

Restitution as a Form of Protection against the Rights of the Child Victims

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Abstract.

This study aims to determine and analyze how the mechanism for implementing restitution for child victims of crime. This research uses normative juridical writing method. The results of this study are that in the Government Regulation of the Republic of Indonesia Number 43 of 2017 concerning the Implementation of Restitution for Children Who Become Victims of Crime, it still has shortcomings, especially regarding substitute punishment if the decision to grant restitution is not implemented, it is not regulated in this government regulation, so hope that This government regulation will serve as a legal umbrella for children who are victims of criminal acts by adding in these government regulations additional penalties, in addition to corporal punishment and fines as the main crime, so that legal certainty for the implementation of restitution for children who become victims of these crimes can be implemented. .

Keywords: Right of Restitution, Legal Protection, Child victims of crime

1. Introduction

The function of criminal law in the criminal justice system is to provide protection for the rights and interests of individuals, both perpetrators of criminal acts and victims of criminal acts, the rights and interests of the community including witnesses and the rights and interests of the state represented by the Government.¹

In relation to the examination of a criminal act, the victim is often only positioned as a witness, as a reporter in the investigation process, and as a source of information, or as one of the keys to solving cases.²

Guarantees of legal protection for children have been contained in the Convention on the Rights of the Child (convention on the rights of the child), as has been ratified through Presidential Decree Number 36 of 1990 concerning the ratification of the Convention on the Rights of the Child which was then absorbed into national law, contained in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (hereinafter referred to as the SPPA Law) and Law Number 35 of 2014 amends to Law Number 23 of 2002 concerning Child Protection (hereinafter referred to as the Child Protection Law).

One form of protection for victims of crime as an effort to fulfill the rights of victims is restitution. Restitution is compensation given to the victim by the perpetrator. Restitution is in accordance with the Principle of Restoration in its Original

¹Muladi, 1995, *Kapita Selekta System Peradilan Pidana*, Penerbit Undip, Semarang, p. 129

² Kabib Nabawi, Aprillani Arsyad, "Meningkatkan Pemahaman Masyarakat terhadap Undang-Undang No. 31 Tahun 2014 tentang Perlindungan Saksi dan Korban di Desa Aro Kecamatan Muaro Bulian Kabupaten Batanghari", *Jurnal Pengabdian pada Masyarakat*, Vol 31, No 2 (April – Juni 2016), p. 1.

Condition (*restitutio in integrum*), which is an effort that the victim of a crime must be returned to its original condition before the crime occurred even though it is based on the fact that it is impossible for the victim to return to her original condition. This principle emphasizes that the form of recovery for victims must be as complete as possible and cover various aspects arising from the consequences of the crime. With restitution, the victim can be restored to his freedom, legal rights, social status, family life and citizenship, return to his place of residence, restore his job, and recover his assets. In practice, in almost many countries, the concept of restitution has been developed and given to victims of crime for their suffering as victims of criminal acts. In this concept, the victim and his family must get fair and proper compensation from the guilty person or a responsible third party. This compensation will include the return of property or payment for the damage or loss suffered, reimbursement of costs incurred as a result of the victim's fall, provision of services and rights of recovery.³

The restitution that must be paid by the perpetrator of a criminal act is intended in addition to compensation for loss of property, compensation for suffering as a result of a criminal act, and/or reimbursement of medical and/or psychological treatment costs as a form of responsibility for the crime committed, it is also intended to relieve suffering and enforce justice for children who are victims of criminal acts as a result of criminal acts committed by perpetrators of criminal acts.

The issuance of Government Regulation 43 of 2017 which principally regulates the procedure for applying for restitution and the procedure for granting restitution is a progressive effort from the state in order to provide certainty in the fulfillment of the rights of children as victims of criminal acts. However, public understanding in general and the active role of law enforcement officers (investigators, prosecutors and judges) are needed in fulfilling the right to restitution and ensuring that the perpetrator pays the restitution and giving a mandate to the Witness and Victim Protection Agency (LPSK) to help assess the requested loss.

