

SUBMITTING APPLICATION FOR RESTITUTION BY VICTIMS OF CHILDREN SEXUAL CRIME IN THE CRIMINAL JUSTICE SYSTEM

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ABSTRACT

Sexual crimes against children constitute criminal acts and violations of human rights which threaten the growth and development of children as buds of the nation's next generation. Therefore, optimal protection is needed by various parties collectively in order to guarantee and restore their rights at various stages and paths, one of which is through the criminal justice system. This study aims to describe the submission of requests for restitution by victims of child sexual offenses in the criminal justice system. This study uses normative legal methods with data collection techniques in the form of literature studies related to legislation concerning child protection and restitution. The results of the study indicate that submitting a request for restitution Children who are victims of sexual crimes are referred to the Republic of Indonesia Government Regulation Number 43 of 2017 concerning Implementation of Restitution for Children who are Victims of Criminal Acts. The application for restitution has two contents, namely substantive content and administrative content. The charge substantial that victims' rights are the responsibility of the perpetrators of material and immaterial and the administrative charge contains the identity of the applicant; identity of the perpetrator; a description of the events experienced; losses suffered; and the amount or amount of Restitution. Submission by the victim and / or institution, in writing in Indonesian language on stamped paper to the court before and / or after the court's decision, through the investigation or prosecution stage and / or through the LPSK.

Keywords: children, restitution, sexual, criminal acts

INTRODUCTION

Children as part of the younger generation is one of the potential human resources as the successors to the ideals of the nation's struggle in the future, requiring special guidance starting from the smallest aspects of life, namely the family, community and country so that the child's physical and mental growth and development and social can run in a balanced way.¹⁵⁹

Imbalance of children's growth and development from physical, mental and social aspects causes children to be easily influenced by values in a society that continues to develop in line with the current globalization in the field of communication and information, advances in science and technology, bringing about uncontrolled social change. Continued impact on consumerism and asocial patterns that can increasingly plunge children into

¹⁵⁹ R. Soeroso, Introduction to Legal Studies, (Jakarta: Sinar Grafika, 2009), page. 97

perpetrators and victims of criminal acts such as narcotics, extortion, theft, abuse, rape, molestation and order violations.¹⁶⁰

Ha perceive mentioned above, the required protection against children as efforts to protect freedoms child rights (*fundamental rights and freedom of children*), achieving the welfare of children,¹⁶¹ which is legally regulated in Law Number 35 of 2014 concerning Child Protection. The regulation requires collective collaboration between parents, family, community, state, government, and law enforcers to guarantee and fulfill children's rights.¹⁶² part of respect for human nature.¹⁶³

One of the problems of Human Rights (HAM) in Indonesia is the crime of sexual crimes against children. Children are very vulnerable to these crimes because they are always positioned as weak or powerless and have a high dependency with the adults around them. This makes the child helpless when threatened to not tell what he experienced. Nearly every case revealed, the culprit was someone close to the victim,¹⁶⁴ and the traumatic effects experienced are profound and difficult to cure.¹⁶⁵ The existence of such cases is also part of the weakness of law enforcement.¹⁶⁶

Law enforcement through the criminal justice system develops remedial efforts for victims of human rights violations (sexual crimes) through several methods that are broadly divided into two, namely: *monetary remedies* and *non-monetary remedies*. *Monetary remedies* are remedies that utilize material or physical value in the form of money to repair reparations resulting from violations. Whereas *Non-Monetary Remedies* are recovery efforts for victims who are more based on repairing losses incurred by certain measures that cannot

¹⁶⁰ Eric lambue Tampubolon. 2017. Effectiveness of Child Prisoners Development in the Special Child Development Institution (LPKA) Pekanbaru. VISIP Number, 4 (1) : 1

¹⁶¹ Irwan Safaruddin Harahap, 2016. Legal Protection of Children Victims of Sexual Violence in the Perspective of Progressive Law. Journal of Media Law, 23 (1) : 41

¹⁶² Law Number 35 of 2014 concerning Child Protection, Article 1 Paragraph (12)

