



Restitution As A Form Of State Responsibility Toward Child Victims Of Sexual Abuse Crimes

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ABSTRACT

The criminal act of sexual abuse against children constitutes a serious offense that causes long-term traumatic impacts on victims. The state bears a constitutional obligation to protect and restore the rights of child victims of sexual crimes through restitution mechanisms. This study examines the implementation of restitution as a manifestation of state responsibility within the Indonesian criminal justice system. The objectives of this research are to identify the juridical foundations of restitution for child victims of sexual abuse, analyze its implementation mechanisms, and evaluate the obstacles in fulfilling restitution rights. This research employs a normative juridical approach through the analysis of statutory regulations, court decisions, and relevant legal literature. The findings indicate that although restitution has been regulated under Law Number 31 of 2014 concerning the Protection of Witnesses and Victims and Law Number 35 of 2014 concerning Child Protection, its implementation continues to face substantive and procedural challenges. The primary obstacles include limited understanding among law enforcement officials, the complexity of application procedures, constraints on state budget allocation, and the low level of victim awareness regarding restitution rights. In conclusion, restitution is a vital instrument for victim recovery and reflects the state's responsibility; however, it requires systemic reform through procedural simplification, capacity building for law enforcement personnel, adequate budget allocation, and extensive public dissemination.

Keywords: Restitution, State Responsibility, Child Victims of Sexual Abuse, Protection of Witnesses and Victims, Restoration of Rights

ABSTRAK

Tindak pidana pencabulan terhadap anak merupakan kejahatan serius yang menimbulkan dampak traumatis berkepanjangan bagi korban. Negara memiliki kewajiban konstitusional untuk melindungi dan memulihkan hak-hak anak korban kejahatan seksual melalui mekanisme restitusi. Penelitian ini menganalisis implementasi restitusi sebagai wujud pertanggungjawaban negara dalam sistem peradilan pidana Indonesia. Tujuan kajian ini adalah mengidentifikasi landasan yuridis restitusi bagi anak korban pencabulan, menganalisis mekanisme pelaksanaannya, serta mengevaluasi hambatan dalam pemenuhan hak restitusi. Metode penelitian menggunakan pendekatan yuridis normatif dengan analisis peraturan perundang-undangan, putusan pengadilan, dan studi literatur. Hasil penelitian menunjukkan bahwa meskipun telah diatur dalam Undang-Undang Nomor 31 Tahun 2014

tentang Perlindungan Saksi dan Korban serta Undang-Undang Nomor 35 Tahun 2014 tentang Perlindungan Anak, implementasi restitusi masih menghadapi kendala substantif dan prosedural. Hambatan utama meliputi minimnya pemahaman aparat penegak hukum, kompleksitas mekanisme pengajuan, keterbatasan anggaran negara, dan rendahnya kesadaran korban akan haknya. Kesimpulannya, restitusi merupakan instrumen vital dalam pemulihan korban yang mencerminkan tanggung jawab negara, namun memerlukan reformasi sistemik melalui penyederhanaan prosedur, peningkatan kapasitas aparat, alokasi anggaran memadai, dan sosialisasi masif kepada masyarakat.

Kata Kunci: Restitusi, Pertanggungjawaban Negara, Anak Korban Pencabulan, Perlindungan Saksi dan Korban, Pemulihan Hak *terjemahkan dalam bahasa Inggris*

INTRODUCTION

Sexual crimes against children, particularly acts of sexual abuse, have become a critical problem that threatens the future of the nation's younger generation. Data from the Online Information System for the Protection of Women and Children (Simfoni PPA) of the Indonesian National Police indicate a continuous upward trend in cases of sexual violence against children from year to year (KPAI, 2020). This phenomenon not only causes physical harm to victims but also results in profound psychological trauma that may persist into adulthood, hindering children's mental, emotional, and social development (Setyawan, 2019).

The Constitution of the Republic of Indonesia, through Article 28B paragraph (2) of the 1945 Constitution, affirms that every child has the right to survival, growth, and development, as well as the right to protection from violence and discrimination. This provision establishes a fundamental obligation for the state to provide comprehensive protection to children as vulnerable legal subjects. Such protection is not limited to preventive and repressive measures but also encompasses a restorative dimension through the post-crime recovery of victims' rights.

