



Inability Formulation of Perpetrators to Pay Restitution to Children Victims of Sexual Exploitation

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Abstract

This study aims to determine, analyze, and formulate whether the State can pay off restitution that cannot be paid by the perpetrators to children who are victims of the crime of sexual exploitation; and formulate the formulation of provisions regarding the provision of compensation to children victims of the crime of sexual exploitation who cannot obtain restitution because the perpetrator is unable to pay in order to comply with the principles of non-discrimination. This study is an example of normative legal research, employing a statutory and conceptual approach. In this study, the author employs a systematic and theological interpretation approach to the analysis of legal materials. According to the findings of the study, the State could compensate criminals for their inability to pay restitution by providing them with a nominal sum of money. However, this compensation is only available for heinous human rights violations and acts of terrorism. In addition to gross human rights violations and terrorism, this has led to new problems, including injustice for victims, particularly children who are victims of sexual exploitation, who do not receive compensation because the perpetrators cannot pay them.

Keywords: *Rights; Restitution; Sexual Exploitation*

Introduction

Pancasila, the 1945 Constitution of the Republic of Indonesia (henceforth referred to as the 1945 Constitution), and the fundamental principles of the Convention on the Rights of the Child, such as "non-discrimination, giving the best," form the basis for the implementation of child protection policies. The child's right to have their voice heard, as well as their best interests, their right to life, survival, and development, and their right to live. The goal of Indonesia's child protection efforts is to realize quality, noble, and prosperous children by protecting them from violence and discrimination and ensuring that they are able to fully exercise their rights to life, liberty, and the pursuit of happiness in an environment

conducive to their healthy growth and development. Compensation is available for minors who have suffered harm as a result of criminal acts, as stated in Article 71D of the Child Protection Law. To put it simply, this is a safeguard for kids.

The submission of a request for restitution in the event that there are more than 1 (one) child who is the victim of a crime, it can be combined in 1 (one) request for restitution (Hakim, 2020). This regulation shows that every perpetrator of a criminal act is charged with an obligation to be responsible to a child victim of a crime without exception (Iskandar et al., 2021). However, the large number of victims who must receive restitution can lead to the inability of the perpetrators of criminal acts to carry out their obligations due to the insufficient amount of assets. One of the cases of perpetrators of criminal acts who have an obligation to pay restitution to several child victims of criminal acts is Herry Wirawan. He is the perpetrator of the rape of 13 (thirteen) female students who are still under the age of 18 (not yet 18 (eighteen) years old or not yet married), as described in the Bandung District Court Decision Number: 989/Pid.Sus/2021/ PN Bdg.

The Indonesian National Police for the West Java Region (hereinafter referred to as Polda) received a report on the rape case by Herry Wirawan. When initially accepted, this case was not immediately exposed to the media with consideration of the psychological and social impact of the victim of Herry Wirawan's depravity. The Herry Wirawan case first appeared to the public on 8 (eighth) December 2021 (two thousand and twenty-one). At that time, several hearings had been held with the agenda of examining victim witnesses. The trial was chaired by the Chairman of the Panel of Judges, Y. Purnomo Surya Adi, behind closed doors. Meanwhile, based on a copy of the indictment received by detikcom, it is known that the action was carried out by HW in the period 2016 (two thousand and sixteen) to 2021 (two thousand and twenty one). The indictment was read out by Agus Mudjoko as a prosecutor at the Bandung District Attorney.

Herry Wirawan himself admitted that he raped his female students until they became pregnant and gave birth. This was revealed from a conversation held with the Head of the Bandung Detention Center Riko Stiven with Herry on December 13 (thirteen) 2021 (two thousand and twenty one). As stated by the Head of the West Java High Prosecutor's Office, Asep Mulyana, Herry Wirawan essentially took this action in order to exploit female students and the child they gave birth to in order to garner sympathy and assistance (hereinafter referred to as Kajati Jabar). The public prosecutor imposed the death penalty on Herry Wirawan, the perpetrator in the rape case involving thirteen female students (hereinafter referred to as the Public Prosecutor). The prosecutor determined that Herry Wirawan's punishment was proportional to his actions. In addition, Herry was also charged with an identity announcement and chemical castration. The penalty of Rp500.000.000, - (five hundred million rupiah) and restitution to the victim Rp331.000.000,- (three hundred and thirty one million rupiah), dissolution of pesantren foundations including Madani Boarding School and confiscation of assets and evidence for auction.

The Panel of Judges of the Bandung District Court (hereinafter referred to as PN Bandung) in Court Decision Number: 989/Pid.Sus/2021/PN Bdg gave the following considerations: "The provisions of the law have not stipulated to whom restitution will be charged, if the perpetrator is unable to pay . Thus, the panel of judges declared a restitution of Rp331.000.000,- (three hundred and thirty one million rupiah) is the duty of the state which in this case will be represented by the Ministry of Women's Empowerment and Child Protection." The imposition of compensation to the state because the perpetrator is unable to pay is basically possible, This is in accordance with Article 28 paragraph 1 of the Supreme Court of the Republic of Indonesia Regulation Number 1 of 2022 on Procedures for Completing Applications and Providing Restitution and Compensation to Crime Victims (hereinafter referred to as Perma Restitution and Compensation) which basically states that: "The applicant may combine the submission of the application for compensation with the submission of the application for restitution."

