

Uncertainty of Law Regarding Restitution as Legal Protection for Child Victims of Sexual Violence

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Abstract

This study examines the legal uncertainty related to the implementation of restitution as a form of legal protection for child victims of sexual violence. The issues raised include unclear regulations, complicated administrative procedures, and lack of support from law enforcement officers in the process of submitting and fulfilling restitution. These conditions often prevent victims from obtaining compensation that is their right according to court decisions that have permanent legal force. This study aims to analyze the legal uncertainty related to the implementation of restitution for child victims of sexual violence in Indonesia, identify obstacles in its implementation, and provide recommendations for improving the existing legal system to create better legal certainty.

This study uses a normative legal method with a statute approach and a case approach. The results of the study indicate that legal uncertainty regarding restitution for child victims of sexual violence is caused by ambiguous regulations, inconsistencies between applicable regulations, and complicated administrative procedures. Support from law enforcement officers, especially public prosecutors, is often less than optimal in facilitating restitution applications by victims. In addition, limited socialization regarding victim rights exacerbates uncertainty in the implementation of the law.

This study provides theoretical and practical implications in the development of criminal law and child protection. Theoretically, this study enriches the criminal law literature related to victims' rights and the implementation of restitution. Practically, the results of this study can be a reference for policy makers in formulating clearer and more implementable regulations. The proposed recommendations include simplifying administrative procedures, strengthening the role of prosecutors, and increasing the socialization of victims' rights to create a more responsive and equitable legal system.

Keywords: Legal uncertainty, restitution, child protection, sexual violence, administrative procedures, public prosecutor

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INTRODUCTION

Phenomenon violence sexual to child has appear as critical global issues, affecting millions life in various context socio-economic and cultural . Although There is convention international and law nationally designed For protect rights children, many countries still difficulty in enforcement steps law, especially related restitution for child victims. Uncertainty law This become challenge big in reach justice and ensure protection comprehensive for vulnerable children.

Violence sexual to child is global issues that cross national borders. Convention Union Nations on the Rights of the Child (UNCRC) requires member states For protect children from all form violence, including exploitation sexual. However, even though There is framework Work international, case violence sexual still happen with alarming levels. Interpretation law that does not consistent and practice weak implementation to worsen suffering of child victims. Report international show that only part small from reported cases produce restitution law, highlighting global failure in to uphold rights child in a way effective.

Indonesia faces challenge big in handle complexity law related restitution for child victims from violence sexual. Although Constitution national like Law no. 35 of 2014 concerning Child Protection regulates right restitution, still There is gap in its implementation Because interpretation fragmented laws and mechanisms weak enforcement. Verdict court often varies , so that many victims do not get compensation or adequate support. Studies Salsabila, (2024)by andDiastu, (2024) highlight challenge systemic in fulfil obligation restitution.

Study about protection law and restitution for child victims from violence sexuality in Indonesia is quite wide, but still show ongoing challenges ongoing.E. Anggoman, (2019) explore enforcement law criminal to perpetrator, emphasizes the need clarity law . Nashriana, (2011)andM. Gulton, (2013) discuss more context wide about protection law for child , while A. Huraerah, (2012) focus on prevention strategies violence. Prihatmini, Tanuwijaya, andS. Prihatmini, (2019) researching mechanism restitution, shows obstacle practical in its implementation.

More carry on ,Marzuki, (2006) to describe methodology relevant research For studies law , giving framework Work For evaluate system law in Indonesia. A recent study by Madyana andMadyana, (2023.) as well as Salim, (2022) disclose that the restitution process still complex and lacking utilized , often leaving the victim without road go out.

Handle uncertainty law in restitution for child victims from violence sexual urgency Because implications social, psychological, and legal aspects. Restitution No only functioning as compensation but also as means restore dignity of victims and promote justice social . Framework failed law ensure proper restitution time and adequate will perpetuate injustice systemic and inhibiting progress public.