Within the context of criminal law, the paradigm of justice has shifted from an approach that primarily emphasizes the punishment of offenders (retributive justice) toward a more holistic conception of justice that gives due attention to victim recovery (Hiariej, 2018). One concrete manifestation of this paradigm shift is the provision of restitution to crime victims. Restitution is defined as compensation granted to victims or their families by offenders or third parties, which may take the form of the return of property, financial compensation for losses or suffering, or reimbursement of costs for specific measures.

The legal basis for restitution for crime victims in Indonesia is explicitly regulated under Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 on the Protection of Witnesses and Victims, further strengthened by Government Regulation Number 7 of 2018 on the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims. Specifically for child victims of sexual crimes, relevant provisions are also contained in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 on Child Protection.

However, the implementation of restitution in criminal justice practice remains far from ideal. Numerous studies indicate that applications for restitution for child victims of sexual crimes are still very limited, and even when submitted, they are

often not granted by courts or are not effectively enforced (Ariani, 2019). This situation reflects a significant gap between legal norms as written in legislation (law in books) and their practical application (law in action).

The problems surrounding the implementation of restitution for child victims of sexual abuse reveal systemic issues within the Indonesian criminal justice system. These obstacles are not merely technical or procedural but are also structural and cultural in nature. Structurally, there are coordination problems among law enforcement agencies and related institutions throughout the process from application to enforcement of restitution. Culturally, persistent stigmatization of victims of sexual crimes discourages victims and their families from reporting offenses or claiming their legal rights (Pratiwi and Anggraeni, 2021).

The absence or minimal amount of restitution received by victims has a direct impact on the effectiveness of the recovery process. Victims of sexual abuse require various forms of recovery services, including psychological therapy, medical treatment, and social assistance, all of which entail substantial costs. Without financial support through restitution, victims' families who often come from economically disadvantaged backgrounds face significant difficulties in accessing such services, thereby prolonging the victims' suffering (Purnianti and Supatmi, 2020).

This research is therefore both relevant and urgent to identify the root causes of deficiencies in the implementation of restitution and to formulate comprehensive solutions. The study is not only of academic significance but also holds practical value for improving policies and law enforcement practices that are oriented toward the best interests of child victims of sexual crimes.

METHODS

This research employs a normative juridical approach (legal research) that focuses on the examination of positive legal norms within the Indonesian statutory system (Marzuki, 2016). This method is selected because the primary object of the study is the implementation of legal provisions concerning restitution for child victims of sexual abuse, which requires an in-depth analysis of the normative structure and its application in judicial practice. The type of research applied is prescriptive research, which aims to provide legal arguments based on the findings of the study and to offer recommendations or improvements to the issues under examination (Soekanto and Mamudji, 2015). Accordingly, this research not only describes the factual conditions of restitution implementation but also critically analyzes them and proposes normative solutions to enhance its effectiveness. The approaches used in this study include the statute approach, the conceptual approach, and the case approach. The statute approach is conducted by examining various regulations related to restitution and child protection, ranging from statutory laws to implementing regulations. The conceptual approach is employed to understand legal doctrines and theories relevant to state responsibility, children's human rights, and restorative justice. Meanwhile, the case approach involves an analysis of court decisions related to restitution for child victims of sexual abuse (Marzuki, 2016).

The legal materials utilized consist of primary, secondary, and tertiary legal sources. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, the Indonesian Criminal Code, Law Number 31 of 2014 on the Protection of Witnesses and Victims, Law Number 35 of 2014 on Child Protection, Government Regulation Number 7 of 2018, as well as other related regulations. Secondary legal materials comprise legal textbooks, scientific journals, research findings, and legal articles relevant to the subject matter. Tertiary legal materials consist of legal dictionaries and legal encyclopedias used to clarify concepts and terminology. The collection of legal materials is carried out through library research by identifying, inventorying, and classifying legal materials relevant to the research issues. The collected legal materials are then systematically examined to identify the ratio legis, legal principles, and doctrines underlying the regulation of restitution. The analysis of legal materials is conducted qualitatively using methods of legal interpretation, including grammatical, systematic, historical, and teleological interpretation. Grammatical interpretation is applied to understand the literal meaning of legal texts. Systematic interpretation is used to comprehend legal provisions within the broader regulatory framework. Historical interpretation examines the background and objectives of the formulation of legal norms, while teleological interpretation considers the purposes and benefits of the legal regulation. The results of the analysis are then presented in a descriptive-prescriptive manner to provide a comprehensive overview as well as solutions to the issues examined.

