

Effectiveness of Implementation of Restitution in Restoring the Rights of Child Victims of Sexual Violence in Semarang City

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Abstract. *The issue of the vagueness of the restitution regulation for child victims of sexual violence has resulted in the violation of the rights and justice for child victims of sexual violence. This thesis aims to know and analyze the effectiveness of the implementation of restitution for child victims of sexual violence in Semarang City at this time and to know and analyze the obstacles and solutions in the implementation of restitution for child victims of sexual violence in Semarang City at this time. The type of approach used is the sociological legal method where law in this study is conceptualized as ideas, culture, and views of society regarding legal regulations implemented in the social environment of society. Based on the research conducted, it is known that the implementation of protection and recovery of child victims of sexual violence has not been effective, this is indicated by the still minimal implementation of restitution for child victims of sexual violence which ultimately also hinders the implementation of rehabilitation for child victims of sexual violence. The obstacles that influence are the constraints of legal regulations that still do not explicitly and clearly contain the implementation of restitution, this culturally also hinders the system of implementing restitution for child victims of sexual violence. The solutions that can be done are Efforts in the Implementation of Counseling, Improving Facilities and Infrastructure in Efforts to Prevent and Eradicating Sexual Harassment Against Children, the Need for a Protection House for Child Victims of Sexual Harassment During the Legal Process, Providing Understanding to Victims Regarding Their Rights, and Need to regulate the amount of restitution for child victims of sexual violence.*

Keywords: *Children; Effectiveness; Restitution; Sexual; Violence.*

1. Introduction

Indonesia in the actualization of the rule of law clearly recognizes and protects the existence of human rights for all groups in society. This is as clearly stated in Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia and Article 28D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

Including in terms of legal protection of the human rights of every group of Indonesian society, as regulated in Article 28B paragraph (2) and Article 28G of the 1945 Constitution of

Master of Law, UNISSULA

the Republic of Indonesia. So it is clear that evidence of the existence of a state of law is the guaranteed recognition and protection of human rights of every group of society that exists. No exception in Indonesia. However, in reality, not all human rights owned by marginalized groups in Indonesia can be realized. Including in this case children.

The issue of the criminal justice system in cases of sexual violence in Indonesia is also very interesting to discuss. The various explanations above show that there needs to be a bias from all parties towards child victims of sexual violence. The Criminal Justice System in Indonesia has so far ignored child victims of sexual violence. Victims as parties seeking justice are not given space in the investigation and investigation process and trial. This results in victims having little opportunity to fight for their rights and restore their condition as a result of sexual crimes against children.

According to the Great Dictionary of the Indonesian Language, a child has many meanings. A child means the second descendant. The definition of a child is still general (neutral) and its meaning will be different if viewed from sociological, psychological and legal aspects. For example, in many laws and regulations, the term child has connotations of human age. A child is defined as a certain age group of humans.

However, in reality, the importance and role of the child experience various problems. The complexity of children's problems intersects with the developing structure and system, which runs and is established in an institution, government or even a country. The dynamics that run in an institution, government or country will determine the form and characteristics of children's problems. Therefore, children's problems include several things, namely:¹

1. A vision of development that is in favor of children's interests and that prioritizes the best interests of children is integrated into development systems and models.
2. The child protection legal system has not been fully integrated into positive legal norms and child law enforcement has not been optimal.
3. The reality of children in difficult situations such as child laborers, street children, children who are victims of violence, child abuse, child prostitution, and a number of other children's problems require special intervention, because they are increasingly being found in Indonesian society and the state.

In addition to the above issues, the issue of child protection also occurs in the legal aspect. In its development, the criminal justice system in Indonesia only positions child victims of sexual violence as reporters and witnesses. This is clearly unfair to victims who suffer material and non-material losses.² Meanwhile, the position of perpetrators of criminal acts receives more attention in the criminal justice system in this country, this is shown by the implementation of treatment of offenders, social readaptation, correctional, remission, amnesty, rehabilitation, and abolition.³ This situation is clearly unfair because the suffering experienced by the victim only becomes a basic instrument for sentencing the perpetrator,

¹Muhammad Joni and Tanamas Zulchaina Z, *The Concept of Child Human Rights Protection in the Indonesian Legal System*, Gramedia, Pustaka Utama, Jakarta, 2004, p. 23.

²Didik Arief Mansyur and Elistaris Gultom, *The Urgency of Protection of Crime Victims Between Norms and Reality*, PT. Raja Grafindo Persada, Jakarta, 2007, pp. 26-27.

³Maya Indah S., *Victim Protection, A Victimology and Criminology Perspective*, Kencana, Jakarta, 2014, p. 97.

Master of Law, UNISSULA

while the victim's suffering cannot really be restored in the development of the criminal justice system.

Furthermore, various problems that arise as a result of the unfairness of the criminal justice system for victims of sexual violence have found a bright spot, namely the implementation of restitution.⁴ is an alternative in an effort to protect and restore the rights of victims who have been injured due to the crime of sexual violence. Regarding restitution in its development has been clearly regulated in the United Nations Declaration on The Prosecution and Assistance of Crime Victims in point 4 part 1 General Principles. The United Nations declaration states that:⁵

Reparation by the offender to the victim shall be an objective of the justice process. Such reparations may include (1) the return of stolen property, (2) monetary payment for loss, damages, personal injury psychological trauma, (3) payment for suffering, and (4) service to the victim. Reparation should be encouraged by the corrective process.

