

The Role of Witness and Victim Protection Institutions in Fulfilling the Restitution Rights of Children Victims of Sexual Violence Crimes

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Abstract

The presence of the Witness and Victim Protection Agency as an institution that overcomes protection for Witnesses and Victims, at least provides fresh air for residents, especially children who face victims of intimate violence. It is intended as an effort to vent rights and provide encouragement to share comfort with witnesses and or victims that must be carried out by the LPSK or other institutions in accordance with the determination of this law. Looking at the meaning of the contribution of witnesses and or victims in making clear the issue of crimes to the importance of providing protection to witnesses and victims. There are also objectives that have been achieved in this preparation, namely to recognize and analyze the restitution rights of children victims of intimate violence crimes in crime law in Indonesia and to recognize and analyze the contribution of witness and victim protection institutions that act like state institutions that have the right to vent the restitution rights of children victims of intimate violence crimes in Indonesia. The research procedures used are normative juridical, with the approach of legislation, abstracts, problems, analysis of legal material used is qualitative. The results of the research prove that the basis for submitting restitution to children's victims of intimate violence crimes has been regulated in Law No. 35 of 2014 concerning Child Protection and regulations regarding the method of applying restitution have also been regulated in Ruling Regulation No. 43 of 2017. This regulation on restitution was made to make it easier for the victim's child to plead for loss to the perpetrator of the crime of intimate violence. The method of applying restitution for victims of intimate violence crimes can be tried simultaneously by means of crimes, especially since it can be initiated from an early investigation submitted through the Witness and Victim Protection Agency (LPSK).

Keywords

LPSK; sexual violence; restitution rights; Indonesia



I. Introduction

The presence of Witnesses and Victims is a very certain matter in the disclosure of crimes in the manner of crime justice. The interpretation of the victim in Law No. 31 of 2014 is a person who faces physical, psychological, and or economic losses caused by a crime. Therefore, to Witnesses and Victims, protection is handed over to all steps of the crime trial method. Efforts in venting rights and providing encouragement to share a sense of comfort and security with victims, their character must be carried out in accordance with the determination of the Law.

In its special matter that is related to the rights of victims, it can be observed in Article 5 of Law No. 31 of 2014 concerning The Amendment to Law No. 13 of 2006 concerning Protection of Witnesses and Victims. These rights include obtaining protection

for the security of both individuals and their families, sharing explanations without weight and trapping problems, obtaining data on the progress of the problem and the standings of the legal assembly, finding legal invitations and assistance, hiding their identities, if there is danger or terror with a large category, until the victim can be handed over the latest self-evidence let alone relocation. Not only that, but victims also have the power to obtain medical encouragement, intellectual drive, psychosocial rehabilitation, and change loss or restitution.

As an application related to the rights of restitution of victims, it is in Government Regulation No. 7 of 2018 concerning the Provision of Compensation, Restitution, and Encouragement to Witnesses and Victims. The Witness and Victim Protection Agency, hereinafter abbreviated as LPSK, is an institution that works and has the right to share protection and other rights with Witnesses and or victims.

Restitution as a form of change in the criminal justice system in Indonesia has been touched since 2000 in Law No. 26 of 2000 concerning the Legal Assembly of Basic Rights of Persons. As well as the interpretation of restitution in Article 1 of Government Regulation No. 3 of 2002 concerning Compensation, Restitution, and Rehabilitation to Victims of Gross Human Rights Violations, as a child regulation that regulates the technicalities of Law No. 26 of 2000, saying that restitution is a change in the loss handed over to the victim or his family by the actor or a third party, it can be in the form of collecting property, change payment for loss or expense, or exchange fee for Special action.

Not only the above, but the victim also has the power to get health rehabilitation, social rehabilitation, returns, and social reintegration from the ruler if the person in contact faces a good burden of body or psychiatry. Not only is it also interpreted in this Law that it also has the power to obtain rights and protections in accordance with the determination of other laws and regulations. If the victim of the crime is the age of the child, not only in the Ruling Regulation No. 7 of 2018, the right to change the loss to the victim, specifically for children is also in Article 2 paragraph (1), and Article 3 of Government Regulation No. 43 of 2017 concerning the Application of Restitution for Children Who Are Victims of Crimes.

The section listed in Restitution for victims of crimes in child protection issues is sourced in Article 3 of The Ruler's Regulation No. 43 of 2017 concerning the Application of Restitution for Children Who Are Victims of Crimes, if you change the loss, it can take the form of: a). Loss of wealth or income; b). Suffering for criminal offences; and c). For reimbursement of medical and/or psychological treatment costs.