¹⁶³ Agus Takariawan and Sherly Ayuna Putri. 2018. Legal Protection for Victims of *Human Trafficking* in the Perspective of Human Rights , Journal of Law IUS QUIA IUSTUM , 25 (2): 241

¹⁶⁴ Ivo Noviana. 2015. Sexual Violence Against Children: Impact and Handling (*Child Sexual Abuse: Impact And Hendling*. Sosio Informa Journal , 1 (1) : 14-15

¹⁶⁵ Siti Wisdom. 2017. Anticipating Sexual Crimes Against Children Through Learning "I Am a Child Dares to Protect Myself": Study at the al-Hikmah Grobogan Foundation . SAWWA Journal, 12 (2) : 189

¹⁶⁶ Sri Endah Wahyuningsih. 2016. Legal Protection of Children as Victims of Criminal Acts in the Current Positive Criminal Law. Journal of Legal Renewal , 3 (2): 172-173

be matched with certain material values (such as: apologies from perpetrators, guarantees of nonrepetition, rehabilitation, *truth telling*, punishment for perpetrators, or a statement by the judge's decision (*declaratory judgments*)).¹⁶⁷

Development efforts in the system of criminal justice of children is important because children in conflict with the law tend to be harmed,¹⁶⁸ especially children who become tire cast. In line with this the perpetrators and victims would not necessarily meet or restore the relationship between victim and offender, so the concept of *restorative justice* offers a recovery process that involves the direct perpetrators and victims in the settlement of the problem.¹⁶⁹

So far, the existence of victims (*victims*) in a crime has not received much attention. Criminal law is more likely to give greater attention to the perpetrators of criminal acts than the victims. The victim is only positioned as a reporter and witness of a crime. Though the victim is an object that suffered as a result of a criminal act well, physical, mental, and / or economic loss.¹⁷⁰ After feeling experience as a victim of a criminal offense, he must experience further victimization due to systematic rejection by the criminal justice system. The rejection occurred because of the view that the position of the victim had been taken over by the state, so that the further involvement of victims in the judicial process to fight for their rights was judged to burden the existing system. This condition affects the effectiveness and efficiency of law enforcement officers.¹⁷¹

Children who are victims of a crime, hereinafter referred to as Victim Children, are children who are not yet 18 (eighteen) years old,¹⁷² need to get legal protection is realized through various forms, through the provision

¹⁶⁷ Abdul Haris Samendawai. 2009. The Rights of Victims of Serious Human Rights Violations (Overview of International and National Law). *Journal of Law*, 16 (2): 258.

¹⁶⁸ Jefferson B. Pangemanan. 2015. Child Criminal Liability in the Indonesian Criminal Justice System, *Journal of Lex et Societatis*, 3 (1): 104.

¹⁶⁹ Josephin Mareta. 2018. Application of *Restorative Justice* Through Fulfillment of Restitution on Victims of Childhood Crimes. *Journal of Indonesian Legislation*, 15 (4): 310

¹⁷⁰ Mahrus Ali and Ari Wibowo. 2018. Compensation and Restitution Oriented to Criminal Victims. *Yuridika Journal*, 33 (2): 261

¹⁷¹ Fauzy Marasabessy. 2015. Restitution for Criminal Victims: A New Mechanism Offering. *Journal of Law and Development* 45th Year, 1 (1) : 54

¹⁷² Law Number 11 Year 2012 concerning the Criminal Justice System for Children, Article 1 A yat (4)

of medical care, legal aid and compensation and restitution to victims.¹⁷³ Restitution is the return of damages by the offender as one of the victims' rights. The compensation includes the return of stolen property, payment of a sum of money for loss, damage, and injuries and psychological trauma suffered by the victim, payment for suffering and assistance to the victim.¹⁷⁴

Based on the description above, the purpose of this study is related to the submission of requests for restitution by victims of child sexual crimes in the criminal justice system.

