

## Process of Granting Retitution Rights to Child victims of crime (study of besilam village langkat district)

Lidya Rahmadani Hasibuan<sup>1\*</sup>, Hasdiana Juwita Bintang<sup>2</sup>, Nurbela Br.  
Purba<sup>3</sup>

<sup>1,2,3</sup>*Department of Law Universitas Pembangunan Panca Budi, Medan,  
Indonesia*

\*e-mail: [lidya.hsb@gmail.com](mailto:lidya.hsb@gmail.com)

### ABSTRACT

One form of compensation for victims of criminal acts is restitution. Restitution in accordance with the Principle of Restoration to its Original Condition (*restitutio in integrum*) is an effort that ensures that crime victims must be returned to their original condition before the crime occurred, even though it is based on the fact that it is impossible for the victim to return to their original condition. This principle emphasizes that the form of recovery for victims must be as complete as possible and cover various aspects arising from the consequences of the crime. With restitution, victims can have their freedom, legal rights, social status, family life and citizenship restored, returned to their place of residence, their job restored, and their assets restored. Restitution itself is defined as the payment of compensation charged to the perpetrator based on a court decision which has permanent legal force for material and/or immaterial losses suffered by the victim or his heirs. For this reason, the perpetrator is required to pay restitution to the child victim of a crime to compensate for the losses suffered by the victim as a form of the perpetrator's responsibility for his actions which caused harm to the victim, his family or his heirs, as the implementation of Article 71 D Paragraph (2) of Law Number 35 of 2014 concerning Amendments to Law number 23 of 2002 concerning Child Protection. Applications for restitution can be submitted by child victims of criminal acts who must be accompanied by parents/guardians, their heirs or through the Institution witness and victim protection. To apply for this restitution, it is hoped that the child's companions have equipped themselves with the applicant's identity file, the identity of the perpetrator, a description of the criminal act, a description of the losses suffered, the amount of restitution requested and the form of restitution requested.

### Keywords:

Right to Restitution, Right to Restitution Process, Child Criminal Cases

### 1. Introduction

Based on preliminary data, there are more than 7000 (seven thousand) children who are perpetrators of criminal acts entering the justice process every year. In July 2010 there were 6,273 (six thousand two hundred and seventy three) children in detention and prisons throughout Indonesia, consisting of 3,076 (three thousand and seventy six) children with detainee status, 3,197

(three thousand one hundred and ninety seven) prisoners and 56 (fifty six) state children. This shows that the punishment regulated in the Juvenile Justice Law is still weak. The large number of juvenile court decisions that tend to impose prison sentences rather than action against delinquent children, is actually not in accordance with the philosophy of punishment in juvenile criminal law.

Special protection is a right that must be given to children. This special protection includes children in conflict with the law and children who are victims of criminal acts. This is the obligation and responsibility of the government and society. Protection for children in conflict with the law can be realized through the Juvenile Criminal Justice System.

Data on Child Complaint Cases by KPAI from January 2011 to July 2015 recorded 1,111 cases of pornography and cyber crime, 702 cases of physical violence, 197 cases of psychological violence, 1,694 cases of sexual violence, and 895 cases of trafficking and exploitation.

Restitution itself is defined as payment of compensation imposed on the perpetrator based on a court decision that has permanent legal force for material and/or immaterial losses suffered by the victim or his/her heirs. For this reason, the perpetrator is required to pay restitution to the child victim of the crime to replace the losses suffered by the victim as a form of the perpetrator's responsibility for his/her actions that cause losses to the victim, family or heirs, as an implementation of Article 71 D Paragraph (2) of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

Applications for restitution can be submitted by child victims of criminal acts who must be accompanied by parents/guardians, heirs or through the Witness and Victim Protection Agency. To apply for this restitution, it is expected that child companions have equipped themselves with the applicant's identity files, the perpetrator's identity, a description of the crime, a description of the losses suffered, the amount of restitution requested and the form of restitution requested.

As a new paradigm in the world of criminal justice, it certainly takes time to introduce restitution in the midst of a legal system that has been recognized for generations. Not to mention that pragmatic thinking tends to dominate the thinking of our law enforcement officers. Namely, the attitude of having difficulty accepting new developments and prioritizing the Criminal Procedure Code as a "holy book" as a reference for law enforcement.

