

Regulation of the Right of Restitution for Children As Victims of Criminal Acts

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ABSTRACT

So far, victims of criminal acts only get inner satisfaction from the punishment imposed on the perpetrators but do not get anything that has a direct impact on them. The codified concept of Indonesian punishment in the Criminal Code (KUHP) regulates more aspects related to perpetrators of criminal acts and sentencing. Not much regulates the rights of victims of criminal acts. This paradigm shift began to occur after the enactment of Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, where in this Law the rights of Witnesses and Victims began to be considered. Victims are individuals who are harmed materially or immaterially for the occurrence of criminal acts that they receive. In cases of sexual violence against children, it results in losses suffered by child victims in the short and long term which require recovery of the child's condition. Law Number 13 of 2006 juncto Law Number 31 of 2014 concerning Protection of Witnesses and Victims has accommodated restitution.

In Law Number 31 of 2014 concerning Protection of Witnesses and Victims, the victims of criminal acts have the right to obtain restitution rights in the form of compensation for loss of property or income, compensation for losses caused by suffering directly related to the crime, and/or reimbursement for medical and/or psychological treatment costs. However, at present the implementation of restitution for victims of crimes against children is considered not optimal, especially regarding the implementation of restitution that can be given to victims.

Keywords: *children, restitution, criminal acts*

INTRODUCTION

Criminal law is the law that regulates violations and crimes against the public interest, actions which are punishable by punishment which constitutes suffering or torture. Concretely, there are two objectives of criminal law, namely, to frighten everyone not to commit bad deeds and to educate people who have been in the life of their environment. Sexual violence is increasingly common in Indonesia. Sexual violence can have an impact on physical violence and reproductive organs, even on the psychology of the victim, therefore this act of sexual violence can be categorized as a Human Rights Violation. Article 28 paragraph (1) of the 1945 Constitution of the Republic of Indonesia guarantees that "every person has the right to protection of self, family, honor, dignity and property under his control, and has the right to feel safe and protected from threats of fear to do something

that is a human right". In accordance with the constitutional mandate the state must be present in providing a sense of security for the people, including a sense of security from criminal acts of sexual violence. Sexual harassment and violence in recent times is increasing. Crimes of decency or moral offenses and sexual harassment or sexual harassment are two forms of violations of decency which are not only a matter of national law in a country but are already a legal problem in all countries in the world or a global problem.

Currently, victims of sexual violence do not only come from adults, but also those who are classified as minors (children). The weak biological condition of children makes it easier for criminals to carry out their actions on children and makes them the easiest victims to target. The government in its efforts to protect children from criminal acts, including sexual violence, issued Law Number 17 of 2016 in conjunction with Law Number 23 of 2002 concerning Child Protection, which aims to ensure the fulfillment of children's rights so that they can live, grow, develop and participate optimally. In accordance with human dignity, and receive protection from violence and discrimination, for the realization of quality, moral, and prosperous Indonesian children. Criminal acts related to children are of course a specificity that must be regulated separately and different from ordinary crimes.

So far, victims of criminal acts only get inner satisfaction from the punishment imposed on the perpetrators but do not get anything that has a direct impact on them. The codified concept of Indonesian punishment in the Criminal Code (KUHP) regulates more aspects related to perpetrators of criminal acts and sentencing. Not much regulates the rights of victims of criminal acts. This paradigm shift began to occur after the enactment of Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, where in this Law the rights of Witnesses and Victims began to be considered. Victims are individuals who are harmed materially or immaterially for the occurrence of criminal acts that they receive. In cases of sexual violence against children, it results in losses suffered by child victims in the short and long term which require recovery of the child's condition. Law Number 13 of 2006 juncto Law Number 31 of 2014 concerning Protection of Witnesses and Victims has accommodated restitution.

In Law Number 31 of 2014 concerning Protection of Witnesses and Victims, the victims of criminal acts have the right to obtain restitution rights in the form of compensation for loss of property or income, compensation for losses caused by suffering directly related to the crime, and/or reimbursement for medical and/or psychological treatment costs. However, at present the implementation of restitution for victims of crimes against children is considered not optimal, especially regarding the implementation of restitution that can be given to victims.

RESEARCH METHODS

This type of research uses normative empirical research where normative research is legal research that carries out law as a building system of norms. Empirical research is a research method that examines law from an external perspective with the object of research being attitudes and social behavior towards law. The data sources used in the

