



Providing Restitution to Children Victims of Pornographic Video Distribution

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Abstract: This study aims to determine the effect of providing restitution on child victims of the distribution of pornographic videos. This research uses empirical legal methods and is based on cases that occur, then analyzed descriptively. The results of the study that the implementation of Restitution of Children as Victims of the Distribution of Pornographic Videos based on Article 7A of the Law of the Republic of Indonesia Number 31 of 2014 concerning the Protection of Witnesses and Victims and PP No. 43 of 2017 concerning the Implementation of Restitution for Children Victims of Criminal Acts. Factors Affecting the Provision of Restitution to Child Victims Distribution of Pornographic Videos, where children and parents or families of both perpetrators and victims do not understand the law, and the existence of Government Regulations (PP) regarding the provision of restitution that must be received by victims. Restitution is certainly not to remove the crime and the process of solving a case. The problem that affects the fulfillment of restitution is also due to the absence of the Witness and Victim Protection Agency so it must wait for the decision and the results of the Central LPSK assessment. In addition, it is also determined by the economic ability and the will of the perpetrator.

Keywords: Restitution; Child; Victim; Pornography

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1. Introduction

Technological advances are currently experiencing rapid progress, and their existence is essentially to facilitate humans in carrying out activities and work to be more effective and efficient. The positive impact of technology itself is that it can establish social relationships through the use of social media *platforms* such as *Instagram*, *WhatsApp*, *Facebook*, and the like which are used as a means of communication with one another. However, this technological advancement can also be misused by parties who want to take advantage, and not infrequently there is behavior that leads to violations of the law from the use of this technology, increasing types of crime that have never occurred before. Social media accessed through the internet network is the main means used by a person in terms of communicating, getting to know, and befriending strangers, without being limited by distance and time, so it can also have a negative impact.¹

The development of information technology today such as the use of social media can have a positive impact as well as a negative impact. As affirmed by Fenty U. Puluhalawa, "*Digitalization on the one hand brings benefits to civilization, but on the other hand, digitalization brings new problems...*"² One of the problems or negative impacts of technology itself is the emergence of crime in the field of technology Crime in the field of information technology can be called *Cyber Crime*. The term *cybercrime* currently refers to criminal activity related to cyberspace and computers based on the sophistication of the development of internet technology as the main medium for carrying out crimes.³ The victimology aspect can also be a strong foundation regarding the protection of victims' rights for unlawful treatment for the benefit of crime victims. The fulfillment of the rights of victims of crime in the form of legal protection is certainly very necessary.⁴

Actions that lead to crime, one of which is when accessing technology and is called *cybercrime* which is currently experienced by many people. The type of *cybercrime* that disturbs and even harms the community is immoral acts such as the spread of pornographic content through social media. The spread of pornographic videos can be experienced by anyone, even based on data and the fact that cases like this are mostly experienced by women. According to data and records at the end of 2021 from Komnas Perempuan on Cyber Gender-

¹ Jimmy Maulana, dkk. "Analisa tindak pidana pornografi melalui media sosial berdasarkan pasal 27 ayat (1) undang-undang republik indonesia nomor 19 tahun 2016 tentang informasi dan transaksi elektronik," no. 1 (2019): 2.

² Fenty U. Puluhalawa, dkk. "Legal Weak Protection of Personal Data in the 4.0 Industrial Revolution Era," *Jambura Law Review* 2, no. 2 (2020): 184.

³ Sahat Maratuli T. Situmeang, *Cyber Law* (Bandung: CV. Cakra, 2020): 23.

⁴ Dheny Wahyudi, "Perlindungan Hukum Terhadap Korban Kejahatan Cyber Crime Di Indonesia," *Jurnal Ilmu Hukum Jambi* 4, no. 1 (2013): 100.

Based Violence (KBGS), it increased by 83% from 2020 with 940 cases to 1,721 cases in 202 and was dominated by cases of online intimidation, to threats of disseminating personal photos or videos, including online sexual extortion.⁵ The act of spreading pornographic content is included in the category of personal photo or video threats and online sexual blackmail.