Article 1 paragraph (2) of the Perma Restitution and Compensation explains that: "Compensation is compensation given by the state because the perpetrators of criminal acts are unable to provide full compensation for which they are responsible." Furthermore, in the provisions of Article 17 paragraph (1) Perma Restitution and Compensation explains that: "Victims of criminal acts of gross human rights violations and criminal acts of terrorism are entitled to receive compensation in the form of: compensation for loss of wealth and/or income, compensation caused as a result of suffering directly related as a result of a criminal act including injury or death, reimbursement of costs for care and/or treatment, and other material and immaterial losses suffered by the victim as a result of the crime" which can be given in the form of non-money gradually in the form of educational scholarships, job opportunities, or other forms. Thus, as regulated in Article 28 paragraph (1) of the Perma Restitution and Compensation, it can be seen that the merger of the application for Compensation together with Restitution can only be carried out by victims of criminal acts of gross human rights violations (hereinafter referred to as HAM) and terrorism (Murtadho, 2020).

Based on this description, it can be seen that there are no legal rules that regulate the provision of compensation in the form of compensation, especially to children who are victims of criminal acts other than gross human rights violations and terrorism. This legal vacuum can cause problems in certain circumstances, namely when the perpetrator commits a criminal act to more than 1 (one) victim, causing the nominal amount of money to be paid to be greater than the amount of assets owned by the perpetrator of the crime. This situation then gives rise to another problem, namely whether or not the state can pay a sum of money to pay off some of the compensation that the perpetrator is unable to fulfill to the child victim of a crime. This causes no legal protection for the victim as a form of certainty for the fulfillment of the needs for facilities and infrastructure for child development based on the principle of the best interests of the child.

Based on this background, this research aims to know, analyzing, and formulating whether or not the restitution that cannot be paid by the perpetrators to the child victims of the crime of sexual exploitation can be paid off by the State; and formulate the formulation of provisions regarding the provision of compensation to children victims of the crime of sexual exploitation who cannot obtain restitution because the perpetrator is unable to pay in order to fulfill the principles of non-discrimination, the best interests of the child, and developmental rights.

Literature Review

Legal Certainty Theory

Radbruch (1932) provide a fundamental contribution to the theory of legal certainty using the fundamental concepts of law, including justice, expediency, and legal certainty. On the basis of the opinions of these individuals, it can be concluded that legal certainty necessitates regulations to protect the rights of citizens and that there be clarity, no contradictions, no multiple interpretations, and that the law be able to be implemented, guaranteeing the rights and responsibilities of every citizen in accordance with the culture of the people who live there. There is Legal certainty is a means of realizing justice and peace (Ali, 2009).

Legal Protection Theory

The legal protection theory is derived from the theory of natural law or the flow of natural law. God, who is eternal and universal, is the source of natural law, and law and morality are inextricably linked (Sinaulan, 2018). According to this theory, the internal and external aspects of human life are realized through law and morals, and the two are therefore mutually reflective and regulating. All legal regulations provided by the community, which are essentially an agreement by the community to regulate

behavioral relations among community members and between individuals and the government, which is believed to represent the community's interests, must be taken into account in order to provide adequate legal protection. According to Rahardjo (2010) Human rights (henceforth referred to as human rights) protection is provided so that individuals and groups can exercise all of their legal rights without fear of retaliation (Rahardjo, 2020):

Theory of Economic Approach to Law

Robert A Posner revealed that: "the use of the principles of Economics in the use of law because "economic is a powerful tool for analyzing a vast range of legal questions" further said by Polinsky that the economic approach to law is carried out by legal experts with the intent "in order to focus on how to think like an economic about legal rules" (Murni, 2012). Posner argues that the function of law must be evaluated in terms of its worth, usefulness, and efficacy. Posner defines efficiency as "the maximization of value through resource allocation." Posner then expressed his views on the use of economic theory in law by stating that "many of the doctrines and institutions of the legal system are best understood and explained as efforts to promote resource efficiency" and "the common law is best explained as a system for maximizing the wealth of society."

Victim Theory (Victimology)

Based on Sahetapy (1995), Victimology is a science or field of study that examines the concerns of victims from every angle. while, according to Arief Gosita, victimology is a discipline of study that investigates all elements relating to victims in all domains of life and work. Victimology provides a larger understanding of crime victims as the result of emotional, bodily, and social pain caused by human activities. The objective is to provide an explanation of the true role of the victims and their relationship with the victims, as well as to instill confidence and awareness that everyone has the right to be informed of the risks they face in relation to their environment, profession, and others (Abdullah, 2019).

Purpose of Sentencing

According to Satochid Kartanegara and the opinions of leading legal experts in criminal law, there are three schools when it comes to the theory of punishment or punishment in criminal law, namely: first, the Absolute or *vergeldings* theory (*vergelde/reward*), which teaches that the basis of punishment must be sought on the crime itself to demonstrate that the crime is the basis for a relationship deemed to be revenge, a reward for the perpetrator of the wrongdoing. Because the victim suffers as a result of the criminal act (Wirjono, 1989).

Sexual Violence

Criminal law or *recht law* is a series of rules or norms that regulate human behavior and actions in social life (Hamzah, 2008). Criminal *straf* is a sentence imposed on a person convicted of committing an offense based on a decision with permanent legal effect. Criminal law is the body of law that regulates acts of violation and crimes against the public interest, for which punishments that constitute suffering or torture are threatened (Sholehuddin, 2003).