Meanwhile, regarding the regulation of restitution in national legal regulations is clearly regulated in Law Number 31 of 2014 concerning Protection of Witnesses and Victims. Article 1 number 11 of Law Number 31 of 2014 states that "restitution is compensation given to the victim or his/her family by the perpetrator or a third party." Furthermore, Article 7A number 1 of Law Number 31 of 2014 states that:

Victims of criminal acts have the right to receive restitution in the form of:

- (a) compensation for loss of wealth or income;
- (b) compensation for losses incurred as a result of suffering directly related to the criminal act; and/or
- (c) reimbursement of medical and/or psychological care costs.

Furthermore, Article 3 of the Republic of Indonesia Government Regulation Number 43 of 2017 concerning the Implementation of Restitution for Children Who Are Victims of Criminal Acts states that:

Restitution for children who are victims of crime in the form of:

- (a) compensation for loss of property;
- (b) compensation for suffering as a result of a criminal act; and/or
- (c) reimbursement of medical and/or psychological care costs.

⁴Restitution is the restoration of the rights of victims of a criminal act in society. Galeway stated that the purpose of restitution is to restore the losses suffered by the victim due to a criminal act, namely by providing appropriate sanctions to the convict and preventing retaliation against the victim. In Indonesia, the restitution system adopted is a procedural rights approach system, this is clearly seen in Law Number 31 of 2016 and Government Regulation Number 44 of 2008. The weakness of this restitution system is that the legal rights of the victim are difficult to determine due to the unclear separation between the victim's personal interests and the public interest, and the next weakness is that the restitution system adopted in Indonesia tends to be easy to abuse. See: Ahmad Sofyan, Granting Restitution to Victims of Criminal Acts in the Indonesian Criminal Justice System, Accessed Through business-law.binus.ac.id, On May 12, 2018.

⁵Romli Atmasasmita, Writing a Scientific Paper on the Problem of Compensation for Victims of Criminal Acts, National Legal Development Agency, Department of Justice, Jakarta, 1992, p. 4.

Master of Law, UNISSULA

Then, regarding the implementation of restitution for victims of sexual violence, it is also regulated in Article 37 of Law Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims, which states:

(1) Witnesses and/or victims of serious human rights violations, acts of terrorism, human trafficking, acts of torture, acts of sexual violence and serious abuse are entitled to receive assistance.

(2) The assistance referred to in paragraph (1) is in the form of:

a. medical assistance; and

b. psychosocial and psychological rehabilitation assistance.

(3) The request for assistance as referred to in paragraph (2) is submitted by the Witness and/or Victim, Family, or their attorney.

(4) The request for assistance as referred to in paragraph (3) must be submitted in writing in Indonesian on stamped paper to the LPSK.

(5) Medical assistance as referred to in paragraph (2) letter a for victims of criminal acts of terrorism is excluded from the provisions as referred to in paragraph (3).

In its development, the implementation of restitution for the recovery of child victims of sexual violence has not been effective. This is because both Article 7 of Government Regulation of the Republic of Indonesia Number 43 of 2017 and Article 37 of Law Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution, and Assistance to Witnesses and Victims still contain administrative requirements that still make it difficult for victims, so that the authorities should be able to facilitate the fulfillment of administrative requirements as regulated in Article 7 of Government Regulation of the Republic of Indonesia Number 43 of 2017 and Article 37 of Law Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution, and Assistance to Witnesses and Victims. In addition, perpetrators of criminal acts are reluctant to pay restitution on the grounds of economic inability, this becomes even more unfair because the perpetrator's inability to pay restitution is only replaced with a subsidiary sentence in the form of imprisonment for 2 to 3 months. This can be seen in the decision Number 07/Pid.Sus-Anak/2019/PN Smg which imposed a criminal fine of restitution of IDR 60,000,000 (Sixty Million Rupiah). The majority of the judge's considerations were so that the victim's losses could be replaced by the perpetrator where part of the restitution paid could be paid for proper rehabilitation costs. However, in reality, the criminal compensation was replaced with imprisonment for 3 months.⁶ In addition, the time for receiving restitution by child victims of sexual violence is also quite long considering the long judicial process, not to mention the perpetrators who are in detention or sentenced to death which can then be a reason not to carry out restitution. This situation is further complicated by the fact that the types of sanctions threatened in the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection against perpe-

⁶Anjar Wirawan Dwi Sasongko, Data on the Number of Sexual Violence Cases at the Semarang City District Court, Data obtained through data provided by the clerk of the Semarang City District Court on April 12, 2024.

Master of Law, UNISSULA

trators of sexual violence against children do not contain the threat of criminal compensation.

