

FULFILLMENT OF RESTITUTION RIGHTS TO VICTIMS OF TRAFFICKING OFFENSES

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Abstract

Crime is a significant issue in Indonesia, with human trafficking being a major concern. The crime is based on Article 28, paragraph (2) of the Republic of Indonesia Constitution of 1945, which states that human rights are inalienable. The original regulation for the crime was in Article 297, which outlined the punishment for trafficking women and men who are not yet adults. However, the current rules do not provide clear protection for victims, and offenders do not face commensurate penalties. The Criminal Code provides compensation through a judge's decree, but implementation is challenging due to limitations in determining compensation and the lack of specialized legal protection for victims. This study uses normative legal research to analyze Indonesia's legal protection and compensation for victims of human trafficking, utilizing current legal materials and written works. The Criminal Code and PTPPO Law provide limited protection for victims of human trafficking, but they lack comprehensive restitution. Indonesia only approves two restitution requests, demonstrating the fundamental right to recompense. The process is lengthy and lacks evidence of expenditure, leading to uncertainty in court decisions.

Keywords: Human Trafficking, Restitution, Victim.

1. INTRODUCTION

Crime is one of the most disturbing issues for the surrounding community and must be addressed quickly and appropriately. Criminal acts can be stated to be unlawful if they are committed due to violating what is controlled in the Law or rules that the Government has set, and the offenders of these criminal acts can face punishments as regulated therein.

Human trafficking is a crime that has a detrimental impact on the victims. Regarding this criminal offense, it has a legal foundation based on Article 28, paragraph (2) of the Republic of Indonesia Constitution of 1945, which states:

"The right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, and the right not to be prosecuted based on relevant law are all inalienable human rights".

The original regulation regarding the crime, prior to its abolition and replacement by Law Number 21 of 2007 concerning the Eradication of Trafficking in Persons (from now on referred to as the PTPPO Law), is in Article 297, with the formulation of a crime in the form of: "Trafficking women and men who are not yet adults is punishable by imprisonment for a maximum of four years".

According to the article's interpretation, human trafficking done by offenders is a violation of human rights. Then, it is controlled in Article 555-Article 570 of the RKUHP, which analyzes the scope of the Trafficking in Persons Act more widely by looking at the evolution of the technique used to deceive victims. Similarly, Article 324 of the Criminal Code states that anybody who operates a slave trade or performs a slave trade at his or her own expense or at the expense of others shall be punished. Based on the debate in the article, it can be inferred that the illegal act of trafficking in persons includes not only

trafficking women as enslaved people or sex workers but also trafficking kids to be exploited as beggars and so on.

In his presentation, the director of the anti-trafficking task force stated that vulnerable groups in trafficking, notably women and children, were the biggest victims of trafficking. According to data from the Indonesian National Police, between 2020 and 2022, there were 509 trafficking instances. The bulk of the 213 cases included labor exploitation, 205 involved sexual exploitation, 31 involved employment that was not in conformity with the planned task, and five involved newborns who were purchased and sold. According to the data, adult women were the most common victims, accounting for 418 persons in total, plus 218 girls. There were 115 adults and three boys among the male casualties.

Concerning the substance of the legislation, the issue is that present rules do not offer clarity to victims of trafficking crimes, but they do govern the perpetrators of these crimes. Similarly, criminology emerges before victimology, which appears only a few years later. Based on current facts, offenders of human trafficking crimes do not face commensurate penalties.

Although the Criminal Code includes aspects of victim protection in the form of providing compensation through a judge's decree in imposing a conditional crime or as a substitute for the principal crime, this provision is not without obstacles in its implementation, namely: (1). A judge cannot determine compensation as a separate penalty in addition to the primary offense but only as a "special condition" for the execution or execution of the principal crime imposed on the convict. (2). Only if the court imposes a maximum sentence of one year or jail can exceptional requirements in the form of compensation be determined. (3). According to the Criminal Code, the specific requirements in the form of compensation are purely facultative, not mandatory.