Although the right of restitution has been stated in a number of rules and the right of restitution to child victims of criminal acts specifically in PP 43 of 2017 but in practice the fulfillment of the right to restitution so far has not been seen.

2. Methods

This research method is normative juridical research (normative legal research method). Normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the problems faced. Normative legal research is carried out to produce new arguments, theories or concepts as prescriptions in solving problems at hand.⁴ Based on the urgency described above, the author wants to comprehensively examine the regulation of the right to restitution in the legislation and matters relating to the mechanism for submitting the right to restitution, the process of applying for restitution, and implementing restitution so that it can be effectively implemented.

³Supriyadi Widodo Eddyono, et.al, "*Masukan Terhadap Perubahan UU No. 13 Tahun 2006 tentang Perlindungan Saksi dan Korban*", (Jakarta: Koalisi Perlindungan Saksi dan Korban), p. 16.

⁴ Peter Mahmud Marzuki, 2005, *Penelitian Hukum*, Jakarta : Kencana, p. 35

3. Research Results And DISCUSSION

In Article 59 of Law no. 23 of 2002 concerning Child Protection, it is stated that: "The government and other state institutions are obliged to provide special protection to children in emergency situations, children who are in conflict with the law, children from minority and isolated groups, children who are economically and or sexually exploited, children who are trafficked, children who are victims of abuse of narcotics, alcohol, psychotropics and other addictive substances, children who are victims of kidnapping, selling and trafficking, children who are victims of physical and or mental violence, children who have disabilities, and children who are victims of abuse and neglect.⁵

The terminology of compensation in the implementation of restitution will not be separated from the discussion regarding the function of compensation in the Criminal Procedure Code which is regulated in Article 98 paragraph (1), it is stated that if an act which is the basis of an indictment in an examination of a criminal case by a district court causes harm to a person. otherwise, the judge presiding over the trial at the request of that person may decide to combine the lawsuit for compensation to the criminal case. However, the regulation in the Criminal Procedure Code still has several shortcomings regarding the filing procedure which is not simple because the application for compensation (restitution) can only be made through a claim for compensation combined with the main examination of the criminal case. Besides that,⁶

In addition to the Criminal Procedure Code, the laws and regulations governing restitution for victims of criminal acts actually existed before Law Number 13 of 2006 concerning the Protection of Witnesses and Victims was formed. However, this provision is still limited to victims of certain criminal acts, namely victims of gross violations of human rights and victims of criminal acts of terrorism.

In addition to being regulated in the Law, Restitution is also regulated in several Government Regulations, the first of which is regulated in Government Regulation Number 44 of 2008 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims. Article 1 point 5 states that restitution is compensation given to the victim or his family by the perpetrator or a third party, it can be in the form of returning property, payment of compensation for loss or suffering, or reimbursement of costs for certain actions.⁷

Provisions regarding the provision of restitution based on PP Number 44 of 2008 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims are regulated in Article 20 which states that:

Article 20

- Victims of crime have the right to receive restitution.

⁵ Fiska Amanda, "Penerapan Diversi Sebagai Upaya Perlindungan Hukum Bagi Anak Pelaku Tindak Pidana", *Jurnal Daulat Hukum*, Vol 1 No 1 (2018), p. 83.

⁶ Sapti Prihatmini, Fanny Tanuwijaya, Dina Tsalist Wildana, Misbahul Ilham, "Pengajuan dan Pemberian Hak Restitusi Bagi Anak Yang Menjadi Korban Kejahatan Seksual", *RechtIdee*, Vol 14 No 1 (2019), p. 119.

⁷ Government Regulation Number 44 of 2008 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims.

- The application to obtain Restitution as referred to in paragraph (1) shall be submitted by the Victim, Family, or their proxies with a special power of attorney.
- The application to obtain Restitution as referred to in paragraph (2) shall be submitted in writing in the Indonesian language on paper with sufficient stamp duty to the court through the LPSK.

