

Providing the Right to Restitution to Child Victims of Crime (Study of Besilam Village, Langkat Regency)

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Abstract - One form of compensation for victims of criminal acts is restitution. Restitution in accordance with the Principle of Restoration to its Original Condition (restitutio in integrum) is an effort that ensures that crime victims must be returned to their original condition before the crime occurred, even though it is based on the fact that it is impossible for the victim to return to their 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, victims can have their freedom, legal rights, social status, family life and citizenship restored, returned to their place of residence, their job restored, and their assets restored. Restitution itself is defined as the payment of compensation 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. For this reason, the perpetrator is required to pay restitution to the child victim of a crime to compensate for the losses suffered by the victim as a form of the perpetrator's responsibility for his actions which caused harm to the victim, his family or his heirs, as the implementation of Article 71 D Paragraph (2) of Law Number 35 of 2014 concerning Amendments to Law number 23 of 2002 concerning Child Protection. Applications for restitution can be submitted by child victims of criminal acts who must be accompanied by parents/guardians, their heirs or through the Witness and Victim Protection Agency. To apply for this restitution, it is hoped that the child's companions have equipped themselves with the applicant's identity file, the identity of the perpetrator, a description of the criminal act, a description of the losses suffered, the amount of restitution requested and the form of restitution requested.

Keywords: Right to Restitution, Right to Restitution Process, Child Criminal Cases.

I. INTRODUCTION

The development of the concept of restorative justice, the practice of the juvenile criminal justice system that has been implemented so far as regulated in Law Number 3 of 1997 concerning Juvenile Courts, has been marked by a number of criticisms of several weaknesses and normative dysfunctions that are prone to injuring children's rights. The Juvenile Court Law Number 3 of 1997 was reformed, resulting in the birth of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU-SPPA) which has been enacted (in the State Gazette of the Republic of Indonesia 2012 Number 153; Supplement to the State Gazette of the Republic of Indonesia Number 5332) dated July 30, 2012 and came into force after 2 (two) years from the date of enactment.

Child Complaint Case Data by KPAI from January 2011 to July 2015 recorded 1,111 cases of pornography and cyber crime, 702 cases of physical violence, 197 cases of psychological violence, 1,694 cases of sexual violence, and 895 cases of trafficking and exploitation. Restitution itself is defined as payment of compensation imposed on the perpetrator based on a court decision that has permanent legal force for material and/or immaterial losses suffered by the victim or his/her heirs. For this reason, the perpetrator is required to pay restitution to the child victim of the crime to replace the losses suffered by the victim as a form of the perpetrator's responsibility for his/her actions that cause losses to the victim, family or heirs, as



an implementation of Article 71 D Paragraph (2) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

Applications for restitution can be submitted by child victims of criminal acts who must be accompanied by their parents/guardians, heirs or through the Witness and Victim Protection Agency. To apply for this restitution, it is expected that child advocates have equipped themselves with the applicant's identity documents, the perpetrator's identity, a description of the crime, a description of the losses suffered, the amount of restitution requested and the form of restitution requested.

As a new paradigm in the world of criminal justice, it certainly takes time to introduce restitution in the midst of a legal system that has been recognized for generations. Not to mention that pragmatic thinking tends to dominate the thinking of our law enforcement officers. Namely, the attitude of having difficulty accepting new developments and prioritizing the Criminal Procedure Code as a "holy book" as a reference for law enforcement.

There are at least three weaknesses in the laws and regulations regarding the provision of restitution to victims of crime. First, there is a polarization of laws and regulations that regulate the provision of restitution to victims of crime that tend to contradict each other. Second, there is overlapping regulation regarding restitution to victims of crime. There are at least three regulations that regulate the provision of restitution to witnesses and victims of crime, namely PP Number 44/2008 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims; PP Number 3/2003 concerning Compensation, Restitution, and Rehabilitation for Victims of Serious Human Rights Violations; and Law Number 21/2007 concerning the Eradication of the Crime of Human Trafficking. Third, in Law Number 13/2006, the scope of restitution can be in the form of returning property, paying compensation for loss or suffering, or reimbursing costs for certain actions.

Meanwhile, in the Criminal Procedure Code, compensation only focuses on real losses due to criminal acts. So, in practice, only material losses can be examined by the Judge. The claim for compensation for the loss for the victim is considered immaterial so that it must use the civil law mechanism. Fourth, the weak coercive power and execution of the implementation of restitution. Law Number 13/2006 does not regulate the coercive power to make payments and which institutions are authorized to execute the implementation of the restitution. This means that if the perpetrator is unable and unwilling to pay restitution to the victim, it has no legal consequences and does not have any implications for the perpetrator. In practice, this has violated the victim's right to obtain compensation.

One of the crimes that has become a phenomenon lately is sexual violence, especially against children. Children are a priceless gift bestowed by God on every human couple to be cared for, protected, and educated well.

He is a human being who has limited physical, mental, and social abilities to overcome the various risks and dangers he faces and also automatically still depends on other parties, especially family members who play an active role in protecting and guarding him. The nature of this research is descriptive analysis, meaning that from this research it is expected to obtain a detailed and systematic picture of the problems to be studied.