With numerous implementation challenges, the provision of restitution is still regarded as a legal protection that is merely a provision contained in Indonesia's favorable legislation. However, the form of protection is far from successful in its execution for victims. Based on existing rules in Indonesia on human trafficking, legal protection in the form of compensation for victims is still insufficient to be executed in line with victims' expectations.

For example, the Criminal Procedure Code only provides legal protection to victims through compensation through case consolidation and does not govern alternative types of legal protection. The lack of specialized legal protection for victims of crime, particularly victims of human trafficking, has resulted in unfairness because public prosecutors representing victims sometimes only prosecute or sentence criminals to comparatively short penalties.

Based on the explanation of the problem's background above, the formulation of the problem in this study is the form of legal protection for victims of trafficking crimes, how to implement restitution for victims of trafficking crimes, and the obstacles to restitution under trafficking law.

2. RESEARCH METHODS

This study is a normative legal research employing a literature review, i.e., legal research that uses the law to establish a norm system. The search for resources is based on current legal materials such as laws and regulations, as well as written works such as

books or other articles found on websites relevant to the subject of this study. This normative legal study is being utilized to understand better the type of legal protection for victims of human trafficking and the execution of compensation for victims of human trafficking in Indonesia (Baihaiqi, 2022).

3. RESULTS AND DISCUSSION

3.1. Legal Protection for Victims of Trafficking in Persons

The goal of the law is to provide justice, convenience, and legal clarity. It also, of course, delivers legal justice to victims of crimes. The necessity for legal protection for crime victims is a national as well as a worldwide problem.

So far, the suffering experienced by victims of crime has only been used as an instrument for determining verdicts and criminal sentences for the perpetrator, even though the suffering experienced by criminal perpetrators is unrelated to the suffering experienced by victims of crime; instead, victims will experience more suffering than they have previously experienced. In terms of psychology, victims of crime will often experience stress and depression as a result of what they have witnessed. Victims will also frequently isolate themselves from their surroundings, which can be exacerbated by victims who distance themselves from their own families. Victims will also frequently miss out on opportunities to participate in social, moral, and spiritual changes. As a result, victims require legal protection for the atrocities they are subjected to.

The legal protection afforded to victims of criminal activities is mainly governed by Law Number 13 of 2006 and Law Number 31 of 2014 on the Protection of Witnesses and Victims. Several legal professionals have proposed theories of legal protection in addition to legislation and regulations.

Legal protection can be divided into two, namely:

a. Preventive Legal Protection

The government protects to prevent infractions before they occur. This is included in laws and regulations to avoid violations and to provide signs or constraints in carrying out a responsibility.

b. Repressive legal protection

Repressive legal protection is the ultimate line of defense for victims, consisting of punishments such as fines, jail, and other penalties imposed if a disagreement has arisen or the perpetrator has committed a violation. The victim gains peace of mind due to the punishment meted out to the criminal.

The differentiated protection is legal protection in each component that offers completeness. Preventive legal protection is a type of protection that is the foundation for law enforcers to safeguard victims of criminal activities, as well as creating legal agreements with penalties as a form of prevention so that prospective victims of trafficking crimes are not brought up. Meanwhile, victims are supplied with oppressive legal protection by enforcing punishments specified in existing laws, such as imprisonment, fines, and compensation offered to victims by criminals.

Victim protection might be abstract (indirect) or tangible (direct) protection. Abstract protection is a type of protection that can only be felt emotionally, such as the happiness that comes from obtaining what the victim desires. In contrast, concrete protection is a type of protection that can be enjoyed physically, such as material and non-

material giving. Material donations might be restitution, recompense, or exemption from living costs or schooling. Immaterial protection might take the shape of liberty from dangers or news that lowers human dignity.