Legal Dispute Resolution Efforts

Rubin et al. (1994) put forth a dispute resolution theory. First, *contending*, which involves attempting to implement a solution that is preferred by one party over the other. Second, *yielding*, which entails lowering one's own expectations and being willing to accept the deficiencies of what is actually desired. Third, *problem-solving*, which involves the search for a solution acceptable to both parties. The fourth step is to *withdraw*, which entails leaving the dispute situation both physically and mentally. The

fifth is in action (silent), that is to do nothing (Pruitt, 2013). Legal anthropologists express their opinions on ways to resolve disputes that occur in society, both traditional and modern societies.

Legal Protection for Children Victims of Crime

According to Satijipto Raharjo, the goal of the legal system is to ensure that everyone in society is able to fully exercise their legal rights, including those that have been violated by others (hereafter referred to as HAM) (Raharjo, 2014). Legal protection for the community, in Pjillipus M. Hadjon's view, entails either preventative or coercive action on the part of the government (Hadjon, 1987). While repressive legal protection seeks to resolve disputes, such as through judicial intervention, preventative legal protection aims to prevent disputes from occurring and thus directs government actions to exercise caution when making discretionary decisions (penally) (Bherta, 2021).

Children in Conflict with the Law

A child in conflict with the law is a youngster who is involved in legal issues or as a criminal, but who is not yet regarded capable of being accountable for his acts since he is still a minor and still developing (Permata et al., 2020). A child who has achieved the age of 8 (eight) but has not yet reached the age of 18 (eighteen) or is not married according to this provision.

Restitution and Compensation Under Indonesian Criminal Law

Restitution is part of the form of restoration of the rights of victims or what is commonly referred to as reparations (Dahlia, 2022). This has been developing for a long time even when there was no known international human rights law. The right to reparation is usually applied to cases of war between countries which are usually bilateral in nature where the perpetrator country is required to pay war losses for the attacked country. An example of a case is the Treaty of Versailles in 1919 after World War I (first), which made Germany and its axis countries have to pay a sum of money to the opposing country.

Research Methods

This study examines normative legal research from both a legal and a philosophical perspective. Legislative technique This is achieved through the examination and study of all applicable laws, regulations, and legal rules. Similar to Law of the Republic of Indonesia No. 35 of 2014 Concerning Amendments to Law of the Republic of Indonesia No. 23 of 2002 Regarding Child Protection in the Criminal Code. While the conceptual approach is used to find new concepts related to the reformulation of the provisions regarding the provision of restitution to children who are victims of sexual exploitation and who are unable to obtain compensation in the form of restitution from perpetrators in order to meet the child protection principles of nondiscrimination, the child's best interests, and developmental rights.

Legal regulations pertaining to whether or not the State pays restitution that cannot be paid by the perpetrator to the child victim of sexual exploitation and the formulation of provisions regarding the provision of restitution to child victims of crime who cannot obtain restitution because the perpetrator is unable to pay are the primary legal materials utilized by the author in this study.

- a. The Criminal Code (State Gazette of Indonesia 1958 No. 127, State Gazette No. 1660 Supplement);
- b. Law No. 20 of 2001 Relating to Amendments to Law No. 31 of 1999 Relating to the Eradication of Criminal Acts of Corruption (Supplement to State Gazette No. 4150);
- c. Law No. 23 of 2002 Relating to Child Protection (Supplement to the State Gazette of the Republic of Indonesia Number 4235); and

- d. Republic of Indonesia Law No. 35 of 2014 Relating to Amendments to Law of the Republic of Indonesia No. 23 of 2002 Relating to Child Protection (State Gazette of the Republic of Indonesia Year 2014) (State Gazette of the Republic of Indonesia Year 2014 297, Supplement to the State Gazette of the Republic of Indonesia 5606).
- e. Government Regulation No. 44 of 2008 of the Republic of Indonesia Concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims.
- f. Government Regulation Number 7 of 2018 of the Republic of Indonesia Concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims.
- g. Indonesian Government Regulation Number 35 of 2020 Regarding Amendments to Indonesian Government Regulation Number 7 of 2018 Regarding the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims
- h. Government Regulation of the Republic of Indonesia Number 43 of 2017 on the Implementation of Restitution for Children Who Are Crime Victims.
- i. Supreme Court of the Republic of Indonesia Regulation No. 1 of 2022 on Procedures for Completing Applications and Providing Restitution and Compensation to Crime Victims.

The secondary legal materials utilized in this study include books, journals, and related legal research reformulation of the provisions regarding the provision of restitution to children who are victims of sexual exploitation crimes and cannot obtain restitution in order to fulfill the principles of child protection, namely nondiscrimination, the best interests of children, and developmental rights. The secondary legal materials are:

- 1) Books on criminal law, child protection, and electronic media;
- 2) Journal of criminal law, especially child protection;
- 3) Previous research related to child protection;
- 4) Big Indonesian Dictionary and Legal Dictionary.

