

GRANTING RESTITUTION AS A FORM OF LEGAL PROTECTION FOR CHILD VICTIMS OF SEXUAL VIOLENCE (ANALYSIS OF DECISION NO. 298/PID.SUS/2024/PN PLK)

Febi Riana Sinta¹, Tahasak Sahay², Rizki Setyobowo³

^{1,2,3} Fakultas Hukum Universitas Palangka Raya

Email: feby06093@gmail.com¹, tahasak.sahay68@gmail.com², rizkisetyobowo@law.upr.ac.id³

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Abstract

Cases of sexual violence against children are a serious form of violation of human rights that cause deep suffering for victims both physically, psychologically, and socially. Restitution is an important instrument to restore victims' rights. This article aims to analyze the application of restitution as a form of legal protection for child victims of sexual violence based on Decision Number 298/Pid.Sus/2024/PN Plk. This study uses a normative juridical method with a qualitative approach. Data sources consist of court decisions as primary data and laws and legal literature as secondary data. The results of the study indicate that restitution in the decision has been implemented as a concrete form of legal protection for victims in accordance with the provisions of Article 7A of Law Number 31 of 2014 in conjunction with Law Number 13 of 2006 concerning Protection of Witnesses and Victims and Article 82 paragraph (1) of Law Number 17 of 2016 concerning Child Protection. The provision of restitution reflects a form of restorative justice that is oriented towards victim recovery rather than merely punishing the perpetrator. However, its implementation in the field still faces obstacles such as a lack of legal understanding and limited mechanisms for enforcing restitution decisions. This article emphasizes the importance of strengthening a legal system that is responsive to victims' needs by encouraging the implementation of restitution as a mandatory instrument in every child sexual violence decision.

Keywords: *legal protection, restitution, child sexual violence, restorative justice*

Introduction

Legal protection for child victims of sexual violence is a key issue within the Indonesian criminal justice system. Sexual violence against children not only causes physical harm but also profound psychological trauma for victims and leads to long-term economic and social losses. According to data from various protection and law enforcement agencies, cases of sexual violence against children are on the rise, and their handling often faces procedural challenges related to restorative justice and the effectiveness of restitution. Restitution is a crucial legal instrument in victim recovery efforts, particularly in restorative justice, which places the victim as the primary stakeholder in obtaining comprehensive rights restoration (Sari & Nurhadi, 2021, p. 73). Restorative justice theory emphasizes that justice is not solely focused on punishing the perpetrator but also focuses on restoring the rights and substantive justice for the victim (Rahmat, 2019, p. 45).

In her research, Putri revealed that although restitution is expressly regulated in child protection laws and the juvenile criminal justice system in Indonesia, its implementation faces various real obstacles, including the perpetrator's limited financial resources, lengthy legal processes, and minimal psychosocial support for victims, thus rendering its effectiveness less than optimal (Putri, 2020, pp. 83-85). Based on the description, the problem formulation in this study is: What are the forms and mechanisms of legal protection for children as victims of sexual violence in Indonesia? and How is the application of restitution in Decision Number 298/Pid.Sus/2024/PN Plk as a form of legal protection for child victims of sexual violence? This problem formulation is the basis for analyzing the extent to which the criminal law system in Indonesia is able to provide effective and just protection for victims and how restitution is implemented as a legal instrument that favors victims. The novelty of this article lies in its in-depth analysis of the application of restitution in the context of child sexual violence cases, specifically based on court decision No. 298/Pid.Sus/2024/Pn Plk. The research hypothesis states that although it has been strictly regulated by law, the implementation of restitution in practice still requires innovation and strengthening of mechanisms to truly

be able to provide optimal legal protection for child victims of sexual violence. The main objective of this study is to uncover and assess the effectiveness of the application of restitution in court decisions for crimes of sexual violence against children and to identify obstacles and solutions needed to strengthen legal protection for victims.

Literature review

A. Previous Research Review

Research on legal protection for child victims of sexual violence through restitution has been extensively researched, but there is still room for improvement, particularly in the context of implementing the law at the local level.judicial. Research by Simanjuntak (2020:102) in the Journal of Jurisprudence entitled "Implementation of Restitution in Indonesian Criminal Law." He found that the biggest obstacle in implementing restitution is weak coordination between law enforcement agencies and the Witness and Victim Protection Agency (LPSK), as well as the absence of an effective execution mechanism. The strength of this study is its ability to highlight institutional aspects, but its weakness is that it does not address the legal aspects of implementing restitution.