After the issuance of PP Number 44 of 2008 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims, in 2017 the Government issued a Government Regulation which specifically regulates the provision of restitution to children who are victims of criminal acts, namely PP Number 43 of 2017 concerning Implementation Restitution for Children Who Become Victims of Crime. The Government Regulation regulates who is entitled to receive restitution to the mechanism for granting restitution to children as victims of criminal acts, including:

Chapter 20

- 1) Every child who is a victim of a crime has the right to obtain restitution.
- 2) Children who become victims of criminal acts as referred to in paragraph (1) include:
 - a. Children in conflict with the law;
 - b. Economically and/or sexually exploited children;
 - c. Children who are victims of pornography;
 - d. Child victims of kidnapping, sale, and/or trafficking;
 - e. Children who are victims of physical violence and/or
 - f. Child victims of sexual crimes.
- 3) Restitution for children in conflict with the law as referred to in paragraph (2) letter a is given to child victims.⁸

The provisions in the Government Regulation, in Article 3 explain that Restitution for Children who are victims of criminal acts in the form of: a. Compensation for loss of property; b. Compensation for suffering as a result of a crime; and/or c. Reimbursement of medical and/or psychological treatment costs.

Regulation of Restitution for Child Victims of Crime Submission of application for restitution as referred to in Government Regulation Number 43 of 2017, is regulated on:

Article 4

- 1) The request for restitution is submitted by the victim.
- 2) The victim party as referred to in paragraph (1) consists of:
 - a. Parents or guardians of children who are victims of criminal acts;
 - b. Children's heirs who are victims of criminal acts; and
 - c. A person who is authorized by a parent, guardian, or heir of a child who is a victim of a crime with a special power of attorney.
- 3) In the event that the victim as referred to in paragraph (2) letter a and letter b is the perpetrator of a criminal act, an application for restitution may be submitted by the institution.

⁸ Government Regulation Number 43 of 2017 concerning the Implementation of Restitution for Children Who Become Victims of Crime

The application for restitution as intended, is submitted in writing in the Indonesian language on paper stamped to the court, which is submitted before the court's decision, through the following stages: a. Investigation; or b. Prosecution.

In addition to going through the investigation or prosecution stage as intended, requests for restitution can be submitted through the Witness and Victim Protection Agency (LPSK) in accordance with the provisions of the legislation. The request for restitution that is submitted after a court decision that has obtained permanent legal force can also be submitted through the LPSK in accordance with the provisions of the legislation.

According to PP Number 43 of 2017, at the investigation stage as intended, the investigator notifies the victim regarding the rights of the child who is the victim of a crime to obtain restitution and the procedure for submitting it. Furthermore, the victim submits an application for restitution no later than 3 (three) days after notification of the rights of the child who is the victim of a crime by the investigator. Restitution application that has been declared complete, the investigator sends a request for restitution which is attached to the case file to the public prosecutor

Furthermore, at the prosecution stage, the public prosecutor informs the victim of the right of the child who is the victim of a crime to obtain restitution and the procedure for submitting it before and/or in the trial process. Restitution is submitted no later than 3 (three) days after notification of the rights of children who are victims of criminal acts by the public prosecutor.

The request for restitution submitted by the victim is granted, depending on the decision of the judge handling the case. If the conditions submitted are complete as stated in the PP, then the judge considers that restitution needs to be granted, then the judge will decide on the sentence for restitution in the defendant's decision. However, if the judge does not grant the request for restitution, the restitution cannot be carried out.

The imposition of a crime in the form of providing restitution for children who are victims of criminal acts in a judge's decision which has permanent legal force is also a mandate from Article 9 paragraph 1 of Law Number 14 of 1970 concerning Basic Provisions of Judicial Power which is the basis for the victim to receive compensation and rehabilitation (victims resulting from arrest, detention, detention and trial without being based on law or because of errors regarding the person or the law who were introduced).⁹ The form of the judge's decision on the provision of restitution for children who are victims of these crimes in the future is in the form of additional crimes, where the main crime is corporal punishment and fines as stated in the article which is the subject of the problem, namely Article 81 paragraph (1) of the Law. Number 35 of 2014 concerning Child Protection, while the provision of restitution will be an additional crime in the criminal prosecution and judge's decision, it is no longer a conditional crime for the defendant/perpetrator which if the perpetrator or defendant has paid then the main crime no longer needs to be carried out as stated in Article 14c of the Criminal Code.