The legal material analysis technique used by the author in this study is a systematic interpretation which is the method used to interpret the provisions of the legislation as part of the entire statutory system by conducting a study with other laws and regulations (Mertokusumo, 2009). The purpose of the author's use of this interpretation is to conduct a study of the relevant regulations in order to reformulate the provisions regarding the provision of restitution to children who are victims of sexual exploitation crimes and who cannot obtain restitution in accordance with the principles of child protection, namely non-discrimination, the best interests of the child, and developmental rights. Another legal material analysis technique utilized by the author is the theological interpretation used to formulate the restitution provisions in Government Regulation Number 43 of 2017 Concerning the Implementation of Restitution for Children Who Become Victims of Crime by taking into account and considering the wishes to be achieved or fulfilled by the former provisions of these laws and regulations.

Research Results and Discussion

A. Payment of restitution that cannot be paid by the perpetrators to children who are not victims of sexual exploitation by the state

Restitution is basically a form of punishment in Indonesia. According to Satochid Kartanegara (2008) and the opinions of leading legal experts in criminal law, putting forward the theory of punishment or punishment in criminal law, it is known that there are three schools, namely: first, Absolute or *vergeldings theorieen* (*vergelde/reward*), this school teaches the basis of punishment must be sought in the crime itself to show the crime as the basis of a relationship that is considered to be retaliation, a reward for the person who did the evil deed. Because the crime causes suffering to the victim. This theory

is also known as absolute theory or reward theory and this theory was born at the end of the 18th (eighteenth) century. According to these absolute theories, every crime must be followed by a criminal cannot be without a bargain. A person gets punished for having committed a crime (Satochid, 2008). Thus, the provision of punishment here is intended as a form of retaliation against those who have committed crimes. There are many philosophers and criminal law experts who adhere to this theory, including Immanuel Kant, Stahl, JJ Rousseau. Of the many expert opinions, the writer is interested in Hegel's opinion regarding his argument against punishment when it is correlated with absolute theory in criminal law. Where punishment is seen as a reciprocal process, while punishment is a *dialectische vergelding* (Wirjono, 1989)

Prior to the enactment of Law No. 11 of 2012 concerning SPPA, the primary and most frequently applied sanction for children who committed crimes was imprisonment, and ultimately, children who committed crimes ended up in Correctional Institutions. In addition, the old law did not recognize a protection mechanism for victims during the mediation process. Some of the negative impacts that can arise from placing children in Child Correctional Institutions, both direct and indirect, are: (1) psychologically disturbed child development because it is influenced by the institutional social conditions of the institution; (2) the child's social behavior will be disturbed because of the association/interaction between the child and other children or with other convicts if placed in a correctional institution; (3) physical and biological impacts place children in a vulnerable position to become victims of violence, both physical and sexual violence. Article 1 point 6 of the SPPA Law defines diversion as the transfer of the resolution of a child's case from the criminal justice system to a process outside of the criminal justice system, and Article 7 paragraph (1) outlines the requirement to seek diversion at each stage of the examination, beginning with the investigation, prosecution, and trial stages. The diversion obligation is a process that must be pursued at all stages of the examination procedure, beginning with the investigation, prosecution, and court examination phases. The purpose of implementing diversion in juvenile justice is to reach an agreement between the victim and the child, to prevent children from being punished by deprivation of liberty, to encourage community participation and to accept responsibility for the child.

The philosophy underlying the implementation of diversion to achieve this diversion goal demonstrates a shift in the philosophy underlying the resolution of child cases, which was originally retributive justice, then shifted to rehabilitative, and is now, as a result of this law, restorative justice. The success or failure of diversion in resolving situations involving children will depend on the engagement of both the victim and his family and the offender and his family. Both the criminal and his family and the victim and hers are in the same position. The interests of both parties must be comparable and in harmony. If only one party's interests are prioritized, it is reasonable to anticipate that the diversion agreement will be challenging to reach. This is specified in Article 6 paragraph 1 of the SPPA Law, which stipulates, in essence, that the Diversion process must consider:

- a. the victim interests;
- b. child welfare and responsibilities;
- c. negative stigma avoidance;
- d. retaliation avoidance;
- e. community harmony; and
- f. decency, decency, and public order.

According to these statutes, the "interests of the victims" are a crucial factor in the success of diversion and must be thoroughly examined. Article 7 paragraph 1 specifies the obligation to seek diversion at each level of examination, beginning with the investigation, prosecution, and court levels. Therefore, distraction must be addressed at each phase of the examination, beginning with the investigation, prosecution, and court examination phases. The philosophy underlying the implementation of diversion demonstrates a shift in the philosophy underlying the resolution of child cases, which was

originally retributive justice, then shifted to rehabilitative justice, and is now, as a result of this law, restorative justice. Concerning the implementation of an integrated juvenile court, the author will analyze the balance between the protection of perpetrators (children) and victims in child cases. Criminal law should be able to protect human rights through laws and regulations in a fair and balanced manner between the rights of perpetrators and the rights of victims, and it should be able to protect the interests of all parties in a fair and balanced manner in order to achieve the goals of the criminal justice system. To promote the interests of victims and the rehabilitation of criminal offenders, at the XI United Nations Congress on Crime Prevention and Criminal Justice in 2005, item 32, we acknowledged the significance of further developing restorative justice policies, procedures, and programs, including alternatives to prosecution, thereby avoiding potential negative effects of imprisonment, reducing the burden of criminal justice, and promoting the incorporation of restorative jus.