Need will study This the more emphasized by research Afifah, (2022)and Alpihan, (2022), who found significant inconsistency in decision courts involving child victims. Handling gap this is very important For create environment supporting law victim recovery and social reintegration. The main objective study This is For analyze uncertainty law related restitution for child victims from violence sexuality in Indonesia.

RESEARCH METHOD

In research this, method research used is approach law or approach law, which can also called as study law normative. This process aiming For identify rule law, principle law, and doctrine law For overcome problem law related uncertainty law in implementation restitution as protection for child abuse victim sexual, as well as obstacles and efforts For create certainty law related restitution as protection for child abuse victim sexual.

Population in study This covering regulation relevant legislation, such as the TPKS Law, the Criminal Code, and regulations related protection child. Selected sample covering decision court, policy government, and reports from institution related such as LPSK and the Prosecutor's Office. Data is analyzed in a way qualitative with method analysis content . Data obtained from source primary and secondary law compared to For identify inconsistency laws and obstacles in implementation restitution.

Collection Techniques, Literature Study, Through study about regulation legislation, books, journals scientific, articles law, and reports official. Documentation, Using data from decision courts, policies and reports official institution related. Case Analysis, Examining case law current For understand implementation restitution in practice law.

RESULTS AND DISCUSSION

Uncertainty in the Implementation of Restitution as Protection for Child Victims of Sexual Abuse

Sexual violence against children is a serious crime, not only because of its harmful physical, psychological and social effects, but also because it involves human rights violations. Given its complexity and severe impact, the protection of child victims of sexual violence must be a top priority, with restitution serving as an important mechanism in the healing process. Restitution is a form of compensation given by the perpetrator to the victim or their heirs based on a legally binding court decision. Restitution plays an important role in providing protection for child victims of sexual violence, as it not only includes financial compensation but also acknowledges the suffering experienced by the victim.

Sexual violence against children is a very serious problem that involves more than just a criminal act. The impact of this violence is not only felt physically but also affects the psychological and social conditions of child victims. Children who experience sexual violence often face deep trauma, which can affect their mental and emotional development. In addition, this act also violates human rights, ignoring the dignity and integrity of children as individuals who deserve protection. Therefore, the protection of children who are victims of sexual violence must be prioritized in the legal system and government policies. Regarding the recovery of child victims, restitution serves as a vital mechanism. Restitution not only provides financial compensation but also acts as an official recognition of the suffering experienced by victims. Through restitution, victims are given the opportunity to receive compensation for the losses they have experienced, both physically and emotionally. This process helps child victims feel that efforts are being made to right the wrongs done to them, which, in turn, can contribute to their healing and recovery.

Restitution is granted based on a legally binding court decision, providing a strong legal basis for victims to obtain their rights. Although there are legal provisions governing restitution, the process of applying for and implementing it is often complicated and not easily accessible. Therefore, it is imperative to ensure that the procedures related to restitution are simplified to make them more understandable and accessible to victims, especially children who may not have adequate knowledge of their rights. Restitution also reflects the state's commitment to protecting the rights of children and providing justice for those who are victims of sexual violence. By strengthening the restitution mechanism, it is hoped that the state can demonstrate its concern for this issue and ensure that child victims receive not only the protection but also the justice they need to restart their lives.

This effort not only covers the legal aspect, but also involves education and public awareness so that children feel empowered to report and get the protection they need. To create a safer environment for children, it is essential for all parties, including the government, legal institutions, and the community, to work together to support child victims of sexual violence. Protection, recovery, and restitution must be an integral part of the legal system and public policy, so that children who experience sexual violence can undergo a better recovery process and get the justice they deserve.