RESULTS AND DISCUSSION

Legal Basis for Restitution for Child Victims of Sexual Abuse

Restitution for child victims of sexual abuse has a strong juridical foundation within the hierarchy of Indonesian laws and regulations. At the constitutional level, guarantees of children's rights are enshrined in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that every child has the right to survival, growth, and development, as well as the right to protection from violence and discrimination (Gultom, 2014). This provision positions the state as fully responsible for ensuring the fulfillment of children's fundamental rights, including the right to recovery after becoming victims of crime.

The Indonesian Criminal Code regulates acts of sexual abuse under Articles 289 to 296, classifying indecent acts against children as crimes against morality. However, the Criminal Code does not explicitly regulate the right to restitution for victims. This legal vacuum is subsequently filled by special laws that provide more comprehensive protection for crime victims, particularly children (Raharjo, 2018).

Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 on the Protection of Witnesses and Victims serves as the principal legal basis for the regulation of restitution. Article 7A paragraph (1) affirms that victims, through the Witness and Victim Protection Agency (LPSK), are entitled to submit applications for restitution. Furthermore, Article 7A paragraph (2) stipulates that restitution as referred to in paragraph (1) consists of compensation for the loss of property or income, compensation for suffering directly resulting from the criminal act, and/or reimbursement of medical and/or psychological treatment costs.

Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 on Child Protection provides more detailed regulation. Article 71D paragraph (1) states that every child who becomes a victim of a sexual crime has the right to submit a claim for restitution to the court, which constitutes the responsibility of the offender. This provision reinforces that restitution is not merely a matter of benevolence but a legally guaranteed right of the victim that must be fulfilled by the perpetrator.

The technical implementation concerning procedures for the submission and execution of restitution is regulated under Government Regulation Number 7 of 2018 on the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims. This regulation comprehensively governs the process, from submission procedures and determination of the amount of restitution to enforcement mechanisms. Article 28 paragraph (1) of Government Regulation No. 7 of 2018 states that applications for restitution are submitted in writing to the court through the LPSK, either in the Indonesian language or in local languages. This provision reflects the government's effort to facilitate victims' access to their legal rights.

Indonesia has also ratified the Convention on the Rights of the Child through Presidential Decree Number 36 of 1990. Article 39 of the Convention obliges States Parties to take all appropriate measures to promote the physical and psychological recovery and social reintegration of child victims of any form of violence, exploitation, or abuse (United Nations, 1990). This international obligation provides additional legitimacy for the regulation of restitution in national law as a concrete form of victim recovery.

From a legal theory perspective, restitution for crime victims represents the embodiment of restorative justice theory, which emphasizes the restoration of relationships and the healing of harm caused by crime rather than merely retribution against the offender (Hiariej, 2018). In this context, restitution functions not only as material compensation but also as state recognition of the suffering experienced by victims and as an effort to restore the dignity and rights of victims that have been violated.

The concept of state responsibility in administrative law underscores that the state has an obligation to protect its citizens from all forms of crime. When crimes occur against citizens, particularly vulnerable groups such as children, the state bears both moral and legal responsibility to ensure that victims receive appropriate recovery (Mamesah, 2019). In this regard, restitution serves as a legal instrument that translates state responsibility into concrete action.

The Mechanism for Implementing Restitution in the Indonesian Criminal Justice System

The mechanism for implementing restitution for child victims of sexual abuse constitutes a series of procedures involving multiple institutions within the criminal justice system. This process begins at the investigation stage and continues through to the execution of court judgments. An understanding of this mechanism is essential to identify critical points that become obstacles to its effective implementation (Budiarta, 2018).

The first stage in the restitution mechanism is the submission of an application. Pursuant to Article 28 of Government Regulation No. 7 of 2018, victims or their legal representatives may submit an application for restitution to the court through the Witness and Victim Protection Agency (LPSK). In cases involving child victims of sexual abuse, the application is generally submitted by parents or legal guardians acting on behalf of the child. The application must be filed no later than the time of the public prosecutor's reading of the criminal charges, indicating that the timing of submission is highly crucial and requires effective coordination among victims, victim advocates, and the LPSK.