The compensation granted to the person who experienced the loss is proportionate to the harm caused. The distinction between compensation and restitution is that compensation arises from the victim's request and is paid by the community or is a form of community or state responsibility (the responsibility of society). In contrast, restitution is more criminal, arising from a criminal court decision and paid by the convicted person or is a form of convict responsibility. As previously said, providing compensation to victims of trafficking crimes may not only give them peace of mind but also reduce the pain that victims experience as a result of the perpetrator's acts because restitution is a crime adjudicated by a judge in a trial.

Protection of victims of criminal acts, as a form of human rights protection that has been inherent in everyone since the beginning, is expected to protect every citizen of society, with the implementation of preventive and repressive legal protection, where the state makes the form of protection based on human rights.

The relationship between victims and criminal justice is a legal system in which any citizen who believes his or her rights have been violated or harmed by a criminal act can seek justice. Regarding the regulation of rights and provisions regarding victims, several existing laws have begun to provide them; however, applying and implementing them requires a process that is not only carried out in the same direction but also with various supports, smoothing the process of legal protection in criminal justice requires seriousness from the parties, namely:

- a. Victims
Victims and all citizens must be aware of their rights and the processes for achieving such rights. Socialization by parties involved in the victim protection process is one of the efforts that may be made.
- b. Witness and Victim Protection Agency (LPSK)
The LPSK is an entity charged and allowed to defend additional rights of witnesses and/or victims, such as those outlined in Article 1 point 6 of Government Regulation Number 44 of 2008.
- c. Law Enforcement
Law enforcement officers have a crucial role in ensuring the safety of all community members, and each officer plays a unique function. Police Investigators, Public Prosecutors, Attorney Generals, Prosecutors, Judges, and Courts are all essential players in criminal justice, and it is anticipated that the parties would assist the newspaper in obtaining its rights.
- d. Community
The community has a responsibility to play honestly and openly monitor the fulfillment of rights and legal protection for victims of trafficking crimes, mainly exploited women.

In the abstract, legal protection for victims of crime refers to victim protection under Indonesian positive law. In contrast, legal protection in concreto directly refers to the perpetrator's responsibility to the victim, such as providing compensation (restitution) for the perpetrator's actions. The execution of this protection is still deemed problematic since various laws need to be modified and introduced to execute legal protection for victims

of crime adequately.

Victims of crimes have legal protection in the form of If a judge cannot grant restitution, the victim/family's rights are outlined in civil law Article 1365 of the Civil Code, Book III of the Civil Code, in the section on "Engages born for the sake of the Law," which states: "Every unlawful act, which causes harm to another person, requires the person who by mistake publishes the loss, indemnifying." According to Rosa Agustina in her book Unlawful Acts, four elements must be met in order for an act to be classified as unlawful:

- a. In violation of the perpetrator's legal responsibilities;
- b. In violation of others' subjective rights;
- c. In violation of decency; and
- d. In violation of provisions, thoroughness, and prudence.

It is mentioned above regarding unlawful acts based on Civil Law to assist victims of criminal acts who want to make other efforts to obtain assistance regarding rights not granted by the Criminal Law because the Civil Law also regulates the right to restitution for victims so that it can be filed through civil channels.

3.2. Implementation of Restitution for Victims of Human Trafficking

Regulations concerning victim restitution contained in several favorable Indonesian laws have been regulated in several laws and regulations, namely the Criminal Code, Criminal Procedure Code, Law Number 13 of 2006 jo, Law Number 31 of 2014 concerning the Protection of Witnesses and Victims, Government Regulation Number 7 of 2018 concerning the Granting of Compensation, Restitution, and Assistance to Victim Witnesses, and the PTPPO Law, and there are still several regulations.

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This rule is inextricably linked to Herbert Packer and Muladi's criminal law philosophy, which states that criminal law concerns involve banned activities or crimes (offense), persons who perform prohibited acts and have characteristics of guilt, and criminal threats (punishment).

