

The Urgency Of Providing Restitutions For Victims Of Sexual Violence

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Abstract: Criminal acts of sexual violence are crimes that are rife in Indonesia today. Most of the existing laws and regulations in Indonesia only focus on punishment for perpetrators of sexual violence crimes. Meanwhile, victims of sexual violence have not received proper attention, especially with regard to compensation for the losses they have experienced. This article aims to examine the laws and regulations governing the provision of restitution for victims of sexual violence and the problems encountered in providing restitution for victims of sexual violence. The results of this study indicate that granting restitution to victims of sexual violence can be submitted to the Witness and Victim Protection Agency, and the problem in the practice of granting restitution to victims of sexual violence is the lack of government support to provide restitution rights for victims, and not yet there are coercive measures and sanctions against perpetrators of crimes against victims of sexual violence that do not provide restitution.

Keywords: Victims, Sexual Violence, Restitution.

Abstrak: Tindak pidana kekerasan seksual merupakan kejahatan yang banyak terjadi di Indonesia saat ini. Sebagian besar peraturan perundang-undangan yang ada di Indonesia hanya fokus pada hukuman bagi pelaku kejahatan kekerasan seksual. Sementara itu, korban kekerasan seksual belum mendapatkan perhatian yang layak, terutama dalam hal ganti rugi atas kerugian yang dialaminya. Artikel ini bertujuan untuk mengkaji peraturan perundang-undangan yang mengatur pemberian restitusi bagi korban kekerasan seksual dan permasalahan yang dihadapi dalam pemberian restitusi bagi korban kekerasan seksual. Hasil penelitian ini menunjukkan bahwa pemberian restitusi kepada korban kekerasan seksual dapat diajukan kepada Lembaga Perlindungan Saksi dan Korban, dan permasalahan dalam praktik pemberian restitusi kepada korban kekerasan seksual adalah kurangnya dukungan pemerintah untuk memberikan hak restitusi bagi korban kekerasan seksual, dan belum adanya tindakan dan sanksi pemaksaan terhadap pelaku kejahatan terhadap korban kekerasan seksual yang tidak memberikan restitusi.

Kata Kunci: Korban, Kekerasan Sexual, Restitusi.

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Introduction

The development of criminal acts occurring today is influenced by technological developments and has resulted in new crimes which are often known as contemporary crimes. Some of the new crimes that have developed in this modern era include cyber terrorism, revenge porn, cybercrime, human trafficking, sexual violence

against children and women and various other crimes. New crimes that have developed in this era have more sophisticated, complex and complex modus operandi, making them difficult to handle.

Talking about the settlement of criminal cases in Indonesia at this time, of course, cannot be viewed from one side only, namely related to the fate of the perpetrators of the crime itself, but what also needs to be considered is related to victims of criminal acts who suffer material and immaterial losses as well as protection for victims.¹ The role of witnesses and victims in uncovering a fact of a criminal incident is very important. It is these witnesses and victims who experience, see and hear the occurrence of a crime. The role of witnesses and victims is so important to produce legal evidence, the fact is that witnesses and victims often take acts of intimidation, harassment, threats, terror, and acts of violence from opposing parties who try to thwart or hinder these witnesses and victims. not to testify in a legal proceeding

Based on the 2020 annual report of the Witness and Victim Protection Agency (LPSK), throughout 2020 the Witness and Victim Protection Agency (LPSK) received 1454 requests for protection. This is clearly seen in the decrease in applications in the previous year, namely in 2019 there were 1898 applications. The number protected by the Witness and Victim Protection Agency (LPSK) with the status of witnesses, victims, perpetrator witnesses, reporters and expert witnesses totaled 2,785 people. Throughout 2020 all protected by the Witness and Victim Protection Agency (LPSK) have received a total of 4,478 protection programs such as medical assistance, psychological assistance, psychosocial rehabilitation, restitution, compensation, physical protection and fulfillment of procedural rights.²

Protection for victims of criminal acts and fulfillment of the rights of victims of criminal acts in Indonesia have been regulated in several laws and regulations. Regulations related to the protection of victims of criminal acts are contained in the Law of the Republic of Indonesia 31 of 2014 concerning Protection of Witnesses and Victims. The protection referred to is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and/or victims which must be carried out by the Witness and Victim Protection Agency (LPSK) or other institutions in accordance with the provisions of the law in question. Besides that, there is also Government Regulation of the Republic of Indonesia Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution and Assistance to Witnesses and Victims as one of the supporting regulations to strengthen efforts to protect witnesses and fulfill victims' rights. One form of protection for victims as an effort to fulfill the rights of victims is restitution. Restitution is compensation given to victims or their families by perpetrators or third parties as stipulated in Article 1 number 11 of the Law of the Republic of Indonesia Number 31 of 2014 concerning Protection of Witnesses and Victims.