Achieving peace between victims and children, settling child cases outside of court, preventing children from being investigated in court, and establishing that sentencing is not a crime are the objectives of diversion in Indonesia, which are governed by numerous laws and regulations. Responsibility, social order, and retaliation should be taught to children. Considering the goal of diversion, the juvenile criminal justice procedure through diversion under this statute continues to place the offender's interests above those of the victim; the victim's interests are not adequately protected. In the interim, pursuant to Article 6 paragraph (1) of this law, the process of diversion must take into account the victim's best interests. This suggests that the law's articles do not appropriately address the protection of victims of illegal conduct.

The State's partiality is still apparent, in that it continues to side with criminals, in this case child criminals, by regulating the rights of child criminals and always prioritizing their best interests. This is not the case with regard to the protection of victims in criminal cases involving juvenile offenders. According to the researcher, the alignment of the state with the victims is crucial to the success of diversion. According to Philip. P. Purpura in Didik Sunaryo, the purpose of the criminal justice system is to "protect and maintain public order, control crime, make arrests and detentions of perpetrators of crimes, provide limits regarding the guilt or innocence of a person, convict the guilty perpetrators, and through the components of the system as a whole."

According to Muladi & Priyatno (1991), the criminal justice system can be physical in the sense of structural synchronization in the sense of alignment of the criminal justice administration mechanism, substantive in relation to the applicable positive law, and cultural in the sense of living the views, attitudes, and philosophies. The settlement of criminal cases through the participation of many parties and the attainment of a resolution that benefits all parties, including offenders and their victims, is a relatively recent concept. A restorative justice strategy is one type of case settlement technique that allows the victim to gain protection. Zernova (2007) mentions that as a reaction to crime, restorative justice places victims at the center and affords them as many options for participation, voice, and choice as feasible. Restorative Justice is a response to crime that places the victim at the center and takes into account the victim's choices and chances.

As according to Willian Bakker in (Hafrida, 2019), cases involving juvenile offenders are resolved by bringing together offenders and victims of criminal acts is refers to mediation criminal law. The goal of this criminal mediation law is to reach an agreement between the victim and the offender and to compensate the victim. This agreement is mediated by law enforcement officials, government parties, non-governmental organizations, or community leaders. According to the laws and regulations, mediation is a form of deliberation institution that is typically employed in the realm of civil law to settle civil disputes. Beginning with the concept of justice for crime victims, this became the foundation for the concept of restorative justice. Prior to now, criminal justice has been focused on criminal offenders and the protection of criminal offenders. Retributive justice is the justice principle that emphasizes retribution against the perpetrator. Based on the principle of retributive justice, the sole purpose of the criminal

justice system is to prevent the recurrence of the crime by imposing a deterrent sentence. The imposition of imprisonment sanctions is solely based on the crime that was committed, and the imposition of sanctions on criminals is an absolute response that should be applied to criminals. So that retributive justice cannot achieve the fundamental objective of carrying out a punishment, namely justice that is balanced between the perpetrator and the victim.

The principle of restorative justice is a response to the principle of restorative justice. This principle of restorative justice can be realized within the framework of the criminal justice system through penal mediation. Penal mediation is an approach to resolving cases that is rooted in the community and in customary law, and is practiced in Indonesia for conflict resolution. Thus, customary law is the foundation of the principle of restorative justice. In this regard, Marc Levin mentions, as does Eva Achjani Zulfa, that the customary law approach, which is considered antiquated, archaic, and traditional, is now referred to as a method for resolving progressive criminal cases. In restorative justice, an effort is made to recover/return the loss or consequences caused by a criminal act, and the offender is given the opportunity to participate in this effort. All of this is for the purpose of preserving public order and a just peace.

This is consistent with the evolution of the principles of justice, which shifted from retributive justice to restorative justice, as well as the evolution of the theory of punishment. The theory of punishment, which was originally based on the theory of retribution or the theory of retaliation, is absolutely given to the perpetrators of criminal acts in an effort to retaliate, and is then followed by the concept of restraint or exile, which is applied to the perpetrators in an effort to keep them away from or exile them from public life. In accordance with the times, this theory evolved towards the concept of reformation or rehabilitation. This concept is still focused on the perpetrators of criminal acts, but the perpetrators who are sentenced to imprisonment are not only exiled, but are also fostered, repaired, and rehabilitated in their exile so that they can return to being good people and return to community life. Several child criminal law experts, child psychologists, and child behavior experts believe that the restorative justice approach is the best way to resolve cases involving children who have committed crimes within the juvenile criminal justice system. In Indonesia, it is anticipated that restorative justice in child cases will not only provide protection for perpetrators of child crimes, but will also provide victims with a sense of justice.

Through a restorative justice approach in the resolution of children's cases, criminal cases are resolved by restoring both the damage caused by the crime and the perpetrator's accountability. Criminal cases must be viewed as a conflict between community members, in this case the victims and offenders of criminal acts. Through a restorative justice mechanism involving the active participation of the parties in formulating a mutually beneficial form of settlement, the victim will have the opportunity to participate in formulating a form of settlement that is deemed equitable for him. This restorative justice approach provides victims with full participation in the resolution of their cases, where the victim's role had previously been excluded.