The intended analysis is based on the description, the facts obtained will be analyzed carefully to answer the problems. So that it can answer questions according to the main problems in this writing. This research was conducted using data collection tools, namely: literature study or document study to collect secondary data related to problems in the protection of child victims of sexual violence. In the form of legal protection for child victims of sexual crimes, there is legal assistance, rehabilitation, health services and social security according to physical, mental, spiritual, and social needs as an effort to restore the condition of child victims of sexual violence who have long-term trauma. Obstacles in providing legal protection for child victims of sexual crimes are from the substance of the law, legal structure,

legal culture, and facilities and infrastructure that have not been running optimally.

II. METHODS

This research was conducted using a qualitative descriptive method with a jurisprudential model. In using this method, the primary and secondary data obtained will be elaborated in order to obtain a picture of the situation and conditions in the research area. The population of Besilam Village is 2,456 families. From the results of the interview with Mr. Rahmat as Secretary of Besilam Village, Langkat Regency. This open interview technique can be the right means to obtain real information.

This study aims to determine the history of the concept of Restorative Justice.

III. RESEARCH RESULT

Victims as the party who suffers and is harmed by violations of criminal law are usually only involved in providing testimony as a victim witness. 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. This is because the criminal justice system is organized to try perpetrators of criminal acts, not to serve the interests of victims of criminal acts, because criminal acts are acts of the perpetrator against the state. The existence of the criminal justice system is intended for the interests of the state and society, not for the personal interests of citizens. This causes the losses due to criminal acts suffered by victims of criminal acts to be a disaster that must be borne by the victim himself because it is not the function of the criminal justice system to bear it.

According to Muladi, in the framework of the concept of regulating the protection of victims of criminal acts, the first thing that must be considered is the essence of the loss suffered by the victim. The essence of the loss is not only material or physical suffering but also psychological. This is in the form of "trauma of losing trust in society and public order". Symptoms of this syndrome can be anxiety,

suspicion, cynicism, depression, loneliness and other avoidance behaviors.

One form of compensation for victims of crime is restitution. Restitution in accordance with the Principle of Restoration in the Original State (*restitutio in integrum*) is an effort that victims of crime must be returned to their original condition before the crime occurred, even though it is based on the fact that it is impossible for the victim to return to their original condition.

This principle emphasizes that the form of compensation for victims must be as complete as possible and cover various aspects arising from the consequences of the crime. With restitution, victims can be restored to their freedom, legal rights, social status, family life and citizenship, return to their homes, restore their jobs, and restore their assets. In practice, in almost many countries, this concept of restitution has been developed and also given to victims of crime for their suffering as victims of crime. In this concept, victims and their families must receive fair and appropriate compensation from the guilty person or third party responsible.

This compensation will include the return of property or payment for damage or loss suffered, reimbursement of costs incurred as a result of the victim, provision of services and recovery rights.

In Law No. 13 of 2006, provisions regarding restitution are only regulated in one article as follows:

Article 7

- 1) Victims through LPSK have the right to file a lawsuit in the form of:
 - a) the right to compensation in cases of serious human rights violations;
 - b) the right to restitution or compensation for losses that are the responsibility of the perpetrator of the crime.
- 2) Decisions regarding compensation and restitution are made by the court.
- 3) Further provisions regarding the provision of compensation and restitution are regulated by Government Regulation.

The lack of regulations regarding restitution will certainly make it difficult for victims of criminal acts who will apply for restitution. First, the victim does not know for sure the losses that can be requested for restitution. Second, the victim does not know when to submit the application for restitution: can the victim immediately submit the application for restitution to LPSK immediately after the crime occurs, or before the public prosecutor files a criminal charge, or before the judge makes a verdict?

Third, the victim does not know the mechanism that can be taken if the perpetrator of the crime is unable or unwilling to pay the compensation requested by the victim. Fourth, the victim also does not know the time period for payment of restitution from the perpetrator of the crime to him since the judge's decision requiring the perpetrator to pay restitution to the victim has permanent legal force.

The rules on the right to restitution are regulated in Article 71D. Article 71D paragraph (1) states, "Every child who is a victim as referred to in Article 59 paragraph (2) letters b, d, f, h, and j has the right to file a lawsuit in court for the right to restitution which is the responsibility of the perpetrator of the crime". While paragraph (2) states, "Further provisions regarding the implementation of restitution as regulated in paragraph (1) by Government Regulation,".

The regulation also regulates the focus of strengthening and expanding the scope of special protection as stated in Article 59 paragraph (2). The old Child Protection Law did not cover the scope of material substance. For example, children who are victims of sexual crimes, children who are victims of pornography, children who are victims of HIV/AIDS, children who are victims of terrorist networks, children with deviant social behavior, and children who are victims of stigmatization from labeling related to their parents' conditions.

Restitution is defined as payment of compensation imposed on the perpetrator based on a court decision that has permanent legal force for material or immaterial losses suffered by the victim or his heirs. This is a form of responsibility of the perpetrator for his actions as

an implementation of Article 71 D Paragraph (2) of Law 35/2014 concerning Amendments to Law 23/2002 concerning Child Protection.

IV. CONCLUSION

1. This study has not obtained data on children who are victims in a case that is given the Right to Restitution. If there are child victims but the new Child Protection Law has not been implemented so that child victims only get rehabilitation and psychological assistance.
2. Lack of knowledge about the Right to Restitution by law enforcers, especially the Police, is a very serious obstacle to being able to implement the right to restitution for child victims. So that data on children who are victims and who receive the right to restitution cannot be found in this study, therefore more in-depth research is needed and the research area must be wider, not only limited to Besilam City.

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