Various cases of sexual violence against children basically occur as a result of various problems in society, especially economic problems. The problem of poverty will cause every poor person to ignore their environment and their family which is the smallest social base. This situation results in the neglect of moral education which ultimately results in low moral problems, low morals in the era of information technology advancement today are getting worse with the existence of pornography crimes in cyberspace.⁷This is what then triggers the high number of cases of sexual violence.⁸In addition, high poverty rates can also trigger the emergence of various criminal acts of child trafficking, including the trafficking of children as commercial sex workers.

On May 2019, the Kompas daily noted that the level of economic inequality reached 0.389.⁹These problems and conditions result in the failure to achieve social welfare and social justice, which are the mandate of the state's goals as stated in the fourth paragraph of the 1945 Constitution. This includes the failure to achieve protection of children's human rights as regulated in Article 28B number 2 and Article 28G of the 1945 Constitution of the Republic of Indonesia and Article 52, Article 53, Article 57, Article 58, Article 64, Article 65, and Article 66 of Law Number 39 of 1999. Then in 2020 the Ministry of Child Protection and Women's Empowerment through the daily Kompas noted that there had been 2,556 cases of sexual violence against children.¹⁰This is quite high, so it can also be estimated that there are 2,556 child victims of sexual violence who cannot receive restitution, considering the existence of a substitute criminal penalty for compensation. The number of cases of sexual violence against children can also be seen in the daily report of lokadata.id which states that:¹¹

Not getting any better in early 2020, a number of cases of sexual violence against children are still emerging. Among them, cases of sexual harassment in 12 elementary school students in Seyegan District, Sleman, Special Region of Yogyakarta (DIY) by a teacher (48). The case was uncovered by the police in January 2020, but had been going on since August 2019. Previously, the Indonesian Child Protection Commission (KPAI) explained that from January to October 2019, the number of cases of sexual violence against children in schools increased. KPAI noted that there were 17 cases of sexual violence in educational environments with 89 child victims, consisting of 55 girls and 34 boys. "The complaints we received actually decreased. However, the level of violence actually increased significantly. And what is rather frightening is sexual violence because there has been an increase," explained KPAI

⁷Ira Alia Maerani, Implementation of the Idea of Balance in the Development of Indonesian Criminal Law Based on Pancasila Values, Journal of Legal Reform, Volume II No. 2 May - August 2015, pp. 330-331.

⁸Mohammad Teja, Socio-Economic Conditions and Sexual Violence Against Children, Brief Social Welfare Info Magazine, Vol. VIII, No. 09, May 2016, pp. 10-11, Accessed Through www.slideshare.net, On May 12, 2018.

⁹The amount of data has decreased, in March 2017 the level of economic inequality reached 0.393 and then the economic inequality figure decreased in the September quarter of 2017 to 0.391. Kompas daily data related to economic inequality reached is measured from inflation in 82 major cities in Indonesia. See: Kompas, Villagers Increasingly, Thursday edition, August 2, 2018, p. 1.

¹⁰Kompas.com, accessed on May 12, 2024.

¹¹<https://lokadata.id/artikel/2020-kekerasan-pada-anak-tak-menurun>, accessed May 12, 2020.

Master of Law, UNISSULA

Commissioner for Education Retno Listyarti in the Workshop on Prevention and Handling of Violence in Educational Units, Monday (9/12). Of the 17 recorded cases, 88 percent were committed by teachers and 22 percent were committed by school principals. 64.7 percent or equivalent to 11 cases occurred in elementary schools, 23.53 percent or 4 cases in junior high schools, and 11.77 percent or 2 cases in high schools. These cases occurred because children did not understand sexual activity so they did not realize that they were victims of sexual violence. Responding to Jokowi's instructions regarding the reform of the reporting system for cases of violence against children, Retno explained that the public can use the LAPOR application to report cases of violence. Although indeed, the application does not only serve reporting cases of violence against children, but also other public service areas.

Cases of sexual violence against children in Semarang City reached 101 cases in November 2022. This is quite high, while the eradication of child predators is still relatively low.¹²The various cases above show that legal protection for child victims of sexual violence has not been able to guarantee compensation by the perpetrator against the child so that the victim is unable to pay for rehabilitation costs. Such a situation will result in material losses and psychological losses simultaneously. So it is clear that the existence of a substitute criminal penalty for compensation and the fact that legal efforts towards restitution are difficult have resulted in the implementation of restitution not being able to be fair to child victims of sexual violence.

2. Research Methods

This research was also conducted using a descriptive analysis type, namely by providing a comprehensive picture or description, written systematically and in depth about a condition, problem or symptom being studied.¹³

3. Results and Discussion

3.1. Effectiveness of Restitution Implementation for Child Victims of Sexual Violence in Semarang City Currently

As explained in the introduction, victims of crime in the criminal justice system tend to be forgotten and given less attention (in the context of recognizing their basic rights). Attention to victims is not commensurate with the attention and recognition of the rights of perpetrators. In fact, in the context of law enforcement in a country that bases itself on the rule of law, the attention given by the state to perpetrators and victims of crime should be commensurate in accordance with the mandate of the constitution which states that every citizen is equal before the law.¹⁴Basically, the issue of the imbalance of rights between victims and perpetrators must be viewed fairly in the context of the realization of universal human

¹²<https://regional.kompas.com/read/2022/11/03/230559378/sepanjang-2022-ada-1125-kasus-kekerasan-di-jateng-87-persen-korban?page=all>, accessed November 12, 2024.