MATERIALS AND METHODS

This study uses normative legal methods used in an attempt to analyze materials with reference to the norm of law - norm a law as outlined in the legislation Rule. Data collection techniques in the form of literature study through identification procedures and inventory of legal materials include:

1. Primary Legal Materials, namely the legal materials that are authoritative legal form of legislation,¹⁷⁵ related to child protection and restitution.
2. Secondary Legal Materials, namely the legal materials that explain the primary legal materials,¹⁷⁶ in the form of expert opinion derived from various literature from books and be rbagai journals associated with this study.
3. Tertiary Legal Materials, are legal materials that provide explanations and instructions for primary and secondary legal materials.¹⁷⁷ Obtained from legal dictionaries, Indonesian dictionaries, English dictionaries, and Encyclopedias.

Legal materials obtained, inventoried and identified were then analyzed qualitatively.

¹⁷³ Didik M Arif Mansur, Elisatris Gultom, Urgency of Protection of Criminal Victims Between Norms and Reality , (Jakarta: Rajawali Press, 2006), page. 31.

¹⁷⁴ Romli Atmasasmita, Scientific Writing about Issues Against Victims of Crime Compensation (Jakarta: National Legal Development Agency, the Department of Justice, 1992), page . 4

¹⁷⁵ Peter Mahmud Marzuki, Legal Research Methods (Jakarta,: Kencana, 2005), page. 141

¹⁷⁶ Soerjono Soekanto, Introduction to Legal Research (Jakarta: UI-Press, 2007), page. 52

¹⁷⁷ Ibid, p. 52

RESULTS AND DISCUSSION

Legal protection for child as victims of sexual crimes, one of them is the right to restitution as a form of distribution of justice for the victims held as fallow equality before the law. Guaranteed legal protection for victims' rights is very important considering that the result of criminal acts of sexual crimes against children has caused loss and suffering both material and immaterial in the form of physical and psychological losses and suffering. The guarantee legal certainty necessary get through regulations – regulations.¹⁷⁸

Laws and regulations govern the procedure for granting restitution namely Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning Protection of Witnesses and Victims. Article 7A and 7B which states that : victims of criminal acts are entitled to restitution in the form of ¹⁷⁹ : compensation for loss of wealth or income; G anti loss incurred due to suffering directly related as a result of a criminal offense; and / or reimbursement of medical and / or psychological care costs.¹⁸⁰ Assignment through Decree of potential protective witnesses and victims (Agency) and the submission of restitution can be made before or after the court decision that has obtained permanent legal force through the Agency.¹⁸¹

Regarding the application for Restitution submitted before a court decision which has obtained permanent legal force, LPSK can submit Restitution to the public prosecutor to be included in his claim. In the event that a request for Restitution is submitted after a court ruling that has obtained permanent legal force, LPSK may submit a Restitution to the court to obtain a ruling.¹⁸² In the case of a victim of a death crime, Restitution is given to the Victim's Family who are the Victim's heirs.

Further provisions regarding the procedure for requesting and granting Compensation and Restitution as referred to in Article 7 A and Article 7B are regulated by Government

¹⁷⁸ Alvianto RV Ransun. 2012. Mechanisms for granting compensation and restitution to victims of crime. *Lex Crimen Journal* , 1 (1) : 69-7 1

¹⁷⁹ Law No. 31 of 2014 concerning Protection of Witnesses and Victims, Article 7A Paragraph (1),

¹⁸⁰ Ibid, Article 7A Paragraph (2)

¹⁸¹ Ibid, Article 7A Paragraph (3)

¹⁸² Article 7A Paragraphs (4), (5) and (6)

Regulation.¹⁸³ Meanwhile, the implementation of the provision of compensation and restitution is still before October 16, 2017, it still refers to Government Regulation Number 44 of 2008 concerning Provision of Compensation, Restitution and Assistance to Witnesses and Victims as long as it does not conflict with the provisions in Law Number 31 Year 2014 Amendment to Law Number 13 of 2006 concerning Protection of Witnesses and Victims.

