

THE RESTITUTION IN HUMAN TRAFFICKING LAW ENFORCEMENT IN RELATION TO VICTIM PROTECTION

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Abstract

This is a general policy in the form of restitution or compensation from the criminal to the victim of human trafficking crime which becomes a parameter of victim's right fulfilment. The weakness in its formulation leads to lack of firmness of its implementation. In this writing I will make a theoretical study related to restitution law structure for human trafficking victims. This research juridically studied about the non-clarity of the policies related to restitution. The method used in this research is law research assisted by library study & evaluation to restitution policy making in human trafficking law enforcement. This research is important because human trafficking is now becoming a transnational crime which is well structured & systematically arranged. Human trafficking gives great advantage to the criminal doing it. It is because the victims become a never ending commodity. Some considerations about restitution policy, have negated that human trafficking victims are vulnerable to have a secondary victimization risk. They come face to face with this risk when they deal with the operation of criminal laws, because the law has not fully accommodate the victim's right. That's why we need a legal form in having a victim based approach restitution.

Keyword: Human; Protection; Restitution; Trafficking; Victim.

A. INTRODUCTION

Human trafficking is a crime business which gives big advantage, with humans as its commodity. Humans are considered as product/commodity that can be recycled non-stop: to be exploited, tortured, & inhumanly treated. That's why an orientation to human trafficking victim protection needed to be put forward. Restitution or compensation from the criminal to the victim is one of the victim's right. This is expected to be a sentence which fulfil their rights. Hopefully it will prevent human trafficking as psychological weapon for the criminals. It will heal the conflict caused by the crimes, & pay back the crimes by sentencing the criminals violating the victim's right. The consideration to restitution policy for human trafficking victims are meant to negate the victim's right so that they will get procedural & substantial justice regarded to suffering they have gone through.

Human trafficking crimes always create a difficult situation & condition for the victims to live as normally as before. The loss or destruction of belongings, the crippled victims, will obviously lessen their ability to gain for their life. The same things come with the psychological

trauma & the negative stigma, it will not just disappear though the criminal has been arrested. It even gets worse when the victim has to deal with all the process in court. They often have difficulties in having mental, physical, time & financial preparations to come to the court. The non-existence of juridical basis which can be used by the victim to withdraw as a witness will put bigger pressure to them.¹ The importance of the victim as a witness in court in proving human trafficking crime, shall never put the victim as a means only to the investigation. The orientation in proving human trafficking shall not only to decide whether the defendant is guilty or not. It should be how the investigation becomes a place where the victim are being listened to & cared for their sufferings.

In this kind of case, Satjipto Rahardjo said that justice seekers seek for justice not only for the sake of justice enforcement only. The most important thing is they need help to overcome their problems². Human trafficking victims surely wish that court is the last resort to get their rights. The victim's condition should be put into consideration. Even international & national law policies are made to give victim protection. Government has an obligation to provide reparation rights to them. It is written in Basics and Guidelines on the Rights to a Remedy & Reparation for Victims of Violations of International Human Rights & Humanitarian Law. It says that victims are given 5 reparation rights: restitution, compensation, rehabilitation, satisfaction & guarantee of non-repetition. Whereas, Indonesian law policy has some regulations that accommodate the victim's rights. They are: Indonesian Law Policy number 13/2006 as altered & added by Law Policy number 31/2016, regarding Witness & Victim Protection, Government Policy number 7/2018 as altered & added by Government Policy number 35/2020, regarding The Compensation, Restitution & Help for Witness & Victim, and especially for human trafficking victims it is regulated in Act No. 21/2007, aiming to stop Human Trafficking.

The victim's right as a justice seeker has been neglected. Viewed from the aim of sentencing in positive criminal law, the criminals even get more chances such as rehabilitation, treatment of offender, social re-adaptation, community acceptance etc. This should be considered as unfairness to the victims. As the violated party, they only function as a means of proving crime. Even their basic rights are not considered. The operation of criminal law in law body & regulation is more offender/criminal oriented. The victim's existence is subordinated & eliminated. They get secondary victimization risk in criminal law³. Some considerations are needed to be done in the formulation & implementation policy of restitution. It will give a more open minded view, whether the policy is sufficient for the victim. We will be able to see if the victim of human trafficking are placed as

1 G. Widiartama, *Viktimologi (perspektif korban dalam penanggulangan kejahatan)*, Cahaya Atma Pustaka, Yogyakarta, 2018, page. 85-86

2 *Ibid.*

3 C. Maya Indah S, *Perlindungan Korban Suatu Perspektif Viktimologi dan Kriminologi, second edition*, Prenadamedia Group, Jakarta, 2016, page. 97

a structural violence victim as a form of secondary victimization after they are violated by human trafficking, due to the restitution policy weaknesses.

