical and/or Psychological Treatment Costs; Steamcell Actions	425.045.000
3	Compensation for Suffering as a result of Criminal Acts.	
	Guaranteed recovery care for child victims	12.000.000
	Guaranteed support for life's necessities	12.000.000
4	Other losses suffered by the Victim as a result of the criminal act, including basic transportation costs, attorney's fees, or other costs related to the legal process.	
	Transportation	6.818.000
	Consumption	7.380.000
	Attorney	700.000.000
	Total number	25.140.161.900

Furthermore, regarding the amount of restitution which is the right of the victim's child David, if it is not paid by the defendant Mario Dandy, it can be replaced with a prison sentence of 7 (seven) years as stated in the Public Prosecutor's demands, according to Alimin Ribut Sujono, restitution is compensation given to the victim or his family by the perpetrator of the crime or a third party, where according to Article 4 of Perma Number 1 of 2022, the victim's right to receive restitution includes 4 (four) things:

- a. Compensation for loss of wealth and/or income;
- b. Compensation for losses, both material and immaterial, resulting from suffering directly related to criminal acts;
- c. Reimbursement for medical and/or psychological treatment costs; and/or
- d. Other losses suffered by Karban as a result of piclana's actions, including basic transportation costs, attorney's fees, or other costs related to the legal process.

Looking at the form of compensation provided above, it can be seen that this compensation, apart from being a real loss that can be given to the victim, also includes compensation, both material and immaterial, which is caused by suffering directly related to the crime. Even though money is not everything, in the incident that happened to the child victim David, in the opinion of the Tribunal, it would be unfair if the restitution which was the child victim David's right, was replaced by imprisonment if the Defendant did not pay it, or replaced by imprisonment as stated by expert witness DR Jamin Ginting SH., MH., MKn. Bearing in mind that replacing restitution with imprisonment or confinement will actually eliminate and deny the child victim David's right to receive compensation, especially in the field of civil law, so it is not appropriate that the Public Prosecutor conveyed regarding replacing restitution with imprisonment, therefore the amount of restitution charged to the Defendant, which is the right of the victim's



child David if the Defendant is unable to pay, remains with the defendant, and does not rule out the possibility that one day the Defendant will be able to complete it, Likewise for the child victim David, with this restitution, it is possible to file a new civil lawsuit if there are other costs incurred other than the costs specified in the restitution in question at a later date.²⁰

D. Conclusion

The position of Amicus Curiae in the judge's legal considerations determining the right to restitution in decision Number 297/PID.B/2023/PN JKT.SEL, the judge in determining the right to restitution attached considerations to the Amicus Curiae submission submitted by PILnet. The judge's basis for including Amicus Curiae was also based on the existing law in force in Indonesia using Article 5 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power. The judge's legal consideration in determining restitution for the defendant Mario Dandy is based on Government Regulation Number 43 of 2017 concerning the Implementation of Restitution for Children Who are Victims of Crime and Article 4 of Perma Number 1 of 2022 concerning Procedures for Settlement of Applications and Providing Restitution and Compensation to Victims of Crime, 25,140,161,900 (twenty five billion one hundred forty million one hundred sixty one thousand nine hundred rupiah)

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