Furthermore, Indra Ardiansyah, Anis Widyawati & Indah Sri Utari (2023: 45-46) in the research "*Taking Restitution Seriously? Victim-Oriented Gaps in the Criminal Justice System*" found that out of 61 cases of child sexual violence at the Kaimana District Court, only one case resulted in restitution, indicating institutional barriers and limited understanding of victims' rights. This study, empirical data, demonstrates the low level of restitution, and the focus remains on the number and obstacles, rather than how judges' considerations are formulated in their verdicts.

Another study by Azzahra & Lubis (2024: 102-104) in the article "Mechanism for Implementing Restitution for Victims of Sexual Violence (Study"Comparative Law in Indonesia and Thailand)" reviews national mechanisms and their challenges, including the lack of adequate guidelines for assessing losses and executing restitution. This study has the advantage of a comparative perspective that enriches existing studies in Indonesia. It also highlights its shortcomings, which are macro-scale in nature and do not address the details of court decisions in specific regions.

Based on this study, this research refines the findings.n previous studies with a focus on combining a normative approach with a legal analysis of Decision Number 298/Pid.Sus/2024/PN Plk. Thus, this study refines previous studies by analyzing the practice of applying restitution in court as a concrete form of legal protection for child victims of sexual violence.

B. Theoretical basis

1. Legal Protection Theory

The theory of legal protection is the primary conceptual basis for this research. According to Philipus M. Hadjon (2019:28), in "Legal Protection for Child Victims of Sexual Violence," legal protection extends beyond formal norms to fulfilling victims' rights and restoring their socio-psychological well-being. This restoration includes restitution as an instrument of legal protection for child victims.

2. Restorative Justice Theory

Restorative justice (*restorative justice*) is an important foundation for understanding the purpose of restitution. According to Zehr (2020:52) in "Restorative Justice for Child Victims: Healing and Accountability" (revised edition), restorative justice emphasizes that the victim is the primary subject of recovery, with the perpetrator as the responsible party and the community as part of the recovery process. Restitution is a practical tool within this framework.

3. Human Rights Theory

According to Widiyati and Sari (2022, p. 90), children are legal subjects with inherent human rights from birth, including the right to protection from all forms of violence and exploitation. Legal protection of children based on human rights must be a priority in the legal system, and the fulfillment of children's rights must be comprehensive. This is in line with the Convention on the Rights of the Child, ratified through Presidential Decree Number 36 of 1990.

Method

This research uses a normative juridical method with a qualitative approach. The normative juridical method was chosen because the primary focus of the research is to examine and analyze applicable legal norms and the application of restitution in court decisions related to crimes of sexual violence against children. The qualitative approach was used to gain an in-depth understanding of the legal aspects and practices of restitution based on court decision documents and supporting legal literature. The primary data source for this research is Decision Number 298/Pid.Sus/2024/PN Plk, which was analyzed to obtain an overview of the application of restitution as a form of legal protection for victims. Secondary data sources include relevant laws and regulations, scientific journals, and related literature supporting the legal analysis.

Results and Discussion

A. Case Chronology (Decision No. 298/Pid.Sus/2024/PN Plk)

The case in Decision Number 298/Pid.Sus/2024/PN Plk began with a report from the victim's parents, who reported an act of sexual violence against a 14-year-old girl. The defendant was known to the victim, but not related by blood or marriage, and was not in any employment relationship with the defendant. The victim's daughter met the defendant through the OMI application.

The incident began when the defendant came to a guest house to meet the victim's child. In the quiet atmosphere, the defendant invited the victim's child to chat by providing a sense of comfort to the victim's child so that the victim's child would comply with the defendant's wishes to be able to commit indecent acts against the victim's child without permission and without the victim's ability to resist by exploiting the victim's innocence and helplessness. The act was carried out consciously by the defendant and was carried out more than once in the same place. The victim who felt afraid and depressed did not immediately tell her parents about the incident. However, the change in the victim's attitude, which became quiet, often cried and looked afraid, began to arouse suspicion for her mother. After being slowly persuaded, the victim finally admitted that she had been a victim of indecent acts committed by the defendant.

Following up on her child's confession, the victim's mother immediately reported it to the police. The police then examined the victim and took him for questioning. *visum et repertum* at the hospital. That at the time of the trial the victim's child was pregnant. That before having intercourse with the defendant, the victim's child had also agreed with 2 other men at the guesthouse. From the results of the post-mortem on the physical examination, no indication of violence was found, during the internal examination, it was found that there were old tears in the hymen with tears at 1, 2, 5, 8 and 11 o'clock from the results of the examination, it was suspected that this was due to intercourse with a minor according to the victim's statement. In addition, the statements of witnesses presented at the trial strengthened the chronology that the act did occur as charged by the Public Prosecutor.