The victim as the suffering & disadvantaged party, caused by criminal law violation, is involved only as a witness. As the consequences then, the victims are not satisfied with the prosecutor's claim or the judge's sentencing, as they are considered as denying the victim's value of justice. This happens because the criminal law being operated to prosecute the criminal, not to serve the victim's needs. The crimes are viewed as actions against the government. The existence of criminal law is to serve the country & society, not the people's individual needs. This leads to a conclusion that the damage caused are fully endured by the victims only. The criminal law system/function has nothing to do with it whatsoever⁴. That's why this study of restitution needs to emphasis that human trafficking should not be seen merely as a crime against government or society. It should be viewed as victim based approach. The human trafficking victims directly experience the violation. They need to be saved from the misery they endure, especially when they have to go through all the process in court. Though there are other aspects such as the human trafficking criminal, government, society but the victim's right should not be neglected.

Human trafficking victims are on a vulnerable & weak side, that's why they easily become a target. In the mean time, the suffering they endure functioning only as an instrument of convicting & sentencing the criminals. Psychologically the victim will go through stress & depression due to what they have experienced. They tend to isolate themselves from the outside. Even worse, they might distance themselves from their family. They might also loose their chance to go through social, moral & spiritual changes.⁵ Basically, human trafficking is a crime against human right. It will cause suffering beyond other conventional crimes. This crime might be acted in a long term & the victims are exploited in every way.

B. RESEARCH METHODS

This research was a normative research as a process for reflect the law specifically about the restitution on Act Number 21 of 2007, relate it to a study of the legal principles of victim protection to answer the issue of human trafficking's victims.

C. RESULT AND DISCUSSION

1. The Victims & Human Trafficking Victim's Rights.

Laws in Human Trafficking, article 1 paragraph 3 mentions that "Victims are those who endure psychological, mental, physical, sexual, financial & social abuse caused by human trafficking". The definition of victim here is substantially similar to those in UU number 31/2014 as the

4 Fauzy Marasabessy, Restitusi Bagi Korban Tindak Pidana: Sebuah Tawaran Mekanisme Baru, *Jurnal Hukum dan Pembangunan*, Vol. 45, No. 1, January-March 2015, page 54

5 Anggie Rizqita Herda Putri dan Ridwan Arifin, Perlindungan Hukum Bagi Korban Tindak Pidana Perdagangan Orang Di Indonesia (Legal Protection for Victims of Human Trafficking Crimes in Indonesia), *Res Judicata*, Vol. 2, No. 1, June 2019, page.180

alteration of UU number 13/2006 related to Witness & Victim Protection. It is implied in article 1 paragraph 3 which says that "Victims are those who endure physical, mental & financial abuse caused by crimes".

Human trafficking in article 3 of Protocol to Prevent, Suppress & Punish Trafficking in Persons Especially women & children, supplementing the United Nations Convention against Transnational Organized Crimes (later known as Palermo Protocol) says that "Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".

The definition of human trafficking in Palermo Protocol is similar to those in article 1 paragraph 3 of Indonesian Human Trafficking Law. It says "Human trafficking is the recruitment, transportation, harbouring, sending, transfer or receipt of persons by means of violation, abduction, confinement, forgery, fraud, abuse of power of vulnerability, debt bondage, giving payment/privilege for the consent of the person having control over other person, done nationally or transnationally for the purpose of exploitation".

Victim protection is basically an inseparable part of human rights. The victim's right itself is also a part of human right concept. And if human right is threatened or disturbed, there should be a guarantee of law protection for the victim.⁶ The concern given to crime victims is basically an effort to put balance between the suspect's fundamental right & the victim's right & necessity. It makes it important to formulate an appropriate victim protection concept. Meaning that, it has to be clear where it leads to & what it covers.⁷ It is wiser if victim protection should not be interpreted only for imprisoning the criminals, because it means that it gives indirect/abstract protection only. It should cover direct protection by restoring the victim from their suffering. One of the way is by providing restitution.

