



The fulfillment of restitution rights for child victims of sexual violence (A study at Tapaktuan district court)

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Abstract

The right restitution of child victims of sexual crime Article 8 of Government Regulation Number 43 of 2017 concerning the implementation of Restitution for Children Victims of Criminal Acts and Law Number 35 of 2014 concerning Amending Law on Child Protection. The regulation hasn't been effective in fulfilling the rights of child victims of sexual violence. This research is an empirical juridical research with a socio-legal approach. Data collection using observation methods and interview with respondent and informant. The research results that in Tapaktuan District Court there is no application for restitution rights for child victims of sexual violence. Law enforcement officials do not know the full extent of the procedures for obtaining restitution for child victims of sexual violence. There are obstacles in fulfilling the right to restitution of victims caused by law enforcers such as the Public Prosecutor not referring to the provisions of Article 18 of Government Regulation Number 43 of 2017. In addition, in the laws and regulations, there are shortcomings, especially the internal regulations of each law enforcement agency that regulates the implementation of restitution of child victims of criminal act.

Keywords: restitution, child protection, sexual violence

Introduction

The states responsibility to protect victims of sexual violence and their rights fulfill with regulation that require perpetrators to provide restitution and compensation to victim in their rights overall recovering ^[1] So far, the resolution of criminal cases has always paid attention to the rights of suspects and ignored the rights of victims, while restitution is one of the rights victims regulated in the legislation. Government Regulation Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning the Granting of Compensation, Restitution, and Assistance to Witnesses and Victims states restitution is one of the legal protections for child victims of criminal acts through compensation and is currently regulated in national and international law studies. In September 1985 in Milan Italy, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was established as a result of The Severnt United Nations Congress on the Treatments of Offenders formed and successfully formalize of protection to victims from crime such as access to justice, restitution, compensation and assistance ^[2]. The provision of restitution to child victims of crime is one of the protections of children from crime as required by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Article 1 Paragraph (2) of The Child Protection Law is all activities to guarantee and protect children and their rights in order to live, grow, develop, and participate optimally in accordance with human dignity and dignity, and receive protection from violence and discrimination. One of the legal protection for child victims of sexual violence is to obtain restitution is payed charge that person because of the loss economic suffered by another person. In development of criminal law, restitution is punishment for

the offender which provides an opportunity for agreement between the victim and the perpetrator through payment of damages from the perpetrator to the victim or the victim's family of heirs. Fulfillment of the rights of victims complete and comprehensive in all result of crimes. In practice, many countries provide restitution to victim of crime fairly and appropriately to person for responsible the crime. Compensation given as payment for damage or loss suffered by victim, replacement of charge resulting from a criminal offence and restoration of rights to the victim ^[3].

Restitution is provided based on submission by parents, guardians and heirs. In reality, no victim, parents, guardians and heirs that applied for restitution rights in South Aceh Region, because parents or guardians don't know about the right to restitution can be obtained by children victims of crime. One of the causes restitution was not raised because the low understanding of restitution caused by lack of socialization to parents about restitution of the victim's child. Based on introduction the problem, there are several problem formulation including why law enforcement can't fulfill restitution against child victims of sexual violence and what are the obstacles in fulfilling restitution for child victims of sexual violence.

Research method

The research is empirical juridical method which examines the implementation of normative legal provisions on each particular legal event that occurs in society. The research approach is socio-legal with data collection through interview and observation. The type data used in this study are primary data and secondary data. Primary legal material derived by field research obtained towards responden related to the object of study. The sample in this study was obtained by purposive sampling

Results and discussion

The reason of law enforcement unable to fulfill restitution of child victims of sexual violence

According to Ricard J. Gelles, violence against children is intentional acts that cause harm or harm to children (both physically and emotionally) ^[4]. Forms of violence towards children can be classified into physical violence, psychological violence, sexual violence and violence social. Sexual violence against children according to End Child Prostitution in Asia Tourism (ECPAT) International is a relationship or interaction between a child and an older person or adults such as strangers, siblings or people parents where children are used as objects of satisfying needs sexual offender. In general, the definition of sexual violence in children is involvement of a child in any form of sexual activity that occurs before the child reaches a certain set age limit by the laws of the country concerned where the adult or child others who are older or people who are considered knowledge more than children use it for sexual pleasure or activity sexual ^[5].

Law enforcement aims to protect child victims of sexual violence with enactment of laws and the relationship between legal factors such as legal norms, law enforcement, and society. Based on Government Regulation Number 43 of 2017, the stage of applying for restitution before a court decision starts from the investigation stage, investigation to the prosecution stage when begin investigation case file is complete and submitted to the Prosecutor's Office. In the case of child victims of sexual violence, law enforcement has difficulty in determining material and non-material losses because regulations do not provide clearly about the amount of compensation from the perpetrator to victim as restitution. Implementation of restitution based on principle of restoration of the original state (*restitutio in integrum*) which effort that victims of crime can be restored to their position before a crime occurred, although unlikely that the victim of the crime can return to the position before the crime occurred.

