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ENFORCEMENT AND PROTECTION OF CHILDREN'S RIGHTS VICTIMS CRIMINAL ACTIONS

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Abstract

The purpose of this study is to determine the protection and enforcement of children as victims of criminal acts in obtaining their rights through restitution in the form of compensation charged to the perpetrators of criminal acts. Protection of the existence of children's rights is the responsibility of all parties, including their parents as the family of the child, because from birth the child has obtained his rights, which is primarily his right to live, and be raised. It aims to protect children from all threats, and intimidation, as well as violence from physical and psychological, sexual and neglect of children and not also the existence of discrimination, but provides a sense of comfort and safety wherever the child is, free from all obstacles or disturbances, so everything prioritizes the best interests of the child, and does not result in the child as a victim of a crime, and causes the child to suffer a form of enforcement of the rights of the child who has been violated and punish the offender according to applicable law, so that there is a deterrent effect and does not repeat his actions. Normative juridical research methods used by reviewing literature or books as well as legislation relating to the problem to be examined. The resultsof this study are (1) protection and enforcement of children's rights, namely rehabilitation, compensation and legal assistance in accordance with the provisions of the child protection law Number 35 of 2014 concerning amendment of law number 23 of 2002, especially promoting the existence of children's rights (2) the constraints faced are lack of public awareness of cases affecting children, legislation is not fully in favor of children, in terms of restitution law enforcement officials have different interpretations.

1. Introduction

Children as a generation to carry forward the ideals and struggles of a nation should be guarded and protected because they already have human rights from birth into the world and even have inherent these rights since they are in the

womb of their mother or the womb of a woman.This can be considered as a form of protection of children's rights, from birth, adolescents to growing up, must still be given their rights in addition to fulfilling the rights to clothing, food and housing rights of children as victims of crime, victims of a crime or also violation[2]These rights are usually in the form of proper compensation given by the perpetrator to the victim and the right is considered to be a necessity of the perpetrator to pay for the suffering that has been experienced by the victim due to the act done by the perpetrator either intentionally or unintentionally but basically there are bad intentions and arise in the perpetrators so as to cause suffering and bad feelings for the victim.

Every child has the right to get legal protection from all forms of physical or mental violence, neglect, ill-treatment and sexual harassment while in the care of his parents or guardians, or any other party responsible for the care of the child.But the reality is not the case, children as victims of violence are often ignored by competent institutions in the criminal justice system, which should provide adequate attention and protection based on the law. Children who are victims of criminal offenses are entitled to receive compensation in the form of restitution in the form of loss of wealth, suffering due to criminal acts that occur, and reimbursement of medical and psychological care costs. restitution is related to children's rights, but sometimes in practice it is often constrained because of different perceptions among law enforcers. This should not have happened, because no matter how victims still have the right to be treated fairly, and protected their rights[3].

Children often experience abusive and unfair treatment and even become an outlet for adults, being traded, traded or exploited sexually and economically which results in children not only being injured but their lives being threatened and mentally and psychologically disrupted.The importance of rehabilitation is given to children who have experienced prolonged trauma due to the victims of the crime they have experienced, even which often results in depressed children. despair causes the child to take a shortcut to end his life without thinking.As victims, at least children are entitled to their special rights related to compensation or restitution, where children who are entitled to restitution or compensation are children who are dealing with the law, victims of economic and sexual exploitation, victims of pornography, victims of abduction, sale and human trafficking, victims of sexual crimes and even victims of physical and

[2]Sutedjo Wagiati, (2013),*Hukum Pidana Anak,* Refika Aditama, Bandung, p. 23

[3]Tedy Sudrajat, (2011), *Perlindungan Hukum Terhadap Hak Anak Sebagai Hak Asasi Mansuia Dalam Perspektif Sistem Hukum Keluarga DI Indonesia,* Kanun Jurnal Ilmu Hukum, No. 54, Th XIII, p. 120

psychological violence[4]

Restitution in accordance with Law No. 35 of 2014 concerning the protection of children states that children who are victims of criminal acts and who are dealing with the law have the right to submit to court to get restitution which is the responsibility of the perpetrators of crimeis regulated in article 71D, and reads paragraph 1, its contents, every person who violates the provisions as in article 76D is sentenced to a maximum imprisonment of five years and a maximum of 15 years and a maximum fine a lot of 5billion and in which form: loss of wealth, suffering, medical and psychological care and filed before the decision of the investigation or prosecution or through the Witness and Victim Protection AgencyProtecting a child is not only sufficient to provide rehabilitation to the child as a victim, but it is not enough to punish the perpetrator without being accompanied by fines or payment of damages caused to him, thus the law that lives in the community which aims to provide legal certainty of justice, forcing the suspect to pay fines and provides compensation for victims, as a form of law enforcement to the perpetrators or suspects.

