

Law Enforcement Of Giving Restitution For Victims Of Trafficking In The State Court Of Central Jakarta

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Abstract. This study aimed to analyze and assess: 1) Law Enforcement of Giving Restitution of Victim of Crime Against Trafficking in West Java Police Jurisdiction; 2) obstacles and barriers in the Restitution Administration of the Victim of Crime Against Trafficking in West Java Police Jurisdiction; and 3) How to overcome the obstacles in Giving Restitution of Victim of Crime Against Trafficking in West Java Police Jurisdiction.

This research use sociological juridical approach to the specification of the research is descriptive analysis. Data sources include primary data and secondary data. Methods of data collection using interviews and documentation study. Methods of data analysis in this thesis using qualitative descriptive

The study concluded that not every Victims of Crime of Trafficking Got Giving Restitution. Obstacles Giving Victims Restitution against Crime of Trafficking affected by the dominant legal factors and the influence of other factors. UUPTPO an attempt by the State to TPPO, but construction is still weak, law making it difficult for victims obtain restitution, so it needs to be revised. It is recommended that UUPTPO revised or reconstructed, so UUPTPO for more providing legal protection for victims of TPPO to establish in the regulations (laws) that the State through the investigating police and / or prosecutor (JPU) who shall seek fulfillment TPPO restitution by offenders to victims TPPO, that is the nation participation for the society.

Keywords: Law Enforcement; Restitution; Victims; Crime; Trafficking.

1. Introduction

The Indonesian government has approved Act No. 21 of 2007 on the Eradication of Trafficking in consideration that every person as a creature of God Almighty has rights in accordance with the glory of the status and dignity as well as legally protected by the Constitution of Republic of Indonesia 1945, as set in article 28 A that: "Everyone has the right to live and to defend life and living".

The criminal justice process is still oriented to retributive justice and the approach the victim, it led to a lawsuit against the criminal law and the administration of justice oriented to the perpetrators of crimes to question why justice was given to those who violate the criminal law and not to those who violated their rights, as the injured party or harmed directly as a result of violations of criminal law.⁴

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⁴ Mudzakkir, 2005, *Viktimologi (Studi Kasus di Indonesia)*, Surabaya: Papers in Criminal Law and Criminology at XI National Seminar, p. 20.

Protection of victims included as one of the issues also gained international attention. In the Universal Declaration of Human Rights, Article 8 states that⁵: Everyone has the right to an effective remedy by the competent national Tribunals for acts violating the fundamental rights granted him by the constitution or by law (Everyone is entitled to effective remedy by the competent national tribunals for acts of violations of rights guaranteed to him by constitution or by law).

Trafficking is a serious crime against human life and humanity, given the number of trafficking cases are increasingly complex modus operandi. Trafficking in Indonesia has been around a long time, it's just lack of awareness and lack of comprehensive regulations for law enforcement and government officials are less sensitive to the practice of human trafficking, contributed to the high number of trafficking cases that occurred in Indonesia. State of Indonesia is not only known as a transit country but also the sender and recipient. This means that some areas in Indonesia known as the victim comes but it is also in some regions in Indonesia become a victim of exploitation.

So far the Indonesian government has shown concern for this problem, including law enforcement elements, which consistently and continuously working to improve legal certainty military personnel through technical training. National Police have also enhanced international cooperation network with other state police, as well as foreign institutions in order to make effective prevention of Trafficking, either through the efforts of a preventive and repressive.

On August 11, 2006 has been passed and enacted Act No. 13 of 2006 on the Protection of Witnesses and Victims (hereinafter abbreviated UUPSK 2006) were subsequently amended by Act No. 31 of 2014 (hereinafter referred to UUPSK 2014) in which there are several chapters plus, among others Article 7A and Article 7B are inserted between Article 7 with Article 8 of the regulation on Restitution and procedures of application.

Besides, in law specific criminal offense, namely Act No. 21 of 2007 on the Eradication of Trafficking (UUPTPO) in Article 48 through Article 50 contains a provision concerning Restitution. This UUPTPO besides regulating the criminal sanctions for perpetrators of individuals or a group of people organized as well as corporate actors but these laws also regulate the rights of victims who are often overlooked. One of the victims' rights to be discussed in this thesis is the provision of Restitution to Victims of Crime of Trafficking. Victims of human trafficking crime a lot of concern, their physical and psychological suffering even some of them stretchable lives. Even if there are some who receive restitution from the offender TPPO.

Jakarta as a city with a population and population density is so great, it has a very complex problem, including issues including criminal cases. Jakarta is also vulnerable to human trafficking cases.