According to the doctrine advanced by Herbert Packer and Muladi, the scope of criminal law is three (three) things and does not mention the victims who arise from prohibited acts; basically, the victims who arise as a result of the crime are the parties who have the most significant losses, but for the regulation is still not considered, so that the provision of restitution for victims is not contained in the Criminal Code. The Criminal Code corresponds to the neoclassical school of thought, which recognizes, among other things, the creation of mitigating circumstances for offenders of physical, environmental, and urgent crimes.

The provisions of the Criminal Procedure Code are employed in exercising reparation rights under the Criminal Code. In the Criminal Procedure Code, the method for providing compensation can be done in two ways: (1). After the criminal matter is resolved, file a civil complaint. (2) Combine the application for compensation with the

subject matter.

According to Article 7 of Law Number 31 of 2014 about Amendments to Law Number 13 of 2006 About the Protection of Witnesses and Victims, victims have the right to:

- (1). Through the LPSK, victims have the right to file an application with the court in the form of:
 - a. the right to compensation in circumstances of grave human rights breaches;
 - b. the right to reparation or compensation in cases when the perpetrator of the criminal act is held accountable.
- (2). The court will make compensation and restitution decisions.
- (3). Government Regulations will govern further issues concerning compensation and restitution.

A thing that makes the judge grant the victim's restitution claim can be seen from the process of filing the claim, whether from the investigation stage by the police to the continuing stage, namely the demand for restitution in the judge process can see whether the restitution can be granted or not with solid evidence. If the judge denies the reparation claim, the evidence offered was insufficient.

The process of submitting restitution may not be carried out from the beginning or at the stage of a case complaint for legal proceedings, so the procedure is not by existing rules, lack of knowledge that the victim/family has about the victim's right to restitution, if the victim submits a claim for restitution and follows all procedures.

- a. Public Prosecutor
Implement the Restitution provision of the court judgment by providing a copy of the court decision to the LPSK no later than 7 (seven) days after receipt of the copy of the court decision.
- b. LPSK
Notify the victim, their family or legal representatives, and the offenders of criminal actions and/or third parties no later than 7 (seven) days after receiving a copy of the court ruling. The following is stated in Article 32, paragraph (1) of PP Number 7 of 2018 About the Granting of Compensation, Restitution, and Assistance to Victim Witnesses:
“The perpetrator of the criminal act and/or a third party must carry out the decision or court resolution mentioned within 30 (thirty) days of receiving a copy of the court decision or determination”.

Claims for restitution in the judicial process are complex even though they are backed by specific legislation on human trafficking; nevertheless, this does not ensure that victims will be granted restitution claims through their legal representation or the Public Prosecutor.

Then, in terms of providing restitution to victims if it is related to forms of trafficking, it does not affect the judge's ability to determine the size or size of compensation received by victims, whether from victims of migrant workers, child labor, child trafficking through adoption, marriage and order brides, or organ implantation, because the losses suffered by each victim have their amounts, as evidenced by evidence in the form of a memorandum of expenditure.

3.3. Obstacles to The Implementation of Restitution Under the Trafficking Law

The implementation of reparation rights for victims of trafficking has been slow. It requires more attention from the government, so victims in this growing number of instances are not receiving what they should. According to the case established to investigate human trafficking in Indonesia, the resolution of cases is based on the Articles in the PTPPO Law by protecting victims, in addition to punishment for criminals, and also by satisfying the rights of victims.