Observed from that point, between Government Regulation No. 7 of 2018 concerning the Provision of Compensation, Restitution, and Encouragement to Witnesses and Victims, as a technical regulation of the LPSK Law is Law 31 of 2014, very much in line with Government Regulation No. 43 of 2017 concerning the Application of Restitution for Children Who Are Victims of Crimes which is a child provision from Law No. 35 of 2014.

In the determination of global crime law, victims have the right to hold a full and appropriate reparation site that is sufficient but not limited to restitution, rehabilitation, relief services. Restitution if possible is to return the victim to the initial condition before the formation of the crime.

The birth of Law No. 13 of 2006 concerning The Protection of Witnesses and Victims which has been updated to Law No. 31 of 2014, distributes fresh winds for witnesses and or victims of crimes in an effort to get legal protection in the way of criminal justice. In the Law, victims of special crimes, the Problem of Child Protection, is

a form of attention from the state for their rights, because in the Criminal Code and the Criminal Procedure Code it is more towards the rights of the perpetrator, on the contrary, the rights of victims are said to be only a few small. As well as restitution, which is one of the rights of victims, it can also be categorized as part of the Restorative Justice design.

From the results of some of the Jury's provisions for victims' restitution rights in cases of Child Protection problems that are intertwined in some areas of Indonesia, it proves that efforts are difficult to vent the rights of victims of crimes regarding child protection. There is a comparison of the assumptions and interpretations of each law enforcement, and applications in judicial applications in Indonesia, even though the application for victim restitution rights has passed the method that has been inaugurated by the laws and regulations.

For this reason, based on the explanation of the framework above, researchers were attracted to carry out research with the head of the essay "The Contribution of Witness and Victim Protection Institutions in The Venting of Restitution Rights of Children Victims of Intimate Violence Crimes". Based on the explanation of the framework behind the problem above, until the Researchers tried to formulate some of the problems as the next: What is the right of restitution of children victims of intimate violence crimes in crime law in Indonesia. And how does the Witness and Victim Protection Agency contribute in venting the restitution rights of children victims of intimate violence crimes in Indonesia.

II. Research Method

In this research, it is suitable for the case raised, the author uses a normative juridical research type, because in the contribution of witness and victim protection institutions in venting the restitution rights of children victims of intimate violence crimes, in addition to studying legal laws and regulations, legal facts that must be raised, studying and observing legal laws and regulations in a positivistic way in venting the rights of child restitution.

The normative juridical approach is tried to be sourced from important legal material by observing theories, concepts, legal principles and laws and regulations related to this research. This approach is also known by the bibliography approach, which is to pursue books, laws and regulations and other deeds related to this research. The approach in a juridical way in this research is an approach from the field of legislation and legal norms are suitable for the case that exists, on the contrary, the problem approach is an emphasis on research that intends to gain insight into cases with the path of creating from the decisions of the legal tribunal. The material base of the law consists of the subject matter, inferior as well as tertiary. In research, generally the information obtained is analyzed through quantitative and qualitative approaches.

III. Result and Discussion

3.1 Restitution Rights of Children Victims of Sexual Violence in Criminal Law in Indonesia

Every citizen has the rights and roles contained in the constitution or other laws. The venting of rights and the executive role must be tried with a balance, so as not to be clashed. The law of criminal activity regulates the various rights of the accused as well as or the suspect. It is appropriate for the victim to find protection, including the fulfillment of the victim's rights even though in carrying it out, it is also mandatory to be imprisoned with the obligations that exist (Waluyo, 2018).

The role of victims in crime trials as a party to the equality tracker has so far been neglected. When examined from the purpose of punishment in the positive crime law, the wrongdoer finds more attention such as rehabilitation, treatment of offenders, social adaptation, socialization, and others. This matter is a form of injustice for the victim, because as a burdened party, it is only used as a means of proof, and it is not often that the basic rights of the victim are neglected.

Article 5 of Law No. 13 of 2006 states some of the rights of victims and witnesses, are as follows:

- a. Obtain protection for the safety of individuals, their families, and property, and free from danger that coincides with the evidence that they want to, again, or have provided.
- b. Participate in how to sort and ensure the form of protection and security support.
- c. Provide information without pressure.
- d. Got a translator.
- e. Free from entanglement questions.
- f. Get information on the progress of the case.
- g. Obtain information regarding court decisions.
- h. Knowing in the event that the convict is released.
- i. Got a new identity.
- j. Getting a new place of residence.
- k. Obtain reimbursement for transportation costs according to needs.
- l. Obtain legal advice.
- m. Get a life fee boost whereas until the protection duration limit is completed. (Waluyo, 2018)

One of the rights of victims of crimes that must be crowded is the right of restitution. Restitution is a change of loss that is handed over to the victim or his family by the actor or a third party, it can be in the form of return of property, payment of loss change for running out or expenses, or exchange of fees for special actions and sourced from legally capable legal tribunal settings. In a theoretical way in crime law, restitution is intended as an effort to improve the victim's situation in the atmosphere before facing some loss caused by something wrong that is felt.