It is considered as "a compensation" when it is provided by a legal institution using the government financing. Whereas "a restitution" is given by the crime doer. Compensation can be done in two ways:

- a. Government acknowledges to be responsible for the crime happens, for not protecting the victim from the criminal's threat. So they give a free medical treatment as a compensation until the victim recovers.

6 Yulia Monita, Perlindungan Hukum Bagi Korban Tindak Pidana Perdagangan Orang Dalam Perspektif Undang-Undang No. 21 Tahun 2007, *Inovatif: Jurnal Ilmu Hukum*, Vol. 6, No. 2, 2013, page.165.

7 *Ibid*, page.166.

- b. The victim is given a financial support to replace the loss of income (this will be a great help for the less fortunate ones : to pay for a lawyer to defend them in dealing with the criminal in court, to get their restitution right from the criminal, to care for their disability caused by the crime, other similar things).⁸

Law protection through juridical aspect provided by the government, is mainly done with KUHP/Indonesian Law Policy. This law products give less concern to the victims, but at least there is one article that formulates a clausa related to victim protection. It is stated in article 14c paragraph 1 KUHP which mentions compensation in civil nature.⁹ KUHP has not assertively defined a concrete & direct policy that provides victim protection. It has not formulated either the kind of restitution given to the victim or victim's family. The judge is only given a facultative bargain/choice. That means the policy is not imperative, it can not make the judge provide protection as mentioned in KUHP/Indonesian Law Policy.¹⁰

Human Trafficking Law formulates restitution, witness & victim rights. The articles related are:

- a. Article 35 - the right to have lawyer assistance during the investigation, prosecution & examination process in court.
- b. Article 44 - the right to have a level 2 identity secrecy for the victim or witness & their family, if they got threatened psychologically & physically related to their being a witness or victim.
- c. Article 47 - assurance of victim protection before, during and after the investigation process.
- d. Article 51 & 52 - the rights to have a medical & social rehabilitation, repatriation & social re-integration from the government.
- e. Article 53 - ministry or government legal body handling health & social problems are obliged to provide help to the victims enduring a trauma or dangerous disease. They have rights to get straight assistance, the latest is 7 days after they apply for their request.
- f. Article 54 - victims stay abroad should be protected by Indonesian Government through its representatives and get a right of repatriation to Indonesia, financed by the government.
- g. Article 55 - human trafficking victim & witness have the rights & protection as stated in other law policy.

2. The Terms of Restitution in Human Trafficking Law

Restitution in protection right for human trafficking victims refers to: Act number 13/2006 as altered & added with Act number 31/2014,

8 Budi Suhariyanto, Quo Vadis Perlindungan Hukum Terhadap Korban Melalui Restitusi (Perspektif Filsafat, Teori, Norma dan Praktek Penerapannya), *Jurnal Hukum dan Peradilan*, Vol. 2, No. 1, March 2013 ,page 119.

9 Alfian Alfian, Upaya Perlindungan Hukum Terhadap Korban Tindak Pidana Perdagangan Orang (Legal Protection Against Crime Victims of Human Trading), *Fiat Justisia Jurnal Ilmu Hukum*, Vol. 9, No. 3, July-Sept 2015, page 335.

10 Ibid, page 336.

about Witness & Victim Protection, regulated in articles 7A & 7B; Regulation of restitution in Act number 21/2007 related to Human Trafficking Suppression in articles 48 up to 50; Government Regulation number 7/2018 juncto PP number 35/2020 is a newly applied law policy in government regulation level. It formulates restitution & compensation. The assistance for victim & witness is stated in articles 19 up to 36.

Act number 21/2007 about Human Trafficking Law, states that Restitution is a compensation of loss charged to the crime doer based on legally binding court verdict. The loss is as well as material or immaterial endured by the victim or the heir. The definition of restitution in Human Trafficking Law here is different from those in Act number 31/2014 altered from Act number 13/2006 about Witness & Victim Protection. It is mentioned that restitution is a compensation given to the victim or their family by the crime doer or third party.