This principle states that form of recovery for victim must be complete in restoring the condition of victims from various aspect due to crime. Restitution can restore victims rights such as liberty, general rights, social status, family life and citizenship, employment recovery and asset recovery. Restitution to child victims of sexual violence is compensation given by the perpetrator to the victim in the form of money and others ^[6]. Restitution is compensation for perpetrators to victims both material and non-material, physical, mental healing and guarantees for the future of child and the property of the victim who was seized by the perpetrator must be replaced or returned ^[7].

The fulfillment of rights for child victims of sexual violence hasn't been optimal. In The Tapaktuan District Court from 2019 to 2021, there were 12 (Twelve) cases of sexual violence against children. Based on this data, many child victims of sexual violence do not get their rights through the fulfillment of restitution. In Aceh, the regulation about restitution is regulated in Article 4 letter d Qanun Number 6 of 2014 concerning Jinayat Law which states one of the *uqubat ta'zir* is the granting of restitution. In 2020, South Aceh police investigators resolved one of the non-litigation cases of sexual violence against children, resulting in the perpetrator paying compensation to the victim, but not with a restitution mechanism ^[8].

Police investigators didn't know the procedure applying for restitution to the trial stage, although the procedure for submitting restitution has been clearly regulated in Government Regulation Number 43 of 2017 concerning the Implementation of Restitution for Children who are Victims of Criminal Act. Based on data, from 2019 to 2021 institutions authorized to apply for restitution such as the Police, Prosecutor's Office and other institutions didn't apply for restitution. The institution not only assists from the investigation process to the court, but also notifies the right to restitution submitted to the court ^[9].

The prosecution also confirmed that from 2019-2021 no child victims of sexual violence had applied for restitution or demanded compensation submitted in writing to the investigation team by both the victim's parents and the victim's lawyer which should have been submitted at the investigation and prosecution stage ^[10]. The public prosecutor can't do much in fulfilling restitution because at the investigation stage, the victim and her family are not informed of her right to apply for restitution and obtain her rights as a victim. The P2TP2A institution also confirmed that from 2019-2021 none of the investigating parties or parents of victims of sexual violence applied for restitution or received restitution after the court ruling.

In the judicial system, the court in deciding cases of sexual violence is a passive institution, because the judge decides the case according to the demands of the public prosecutor, if according to the fact at trial and the judge's conviction is appropriate, it will be granted. If according to the facts of the trial and the judge's conviction is incorrect, it will be rejected. In deciding on restitution, the judge decides based on the demands of public prosecutor. If the public prosecutor doesn't demand right of restitution, the judge can't grant the right of restitution. It depends the institution that assists child victims of sexual violence ^[11].

The victim is not interested in applying for restitution because the perpetrator is a close person to the victim. Moreover, long cases settled in court also create a bad outlook for victims and their families. The victim's lawyer has also made efforts to get the victim restitution, but did not get approval from the victim and her family who want the case to quickly resolved. In the future, every case of child victims of sexual violence will be sought to get restitution as expected by the law. Victims don't get restitution and institutions those authorized to apply for restitution only accompany the victim in court because the victim comes from underprivileged family. ^[12]

The victim's family only carries out the trial process as outlined by the law enforcer, but in the case of the right to restitution, no one from the law enforcement authorities explains to the victim or the victim's family, therefore the right to restitution is not obtained by child victims of sexual violence ^[11]. The institution regarding restitution because so far no one has applied for restitution because the institution also does not know about the existence of compensation (restitution) that can be submitted by the victim to the perpetrator, in the future this restitution will be sought for every child who is a victim of sexual violence, especially children ^[13].

Obstacles in fulfilling restitution for child victims of sexual violence

One of obstacles to the fulfillment of the right to restitution of child victims of sexual violence is law enforcement.

Restitution is compensation given by the perpetrator to the victim. In the jurisdiction of the Tapaktuan District Court, since 2019 to 2021, no victim filed for compensation, because the victim didn't proposed for restitution ^[14]. Law enforcers who resolve cases are not active fighting for the right to restitution of child victims. During the prosecution stage, the Public Prosecutor didn't include request for restitution right in the prosecution, so that affecting the fulfillment of restitution for the child victim. The public prosecutor didn't refer to Article 18 of Government Regulation Number 43 of 2017 which authorizes the public prosecutor to impose the right to restitution in his charge letter in accordance with the fact of the trial and supported by evidence.

When the public prosecutor does't include the right of restitution in his complaint, the judge in his judgment does't consider the fulfillment of the right to restitution, because in criminal law there is a prohibition for judges to decide cases outside the demands of the public prosecutor or *ultra petita* judgement ^[15]. Regulation of the Chief of the National Police of the Republic of Indonesia Number 3 of 2008 concerning the Establishment of Special Service Rooms and Procedures for Examining Witnesses and/or Victims clearly stipulates that in the examination of victims of criminal acts at the investigation stage, questions must be asked in order to obtain information about the substance of the case examined, including losses suffered by witnesses and / or victims as material for filing restitution or providing compensation.

