

THE LANGUAGE OF REGULATIONS: EXPLORING THE RIGHT TO RESTITUTION FOR CHILD VICTIMS OF SEXUAL CRIMES

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Abstract: *Children's rights are also part of the most fundamental human rights. Generally, protection for children is represented by children who come into contact with the law. From the Child Protection Law emphasizes that legal protection for children is the state's obligation, including for child victims of sexual violence. Every child who becomes a victim of a crime has the right to restitution. The purpose of research is to analyze and find the essence and concept of restitution for child victims of sexual violence based on the principle of justice. The type of research is normative legal using normative legal case studies, with approaches including legislative, philosophical, conceptual, case, and comparative approaches. The collection of legal materials is conducted by reviewing literature sources. The analysis of legal materials in this normative research consists of reading regulations, journals, and other references. Result shows that the essence of providing restitution for child victims of sexual violence based on the principle of justice is that children are vulnerable victims for whom the state is obligated to advocate for their rights in the form of restitution, making it easily accessible and beneficial for child victims. The concept of providing restitution for child victims of sexual violence emphasizes the need to reinforce the Sexual Crimes Law for children in fulfilling the right to restitution and must be clearly regulated through policies that facilitate child victims of sexual violence in applying for restitution.*

Keywords: *restitution, children, sexual violence, principle of justice*

A. Introduction

According to data from the World Health Organization (WHO), in the last 3 years (2019-2022) as many as 12% of children worldwide have become victims of sexual violence. To prevent these crimes of sexual violence, various preventive and repressive efforts have been made in Indonesia, including various legal instruments that have also been produced to prevent and overcome these crimes of sexual violence against children.

Indonesia, these efforts have been made through legal products aimed at preventing criminal acts of violence against children, in this case through the establishment of Law Number 23 of 2002 concerning Child Protection, as amended by Law 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, and last amended by Law 17 of 2016 concerning Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning Second Amendment to Law 23 of 2002 concerning Child Protection (hereinafter referred to as the Child Protection Law) and Law of the Republic of Indonesia Number 13 of 2006 concerning Protection of Witnesses and Victims (hereinafter referred to as the Witness and Victim Protection Law), it has been stated that compensation is only given for serious Human Rights (HAM) violations and terrorism, but there is no regulation regarding compensation or restitution for children, especially criminal acts of sexual violence that can cause psychological trauma throughout the child's life until adulthood which will affect the child's growth and development. Child protection is related to children's rights, which is an important thing that cannot be ignored, because children's rights are also part of the most basic human

rights. Child protection is generally represented by children who are in conflict with the law, in this case those who are facing the criminal justice process, either as perpetrators or victims (Murtadho, 2021).

Normatively, every child who is a victim of a crime has the right to receive restitution. This right is stated in Government Regulation Number 43 of 2017 concerning the Implementation of Restitution for Children Who Are Victims of Crime, as an implementing regulation of Article 71 D of the Child Protection Law. The implementation of restitution for victims is only intended for certain crimes, including sexual violence. The issuance of this Government Regulation aims to provide legal protection for victims, especially children, regarding the application of the right to restitution. The clarity in the Child Protection Law does not clearly regulate the mechanism for providing easy restitution for victims. There are many stages that must be passed by victims, including reports of criminal acts, investigations and inquiries, requests for restitution, and court proceedings.

In Law Number 12 of 2022 concerning Sexual Violence Crimes, Article 35 states that if the confiscated assets of the convict are insufficient to cover the cost of Restitution, the state will provide compensation in the form of the underpaid Restitution to the Victim in accordance with the court's decision. However, this is not clearly regulated in the Child Protection Law, only discussing restitution. In Law Number 12 of 2022 concerning Sexual Violence Crimes, Article 16 states that in addition to imprisonment, fines, or other penalties according to the provisions of the Law, the judge is required to determine the amount of Restitution for Sexual Violence Crimes that are subject to imprisonment of 4 (four) years or more. Meanwhile, perpetrators whose imprisonment is less than 4 years are not subject to restitution. This is truly unfair, because every child victim of sexual violence has the same physical and psychological trauma.