¹³Location, cit.

¹⁴In accordance with the principle of equality before the law, as emphasized in Article 28 D paragraph 1 which reads: "Everyone has the right to recognition, guarantees, protection and certainty of fair law and equal treatment before the law"

Master of Law, UNISSULA

rights protection covering both national and international scales.¹⁵ From a national and international human rights perspective, legal protection for victims is considered very urgent.

Therefore, normatively, victims must be given protection rights in the form of legal protection or special protection. Experts have formulated arguments regarding the urgency of legal protection for victims. According to Black's Law Dictionary:

*Protection is (1) a. the act of protecting: defense; shelter of evil; preservation from loss, injury or annoyance; as we find protection under good laws and an upright administration; b. an instance of this; (2) one who or that which protects.*¹⁶

Legal protection is a matter or act to protect legal subjects based on applicable laws and regulations accompanied by sanctions if someone commits a breach of contract.¹⁷ The definition of legal protection is the guarantee of human rights and obligations in order to fulfill one's own interests and in relations with other humans.

Barda Nawawi Arief said that the meaning of protection for victims of criminal acts can be seen from two meanings, namely:¹⁸

- a) Can be seen as legal protection to avoid becoming a victim of a crime (meaning protection of human rights or a person's legal interests);
- b) It can be interpreted as protection to obtain legal guarantees/compensation for the suffering/loss of people who have become victims of criminal acts (so it is identical to victim assistance). The form of compensation can be in the form of restoring a good name (rehabilitation), restoring inner balance (among others, with forgiveness), providing compensation (restitution, compensation, social welfare guarantees/compensation), and so on.

Mardjono Reksodiputro said that from a criminological approach, there are several reasons why crime victims need attention, namely:¹⁹

- 1) The criminal justice system is considered to pay too much attention to the problems and role of the perpetrator (offender-centered);
- 2) There is potential for information from crime victims to clarify and complement our interpretation of crime statistics (especially those from the police); this is done through victim surveys;
- 3) It is increasingly recognized that in addition to victims of conventional crime (street crime), it is no less important to pay attention to victims of non-conventional crime (including corporate crime and white collar crime) as well as victims of abuse of economic power and/or public power.

¹⁵International provisions that provide guarantees for the rights of victims, including guarantees for the absence of discrimination, guarantees for equality before the law and guarantees for respect for human dignity as also guaranteed by the 1945 Constitution, for example: Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

¹⁶Bryan A Graner. Black's Law Dictionary Eighth Edition. St. Paul. West Thomson, 2004. p. 1446

¹⁷Soedikno Mertokusumo, Understanding the Law (An Introduction), Liberty, Yogyakarta. 1997. p. 9

¹⁸Barda Nawawi Arief, Problems of Law Enforcement and Criminal Law Regulation in Combating Crime, Jakarta, Prenada Media Group, 2007, p. 61

¹⁹Mardjono Reksodiputro, Human Rights in the Criminal Justice System: Third Book Collection, Center for Justice Services and Legal Service, University of Indonesia, 1994, p.102

Master of Law, UNISSULA

Passive legal protection is in the form of external actions (other than the judicial process) that provide recognition and guarantees in the form of regulations or policies related to the rights of the perpetrator and the victim. While active ones can be in the form of actions related to efforts to fulfill their rights. This active legal protection can be divided into active preventive and active repressive. Active preventive is in the form of rights granted by the perpetrator, which must be accepted by the victim in relation to the implementation of legal regulations or government policies. Active repressive is in the form of demands to the government or law enforcement officers regarding regulations or policies that have been applied to the victim that are considered detrimental.²⁰

Protection can be divided into two types, namely legal protection and special protection against threats. Legal protection can be in the form of immunity given to reporters and witnesses so that they cannot be sued civilly or prosecuted civilly as long as the person concerned provides testimony or reports in good faith or the person concerned is not the perpetrator of the crime himself. Other legal protection is in the form of a prohibition for anyone to leak the name of the reporter or an obligation to keep the name of the reporter confidential accompanied by the threat of criminal penalties for violations. All witnesses, reporters and victims need this legal protection. Meanwhile, special protection for witnesses, reporters and victims is given by the state to overcome possible threats that endanger themselves, their lives and property, including their families. Not all witnesses, reporters and victims of criminal acts need this special protection, because not all of them face threats.²¹

The issue of protecting victims of crime is one of the issues that has attracted international attention. This can be seen from the discussion of the issue of protecting victims of crime in the 7th UN Congress in 1985 on "The Prevention of Crime and The Treatment of Offenders" in Milan, Italy: It was stated that "Victims' rights should be perceived as an integral aspect of the total criminal justice system." (Victims' rights should be an integral part of the entire criminal justice system). In this UN Congress, a draft Resolution on Victim Protection was submitted to the UN General Assembly. This draft Resolution later became UN General Assembly Resolution No. 40/34 dated 29 November 1985 on the "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power."