B. Research result

This research focuses on a legal analysis of Decision Number 298/Pid.Sus/2024/PN Plk relating to the crime of sexual violence against children committed by an adult male against a victim who is still a minor. Based on the results of the investigation into the decision, data was obtained that the defendant was sentenced to 5 (five) years in prison and a fine of Rp. 15,000,000 (Fifteen Million Rupiah) with the provision that if the fine is not paid, it will be replaced with 1 (one) month in prison as stipulated in Article 82 paragraph (1) of Law Number 17 of 2016.

In its ruling, the panel of judges also ruled that the victim was entitled to restitution as a form of reparation for the physical and psychological suffering he experienced. Based on recommendations from the Witness Protection Agency and the KThe restitution requested by the victim (LPSK) includes medical expenses, psychological recovery costs, and moral losses due to severe trauma experienced by the victim in the amount of Rp. 37,000,000 (Thirty Seven Million Rupiah) with the provision that if the restitution is not paid it will be replaced with imprisonment for 3 (three) months. The data in the decision shows that the panel of judges considered several pieces of evidence submitted by the public prosecutor, including:

1. Statements from victim witnesses and supporting witnesses;
2. Post mortem et repertum letter from the hospital;
3. The defendant's confession; and
4. LPSK recommendation letter regarding restitution application. Based on the legal facts at trial, it was proven that the defendant committed indecent acts against the victim repeatedly in the place. The

judge considered that the act not only violated criminal law but also violated the moral, customary, and social values of the people living in Palangka Raya.

C. Legal Protection for Child Victims of Sexual Violence

Legal protection teProtection of children who are victims of sexual violence is a concrete manifestation of the state's responsibility as stated in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that every child has the right to survive, grow and develop and has the right to protection from violence and discrimination. This constitutional provision is strengthened through Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and Law Number 17 of 2016 which emphasizes special protection for children as victims of sexual crimes. According to Hadjon (2019, p. 112) legal protection is an effort to provide a sense of security to legal subjects through fair regulatory instruments and law enforcement, thus the state is obliged to provide comprehensive protection to children both preventively and repressively.

According to Muladi (2021, p. 88) in his book *Restorative Justice and Its Relevance to Indonesian Criminal Law* states that restitution is not only a form of material compensation but also a "moral effort of the state to restore the dignity of the victim." This concept is in line with the progressive legal principle put forward by Satjipto Rahardjo (2020, p. 51) in *Progressive Law: A Synthesis of Indonesian Law* that the law should serve humans, not humans serving the law. In the context of Decision Number 298/Pid.Sus/2024/PN Plk, the judge has implemented restitution by considering the rights of child victims based on the provisions of positive law, indicating the application of the principle of restorative justice in judicial practice.

D. Implementation of Restitution in Decision No. 298/Pid.Sus/2024/PN Plk

Decision Number 298/Pid.Sus/2024/PN Plk is a concrete form of law enforcement that favors child victims in cases of sexual violence. The panel of judges imposed a sentence based on Article 82 paragraph (1) of Law Number 17 of 2016 concerning the stipulation of government regulations in lieu of law number 1 of 2016 concerning amendments to law number 35 of 2014 concerning amendments to law number 23 of 2002 concerning Child Protection. In addition to imposing a sentence on the defendant, the judge also considered granting restitution to the victim in the amount of Rp. 109,483,000.00 (One Hundred Nine Million Four Hundred Eighty Three Thousand Rupiah) whose distribution and payment were carried out proportionally and equally with two other perpetrators so that from the calculation of the proposed restitution value it was divided into 3 parts with rounded up, each paying Rp. 37,000,000,- (Thirty Million Rupiah) through the Witness and Victim Protection Agency (LPSK) as part of the restoration of the victim's rights if the restitution is not paid then it will be replaced with imprisonment for 3 (three) months.