Resolving sexual violence through Restorative Justice is a method of solving problems with a psychological approach. In cases of sexual violence, psychological trauma is not only experienced by the child victim, but also by the family and closest people to the child victim, so that restorative justice is present to facilitate the resolution of sexual violence problems. In essence, children cannot protect themselves against various mental, physical and social threats in various areas of life and livelihood. So it is very necessary for the state to be present in its legal regulations to protect children who face legal problems (Prakoso, 2013). Crimes of sexual violence against children have a negative impact on children and their future, especially for the child's daily survival, both the child's morals and spirituality are threatened if the act of sexual harassment is experienced.

Legal protection for children and their rights is one side of the approach to protecting Indonesian children. (Muchsini, 2006). In order for the protection of children's rights to be carried out regularly, orderly and responsibly, legal regulations are needed that are in line with the development of Indonesian society (Wagiati Soetodjo, 2006). Compensation is an important aspect needed to restore the original situation, although in some cases, the loss cannot be fully recovered,

Child protection is interesting to study through scientific research where conflicts occur between regulations made by legitimate and authorized policy makers with various rules, on the other hand the existence of Government Regulations themselves seem to accommodate but weaken the bias towards children, so that according to the researcher's opinion after going through a process of contemplation, a new legal breakthrough and a separate theory are needed that regulate child restitution justice which is a fundamental right for child victims of criminal acts.

Restitution is an absolute obligation that must be developed because it is the end of the essential protection efforts according to the actual purpose of the law that the concept of legal protection efforts for children so far has two aspects, namely the first aspect relating to policies and laws and regulations that regulate the protection of children's rights and the second aspect regulates the implementation.

Restitution of children's rights as victims of sexual violence is a new government policy as an effort to restore the losses experienced by children. This policy is a serious effort by the government that views sexual crimes against children as extraordinary crimes, so the government must handle them in extraordinary ways too. Restitution of children's rights is needed to protect children who are victims of crimes, which in various aspects are very detrimental. Legal protection for children through the granting of restitution rights is a manifestation of the philosophy and ideology of Pancasila, as the ideology of the Indonesian nation and state. The first two aspects of thought are the material aspect in the form of restitution of children's rights, the second aspect of children who are vulnerable to becoming victims of crime is protected by the divine aspect. Related to the above explanation, the law governing Child Restitution needs to be initiated for the future, in relation to the philosophy above for the renewal of just criminal law, the Theory of Just Child Restitution initiated by the researcher is solely to provide a sense of true justice that better accommodates fundamental child rights so that epistemologically in the way this research works, it is hoped that in the end a legal design (science) will be formed that can solve the problems faced by humans today, especially child victims of sexual violence with an approach to the principle of justice.

The urgency of giving birth to new legal regulations or legislation that specifically regulates restitution of compensation payments imposed on the perpetrator based on a court decision that has permanent legal force for material and immaterial losses suffered by the victim or his heirs. This research is a continuation of the previous scientific paper manuscript so that it gave birth to the author's conception of the Urgency of having unclear or vague normative regulations in new regulations that regulate in detail, clearly, precisely and effectively for child victims of crime, emphasizing children as victims because in reality children are victims who are vulnerable to crime. In children is the mirror image of the future and assets of the State and Nation, especially religion. Simply put, theory comes from a concept that has been tested for truth, while a concept is an idea that does not yet have a proposition so that researchers will develop a basic concept so that it can describe the relationship between phenomena.

The formulation of the problem in this study is the Nature of Restitution for Child Victims of Sexual Violence Based on the Principle of Justice and the Concept of Restitution for Child Victims of Sexual Violence Based on the Principle of Justice. The purpose of this study is to analyze and find the nature of restitution for child victims of sexual violence based on the principle of justice and to analyze and find the concept of restitution for child victims of sexual violence based on the principle of justice.