⁹ Arif Gosita, 1985, *Masalah Perlindungan Anak, Kedudukan Korban Di Dalam Tindak Pidana*, Jakarta: Akademika Presindo, p. 2

This is the difference between Article 14c of the Criminal Code and Government Regulation Number 43 of 2017, where Article 14c of the Criminal Code makes the provision of restitution a condition for the implementation of a conditional crime, so that the main crime does not need to be carried out if the granting of restitution has been carried out, this emphasizes or emphasizes or oriented to the interests of the perpetrator or defendant. Meanwhile, Government Regulation Number 43 of 2017 will position itself as an additional criminal which if the restitution has been carried out, the main crime will not disappear or in other words the perpetrator or defendant will continue to serve. Settlement of criminal cases should be carried out in a criminal trial, which can be decided by the same judge in the same criminal trial regarding the punishment, compensation,¹⁰

The procedure for submitting requests for restitution by victims or their heirs is in this government regulation, so the process of combining claims for compensation as described in Article 98, Article 99, Article 100 and Article 101 of the Criminal Procedure Code, can be simplified so that the victim no longer has to file a civil lawsuit to demand restitution or compensation suffered, so that the principles of criminal proceedings, namely simple, fast and low cost can be implemented. In order to be able to include the provision of restitution in the judge's decision, it is started from the inclusion of the provision of restitution in the demands of the Public Prosecutor, because if it doesn't go through this mechanism and suddenly restitution appears to children who are victims of criminal acts in the judge's decision, it will be something that is decided in excess of what is demanded (*ultra petita*). Therefore, this Government Regulation regulates the procedure for submitting an application for granting restitution in which the application for granting restitution by the victim or his heirs must be stated in the demands of the Public Prosecutor.

Making it an additional crime in addition to the main punishment imposed on the perpetrator, it is hoped that justice for children who are victims of criminal acts in the future can provide legal certainty for children who are victims of criminal acts to demand their rights to the perpetrators and for the community it can also be considered to act because there are multiple layers of punishment. -layers dropped for this crime. With the promulgation of this Government Regulation, it can also be at the same time as a shortcut in an effort to claim compensation without having to go through a civil lawsuit that has to incur costs to file a lawsuit. As well as the examination of the subject matter of the case and the submission of a request for restitution/compensation, it can be decided by the same panel of judges who know the main points of the case, so that the amount of the request for restitution/compensation can be considered directly by the judge according to the severity of the subject matter of the case. Placing the provision of compensation/restitution as an additional crime in the judge's decision, this aspect is in line with the Draft of the Criminal Code (RUU-KUHP) which places the penalty of compensation as an additional crime.

The issuance of this government regulation is very hopeful, in the future the imposition of additional penalties on the defendant in the form of giving restitution to

¹⁰ *ibid*

victims can be implemented and implemented as expected by the government, legislatures/lawmakers as well as implementing the provisions of these laws and regulations and the community, because so far Indeed, there is no special regulation regarding restitution for children who are victims of these crimes. So that it can provide legal certainty for the community in general and for child victims / their heirs in particular.

4. Closing

The regulation of restitution for Child Victims of Crime, apart from being regulated in the Criminal Code and Criminal Procedure Code, is specifically regulated in Government Regulation of the Republic of Indonesia Number 43 of 2017 concerning the Implementation of Restitution for Children Who are Victims of Crime. The request for restitution submitted by the victim is granted, depending on the decision of the judge handling the case. If the conditions submitted are complete as stated in the PP, then the judge considers that restitution needs to be granted, then the judge will decide on the punishment for restitution in the defendant's decision. However, if the judge does not grant the request for restitution, the restitution cannot be carried out. In the implementation of the provision of restitution for children who are victims of criminal acts, there are still imperfections, especially regarding substitute penalties if the decision to grant restitution is not implemented, there are no rules or legal umbrellas to force the convict to carry out restitution, it is hoped that the Government Regulation will also include additional penalties, so that will provide legal certainty for the implementation of restitution for children who become victims of criminal acts can be carried out.

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