Payment of compensation which can be in the form of restitution requires the state to take the money of the suspect used to pay damages to victims, which is called restitution and the provision of restitution is an obligation of the State to protect the rights of its citizens including protecting the rights of existing children in the provisions of law No, 39 of 1999 concerning human rights and children have the right to get the best interests for themselves by getting the restitutionCompensation must be sought in the beginning starting from the level of investigation, meaning that the police are trying and trying to get the perpetrators to pay for all losses suffered by the victim and if it is not carried out it will be forwarded to the prosecution and also still not doing or carrying out compensation will be proceed to litigation[5]

The regulation on child protection besides Law Number 35 Year 2014 concerning Amendment to Law Number 23 Year 2002 concerning Child Protection Restitution in accordance with Law No. 35 of 2014 concerning the protection of children states that children who are victims of criminal acts and who are dealing with the law have the right to submit to court to get restitution which is the responsibility of the perpetrators of crimethere are also other regulations in the form of Government Regulation Number 43 Year 2017

[4] Pulunggono Wigati dan Munsyarif Abdul Chalim (2017) *Kebijakan Perlindungan Hukum terhadap Anak Korban Kekerasan Dalam Rumah Tangga Dengan Kotribusi Upaya Pembaharuan Hukum Pidana Nasional,* Jurnal Hukum Khaira Ummah, Vol. 12 (2) P. 343

[5] Manihuruk T.N.S dan Rochaeti Nur, (2016) *Perlindungan Hak Anak Korban Phedofilia Dalam Sistem Peradilan Pidana Anak (Studi Tentang Penanganan Kasus Kejahatan Seksual Terhadap Anak Di Polrestabes Semarang),Law Reform*, 12 (1) 121-131, https://doi.org/10.14710/lr.v12i1.15845

Regarding Restitution for Children Victims of Crime and Government Regulation No. 44Year 2008 Regarding the Provision of Restitution, Compensation and Assistance to Witnesses and Victims.Regarding Restitution for Children Victims of Crime and Government Regulation No. 44 of 2008 concerning the granting of compensation, compensation and restitution, and assistance to witnesses and victims which stated that the victims of gross violations of human rights and the right to obtain compensation were submitted by the victim, her family or her attorney to the court through a witness protection agency and victims (LPSK). The promulgation of this regulation explicitly requires and requires that children who are victims of criminal offenses are entitled to get compensation because it is a lost right, and their rights have been seized by others, with claims for compensation and applicable law, the State is obliged to charge to pay to the victim as a form of protection for children or the community members.

Based on the protection of children who are whole and comprehensive and also comprehensive, this law places an obligation in protecting children of children against non-discrimination and the child gets the best interests, the right to life and survival of his life and the existence of respect for children and his opinion

2. Research Method

This type of research used in normative juridical research is research in the study of literature which means that it will examine more and study the existing legal rules and applicable. Normative legal research is called a process to find the rule of law, and legal principles and the existence of legal doctrines and to answer the existence of legal issues that are or are faced so that arguments can be obtained, also theories or the existence of new concepts as prescriptions

While the research approach is used by the legislation and conceptual approach, then the types and legal materials used in this study are primary, secondary and tertiary legal materials, where the primary legal material is the Indonesian Criminal code, Law No. 35 of 2014 concerning Amendment to Law No. 23 of 2002 concerning Child Protection, Government Regulation Number 43 of 2017 concerning Restitution for Children Victims of Crime and Government Regulation, Number 44 of 2008 Regarding the Provision of Compensation, Restitution and Assistance to Witnesses and Victims, secondary legal material is in the form of publications or journals concerning law are not official documents[6]

And publications on this law are also obtained by including textbooks, legal dictionaries, and legal journals. Tertiary legal materials are materials that provide meaningful instructions or explanations of primary legal materials and