Cases of sexual violence can be committed by anyone, at any time, regardless of time and place. Cases of sexual violence are rife in the environment around us, such as cases of incest (marriage by blood relations), rape in educational settings and workplaces. So far, the substance in the Criminal Code (KUHP) has not fully protected victims of sexual violence. The Criminal Code (KUHP) only focuses on punishing the perpetrators and has not thought of the best legal remedy for victims of sexual violence, besides that it also does not cover forms of sexual violence that are currently developing. The position of the victim in the Criminal Code appears to be not optimal compared to the position of the perpetrator. The problem that needs attention is the position of the victim as a legal subject having equal status before the law (equality before the law).³

The majority of victims of sexual violence in Indonesia are children and women. Children have a role in the life of the nation as potential human resources that determine the existence and glory of the nation. In criminal acts, sexual violence, especially against children, is a form of sexual torture that is often carried out by adults or

¹ Siswanto Sunarso, 2012, *Viktimologi dalam Sistem Peradilan Pidana*, Sinar Grafika, Jakarta, p. 49.

² Fakhru Haqiqi, LPSK Apresiasi Putusan Hakim Perkara Pencabulan Anak di Gereja Herkulanus Depok, <https://lpsk.go.id/berita/detailpersrelease/3269>, accessed on 13th July 2023.

³ Dikdik M Arief dan Elisatris Gultom, 2007, *Urgensi Perlindungan Korban Kejahatan Antara Norma dan Realita*, PT RajaGrafindo Persada, Jakarta, p. 24.

those who are older than the child, usually using sexual stimulation. An act that is a crime must have a victim who experiences and feels the loss as a result of the crime.⁴

Violence against women can be defined simply as any form of behavior perpetrated against women that causes psychological consequences in the form of feelings of fear that result in physical injury. This very broad definition ranges from sexual harassment in the form of whistling or teasing against women, to the omission by the State of the condition that women whose nationals are victims of violence.⁵ Sexual violence includes an act that ranges from sexual harassment to forcing someone to have sexual intercourse without the victim's consent or when the victim wants or does not want it to fulfill the perpetrator's sexual needs. Crimes of sexual violence result in victims suffering that require serious attention.⁶

Even though Law Number 13 of 2006 concerning the Protection of Witnesses and Victims has guaranteed a sense of security in giving information during the examination process. The realization of a sense of security that often does not work according to the objectives of these laws and regulations makes victims tend to prefer to remain silent. In connection with this responsibility, one form of effort to protect victims of sexual violence, especially children, must also pay attention to the responsibility towards children by parents and families based on the Child Protection Act.⁷

Based on these problems, this article will discuss the procedures for applying for and granting restitution for victims of sexual violence and the constraints of the Witness and Victim Protection Agency in efforts to provide restitution for victims of sexual violence.

Literature Review

The literature review contains descriptions of theories, concepts, findings, and other research materials obtained from reference materials to be used as the basis for research activities. The description in the literature review is directed to develop a clear framework of thinking about solving the problems that have been described in the formulation of the problem. The literature review shows a "knowledge map" related to the topic of study, provides theories and concepts that can sharpen the analysis and relies on reputable journal articles published no later than the last 10 years and cites articles on "giants". The end of the literature review also identifies the logical reasons why this research is important.

Method

The writing of this article uses normative legal research methods with a statutory approach. The legal materials used in this research are primary legal materials and secondary legal materials. The legal material collection technique used in writing this article is in the form of literature studies. The analysis technique used in writing this article is to use deductive analysis techniques.

