

Provision of Restitution and Protection Children of Victims Criminal Action

by Fransiska Novita Eleanora

Submission date: 09-Mar-2021 01:24AM (UTC-0800)

Submission ID: 1528274749

File name: Provision_of_Restitution-1.pdf (170.08K)

Word count: 3195

Character count: 16320

Provision of Restitution and Protection Children of Victims Criminal Action

Fransiska Novita Eleanora¹, Dwi Seno Wijanarko²

¹ ²Faculty of Law, Bhayangkara University, Jakarta, Indonesia

fransiska.novita@dsn.ubharajaya.ac.id¹, dwi.seno@dsn.ubharajaya.ac.id²

Abstract. The purpose of this research is to find out how the mechanism of restitution given to children as victims of criminal acts against decency in obtaining protection for their rights as parties who suffer as a result of the actions committed by the perpetrator, in the capacity of being victims. To get restitution as a form of compensation given by the perpetrator as a result of his actions. Therefore, the child's birthright includes not only education and health, as well as the need for food and drink or the right to an adequate environment and place to live, but also the right to fulfillment as a victim of a crime or criminal act they have experienced, which This is a form of substitution as a result of the suffering he has experienced both in terms of treatment, rehabilitation or other pain relief in terms of the psychological or psychological condition of the child as the victim. The provision of restitution is based on existing regulations and in the provisions that apart from the child who gets it can also be his family, on the basis that every child can be entitled to the fulfillment of his rights regarding being a victim of a criminal act.

Keywords. Protection, Child, Restitution

1. Introduction

Protection of children is the obligation of every person without exception and not only the obligation of the parents because children are the generation of the nation's future who will continue the struggle of the nation and children have the same rights as adults and there is no difference, the protection referred to is also in providing Child welfare, in terms of welfare, implies that not only provides protection for his basic needs or basic needs but also includes the need for physical and psychological protection of his body because a child cannot protect himself without help from others, which means an adult who can sustain and protect it in various ways, not committing a crime or an act that could cause a child to be injured as a result of an action that occurred or an act committed by another person. Actions carried out by other people can have an impact not only on adults, but also on children where the act is an act that is detrimental where the child often gets unfair treatment against himself, and is in a position as a victim. As a victim, of course, he is a party who feels aggrieved due to the treatment or actions of the perpetrator or the suspect children as victims get suffering both physically and or psychologically and need to undergo treatment for recovery of the illness they suffer, not only that, there must be a psychiatrist or psychologist when it can cause trauma or also cause depression and even pressure in his life.

The submission of children as victims in seeking justice is often neglected and loses the opportunity to fight for their rights where children and women are very vulnerable to the violence they experience and legal standing for victims seems lame when compared to the suspect or defendant (Mayasari, 2018). The physical and psychological suffering experienced by the victim is considered only as relevant to impose sanctions or impose punishment on the perpetrator and this has nothing to do with the victim's suffering, in connection with an examination of the criminal act that occurred, the victim is only positioned as the witness provider, also whistleblowers in investigations and processes as well as one of the keys in solving criminal cases.

An act of decency is a criminal act that is very contrary to morals and ethics and in this case it is regulated in statutory regulations, and there is a provision that if a child becomes a victim of a criminal act, apart from receiving treatment, he also receives restitution in the realm of crime, namely compensation the fees charged to the perpetrator based on a court decision that has permanent legal force for material and immaterial losses suffered by the victim and also his heirs based on Government Regulation Number 43 of 2017 concerning the implementation of restitution for children who are victims of criminal acts experienced.

Children who experience or become victims of acts have the right to get restitution for the suffering they experience and are rights given to them, where what is meant by children who are victims of criminal acts are children who are faced with the law, children who are exploited economically and also sex, children who are victims of pornography, children who are victims of kidnapping as well as trafficking and / or sale, and children who are victims of physical and psychological violence and sexual crimes. The provision of restitution is a form of protection for children's rights, especially their human rights as stated in the Child Protection Law, namely Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

In this Law, it is stated that what is meant by protection of children is all of all activities that guarantee and protect children and also include their rights so that they can live and grow as well as develop and participate optimally and in accordance with dignity. of humanity, and get protection from all acts of violence and discrimination (Pertwi, 2020). The provision of restitution rights for children is a renewal of positive law in Indonesia where the provision of restitution rights is to prioritize children's rights in accordance with the principles of protection of rights by prioritizing the best interests of a child, especially with his capacity as a true victim. really get protection and give priority to their welfare so that they can grow and develop as well as recover from their normal condition. Based on the introduction above, the formulation of the problem is will be studied is how to provide restitution and protection to children who are victims of decency crimes