[6] Soekanto, Soerjono & Mamudji Sri, (2001), *Penelitian Hukum Normatif (suatu tinjauan singkat)*, Jakarta : Rajawali Pers, p. 23-25

secondary legal materialssuch as legal dictionaries and encyclopedias. Data collection techniques for primary materials are done through the study of legal literature, inventory of legislative regulationsrelated to grouped based on the level or hierarchy of legislation, collection of secondary legal material is done by conducting a literature review and literature search related to the subject of research. And Tertiary legal materials Tertiary legal Tertiary legal material is obtained from the legal dictionary, also Indonesian dictionary and English dictionarymaterials are collected through literature review, both manually and electronically via the internet

Furthermore, the technique of analyzing legal materials is carried out by means of library research (Library Research), namely by conducting inquiries of existing legal materials and their relevance or relevance to the subject matter of the study in this study.

3. Result and Discussion

3.1 Protection and Enforcement of Children's Rights as Victims According to Law Number 35 of 2014 concerning Amendment of Law Number 23 of 2002 concerning Child Protection

Protection of children as victims of criminal acts is an obligation for everyone without exception, meaning that here the responsibilities and obligations for parents, families, communities, the government and also the State Protection of children as victims of criminal acts is an obligation for all people without exception, meaning that here the responsibilities and obligations of parents, family, community, government and also the State with special protection for children and compensation based on appropriate human rightsare in accordance with the mandate of Law Number 39 of 1999 concerning Human Rights. Child protection as the next generation of the nation has been focused again since the existence or birth of Law No. 23 of 2002 concerning child protection, which is focused on the lives of children who will continue the nation's struggle and the ideals of the nation Child Protection and Enforcement Issues in addition to being an obligation of all parties related parties to provide legal certainty, up to now the Number Law 23 of 2002 has been revised and has been revised with Law Number 35 of 2014 concerning Child Protection. Crimes that occur not only committed by adults, but also children who are dealing with the law, because as a child offender[7]

Compensationis a formof sanctions, Sanction because of the presence of the State to protect its citizens, As an instance if there are citizens who feel

[7] Parkinson Patrick,*Child Protection, Permanency Planning and Children's Right to Family Life*, *International Journal of Law, Policy and the Family*, Volume 17, Issue 2, August 2003, Pages 147–172, https://doi.org/10.1093/lawfam/17.2.147

uneasy, insecure then those who create such trouble will be sanctioned so as not to interfere again. Sanction as *ultimumremedium* is the last resort namely by convicting the offender if the offender is deemed not willing to pay the losses imposed on him, but it is different if the perpetrator is a child below the age, then the sanction can be a minimum remediumthe application of sanctions from crime which is the ultimate or final sanction in law enforcement

Form of sanctions as enforcement of children's rights because it is in accordance with various existing theories of retribution where those who are guilty must be punished, meaning that the teeth are replaced with teeth, appropriate retaliation in accordance with their actions, giving a deterrent effect the purpose of this retaliation theory is to foster awareness of the perpetrator, not repeating the act, and more aware that the law is no joke, and the law was created by the authorities, and there was a compulsion to follow the rules

Actors who give suffering to victims, and if proven to have committed acts that are contrary to the law, then can be regarded violating acts that can be criminalized, called acts that violate an act that is crime and violations, and the crime is usually referred to as an act that is considered violate the rules that have been made by the authorities, and meet the elements that have been determined, namely:

(i) There are subjects where the subjects here can come from a single actor or more than 1 actor called inclusion can even be done by corporations in this case limited liability companies, foundations, firms, cooperatives, and so on, as in the case of child pornographic content On Facebook or Instagram, there must be accountability from the corporation which is considered to display photographs of minors.
(ii) Errors, can occur because there is an element of intentionality or also because of negligence, intentional because there is already an intention and planned, there is a time limit in thinking when to do the act, while negligence is not intentional, but negligence resulting in dangerous death can be sentenced to death or for life too.
(iii) The act is against the law, meaning that the actions carried out by the perpetrators clearly destroy the future of the child, commit violence or violate the human rights of the child, including acts that are illegal and appropriate and deserve to be imposed or threatened with sanctions or punishment.
(iv) Acts are regulated in law. Acts carried out by the Actors have been regulated in the Law, somes rules regulate them in accordance with what clauses and threats of punishment are determined including

imprisonment and fines imposed on the perpetrators, as well as additional crimes other than the principal criminal[8].