B. Methodology

This research is a normative legal research. Normative legal research uses normative legal case studies, which are studies of legal issues in a coherent legal system. Normative juridical is law conceptualized as what is written in laws and regulations (law in books) or law conceptualized as rules or norms that are benchmarks for human behavior that are considered appropriate. In this study, the approaches used are the legislative approach, the philosophical approach, the conceptual approach, the case approach and the comparative approach. The sources of legal materials in this study are primary legal materials. The primary legal materials used in this study are materials known in the theory

of child protection, the theory of the purpose of law and the theory of justice and the theory of legal protection. This study also uses secondary legal materials. Secondary legal materials are in the form of journals, legal magazines, judicial variants and magazines and some of the internet which contain basic principles of legal science and classical views originating from the problems studied. In addition, this dissertation research also uses tertiary legal materials in the form of a general Indonesian dictionary and a legal dictionary which are used as a reference framework to provide limitations. In this dissertation research, the collection of legal materials is carried out by reading library materials used to support this research. This research begins by finding reading materials from literature related to the urgency of restitution law reform for child victims of criminal acts based on justice. Analysis of legal materials in this normative research, namely by means of the legal materials that the author has obtained from primary legal materials and secondary legal materials, and tertiary.

C. Result and Discussion

1. The Essence Of Giving Restitution To Child Victims Of Sexual Violence Based On The Principle Of Justice

Sexual violence against children is one of the most damaging crimes, with long-term impacts on victims. To protect children, various countries, including Indonesia, have formulated specific laws that focus on protecting children from sexual violence. There are several regulations governing this in Indonesia. All of the positive legal regulations in point a criminalize all forms of sexual violence against children with severe sanctions for the perpetrators, including the rights of children as victims of criminal acts of sexual violence against children in the form of compensation or restitution.

Related to the nature of legal protection for children, it cannot be separated from the issue of child welfare. In the general explanation of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, it is explained that: "because children, both spiritually and physically, and socially do not yet have the ability to stand alone, it is the obligation of the previous generation to guarantee, maintain and secure the interests of the child. In fulfilling human rights, the State may not discriminate between one person and another, because in essence every person is the same subject in the eyes of the law. This is in accordance with Article 28 D Number 1 of the 1945 Constitution of the Republic of Indonesia which states, "everyone has the right to recognition, guarantee, protection, and certainty of fair law and equal treatment before the law". In principle, fair and equal treatment before the law does not only apply to people who are adults or of sufficient age, but also applies to guarantee the fulfillment of children's rights. In addition, based on the understanding that children as shoots, potential and young generations who continue the ideals of the nation's struggle, have a strategic role and have special characteristics and traits that guarantee the continued existence of the nation and state in the future.

Legal protection of children's rights is very important to be regulated in a law. Psychologically, children are not miniature adults but rather children are subjects who are still vulnerable in the stage of developing capacities, which are closely related to the causality between the fulfillment and protection of the right to life and the right to survival, the right to grow and develop children and the right to protection from violence and discrimination (Teguh 2018). Children's human rights as human rights, explicitly as a constitutional right which in the view of the constitution is not only a form of harmonization and accommodation of human rights views and instruments as a global issue, but the recognition of human rights in the constitution is a requirement for a state of law.

In many countries, dissatisfaction and frustration with the formal justice system or

a renewed interest in preserving and strengthening customary law and traditional justice practices have led to calls for alternative responses to crime and social disorder. Many of these alternatives provide the parties involved, and often the surrounding community, with the opportunity to participate in resolving the conflict and dealing with its consequences. Restorative justice as an effort to find a peaceful resolution of conflict outside the court is still difficult to implement. In Indonesia, there are many customary laws that can be Restorative justice, but their existence is not recognized by the state or is not codified in national law. Customary law can resolve conflicts that arise in society and provide satisfaction to the conflicting parties. The emergence of the idea of Restorative justice as a criticism of the implementation of the criminal justice system with imprisonment which is considered ineffective in resolving social conflict. The reason is that the parties involved in the conflict are not involved in resolving the conflict.