Results and Discussion

Procedures for Implementing Restitution for Victims of Sexual Violence in Indonesia

The concept of compensation known in Indonesia includes restitution and compensation. Compensation is a form of protection for victims directly, but in practice both restitution and compensation as the form of compensation is not well known and understood by law enforcement officials and Indonesian society as a whole. The difference between refund and compensation can be seen from two things. First, compensation is a demand fulfillment of compensation made by the victim through an application that paid for by society or the state. In compensation does not require any punishment of

⁴ Arif Gosita, 1983, *Masalah Korban Kejahatan*, Akademika Presindo, Jakarta, p. 41.

⁵ Niken Savitri dan Aep Gunarsa, 2008, *HAM Perempuan: Kritik Teori Hukum Feminis terhadap KUHP*, Refika Aditama, Bandung, p. 48.

⁶ Abdul Wahid, Muhammad Irfan, dan Muhammad Tholchah Hasan, 2001, *Perlindungan Terhadap Korban Kekerasan Seksual: Advokasi Atas Hak Asasi Perempuan*, Refika Aditama, Bandung, p. 32.

⁷ Renaldi P. Bahewa, "Perlindungan Hukum Terhadap Anak Sebagai Korban Pelecehan Seksual Menurut Hukum Positif Indonesia," *Lex Administratum*, Vol. 4, No. 4, 2016, p. 21–28.

criminals. Second, on restitution of claims for compensation carried out through a court decision and paid for by the perpetrator of the crime.⁸

The implementation of restitution must be in accordance with the principle of Restoration in its Original Condition (*restitutio in integrum*), this is an effort that can be done that victims of crime must be returned to their original state before the crime happen. Even though it is based on that it will not be possible for victims of criminal acts to return in the condition at the time before experiencing the loss he suffered. This principle too emphasizes that the form of recovery to be carried out on victims must be achieve a completeness in recovery and cover various aspects that caused by crime. Through filing for restitution, victims are expected to be able to restored freedom, legal rights, social status, family life and citizenship, restoration of his job and restoration of his assets.

Protection of witnesses and victims in positive law in Indonesia has received arrangement even though it is still very simple and partial. It can be seen in material criminal law and formal criminal law. There is confusion for victims regarding the mechanism to be used in filing charges restitution, can be caused because there is no alignment in the filing procedure the right to restitution itself.⁹ In cases of criminal acts of sexual violence, law enforcement officers focus on not only punishing the perpetrators of crimes only sexual intercourse but keep in mind that there is a victim's right in the form of compensation (restitution) as a result of the crime of sexual violence. Society and all parties involved stakeholders also need to pay attention to the rights of victims of sexual violence. Restitution given to victims of criminal acts of sexual violence takes various forms, ranging from reimbursement of medical to psychological treatment costs, to assistance to victims of sexual violence in court.

Based on the provisions in Article 7A paragraph (1) of Law Number 31 of 2014 regarding the Protection of Witnesses and Victims, victims of criminal acts have the right to obtain restitution which can be in the form of compensation for loss of income or wealth; compensation arising from suffering that results directly from something crime and/or reimbursement of medical and/or psychological treatment costs. Witness and Victim Protection Agency as a mandated institution by the Witness and Victim Protection Act to provide protection and fulfilling the rights of witnesses and victims play a role in accompanying victims of criminal acts, notify or inform victims of criminal acts regarding their rights in obtaining restitution. Submission of requests for restitution for victims crime under article 7A paragraph (3) of Law Number 31 of 2014 concerning the Protection of Witnesses and Victims can be filed before a court decision which has permanent legal force or after a court decision has been made obtain permanent legal force through the Witness and Victim Protection Agency.

If the request for restitution is filed before a permanent legal verdict (*inkracht*) Witness and Victim Protection Agency can apply for restitution to the court to obtain a determination. If the victim crime of death, restitution can be given to the family of the deceased is the heir of the victim as stipulated in Article 18 of the Government Regulation Number 35 of 2020 concerning Provision of Compensation, Restitution and Assistance to Witnesses and Victims.

