

Implementation Practice Restitution of Children Victims of Sexual Crime

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Implementation Practice Restitution of Children Victims of Sexual Crime

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Abstract. This paper analyzes Indonesian law on children's rights against sexual offenses and restitution for kid victims. This research is legal. This investigation included traditional and internet literature searches. This research is qualitative data analysis because it's descriptive-narrative. The study found that legal protection for child victims of sexual offenses is governed under numerous laws and regulations, including Law of the Republic of Indonesia Number 35 of 2014 Concerning Amendments to Law of the Republic of Indonesia Number 23 of 2002 Concerning Child Protection. Law No. 31 of 2014 amends Law No. 13 of 2006 on Witness and Victim Protection, Law No. 11 of 2012 on the Criminal Justice System for Children, and Law No. 23 of 2004 on Eliminating Domestic Violence. Without a particular statute regulating reparation, its execution is ambiguous.

Keywords: Children; Victim; Restitution

1. Introduction

Most of the victims found around the community are children. Many children are victims of criminal acts or victims of minor crimes or serious crimes. Children become victims of crime because they have experienced physical, psychological, sexual or social suffering as a result of unlawful acts committed by people, groups of people, institutions or the state [1]. One of the crimes that make children as victims is sexual crimes. The practice can be in the form of obscenity, harassment, rape or it can also be in the form of sodomy and incest. Children are used as a means of satisfying lust for those who suffer from these sexual disorders. Victims of child sexual violence not only suffer physical injuries, but also damage to their organs and sexuality, as well as contracting sexually transmitted infections [2].

The Indonesian Child Protection Commission recorded several cases of child victims of sexual abuse and harassment at schools throughout 2019. There were 20 students from a public elementary school in Malang who were victims of sexual harassment by honorary teachers. There were also 14 elementary school students in Lilliaja District, Sopeng Regency, South Sulawesi who were victims of sexual abuse by the principal. A number of elementary school students in Cambai District, Prabumulih City, South Sumatra were also victims of sexual abuse by a sports teacher. The victim of sexual abuse by an unscrupulous sports teacher also occurred in a vocational school student in East Luwu, South Sulawesi. Cases of sexual crimes such as rape and sexual abuse of children dominate during the COVID-19 coronavirus pandemic. Based on data from the Indonesian Child Protection Commission, there were 419 cases of children facing the law for being victims of sexual crimes in 2020. Children who are victims should be given great attention for the suffering or losses experienced. Protection for children includes all activities to guarantee and protect children and their rights so that they can live, grow and develop optimally and receive protection from violence and discrimination [3]. Protection of

victims, especially victims' rights to obtain compensation, is an integral part of human rights in the field of welfare and social security [4].

The regulation of the Criminal Code is oriented towards the perpetrator so that the victim tends to be forgotten. In fact, the victim is one aspect that really suffers from the actions of the perpetrator. Likewise in Criminal Procedure Code, the regulation regarding victims is completely marginalized. The Criminal Procedure Code regulates more about the protection of suspects while the protection of victims is not fully formulated [5]. The provision of total legal protection in Indonesia to children who are victims of sexual crimes is a matter of social reality and needs to receive great attention from all parties, namely the government together with law enforcement officers, the community and other social institutions that have the authority [6]. In terms of the form of protection for children in Indonesia, there are several institutions that are specialized based on the authority regulated by law in terms of providing assistance, both legal assistance, psychology and rehabilitation efforts for children who are victims of criminal acts, namely the Child Protection Commission (central), the National Child Protection Agency (KPK) [7]. Child Protection (regional) and Assistance Institution, namely the Witness and Victim Protection Agency.

Seeing the existing facts, that violence that often occurs against children can damage, endanger psycho-social conditions and cause prolonged fear due to events that have been experienced [8]. Children who are victims of violence in this case clearly have suffered losses, not only material, but also immaterial such as emotional and psychological shocks, which can affect the child's future life [9]. In contrast to the purpose of the provision of restitution, in an effort to protect through the fulfillment of their rights, it tends not to run smoothly after the child experiences deviant actions, so that the rights of the child that should be fulfilled are neglected. Including the mechanism for submitting the right to restitution or compensation suffered by the child as a result of the perpetrator's actions [10]. The process is not easy and literacy for the victims is minimal, which makes it an obstacle in seeking the right of restitution that should be received by children. The formulation of the problem in this research are : How to regulate children's rights against sexual crimes in positive law in Indonesia? And How is the practice of providing restitution to child victims of sexual crimes?