In the juvenile criminal justice process, children's rights must be protected at every level of the juvenile criminal justice process. Protection is given as a form of respect for children's human rights. In its development, the process of protecting children in conflict with the law has undergone fundamental changes, namely strict regulations regarding "restorative justice and diversion." This regulation is intended to avoid and distance children from the judicial process, so as to avoid stigmatization of children in conflict with the law. In Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, Article 1 states that Criminal Acts of Sexual Violence are all acts that fulfill the elements of a criminal act as regulated in this Law and other acts of sexual violence as regulated in the Law as long as they are determined in this Law. While the Victim is a person who experiences physical, mental, economic, and/or social losses resulting from Criminal Acts of Sexual Violence and a child is a person who is not yet 18 (eighteen) years old, including a child who is still in the womb. According to Article 16 of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, restitution is only given for criminal acts of sexual violence that are threatened with imprisonment of 4 (four) years or more. But it is not given if it is less than 4 (four) years. This is truly unfair, because every child victim of a criminal act of sexual violence has the same physical and psychological trauma. It is clear that justice is not seen in this norm for child victims of criminal acts of sexual violence.

Regarding Article 35 of Law Number 12 of 2022, according to researchers, the State's efforts to provide restitution are not clearly regulated/vague norms. There is no clear role for the state to obtain justice. This restitution is given by the perpetrator, but if the perpetrator does not have assets, the state must be responsible for providing restitution to child victims of crime. In the State Budget (APBN) posture, every year there must be a sufficient budget allocation for this case. The budget for victims of crime in Indonesia is allocated through various programs funded by the APBN (State Budget). Restitution must be strengthened through affirmation in the Law or other regulations, because what is happening now is that victims need a fairly long process for the proposal for granting restitution. Child victims of sexual violence crimes participate in the process with investigators and Public Prosecutors (JPU) to strengthen evidence through the prosecutor's plan which indirectly makes child victims face the perpetrator directly through evidence in front of the judge. The author assumes that the special nature of children does not have to be burdened through judicial mechanisms such as general judicial evidence because children are sufficient to testify to themselves. It can be imagined that child victims of sexual violence crimes who are still in a state of physical and psychological trauma must remind themselves of the worst events in their lives if the process is still regulated like this, so that their development stage is difficult to achieve legal goals because they are in a vulnerable position.

2. The Concept Of Giving Restitution To Child Victims Of Sexual Violence Based On The Principle Of Justice

The decision which is the finding of this research which is the legal material studied is a decision which contains a criminal case of child sexual violence where in this case the court is not given to the victim who has experienced sexual violence, only the domain to the perpetrator's actions with the maximum punishment and castration, while in the case of "Vina Cirebon", the perpetrator who was not guilty due to lack of evidence also received a punishment. Based on the case analysis that is the object of study in this study, the researcher principally explains that legal reform is a bridge between the development of society and legal provisions including the interests of children as victims of crimes against perpetrators. The formation of legal rules must be built through the main principle, namely legal certainty. The judge's discretion in legal discovery (*rechtsvindings*) must be based on a very simple reason, namely the openness of the meaning given by the words in the law or other regulations that will be tested through evidence in court. However, due to the unclear meaning contained in the data, both the community itself and the legal facts obtained, so that the theory of legal certainty to realize justice, certainty is needed to realize the principle of equality before the law without discrimination as if ignored without accommodating the interests of the parties, especially for child victims of sexual violence.

