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Fulfillment of the Rights of Restitution for Child Victims of Sexual Crimes (Study of the Appeal Decision of the Bangka Belitung High Court Number 14/Pid.sus/2024/PT BBL)

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Abstract: The aim to be achieved in this research is to find out about the fulfillment of the right to restitution for child victims of sexual crimes. The method used in this research is normative juridical where researchers use secondary legal materials originating from decisions as well as journals and books related to the research topic being conducted. The payment of restitution received by the victim in decision Number 14/PID.SUS/2024/PT BBL is a form of legal certainty for the victim where the essence of legal certainty is a form of implementation in which there is a law enforcement mechanism for various actions without any views who is the individual who broke the law.

Keyword: Restitution, Children, Sexual Violence, Decision Number 14/PID.SUS/2024/PT BBL.

INTRODUCTION

The position of victims in criminal justice as parties seeking justice has been neglected. Perpetrators of criminal acts receive more attention, such as rehabilitation, correctional services and so on (Firman Zakaria et al., 2023). This is a form of injustice for the victim because as the injured party they only function as a means of proof and it is not uncommon for the victim's human rights to be ignored. Talking about victims, nowadays the most victims found are children. Many children are victims of criminal acts, both minor crimes and serious crimes. Crime has been known since human civilization. The higher the civilization, the more rules and the more violations (Febrianto, 2022).

Making children victims of criminal acts, one of the most vulnerable crimes is sexual crime. Sexual crime is violence that occurs because of issues of sexuality (Munthe et al., 2019). The practice can take the form of harassment, rape, or sodomy. Children are used as a means of venting lust for those who experience sexual disorders (Kayowuan Lewoleba & Helmi Fahrozi, 2020).

Based on data in 2023, there will be 8,838 cases of sexual violence against children. This number is a form of concern where children at a young age have to deal with actions that can

traumatize them due to treatment from adults. Therefore, in 2017, government regulation number 43 of 2017 concerning the Implementation of Restitution for Child Victims of Crime. This Government Regulation regulates the child's right to obtain restitution from the perpetrator of a crime because his or her actions harm the child, both physically and psychologically, which causes the child to be unable to carry out his or her functions (Miftahul Jannah et al., 2021).

The complexity of current legal problems certainly requires special attention from law enforcement officials, the government and the community in efforts to enforce the law and overcome various criminal acts, including realizing justice and prosperity for society, especially for victims of criminal acts (Nurisman, 2022). Protection for victims is not only limited to providing compensation or restitution, but also restoring children's rights so that they can grow and develop and obtain their rights in the educational, social and cultural fields (Mantali, 2022).

One case that can be used as a reference related to this problem is the case contained in Decision Number 14/PID.SUS/2024/PT BBL where the defendant Ahmad Yudha carried out deception, a series of lies or persuaded a child to have sexual intercourse with him. As a result of this action, Ahmad Yudha was sentenced to imprisonment for 9 years and Rp. 100,000,000. Apart from that, he charged Ahmad Yudha Prawira with paying restitution to Mutiara Oktaviana's child in the amount of Rp. 25,499,000.

In this decision, the public prosecutor filed an appeal, where in this decision the panel of judges did not consider a replacement sentence for restitution, where the amount of restitution that had been determined was a form of responsibility, so that if the restitution was not carried out, it would result in a violation of the newspaper's rights and present injustice. When the perpetrator does not make restitution payments because he cannot afford it, there will be a legal vacuum and this will result in injustice for the victim.

Based on these demands, the judge issued a decision that if the defendant did not make payment, he would confiscate and auction it. If the auction is not fulfilled, the defendant will be imprisoned for three months.

Criminal law reform policies must use a values approach so that the laws created have the ability to be effective in tackling crime (Anwary, 2022). The principles used to limit the use of criminal law consist of prohibitions and recommendations (MacUlan & Gil Gil, 2020). Criminal law does not need to be applied if there are other, more effective methods with lower levels of loss. It should not be used emotionally to simply retaliate or punish actions where it is not clear who the victim is and what the harm is. Criminal policy also does not need to be used if it does not have strong support from the community or its implementation will not be effective. Criminal law policies must be uniform, universal and rational, and maintain harmony between order, legitimacy and competence. Must maintain harmony between social defense, procedural justice and substantive justice, and must maintain communal morality, institutional morality and civil morality. The use of criminal law as a means of prosecution must be carried out simultaneously with non-penal prevention efforts (Buisman, 2022). Another important limitation is that criminal law must pay attention to victims of crime, must specifically consider the priority scale and regulatory interests (Landaburu, 2016).