Arif Gosita and Angkasa determined that the lack of guaranteed legal protection for victims within the criminal justice system could result in victimization (Hafrida, 2019). The state should be responsible for assisting victims of criminal acts. In order to maintain the rule of law, the state is obligated to apply criminal sanctions to criminals, preventing the public from taking the law into their own hands. With the application of these sanctions, it is hoped that criminals can be reformed. The justice provided by the state, which consists of applying sanctions to the perpetrators so that they can be rehabilitated and readmitted to the community, should be equal and balanced with the justice that the victims should receive. If the state is involved in enforcing the law against perpetrators, it should also be responsible for recouping the victims' losses, particularly in juvenile criminal justice.

The primary premise of restorative justice in the Juvenile Justice System Act strives to improve or correct the concept of justice in the previous criminal justice system by integrating a wider variety of parties who have not yet received a sense of justice. Together, we will ideally establish a solution that is more equitable and exert a constructive influence on all parties. Beginning with Law No. 11 of 2012 regarding the Juvenile Criminal Justice System, it is obvious that this law prioritizes the protection of juvenile offenders over the protection of juvenile victims. There is no state protection for the victims in this instance. Despite the fact that victimology is defined as the scientific study of victims in the report of the first symposium on victimology, the position of victims in the Indonesian criminal justice system, including juvenile criminal justice, is still neglected because Indonesian criminal law is still oriented to the interests of the perpetrator (Offender Oriented). However, there should be a focus on the difficulties of crime victims, which are the primary concern here (Victimology is the scientific study of victims; nonetheless, the major concern should be crime victims' problems.) In addition, Shapland stated that the victim would not be forgotten (Hafrida, 2019).

As part of the state's responsibility to the victims of criminal acts, it is possible to provide compensation. The definition of compensation in the PP is a form of state-funded compensation given to the victim when the perpetrator is unable to do so. Furthermore, according to Joe Hudson, the concept of restitution and compensation entails "Increasingly, the concepts of restitution and compensation are being proposed as public social policy remedies for crime victims seeking reparation. While the terms "restitution" and "compensation" are frequently used interchangeably, restitution will be defined here as payments made by the criminal to the victims of the crime. In spite of the fact that laws and regulations outline the state's obligation to compensate victims of criminal acts if the perpetrator is unable to do so, this obligation has not been carried out as intended. In contrast, the victim of a crime becomes a determining factor in exposing a crime. In the absence of a victim's cooperation in disclosing a case, it is inevitable that the crime will remain unsolved.

The reason for the government's failure to fulfill its compensation commitment is that this obligation has not been effectively controlled. In Article 2 of Government Regulation Number 44 of 2008 of the Republic of Indonesia, victims who get compensation are limited to victims of human rights breaches and victims of terrorism. The low degree of diversion success is the result of the absence of governmental protection for victims of criminal crimes, particularly juvenile victims of criminal acts. Failure to negotiate a reparation agreement between the victim and the offender is one of the primary causes of diversion's failure. Law No. 11 of 2012 appears to align the state with minors as perpetrators of criminal activities, while the state fails to offer safety for victims. This has led to Indonesia's poor compliance with diversion agreements. The future success of diversion will be influenced positively by the state's protection of victims by ensuring their right to compensation in child abuse cases.

The concept of compensation does not mean that the state takes over the responsibility of the perpetrator but that the state pays the victim's right to sue against the perpetrator. In the concept of subrogation in civil cases, the victim loses her right to sue after the state provides compensation. The criminal law policy regarding compensation is predicated on the notion that providing compensation to crime victims is an obligation of the state and a form of state responsibility for crime victims. In order to achieve a balanced level of protection between perpetrators of child crimes and victims of criminal acts in the case of children, it is necessary to consider the protection of victims of criminal acts in the case of children, in addition to the protection of victims of criminal acts against certain criminal acts as stipulated by the current child legislation cases. It is necessary to strike a balance between the protection of juvenile offenders and that of their victims. Protection for victims of crime in child cases through compensation will have a positive effect on the realization of protection for child perpetrators through the success of the diversion agreement and the decision not to prosecute the child. As explained by Warren G Foote, compensation for victims aims to ensure a more effective response to victims in a criminal justice system.

In addition to Indonesia and Thailand, government- and privately-funded institutions have been established in other parts of the world to provide victims with not only material compensation but also support for therapy, post-traumatic psychopathology, and traumatic stress disorder, as well as any necessary medical treatment. According to surveys performed in the United States, victims of major crimes are more likely to report a need for victim support services than other victims. According to a second survey, 64% of crime victims in Pennsylvania utilize victim services, compared to only 24% of victims of nonviolent offenses. Evaluations of victim services should distinguish between violent and nonviolent victimization, as the two groups may have varying requirements. Before assessing the results of prior research, an introduction to the current focus of victim assistance for direct and indirect victims and an explanation of the subjective perspectives of victims when evaluating support for crime victims are presented.

Integrated Juvenile Justice will be impacted by the protection of victims and offenders in child cases in a balanced manner. So that the purpose of the juvenile criminal justice system is to control crime, protect juvenile offenders, and protect juvenile victims in a consistent and harmonious manner. Balanced legal protection for children as perpetrators of crimes and victims of criminal acts through revision of the law is essential to be carried out fairly within the context of achieving the value of justice. In order for the value of justice to be achieved through legal protection described in written law, the written law must be able to reflect the values of justice that exist in the larger society.