There are at least three weaknesses in the laws and regulations regarding the provision of restitution to victims of crime. First, there is a polarization of laws and regulations that regulate the provision of restitution to victims of crime that tend to contradict each other. Second, there is overlapping regulation regarding restitution to victims of crime. There are at least three regulations that regulate the provision of restitution to witnesses and victims of crime, namely PP Number 44/2008 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims; PP Number 3/2003 concerning Compensation, Restitution, and Rehabilitation for Victims of Serious Human Rights Violations; and Law Number 21/2007 concerning the Eradication of the Crime of Human Trafficking. Third, in Law Number 13/2006, the scope of restitution can be in the form of returning property, paying compensation for loss or suffering, or reimbursing costs for



certain actions. Meanwhile, in the Criminal Procedure Code, compensation only focuses on real losses due to criminal acts. So, in practice, only material losses can be examined by the Judge. The claim for compensation for the loss for the victim is considered immaterial so that it must use the civil law mechanism. Fourth, the weak coercive power and execution of the implementation of restitution. Law Number 13/2006 does not regulate the coercive power to make payments and which institutions are authorized to execute the implementation of the restitution. This means that if the perpetrator is unable and unwilling to pay restitution to the victim, it has no legal consequences and does not have any implications for the perpetrator. In practice, this has violated the victim's right to obtain compensation.

Unpreparedness to accept the development of globalization can cause children to fall into various crimes. The rampant crimes committed by children or crimes related to children not only disrupt the security and order of society, but also constitute a danger that can threaten the future of a nation and state. So that children as the successors of the ideals of the nation and state must be protected from actions that can harm children so that children can be maintained for the future of the nation and state. Crimes or violations committed by children are essentially a reflection of the nature of society that is less responsible in raising and guiding children, which will produce a less good generation.

This is very worrying, therefore, based on this, children must be given the best and wisest attention and protection. Children who commit crimes are processed legally to uphold the supremacy of law. The juvenile criminal justice system is an effort to protect and educate children without ignoring the essence of justice. Efforts to avoid the negative impacts of the criminal process with the method of resolving children's problems from the formal criminal process to a joint resolution between the perpetrator and the victim by involving the family in deliberations to achieve a fair resolution for all parties (win-win solution) peacefully (Compare with Law No. 11/2012: Article 1 number 6).

Deliberation for peace is a transfer of case resolution from formal criminal trials to a settlement process outside criminal law in general (See and compare Law No. 11/2012: Article 1 number 7). The purpose of deliberation in resolving child cases is to provide legal protection to children. Handling cases from criminal trials to trials outside criminal trials generally appears to be aimed at avoiding negative stigmatization of children. In addition, the imposition of criminal penalties or sanctions on children is not considered the best solution to resolve child crimes. This is in line with the objectives of the juvenile justice system, namely to realize a criminal justice system that truly protects the best interests of children (General explanation of Law No. 11/2012).

In Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which aims to realize a justice system that truly guarantees the protection of the best interests of children in conflict with the law. The Juvenile Court Law is considered no longer in accordance with the legal needs in society and has not comprehensively provided special protection to children in conflict with the law. Juvenile Criminal Justice (UU SPPA), Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and Law

of the Republic of Indonesia Number 4 of 1979 concerning Child Welfare, which laws have provided a legal basis for efforts to protect children.

## **2. Methods**

This analytical descriptive research method explains the legal problems related to the management of household waste that is not managed properly and can have a negative impact on public health. The approach used is normative legal. The approach method used in this study is the legislative approach. Secondary data includes primary, secondary and tertiary legal materials. The primary legal materials are in the form of laws and regulations. The secondary legal materials consist of textbooks, legal journals, previous research results and other publications. Tertiary legal materials provide instructions or explanations for primary and secondary legal materials such as legal dictionaries such as encyclopedias and others.