If the use of criminal law does not pay attention to the limiting principles as mentioned above, it will give rise to principles that are unreasonable, that is, they do not have a rational basis for justification, are ineffective, that is, inappropriate because they are unable to prevent the occurrence of crime, are not profitable, that is the costs incurred are greater than the results to be achieved, and are not necessary, that is, as long as there are other methods, the use of criminal law is only complementary.

Important reasons that must be considered in creating criminal policies to deal with sexual violence. Sexual violence is a criminal act that needs to be regulated strictly in criminal law

policies because this criminal act has claimed victims and caused enormous losses (Harmanto, 2024).

As a serious crime that destroys human dignity, the criminal sanctions imposed must be maximum and provide a deterrent effect for the perpetrator. However, providing a deterrent effect for perpetrators of criminal acts may not necessarily solve the problems faced by victims. Therefore, it is necessary to formulate a criminal law policy that also prioritizes the interests of victims specifically. One effort that the state can make is to establish a restitution payment policy.

Several studies related to restitution have been carried out by various researchers. First, Niken Utami's research focuses on restoring children's rights to restitution as victims of sexual violence (Budi Utami & Prabowo, 2020). The scientific contribution produced in this research is that the rules regarding procedures for fulfilling the right to restitution are unclear and incomplete, resulting in a lack of understanding by law enforcement officials, especially in carrying out the inter-court application process and the trial process. Meanwhile, human resource factors in supporting the fulfillment of the right to restitution are considered to be inadequate. The existence of a legal vacuum in the procedures for fulfilling these rights causes public prosecutors to have to implement court decisions and innovate through decision making through deliberation and consensus.

Second, Pratiwi's research focuses on restitution mechanisms for child victims of sexual violence (Andi Dewi Pratiwi & Akhdiari Harpa Dj, 2022). The scientific contribution of this article emphasizes that in Law Number 31 of 2014 concerning Protection of Witnesses and Victims, victims of criminal acts have the right to obtain the right to restitution in the form of compensation for loss of property or income, compensation for losses incurred due to suffering directly related to the crime. criminal charges, and/or compensation for medical and/or psychological treatment costs.

However, currently the implementation of restitution for victims of crimes against children is considered not yet optimal, especially regarding the implementation of restitution that can be given to victims.

Third, Artanti's research focuses on the right to restitution for children who are victims of sexual violence (Dinda Artanti & Ramdan, 2024). The scientific contribution produced in this research is that the implementation and fulfillment of the right to restitution has not been fully realized in all cases of sexual violence against children. This can happen because there is no obligation for the public prosecutor to include restitution in his demands and there is no coercive effort to guarantee the right to restitution. In fact, restitution is a right that should be given to child victims, and its implementation must be maximized in the Indonesian criminal justice system. The judge should decide to impose additional punishment in the form of restitution even without a request, because restitution is often ignored.

Several studies have been put forward as a basis for researchers in analyzing the right to restitution which must obtain legal certainty where the judge becomes an intermediary in fulfilling the victim's rights.

The problem formulation contains article questions that must be explained in the discussion and answered in the conclusion.

METHOD

The method used in this research is normative juridical where researchers use secondary data sources in the form of court decision Number 14/PID.SUS/2024/PT BBL. Apart from that, researchers also use data sources in the form of books and journals that are related to the research topic being conducted. Secondary data collection was carried out using library research from library materials. This can be done by reading, taking notes and quoting things related to restitution. Some places where authors can collect data are libraries, or access data

through available journal portals. The data analysis mechanism emphasizes qualitative methods where researchers describe various existing problems.

RESULTS AND DISCUSSION

Restitution for Child Victims of Sexual Violence

Children are a weak and vulnerable group and therefore need protection so that their rights can be fulfilled (Lundy et al., 2021). Protection of Indonesian children aims to ensure that children can grow and develop optimally (Toros, 2021). The challenge in child protection in Indonesia is realizing the fulfillment of children's rights but at the same time being able to provide protection to children from dangers that harm them, which in the end can keep children away from the threat of deprivation of children's rights (Fadhilah & Panjaitan, 2024).

Every child has human rights just like adults have, not only those who think about and are willing to take concrete steps to protect children's rights (Geovani et al., 2021). Children are individuals who are immature both physically and mentally, let alone socially. So, when compared with adults, it is clear that children are more at risk of experiencing violence, especially sexual violence (Iskandar et al., 2022).