Crimes related to the dissemination of pornographic content through social media itself are regulated in Law No. 19 of 2016 on amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions, namely contained in Article 27 Paragraph (1) which states that "Everyone intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have content that violates decency"⁶. Although the criminal act of spreading pornographic content has been regulated in a regulation that has criminal sanctions, there are still those who violate these provisions.

As a result of the circulation of pornographic content, victims then experience various psychological pressures such as damage to the name, dignity, and dignity of the victim and loss of confidence, triggering victims to harm themselves and even end their lives. Therefore, protection for victims is certainly very important to treat the trauma experienced due to the spread of pornographic content through social media. In previous studies, emphasis has been placed on how perpetrators should be punished severely and encouraged communities and states to pay attention and realize the importance of protecting rights from the perspective of victims.⁷

The rights of victims themselves are regulated in Article 5 of Law No. 31 of 2014 on Amendments to Law No. 13 of 2006 concerning the protection of witnesses and victims. This rule regulates the rights of witnesses and victims, where victims and witnesses have the right to protection of personal and family security, and property, and are free from threats related to testimony that will, is, or has been given.⁸ In addition, there is Government Regulation of the Republic of Indonesia Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims.⁹ As one

⁵ Komisi Nasional Anti Kekerasan Terhadap Perempuan, "Peluncuran CATAHU Komnas Perempuan 2022" Komnas Perempuan, 2022, <https://komnasperempuan.go.id/kabar-perempuan-detail/peluncuran-catahu-komnas-perempuan-2022>.

⁶ Article 27 paragraph (1) of Law No.19 of 2016 concerning Electronic Information and Transactions

⁷ Reski Diaul Haq, "Tinjauan Viktimologis Terhadap Kejahatan Pelecehan Seks Secara Verbal (Studi Kasus Di Kota Makassar 2018-2020)" Skripsi Fakultas Hukum (Universitas Hasanuddin, 2021):9.

⁸ Article 5 of Law 31 of 2014 Law No. 13 of 2006 Protection of Witnesses and Victims

⁹ Government Regulation of the Republic of Indonesia Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims

of the supporting regulations to strengthen witness protection efforts and the fulfillment of victims' rights.

Based on the results of research conducted by prospective researchers in Gorontalo Province, there was also a criminal act of spreading pornographic content through social media, where in 2020-2022 there were three (3) cases of spreading sexual videos through social media, which happened to children aged 16 years. The chronology of events is when during courtship the girl was asked by her boyfriend to take nude pictures and show sensual areas for personal satisfaction. However, when there is a conflict in their relationship, the victim wants to break up from the perpetrator, and the perpetrator does not accept and threatens to disseminate the sex photo to his Facebook account story.¹⁰

The perpetrator (A) himself is currently still in grade 3 of Vocational High School and victim (I) is still in grade 2 of Gorontalo City High School. The perpetrator admitted (in the news program) that he often teased the victim to have adult relations which in the end was also obeyed by the victim because he was forced. Perpetrators often restrain victims from being allowed to do group work and leave the house to be picked up. In the end, the victim must once follow the wishes of the perpetrator who invites the victim to have video *call sex*, and threatens the victim to circulate the video during intercourse, which then reluctantly the victim agrees to the perpetrator's request with their position in their respective homes.

During the *sex video call*, the perpetrator asked the victim to show the victim's naked body and vital organs which were forced to be fulfilled because at that time the victim felt forced and helpless. The perpetrator began to launch his action to record the footage and take screenshots (photos) when the victim showed a naked body. After having *video call sex*, the perpetrator then often threatened the victim to share the photo if his request was not fulfilled by the victim, even though the victim begged to delete their photo.

The crime, especially the spread of pornographic content, began when the perpetrator heard the news that the victim liked one of the other students at his school, and the perpetrator eventually spread the immoral content to his older siblings (AM) via *WhatsApp*. The victim then pleaded and asked the perpetrator to delete the photo but did not respond. The perpetrator finally began to spread the immoral content to the wife of the victim's brother (FR) and cousin (FK) through Instagram (*direct message*) using fake accounts. The victim's family finally invited the perpetrator to come to the victim's house and solve the problem in a family manner, but the perpetrator ignored and even challenged the victim's family.