Ministerial Regulation Number 22 of 2010 concerning Standard Operating Procedures for Integrated Services for Witnesses and/or Non-Trafficking Victims in Chapter VI Number 6 that: "Trained police with a perspective on human rights, gender, and children (female police PPA Unit) after receiving a report from the victim, the victim's attorney, or the victim's companion, immediately conduct an investigation and investigation, conveying to the victim the victim's rights including restitution, submit the file to the Public Prosecutor. The treatment and treatment of victims of sexual exploitation requires special skills. Therefore, in every police station there should be a number of officers who are trained especially in handling cases of sexual violence. These officers are police officers who have social skills, knowledge of the position and problems faced by victims and are familiar with institutions that provide assistance, services, and assistance to victims both non-governmental organizations and government agencies ^[16].

This is to prevent victim revictimization because police reporting persons or investigators don't understand the conditions of trafficking victims. Therefore, police support plays a role and is strategic in handling victims so as to get restitution in cases of sexual violence against children It needs a dual role of the Investigator to care about the interest of the victim. Moreover, the investigator is the victim's first source of information in know the legal efforts to claim compensation from the perpetrator. So the Investigator not only realizes legal certainty but also protection of victims. The Public Prosecution role in conveying to the victim about her right to apply for restitution. The Public Prosecutor also conveyed the number of victims' losses due to sexual violence and charges against the perpetrators ^[17].

The Public Prosecutor must notify the victim's right to apply for restitution compared to the provisions for combining

compensation cases in Article 98 of the Code of Criminal Procedure because it is clearly different. In this provision, there is no order to the Public Prosecutor to inform the victim that the victim has the right to apply for restitution. The obligation of the Public Prosecutor is very important considering that victims are usually ordinary people who lack knowledge and understanding of their rights as victims. The role of the judge is very large in considering the amount of restitution, both material and immaterial, as stated in the court decision Judges in seeking legal facts are not only to reveal material truths but to reveal the truth about the suffering of victims, provide information on victims' rights and provide justice to victims in their decisions, so it is necessary for judges' discretion to apply them through additional criminal compensation payments.

The decision on compensation is not only for the sake of compensation, but there are other aspects that must be considered by the judge, namely welfare, both for the perpetrator in the form of the accuracy of the selection of criminal workers, and welfare for the victim in the form of compensation based on their socio-economic. So the Investigator and Public Prosecutor play an important role in submitting evidence to support the victim's right to get restitution, so that they can consider the amount of restitution for the victim as stated in the court decision. If evidence is not presented by the Investigator or the Public Prosecutor, the Judge cannot consider the imposition of restitution rights in his decision.

The application for restitution stipulated in Article 18 of Government Regulation Number 43 of 2017 states that the public prosecutor in his complaint includes a request for restitution in accordance with the facts of the trial supported by evidence. The article does not affirm the Public Prosecutor's obligation to include a request for restitution in the prosecution caused the Public Prosecutor not to include the request for restitution in the prosecution, because it was not regulated in Government Regulation Number 43 of 2017. Law enforcement does not active role in facilitating the restitution of child victims of criminal acts. This is due to weaknesses in the internal regulations of law enforcement agency that regulate the implementation of restitution to child victims of criminal act. In the absence of technical regulations from every law enforcement agency in handling the implementation of restitution for child victims of criminal act ^[18].

The regulations of restitution to child victim of criminal has deficiency related to the provision of restitution that still depend on court decisions. Restitution of the victim should be possible as long as the facts of the trial have been proven to cause harm and suffering to the victim ^[19]. The provision of restitution based on a court decision is very detrimental to the victim, just like the child victim experienced in this case. Laws and regulations governing the implementation of restitution can be said to have not been effective in realizing legal certainty for victims of criminal acts. The provision of restitution is still the duty of law enforcement in its implementation and the formation of the Law itself, because there is no standard regulation on how much must be issued to pay the compensation. Many cases in the field of compensation cannot be paid due to economic factors ^[20].

Conclusion

Law enforcement officials do not know the full extent of the procedures for obtaining restitution for child victims of

sexual violence, so none of the cases have been brought before the courts for restitution. Since 2019 to 2021 in the Tapaktuan District Court no applied for restitution to victims of sexual violence. Law enforcement who don't know how to apply for restitution cause justice can't be provided to child victims of sexual violence through the provision of restitution. There are obstacles in fulfilling the right to restitution of victims caused by law enforcers such as the Public Prosecutor not referring to the provisions of Article 18 of Government Regulation Number 43 of 2017. In addition, in the laws and regulations, there are shortcomings, especially the internal regulations of each law enforcement agency that regulates the implementation of restitution of child victims of criminal act.

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