Government Regulations in accordance with Article 7A and Article 7B and are in effect now since they were promulgated on October 16, 2017, namely Government Regulation of the Republic of Indonesia Number 43 of 2017 concerning Implementation of Restitution for Children who are Victims of Crime. This regulation considers that the implementation of Article 71D paragraph (2) of Law Number 35 Year 2014 concerning Amendment to Law Number 23 Year 2002 regarding Child Protection, bearing in mind Article 5 paragraph (2) of the Constitution of the Republic of Indonesia 1945 .

Procedures Pengajuan Request Restitution diatur dalam Chapter II , Article 2 hingga Article 18 . Specifically for child victims of the crime of sexual crime listed in Article 2 Paragraph (1) Point f.¹⁸⁴ The regulation contains 2 (two) aspects namely Substantive aspects and administrative aspects. The explanation is as follows :

1. Substantive aspects

Substantively, restitution is the right of the child who is a victim of a sexual crime and is an obligation for the perpetrator of the act. Children who are victims of sexual crimes have the right to receive :¹⁸⁵

- a. compensation for a loss of wealth;
- b. compensation for suffering as a result of a crime; and / or
- c. reimbursement of medical and / or psychological care costs.

The petition for Restitution is submitted by the victim consisting of :¹⁸⁶

¹⁸³ Ibid, Article 7B

¹⁸⁴ Government Regulation of the Republic of Indonesia Number 43 Year 2017 concerning Implementation of Restitution for Children who are Victims of Crime, Article 2 Paragraph (1) Point f

¹⁸⁵ Ibid , Article 3

¹⁸⁶ Ibid, Article 4, Paragraphs (1) and (2)

- a. The Parents or Guardian Children who become victims of crime;
- b. Children's heirs who are victims of criminal offenses; and
- c. a person who is authorized by a parent , guardian, or heir of a child who is a victim of a criminal offense with a special power of attorney.

If the offender is a parent or guardian of the child or the heir of the child, an application for restitution can be submitted by the institution.¹⁸⁷ Submission of restitution requests can be made before or after a court decision. **Before the Court's Decision**, the Request for Restitution is made in writing in Indonesian Batrasa on a stamped paper to the court. before the court's decision , filed through ap :¹⁸⁸

- a. investigation; or
- b. Accusing.
- c. In addition to going through the investigation or prosecution stage for requests for Restitution, it can be submitted through the LPSK in accordance with statutory provisions.

Furthermore, if **Have got a Court decision** that tel ah permanent legal power, then the application is filed by the Restitution Agency in accordance with the provisions of the legislation.¹⁸⁹

2. Aspects administratif

Terms administratif request for restitution filed by the victim, must at least include some things, seb a gai beriku t :¹⁹⁰

- a. applicant's identity;
- b. identity of the perpetrator;
- c. a description of the criminal event that was experienced;
- d. a description of the losses suffered; and the amount or amount of Restitution.

Requests for Restitution as referred to in points a, b, c, d, and e must be attached _.¹⁹¹

¹⁸⁷ Ibid , Article 4 Paragraph (3)

¹⁸⁸ Ibid , Article 5 Paragraphs (1) , (2) and (3)

¹⁸⁹ Ibid , Article 6

¹⁹⁰ Ibid , Article 7 Paragraph (1)

- a. photocopy of the identity of the child who is a criminal victim legalized by the official in an authorized act;
- b. valid proof of loss : 1) . loss of wealth; 2). compensation for suffering as a result of a crime; and / or 3). reimbursement of medical and / or psychological care costs.
- c. photocopy of death certificate that has been legalized by an authorized official if the child who is a victim of a crime dies; and proof of special power of attorney if the application is submitted by the power of the Parent , Guardian, or heir of the Child who is a victim of a criminal offense.