2. Result and Discussion

a. Children and Their Protection

Protection of children in general can be interpreted as providing a sense of security and comfort in the fulfillment of their rights and avoiding all actions that are deemed to cause harm or suffering to children including exploitation or violence, fulfillment of protection and enforcement of children's rights including protection of children. juridical and non-juridical means that a child not only gets the need for food, clothing or shelter but also includes other needs including getting protection for the child as a victim of the crime he has experienced, as a victim here focuses more on suffering as a result of the crime he has experienced. by the victim, which includes reimbursement of medical expenses, or damage to certain items

including rehabilitation measures, where the impact can make children uncomfortable (Ningtias, 2018).

Fulfillment of children's rights includes also providing protection and enforcement of their rights as victims because children as the next generation of the nation will continue their ideals, so that maximum protection should be given such as the fulfillment of compensation for losses that they deserve as a form of compensation for the consequences. an unpleasant act or an act experienced as a result of a criminal act committed by the perpetrator, where the act is a criminal act of decency that violates the norms and ethics prevailing in society, because it violates existing rules, violates the norm, the meaning here is to violate the will norms of decency and politeness as well as legal norms, namely norms that apply in society. (Djamil, 2013).

Victims of crimes experienced by children are entitled to their rights such as rights in the form of assistance, namely getting assistance from their attorneys during the trial process or being carried out, then with the right to health services by getting proper treatment and child-friendly services where in the treatment and healing of wounds or illnesses that they suffer outside of their body or trauma as a result of the criminal acts they have experienced, healing and services provided by doctors and nurses who are always friendly and put the best for the child. while the right of guidance to get the fulfillment of their rights while in care and the right to get restitution accompanied by law enforcers in obtaining it, such as procedures that must be obtained by children for restitution which is their right, as well as legal certainty of the criminal act they have experienced.

b. Victims of the Crime of Decency

Victim is defined as the party who suffers loss and suffering as a result of an action or action committed by the perpetrator, and in the criminal act that occurs the victim is a child. The criteria for being a child in the provisions of the laws and regulations in Indonesia are those aged between 8 and 18 years and are also children in the womb. The criminal act of sexual immorality was part of a crime against decency, it was stated as morality because it is part of a crime against decency, where an error that is considered by the government in an act that is detrimental and torturous to the community which is proven in the rules of criminal law is violated and also an act that violates the rules or norms that apply and live in society. Crimes against decency can be interpreted as matters of morality related to manners and manners that violate moral and ethical values inappropriately and also against religious and moral norms that deviate from and are dealing with ongoing legal processes (Mansur, 2007). Decency or crime can often cause concern or anxiety for everyone, especially parents whose victims are children because apart from being able to threaten the safety of girls due to obscene acts it can also affect the process of early sexual growth.

Children as victims of a crime of decency are certainly entitled to protection of their rights, and based on the convention on children's rights, one of which is regulated is that a child has the right to protection, which includes the right to get protection from discrimination and acts of violence. and also consequences of neglect for children who do not have a family or relatives, where this right consists of 2 (two) categories:

- a) children must not be treated in a discriminatory manner, which includes non-discrimination against children and their rights, obtaining rights and citizenship which are the rights of the child, and the rights of children as persons with disabilities.
- b) prohibition against child abuse and exploitation, the right to associate with his family, protecting children from all wrong forms are the obligations of the state, also protecting children from work that can threaten their health, education and development, prohibition of torture, and

punishment, and cruel treatment, death penalty and life imprisonment as well as arbitrary actions and orphans are also protected (Rachel, 2020)

c. Submission of Restitution

Restitution can be submitted by every child who is a victim of a criminal act they have experienced, and requests for restitution can be submitted after a court decision is legally enforceable through the existence of a protection institution for witnesses and victims and based on applicable regulations the child who can filing for restitution is:

- a) Children who are faced with the law, namely children who are the perpetrators of the criminal acts that have occurred, children who do them will always seek diversion for the child as the perpetrator, for children as criminal offenders is the last effort given if diversion is not found but efforts are made so that diversion can be implemented To children who are perpetrators of a criminal act, if the child does not get diversion, they still have their rights as long as they are institutionalized for special training, especially the right to get education, play games and so on, such as when a child does not commit a crime (Krisnawati, 2005).
- b) Children who are exploited economically and / or sexually, namely children who are victims of human trafficking and are also used as child labor or to make ends meet and are also used as satisfiers of their needs and desires
- c) Children who are victims of pornography
- d) Child victims of abduction, sale and / or trafficking
- e) Child victims of physical or psychological violence, due to violence that has occurred to the child
- f) Child victims of sexual crimes

Filing for restitution that is obtained is based on the type of restitution for the child who is the victim, compensation for loss of wealth, and compensation for the suffering resulting from the victim of a criminal act experienced as well as compensation for medical and or psychological treatment costs, and the application is filed by the victim, parent or heir and submitted in writing and filed before the court's decision is legally binding, namely in the investigation or prosecution stage and can be submitted through the witness and victim protection agency (Ali, 2018)

d. Implementation of Restitution and Child Protection

Restitution is given to protect children, especially children who are victims of decency which is a criminal act, where protection serves the following purposes:

- a) sense of security is given to the victim, especially given when being processed by the court
- b) in undergoing the process of justice, giving encouragement to the victim and motivation not to be afraid
- c) can restore trust in society and life
- d) to the community as well as to the victims and the families of the victims a sense of justice is fulfilled
- e) ensure girls are free from violence
- f) human rights and violations thereof are serious crimes and constitute crimes based on gender
- g) based on gender, violence is manifested with an attitude that does not tolerate
- h) there must be fair law enforcement against perpetrators of violence against children

The protection provided for not being a victim of a crime or criminal act is due to the protection of individual interests as well as guarantees and compensation which are protection for suffering or loss of the victim, where compensation can take the form of restoration of good name, or rehabilitation, restoration of balance mentality, among others, in the form of utilization, providing compensation to victims such as restitution, compensation, as well as social security or compensation which is welfare and so on. (Nirwansyah, 2019). Protection given to children as victims of decency such as rape and obscenity is the concern of mankind for the existence of children and their future which has gained legitimacy and ratification of the United Nations convention regarding children's rights.

Children as victims of decency crimes need and have the right to a legal basis and get help in solidarity with their human rights, so they can seek protection of the law as a basis for being able to follow up on their physical and psychological healing and will certainly cause deep trauma for himself. So it needs to be given their rights in the form of restitution, which is protection given to children as victims of crimes or crimes that have occurred and befell them, victims of crimes have the right to receive restitution in the form of compensation for their suffering (Noviana, 2015). Children are an effort to create conditions in which children's rights and obligations can be fulfilled, everyone has human rights, including children and not only children as perpetrators of criminal acts, but children as victims of crimes or crimes that occur and what constitutes their rights. their rights need to be given special protection, including protection in the form of restitution in the form of children's rights.

The implementation of the right of restitution which is the right of the victim can be submitted by the parents or guardian of the victim before the trial and can be requested at the stage of investigation or prosecution and can also be submitted when the judge decides the case, if requested at the investigation stage it can be loaded or included in the prosecution file, and the right to restitution is a request from the victim, if the trial process has been completed, the victim can apply for restitution through the witness and victim protection agency, and will be given directions to facilitate it, payment of restitution in the form of compensation to the victim (Windari, 2011), be charged to the perpetrator based on a court decision that has obtained permanent legal force, and all material and non-material losses suffered by the victim will be converted into rupiah and submitted by the victim's parents or guardian to get restitution, where restitution is which will later be borne by the perpetrator.

3. Conclusion

Restitution is the provision of compensation to victims as a result of a criminal act they have experienced and is a form of protection of rights which includes compensation for lost property, as well as the consequences of criminal acts that have occurred are entitled to compensation and compensation for medical and / or medical and psychological costs , as well as those who are entitled to apply for restitution are the parents or guardians of the child, the heirs as well as the person who is authorized by the parents or heirs with a special power of attorney from the child who is the victim of a crime

References

- [1] Ali, M. & Wibowo, A. (2018). Kompensasi dan Restitusi yang Berorientasi Pada Korban Tindak Pidana. *Jurnal Yuridika*. 33 (2). 272.
- [2] M. N. (2013). *Anak Bukan Untuk Dihukum*. Jakarta. Sinar Grafika
- [3] Mansur, D. M. A & Gultom., E. (2007). *Urgensi Perlindungan Korban Kejahatan Antara Norma Dan Realita*. Jakarta: PT. RajaGrafindo Persada