2. Method

This is a type of library research [11]. Library research is research conducted through the collecting of library data or research conducted to answer an issue that primarily relies on a critical and in-depth examination of relevant library items [12]. This investigation includes library research since data sources can be gathered from libraries or other written documents, including journals, novels, and other literature.

3. Discussion

3.1. Regulation of Children's Rights Against Sexual Crimes in Positive Law in Indonesia

Children, the next generation of the nation's principles, have a critical role in securing the nation's and state's future. To assume that responsibility later, they must grow and develop optimally physically, mentally, socially, and spiritually. They need rights, protection, and success. All child abuse must be stopped. Every citizen has the rights and obligations contained in the constitution and other laws. The fulfillment of rights and the implementation of obligations must be carried out in a balanced manner, so that there is no conflict. Criminal procedural law regulates various rights of suspects and/or defendants. The victim party should

receive protection, including the fulfillment of the victim's rights although in carrying it out must also be balanced with the existing obligations.

As a party seeking justice, the victim has been neglected [13]. Positive criminal law emphasizes rehabilitation, treatment of prisoners, social adaptation, and correctional institutions. As the harmed party, the victim's human rights are often overlooked, which is an injustice. The protection of crime victims is necessary because society is viewed as an established belief system. This belief is reflected in the norms of institutional organizations such as the police, prosecutors, courts, and penal facilities, among others. The commission of crimes against the victim will result in the collapse of the belief system.

Second, further justifications for legal protection for crime victims include the social contract and social solidarity arguments [14]. It can be stated that the state monopolizes all societal responses to crime and prohibits private initiatives. Therefore, when a crime happens that results in victims, the state must be responsible for attending to their needs.

Third, the protection of crime victims is typically related with one of the currently priority goals of punishment, notably dispute resolution [15]. Resolving problems created by illegal behavior, restoring equilibrium, and fostering a sense of social harmony.

Regarding victims, children are the most prevalent victims in the community nowadays. Numerous children are victims of criminal acts or crimes, including both minor and serious offenses. Children are God's creations and social beings; from the time they are conceived until they are born, they have the right to exist, be autonomous, and get enough protection from their parents, family, society, nation, and state.

Children are frequently the victims of crimes that can be damaging, hazardous, and terrifying. Children who are victims endure not only monetary but also immaterial losses, such as emotional and psychological trauma, which can have a lasting impact on their future. Children may face physical, psychological, and sexual acts of violence as a result of criminal activity.

Worrisome is the increasing trend of sexual crimes against not only adult women but also children. Children who were victims of sexual crimes such as prostitution, rape, sexual abuse, and sexual harassment have been afflicted with venereal illnesses such as AIDS.

Sexual crimes include all sexual actions, attempted sexual acts, unwanted comments, and sex trafficking involving threats and physical coercion, regardless of the perpetrator's relationship to the victim and regardless of the setting, including but not limited to the home and workplace. Sexual crimes include rape, molestation, sexual harassment, forced prostitution, women's trafficking for sexual purposes, sex slavery, forced pregnancy, sexual assault, sexual exploitation and/or sex abuse, and abortion.

Sexual offenses encompass all sorts of sexual intimidation and compulsion. In other words, unwelcome sexual contact by one of the parties is a sexual offense. The essence of sexual offenses is verbal threats and compulsion (action). Sexual crime refers to deviant sexual activity or deviant sexual relations that hurt the victim and disrupt the social order.

Articles 285 and 289 of the Criminal Code also define sexual offenses. According to Article 285, anybody who coerces a woman who is not his wife to engage in sexual activity by the use of force or threats of force is guilty of sexual offense. According to Article 289 of the Criminal Code, :

Any person who by force or threat of violence compels someone to commit or allow him to commit an obscene act, shall be punished for violating decency with a maximum imprisonment of nine years.

So it can be understood that the elements contained in the definition of sexual crime and contained in Article 289 of the Criminal Code consist of elements of threatening, coercing and raping. In recent years, cases of sexual crimes have become increasingly common in our society, especially against women and children. This phenomenon has become so troubling and worried for the community, so it needs serious attention and handling. All parties, especially the state must be present in providing protection for its citizens. The 1945 Constitution of the Republic of Indonesia has regulated the rights and obligations of every citizen, including obtaining the right to recognition, guarantee, protection, and legal certainty. Another article also stipulates that every child has the right to survive, grow and develop and is entitled to protection from violence and discrimination.