Restitution is regulated in articles 48 up to 50 of Human Trafficking Law. Article 48 paragraph 1 says, all victims/heir of human trafficking have the right to get a restitution. Paragraph 2 mentions, restitution as defined in paragraph 1 is granted for:

- a. The loss if wealth or income.
- b. Endurance of sufferings.
- c. Medical or psychological treatment cost.
- d. Other losses caused by or endured as human trafficking victim.

It is explained in article 48 paragraph 1 of Human Trafficking Law, that the request/lawsuit for restitution should be carried out from the time the victim reporting their case to the local Police Authority. The case will be handled by the investigator, all together with the crime committed by the suspected criminals. The prosecutor will explain to the victim about their right requesting for a restitution. Then they will be assisted to make an estimation of the losses the endure. This mechanism does not omit the victim's right to do a personal lawsuit for restitution.

Act number 31/2014 altered from Act number 13/2006 about Witness & Victim Protection has some differences related to the mechanism of restitution right request. In this regulation, the restitution can be requested either before or after the legally binding verdict is done. This procedure is through The Institution of Witness & Victim Protection. If is done before the verdict, then the prosecutor should be responsible for executing the restitution right for their client, as implied in the lawsuit. But if it is done after the legally binding verdict is issued, it becomes the responsibility of The Institution of Witness & Victim Protection to apply for restitution to the court for their legal rights. Because The Institution can only do that after the verdict, it means that Human Trafficking Law has not included The Institution to have an authority to apply for restitution.¹¹ So we can say that The Witness &

11 Gesty Permatasari, dkk, Pelaksanaan Pemberian Restitusi Terhadap Korban Tindak Pidana Perdagangan Orang (Studi Kasus di Kejaksaan Negeri Indramayu), *Soedirman Law Review*, Vol. 1, No. 1, 2019, page 57.

Protection Law and Human Trafficking Law have not accommodated a harmonious regulation of restitution for human trafficking victim.

In article 50 of Human Trafficking Law, the verdict of restitution shall be executed right after it is being issued by the first degree court. It can be deposited in the court where the case is being handled. And after the legally binding verdict is announced, the restitution should be given in 14 days the latest. In the case it is not fulfilled yet in 14 days, the victim/heir shall notify the court. The court then shall send a notification of warning to the giver to act on the verdict. Then if the notification is still neglected, the court will assign the prosecutor to confiscate the defendant's wealth to be auctioned, to pay for the restitution. If the defendant is not capable of paying it, they will have to go through one year of imprisonment the most.

Basic principles & guidelines on the right to a remedy & reparation for victims of gross violations of international human rights law & serious violations of international humanitarian law, includes restitution in it. Restitution shall be given to maximum fix the victim's conditions as before they endure human right violation. Restitution shall include recovery that covers freedom, citizenship, residence, job opportunity or wealth. It shall correspond with - *Restitutio ad integrum, or restitutio in integrum*, is a Latin term that means "restoration to original condition". It means that the victim shall be granted back their previous condition as before they experience the violence. Still we have to understand that it is impossible for them to fully recover. This principle makes sure that the victim recovery is thoroughly done & covers all aspect damaged by the violence. Restitution gives back their freedom, legal rights, social status, family life, citizenship, repatriation right, occupation & assets. In most countries, restitution is developed & given to victims of crimes/violence for the sufferings they endure. This concept then implies that the victim & their family shall get a fair & appropriate compensation from the offender or the third party responsible for that. The compensation includes:

- a. recovery of wealth
- b. payback of damage or loss
- c. payback of cost due to casualties
- d. services provided
- e. recovery rights¹²

Other kinds of loss are also mentioned in article 48 paragraph 2 of Human Trafficking Law related to restitution. The loss is defined as loss of wealth, basic transportation cost, the cost for lawyer & court related procedure, lost of income promised by the offender.

12 Supriyadi Widodo Eddyono, dkk, *Masukan Terhadap Perubahan UU No.13 Tahun 2006 tentang Perlindungan Saksi dan Korban*, Koalisi Perlindungan Saksi dan Korban, 2014, Jakarta, page 16, <http://icjr.or.id/wp-content/uploads/2014/06/Briefing-Paper-Koalisi-PSK-Final.pdf>;

3. The Weakness of Restitution Regulation in Human Trafficking Law

Regulation of restitution for human trafficking victim is a *lex specialis*, as a breakthrough from weaknesses in KUHP which is not specially & comprehensively ruled in its policy. In fact, the policy about restitution in Human Trafficking Law needs to be reviewed comprehensively, either from its procedure, mechanism, procedural law, or material criminal law. It should cover all the rules related to how the restitution would be converted if it can not be paid for by the defendant.