The stages of the application for restitution to the court that were submitted before the court's decision, as follows:

a. Investigation Stage

If there are more than 1 (one) child victims of a speech act , the application for a Reimbursement can be combined in 1 (one) request for Restitution.¹⁹² Application for Restitution to the court prior to a court decision submitted through the investigation stage , the investigator notifies the victim regarding the right of the child who is a victim of a criminal offense to obtain Restitution and the method of submission.¹⁹³ The victim in submitting a request for Restitution no later than 3 (three) days after the notification of the rights of the child who became a criminal victim by the investigator.¹⁹⁴

Investigators will examine the completeness of the application for Restitution within 7 (seven) days from the date the filing of the application for Restitution for Children who are victims of a crime is received. In the event that there is a lack of application for a Restitution submission, the investigator notifies the applicant to complete within 3 (three) days from the date of receipt of the notification must complete the request. If the applicant does not complete the application within the timeframe as the applicant is deemed not to have applied for a refund.¹⁹⁵

¹⁹¹ Ibid , Article 7 Paragraph (2)

¹⁹² Ibid , Article 8

¹⁹³ Ibid , Article 9

¹⁹⁴ Ibid , Article 10

¹⁹⁵ Ibid , Article 11, Paragraphs (1), (2), (3) and (4)

Following up on this matter, the Investigator can request an assessment of the amount of Restitution request submitted by the applicant to the LPSK . Submitting an assessment of the amount of Restitution request submitted by the investigator to LPSK is made after the application for Restitution submitted by the applicant is declared complete. LPSK submits the results of the assessment of the Restitution request amount based on documents submitted by the investigator no later than 7 (seven) days after the application for Restitution assessment is received.¹⁹⁶

Application for Restitution that has been declared complete , the investigator sends the application for Restitution attached to the case file to the public prosecutor. In line with this, the investigator requested an evaluation of the amount of the request for Restitution to the LPSK, and attached the results of the evaluation of the amount of the request for Restitution to the case file to the public prosecutor.¹⁹⁷

b. Prosecution Stage

In this stage, the public prosecutor informed the victim about the right of the child who was a victim of a crime to get restitution and the procedure for his filing before and / or in the trial process. In the case that the offender is a child, the public prosecutor notifies the right of the child who is a victim of a criminal offense to get Restitution during the diversion process.¹⁹⁸ The victim submits a request for Restitution at this stage of prosecution no later than 3 (three) days after the notification of the rights of the child who is a victim of a criminal offense by the public prosecutor.¹⁹⁹

The public prosecutor will examine the completeness of the application for Restitution within a maximum period of 3 (three) days from the date the application for Restitution for a child who is a victim of a crime has been received. If there is a lack of application for restitution, the public prosecutor will notify the applicant to complete the application. The applicant completes the application within a maximum of 3 (three) days

¹⁹⁶ Ibid , Article 12

¹⁹⁷ Ibid , Article 13

¹⁹⁸ Ibid , Article 14

¹⁹⁹ Ibid , Article 15

from the date of receipt of the notification must complete the application. If the applicant does not complete the application within the applicant deemed not to apply for Restitution.²⁰⁰

The public prosecutor can request an assessment of the amount of the request for Restitution submitted by the applicant to the LPSK. Submitting an assessment of the amount of Restitution applications submitted by the public prosecutor to LPSK as carried out after the application for Restitution submitted by the applicant is declared complete. Furthermore LPSK will submit the results of the assessment of the amount of Restitution petition based on documents submitted by the public prosecutor no later than 7 (seven) days after the request for Restitution assessment is received.²⁰¹ The public prosecutor in his claim stated the request for restitution in accordance with the facts of the trial which was supported by evidence.²⁰²

Government Regulation of the Republic of Indonesia Number 43 Year 2017 concerning Implementation of Restitution for Children who Become Victims of Crimes regulates the procedure for filing and granting Restitution to Children who are victims of criminal acts, with the hope that it will clarify the requirements for victims to submit applications for Restitution carried out since the case is at the investigation and prosecution stage. In addition, clarifying investigators and public prosecutors to help children who become victims of criminal acts and victims to obtain the right to obtain restitution.

