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Restitution as a Form of Legal Protection for Child Victims of Sexual Violence with Perpetrators of a Biological Father Based on the Principles of Justice

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Abstract. Criminal cases in Indonesia cannot be seen from one side only, namely the fate of the perpetrators themselves. However, there are several things that need to be considered when it comes to victims of crime, this is because the victim suffers material and non-material losses and this is also legal protection for the victim. One of the rights regulated by law is the right to protection against sexual violence. In this research the problem is Can restitution be used as a form of legal protection for child victims of sexual violence by biological fathers based on the principle of justice? Then the method used is a qualitative research, namely a research method that emphasizes the aspect of in-depth understanding of a problem rather than examining the problem in general, which uses in-depth analysis techniques, namely examining problems case by case in this case cases that occurred in the District Court Salatiga. The result is that restitution can be used as a form of legal protection for child victims of sexual violence, including if the perpetrator is the victim's own father. However, it is still necessary to receive criticism and input that there is no specific law that regulates this right to restitution, including if the perpetrator is the biological father of the victim, so this creates various kinds of problems and ambiguity at the implementation level.

Keywords. sexual violence; legal protection; the principle of justice; restitution

Background

Indonesia regulates everything in detail with laws aimed at justice for all Indonesian people. One of the legal requirements is supervision of children[1]. Talking about children, it is not an exaggeration to talk about legal protection for children, because children are one of the next generations of the nation[2]. As the next generation of the nation prepared by the state to become human beings with noble character and noble aspirations, they are worthy, responsible and just.[3]. This is because children are seeds, opportunities and hopes for the nation's next generation, who play a strategic role in securing the future of the nation and state. In order for them to be able to assume responsibility, they must be given the opportunity to grow as much as possible and develop optimally physically, mentally, socially and emotionally. They must protect and enrich their rights. Therefore, all forms of violence against children must be prevented and eradicated[4]

In Article 28 D paragraph (1) of the 1945 Constitution it is explained that relating to the protection of the rights of individual citizens, as well as legal assistance for every citizen, it is unequivocal that every person has the right to recognition, guarantee, protection and legal certainty which means fair and equal treatment before the law. So that it can be said that everyone has the same rights before the law, including the status of suspects, defendants and victims. In addition, it is also explained in Article 34 (1) of the 1945 Constitution which reads: "The state takes care of the poor and neglected children". This provision means that the state administers social rehabilitation, social security, social independence and social protection through the central and regional governments,[5].

Against this background, the explanation of criminal cases in Indonesia cannot be seen from one side only, namely the fate of the perpetrators themselves. However, there are several things that need to be considered when it comes to victims of crime.[6], this is because the victim suffers material and non-material losses and this is also a legal protection for the victim. According to Siswantoro Sunarso[7], The position of the victim in the Criminal Code (KUHP) is currently not optimal, because the Criminal Code (KUHP) does not contain strict provisions that provide direct and concrete legal protection to victims[8]. The Criminal Code also does not formulate the type of compensation (restitution) which in principle greatly benefits the victim and/or the victim's family.

Chapter III of the Child Protection Law Number 23 of 2002 explains the rights of children that must be protected by the state, government, community, family and parents[9]. One of the rights regulated by law is the right to protection against sexual violence. Child abuse or sometimes child maltreatment is a term commonly used to refer to violence against children[10]. Sexual violence against children can be in the form of pre-sexual contact between children and adults (through words, touching, visual images, exhibitionism) or direct sexual contact between children and adults (incest, rape, sexual abuse).[3].

Criminal acts of sexual violence have very complex consequences, child victims of sexual violence experience both physical and material losses, one of which has an impact on the psyche of the victim and endangers the psychosocial condition and creates constant fear of events that are considered difficult to be able to carry out activities and socialize as before[11].

In Law Number 31 of 2014 concerning amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, Article 7A explains that victims of criminal acts have the right to obtain restitution. Restitution can be interpreted as a payment of compensation that is charged to the perpetrator based on a court decision that has permanent legal force for material and/or immaterial losses suffered by the victim or his heirs[12]

The Law on the Protection of Witnesses and Victims was followed up with the ratification of Government Regulation of the Republic of Indonesia Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution and Assistance to Witnesses and Victims. One of the supporting regulations that strengthen witness protection and the realization of victims' rights. In addition, the Supreme Court issued Supreme Court Regulation Number 1 of 2022 concerning Procedures for Submitting Applications and Providing Compensation and Compensation to Victims of Crime.

One of the victims of crime that deserves protection is the victim of a crime against sexual violence[13]. Cases of sexual violence have become a public concern, this can be seen by the wider and more diverse acts of violence in Indonesia[14]. According to Fahrul Haqiq's document from the Witness and Victim Protection Agency (LPSK), up to 533 victims of sexual violence against children and women have been protected. The number of requests for

protection has increased where previously in 2019 there were 507 protected and in 2018 there were 401 protected.[15].