Generally the implementation of victim protection in the form of compensation or restitution in Indonesia still has a lot of weaknesses. Its weaknesses in juridical aspects are:

- a. There is an inconsistency whether the restitution/compensation should be pursued in lawsuit or legal filing.
- b. The process of proving the material loss is complicated & takes time.
- c. The short period of suspect detention
- d. There is no rule in enforcing the act of paying the restitution/compensation to the victim.
- e. The lawsuit of loss can only be done by combining the compensation to the criminal lawsuit. It means that a lawsuit of compensation/restitution is only an accessory to the law.
- f. Compensation, as written in KUHP implies only to material loss, immaterial loss is excluded.
- g. There is no policy related to the judge's legal effort about the consequences of neglected restitution/compensation.

There are also weaknesses from its non-juridical aspect, such as:

- a. The victim & their family are unaware of their restitution & compensation rights.
- b. The victim & their family do not understand how to make a lawsuit of their rights.
- c. The law enforcement/bodies are reluctant to use the new regulations. They are already comfortable with the old ways of holding court.
- d. Their custom/habit is dealing with the law case, not uprooting the problem related to law case.
- e. They have a view that by verdicting the sentence to criminals, means that the victim gets their justice, justice is done. In fact, it only gives a deterrent effect to the criminal. It has not given a recovery to the victim/their family.
- f. There is an egoistic point of view from the victim/their family when the victim-offender relation is damaged, there is no salvation.
- g. The victim tends to think that a loss of life is not worth the compensation. The same goes with physical injury & psychological trauma they experienced.

- h. The law bodies/enforcement have not understood well the mechanism of restitution & compensation.¹³

The weaknesses of restitution in Human Trafficking Law are:

- a. There is a different concept of definition about restitution in Human Trafficking Law & Witness & Protection Law. Restitution regulated in Human Trafficking Law, only aims to the offender. Third party can not involve here. The question is, when the Witness & Protection Institution will put a legal filing of restitution to third party, how will the judge accommodate & deal with it?
- b. Restitution is only an accessory to the sentencing. The rights might be claimed or not. Human Trafficking Law has a major cumulative sentencing: imprisonment or fines. The regulation is conventional. It does not cover victim protection by putting restitution as a major sentencing for the criminal. While the fines is executed by paying the government, restitution is given to the victim. It means the sentencing in Human Trafficking Law has not provided option for the victim.
- c. Weakness of regulation related to restitution claiming. The claim depends on the victim's will to put a lawsuit on it. Then it will relate to the investigator's/prosecutor's will to include that in their early legal filing before the verdict is done. It is possible for the victim/family themselves to claim that. Once again then, it is back to their awareness of their rights. And related to the offender, mostly the victims come from frailer characters & weaker economical/social status. Human Trafficking Law does not have a limitative regulation related to the prosecutor's authority to do a legal act. It happens in either legal appeal or cassation.¹⁴The mechanism has not clearly regulated in its articles, such as: how big the amount of the restitution is claimed? If the prosecutor has put a claim on the legal filing, is the victim allowed to claim the restitution by themselves? How is the procedure? The article regulating it is not the major one, but only the explanatory article. The consequence is that, the police, the prosecutor & the judge are less able to understand & integrate the regulation in doing their jobs.¹⁵Then, the victim can only claim their rights by the help of the prosecutor, because Human Trafficking Law has not accomodate that for them to do it by themselves.
- d. The very obvious is that Human Trafficking Law has not regulated a guidance in estimating the quantity of the restitution & a guidance for the judge to put a verdict on it. The implementation should also be

13 Umi Rahmi, M Syukri Akub, Syamsuddin Muchtar, Implementasi Hak-Hak Korban Atas Kompensasi Dan restitusi Dalam Peradilan Pidana (the Implementation Of the victim's rights For the compensation And Restitution On Criminal Justice, page 6-7. <http://pasca.unhas.ac.id/jurnal/files/20372e4276381c8676757d22d57295ba.pdf>

14 Lukman Hakim, Analisis Ketidak Efektifan Prosedur Penyelesaian Hak Restitusi Bagi Korban Tindak Pidana Perdagangan Manusia (Trafficking), *Jurnal Kajian Ilmiah (JKI)*, Vol. 20, No. 1, January 2020, page. 54.