The criminal law policy regarding compensation is predicated on the notion that providing compensation to crime victims is an obligation of the state and a form of state responsibility for crime victims. In order to achieve a balanced level of protection between perpetrators of child crimes and victims of criminal acts in the case of children, it is necessary to consider the protection of victims of criminal acts in the case of children, in addition to the protection of victims of criminal acts against certain criminal acts as stipulated by the current child legislation cases. It is necessary to strike a balance between the protection of juvenile offenders and that of their victims. Protection for victims of criminal acts committed by children through compensation will have a positive effect on the realization of protection for child offenders through the success of the diversion agreement and not processing the child's case in the court system. As a form of state responsibility towards victims in the process of resolving child cases through diversion based on the principle of restorative justice, the state must immediately establish a compensation institution that provides victims of crime, particularly child victims, with the compensation and other financing they require. The guarantee of victim protection by the state in the juvenile criminal justice system will produce an integrated juvenile criminal justice system that is not only integrated between each sub-system in the juvenile criminal justice system, but also integrated with the interests/protection of victims, thereby realizing the victims-offender orientation of the Child Criminal Justice System. A restorative justice strategy based on compensation will be more effective than one based on restitution.

The process to realize an integrated judiciary in juvenile justice is not enough to just change laws and regulations, but more importantly, the state has a commitment to establish a compensation institution. According to the International for Criminal Justice Reform (ICJR), the state still ignores the protection of victims. Through the establishment of a compensation institution that can begin by compensating child victims of criminal acts, the state demonstrates its concern for the protection of victims of criminal acts. The implementation of diversion within a criminal justice system continues to prioritize the interests of children as perpetrators, while the interests of victims in child cases are not truly protected by the law.

This is in line with the function of the state to protect and provide a sense of security for its citizens. According to Leslie Lipton, this is the oldest function of the state because the state is formed by individuals, and to achieve the goal of protecting individuals, the state needs to be maintained. The state's neglect of the protection of crime victims will result in the destruction of trust in the law enforcement

system. Community trust is integrated with norms formed through legal structures ranging from the police, prosecutors, lawyers and justice. Therefore, it is necessary to have legal instruments that provide protection for victims of criminal acts and effective legal instruments that will serve as a means to restore public trust in the law enforcement system. This trust is integrated with norms embodied by structured institutions such as the police, attorney, court, etc. The crimes committed against the victims will destroy this system of trust. As part of the state's responsibility to the victims of criminal acts, it is possible to provide compensation. Compensation is one form of realizing the goal of the rule of law, namely to create justice for all its citizens, the state is expected to be able to make policies in realizing justice for all the people, including justice for victims. If in this law the settlement of child crimes is directed at the diversion process which aims to minimize imprisonment for child perpetrators, on the other hand the state should be responsible for realizing justice for victims, so that justice as a legal goal will be realized and the implementation of diversion through the principle of restorative justice will tend to be effective.

The Compensation Institution which is the embodiment of the state's commitment to the protection of victims requires large funding, but the funding of this institution can actually come from the perpetrators of the crime themselves. In some criminal acts, there are quite a number of criminal acts that are not only threatened with imprisonment but are also threatened with a fine. Criminal law policies in Indonesia through laws and regulations need to streamline the payment of criminal sanctions for fines applied to perpetrators of criminal acts, especially for certain criminal acts with large economic value such as narcotics trafficking, money laundering, corruption, tax evasion etc.. Through the effectiveness of this criminal fine, the financing of compensation institutions can actually come from the perpetrators of the crime themselves. The state only functions as a collector and distributor. However, if the perpetrator of a criminal act in terms of committing a serious violation of human rights and a criminal act of terrorism, causing victims who tend to be numerous and therefore directly proportional to the cost of compensation that must be incurred by the perpetrator of the crime, thereby preventing the perpetrator of the crime from being able to pay the compensation with the assets it has, then the State can provide compensation for victims of criminal acts.

The provisions as described above essentially create new issues regarding the payment of compensation to victims of criminal acts other than gross human rights violations and terrorism crimes when the perpetrator is unable to pay the specified amount of compensation through restitution. This problem can occur because in today's developments, perpetrators can commit crimes against more than 1 (one) victim, such as the crime committed by Herry Wirawan who was the perpetrator of the rape of 13 (thirteen) female students who were still aged underage (not yet 18 (eighteen) years old or not yet married), as described in the Bandung District Court Decision Number: 989/Pid. Sus/2021/PN Bdg. As a result, the nominal compensation charged to the perpetrator of a crime becomes large because it is a combination or accumulation of the total compensation that must be paid to the victims of criminal acts who suffered losses due to the actions of the perpetrators.