Restitution also practices the principle of healing in the initial condition, which is that the victim of the error must be returned to the original situation before the mistake was established even though the victim of the mistake was not sure to be able to return to the original situation. This principle explains that the views placed on the victim of the impact of a crime must be restored. With restitution, the independence of the victim can be restored, the victim also obtains legal rights, social status, family life, and returns to his place of residence.

According to Article 71D of the Child Protection Law, it means that restitution is a "Loss change payment which is focused on the actors sourced from the legally capable legal tribunal's settings always for the loss of the institution of immaterial experienced by the victim or his heirs. Special for children who are adjacent to the law in power to obtain restitution is the child of the victim".

Restitution is more indicative of the responsibility of the actor to the impact caused by the error, as a result, the key target is to overcome all the losses experienced by the victim. Encourage the measure used in ensuring the amount of restitution submitted is not easy in formulating it. Regarding the social status of the performer and the victim. In the case of victims with a smaller social status than the performer, it is to give priority to change the loss in the form of a module. In contrast, if the status of the victim is greater

than that of the performer, until the healing of good degrees and nicknames should be prioritized (Sulistani, 2011).

The application of mandatory restitution is in accordance with the principle of Healing in the Initial Condition (*restitutio in integrum*), regarding which is something that can be tried if the victim of the error must be returned to the initial situation before the mistake was established. Although it is based on if you don't want to be a victim of crimes, you can be a victim of crimes back in the situation at the time before facing the loss that he believed. This principle also explains that the form of healing that will be tried on the victim must be to achieve something in the whole in healing and cover various views caused by the impact of the error. Through the application for restitution, the victim is expected to be restored to independence, legal rights, social status, family life and nationality, healing of his profession and recovering his assets.

The design of changing known injuries in Indonesia includes restitution and compensation. Change loss is a form of protection for victims in a direct way, but in practice both restitution and compensation as a form of compensation are not yet known and understood by both law enforcement officials and the Indonesian people in totality. The difference between restitution and compensation can be seen from two issues. Initially, compensation is an insistence on fulfilling compensation made by the victim through an application paid by the community or the state. Compensation does not require the existence of a conviction of the perpetrator of the wrongdoing. Secondly, on restitution the injury claim is tried through a legal tribunal's order and paid for by the wrongdoer (Indah, 2014).

The implementation of restitution must be in accordance with the principle of Recovery in the Initial State (*restitutio in integrum*), it is an effort that can be tried that the victim of the crime must be returned to its original condition before the mistake was established. Although it is based on the fact that it will not be possible for the victim of the criminal act to return to the conditions at the time before experiencing the loss that he believed. This principle also emphasizes that the form of recovery to be carried out on the victim must achieve a completeness in recovery and cover various aspects caused by mistakes. Through the application for restitution, victims are expected to be restored to freedom, legal rights, social status, family life and nationality, healing of their profession and recovering their assets (Sapti Prihatmini, 2019).

Sourced from PP No. 43 of 2017, the level of application for Restitution Rights When before submitting an application for restitution to the legal panel, until it was first known that the submission must be submitted by being recorded in the Indonesian on paper with stamps and submitted before the legal tribunal's decision was to be investigated and prosecuted. However, in the investigation step, the interrogator can notify the victim of the right of the child who is the victim of a crime to obtain restitution and the rules for the method of submission. Upon this notice, the victim has a very long duration of 3 days to apply for restitution.

3.2 The Role of Witness and Victim Protection Institutions in Fulfilling the Restitution Rights of Children Victims of Sexual Violence Crimes in Indonesia

Witness and Victim Protection Institutions can have similar duties with institutions entitled to be linked in providing protection and encouragement, the institutions must carry out the provisions of the Witness and Victim Protection Agency in accordance with the determinations stipulated in the law.

Witnesses and or victims who are located under the protection of the LPSK, are not in a way that all of them feel comfortable, because the number of cases that increase in

numbers of cases is suitable for the proceedings of a trial. In each step of the checking ranging from the level of investigation to checking in the legal panel which takes a fairly long duration. However, the problem has been going on for quite a long time, as a result, witnesses or victims do not remember the incident, but in front of the conference the legal panel must be required to have evidence of their testimony. In this kind of stage, the arrival of lpsk is very much needed. Because the arrival of the LPSK is expected to be able to share a sense of security and comfort for witnesses or victims so that they can share evidence in front of the court and the way the trial can run without being complicated.