15 *Ibid*, page 54.

clarified: has it to be paid off at once, can it be done in installment. Those points that weaken the restitution implementation should be put right. Even the role of Witness & Victim Protection Institution in estimating the quantity of restitution is not written in Human Trafficking Law itself. It is written outside, in the additional article. Other fact is that, the Institution only exists in the capital city, it will cause other obstacle.

- e. The execution of restitution is still unclear. Article 48 paragraph 5 of Human Trafficking Law mentions that restitution can be deposited at the court where it is being held. We can say that this point does not show full support to the victim, because it says that that the fund deposited is in voluntary term. Besides, this law does not further explain the prosecutor's role, especially their communication/relation with the victim. Other than that, it does not regulate the prosecutor's authority as the executor of the restitution. Article 50 paragraph 3 of Human Trafficking Law only gives the prosecutor the authority to confiscate the offender's wealth by the court's order, if the restitution is not paid off. It does not say anything about the expiry date of restitution claiming/lawsuit. It does not say anything about what they should do if the criminal does not have enough fund to pay off.¹⁶ And the point about the deposit as said above, will put the victim under the offender's pity. No law enforcement to act on it. It means that:

- 1) restitution is given depends on the verdict. If the defendant is proved to be not guilty/free, the victim will get nothing, even though they have experienced material/immaterial loss as a human trafficking victim.
- 2) if the criminal does not act on the verdict of restitution or does not have enough fund to pay it off, the victim will get nothing either, because the criminal is allowed to do it another way : a maximum 1 year of imprisonment.

So we can conclude that the replacement of Act No. 22/2007 about restitution is not fully victim oriented yet. Human trafficking victims experience many kinds of loss, physical, emotional or financial.¹⁷ Even when their personal information as victims leaks out, it may lead to violence, discrimination and ill treatment to them. The imbalance of the victim's & the criminal's bargaining position is considered as a complicated matter too. As the victims mostly come from lower educational, social & economical status.

Restitution in Human Trafficking Law has not protected the witness & victim. It is because some points related to its legal claim mechanism as written in article 48 paragraph 1 show less legal binding & certainty in its implementation. The mechanism in restitution claim is a

¹⁶ *Ibid*, page 55

¹⁷ Mahrus Ali ; Ari Wibowo, Kompensasi Dan Restitusi Yang Berorientasi Pada Korban Tindak Pidana, *Yuridika*, Vol. 33, No. 2, May 2018, page. 278.

procedural law. It should be regulated in a separate body of law for a clearer, more fixed & detailed mechanism.¹⁸We should also remember, that sometimes, the major obstacles in human trafficking victim protection even come from the victim themselves (though government, police, prosecutor & court are also involved). The victim sometimes neglects their case. The causes are either:

- a. They are not able to react to the offense.
- b. They/other institution are afraid of a more serious impact if they come into a confrontation with the criminals, or
- c. The negligent has become socially acceptable caused by a limited relation.¹⁹

Considering that the concept of victim protection should be potential & actual victims oriented, we can say that Act No. 21/2007 is well ahead that other laws.²⁰Human Trafficking Law has also accommodate both potential & actual victims need. This Law implies that many parties, especially law enforcement shall oblige to the victim's needs. This Law brings new hopes to the victims. It also challenges the victim perspective law enforcement to give back the victim's rights. Nevertheless, it still has some weaknesses related to the restitution for the victim.

We really concern that many judges do not put restitution in their verdicts of human trafficking cases. Minding that the claim of restitution depends on the prosecutor's/victim family's initiative in their legal filing. Restitution is only considered as an accessory outside the major sentence. This many facts do not make the judge have space & freedom to pure restitution in their verdicts. Other than article 48 of Human Trafficking Law, judges have no other guidance in giving what kind of restitution/compensation in their verdict.