(v) Time, Place and Circumstances, this is related to when the crime or the act was carried out, according to the day, time and date and how the perpetrator's condition can be accounted for or not, whether the perpetrators of children or are under age, or not in their right mind or crazy, in that case the punishment isdistinguished, both for children are not the same as adults, their placement may not be combined but placed in the Institute for Special Development of Children (LPKA), whereas for those who are crazy the perpetrators must embrace in a mental hospital and based on observations from expert witnesses i.e. doctors, not to be left free or to roam because it will endanger the lives and safety of many people, so it must be included in the mental hospital.

In the case of punishing the offender or providing a criminal offense, the objective theory is to protect so that the perpetrator looks more towards correctional conditions where the perpetrator is in the knowledge not to be tortured or treated inhumanely but is educated to be better, educating the offender is directed as a subject not an object in the hope of his self-awareness to be a better person, and to return to society and not to repeat his mistakes a second time, there was repentance there and reallythere is regret in the offender for not repeating his actions and had a deterrent effect on him.

Of the two theories above, the protection and enforcement of children's rights is more inclined and tends to the third theory, which is a combined theory, in addition to giving retribution or punishment accordingly to the perpetrators, it also changes the mindset and character of the perpetrators because it makes my peers not easy, with an internal approach also exists approaches in the environment and for victims can also be done with efforts at rehabilitation or recovery

Enforcement of children's rights as law enforcement that creates a sense of security and security means that the law must be upheld by the guilty party indiscriminately must receive sanctions or penalties commensurate with his actions, thus the law comes alive in the midst of it means that the law provides justice for perpetrators and victims by requiring perpetrators to pay fines or compensation to victimsthe community paying fines or compensation to the victim as required It is already regulated in various laws and regulations. Provisions of Law Number 35 Year 2014 Regarding Amendment to Law Number 23 Year 2002

[8] Siregar Hotma, (2018), *Peranan Pusat Kajian Perlindungan Dalam Menjalankan Hak Asasi Anak Jalanan Ditunjau dari Pasal 11 Undang-Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak, Jurnal Civic,* Media Kajian Kewarganegaraan, vol. 15 (1), p. 12

concerning Child Protection, in Article 76D requires the offender to pay for all losses and suffering suffered by the victim, where the victim as the party suffering due to losing everything, has not again leaving deep wounds and prolonged trauma that are sometimes difficult to recover too.

The provisions of Article 76D can be explained that the State protects children as victims of crime and also upholds the rights of children, this can be proven in addition to the law there is actually a perception of the Code of criminal procedure law governing the incorporation of compensation, but in more detail, it is regulated in a Government Regulation governing compensation provided to children through restitution, and compensation which continues to include the State in protecting it.Child rights must be given protection early on with the issuance of Government Regulation Number 43 Year 2017 Regarding Restitution for Children Victims of Crimes which explains that children who are victims of criminal offenses can request appropriate damages according to procedures to the offender, in this provision explaining also restitution can be submitted by the family and even the heirs if the victim cannot apply.

In addition to the Government Regulation mentioned above, there are also other Government Regulations, numbered 44 in year to 2008 concerning the Provision of Compensation, Restitution and Assistance to Witnesses and Victims, in this PP gives authority to witness and victim protection institutions to assist perpetrators in understanding and understand the rights to how to submit it and how much damage is asked to the perpetrators, the public understands their rights as citizens[9].

In promoting the rights of children there is a lot of involvement from institutions or certain parties such as the Indonesian Child Protection Commission, National Commission for Children, Police, Prosecutors' Office, Judiciary, Witness and Victim Protection Institutions, Ministry of Child and Women's Protection who have contributed to the protection of children's rights. Enforcement of children's rights must always be coordinated in providing child protection, prioritizing children's rights and giving the best interests of children, and children are prioritized in everything, growth and development of children are the top priority for children who have problems with the law, children as victims certainly do not Apart from rehabilitation if it results in the occurrence or trauma that threatens his psyche the rehabilitation given is medical rehabilitation that is by seeking treatment of his body because of the occurrence of clashes or conflicts that occurresulting in injuries all over his body and cannot be brought still, soas not to cause infection or can also cause death of the children, while social rehabilitation is given so that children in their lives or

[9]Warrington Camille, Catch Larkins, *(2019), Children at the centre of safety: challenging the false juxtaposition of protection and participation*, Journal of Children;s Services, 14 (3), p. 133-142

environment can return to their neighborhoods and be accepted by the community with open arms, open arms meaning not to remember or remember what is needed, already experienced by the victims.