Article 29 of Government Regulation No. 7 of 2018 stipulates that the application must contain the identity of the applicant, a description of the criminal act, a description of the losses suffered, and the amount of restitution claimed. In cases of sexual abuse against children, the losses that may be claimed include medical and psychological treatment costs, loss or reduction of the child's ability to pursue education or work in the future, as well as the psychological and emotional suffering experienced by the victim and their family (Sari and Arief, 2019).

The LPSK then conducts verification and assessment of the submitted documents. Article 30 of Government Regulation No. 7 of 2018 provides that the LPSK must submit the restitution application to the court within a maximum of seven working days after the application is received in complete form (Kurniawan, 2020). In practice, this verification stage often encounters difficulties due to the challenges faced by victims in collecting evidence of losses, particularly immaterial losses such as psychological trauma.

At the trial stage, the restitution application is considered by the judge together with the criminal case under examination. Article 35 of Government Regulation No. 7 of 2018 requires that, if the application is granted, the judge must stipulate in the operative part of the judgment the offender's obligation to pay restitution to the victim. The determination of the amount of restitution is based on considerations of the material and immaterial losses suffered by the victim, the offender's financial capacity, and principles of justice.

A fundamental problem at the trial stage is the limited understanding among judges regarding the importance of restitution for victim recovery (Ariani, 2019). Several studies indicate that many judges view restitution as a civil matter separate from the criminal case, resulting in restitution applications often not being seriously considered or even rejected on the grounds that victims may file separate civil lawsuits.

Article 45 of Government Regulation No. 7 of 2018 provides that offenders are required to pay restitution within a maximum of 30 days after the judgment has obtained permanent legal force. If the offender fails to pay, the public prosecutor is responsible for executing the judgment against the offender's assets. In practice, however, the execution of restitution faces serious obstacles because many offenders do not possess sufficient assets or deliberately conceal their assets to avoid fulfilling restitution obligations (Fauzi and Sutanti, 2020).

Article 7D of the Law on the Protection of Witnesses and Victims regulates a subsidiary mechanism in the form of compensation paid by the state through the

LPSK. This provision is crucial to ensure that victims continue to receive recovery even when offenders are unable to pay restitution (Angkasa and Iswanto, 2019). Nevertheless, this compensation mechanism also faces challenges due to the limited budget allocated by the government for such purposes.

The restitution mechanism within the Indonesian criminal justice system has been comprehensively regulated through various legal instruments. However, the effectiveness of its implementation remains dependent on several external factors, including the capacity of law enforcement officials, victims' awareness of their rights, the support provided by victim advocates, and the political will of the government to allocate adequate resources for the implementation of restitution and compensation.

Obstacles to Implementation and Efforts to Optimize Restitution for Child Victims of Sexual Abuse

The implementation of restitution for child victims of sexual abuse continues to face various substantive obstacles that hinder its effectiveness (Pratiwi and Anggraeni, 2021). These obstacles are multidimensional in nature, encompassing legal, institutional, socio-cultural, and economic aspects. From a legal perspective, inconsistencies and ambiguities persist within several provisions governing restitution. Although the Law on the Protection of Witnesses and Victims and the Child Protection Law recognize the right to restitution, coordination between these laws and the criminal procedural framework remains weak (Wahyuningsih, 2014). The Criminal Procedure Code (KUHAP), as the primary procedural law, does not explicitly regulate the mechanism for submitting restitution claims within criminal proceedings, resulting in confusion among legal practitioners.

A significant institutional barrier lies in the limited capacity and understanding of law enforcement officials regarding the importance of restitution. Many investigators, prosecutors, and judges lack sufficient knowledge of restitution procedures or even perceive restitution as an additional burden within the criminal justice process (Ariani, 2019). Consequently, victims are often not adequately informed of their right to seek restitution, or their applications are not properly processed.

The complexity of restitution application procedures also constitutes a major obstacle. Victims or their families must navigate lengthy bureaucratic stages, including the collection of evidence of losses, submission of applications through the LPSK, and attendance at court hearings (Kurniawan, 2020). For victim families, who generally come from economically disadvantaged backgrounds with limited educational attainment, this process is highly burdensome and frequently discourages them from pursuing restitution.

Difficulties in proving immaterial losses represent a critical technical challenge. Unlike material losses, such as medical expenses that can be substantiated through receipts, psychological harm and trauma experienced by child victims of sexual abuse are difficult to quantify objectively (Diah, 2020). Although psychological assessments may be conducted by professionals, judges often struggle

to determine appropriate restitution amounts for such losses, resulting in awards that are significantly lower than what is actually required for effective recovery.