For victims of child sexual crimes, it will leave feelings of shame, self-loathing and depression, so to overcome these feelings, they use excessive drugs and some even hurt their own bodies in order to express the pain they feel. As a result, it will cause mental disorders called "post-traumatic stress". In fact, there are rights for children as victims to receive medical assistance and psycho-social rehabilitation assistance. Psycho-social rehabilitation assistance is assistance provided by psychologists to victims who suffer from trauma or other mental problems to restore the victim's mental condition.

Victim protection can include abstract (indirect) and concrete (direct) forms of protection. Abstract protection is basically a form of protection that can only be enjoyed or felt emotionally (psychically), such as satisfaction (satisfaction). Concrete protection is basically a

²⁰Philip M. Hadjon Legal Protection for the People, Dissertation, Airlangga University, Surabaya, 1987, p. 23

²¹ Alvianto RV Ransun. Mechanism of Compensation and Restitution for Victims of Criminal Acts. Lex Crimen Vol.1/No.1/Jan-Mrt/2012. Sam Ratulangi University, Manado, 2012, p.63.

Master of Law, UNISSULA

form of protection that can be enjoyed in real terms, such as the provision of material or non-material. Protection for victims in the criminal justice system was initially stated in the Criminal Procedure Code, namely Articles 98 to 101 of the Criminal Procedure Code. However, in the Criminal Procedure Code it is only limited to the consolidation of cases. The point is that in its development, the Criminal Procedure Code is less able to provide protection for victims as a whole, even though the existence of witnesses and/or victims of a crime in this case is very necessary and is also something that must be considered as a whole in the examination process in criminal justice.

In principle, the protection of a person's rights as a witness has been accommodated in the Criminal Procedure Code, but considering the increasingly diverse types of criminal acts and the effects or consequences for the safety of the lives of witnesses/victims or their families, in 2006 the Indonesian government issued Law Number 13 of 2006 concerning Protection of Witnesses and Victims. In Law Number 13 of 2006 concerning Protection of Witnesses and Victims, various rights granted by the State to victims of a criminal act have been regulated which were previously not or were not regulated in the Criminal Procedure Code.

The basis for considering the need for a law regulating the protection of crime victims (witnesses) to be clearly formulated can be seen in the considerations section of this law, which among other things states: law enforcers often have difficulty in seeking and finding clarity about the criminal acts committed by the perpetrator because they cannot present witnesses and/or victims due to threats, both physical and psychological, from certain parties. Whereas we know that the role of witnesses or victims in a criminal justice process occupies a key position in efforts to seek and find clarity about the criminal acts committed by the perpetrator.

The existence of a witness and victim before 2006 was something that was not taken into account. In the Criminal Procedure Code itself, as a form of *Hir/Rbg*, there is a tendency to protect the rights of citizens who have the status of suspect, defendant, and convict.²² But we often forget that the process of proof requires witness or victim witness (victim who testifies). The existence of both is often ignored by law enforcement and law enforcement officers in Indonesia. Safety, both themselves and their families in certain cases are at stake, for their testimony.

Forms of protection and rights of witnesses and victims are given since the beginning of the investigation stage and end in accordance with the provisions of the laws and regulations. In fact, if in giving testimony in front of the court, because his presence will make his life threatened, the law in this case will provide protection for witnesses or victims or family members by giving testimony without the presence of the perpetrator in the examination before the court.

However, it is not uncommon for someone who experiences losses both materially and immaterially due to a criminal act that has befallen him, not to use the rights that should be obtained for various reasons, for example in sexual crimes. Someone who is a victim of a sexual crime will have a feeling of fear in the future if the community finds out about the incident that befell him, because a sexual crime is a disgrace to him and his family so that

²²Rocky Marbun. *Smart and Tactical in Facing Legal Cases*. (Jakarta: Visi Media, 2010, page 86.

Master of Law, UNISSULA

the victim is better off hiding it or the victim refuses to file for compensation because it is feared that the process will become longer and more protracted which can result in prolonged suffering.²³

In its development, guarantees of protection for witnesses and victims have a very important role in the criminal justice process so that with statements from witnesses and victims that are given freely from fear and also free from threats, a criminal act can be revealed, which then increases efforts to fully reveal a criminal act, especially in transnational crimes that have been organized, it is also necessary to provide protection to witnesses, perpetrators, reporters, and also experts. Several provisions in Law Number 13 of 2006 concerning Protection of Witnesses and Victims must be adjusted to the development of legal needs in society. That is why the Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims was enacted.

Furthermore, in addition to the Criminal Procedure Code and Law Number 31 of 2014, regarding child victims of crime, the handling of children as victims is generally regulated in Law Number 11 of 2002 concerning the Child Criminal Justice System (UU SPPA). Providing protection to children as victims of crime is one of the objectives of the child criminal justice system.²⁴ In Law Number 11 of 2012 concerning SPPA, children as victims of criminal acts are referred to as Child Victims.²⁵ Then the implementation of restitution in 2020 is regulated by 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.

Article 1 number (5) of 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 states that "restitution is compensation given to the Victim or his/her Family by the perpetrator or a third party". However, the amount of restitution and the parties authorized to regulate the implementation of restitution are not clearly stated in 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.