Protection of children is protection from the human rights of children given in an integrated manner and also in a systematic manner through a series of programs, and education also exercises and can also be provided through institutions for legal assistance[10]

3.2 Constraints in Enforcement and Protection of Children's Rights

Until now the cases of children either as perpetrators or victims continue to occur and have increased critically due to poverty, injustice, disaster vulnerability both national and international disasters, pornography and speech, human trafficking, father and mother wrong behavior, early marriage, disintegration nation, drug trafficking and even children who have law. Lack of community care results in frequent acts of violence against children, so children are treated very inhumanely, people lack understanding of what is meant by child protection, especially with the enforcement of children's rights, the perception of every child is theirs, so whatever they do is their concern because they think that children are their children

In addition to the above which also becomes an obstacle for law enforcers, the existence of different perceptions between compensation and restitution can lead to various interpretations, that restitution is given at the level of investigation, not prosecution, but there is a claim that restitution is given after being terminated and processed in court. an independent institution as an institution accompanying the child as the victim is only limited to assisting not to decide how the restitution is carried out, the procedures followed by the parties and the amount of the restitution, if the parties agree between the perpetrator and the victim, then the restitution is carried out but if not then it must be transferred to the process the trial[11].

Legal protection is also an act that protects the law, because the law can not only function as a certainty but also guarantees protection and balance between the interests of consumers, entrepreneurs, society and also the government because of the balance and also the arena of change and reform

Victims as the suffering party are forced to rememberor carry outa reconstruction of the crime they have experienced can cause to disruption

[10] Azkia Zuraidah dan Muhamad sadi Is, Perlindungan Hukum Terhadap Hak Asasi Anak Yang Menjadi Korban Kekekrasan, (2018) Nurani : Jurnal Kajian Syari'ah dan Masyarakat, Vol. 18 (1) p. 155, DOI: https://doi.org/10.19109/nurani.v18i1

[11] Arliman S, Laurensius, (2017), *Dinamika dan Solusi Perlindungan Anak di Sekolah*, Jurnal Selat, vol. 4 (2), p. 223

of the child's soul, more down and can result in the child instead of recovering even more injured or crazy because of trauma or psychological experience, at least this can be of concern not only to the authorities but also to the community, meaning that another way is needed to call witnesses who were at the scene to be able to reconstruct the events that had been experienced by the victim

Besides that, because not all of the people with a wide range of characters and knowledge understand their rights, do not know if there are rights to file compensation claims, where and procedures, lack of community understanding because law enforcement authorities do not provide information and input in efforts to demand and demand compensation from perpetrators. There is no assistance from law enforcement authorities, so that people from rural areas and their lack of knowledge do not implement the so-called right to apply for restitution, these rights must be sought so that people as part of human rights humans have the right to prosecute appropriate losses, with this ignorance resulting in people who have children as victims of crime are reluctant and lazy to solve and even silenced all the problems they face[12].

These obstacles often occur in all aspects of children's lives, both in the protection of children in the civil field and also in freedom, the field of family and child safeguards, in the fields of basic welfare and health, education, recreation and cultural creativity and also in the field of special protection that is indeed necessary pay special attention to all parties concerned of children, the wider community, the Government and also the State, as a manifestation of the welfare of its citizens.

Conclusion

1. Protection of children as victims of criminal acts is done by giving restitution to victims charged to the offender, but often different interpretations occur among law enforcers on restitution

2. Obstacles or obstacles in the Implementation and Enforcement of children's rights as victims of criminal acts, including:
   a) Lack of community awareness of cases of children that occur and do not want to report
   b)Providing Compensation, especially Restitution, law enforcers have different perceptions and interpretations

[10]https://www.hukumonline.com/klinik/detail/ulasan/cl5928/ganti-rugi-dalam-kasus-pidana/, "*Bagaimana Cara Menuntut Ganti Rugi Jika Menjadi Korban Tindak Pidana:* 14 Desember 2019, Jam, 13.16 wib

c) Lack of community knowledge results in not knowing their rights, the procedure for submitting, as well as the procedure and where the right to claim the compensation will be filed
d) Law enforcers do not inform the rights of the community or child victims of criminal acts, there needs to be assistance for victims

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