In Indonesia, the provisions for restitution are regulated by Article 184 of the Criminal Procedure Code, which states that restitution can be given to victims of crime as compensation for material and/or immaterial losses suffered. The government has made various efforts to improve the fulfillment of the right to restitution for child victims of sexual violence, one of which is the enactment of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS), which regulates restitution more comprehensively. The TPKS Law stipulates that restitution can be given as compensation for losses suffered by victims, including the mechanism for confiscation and auction of the perpetrator's assets as collateral for restitution payments.

If the perpetrator's assets are insufficient, the TPKS Law also regulates substitute sanctions and involves the state in providing compensation to victims through aid funds. Restitution for victims of sexual violence is detailed in Articles 30-37 of the TPKS Law, which outline the forms, mechanisms, and sources of restitution payments. Restitution can include: a. Compensation for loss of property or income b. Compensation for suffering directly related to the crime of sexual violence c. Reimbursement of medical or psychological care costs d. Compensation for other losses. The mechanism for providing restitution is explained in Article 31 of the TPKS Law, which states that a request for restitution can be submitted by the victim to the investigator, prosecutor, or judge.

Article 10 of the Child Protection Law (UU SPPA) regulates compensation through a diversion mechanism for cases with a criminal threat of less than 7 years, excluding repeated violations as explained in Article 7 Paragraph (2). Article 69 Paragraph (2) of the Child Protection Law states that perpetrators of child crimes can be subject to two types of sanctions, namely acts for perpetrators under 14 years of age and criminal penalties for perpetrators aged 15 years and over. Although this law does not specifically outline the granting of restitution rights to victims, the rights of victims are mentioned in the context of reconciliation through diversion, with the consent of the victim and/or his/her family, including an assessment of the losses suffered. According to Article 81 Paragraph (2) of the Child Protection Law, children can face a maximum prison sentence of half the prison sentence applicable to adults.

Thus, for sexual violence crimes committed by child defendants, the maximum prison sentence can reach 7.5 years. This exceeds the threshold that allows the application of diversion. Therefore, diversion cannot be applied to child perpetrators who have violated Article 76D of Law Number 35 of 2014 concerning Child Protection because they do not meet the first requirement set out in Article 7 Paragraph (2) of the Child Protection Law. If the diversion mechanism cannot be implemented, imprisonment is the last option in handling cases of child sexual violence perpetrators through the trial process. However, judges will try to avoid imposing prison sentences on children, and as an alternative, can impose sanctions in accordance with the provisions of Article 82 Paragraph (1) of the Child Protection Law.

In Government Regulation Number 7 of 2018 concerning Compensation, Restitution, and Assistance to Witnesses and Victims, it is stipulated that the application for restitution is made by the victim or a representative representing the victim. This submission process must be carried out by the victim themselves by completing various documents that are rather complicated in terms of administration and require costs. With this provision, the victim or their representative is required to play an active role. Meanwhile, in the Attorney General's Guidelines Number 1 of 2021 concerning Access to Justice for Women and Children in Criminal Cases, there is no guarantee that the prosecutor will actively assist in completing the administration of the restitution application; it only mentions the components of the required documents, along with the consequences for the victim or their representative if the required documents are not completed within the specified time period. In addition, there are no clear provisions regarding the procedure for calculating immaterial losses experienced by the victim, making it difficult for the public prosecutor to determine it. Ideally, the calculation procedure should be publicly accessible to ensure accountability in determining the victim's losses.

Article 35 Paragraph (1) of the TPKS Law states that if the property confiscated from the convict is insufficient to cover the cost of restitution, the state will provide compensation to the victim in accordance with the court's decision. However, currently there is no clarity regarding the parties who are actively applying for compensation for victims from the Victim Assistance Fund. Therefore, in the government regulation on the Victim Assistance Fund, it is necessary to clarify the technical aspects related to who can apply, the application requirements, and the purpose of applying for compensation, which

is restitution that has not been paid by the perpetrator. Based on Article 33 Paragraph (3) of the TPKS Law, the execution process still burdens the victim to report to the court if the perpetrator does not immediately and voluntarily comply with the legally binding court order to pay restitution.