In this decision, the judge also took into account the provisions of Article 7A paragraph (1) of Law Number 31 of 2014 concerning Protection of Witnesses and Victims.states that the victim has the right to restitution in the form of compensation for lost property, medical expenses, or suffering experienced as a result of the crime. The judge considered that the child victim in this case experienced trauma and psychological loss, so that restitution is a form of justice that balances sanctions for the perpetrator and recovery for the victim. The judge's considerations in this case are in line with the view of Gustav Radbruch, who stated that the purpose of law must be based on three main values: justice, utility, and legal certainty. These three values complement each other to create an effective and meaningful legal system where justice ensures rights are fulfilled fairly, utility provides broad social benefits, and legal certainty affirms clear and reliable rules in society. Restitution as a legal instrument fulfills these three values because it not only provides legal certainty for victims but also contributes to substantive justice and social benefits that cannot be achieved through criminal punishment alone (Hermawati & Widowaty, 2018, p. 136).

The basis for the application of restitution in this case comes from Government Regulation Number 43 of 2002.017 concerning the Implementation of Restitution for Child Victims of Crime and Government Regulation Number 35 of 2020 concerning the Mechanism for Implementing Victims' Rights. This regulation emphasizes that restitution can be granted simultaneously with a criminal verdict and its implementation is coordinated by the LPSK. The panel of judges in this case has adopted this mechanism by determining the amount of restitution adjusted to the victim's recovery needs. Thus, legally, the application of restitution in Decision Number 298/Pid.Sus/2024/PN Plk has reflected the synergy between positive law, legal theory, and humanitarian values. Restitution is not only a symbol of procedural justice but also a reflection of substantive justice that positions victims as legal subjects protected by the state.

E. Evaluation and Impact of the Decision on Child Protection

This ruling has had a positive impact on strengthening the child protection system in Indonesia. First, because the judge provides space for victims to obtain comprehensive justice, not just in the form of punishment for the perpetrator. Both rulings serve as examples of the application of the principle of the best interest of the child, as stipulated in Article 3 of Law Number 35 of 2014. However, further regulations are still needed to strengthen the restitution implementation mechanism so that victims can truly benefit from it. Strengthening the role of the LPSK (Lembaga Penitentiary Agency) and coordination with the prosecutor's office are crucial to ensure the effective execution of restitution decisions.

Conclusion

1. The legal protection mechanism for child victims of sexual violence in Indonesia has a strong legal basis through Law Number 17 of 2016 concerning Child Protection and Law Number 31 of 2014 concerning Protection of Witnesses and Victims. These regulations guarantee children's rights to receive comprehensive protection, assistance, and recovery, including through restitution mechanisms. However, the implementation of this legal protection has not been optimal due to gaps between legal norms and implementation in the field, such as a lack of socialization, weak coordination between institutions, and the absence of clear technical mechanisms for fulfilling the rights of child victims. Therefore, legal protection for child victims still needs to be strengthened, especially in the aspects of implementation and enforcement of victims' rights in the juvenile criminal justice system.
2. The application of restitution in Decision Number 298/Pid.Sus/2024/PN Plk demonstrates that the panel of judges has attempted to apply the principle of restorative justice by providing compensation to child victims. The judge based the decision on Article 7A of Law Number 31 of 2014 and Government Regulation Number 7 of 2018, which provide a legal basis for victims to obtain restitution for material and immaterial losses. However, the implementation of restitution still faces obstacles such as the perpetrator's limited economic capacity and the ineffectiveness of the post-verdict monitoring mechanism for restitution implementation. In other words, the implementation of restitution is normatively in accordance with the law, but in practice it has not provided maximum recovery for child victims.

Suggestion

1. Regarding Legal Protection Mechanisms for Child Victims of Sexual Violence, the government, along with relevant institutions, needs to strengthen the implementation of legal protection for children by establishing a more effective coordination mechanism between the police, prosecutors, courts, and the Witness and Victim Protection Agency (LPSK). Furthermore, it is necessary to revise overlapping implementing regulations and increase the capacity of law enforcement officers to understand the child-friendly justice system approach. Legal education and outreach to the public are also crucial to eradicate the stigma against child victims, allowing the recovery process to proceed more humanely and with dignity.
2. Regarding the Implementation of Restitution in Court Decisions, it is necessary to strengthen technical regulations for restitution, particularly regarding the procedures for assessing, implementing, and overseeing the provision of restitution to victims. The government can consider establishing a National Restitution Implementing Agency in collaboration with the LPSK (Lembaga Penitentiary and Victim Protection Agency) to ensure that victims' rights are met even if the perpetrator is unable to pay. Furthermore, every decision containing restitution needs to be accompanied by operational implementation guidelines so that it does not stop at the written level but actually provides a real healing effect for child victims of sexual violence.

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