Sociologically, legal protection for victims is also interpreted as an effort by the state to create a harmonious relationship of trust towards its citizens by realizing a guarantee of service in the form of fair law enforcement so that its citizens do not make threats or take the law into their own hands. As in the concept of social contract theory,²⁶ The state is given the

²³ Didik M Arif Mansur and Elistaris Gultom, *op.cit.*, p. 52.

²⁴ Yulia, Rena. *Victimology of legal protection for victims of crime*. Yogyakarta: Graha Ilmu, 2010, p.62.

²⁵ Article 1 number 6 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

²⁶ Jean Jacques Rousseau is the initiator of the social contract theory, in Rousseau's teachings on society and the state there is a conflict. On the one hand, the freedom of each individual is emphasized, on the other hand, the power of the state is emphasized. This last thing happens, because according to Rousseau, it is in the state that the general will (*volonte generale*) is realized, namely the will of the people themselves which must not be violated. In the name of the general will, individual rights are sacrificed. See in Theo Huijbers, *Philosophy of Law in the Trajectory of History*, Yogyakarta, Kanisius, 1992, p. 9

Master of Law, UNISSULA

right to manage and regulate its citizens based on a contract of free will delegation from its citizens with the requirement that the state can provide protection guarantees for its citizens. Thus, if the state violates the contract of protection services, then of course the mandate of the citizens will be distorted by itself. So it is not surprising if then its citizens become disappointed and no longer respect the state.

In addition, functionally, legal protection for victims must also be interpreted as a major part of crime prevention and handling regulations. It is impossible to carry out crime prevention and handling appropriately, if we do not pay attention to the problems of victims appropriately. Because crime is basically the result of a relationship²⁷ between the phenomenon of the perpetrators of crime on one side and the victims of crime on the other side. Thus, if the victim does not get proper treatment from the state, then of course there will be apathy and cynicism towards the legal and judicial system, which then by virtue of *conditio sine qua non* will cause crime to be difficult to overcome. Often the disclosure of crimes is due to reports from victims to law enforcement officers. So if the victim is no longer given protection by law, then the victim is not enthusiastic about reporting to law enforcement, then of course efforts to prevent and overcome crime will be hampered. Therefore, legal protection for victims is very urgent for efforts to prevent and overcome crime.

Protection for victims of crime, theoretically there are two regulatory models, namely: (1) the procedural rights model and the services model.²⁸

a. Procedural rights model; victims are given the right to play an active role in the criminal case resolution process, such as the right to file criminal charges, assist the prosecutor or the right to be heard at every level of the case examination where their interests are involved, including the right to be consulted before being granted conditional release, as well as the right to make peace.

b. Service model: Standard standards for the guidance of crime victims, which can be used by the police, for example guidelines for modifications to victims and/or prosecutors in handling their cases, providing compensation as a restitutive criminal sanction and the impact of victim statements before the sentence is imposed. Victims are seen as special targets who must be served in law enforcement activities or the resolution of criminal cases.

3.2. Obstacles and Solutions in the Implementation of Restitution for Child Victims of Sexual Violence in Semarang City Today

1. Obstacles in the Implementation of Restitution for Child Victims of Sexual Violence in Semarang City Currently

a. Legal Regulatory Constraints

The constraints of legal regulations themselves can be seen from the regulations related to child protection that are currently in effect, regulations related to chemical castration sanctions, and regulations related to the Draft Law on the Elimination of Sexual Violence. It has been explained previously that the matter of restitution in its development has been clearly regulated in the United Nations Declaration on The Prosecution and Assistance of

²⁷Arif Gosita, Op Cit, p.98

²⁸Muladi, Human Rights, Politics and the Criminal Justice System, Semarang, BP Undip, 1997, p. 178.

Master of Law, UNISSULA

Crime Victims in point 4 part 1 General Principles. The United Nations declaration states that:²⁹

Reparation by the offender to the victim shall be an objective of the justice process. Such reparations may include (1) the return of stolen property, (2) monetary payment for loss, damages, personal injury psychological trauma, (3) payment for suffering, and (4) service to the victim. Reparation should be encouraged by the corrective process.

In its development Law Number 23 of 2002 concerning Child Protection in its implementation has many shortcomings, including:

1. BThere is no explanation regarding the meaning of violence, even though it is very important to explain what things are classified as acts of violence against children.
2. Inschool environment, children have not received protection from violence perpetrated by teachers at school or school friends,
3. In the case of a child being separated from both parents for the sake of the child's best interests, this law does not explain the extent of the parents' role during the implementation of guidance.
4. PersonThe guardian is not mentioned in the efforts to protect the child, so if the child is cared for by his guardian, it can be said that the guardian does not have an obligation to provide protection for the child.
5. Not yetthe existence of protection for children as victims of sexual crimes
6. Not yetthere is an attempt at restitution from the perpetrator to the victim, for example for victims of sexual crimes

The increasing number of crimes involving children as victims of sexual crimes, whether committed by their own parents, friends, or strangers, has prompted the government to immediately make changes by enacting Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2003 concerning Child Protection. It contains several sanctions for or as aggravation for perpetrators of sexual crimes. The aggravation sanctions for perpetrators of sexual crimes that have been regulated in Law Number 35 of 2014 are as follows:

1. Everyone is prohibited from committing violence or threats of violence by forcing a child to have sexual intercourse with him or with another person. Anyone who violates this shall be punished with imprisonment for a minimum of 5 years.(five) years and a maximum of 15 (fifteen) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah).³⁰

If the crime is committed by a parent, guardian, child caretaker, educator or education staff, then the punishment is increased by 1/3 (one third) of the criminal threat above.³¹

2. Everyone is prohibited from committing violence or threats.Violence, by means of forcing, trickery, making a series of lies, or persuading a Child to do or also allowing indecent acts to be done. For anyone who violates this, shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a maximum fine of Rp.