¹⁰ Data Source in Gorontalo Regional Police

Following up on the case, in the end, the victim's family who had received immoral content asked for help from other relatives to review and ask for suggestions on what steps could be taken to protect the victim, and then made a report to the North City sector police (Polsek) on December 6, 2022 at 19.30 WITA, which was then transferred to the Gorontalo regional police (Polda), considering that the case was an ITE violation, and on the same date at around 21.00 the victim and her family made a report to the Gorontalo Regional Police.

On December 7, 2022, the perpetrator asked the victim to unblock *WhatsApp* and threatened to spread the immoral video at school. On December 8, 2022, the victim was finally carried out by the BAP (minutes of examination) by the Gorontalo regional police. The perpetrator continued to commit his evil acts on December 10, 2022, by yelling at the victim in the school cafeteria calling rude and profane words showing immoral content to other students, and making the victim humiliated in public to cry and run away. Furthermore, on December 11, 2022, the perpetrator began to threaten the victim again by spreading the immoral content to the school, so that on December 12, 2022, the perpetrator was successfully secured by the police at the North City Police and confiscated evidence, which the perpetrator then took his statement by the Gorontalo Regional Police.

On January 5, 2023, the perpetrator's family also asked the victim's family for *restorative justice* at the Gorontalo Regional Police but did not get results because there was no initiative and goodwill between the perpetrator and the family. In the end, on January 10, 2023, Restorative Justice was again scheduled at the Gorontalo Regional Police and resulted in a middle ground between the victim's family and the perpetrator's family, where the perpetrator must pay a restitution fee (compensation) to the victim of Rp. 20,000,000 (twenty million rupiah) for education costs according to the agreement and the perpetrator's ability to have his report torn up, which will be paid in installments of Rp. 1,000,000, every month, but until April 14, 2023, perpetrators and families do not have good faith proving they have not fulfilled the obligation to pay restitution costs agreed on the restorative agenda. As for the BAP case, the police apply Article 27 paragraph (1) of the Electronic Information and Transaction Law with the threat of imprisonment for 6 years and/or a maximum fine of Rp. 1,000,000,000 (one billion rupiah) to the perpetrator.

From the chronology of the case mentioned above, it can be seen that the crime in the form of spreading pornographic content is a crime that is very concerning and requires more attention from the government in terms of providing handling and protection to victims, including assisting to provide a sense of security to victims.

2. Method

The type of research used is empirical legal research, which looks in a real sense at how legislation works in society.¹¹ In addition, this research is referred to as sociological juridical legal research whose object of study is community behavior as a reaction to the implementation of a regulation and is based on the habits of the general public.¹²

3. Analysis and Discussion

Article 3 of PP No. 43 of 2017 regulates restitution for children who are victims of criminal acts in the form of:

- a. Indemnity for loss of wealth;
- b. Indemnity for suffering as a result of a criminal offense; and/or
- c. Reimbursement of medical and/or psychological treatment costs.

This should be given to victims because they are people who suffer physically and spiritually as a result of the actions or actions of others who seek the fulfillment of their interests, and it is contrary to the interests and human rights of those who suffer. Victim here can mean an individual or a group, where victim protection in criminal justice is related to victim protection as part of community protection policy, welfare change, and part of social policy. In addition, the integration between criminal policy and social policy certainly has consequences on how important we pay attention to victims, one of which is the issue discussed by researchers regarding the provision of restitution as part of protecting victims.

The provision of restitution to victims is carried out through mediation by the police and then decided in court, which is carried out after the reading of the judge's decision containing restitution with permanent legal force. If there has been money deposited through the investigator or public prosecutor in the designated bank, and the judge approves the amount of restitution deposited by the perpetrator, the prosecutor can take the money and hand it over to the victim, but if according to the judge, there is an excess then the excess is returned to the perpetrator. If there is a deficiency, the prosecutor can ask for the deficiency to the perpetrator or family and the party who guarantees the perpetrator.