The perpetrator is still given time to fulfill his/her obligations after receiving a copy of the court order for payment of restitution that has legal force. The process of confiscation of restitution and auction awaits the issuance of a court warning letter to the perpetrator, and this stage takes more than 30 days. Given the weaknesses in this regulation, the TPKS Law is expected to make it easier for victims to obtain restitution immediately, where the Public Prosecutor is responsible and authorized to carry out the execution. Thus, it is hoped that victims can receive payment without experiencing additional burdens. This obligation must be the responsibility of the Public Prosecutor's Office or the Victim Protection Agency (LPSK), ensuring that the fulfillment of restitution does not solely depend on the victim but also involves proactive actions from the Law Enforcement Agency and/ or LPSK.

The uncertainty in implementing restitution as protection for child victims of sexual abuse is a serious challenge in the existing legal system. Although there are regulations governing restitution, such as Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS), many provisions in this regulation are still ambiguous and unclear. This raises doubts in its implementation, both for victims who wish to apply for restitution and for law enforcement officers tasked with enforcing this regulation.

Lack of clarity regarding the mechanisms, procedures, and timeframes required to obtain restitution often leaves victims feeling hopeless and helpless. This uncertainty is further exacerbated by the lack of public outreach and understanding of their rights. Many victims, especially children, are unaware that they are entitled to restitution, let alone the procedures they must follow to file a claim. Without adequate knowledge, victims tend to be reluctant to report or file for restitution, which negates their right to compensation for the losses they have suffered. This suggests that not only clear regulations but also accessible information are essential to ensure effective implementation of restitution.

The uncertainty of restitution implementation is also caused by complicated administrative and bureaucratic factors. The restitution application process, which involves many documents and complicated procedures, often becomes a barrier for victims seeking their rights. In some cases, victims or their representatives have to spend significant costs to fulfill administrative requirements, adding to their psychological burden. In this context, the legal system must be able to respond by providing simpler and more accessible procedures so that restitution can be implemented effectively. Support from public prosecutors and related institutions is essential to ensure the smooth running of the restitution process.

Unfortunately, in many cases, public prosecutors are not always proactive in assisting victims in applying for restitution, which can result in delays and uncertainty in the process. Without adequate support, many victims feel trapped in an inadequate system, reinforcing their feelings of hopelessness and helplessness. The uncertainty in implementing restitution as a protection for child victims of sexual abuse underscores the urgent need to revise existing regulations, simplify administrative procedures, and increase support from public prosecutors and related institutions. Only through these steps can victims hope to experience the justice and protection they deserve, and their rights as victims of sexual violence be effectively fulfilled.

Obstacles and Efforts in Creating Legal Certainty for Restitution as Protection for Child Victims of Sexual Abuse

One of the main challenges in creating legal certainty for restitution for child victims of sexual abuse is the ambiguity of existing regulations. Many provisions in the law do not provide sufficient details regarding the procedures and mechanisms for restitution. This includes the lack of clear operational guidelines on how victims can apply for restitution,

as well as the steps that need to be taken to ensure that their rights are recognized and protected. This ambiguity often causes confusion for victims and related parties, including law enforcement officers and child protection agencies. Without clear procedures, the process of applying for restitution becomes complicated and can result in delays in fulfilling victims' rights. Victims who should be able to quickly obtain restitution for their losses are instead faced with unnecessary bureaucratic obstacles. This not only reduces victims' trust in the legal system, but can also add to the psychological burden they already face due to their traumatic experiences.

The lack of clarity in the regulations also hampers the efforts of public prosecutors and law enforcement officers in carrying out their duties. They may feel that they do not have adequate guidelines to effectively assess restitution cases, leading to inconsistencies in the application of the law. As a result, despite having a legal basis for granting restitution, its implementation is inconsistent and highly dependent on individual interpretation, potentially resulting in injustice to victims.