## **3. Results and Discussion**

Children as the next generation of the nation sometimes cannot avoid the influence of the environment in the form of social factors that cause a child to commit a crime that can harm many parties. Children who commit violations of the law or crimes are greatly influenced by factors outside themselves. Therefore, it must be considered that a child who commits a crime is not merely a party who must be punished through the judicial process. Law Number 3 of 1997 concerning Juvenile Courts in this case has not regulated the concept of restorative justice and diversion in Juvenile Courts. The concept of Restorative Justice and Diversion is a concept that provides protection and the principle of the best interests for children.

Law No. 11 of 2012 concerning the Juvenile Criminal Justice System substantively regulates the concept of restorative justice and diversion for children in conflict with the law. Article 7 paragraph (2) of Law No. 11 of 2012 states that law enforcers are required to carry out diversion with a restorative justice approach for children in conflict with the law.

Victims as the party who suffers and is harmed by violations of criminal law are usually only involved in providing testimony as a victim witness. As a result, victims often feel dissatisfied with the criminal charges filed by the Public Prosecutor and/or the verdict handed down by the Judge because they are considered not in accordance with the values of justice for the victim. This is because the criminal justice system is organized to try perpetrators of criminal acts, not to serve the interests of victims of criminal acts, because criminal acts are acts of the perpetrator against the state. The existence of the criminal justice system is intended for the interests of the state and society, not for the personal interests of citizens. This causes the losses due to criminal acts suffered by victims of criminal acts to be a disaster that must be borne by the victim himself because it is not the function of the criminal justice system to bear it.

According to Muladi, in the framework of the concept of regulating the protection of victims of criminal acts, the first thing that must be considered is the essence of the loss suffered by the

victim. The essence of the loss is not only material or physical suffering but also psychological. This is in the form of "trauma of losing trust in society and public order". Symptoms of this syndrome can be anxiety, suspicion, cynicism, depression, loneliness and other avoidance behaviors.

One form of compensation for victims of crime is restitution. Restitution in accordance with the Principle of Restoration in the Original State (*restitutio in integrum*) is an effort that victims of crime must be returned to their original condition before the crime occurred, even though it is based on the fact that it is impossible for the victim to return to their original condition. This principle emphasizes that the form of compensation for victims must be as complete as possible and cover various aspects arising from the consequences of the crime. With restitution, victims can be restored to their freedom, legal rights, social status, family life and citizenship, return to their homes, restore their jobs, and restore their assets. In practice, in almost many countries, the concept of restitution has been developed and also given to victims of crime for their suffering as victims of crime. In this concept, victims and their families must receive fair and appropriate compensation from the guilty person or third party responsible. This compensation will include the return of property or payment for damage or loss suffered, reimbursement of costs incurred as a result of the victim, provision of services and recovery rights.

In Law No. 13 of 2006, provisions regarding restitution are only regulated in one article as follows:

Article 7

- 1) Victims through LPSK have the right to file a lawsuit in the form of:
  - a. the right to compensation in cases of serious human rights violations;
  - b. the right to restitution or compensation for losses that are the responsibility of the perpetrator of the crime.
- 2) Decisions regarding compensation and restitution are made by the court.
- 3) Further provisions regarding the provision of compensation and restitution are regulated by Government Regulation.

The lack of regulations regarding restitution will certainly make it difficult for victims of criminal acts who will apply for restitution. First, the victim does not know for sure the losses that can be requested for restitution. Second, the victim does not know when to submit the application for restitution: can the victim immediately submit the application for restitution to LPSK immediately after the crime occurs, or before the public prosecutor files a criminal charge, or before the judge makes a decision? Third, the victim does not know the mechanism that can be taken if the perpetrator of the crime is unable or unwilling to pay the compensation requested by the victim. Fourth, the victim also does not know the time period for payment of restitution from the perpetrator of the crime to him since the judge's decision requiring the perpetrator to pay restitution to the victim has permanent legal force.



#### **4. Conlusion**

1. This study has not obtained data on children who are victims in a case that is given the Right to Restitution. If there are child victims but the new Child Protection Law has not been implemented so that child victims only receive rehabilitation and psychological assistance.
2. Lack of knowledge about the Right to Restitution by law enforcers, especially the Police, is a very serious obstacle to being able to implement the right to restitution for child victims. So that data on children who are victims and who receive the right to restitution cannot be found in this study, therefore more in-depth research is needed and the research area must be wider, not only limited to the city of Besilam.

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