The Witness and Victim Protection Agency (LPSK) was established based on Law No. 13 of 2006 concerning Witness and Victim Protection. LPSK is an institution that is formed to overcome the provision of protection and encouragement to witnesses and victims stemming from obligations and authorities as well as regulated in the Law on Witness and Victim Protection.

The role of witnesses and victims also seems to be less than the role of the actor. Although the promulgation of Law No. 31 of 2014 concerning The Protection of Witnesses and Victims, the provision of protection to witnesses and victims is not yet optimal. The Law on Witness and Victim Protection is estimated to be not sufficient to guarantee the protection of witnesses and victims which directly hampers the ability of the LPSK itself. One of them is that the Witness and Victim Protection Law has not in a special way regulated what kind of authority the LPSK has in the chart of providing protection to witnesses and victims, which often causes the LPSK to often be misguided in carrying out its duties.

The need for legal regulation and protection for victim witnesses can be justified in a sociological way if in community life all the people of the country are obliged to participate fully, because the community is viewed as an institutionalized belief system ("system of institutionalized trust"). Without this belief, social life cannot go well because there is no certainty in the best-selling behavior. This belief is structured through norms expressed in organizational forms such as police, provisions, legal assemblies and the like.

The protection of witnesses and victims in positive law in Indonesia has found an arrangement even though the character is very simple and partial. This can be observed in the law of crime of the institution of iah or the law of criminals. There is a doubt for the victim regarding the method to be used in applying for restitution, which can be caused because there is no harmony in the method of applying for the right to restitution itself. In the matter of intimate violence crimes, law enforcement officers are centered on not only punishing the perpetrators of intimate misconduct but need to know that there is a victim's right in the form of loss (restitution) of the impact of the intimate violent crime. Residents and all parties concerned also need to pay close attention to the rights of victims of intimate violence. The restitution handed over to victims of crimes of secular violence varies in form from exchanging medical to intellectual maintenance fees, to assistance to victims of intimate violence at trial.

Based on the determination in Article 7A paragraph (1) of Law No. 31 of 2014 concerning The Protection of Witnesses and Victims, victims of crimes have the power to get restitution which can be in the form of changing losses for the disappearance of income or wealth; change losses that arise from the impact of burdens that have a direct impact on a crime and or or exchange of fees for the maintenance of good medicine and or Intellectual property. The Witness and Victim Protection Agency (LPSK) as an institution mandated by the Witness and Victim Protection Law to distribute protection and venting the rights of witnesses and victims function to accompany victims of crimes, notify or inform victims of crimes regarding their rights in obtaining restitution. The submission of

an application for restitution for victims of crimes is sourced from article 7A paragraph (3) of Law No. 31 of 2014 concerning Witness and Victim Protection can be submitted before the legally capable legal tribunal's decision always or after the legal tribunal's decision that has received legal power always through the Witness and Victim Protection Agency (LPSK).

If the application for restitution is submitted before the legal provisions that are legally capable of always (inkracht) the Witness and Victim Protection Agency (LPSK) can apply for restitution to the legal panel to obtain a determination. If the victim of a crime is killed, restitution can be handed over to the family who is the heir expert of the victim as well as regulated in Article 18 of Government Regulation No. 35 of 2020 concerning The Provision of Compensation, Restitution and Encouragement to Witnesses and Victims.

With the soaring number of safe intimate violence of children and women through the Witness and Victim Protection Agency (LPSK) it raises some obstacles and challenges in venting the rights of victims of intimate violence crimes, one of which is restitution (change loss). In the 2020 LPSK Annual Information for the Intimate Violence Protection Program facilitated by the Witness and Victim Protection Agency (LPSK), there are various rights received by victims of intimate violence, including the Interceding of Procedural Rights (PHP), medical rehabilitation, intellectual rehabilitation, restitution, psychosocial rehabilitation and temporary life pay. Sourced from the information in the annual information of the LPSK in 2020, victims of intimate violence who received restitution then increased over the past 3 years. Restitution and indemnity are very meaningful rights for victims who suffer in a physical way the impact of the burden they feel. Victim protection, especially the right of victims to obtain injuries, is an integral part of the basic rights of safety aspects and social security.