Financial incapacity of offenders constitutes a primary obstacle to the execution of restitution. The majority of perpetrators of child sexual abuse lack sufficient assets to pay court-ordered restitution. Enforcement against offenders' assets is further hindered by technical difficulties, as many offenders do not possess registered assets or have transferred ownership of their property prior to the issuance of the judgment.

The limited allocation of state funds for compensation presents a serious structural barrier. Although the law mandates that the state provide compensation when offenders are unable to pay restitution, in practice the budget allocated for this purpose is highly constrained. The LPSK, as the institution responsible for disbursing compensation, frequently faces funding limitations, causing compensation payments to be significantly delayed or postponed for an indeterminate period.

Socio-cultural barriers must also be taken into account. Stigma and shame associated with sexual crimes lead many victim families to refrain from reporting offenses or to withdraw their reports during the judicial process. Social pressure and threats from perpetrators or their families often deter victims from asserting their right to restitution (Supeno, 2018). This situation is exacerbated by the low level of public awareness regarding victims' rights.

To address these various obstacles, comprehensive and systematic optimization efforts are required. First, regulatory reform is necessary by integrating restitution provisions into the Criminal Procedure Code or enacting a special law that regulates restitution procedures in a detailed and operational manner. Existing regulations should be simplified and clarified to facilitate effective implementation in practice.

Second, the capacity of law enforcement officials must be enhanced through regular training and socialization programs emphasizing the importance of restitution for victim recovery. Such training should encompass not only procedural aspects but also an understanding of the psychological impact of sexual crimes on children and the importance of victim-sensitive approaches. The establishment of specialized units within law enforcement agencies to handle child-related cases and restitution should also be considered.

Third, restitution application procedures should be simplified through the utilization of information technology. The LPSK could develop an online restitution application system to enable victims to submit claims without repeatedly visiting LPSK offices. This system could be integrated with electronic criminal justice systems to expedite inter-agency coordination.

Fourth, the role of victim advocates should be strengthened through the empowerment of civil society organizations engaged in child protection. Victim advocates play a strategic role in providing information, assisting with restitution applications, and ensuring the fulfillment of victims' rights. The government should provide financial support and capacity-building initiatives to enable these organizations to perform their functions effectively.

Fifth, the allocation of state budget for victim compensation must be increased. The government should allocate adequate funds within the state budget to ensure that all eligible victims receive compensation promptly without prolonged delays. Transparency and accountability in the management of compensation funds must also be enhanced to prevent misuse (Wahyudi, 2015).

With increased public awareness, it is expected that victims and their families will be more willing to assert their rights, and that stigma against victims of sexual crimes will gradually diminish.

CONCLUSION

Based on the discussion presented above, it can be concluded that restitution constitutes a vital legal instrument in realizing the state's responsibility toward child victims of sexual abuse. The juridical foundation of restitution has been comprehensively established within various legislative frameworks, ranging from the constitutional level to implementing regulations. Restitution functions not merely as material compensation but also as a formal acknowledgment by the state of the victim's suffering and as an effort to restore violated rights. The mechanism for implementing restitution within the Indonesian criminal justice system has been regulated in a systematic manner, encompassing the stages of submission, verification, determination in court judgments, and execution. Nevertheless, in practice, the implementation of restitution continues to face multidimensional obstacles, including legal, institutional, socio-cultural, and economic aspects. These challenges contribute to the low number of restitution applications and result in many victims failing to obtain their rightful recovery.

Optimizing the implementation of restitution requires a holistic approach that involves regulatory reform, capacity building for law enforcement officials, simplification of procedures, strengthening the role of victim assistance services, increasing state budget allocations, and conducting extensive public awareness campaigns. These efforts must be carried out in an integrated and sustainable manner, engaging all relevant stakeholders, including the government, judicial institutions, victim protection agencies, and civil society. Strong political commitment from the government and the legislature is essential to continuously improve the system of protection for victims of crime, particularly child victims of sexual offenses. Restitution must be positioned as a priority within the agenda of criminal justice reform in Indonesia, rather than as a mere supplementary procedural mechanism. Only through an approach oriented toward the best interests of the child and victim recovery can the true objectives of justice be achieved.

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