A kid who is a victim of a crime (victim child) is a child under the age of 18 who suffers bodily suffering, mental distress, or economic loss as a result of a criminal act. Children can experience both physical and non-physical losses as victims. Physical losses can include incapacity, injury, and even death. Non-physical losses can take the form of a child's disrupted mental state or an everlasting sense of dread.

Child victims have the right to be accompanied by their parents and/or people trusted by the child to accompany them. The victim's child is also entitled to:

1. Medical rehabilitation efforts as well as social rehabilitation, both within the institution and outside the institution.
2. Guarantees for safety, both physical, mental, and social safety.
3. Ease of obtaining information related to the development of the case.

In particular, legal protection for children in relation to the phenomenon of sexual crimes is protection that is carried out before and after children become victims of sexual crimes. Legal protection carried out before children become victims of sexual crimes is preventive legal protection. Legal protection that is carried out after a child has become a victim of a sexual crime is a repressive legal protection.

The government's legal protection of children must be based on the principle of children's rights and the protection of children's rights [16] in order to ensure that children receive treatment and opportunity that meet their needs in various spheres of life. The legal protection of minor victims of sexual offences is governed by a number of statutes and rules. The rules and regulations governing the protection of child victims of sexual offences are as follows:

1. Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection
2. Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 13 of 2006 concerning Protection of Witnesses and Victims
3. Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System
4. Law of the Republic of Indonesia Number 23 of 2004 concerning Elimination of Domestic Violence

Child victims of sexual offences are afforded special protection through the following measures:

1. Education on reproductive health, moral and religious values.
2. Children's social rehabilitation services.
3. Psychosocial support throughout treatment and recovery.
4. Offering protection and help at every stage of the examination process, from the investigation and prosecution phases through the court examination.

1. The Practice of Giving Restitution to Children Victims of Sexual Crimes

As a party seeking justice, the victim's place in the criminal justice system has been overlooked. When viewed from the perspective of the goal of punishment under positive criminal law, criminals receive a greater amount of attention to rehabilitation, treatment of offenders, social adaption, and correctional facilities, among others. This is a type of unfairness for the victim, because as the wounded person, they are simply used as evidence and their human rights are generally disregarded.

The punishment for perpetrators of sexual crimes is sufficient in terms of regulation legislation; thus, the regulation of victims of sexual crimes, including how to strengthen their side, becomes homework. The subject of victim protection has always been a fascinating one to study, as the problem of victim protection is not only related to protection, but also to the barriers encountered.

The need for adequate legal protection for victims of crime is very important, considering that the consequences of a criminal act can cause a person to experience loss and suffering, both physically, psychologically and with human dignity. Through the legislation guaranteeing the protection of the rights of victims, it is necessary to obtain legal certainty and justice. Including sexual crimes, it is necessary to provide restitution and assistance in recovering from physical and psychological conditions.

Although normatively legal protection for victims of crime is considered important, at the implementation level in the field there are not no problems, there are still many obstacles and obstacles. Many events in people's lives show that justice and legal certainty have received less serious attention. Including issues of justice and human rights in the enforcement of criminal law relating to legal protection for victims of crime.

Victims of crime lack partiality and a sense of justice, in fact it is not balanced with the protection provided by law to perpetrators of crimes. As a result, when the perpetrator of the crime has been sentenced to criminal sanctions by the court, the condition of the victim of the crime is not cared for at all. In fact, the issue of justice and respect for human rights does not only apply to perpetrators of crimes, but also victims of crimes.

Restitution is compensation given to the victim or her family by the perpetrator or a third party; it can take the form of returning property, payment of compensation for loss or suffering, or repayment of costs for specific activities; it is based on a court order with permanent legal effect.[17].

Restitution or compensation is a fee paid by someone because of a loss suffered by another person economically. Theoretically in criminal law, restitution is defined as an effort to restore the condition of the victim to the situation before experiencing a number of losses caused by a crime experienced.

Restitution also applies the principle of recovery in its original state (*restitutio in integrum*), which states that the victim of a crime must be returned to its original condition prior to the commission of the crime, even if the victim is incapable of returning to its original state. This idea emphasizes the importance of restoring as many of the victim's losses as possible following a criminal act. With compensation, the victim's liberty can be restored, along with their legal rights, social standing, family life, and return to their residence.