- [4] Mayasari, D. E. (2018). Perlindungan Hak Anak Kategori Juvenile Delinquency. *Kanun Jurnal Ilmu Hukum*. 20 (3). 387
- [5] Nirwansyah, ST. (2019). Hak Asasi Manusia Sebagai Jaminan Konstitusi Di Indonesia. *Ensiklopedia Social Review*. 1 (1). 90
- [6] Ningtias, A. D. (2018). Asas Perlindungan Anak Dalam Peraturan Pemerintah Nomor 43 Tahun 2017 Tentang Pelaksanaan Restitusi Bagi Anak Korban Tindak Pidana. *Jurnal Independent*. 6 (2). 121
- [7] Noviana, I. (2015). Kekerasan Seksual Terhadap Anak : Dampak dan Penanganannya. *Sosio Informa*. 1 (1). 15
- [8] Pertiwi, R. (2020). Hak Restitusi Anak Korban Kejahatan Seksual, *Pancasila and Law Review*. 1 (1). 40
- [9] Rachel, L., Sukardi, W. G., Nadia. P. (2020). Perlindungan Hak Anak Korban Tindak Pidana, *Jurnal Belo*. 6 (1). 91
- [10] Krisnawati, E. (2005). *Aspek Hukum Perlindungan Anak*. Bandung : Utomo
- [11] Windari, R. A. (2011). Penegakan Hukum Terhadap Perlindungan Anak di Indonesia (Kajian Normatif atas Bekerjanya Hukum dalam Masyarakat). *Media Komunikasi FPIPS* 10 (1). 45

Provision of Restitution and Protection Children of Victims Criminal Action

ORIGINALITY REPORT

11%

SIMILARITY INDEX

7%

INTERNET SOURCES

7%

PUBLICATIONS

5%

STUDENT PAPERS

PRIMARY SOURCES

- 1** Submitted to Defense University 1%
Student Paper
- 2** repository.uinsu.ac.id 1%
Internet Source
- 3** download.atlantis-press.com 1%
Internet Source
- 4** Azmiati Zuliah, Madiasa Ablisar. "Rights to restitution for child victim of criminal act under government regulation number 43 year 2017", E3S Web of Conferences, 2018 1%
Publication
- 5** Submitted to TAFE NSW Higher Education 1%
Student Paper
- 6** Submitted to Universitas International Batam 1%
Student Paper
- 7** Trini Handayani, Tanti Kirana Utami. "Legal Protection of Children with HIV that Infected from Mother Transmission in Perspective on

Human Rights (Case Study in Cianjur District)",
SHS Web of Conferences, 2018

Publication

-
- | | | |
|----|--|-----|
| 8 | Bismo Jiwo Agung. "PROTECTION OF CHILDREN'S PERSONAL DATA IN THE DIGITAL WORLD BASED ON NATIONAL AND INTERNATIONAL LEGAL FRAMEWORK", Lampung Journal of International Law, 2020
Publication | 1% |
| 9 | www.staimnglawak.ac.id
Internet Source | 1% |
| 10 | Heni Hendrawati, Nurwati Nurwati, Budiharto Budiharto. "Children's Criminal Responsibilities: Comparative Study in Islamic and Criminal Law", Varia Justicia, 2018
Publication | <1% |
| 11 | ejurnal.ung.ac.id
Internet Source | <1% |
| 12 | R Wisnu Prio Pamungkas, Rakhmi Khalida, Siti Setiawati. "PEMBUATAN GAMBAR SINTESIS DARI DEKSRIpsi TEKS DENGAN ALGORITMA GENERATIVE ADVERSARIAL NETWORK", Aisyah Journal Of Informatics and Electrical Engineering (A.J.I.E.E), 2020
Publication | <1% |
| 13 | Rani Hendriana. "The Prevention of Victim Precipitation in the Criminal Acts of Fornication | <1% |

and Coition Against Children", SHS Web of Conferences, 2018

Publication

14	journals.usm.ac.id Internet Source	<1%
15	staffnew.uny.ac.id Internet Source	<1%
16	www.ssoar.info Internet Source	<1%

Exclude quotes Off

Exclude matches Off

Exclude bibliography Off

Provision of Restitution and Protection Children of Victims Criminal Action

GRADEMARK REPORT

FINAL GRADE

/0

GENERAL COMMENTS

Instructor

PAGE 1

PAGE 2

PAGE 3

PAGE 4

PAGE 5

PAGE 6