Sexual violence can be committed by anyone, anytime, anywhere, anytime[16]. Sexual violence often occurs in our environment, such as cases of incest (blood marriage), sexual violence in educational institutions and in the workplace. Azmiati Zuliah Marlina believes that the provisions of the Criminal Code do not fully protect victims of sexual violence. The Criminal Code (KUHP) only focuses on punishing perpetrators, does not consider the best legal protection for victims of sexual violence, and also does not cover current forms of sexual violence.[8]. The position of the victim in criminal law does not seem optimal compared to the position of the perpetrator. Even though the status of victims as legal subjects is equal before the law (equality before the law).[17].

Recently, many court decisions have been in favor of the victim. Based on the author's investigation of the Supreme Court Decision Index, there were 18 (eight) decisions in child protection cases in 2021 that imposed restitutional penalties on perpetrators. In addition to punishing the perpetrator, the decision also included a penalty, after which the perpetrator had to return some money to the victim. However, many obstacles were found in the implementation of restitution, because many perpetrators were unable to provide restitution to victims and chose to serve prison sentences rather than make restitution. Often, law enforcement will try to contact the accused's family, who will initially agree to pay damages, but in the end the family will not even try to pay damages. Besides that, There are various ways for perpetrators of crimes to refuse to pay compensation or compensation to their victims. They prefer to replace the obligation to pay compensation with imprisonment (Harsi Primitia, 2022).

Although there are several court decisions that order restitution, there are also court decisions that do not order restitution or compensation for the perpetrators. For example, the Salatiga District Court investigates and resolves child protection cases. Of the 558 cases handled by the Salatiga District Court between 2019 and 2022, the Salatiga District Court handled 18 child protection cases. Of the 18 cases, 4 cases are still being processed in court, the rest have permanent legal force. And from these cases, only one was fined for paying compensation on behalf of the defendant Warsito and paying compensation in the amount of Rp. 111,200,000.00 (one hundred eleven million two hundred thousand rupiah). In fact, among the cases handled, there are other cases that deserve recovery costs, namely family crime cases. Can restitution be used as a form of legal protection for child victims of sexual violence by perpetrators of biological fathers based on the principle of justice?

Research methods

This type of research is qualitative research, which is a research method that emphasizes aspects of in-depth understanding of a problem rather than examining problems in general, using in-depth analysis techniques, namely examining problems case by case in this case cases that occur in the Salatiga District Court which will be discussed in this study, because the qualitative methodology believes that the nature of a problem will be different from the nature of other problems.

Discussion and Results

According to the Child Protection Law Number 35 of 2014, there are several institutions in Indonesia that are authorized to provide child protection. These agencies are authorized to support crime victims in the form of legal, psychological and rehabilitation assistance. These institutions are child protection commissions, child protection facilities and

supporting institutions, namely witness and victim protection agencies. Children's rights guaranteed in the Child Protection Act are part of human rights that must be protected and fulfilled by parents, family, community, state and government.[18]. Therefore the purpose of this protection is to guarantee and protect children and their rights so that children can continue to live, grow and develop and so that children can participate optimally in accordance with human dignity and in a way that children receive protection from violence and discrimination (Article 1 paragraph (2) Law Number 35 of 2014).

The second part of the Child Protection Act also regulates child protection guaranteed by the state, which contains the duties and responsibilities of the state and government for the protection and fulfillment of children's rights together. In addition, Articles 21-24 stipulate how children's rights are respected without discrimination of any kind, making policies related to children, making efforts for child-friendly cities, supporting facilities and infrastructure and ensuring the availability of human resources in the implementation of child protection. also ensure that children exercise their right to expression according to the child's age and level of intelligence. Then in Article 25 it also regulates the role of the community related to carrying out protection for children which involves community organizations, academics, and child observers.

Providing legal protection guarantees for children, must still pay attention to the principles and objectives of child protection[19]. A child victim of a crime has the right to receive compensation or restitution for his or her suffering, depending on the capacity of the perpetrator, the involvement and role of the perpetrator. The guarantees of the Child Protection Act are in essence in accordance with the needs of child protection and provide special protection to children who are victims of sexual violence[20].

The government issued new regulations to protect children who are victims of crime, especially for restitution. Government Regulation Number 43 of 2017 concerning the Implementation of Restitution for Child Victims of Crime contains 23 Articles. According to this Government Regulation, Restitution is compensation payments imposed on perpetrators based on a court decision that is permanent or causes material and/or non-material losses suffered by victims or their heirs. This is also regulated in Article 71D of the Child Protection Act, whereby victims have the right to apply to court in the form of the right to restitution, which is the obligation of perpetrators of sexual crimes against children. Restitution is a legal protection for children who are victims of crime. Victims of crime and their families must receive fair and reasonable compensation from the perpetrators. Compensation includes the return of property or compensation for damages suffered by the victim, compensation for expenses incurred, such as medical expenses and costs of providing services as well as rights of recovery.

Government Regulation Number 43 of 2017 is a form of government concern for victims. This regulation is useful for explaining the mechanisms and procedures for granting and requesting restitution rights for child victims of criminal acts. This regulation regarding restitution places more emphasis on compensation rules for the recovery process for children who are victims of a crime, especially sexual violence.[21]. Prior to this restitution, the government did not pay much attention to the process of realizing the right to restitution in the form of compensation, which was imposed on the perpetrator against the victim as a form of responsibility because the victim's child had suffered. This regulation can also make it easier for victims of underage crimes to file claims for restitution in court if this is the responsibility of the perpetrator. This regulation is also specifically a form of victim protection as well as the formation of law enforcement officers to think more about protecting children after a crime.