According to Articles 48-50 of the PTPPO Law, which protects the rights of victims of human trafficking in the form of compensation, there are several legal flaws, including:

- a. The mechanism for submitting restitution is implemented since the victim reports the case to the local State Police of the Republic of Indonesia and is handled by investigators in conjunction with the handling of criminal acts committed, according to the explanation of Article 48 paragraph (1) of the PTPPO Law. The public prosecutor advised the victim of her right to seek reparation. Although the Public Prosecutor is authorized to apply for restitution, the implementation mechanism has not been regulated by laws and regulations, such as how to determine the size of the restitution money submitted, whether it is permissible if the public prosecutor has submitted it, and whether victims can apply for restitution themselves. The provisions of the Article controlling the restitution mechanism are only found in the explanatory Article rather than in the text of the Article. This Article should be contained in the Article's substance rather than as an explanation. Consequently, officers, prosecutors, and judges can quickly comprehend and apply the requirements of this Article.
- b. According to Article 48, paragraph (5), reparation can be placed first in the court where the matter is determined. This indicates that sections in the PTPPO Law do not support the spirit of the Law's guarantee of victim protection, notably clauses involving voluntary reparation detention. At the same time, the Article's explanation specifies that restitution in the form of money is held in court in line with rules and regulations. This provision is analogous to dealing with civil matters in consignment. From the inquiry stage, the time of possession of reparation money is carried out. The term "may" in the Article indicates no phrase "mandatory" for reparation to be placed in court first. Ideally, the term should be replaced with required. The definition of firmness is that the instructions of the Law must be followed without exception by everyone.
- c. According to Article 50, paragraph (4) of the PTPPO Law, the culprit faces substitution imprisonment for up to one year if the offender cannot make reparation. The substitute criminal legislation is suitable, but the substitute detention penalty of one year is deemed too mild. This clause should be updated based on the victim's financial losses. This is aimed to discourage the perpetrator's predisposition to prefer incarceration to having to make restitution because the jail term is perceived milder. It is conceivable that the restitution levied to the culprit is exceedingly high, in which case dependents automatically become void.

- d. The PTPPO Law does not specify the prosecutor's participation amount or the prosecutor-victim connection's nature. Furthermore, the prosecutor's authority as the executor of the restitution decision is not expressly regulated because Article 50 paragraph (3) only gives the prosecutor the authority to confiscate the perpetrator's property after an order from the Chief Justice if the perpetrator fails to pay restitution.

The PTPPO Law does not provide a time limit for filing reparations. In contrast, in certain nations with restitution schemes, the country determines the time limit for submitting reparation. In the Netherlands, for example, the period for filing reparation with the police is three (three) years from the date of the offense. Unlike in other nations, such as the United Kingdom, police reports are filed as soon as feasible after the crime occurs, and applications are filed as soon as possible after the offense occurs. Colombia provides 1 (one) year from the date of the offense and can be applied for 1 (one) to 2 (two) years from the date of the crime. The Philippines, like Australia, must first report to the police; the submission in the Philippines is 6 (six) months from the time the victim incurred loss or harm, but the submission in Australia is 2 (two) to 3 (three) years after the crime happened.

4. CONCLUSION

Based on the preceding discussion, it is clear that the regulation regarding human trafficking is indeed contained in the Criminal Code, which only discusses the general understanding, which is deemed insufficient to provide comprehensive protection for victims, and the creation and passage of the PTPPO Law in order to protect abstracto for victims by looking at the evolution of the mode carried out. However, the law does not address restitution as a whole, which can create harm to victims and uncertainty for courts when deciding whether or not to award reparation claims with no foundation in positive law.

The state protects the form of restitution for victims in Concreto. However, the protection still needs improvement in its application, which is inversely proportionate to current restrictions. According to the information provided, just two (two) restitution requests have been approved in Indonesia. This demonstrates the victim's fundamental right to recompense cannot be exercised.

It is challenging to execute the right to reparation for victims. Most victims do not want to follow a procedure that takes an extended period, where taking care of the process takes three months. There are still unresolved issues in establishing the amount for restitution rights since the applicable statute does not control movable/immovable property confiscated for assured fulfillment/payment of restitution. The request for restitution is not supported by evidence of expenditure, and this is bolstered by a substitute sentence of 1 (one) year imprisonment for perpetrators who cannot provide restitution because the convicted person is a field perpetrator rather than the main perpetrator or corporation.

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