Act No. 13/2006 related to witness procedural rights, mentions that victim/witness has the right to get transportation fee and temporary life support during their protection program. But specifically related to human trafficking victim, how will they go on with their lives after all their suffering? Has it been considered by the judge? Restitution rights are directed more towards the responsibility of the convicted person as a result of the crime he committed, and his main goal is to overcome all losses suffered by the victim. Benchmarks to determine the amount or size of compensation in Act No. 21 of 2007 concerning Eradication of Trafficking in Crimes People do not specify explicitly but Act No. 21 of 2007 Concerning Eradication of Human Trafficking only explains that

18 Dedi Jaya Sihite dan H. Atang Hidayat, Hak Restitusi Korban Tindak Pidana Perdagangan Orang Berdasarkan Undang-Undang No. 21 Tahun 2007 Tentang Pemberantasan Tindak Pidana Perdagangan Orang, *Wacana Paramarta: Jurnal Ilmu Hukum*, Vol. 16, No. 2, February 2017, page. 81.

19 *Ibid*, page 338

20 Tengku Rizq Frisky Syahbana dan Ramlan, Perlindungan Hukum Terhadap Korban Tindak Pidana Perdagangan Orang dalam Perspektif Politik Hukum Pidana Indonesia, *Restitusi: Jurnal Mahasiswa Ilmu Hukum*, Vol. 1, No. 1, January-June 2019, page 117

restitution is the right of the victim or his heirs and the restitution is given and stated in the court's ruling, it does not explain the size or indicator of the number of restitution and the appropriateness compensation given. Indeed, in practice the right to restitution for victims of human trafficking is very many obstacles encountered in fulfilling the rights for victims both at the investigation stage, the prosecution stage, and the implementation stage of the decision. Law Enforcement Officials should provide understanding that victims have the right to apply for restitution rights but in practice our law enforcement officers also do not understand the mechanism for including restitution rights for victims of human trafficking. That is because restitution is a new paradigm in the world of criminal justice, of course it takes time to introduce restitution in the midst of a legal system that has been recognized hereditary.²¹ Many prosecutors in carrying out prosecutions had difficulty in summoning witnesses, while the requests for restitution must be supported by evidence of expenses and expert witnesses to determine the size of the compensation. In addition, if the suspect does not pay and chooses to add to the additional confinement, while the additional confinement in lieu of restitution is very mild, for example, a maximum of one year of confinement.²²

Restitution to human trafficking victim needs a more detailed regulation. It should properly place their rights for it. A suitable estimation should be performed related to their medical cost, loss of wealth, income, or other losses as a human trafficking victim. Restitution as a form of victim protection gives a compensation. It is important as a fulfillment to their right of justice. But then some restitutions are not rightly executed, because of some obstacles in its arrangement. Unluckily, restitution can not be treated as obligatory, though Human Trafficking Law has ordered the offender to pay it off.

Then the underline is, policies in restitution for human trafficking victim should put forward a victim-based approach. This approach considers understanding & protection to the victim's need, so that they can be salvaged from their sufferings. This kind of approach put a very basic layout related to the safety & non-discriminative treatment to the victim.

The weakness of policy & implementation in Human Trafficking Law should be followed with a law enforcement by building up the capacity of the police officer, the prosecutors and the judges. The policies & regulations about restitution should also refer to making sure that the criminal gets sufficient & proportional sentencing. If we mean to be attentive & supportive towards victim protection program, then criminal & risk analysis are needed.

21 Ratno Timur Habeahan Pasaribu, Fulfillment of Restitution Right of Human Trafficking Crime Victim through Restorative Justice Approach in Criminal Justice System in Indonesia, *International Journal Of Multicultural And Multireligious Understanding*, Vol. 7, No. 2, March 2020, page 507.

22 *Ibid.* page 508.

D. CONCLUSION

The formulation of restitution policy to human trafficking victim in Human Trafficking Law still contains some weaknesses. Its concept has not involved the third party. It does not have guidance related to claiming the restitution. The judge has less counselling in giving it. The mechanism for restitution legal filing by the prosecutor or victim is not clear. Deposited restitution fund is voluntary, it can not force the criminal to act on it. The execution of restitution is not yet clarified. It depends on the court verdict. There should be a guarantee, even if the defendant is verdict free/not guilty, the victim still has the right to make a legal filing to their loss. Victim gets nothing can be avoided, especially when it is obvious they experience some losses. Besides, if the inability to pay off the restitution can be converted to a maximum one year of imprisonment, then is an indicator that Human Trafficking Law is not in one side with the victim.

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