One significant barrier to ensuring fair access to restitution for child victims of sexual abuse is the administrative difficulties that often arise during the application process. This process often involves gathering a variety of complex and sometimes costly documents, which can be a major barrier to victims seeking to access their rights. Documents required to apply for restitution typically include police reports, medical evidence, and other supporting documentation that can prove the harm suffered by the victim. For children, especially those from economically disadvantaged backgrounds or families with little understanding of the legal system, gathering these documents can be a particularly challenging task. A lack of understanding of the legal procedures and documents required can leave victims feeling discouraged and ultimately choosing not to pursue the restitution application process.

The costs associated with filing for restitution—such as administrative fees, legal fees, and even transportation costs to court or related institutions—can be an additional burden for victims and their families. In many cases, children may lack the financial resources to cover these costs, leaving them powerless to assert their rights. This exacerbates the injustices faced by child victims, who should receive protection and redress but instead face barriers that add to their psychological and emotional burden.

Another significant obstacle in the process of filing for restitution for child victims of sexual abuse is the lack of active support from public prosecutors. Although public prosecutors play an important role in the justice system in protecting the rights of victims, there is often no guarantee that they will be actively involved in helping victims complete the necessary administrative tasks. This situation can cause delays in the restitution filing process and ultimately hinder victims' recovery. In many cases, victims who try to file for restitution are faced with a variety of complicated administrative requirements. When public prosecutors do not provide adequate support, victims are left to struggle alone to understand the complex legal process.

Uncertainty about what documents need to be prepared and what procedures to follow can lead to confusion and frustration, especially for children who may lack knowledge or experience in these matters. This can potentially leave victims feeling overwhelmed and giving up on pursuing justice. Without adequate support from the public prosecutor, the risk of delays in the legal process increases. Victims may be forced to wait a long time to receive a decision regarding their restitution, which can worsen their psychological condition after experiencing trauma. These delays can also be detrimental to victims in terms of financial recovery, as restitution is designed to compensate them for their losses. Therefore, it is crucial for the public prosecutor to act not only as an enforcer of the law but also as a facilitator who helps victims navigate the legal process to obtain their rights.

The restitution execution process for victims of sexual abuse, especially children, often adds to the psychological burden they already face due to trauma. In many cases, victims are required to report to the court if the perpetrator fails to fulfill their obligation to pay restitution. This obligation not only requires victims to be further involved in the legal process, but also forces them to face the perpetrator directly or indirectly, which can trigger a recurrence of their trauma. This situation creates a highly undesirable situation for victims, who should be focused on recovering from their traumatic experiences. Requiring victims to take active steps in reporting violations of court orders can increase the stress and anxiety they already experience.

This process often requires not only courage and mental strength, but can also foster a sense of injustice for victims, as if they must continue to fight for their rights even after experiencing painful experiences. The uncertainty in the execution process can worsen the psychological condition of victims. If the perpetrator fails to pay restitution promptly, victims may feel abandoned by the legal system that is supposed to protect them. Feelings of hopelessness and frustration can make them doubt the efficacy of the legal process and reduce their trust in legal institutions. As a result, many victims may choose not to report the perpetrator's non-compliance, which in turn will hinder the fulfillment of their rights. right restitution they .

Regulatory improvements are an important step in creating legal certainty for victims of sexual violence, especially children. In the context of Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS) and Law Number 11 of 2012 concerning the Juvenile Justice System (UU SPPA), revisions are needed to provide a more detailed explanation of victims' rights and restitution mechanisms. Clear and comprehensive regulations will make it easier for victims to understand their rights and simplify the process of submitting and disbursing restitution. One focus of regulatory improvements is to ensure that victims' rights are explicitly stated in the law.

Including regulations on restitution application procedures, requirements that must be met, and steps that must be taken by authorities to support victims in obtaining their rights. With clearer guidelines, it is hoped that victims will find it easier to navigate the legal process and feel more protected in dealing with difficult situations. The revised regulations should include provisions on the active role of public prosecutors in assisting victims. Currently, there is no guarantee that public prosecutors will provide administrative support in restitution applications.