In this study, it was found that there are vague norms in the Child Protection Law, especially those related to sexual violence against children. Policies through existing regulations cannot fully accommodate the interests of children receiving restitution according to the objectives of the law which prioritizes justice, benefits and certainty to protect the interests of child victims of sexual violence. Because we know that the law is not a goal, only a tool that has a goal that regulates life peacefully and the goal is a just human being. Fulfillment of the right to restitution for victims of sexual violence is not necessarily the responsibility of LPSK. Given that the right to restitution for victims of sexual violence can be submitted from the investigation stage, investigators, who are the first subsystem in handling cases of sexual violence, have a fundamental role in educating victims about the right to file for restitution and including a request for restitution in the Investigation Report (BAP). Although LPSK has a central role in fulfilling restitution, the role of the public prosecutor as a legal apparatus that carries out the prosecution process cannot be ignored. Considering that in submitting restitution before the case is decided, the LPSK Decree must be submitted together with the Public Prosecutor's Letter of Demand. Judges as the third subsystem have an important role in fulfilling restitution for victims of sexual violence. Judges are the parties who will later decide a case and decide the amount of restitution that the victim deserves based on the evidence presented in court.

In the Child Protection Law, especially in Article 21, it does not clearly and firmly discuss restitution, besides that, it is not only given restitution to every child victim, but also compensation. Whereas in the Law, the responsibility of the State, in this case the government, towards children as victims of criminal acts must be seen, who are the successors of the nation's generation whose quality of life must develop well without psychological disorders if children experience criminal acts that cause prolonged trauma. In addition, the LPSK Law does not regulate the provision of compensation for victims of sexual violence against children, it only regulates compensation for victims of gross human rights and terrorism. As for the philosophical basis for the need to formulate a policy in Compensation Efforts as the basis for Restitution for children of sexual violence based on the principle of justice, namely how the restitution itself can be directly felt and given by the perpetrator or the state as a representative to victims of sexual violence who are certainly always in a vulnerable and neglected position. In enforcing laws and regulations related to the protection of children from sexual violence. The role of law enforcement

officers both in the process of investigating cases within the scope of the criminal justice system is in principle part of enforcing special laws and regulations to protect children as victims of sexual violence. A comprehensive legal umbrella for the elimination of sexual violence will be very important.

The Legal Basis for the need for a formulation policy in Compensation Efforts as the basis for Restitution for children who have been sexually abused based on the principle of justice has been regulated in various laws and regulations. However, the detailed and targeted regulation has not fulfilled the sense of justice and pro-child victims of sexual violence, especially regarding the provision and/or receipt of restitution or the form of compensation paid by the state. Protection of victims of sexual crimes in the implementation of judicial practice so far has not been able to provide full protection for victims, especially psychologically, because at each stage in each subsystem of criminal justice. Based on the provision and rules of restitution given to victims of violent and sexual crimes, it has not fully fulfilled the sense of justice, this is because the criminal justice system is organized to try criminals, not to serve the interests of victims of criminal acts. Victims as parties who suffer and are harmed by violations of criminal law are usually only involved in providing testimony as victim witnesses. As a result, victims often feel dissatisfied with the criminal charges filed by the Public Prosecutor and/or the verdict handed down by the Judge because they are considered not in accordance with the values of justice for the victim. One of the important considerations for victim protection is because of the losses they suffer. Therefore, a very essential form of victim protection is carried out through the restoration of losses suffered by victims due to a crime. This restoration can be in the form of compensation or restitution. The importance of compensation and restitution in order to provide protection for victims has been stated in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in 1985, namely in Articles 8 to 11 concerning restitution, and Articles 12 to 13 concerning compensation. (Wahyuningsih Yulianti, 2021).

D. Conclusion

The essence of providing restitution for child victims of sexual violence is to emphasize the philosophical aspect of the obligation of the perpetrator of the crime and at the same time involve the state's obligation to guarantee the fulfillment of the right to restitution for child victims of sexual violence and must be clearly regulated in the legal aspect so that there is clarity of norms through policies in the form of regulations that mechanically help child victims of sexual violence easily receive restitution and easily apply for restitution. b. The concept of providing restitution for child victims of sexual violence based on the principle of justice is a policy through a restitution mechanism in the criminal law system that aims to ensure that victims of crime receive fair restitution and compensation for the losses they have experienced. This study found that child victims of sexual violence must go through a long process to obtain their rights. The regulations in laws and regulations have not yet accommodated the rights of children as victims. Therefore, a comprehensive legal update and improvement is needed immediately.

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