Sexual violence against children is a serious threat to the welfare and safety of children. The impact of sexual violence on children can last throughout the victim's life, affecting their physical, emotional and psychological development. Therefore, it is important to understand the role of restitution in providing compensation and supporting victims' recovery (Susilowati et al., 2022).

Aspects of restitution in cases of sexual violence against children vary based on legal jurisdiction in various countries (Kosher & Ben-Arieh, 2020). Some states have legal provisions that require perpetrators to pay restitution to victims as part of their sentence. However, some countries do not have strong restitution regulations or do not require restitution at all in cases of sexual violence against children (Madu, 2020). Legal provisions regarding restitution are also often inadequate to address the losses experienced by victims of sexual violence. In many cases, the restitution fees obtained from the perpetrator are not enough to compensate for the physical, emotional and psychological losses experienced by the victim. This creates inequality in the judicial process. The restitution aspect in cases of sexual violence against children is an important part of the punishment given to the perpetrator (Mahmud Mulyadi et al., 2024). Restitution refers to payments required by the perpetrator to the victim or the state as compensation for losses suffered by the victim as a result of a crime. In the context of sexual violence against children, restitution has several aspects that require special attention (Sinaga, 2023):

- a. **Complexity in Assessing Losses:** Assessing the losses experienced by victims of sexual violence against children is very complex. These losses include physical, emotional, psychological and social aspects. The impact of sexual violence against children can last for years, even throughout life. Therefore, determining a fair amount of restitution is a challenge.
- b. **Inequality in Legal Process:** In many cases, restitution may be disproportionate to the victim's loss. This creates inequality in the legal process. Victims may feel that the financial compensation they receive is not enough to overcome the long-term impact of the crime.
- c. **Perpetrator's Financial Limitations:** Perpetrators of child sexual abuse may have significant financial limitations, such that they are unable to pay sufficient amounts of restitution. In some cases, perpetrators may fall into poverty or even be in debt due to high restitution payments.
- d. **Psychological Impact on Victims:** The restitution process can have additional psychological impacts on victims. The victim may feel pressured when confronting the perpetrator directly in an effort to ask for compensation. This can worsen the trauma.

e. **Protection of Victims' Rights:** While restitution is important to compensate victims, broader protection of victims' rights must be a priority. This includes victims' access to appropriate psychological, medical, and legal support services.

f. **Legal Reform and Harmonization:** Various jurisdictions have different legal regulations regarding restitution in cases of sexual violence against children. Legal reform and efforts to harmonize restitution provisions are necessary to comply with human rights and victim protection standards.

Restitution in court decision Number 14/PID.SUS/2024/PT BBL

Court decision Number 14/PID.SUS/2024/PT BBL provides clarity regarding the granting of demands made by the public prosecutor in guaranteeing the victims' rights regarding restitution. Several considerations put forward by the public prosecutor in the appeal process include that the panel of judges did not consider a replacement sentence for restitution where the amount of restitution that has been determined is a form of responsibility so that if restitution is not carried out it will result in a violation of the victim's rights and present injustice. When the perpetrator does not make restitution payments because he cannot afford it, there will be a legal vacuum and this will result in injustice for the victim.

As we know, sexual crimes against children are very vulnerable because they are always positioned as weak or helpless parties and have high dependence on the adults around them. This makes children helpless when threatened not to tell what they have experienced (Romandang, 2020). The existence of cases like this is also part of weak law enforcement (Hariansah, 2021). The demands for appeal from the public prosecutor contained in the decision increasingly prove that the existence of a legal vacuum that was forgotten by the judge can result in victims not getting their rights (Purba et al., 2024). Therefore, an appeal is the best way to fill this void.

Restitution is a form of government policy to provide protection to child victims of criminal acts in accordance with the mandate of Article 34 of the 4th Amendment to the 1945 Constitution of the Republic of Indonesia which states that the poor and neglected children are cared for by the State (Maerani, 2023). In Article 7A of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims and specifically regulated in Article 3 of Government Regulation Number 43 of 2017, it is stated that child victims of criminal acts are obliged to receive restitution in the form of compensation. for loss of property, compensation for suffering resulting from criminal acts, and compensation for reimbursement of medical or psychological treatment costs. Children who are victims of criminal acts of sexual violence receive protection in the Child Protection Law, namely in Article 71 D paragraph (1) which states that children who are victims of criminal acts of sexual violence have the right to submit a request for restitution to the court. In submitting a request for restitution, investigators and public prosecutors are obliged to inform the victim regarding the right to apply for restitution in the judicial process as regulated in Article 9 and Article 14 of PP 43/2017. Therefore, the public prosecutor needs to ensure the rights of the victim even though the judge has given a decision. This is one of the actions to avoid if the defendant does not pay the victim's rights due to being unable to do so (Bawono, 2021).