²⁹Romli Atmasasmita, Writing a Scientific Paper on the Problem of Compensation for Victims of Criminal Acts, National Legal Development Agency, Department of Justice, Jakarta, 1992, p. 4.

³⁰ Article 81 paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002

³¹ Article 81 paragraph (3) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002

Master of Law, UNISSULA

5,000,000,000.00 (five billion rupiah).³² If a crime is committed by a parent, guardian, child caretaker, educator, or education personnel, the penalty is increased to 1/3 (one third) of the criminal threat as mentioned above.³³

3. Every person is prohibited from placing, allowing, doing, ordering to do, or participating in economic and/or sexual exploitation of a child. For every person who violates this.

In order to implement maximum protection for children, there needs to be coordination and cooperation between the government, society and parents.³⁴ Protection of children is a shared responsibility, but if those who should protect children end up committing crimes against children, then they should receive a higher punishment.

Gary Becker put forward several opinions regarding rationality in criminal law:

1) Optimal criminal justice policy. This idea is related to cost and benefit analysis, which means an effort to obtain optimal allocation of resources in society in fighting crime. The assumption of the combined theory is that if the existing criminal sanctions are severe enough, every criminal will definitely avoid it. possibility of being caught, in this case it will reduce crime.³⁵

2) Kthe individual's decision about criminal activity. The criminal is a rational actor who weighs the costs and benefits, and the time and resources allocated between criminal activities, so that he knows which will bring the greatest benefit.³⁶ Everyone (not just criminals) is a rational actor who, based on their subjectivity, weighs the costs and benefits of the activities they do. Some people choose activities that are labeled criminal because for them the amount of profit obtained from the activity exceeds the costs that must be incurred. To prevent them from committing crimes, what is done is to increase the costs incurred, so that the profits obtained are smaller. The way to do this is by increasing the criminal sanctions that will be imposed.

As stated by Gery Becker that humans are rational creatures, so if the sanctions imposed are greater than the results obtained, criminals or potential criminals will avoid the crime. The government's efforts to protect children from sexual crimes, when viewed from Gerry Becker's opinion, are the right actions. For children who are victims of criminal acts, the Government, both Regional Governments, and other state institutions are obliged and also responsible for providing Special Protection.³⁷ In other words, children who are victims of a crime have rights that have been regulated in Law Number 35 of 2014, namely the right to receive special protection. This special protection will be given to: Children as victims of criminal acts of kidnapping, selling, and/or trading; Children as victims of physical and/or psychological violence; Children as victims of sexual crimes; Children as victims of terrorist

³² Article 82 paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002

³³ Article 82 paragraph (2) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002

³⁴ Maidin Gultom, Legal Protection for Children in the Juvenile Criminal Justice System in Indonesia. Bandung: Rafika Aditama, 2006, p. 35.

³⁵ William L Barnes Jr, "Revenge on Utilitarianism: Renaouncing A Comprehensive Economics Theory of Crime and Punishment", Indiana law journal, Vol. 74, No 627, (1999), in Mahrus Ali, Principles, Theory and Practice of Criminal Law of Corruption. Yogyakarta: UII Press, 2013, p. 246.

³⁶ D M. Khan, "Social Influence, Social Meaning, and Deterrence", Virginia Law Review, No. 83, in Mahrus Ali, Principles, Theory and Practice of Criminal Law of Corruption. Yogyakarta: UII Press, 2013, p. 246.

³⁷ Article 59 paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002

Master of Law, UNISSULA

networks; Children as victims of mistreatment and neglect; and Children who are victims of stigmatization from labeling related to the condition of their parents.³⁸ What is meant by special protection is a form of protection that can be received by a child in certain situations and conditions to ensure a sense of security against threats that can endanger him and his soul in his growth and development.³⁹

The form of special protection that can be given to children who are victims of a crime is done through fast handling, including treatment and/or physical, psychological, and social rehabilitation, as well as prevention of diseases and other health disorders; psychosocial assistance during treatment until recovery; provision of social assistance for children who come from underprivileged families; and provision of protection and assistance to every judicial process is underway.⁴⁰

Based on the description above, Law Number 35 of 2014 specifically provides protection for children as victims of sexual crimes. The form of protection provided to children as victims of sexual crimes as previously quoted is regulated in Article 69 A of Law Number 35 of 2014 in the form of:⁴¹

- 1) Education about reproductive health, religious values, and moral values;
- 2) Social rehabilitation for children;
- 3) Psychosocial support during treatment until recovery; and also
- 4) Providing protection and assistance at every level of examination, starting from the investigation process, prosecution process, to the examination process in court.