Restitution is described as the act of making amends or compensating the victim for the loss, damage, or injury sustained. Criminals provide victims with recompense. If the victim suffers a loss, the criminal is obligated to provide a monetary payment to the victim. Restitution can take the shape of a quantity of money or the value of an object taken by the offender, burial expenses, lost wages, support and payment for medical bills, counseling, therapy, or finding a new work for the victim. The victim can only seek restitution if the perpetrator has been convicted of committing a crime.

Restitution that is both civil and criminal in nature is granted through the criminal justice system. Although restitution in this case remained civil in character, its criminal aspect cannot be disputed. A compensating fine is an example of restitution under this system. As a kind of compensation, this fine is a monetary obligation imposed upon the offender.

The primary objective of restitution is to compensate the victim for all damages incurred as a result of the perpetrator's culpability for the crime's consequences. The criterion used to determine the amount of reparation is difficult to articulate. This depends on the social standing of the offender and victim. If the victim has a lower social position than the perpetrator, material compensation will be prioritized, and if the victim has a higher social rank than the perpetrator, restoration of dignity and good reputation will be prioritized.

In the evolution of criminal law, restitution is viewed as a punishment for criminal offenders. In this context, the right of restitution offers ample room for the victim and the perpetrator to strike an agreement for the payment of compensation from the perpetrator to the victim or the victim's family or heirs. The method of compensation for the victim must be as comprehensive as feasible and encompass all consequences of the crime.

Restitution can restore the victim's liberty, legal rights, social standing, and family life. In practice, the notion of restitution is provided and developed for every crime victim in nearly all nations. In accordance with this notion, the responsible party must provide fair and adequate recompense to the victim and his family. The compensation at issue includes payment for damages or losses caused by the victim, repayment of expenses spent as a result of a criminal conduct, and the victim's right to recover.

There are challenges and misunderstanding at the level of execution since, among law enforcement agencies, especially the U.S.

The mechanism for filing for restitution is submitted by the victim to the court through the Witness and Victim Protection Agency. Under the pretext of the duties and functions of the Witness and Victim Protection Agency in assisting the rights of the victim, but when in practice the victim actually feels complicated with the requirements and mechanisms in obtaining restitution rights and the ignorance of the victim and/or the victim's family, so they prefer to ignore the rights of the victim [18]. the best rights or principles for the interests of the child contained in the juvenile justice system.

The main problem in seeking restitution for children is due to a lack of knowledge about children's rights and parenting skills during the recovery process for children who are victims. In addition, the community also does not understand the procedures and mechanisms for complaints and social referrals as well as applying for restitution rights for children.

One of the reasons why the request for restitution has not been implemented is because it is very difficult to determine the amount of immaterial compensation suffered by the victim. The immaterial losses are difficult to measure in nominal value. Besides the difficulty in determining immaterial losses, another difficulty is that there is no rule in the form of a law that determines the amount of the compensation.

A request for restitution has never been submitted by the public prosecutor, this can happen because on average the perpetrators of sexual crimes against children are close family members of the victim and in general the perpetrators include people who are financially underprivileged so that the Prosecutor's Office is very difficult when entering the right of restitution. In his claim because even if the court handed down a decision to punish the perpetrator to pay the right of restitution at the execution stage, it would face difficulties in its implementation.

On the other hand, in the judge's consideration, there is no criminal sanction for the perpetrator to compensate the victim because it is not in the prosecutor's request. Compensation can be submitted when the victim submits a request for compensation, and there is no obligation on the decision to include the victim's claim for compensation in a criminal case.

4. Conclusion

1. Legal protection for child victims of sexual crimes is regulated in several laws and regulations, namely Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection, Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law of the Republic of Indonesia Number 13 of 2006 concerning Protection of Witnesses and Victims, Law of the Republic of Indonesia Number 11 of 2012 concerning the Juvenile Criminal Justice System, and Law of the Republic of Indonesia Number 23 of 2004 concerning Elimination of Domestic Violence Ladder.
2. The absence of a special law that regulates restitution creates various problems and ambiguity in its implementation. Prosecutors as public prosecutors are very rarely willing to include restitution in their demands. In practice, victims feel complicated with the requirements and mechanisms for obtaining restitution rights and the ignorance of the victim and/or the victim's family so that they prefer to ignore the rights or principles that are best for the interests of the child contained in the juvenile justice system.

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