The position of the Witness and Victim Protection Agency in assisting the matter includes distributing defense, assistance and intellectual rehabilitation to the safe. In addition, the Witness and Victim Protection Agency also distributed defenses to law enforcement officers in the form of restitution as one of the impregnationals of the rights of victims of intimate violence. With the granting of restitution for victims, it shared a positive thing that the PN Depok jury in deciding this matter not only convicted the perpetrators of the mistakes, but also observed and thought about the loss felt by the victims.

The sentence imposed on the performer is that the performer was diagnosed with 15 years bui, compensation of several IDR 200,000 and decided to pay restitution to YJG victims in the amount of IDR 6,524,000 and to café victims of IDR 11,520,639. Restitution for victims in this matter is requested through the Witness and Victim Protection Agency (LPSK) which thereafter follows up by submitting it to the Ordinary Plaintiff Provision (JPU). The Provision of the Plaintiff Ordinary (JPU) thereafter ushered in the insistence of restitution in the insistence read out for the appellant. This matter is in accordance with Article 7A of the Law of the Republic of Indonesia No. 31 of 2014 concerning The Protection of Witnesses and Victims where restitution is submitted through the Witness and Victim Protection Agency (LPSK). The Witness and Victim Protection Agency divides restitution from the section in the form of running out of income for the elderly because of this problem, transfer fees and consuming fees as long as it explores the way of justice and the burdens included from the anticipated cost of healing mental sciences.

Not only distributing restitution services for victims, the Witness and Victim Protection Agency also distributed procedural rights delivery services and intellectual rehabilitation services to both victims. The service was handed over since June 2020 where

the two victims were handed over intellectual rehabilitation services so that the intellectual shocks they felt could be recovered. On the contrary, procedural rights venting services are provided so that the rights of victims as long as the judicial method is good when it is viewed by interrogators until when it is asked for an explanation at the legal panel can be granted. As a result, it is hoped that the services, in addition to supporting the victim, can uncover the incidents that he feels are not free nor the intellectual shocks of the victims are also restored.

In assisting victims in the problem of intimate violence crimes, the Witness and Victim Protection Agency (LPSK) obstacles and challenges include social consequences felt by victims, including exclusion from residents, victims of intimate violence, especially children running out of their right to learning. The support of the legal power of victims and close residents is very meaningful so that victims are always enthusiastic in pursuing the judicial method and continuing their lives. Another challenge is the limited availability of psychologists in accompanying victims of intimate violence. Often in the problem of intimate violence that exists in some areas there is no availability of a person's energy base (HR) which in this case is a psychologist who is good enough in terms of quantity or quality. And the need for support from law enforcement officers so that the venting of restitution rights in victims of intimate violence can proceed efficiently.

The method of providing witness and victim protection is regulated in article 29 and in LPSK Regulation No. 6 of 2010 concerning the rules for providing witness and victim protection. that is, before the LPSK distributes its protection, witnesses and or victims must apply to meet the requirements set by the LPSK, which are often severely experienced by witnesses and victims to carry them out. The effectiveness of the Witness and Victim Protection Agency has not been so efficient in carrying out its obligations and authorities regarding this matter because it is hit with the Weakness of the Witness and Victim Protection Law by directly limiting the ability of the LPSK.

IV. Conclusion

The right to restitution of children victims of intimate violence crimes has been regulated in Law No. 35 of 2014 concerning Child Protection and regulations regarding the method of applying restitution have also been regulated in Government Regulation No. 43 of 2017. This regulation on restitution was made to make it easier for the victim's child to plead for loss to the perpetrator of the crime of intimate violence. It's just that the regulation has not been greatly explained about the amount of loss that can be requested by the victim, not only that it has not been explained what reward the performer wants to get if the actor denies paying off the restitution, and it has also not been explained to the measuring thrust to divide the loss in a physical way or in an immaterial way. As a result, it has not fulfilled the collateral to the rights of children.

The role of lpsk in venting the rights for victims of intimate violence crimes can be tried simultaneously with the crime method, especially since it can be started from an early investigation submitted through the Witness and Victim Protection Agency (LPSK). The application for restitution is sourced from Article 7A of the Law of the Republic of Indonesia No. 31 of 2014 concerning The Protection of Witnesses and Victims where restitution for victims of criminal acts can take the form of changing the loss of property or income, changing the loss of expenses directly related to the impact of crime and exchanging medical or intellectual maintenance fees. The obstacles and challenges felt by the Witness and Victim Protection Agency (LPSK) in providing victims of intimate violence crimes in obtaining restitution include the lack of support from residents and the

legal power of victims as a result of causing social consequences to victims such as exile, limited availability of People's Energy Base (HR) specifically psychologists in assisting victims of intimate violence and the lack of support from law enforcement officers in the connection of the venting of restitution rights. which has not gone the way efficiently.

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