In addition to the special protection rights given to children who are victims of a crime mentioned above, children who are victims of a crime also have the rights to file a lawsuit in court in the form of rights to restitution which are the responsibility of the perpetrator of the crime. However, not all children who are victims of a crime have these rights, those who have the right to file for restitution in court are:⁴²

- a) Children as victims who are exploited economically and/or sexually;
- b) Children as victims of pornography crimes;
- c) Children as victims of criminal acts of kidnapping, selling and/or trafficking;
- d) Children as victims of criminal acts of physical and/or psychological violence;

³⁸ Article 59 paragraph (2) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 Special Protection for Children as referred to in paragraph (1) is given to: a. Children in emergency situations; b. Children in conflict with the law; c. Children from minority and isolated groups; d. Children who are exploited economically and/or sexually; e. Children who are victims of abuse of narcotics, alcohol, psychotropics, and other addictive substances; f. Children who are victims of pornography; g. Children with HIV/AIDS; h. Children who are victims of kidnapping, sale, and/or trade; i. Children who are victims of physical and/or psychological violence; j. Children who are victims of sexual crimes; k. Children who are victims of terrorist networks; l. Children with disabilities; m. Children who are victims of mistreatment and neglect; n. Children with deviant social behavior; and o. Children who are victims of stigmatization from labeling related to their parents' conditions

³⁹ Article 1 number 15 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002

⁴⁰ Article 59A of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002

⁴¹ Article 69A of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002

⁴² Article 71D paragraph (1) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002

Master of Law, UNISSULA

e) Children as victims of sexual crimes.

Protecting children is essentially protecting the family, protecting society, and also protecting the nation.⁴³Therefore, protection for children is very important. Including protection for children as victims of crime. The rights of children above are very important to protect, especially for children who are victims of sexual crimes. Punishing a perpetrator of sexual crimes does not eliminate the traumatic feelings suffered by the victim.⁴⁴Therefore, the existence of the victim's right to request restitution from the victim becomes an important point. Because this right to restitution is used to restore the trauma suffered by child victims of sexual crimes.

Solutions to the Problem of Implementing Restitution for Child Victims of Sexual Violence in Semarang City Today

The solutions that can be done are:

a. Efforts in Implementing Counseling

Due to the lack of psychologists, it is necessary to form a task force related to psychological counseling for child victims of sexual violence in Semarang City. The elements of the task force consist of the Semarang City Population Control, Family Planning, Women's Empowerment and Child Protection Service (PPKBPPPA), and the Police.

b. Improving Facilities and Infrastructure in Efforts to Prevent and Eradicate Sexual Harassment Against Children

In order to improve facilities and infrastructure, the Women and Children Protection Unit of the Semarang City Police needs to improve the quality of its personnel, so that female police personnel can take part in specialist development education for UPPA female police, namely by taking vocational education, so that they can improve the knowledge and skills of UPPA police in handling children who are victims of crime or sexual violence.

c. There Need to be a Safe House for Child Victims of Sexual Abuse During the Legal Process

Regarding safe houses or shelters, the Semarang City Police need to work together with the Social Services and the Semarang City Women and Children Information Service Unit (UPI-PA) in providing safe houses or shelters, so that victims can rest and relieve trauma safely without threats.

d. Providing Victims with an Understanding of Their Rights

To overcome the obstacle where the victim is withdrawn and reluctant to be placed in a safe house, the UPPA of the Semarang City Police provides an understanding and advice to the victim regarding their rights, one of which is that the victim has the right to be referred to a safe house if their condition is threatened and it is not possible to return to their home.

e. It is necessary to regulate the amount of restitution for child victims of sexual violence. So far, the amount of restitution has been interpreted by the Victim and Witness Protection Agency, constitutionally the institution that has the authority to interpret this is the judicial institution, namely the Prosecutor's Office and the Court. Considering that the Witness and Victim Protection Commission is only an institution *ad hoc*, Therefore, constitutionally, the

⁴³ JE Sahetapy et al., Anthology of Victimization, Bandung: PT. Eresco, 1995, p. 135

⁴⁴ Yulia, Rena. Victimology of legal protection for victims of crime. Yogyakarta: Graha Ilmu, 2010, p.14.

Master of Law, UNISSULA

amount of restitution is interpreted by the prosecutor, with standards that have been formally determined in advance in the relevant laws and regulations.

4. Conclusion

1. The implementation of protection and recovery for child victims of sexual violence is not yet effective, this is indicated by the still minimal implementation of restitution for child victims of sexual violence which ultimately also hinders the implementation of rehabilitation for child victims of sexual violence; 2. The obstacles that influence are the obstacles of legal regulations that still do not explicitly and clearly contain the implementation of restitution, this also culturally hinders the system of implementing restitution for child victims of sexual violence. The solutions that can be done are efforts in the implementation of counseling, improving facilities and infrastructure in efforts to prevent and eradicate sexual harassment against children, the need for a protective house for child victims of sexual harassment during the legal process, providing an understanding to victims regarding their rights, and the need to regulate the amount of restitution for child victims of sexual violence.

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