However, if the prosecutor has not seen any restitution money in the minutes since seven days of the decision of the case with permanent legal force, then the prosecutor forms a deliberative forum that invites the perpetrator or his guarantor with the victim and his companion to decide the amount and

¹¹ Amirudin, H. Zainal Asikin, 2010, "Pengantar Metode Penelitian Hukum", (Jakarta: Raja Grafindo Persada), Hal 49

¹² Mukti Fajar & Yulianto Achmad. *Dualisme penelitian Hukum Normatif & Empiris*. (Yogyakarta: Pustaka Pelajar, 2013). Hlm: 51

mechanism of the restitution submission, an agreement on this matter is then made the minutes of the procedure, after which the prosecutor supervises the course of the restitution submission and reports it to the court.

Restitution and compensation are very important rights for victims who suffer physically as a result of the suffering they experienced. Victim protection, especially the right of victims to obtain compensation, is an integral part of human rights in the field of welfare and sausage security. If we look closely, this provision on restitution still contains several problems. Law No. 31 of 2014 has indeed accommodated several provisions regarding restitution mechanisms for victims of criminal acts. However, in the law, there are new provisions that limit the provision of restitution rights for victims of criminal acts.

Article 7A paragraph (2) states that criminal acts as referred to in paragraph (1) are determined by the LPSK Decree. This means that the right to restitution cannot apply to all victims of criminal acts. This right only applies to victims of certain criminal acts whose determination is not clear because it is only stated: "determined by LPSK Decree". The implementation of restitution can be carried out in investigators and public prosecutors, at this stage when the perpetrator is willing to provide restitution, the investigator and public prosecutor make minutes of the existence of restitution custody money before a court decision with permanent force.

Special protection that can be given to children who are victims of a criminal act is carried out through prompt treatment, including treatment and/or rehabilitation physically, psychologically, and socially, as well as prevention of diseases and other health problems. In addition, the assistance of psychologists during treatment to recovery includes the provision of social assistance for underprivileged children and assistance in every judicial process running. Based on this description, the Child Protection Law specifically protects children as victims of health. The forms of protection provided to children as victims of crime as stipulated in Article 69 A of the Child Protection Law are:

- a. Providing education on religious values, moral values, and others.
- b. Social rehabilitation is carried out;
- c. Psychological assistance during treatment to recovery, and
- d. Provision of protection and assistance at every level of examination starting from the process of investigation, and prosecution to court examination.

In addition to the special protection rights mentioned above given to children as victims of a criminal act, as in the results of the discussion in the previous problem formulation children have the right to apply to the court in the form of restitution which is the responsibility of the perpetrator. However, not all

children who are victims of a criminal act have this right. Children who have the right to apply for restitution to the court are;

- a. Child victims who are economically and/or sexually exploited;
- b. Child victims of pornography;
- c. Child victims of kidnapping, selling, and/or trafficking;
- d. Child victims of physical and/or psychological violence; and
- e. Children as victims of sexual crimes.

protecting children is essentially protecting the family, the community and the nation. therefore, the protection of children is very important, including the protection of children as victims of crime, especially the distribution of pornographic content. the rights of the above children are very important to be protected. the punishment of the perpetrator of the crime does not eliminate the trauma suffered by the victim, therefore the victim's right to ask for restitution from the perpetrator is an important point to be fulfilled. this right of restitution is enforced to recover the trauma suffered by the child as a victim.

along with the times, more and more children suffer physical and psychological losses as a result of the treatment of other parties which leads to criminal acts. as children become victims, the government then issues a pp regarding child restitution in protecting the rights of victims due to a criminal act.¹³ In Article 2 of the Child Restitution PP, it is explained that every child who is a victim of a criminal act is entitled to restitution, even though the Child Protection Law and Child Restitution PP have clearly regulated the impact of the criminal act of child abuse that causes serious injuries, but the child who is the victim still experiences physical losses and mental trauma that interferes with the child's growth and development as a result of the crime.