research are as follows: 1) Primary Legal Materials Primary data is data derived from field data obtained from respondents and informants. So the primary data source is the results of interviews with judges who have decided cases of sexual violence with children as victims, public prosecutors; 2) Secondary Legal Materials Secondary data sources were obtained through library research and document studies. Literature studies include books, journals, seminar proceedings, papers, legal dictionaries, legal encyclopedias, legal literature dictionaries or other written legal materials. In addition to literature study, the secondary data used in this research is also a document study which includes hierarchical or tiered legal documents, laws and regulations, jurisprudence, agreements/contracts and other documents; and 3) Tertiary Legal Materials Tertiary legal materials are legal materials that provide additional instructions to primary legal materials, which in this study are in the form of encyclopedias, law magazines and dictionaries. Data Collection Techniques are: 1) Observation (Observation) Collecting data by recording the results of systematic observations of existing problem phenomena; 2) Interviews Conduct interviews with judges who have served to decide cases of sexual violence with children as victims to obtain data and explanations; and 3) Library Research Studying documents or library materials such as books, journals, mass media, legal materials available online, court decisions, and other literature related to this research. Data analysis is conducting a study or study of the results of data processing by using the theories that have been previously selected in the theoretical framework/literature study. The use of qualitative analysis in this research study is due to the reason that the data collected is in the form of statement sentences and the data collected is generally in the form of information. The nature of descriptive analysis means to provide an overview or explanation of the subjects and objects of research as the results of the research are carried out as is without justifying the results of the research.

DISCUSSION

Restitution is compensation given to victims or their families by perpetrators of criminal acts or third parties. Restitution is specifically regulated in Supreme Court Regulation No. 1 of 2022 concerning procedures for completing applications and granting restitution and compensation rights to victims of criminal acts. As for the form of granting restitution according to Article 4 of the supreme court regulations, the form of restitution given to victims of criminal acts can be in the form of: 1. compensation for loss of wealth and/or income; 2. Compensation for losses, both material and immaterial, caused by suffering directly related to a crime; 3. reimbursement for medical and/or psychological treatment costs and/or 4. other losses suffered by victims as a result of criminal acts, including basic transportation costs, attorney fees, or other costs related to legal proceedings. To submit an application for restitution, one must pay attention to the administrative requirements for the application set out in Article 5 of the Perma. Requests for restitution must be made in writing in the Indonesian language and submitted to the Chairperson/Head of Court either directly or through the LPSK, investigators or public prosecutor. 51 Article 5 (1) the request for restitution must contain: a) the identity of the applicant b) the identity of the victim, in the event that the applicant is not a victim c) a

description of the crime d) the identity of the accused/respondent e) a description of the losses suffered; and f) the amount of restitution paid requested. (2) the application for restitution as referred to in paragraph 1 must be accompanied by: a. photocopy of the identity of the applicant and/or victim b. evidence of material loss suffered by the applicant and/or victim made or ratified by an authorized official, or based on other valid evidence c. proof of the cost of the victim during treatment and/or treatment that is legalized by the agency or party carrying out the treatment or treatment or based on valid evidence; d. a description of the immaterial losses suffered by the applicant and/or the victim e. photocopy of death certificate, in case the victim dies f. certificate of family relationship, heirs, or guardians if the application is filed by the family, heirs or guardians g. special power of attorney, if the request for restitution is filed through a power of attorney; and h. copy or excerpt of the court decision if the case has been terminated and has permanent legal force. (4) the application for restitution as referred to in paragraphs 1 and 2 is made in writing in the Indonesian language, signed by the applicant or his attorney and submitted to the chairman/head of the court, either directly or through the lpsk, investigator or public prosecutor. From the description of Article 5, it can be concluded understand that only the court that has the authority to hear requests for restitution are the courts that try criminal offenders, namely district courts, human rights courts, military courts, high military courts and syar'iyah courts.

Furthermore, according to Article 9, the request for restitution does not erase the rights of the victim, family, heirs and guardians to file a civil lawsuit, in the event that: a. the application for restitution was rejected because the defendant was acquitted or released from lawsuits; and b. the request for restitution was granted and the defendant was sentenced, but there were losses suffered by the victim who had not yet asked for restitution from the court or had requested it but had not been considered by the court. as long as the victim of a criminal act by a district court decision has never made or passed a decision regarding restitution (compensation for the victim). so as long as the victim still has the right to be able to apply for restitution at the district court office in a civil manner for losses suffered as a result of a crime that has injured their basic rights as stipulated in human rights, especially related to the crime of rape which allows the victim to suffer psychological and mental trauma. In the application for the right to restitution at the court level, it is known as the merger of the Petitioners where the merger in question means that they can combine the submission of a request for compensation (compensation) simultaneously with the submission of a request for restitution. in which the application must be submitted through the LPSK and submitted before or during the trial stage against the perpetrators of criminal acts. It is in this compensation that compensation is imposed or given by the state because the perpetrators of criminal acts are unable to provide full compensation which is their responsibility. compensation for loss of wealth and/or income; As for compensation or restitution (compensation) that can be received by victims of criminal acts, namely: 1. Compensation for losses caused by suffering directly related to a crime, including injury or death; 2. reimbursement of care and/or medical expenses; and 3. other material and immaterial losses suffered by victims as a result of criminal acts. 4. Compensation for

Victims of gross human rights violations can be provided in non-monetary/kind forms which are carried out in stages in the form of educational scholarships, employment opportunities, or other forms. The procedure for submitting compensation can be said to be the same as the procedure for filing restitution, which differs only in a number of matters regulated in Article 18 Perma 1 of 2022, including:

The application does not need to contain the identity of the perpetrator of the crime in the event that the identity of the accused has not been or is not known. One form of compensation for victims of criminal acts is restitution. Restitution in accordance with the Principle of Restoration in its Original Condition (*restitutio in integrum*) is an effort that the victim of a crime must be returned to its original condition before the crime occurred even though it is based on the fact that it is impossible for the victim to return to his original condition. This principle emphasizes that the form of recovery for victims must be as complete as possible and include various aspects arising from the consequences of crime. With restitution, victims can be restored to their freedom, legal rights, social status, family life and citizenship, returning to their place of residence, recovering their jobs, and recover their assets. In practice, in almost all countries, the concept of restitution has been developed and also given to victims of crime for their suffering as victims of crime. In this concept, victims and their families must receive fair and appropriate compensation from the guilty person or a responsible third party. This compensation will cover the return of property or payment for damage or loss suffered, compensation for costs incurred as a result of the victim's fall, provision of services and rights of recovery. Based on Article 1365 of the Civil Code, people who suffer losses caused by other people's actions that violate the law have the right to claim compensation. If the person suffers a loss as a result of a crime, to make it easier for the person, the state provides a way to obtain compensation without having to go through the usual civil lawsuit process by combining cases of claims for compensation to criminal cases regulated in the Criminal Procedure Code. Furthermore, the state is increasingly providing space for victims of criminal acts to obtain their rights to compensation with a wider range by issuing Law Number 13 of 2006 concerning Protection of Witnesses and Victims (hereinafter abbreviated as Law No. 13 of 2006) which was later replaced by Law Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims (hereinafter referred to as Law No. 31 of 2004).

Every child who is a victim or perpetrator of a crime has the right to get legal aid and other assistance. Victims of sexual violence actually have the right to restitution as a result of the crime that happened to them. However, in order to obtain their rights, victims of sexual violence must apply for restitution as regulated by two implementing regulations, namely government regulation Number 43 of 2017 concerning the implementation of restitution for child victims of criminal acts as regulated by derivatives of the mandate contained in Article 71D paragraph (2) of the Law. Law Number 17 of 2016 concerning Stipulation of Government Regulation in lieu of Law Number 1 of 2016 concerning the establishment of government regulations in lieu of Law Number 23 of 2002 concerning child protection, and government regulation Number 7 of 2018 concerning provision of

compensation, restitution and assistance to witnesses and victims which is a mandate contained in Article 7B of Law Number 31 of 2014 concerning amendments to Law Number 13 of 2006 concerning the protection of witnesses and victims. 55 Requests for Restitution for victims of criminal acts can be submitted by the Victims as contained in Article 4 paragraph (2) of Implementing Regulation Number 43 of 2017, namely: a. Parents or guardians of children who are victims of criminal acts; b. heirs of children who are victims of criminal acts; and c. People who are authorized by parents, guardians, or heirs of children who are victims of crime with a special power of attorney. If the crime against the child was committed by the victim as mentioned, the request for restitution can be filed by the institution. This request for restitution can be made before or after a court decision has permanent legal force. Where in Article 5 paragraph (2) Government Regulation Number 43 of 2017 states that requests for restitution to the court submitted before a court decision can be submitted through the following stages: a. Investigation; or b. Prosecution. Then in paragraph (3) it is stated that apart from going through the investigation or prosecution stage, requests for restitution can be submitted through the Witness and Victim Protection Agency (LPSK) in accordance with statutory provisions. Restitution requests are submitted in writing using the Indonesian language on stamped paper. Regarding the file for restitution that will be submitted by the victim, at least it must contain what is contained in Article 7 paragraph (1) of Government Regulation Number 43 of 2017, namely: a. Applicant's identity; b. Actor identity; c. Description of the criminal incident experienced; d. Description of losses suffered; and e. Amount or amount of Restitution. Then in paragraph (2) it is stated that the application for restitution as referred to in paragraph (1) must attach: a. Photocopy of the identity of the child who is the victim of a crime which is legalized by the authorized official; b. Proof of legal loss as referred to in Article 3; c. Photocopy of the death certificate which has been legalized by the competent authority if the child who is the victim of a crime dies; and D. Evidence of a special power of attorney if the application is filed by a parental attorney, guardian or heir of a child who is a victim of a crime.

CONCLUSION

Based on the research that the authors have conducted, the authors can conclude that 1. The form of legal protection for victims of sexual violence perpetrated by biological fathers includes protection as contained in Article 59 of Law Number 23 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child protection, including psychosocial assistance during treatment until recovery and providing protection as well as assistance at every level of examination starting from the investigation process, the prosecution process, to the examination process at court hearings. In addition, it is also contained in Article 5 of Law Number 31 of 2014 concerning the protection of witnesses and victims in the form of obtaining protection in the form of personal, family and property security, as well as being free from threats relating to testimony that will be, is being, or has been given by the victim. It is hoped that the Government should immediately clarify the rules regarding regulations regarding obtaining restitution rights and conduct outreach to the community so that the wider community knows their rights when they become victims.

To the Government, it is best to immediately clarify the rules regarding regulations regarding obtaining restitution rights and conduct outreach to the community so that the wider community knows their rights when they become victims.

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