In this context, there needs to be a provision that requires public prosecutors to actively participate in the restitution application process, so that the administrative burden does not fall entirely on the victim. This will reduce the challenges faced by victims and ensure that their rights are met. Improvements must also be made regarding the restitution execution procedure. Existing regulations must consider the psychological needs of victims by providing more humane alternatives in the execution process. For example, involving child protection agencies or other agencies in the restitution execution process could be a positive step. Thus, law enforcement is not solely the responsibility of the victim, but also involves various stakeholders, creating a system that is more responsive to the needs of victims.

Simplifying administrative procedures for restitution applications is an important step to ensure accessibility and efficiency for victims of sexual violence, especially children. Complicated and bureaucratic application processes often act as barriers for victims in obtaining their rights. Therefore, developing simpler and clearer procedures can reduce the barriers faced by victims and their representatives in obtaining restitution. The first step in simplifying these procedures is to identify and reduce the number of documents required for restitution applications. The current administrative process that requires extensive documentation can often prove challenging, especially for victims who may have experienced trauma or limited resources. By minimizing the required documents, the

application process can be expedited, making it easier for victims to exercise their rights without feeling burdened by complicated requirements. It is also important to provide clear and easy-to-understand guidance on the steps involved in applying for restitution.

This can be achieved by offering comprehensive information through various channels such as the official website of the relevant agency, brochures, or help centers. Clear and accessible information will help victims and their representatives understand the procedures that need to be followed, allowing them to navigate the legal process with more confidence. The use of technology can also be an effective tool in streamlining administrative procedures. By utilizing digital platforms, restitution applications can be submitted online, reducing the need to physically visit legal institutions. This not only makes the process faster and more efficient but also provides comfort for victims who may feel anxious or uncomfortable about going to court or place law other .

Awareness campaigns and legal education on victims' rights and restitution mechanisms are essential in raising public awareness. Many victims of sexual violence, especially children, do not understand their rights in the legal system. This lack of knowledge often makes them hesitant to report or seek justice. By conducting comprehensive outreach programs, including seminars, workshops, and the use of social media, the public can be more clearly informed about their rights and the steps required to obtain restitution.

Legal education can also be conducted in schools and communities. By involving children and adolescents in human rights education, they will become more aware of the importance of protecting themselves from violence and abuse. In addition, they will also be better prepared to report if they or their peers become victims of sexual violence. These programs should be designed with an approach that is appropriate to the age and cultural context to ensure that the message is well received. Socialization campaigns can also involve parents, teachers, and community leaders to create a supportive and safe environment for children. By creating a safe space where children feel comfortable discussing their experiences, we can encourage more victims to come forward. Increasing public awareness of victims' rights and restitution mechanisms can also encourage community support, thereby building a better network of protection for children.

CONCLUSION

The importance of improving regulations and simplifying administrative procedures is crucial in ensuring legal certainty for child victims of sexual abuse in the restitution process. The lack of clarity in regulations and complicated administrative obstacles pose significant challenges for victims in asserting their rights, which has the potential to worsen their psychological and emotional conditions. Therefore, a revision of the Law on Sexual Violence Crimes and the Juvenile Justice System is needed to provide a clear explanation of victims' rights and restitution mechanisms, as well as to ensure the active involvement of public prosecutors in supporting the application process. In addition, simplifying application procedures and utilizing digital technology in administration can increase accessibility for victims. Awareness campaigns and legal education on victims' rights are also important steps to raise public awareness and create a supportive environment, allowing children to feel safe and empowered to report the violations they have experienced. With these steps, it is hoped that the restitution system will be more responsive, fair, and effective in fulfilling the rights of child victims of sexual violence, while also helping them in the process of recovering from the trauma they have experienced.

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