CONCLUSION

The conclusion of this study is that filing petition for restitution for children who are victims of sexual crimes in the criminal justice system is regulated in Government Regulation of the Republic of Indonesia Number 43 of 2017 concerning Implementation of Restitution for Children who are Victims of Criminal Acts. Submission of an application to this regulation contains two things, namely the sub-antif content and the administrative content

²⁰⁰ Ibid , Article 16

²⁰¹ Ibid , Article 17

²⁰² Ibid , Article 18

submitted by the victim or CSW, before and / or after a court decision, through the stage of investigation or prosecution.

REFERENCES

- Ali, Mahrus and Wibowo, Ari. 2018. Compensation and Restitution Oriented to Criminal Victims. *Yuridika Journal*, 33 (2): 260-289.
- Atmasasmita, Romli. 1992. Writing Scientific Papers on Compensation Problems Against Criminal Victims. National Legal Development Agency. Department of Justice. Jakarta.
- Harahap, Irwan. Safaruddin. 2016. Legal Protection of Children Victims of Sexual Violence in the Perspective of Progressive Law. *Journal of Media Law*, 23 (1): 37-47.
- Law of the Republic of Indonesia Number 35 of 2014 concerning Child Protection.
- Law of the Republic of Indonesia Number 31 of 2014 concerning Protection of Witnesses and Victims.
- Law of the Republic of Indonesia Number 11 Year 2012 concerning the Criminal Justice System for Children.
- Mansur, Didik., M. Arif., Gultom, Elisatris. 2006. Urgency of Protection of Criminal Victims Between Norms and Reality. Rajawali Press. Jakarta.
- Marasabessy, Fauzy. 2015. Restitution for Criminal Victims: A New Mechanism Offering. *Journal of Law and Development 45th Year*, 1 (1): 54-75.
- Mareta, Josefhin. 2018. P Application of *Restorative Justice* Through the fulfillment of the Restitution In Child Victims of Crime. *Indonesian Legislation Journal*, 15 (4): 309-319.
- Marzuki, Peter. Mahmud 2005. Legal Research Methods. Kencana. Jakarta.
- Noviana, Ivo. 2015. Sexual Violence Against Children: Impact and Handling (Child Sexual Abuse: Impact And Hendling). *Sosio Informa Journal*, 1 (1): 13-28.
- Pangemanan, Jefferson B. 2015. Child Criminal Liability in the Indonesian Criminal Justice System. *Journal of Lex et Societatis*, 3 (1): 101-108.
- Republic of Indonesia Government Regulation Number 43 Year 2017 concerning Implementation of Restitution for Children who are Victims of Criminal Acts.
- Ransun, Alvianto, RV 2012. Mechanisms for the Provision of Compensation and Restitution for Criminal Victims. *Lex Crimen Journal*, 1 (1) : 60-72.
- Samendawai, Abdul. Haris 2009. The Rights of Victims of Serious Human Rights Violations (Overview of International and National Law). *Journal of Law*, 16 (2): 253-267.
- Soekanto, Soerjono. 2007. Introduction to Legal Research. UI-Press. Jakarta.
- Soeroso, R. 2009. Introduction to Legal Studies, Sinar Grafika. Jakarta.
- Takariawan, Agus and Putri, Sherly. Ayuna 2018. Legal Protection of Victims of *Human Trafficking* in the Perspective of Human Rights. *IUS QUIA IUSTUM Law Journal*, 25 (2): 237-255.
- Tampubolon, Eric. Lambue 2017. Effectiveness of Child Prisoners Development in the Special Child Development Institution (LPKA) Pekanbaru. *Jom VISIP*, 4 (1): 1-14.
- Wahyuningsih, Sri. Endah 2016. Legal Protection of Children as Victims of Criminal Acts in the Current Positive Criminal Law. *Journal of Legal Renewal*, 3 (2) : 172-180.

Wisdom, Siti. 2017. Anticipating Sexual Crimes Against Children Through Learning "I Am a Child Dares to Protect Myself": Study at the al-Hikmah Foundation Grobogan SAWWA Journal, 12 (2): 187-206