Realizing this legal vacuum, the judge gave a clear decision, stating that if the defendant does not make payment, he will confiscate and auction it. If the auction is not fulfilled, the defendant will be imprisoned for three months. The judge's decision in this case provides a breath of fresh air for the victims where their rights can be achieved where these rights are guaranteed by law. Thus, legal subjects are intended to obey and carry out the mandate of decisions in accordance with applicable regulations.

The payment of restitution received by the victim in decision Number 14/PID.SUS/2024/PT BBL is a form of legal certainty for the victim where the essence of legal certainty is a form of

implementation in which there is a law enforcement mechanism for various actions without any views. who is the individual who broke the law. With legal certainty, it will be easy for someone to consider acts that violate the law. Legal certainty is a principle in which there is no discrimination regarding various actions. This certainty mechanism emphasizes a principle of truth. This means that all forms of action can be directed in a formal legal manner.

The existence of legal certainty will easily guarantee someone's behavior in accordance with the mechanisms that have been regulated by the state (Ashari, 2024). Without legal certainty, there will be no good rules that can guide a person's behavior (Demin, 2020). This mechanism was emphasized by Gustaf Radbruch where legal certainty is the goal of the legal mechanism itself (Rahardjo, 2014).

Legal certainty is a definite mechanism in which there are provisions and regulations (Kartika et al., 2020). In this mechanism, the law is required to have a definite and fair nature, meaning that it includes guidance and justice that can support a proper order of life (Jamaludin, 2021). This definite nature can make the law run according to its function.

Filing an appeal by the public prosecutor and strengthening it by renewing the decision by the judge is a form of legal certainty itself, where in this mechanism victims need certainty regarding their rights as victims (Ricardo et al., 2024). When victims do not get their rights, the existence of legal certainty is not realized optimally (Afifah, 2023).

CONCLUSION

Sexual violence against children is a serious threat to the welfare and safety of children. The impact of sexual violence on children can last throughout the victim's life, affecting their physical, emotional and psychological development. Therefore, it is important to understand the role of restitution in providing compensation and supporting victims' recovery. The payment of restitution received by the victim in decision Number 14/PID.SUS/2024/PT BBL is a form of legal certainty for the victim where the essence of legal certainty is a form of implementation in which there is a law enforcement mechanism for various actions without any views. who is the individual who broke the law.

Further research is needed to better understand the impact of restitution on victims and how criminal law regulations can be improved to protect the rights of vulnerable victims. In this way, the legal system can function better in providing adequate protection for victims of sexual violence against children.

REFERENCE

- Afifah, G. (2023). Kepastian Hukum Dalam Sengketa Restitusi Terhadap Korban Tindak Pidana Pemerkosaan Anak. *SUPREMASI: Jurnal Hukum*, 6(01), 76–87. <https://jurnal.usahid.ac.id/index.php/hukum/article/view/1704%0Ahttps://jurnal.usahid.ac.id/index.php/hukum/article/download/1704/787>
- Anwary, I. (2022). Evaluation of the Effectiveness of Public Administration Policies in the Development of Stringent Legal Framework: An Analysis of the Criminal Justice System in Indonesia. *International Journal of Criminal Justice Sciences*, 17(2), 312–323. <https://doi.org/10.5281/zenodo.4756127>
- Ashari, Z. S. (2024). Exceptio Dilatoria in the Indonesian Context : Implementation of Justice and Legal Certainty from Radbruch ' s Perspective.
- Buisman, S. S. (2022). The Future of EU Substantive Criminal Law Towards a Uniform Set of Criminalisation Principles at the EU level. *European Journal of Crime, Criminal Law and Criminal Justice*, 30(2), 161–187. <https://doi.org/10.1163/15718174-bja10032>
- Demin, A. V. (2020). Certainty and Uncertainty in Tax Law: Do Opposites Attract? *Laws*, 9(4). <https://doi.org/10.3390/laws9040030>