B. Formulation of Provisions Regarding Compensation for Child Victims of Sexual Exploitation who are unable to obtain restitution because the perpetrator is unable to pay it

Article 7 A of Law No. 31 of 2014 Concerning Amendments to Law No. 13 of 2006 Concerning Protection of Witnesses and Victims stipulates that victims of criminal acts are entitled to compensation in the form of return of wealth or income, compensation for losses due to suffering at the hands of criminals, and compensation for medical care costs. This is in accordance with LPSK and court decisions. Article 71 D of Law Number 35 of 2014 regarding amendments to Law Number 23 of 2002 regarding Child Protection states that every child who is the victim of a crime has the right to petition the district court for restitution. The execution of the Restitution Right for Child Victims is governed by Article 71 D Protection of UUPA Number 23 of 2014. The first paragraph addresses the Child Victims' Right to Restitution. Letters b, d, f, and h of Article 59, paragraph 2, concerning the Right of Restitution for Child

Victims. In addition, letters I and j stipulate that every child victim has the right to seek restitution (compensation) from the court, which is now the responsibility of the offender. 14 The form of compensation is governed by Regulation No. 31 of the Protection of Witnesses and Victims Act (UUPSK) of 2014. According to Articles 7A and 7B, a victim of a crime has the right to seek restitution between:

- a) Compensation for the economic loss of wealth or income suffered by the victim of a crime;
- b) Compensation for the consequences that arise when the victim experiences suffering that is directly related as a result of the commission of a criminal act, and/or ;
- c) Medical care for physical and/or psychological as well as psychological in the form of reimbursement received.

A criminal justice process that incorporates compensation awards compensation with a civil character. The state is responsible for the compensation obligation that the court actually imposes upon the perpetrator. This is a discovery or implication of the state's inability to fulfill its responsibilities for protecting victims and preventing crime. However, certain regulations pertaining to the granting of restitution rights for victims are not listed in the Juvenile Justice System. The only thing that is included in the Juvenile Justice System is the fact that the Law includes the rights of victims when making peace through diversion with the consent of the victim and/or the family of the child victim of sexual exploitation at the value of the loss. In accordance with the Criminal Code Law Number 8 of 1981, compensation claims can be merged with ongoing criminal proceedings. Specifically, the chairman of the trial may, at the request of the plaintiff, determine the merger of the compensation claim with the ongoing criminal proceeding. The purpose of the loss suffered by others is to benefit the victim of a crime. State-provided compensation occurs when the criminal is unable to give the victim or his family with the entire compensation for which he is responsible (Murtadho, 2020). In circumstances of serious human rights breaches, victims are entitled to compensation, including victims of criminal acts of terror or terrorism, criminal acts of trafficking in persons or exploitation, and victims of criminal acts of sexual assault, including rape or sexual abuse of children.

The safeguarding of victims and witnesses Law No. 31 of 2016 mandates compensation. Article 7 of the Convention for the Protection of Victim Witnesses stipulates that every victim who has suffered a serious violation of human rights (human rights) and victims of criminal acts of terror or terrorism are entitled to receive compensation. The state provides compensation when the perpetrator is unable to compensate the victim and/or victim's family, which is the perpetrator's sole obligation. To obtain reparation, a court order with permanent legal effect is utilized. In addition to the rights outlined in Articles 5 and 6, victims of gross violations of human rights and victims of terrorist attacks have the right to compensation under Article 7.

The state is responsible for satisfying the court's actual compensation requirement. This is due to the state's realization that it cannot fulfill its responsibilities to protect victims and prevent crime. Child Protection Act and Child Criminal Justice System Act do not regulate compensation. The rules governing the provision of compensation continue to be governed by the Law of the Republic of Indonesia No. 31 of 2014 Concerning Amendments to Law No. 13 of 2006 Concerning the Protection of Witnesses and Victims and their implementation in the Government Regulation of the Republic of Indonesia No. 44 of 2008 Concerning the Provision of Compensation, Restitution, and Assistance To Witnesses and Victims, so that the provision of compensation to Child Victims continues to be governed by these laws. Article 2 of Government Regulation of the Republic of Indonesia Number 44 of 2008 Concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims stipulates that the victim, family, or special proxies must submit the compensation claim via LPSK to the court. The submission is made prior to the prosecution reading the demands during the trial.

Conclusion

- 1.State compensation may consist of the payment of a nominal sum of money to criminals who are unable to pay restitution. However, this compensation is only available for heinous human rights abuses and acts of terrorism. In addition to gross human rights violations and terrorism, this has led to new problems, including injustice for victims, particularly children who are victims of sexual exploitation, who do not receive compensation because the perpetrators are unable to pay. This situation is possible because the evolution of the era enables the perpetrator to commit a crime against multiple victims. Similar to the criminal act committed by Herry Wirawan, who was the perpetrator of the rape of 13 (thirteen) female students under the age of 18 (not yet 18 (eighteen) years old or not yet married), as detailed in Bandung District Court Decision Number: 989/Pid.Sus/2021/PN Bdg.
- 2.Provisions concerning the provision of compensation to child victims of sexual exploitation who do not receive restitution because the perpetrator is unable to pay can obtain compensation from the State via the LPSK institution. Because child sexual exploitation is a serious violation of human rights, it is appropriate for the victim to receive restitution.

Suggestion

- 1.To the House of Representatives (DPR)

The House of Representatives (hereinafter referred to as DPR) as the legislator in this instance must reform the provisions on the provision of compensation for child victims of criminal acts who cannot obtain restitution rights from the perpetrators in order to fulfill the principles of child protection, including the principle of non-discrimination, best interests for children, and developmental rights for children, in an effort to safeguard the future of children who are victims of crime.

- 2.To the Public Prosecutor

The Public Prosecutor in the case of a crime committed against a child is required to apply for Compensation in the indictment. And there is a Compensation Decision which in determining the decision on the type and amount of Compensation, which then the panel of judges re-examines the type and amount of Compensation proposed.

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