Problems in the Implementation of Restitution for Victims of Sexual Violence in Indonesia

With the increasing number of protected sexual violence against children and women through the Witness and Victim Protection Agency caused several constraints and challenges in fulfilling the rights of victims of sexual violence. One of them is restitution (compensation). In the Witness and Victim Protection Agency Annual Report 2020 Sexual Violence Protection Program facilitated by the Institution Witness and Victim Protection, there are various kinds of rights obtained by victims of sexual violence including the Fulfillment of Procedural Rights, medical rehabilitation, psychological rehabilitation, restitution, psychosocial rehabilitation and costslive temporarily. Based on data from the victim's 2020 Witness and Victim Protection Agency annual report Restitution of sexual violence has continued to increase over a period of 3 last year. Restitution and compensation are very important rights for victims who suffer physically as a result of the

⁸ Maya Indah, 2014, *Perlindungan Korban Suatu Perspektif Viktimologi dan Kriminologi*, Kencana, p. 138.

⁹ Wahyu Wagiman et al., 2007, *Praktik Kompensasi dan Restitusi di Indonesia: Sebuah Kajian Awal*, Indonesia Corruption Watch, Jakarta, p. 12.

suffering they experience. Protection the victim, especially the right of the victim to obtain compensation, is a part integral part of human rights in the field of welfare and social security (social security).¹⁰

In 2018, 41 victims of sexual violence received restitution the respondent In 2019 victims of sexual violence received restitution a total of 125 respondents. And in 2020 victims of sexual violence received restitution for a total of 194 respondents.¹¹ The right of victims of sexual violence to getting restitution began to be understood by the victims of the crime themselves. Although the number of requests for restitution is not as much as protected by sexual violence fulfillment of procedural rights which continues to increase every year.

In advocating victims, especially cases of criminal acts of sexual violence, Witness and Victim Protection Agency constraints and challenges include the social impacts experienced by victims varied, including exclusion from society, victims of sexual violence, especially children, lose their right to education. The support from the victim's attorney and the surrounding community is very much. It is important that the victim remains enthusiastic in undergoing the judicial process and continue his life. Another challenge is limited availability psychologists in assisting victims of sexual violence. Sometimes in cases sexual violence that occurred in several areas without the availability of sources human resources, in this case adequate psychologists both in quantity as well as quality. As well as the need for support from law enforcement officials so that fulfillment of the right to restitution for victims of sexual violence can run effectively.¹²

Problems experienced by law enforcement officials related to the fulfillment of restitution for victims of criminal acts of sexual violence is that coercion has not yet been regulated perpetrators of sexual violence. The perpetrators who have been convicted by the panel of judges are requested to pay restitution to victims choose to be reluctant to pay restitution and prefer a subsidiary sentence which is considered much lighter. That matter creates the impression in the community that many restitution decisions cannot be made executed because the payment of restitution depended on the good intentions of the offender. In addition, law enforcement officials have not been too massive to organize it training related to approaches to victims and restitution, especially for victims criminal acts of sexual violence in order to achieve mutual understanding and awareness to realize the maximum fulfillment of restitution in its fulfillment for victim.

Conclusion

The procedure for applying for restitution for victims of sexual violence can be carried out simultaneously with criminal proceedings and can even be started from the beginning investigation filed through the Witness and Victim Protection Agency. Submission of restitution based on Article 7A of the Law of the Republic of Indonesia Number 31 of 2014 concerning Protection of Witnesses and Victims where restitution is for victims criminal acts can be in the form of compensation for loss of wealth or income, compensation for suffering that is directly related as a result of a crime and reimbursement for medical or psychological treatment. Obstacles and challenges experienced by the Witness and Victim Protection Agency in facilitating victims of criminal acts of sexual violence in obtaining restitution, among others the lack of support from the community and the victim's attorney so that resulting in social impacts on victims such as ostracism, limitations availability of Human Resources, especially psychologists in assisting victims of sexual violence and lack of support from related law enforcement officials fulfillment of the right of restitution that has not been implemented effectively. Obstacles experienced by law enforcement officials in the implementation of restitution for victims of criminal acts sexual violence, among others, has not regulated coercive measures for the perpetrators of sex violations to pay restitution which was decided in court, and payment of restitution depends on the good intentions of the offender.

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¹⁰ Maya Indah, *Op.cit*, p. 110.

¹¹ Wagiman, et.all, *Op.cit*, p. 38.

¹² Maria Novita Apriyani, "Implementasi Resitusi bagi Korban Tindak Pidana Kekerasan Seksual, *Jurnal Risalah Hukum*, Vol. 17, No. 1, 2021, p. 8.

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