The government and law enforcement agencies often choose to ignore efforts to realize children's rights and protect them psychologically and spiritually. In this government regulation,

According to this regulation, children who can apply for their rights of restitution based on Article 2 point 2 are; a) Children who are in conflict with the law; b) Children who are economically and or sexually exploited; c) Children who are victims of pornography; d) Child victims of abduction, sale, and or trading; e) Child victims of physical and/or psychological violence; f) Child victims of sexual crimes.

From a legal perspective, punishment for perpetrators of sexual violence is sufficiently regulated in laws and regulations, homework is to regulate victims of sexual violence, including how justice for victims can be strengthened. The problem of victim protection is always interesting to study because the problem of victim protection is not only related to protection but also the obstacles faced.

The need for adequate legal protection for victims of crime is very important, bearing in mind that the consequences of crime can cause loss and suffering to the physical, mental and human dignity of a person.[22]. With the help of legal provisions that guarantee the protection of victims' rights, it is important to create legal certainty and justice. Including crimes of sexual violence, it is necessary to provide compensation and assistance to restore physical and mental conditions.

Although normatively legal protection for victims of criminal acts is considered important, it cannot be separated from problems at the implementation level in this sector, there are still many obstacles and obstacles. Many incidents in people's lives show that justice and legal certainty are not taken seriously. Covers legal and human rights issues in the implementation of criminal law relating to legal protection for victims of crime. Victims of crime do not get prejudice and a sense of justice, even this is not balanced with the protection provided by law to the perpetrators. As a result, when the perpetrators of crimes are sentenced in criminal courts, the condition of the victims of crime seems to be neglected. Whereas,

One form of legal protection for child victims of sexual violence is to obtain restitution[23]. Restitution or compensation is a fee paid by someone because of a loss suffered by another person economically. In the development of criminal law, restitution is seen as a punishment for criminals. Restitution provides a large space for reaching an agreement between the victim and the perpetrator, namely the payment of compensation by the perpetrator to the victim or the victim's family or their heirs[24]. The form of victim compensation must be as complete as possible and cover all aspects arising from the crime, including aspects of justice. Restitution can restore the victim's freedom, legal rights, social status and family life. In practice, in almost all countries, the concept of restitution is provided and developed for every crime victim. Therefore, victims and their families must be given fair and adequate restitution by those responsible. Compensation in question is payment for damage or loss suffered by the victim, compensation for costs incurred as a result of a crime, and restoration of the rights of the victim.

The state gives freedom to victims of crimes to obtain their rights and compensation by issuing restitution orders, which are standardized in several laws and state regulations. Although the right to restitution has not been specifically regulated in one law, various legal regulations have regulated this right to restitution including the Criminal Procedure Code, Law Number 26 of 2000 concerning Human Rights Courts, Law Number 15 of 2003 concerning Terrorist Crimes, Law Number 13 of 2006 concerning Protection of Witnesses and Victims which was later replaced by Law Number 31 of 2014 concerning amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, Law Number 21 of 2007

concerning the Elimination of the Crime of Trafficking in Persons , Law Number 35 of 2014 concerning Revision of the Child Protection Act, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. In addition, it is also regulated in Government Regulations including PP Number 3 of 2002 Restitution and Compensation for Victims of Human Rights Violations, PP Number 44 of 2008 and PP Number 7 of 2018 which are restitution and compensation regulations as an embodiment of the Witness and Victim Protection Law, PP Number 43 of 2017 for restitution for children as victims.

Referring to the various regulations above regarding the right to restitution for victims of criminal acts, it not only regulates legal guarantees for obtaining restitution rights but also regulates the mechanism for granting restitution rights to victims. Thus it is hoped that the victims can obtain their rights properly.

Conclusion

From the explanation above it can be concluded that Restitution can be used as a form of legal protection for child victims of sexual violence, including if the perpetrator is the victim's own father. However, criticism and input must still be received that there is no specific law governing this right to restitution, including if the perpetrator is the victim's biological father, so this creates various kinds of problems and ambiguity at the implementation level, because among law enforcers including practitioners there are various kinds of interpretation. Some law enforcers do not see restitution as something that is important in a crime, or maybe it is considered important but because the rules are not clear, the prosecutor as the public prosecutor very rarely wants to include restitution in his charges.

Suggestion

1. The suggestions or recommendations from the research described above are the need for special rules regarding restitution, then the need for a comprehensive interpretation regarding the meaning of restitution, which means compensation given to victims or their families by criminal offenders or third parties. Because the third party creates multiple interpretations among law enforcers, especially if the third party is the father of the victim who is also the perpetrator of sexual violence, then it needs to be studied comprehensively if the perpetrator is the father of the victim.

2. It is necessary to conduct a comprehensive study involving stakeholders, in this case the government and/or the Witness and Victim Protection Agency (LPSK) and related parties to discuss this restitution.

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