In the jurisdiction of Gorontalo Regional Police, as mentioned earlier, there has been a criminal case of spreading pornographic content involving children as victims. The police included a request for restitution in the lawsuit because the victim suffered material losses and was considered to have suffered emotional and mental shock due to the spread of videos containing indecent impressions of her. Based on the results of research conducted at the Gorontalo Regional Police, the family of the child victim demanded restitution or compensation as a result of the crime.

By the Gorontalo regional police, a mutual agreement was then made and then submitted to the prosecutor's office and asked to be decided by a judge, arguing that this restitution had also considered the ability and ability of the perpetrator.

¹³ Rino Alfian, Nursiti, Upaya Pemberian Restitusi Terhadap Anak Sebagai Korban Tindak Pidana Penganiayaan Yang Menyebabkan Luka Berat, JIM Bidang Hukum Pidana : Vol. 5, No.3 Agustus 2021

Requests for compensation in the form of restitution can also be submitted by victims in 2 ways, namely;

Restitution applications must be submitted by the victim's family and/or accompanied by the Legal Aid Institute (LBH), if the child is considered not to understand the law and the need for LBH because not all parents understand the right to restitution for criminal acts of abuse committed on the victim's child; and The submission can be made by the victim's family after being decided by a judge for a criminal act.

based on the results of the study that the implementation of the restitution fulfillment process did not run optimally, due to various reasons, namely;

1) Lack of understanding of the provision of restitution.

Children and parents/families, both perpetrators and victims, do not understand the law and the right to restitution that must be given and received by victims. This means that there are still many people who do not know and understand the existence of Government Regulations regarding the provision of restitution to children. This victim in resolving the case and asking for compensation must first be submitted from the police, then the prosecution, and forwarded to the court to be decided through trial. Although it has been regulated in the Law, in practice not all perpetrators want to fulfill restitution for child victims, because this does not affect the sentence period received later by the perpetrators of the crime.

It is different if the victim's family and the perpetrator's family want to apply for restitution due to diversion efforts from both parties to the litigation. The public prosecutor also has no special obligation or rules that require the JPU to notify the existence of restitution rights to child victims of criminal acts, so that in its implementation the JPU does not include points related to restitution to victims, and the judge also cannot grant requests that are not filed in the prosecution at the time of trial. Therefore, with an understanding of this, at least the community or children and families of victims of criminal acts can file a notice since it is in the handling stage at the police to ask for restitution.

As in the case of the spread of pornographic content, the family and companions from the beginning wanted to be given restitution by the perpetrator because it became a mutual agreement. In addition, this request was then forwarded to the JPU and asked to be decided by the court. The change in the amount of compensation costs from the original based on the mutual agreement of the litigants before the Gorontalo Police from 5 million to 14 million rupiah, was carried out based on the consideration and calculation of the Central LPSK. This was also done because of the request of the family so that the LPSK could help and be involved in the case, considering that the perpetrator did not seem to have good intentions to pay compensation previously agreed.

2) There is no LPSK in Gorontalo

The determination of the calculation of compensation is carried out based on the results of the LPSK assessment. This is a factor that hinders and influences the decision on compensation that must be received by families and victims of the spread of pornographic content in Gorontalo because there is no LPSK in the region. This LPSK is a very important factor in applying for restitution of children who are victims of criminal acts. LPSK itself is tasked with providing assistance and knowledge to the family and children as victims, as well as providing advice and input related to the interests of children that must be defended in the trial until all the interests of child victims of abuse are met.

LPSK itself as an institution mandated by the witness and victim protection law to provide protection and fulfillment of the rights of witnesses and victims plays a role in accompanying victims of criminal acts, informing or informing victims of criminal acts about their rights in obtaining restitution. The LPSK calculated restitution from components in the form of loss of parental income due to this case, transportation costs and consumption costs during the judicial process and suffering included in the projected cost of psychological recovery.