- Geovani, I., Nurkhotijah, S., Kurniawan, H., Milanie, F., & Nur Ilham, R. (2021). Juridical Analysis of Victims of the Economic Exploitation of Children Under the Age To Realize Legal Protection From Human Rights Aspects. *International Journal of Educational Review, Law And Social Sciences (IJERLAS)*, 1(1), 45–52. <https://doi.org/10.54443/ijerlas.v1i1.10>
- Hariansah, S. (2021). the Relationship Between Environmental Law Enforcement Related To. *Berumpun: International Journal of Social, Politics, and Humanities*, 4(1), 1–14.
- Harmanto, T. (2024). konservasi hukum terhadap korban kekerasan seksual ditinjau dari Undang-Undang Nomor 12 Tahun 2022. *Jurnal Ilmu Hukum*, 1(4), 53–54.
- Jamaludin, A. (2021). Perlindungan Hukum Anak Korban Kekerasan Seksual. *JCIC : Jurnal CIC Lembaga Riset Dan Konsultan Sosial*, 3(2), 1–10. <https://doi.org/10.51486/jbo.v3i2.68>
- Kartika, A. P., Rizal Farid, M. L., & Nandira Putri, I. R. (2020). Reformulasi Eksekusi Kebiri Kimia Guna Menjamin Kepastian Hukum Bagi Tenaga Medis/Dokter Dan Perlindungan Hukum Bagi Pelaku Pedophilia. *Jurnal Hukum Ius Quia Iustum*, 27(2), 345–366. <https://doi.org/10.20885/iustum.vol27.iss2.art7>
- Kayowuan Lewoleba, K., & Helmi Fahrozi, M. (2020). Studi Faktor-Faktor Terjadinya Tindak Kekerasan Seksual Pada Anak-Anak. *Esensi Hukum*, 2(1), 27–48. <https://doi.org/10.35586/esensihukum.v2i1.20>
- Kosher, H., & Ben-Arieh, A. (2020). Children’s participation: A new role for children in the field of child maltreatment. *Child Abuse and Neglect*, 110(August 2019), 104429. <https://doi.org/10.1016/j.chiabu.2020.104429>
- Landaburu, J. (2016). the transformational function of te criminal law in search of operational boundaries. *Criminal Law*, 23(4), 1–23.
- Lundy, L., Byrne, B., Lloyd, K., Templeton, M., Brando, N., Corr, M. L., Heard, E., Holland, L., MacDonald, M., Marshall, G., McAlister, S., McNamee, C., Orr, K., Schubotz, D., Symington, E., Walsh, C., Hope, K., Singh, P., Neill, G., & Wright, L. H. V. (2021). Life under coronavirus: Children’s views on their experiences of their human rights. *International Journal of Children’s Rights*, 29(2), 261–285. <https://doi.org/10.1163/15718182-29020015>
- MacUlan, E., & Gil Gil, A. (2020). The Rationale and Purposes of Criminal Law and Punishment in Transitional Contexts. *Oxford Journal of Legal Studies*, 40(1), 132–157. <https://doi.org/10.1093/ojls/gqz033>
- Mahmud Mulyadi, Rafiqoh Lubis, Rosmalinda, & Rangkuti, L. H. Y. (2024). Problems in Fulfilling the Rights of Crime Victims Due to Misconceptions of Restitution Terminology. *Justitia Jurnal Hukum*, 8(1), 25–38. <https://doi.org/10.30651/justitia.v8i1.21446>
- Nurisman, E. (2022). Risalah Tantangan Penegakan Hukum Tindak Pidana Kekerasan Seksual Pasca Lahirnya Undang-Undang Nomor 12 Tahun 2022. *Jurnal Pembangunan Hukum Indonesia*, 4(2), 170–196. <https://doi.org/10.14710/jphi.v4i2.170-196>
- Ricardo, D., -, I., & Iryani, D. (2024). Optimalisasi Eksekusi Restitusi Bagi Anak yang Menjadi Korban Tindak Pidana Kekerasan Seksual Dalam Mewujudkan Kepastian Hukum. *Ilmu Hukum Prima (IHP)*, 7(1), 27–38. <https://doi.org/10.34012/jihp.v7i1.4994>
- Toros, K. (2021). A systematic review of children’s participation in child protection decision-making: Tokenistic presence or not? *Children and Society*, 35(3), 395–411. <https://doi.org/10.1111/chso.12418>