The perpetrator is burdened with the obligation to pay a sum of money to the aggrieved and may be in the form of a number of rupiah based on the value of the object taken by the perpetrator, loss of salary, mental and physical treatment. According to Kanit PPA Polda Gorontalo restitution is like easing a person's criminal burden and can also restore the perpetrator's self-esteem. In addition, it can also be an alternative punishment and restore the psychological state of the victim. Not only that, restitution is a forced effort to provide justice and legal certainty to victims of a criminal act.

By distributive justice that has a balancing nature, namely, everyone has equal rights without distinction and is applied to someone by the actions he has committed, children as victims of this crime have been determined in Article 71 D paragraph (1) of Law 35 of 2014 where they have the right to apply for restitution which is the responsibility of the perpetrator for the actions he has committed. This distributive justice is also a form of responsibility from the state towards respect and protection of human rights.

3) economic capability and will of perpetrators

Another obstacle in fulfilling the right to restitution of child victims of this crime is the limitation of the perpetrator's economic ability to pay restitution. It is not uncommon that the provision of restitution that has previously been demanded by the family and victims is constrained in fulfillment because it is related to the economic situation of the perpetrator who is not able. In this case, it was stated earlier by the perpetrator and family that their party was willing to provide compensation with the agreed nominal, but it was not fulfilled for reasons that did not have money.

However, based on the statement of grace that the perpetrators have enough, but their party does not have good intentions to immediately provide compensation that has been discussed together will be given when mediation is completed at the Gorontalo Regional Police in February. Therefore, the role of the government is very necessary in fulfilling the right to restitution of child victims of this crime, because in its application law enforcement officials are not given full authority to urge and force to accommodate the right to restitution of child victims of criminal acts. This makes the authorities sometimes still rule out the implementation of restitution and prioritize the principal crime.

Based on the above, according to the researcher's analysis, the provision of restitution to children as victims of criminal acts has a procedural nature. This means that law enforcement related to restitution is only limited to laws and regulations, so the provision of restitution is not fundamental because the submission of a request for restitution must be accompanied by a request from the victim first.

In addition, restitution is the right of the victim and then to apply. This is only included in the category of victim authority so that everything is left to the victim himself whether to apply or not. Therefore, researchers consider this right is not fundamental because they must submit first, and this application can be accepted or rejected by the court.

Researchers consider that restitution cannot be called a right because if it becomes a right it will be given without the need to be applied beforehand. This can be seen from the categories of verdicts, namely;

1. Not providing restitution to child victims of criminal acts because the application was not accepted by the panel of judges or not requested by the victim,
2. The child victim receives restitution even though the amount of restitution requested is different from that decided by the panel of judges,
3. The panel of judges did not grant restitution because the deadline for the request for restitution was not by the provisions of the law and the child victim did not apply for restitution.

The foregoing causes restitution cannot be included in the JPU indictment and the judge cannot sanction restitution to the perpetrator. This is because the provision of restitution to victims is hindered by the necessity of requesting restitution from victims. This certainly needs to be revised so that victims get maximum legal protection. Judges currently adhere to formal and procedural principles and have not looked at the fundamental aspects of child protection. Therefore, judges should be encouraged to improve substantive justice in society rather than being trapped in statutory provisions that are considered too procedural.

4. Conclusion

Implementation of Restitution for Children as Victims of Distribution of Pornographic Videos based on Article 7A of Law of the Republic of Indonesia Number 31 of 2014 concerning the Protection of Witnesses and Victims and PP No. 43 of 2017 concerning the Implementation of Restitution for Children Victims of Criminal Acts. Factors Affecting the Provision of Restitution to Child Victims Distribution of Pornographic Videos, where children and parents or families of both perpetrators and victims do not understand the law, and the existence of Government Regulations (PP) regarding the provision of restitution that must be received by victims. Restitution is certainly not to remove the crime and the process of solving a case. The problem that affects the fulfillment of restitution is also due to the absence of the Witness and Victim Protection Agency so it must wait for the decision and the results of the Central LPSK assessment. In addition, it is also determined by the economic ability and the will of the perpetrator.

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Other Resources:

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