Based on the above, this study seeks the following problems:

- How Law Enforcement of Giving Restitution of Victim of Crime Against Trafficking in the jurisdiction of the State Court of Central Jakarta?
- How Obstacles and barriers in the Restitution Administration of the Victim of Crime Against Trafficking in the jurisdiction of the State Court of Central Jakarta?

⁵ Eko Soponyono, 2011, *Kebijakan Formulasi Sistem Pemidanaan Yang Beroerintasi Pada Korban Dalam Bidang Hukum Pidana Materil*, Semarang: Faculty of Law, University of Diponegoro, p. 276.

- How overcoming obstacles in the Restitution Administration of the Victim of Crime Against Trafficking in the area of State Court of Central Jakarta?

Research methods

In this study, the method used is a sociological juridical approach. specification of research used in this research is descriptive analysis. Source of data used in this study in primary and secondary data. Methods of data collection in the study were interviews and documentation study. Methods of data analysis in this thesis using qualitative descriptive.

2. Results And Discussion

2.1. Law Enforcement of Giving Restitution of Victim of Crime Against the Trafficking

Victims of crime is basically a party who suffer most from crime, it did not get as much protection as provided by law to the perpetrators of the crime. As a result, when the offender has been sentenced by criminal sanctions court, the victim of crime such conditions are ignored altogether. Though the issue of justice and respect for human rights does not only apply to offenders but also victims of crime.

In Indonesia, the trade has taken place over a long time.⁶ However, in the absence of comprehensive legislation and weak law enforcement and a lack of sensitivity and awareness of government officials, these crimes continue to be the main problems and challenges faced by government and society.⁷ International Organization for Migration (IOM), since 2005 has been to identify and assist victims of human trafficking in Indonesia as many as 3,339 people. Where almost 90% of the victims are women, and over 25% are children. Of course, the data does not describe the number of actual cases of human trafficking, but only the underreporting alone.⁸

On the territory of the Republic of Indonesia Law Regional Police (*Polda Jabar*) based on data obtained from the General Directorate of Criminal Investigation (*Dit.Reskrim*) West Java Police, the number of criminal acts of Trafficking (TPPO) is quite significant, based on the recapitulation of the 2016 and 2019 counted there were 180 cases of TPPO.

Indonesia has Act No. 21 of 2007 on the Eradication of Trafficking (Act-TPPO) which was signed in April 2007. Although it has had a Law on human trafficking, but until now has not been No regulations implementing the Act as advocates such as government regulation.

⁶ Henny Nuraeny, 2011, *Tindak Pidana Perdagangan Orang: Kebijakan Hukum Pidana dan Pencegahannya*, Jakarta: PT Sinar Grafika, p. 352-353.

⁷ See IOM 2011 Case Data On Human Trafficking Global Figures and Trends, p. 6. Explain that human trafficking occurs in many countries and nearly occurred in all continents, Europe, Africa, America, Asia and Australia.

⁸ John Suhardin, *Tinjauan Yuridis Mengenai Perdagangan Orang Dari Perspektif Hak Asasi Manusia*, Mimbar Hukum Volume 20, Number 3, October 2008, p. 411-412.

TPPO restitution to victims in the realization in the field even if the refund is the right of victims TPPO, very rare for victims TPPO, based on interviews in field obtained the fact that⁹:

- Not all victims obtain restitution TPPO, and if the comparison between that receives that does not accept more who do not receive.
- Investigator Police and the Public Prosecutor and apathetic approach to file restitution for victims TPPO, because it has several times put forward restitution, but the police never received an instance verdict restitution of PN.
- Restitution to the victims TPPO still not up instead tend to be ignored, as restitution for victims TPPO an obligation TPPO victim to make a request through the court proceedings, not an obligation of the State to take care and give.
- TPPO very rare actors who choose to pay a fine or restitution, but the perpetrators TPPO prefer criminal in jail who not so long compared to the value of money is so much that must be paid.

Based on the foregoing, it can be concluded that the victim TPPO not all get restitution from the offender TPPO, and restitution would be very rare acceptable victim TPPO if the law specifies only the restitution as a right of the victim TPPO and to get it to go through the trial process in the court. Besides, there are no regulations governing which should be prioritized, whether fines should be received by the State or restitution must be received by the victim, because if the value of the assets seized from perpetrators only approximate amount of fines which must be received State.

The State Court of Central Jakarta Decision No. 978 / Pid.Sus / 2018 / PN.JKT.PST., Is punishing the defendant to pay restitution, but if compared to the fine to be paid to the State by the defendant then the difference is very far away, which means that justice is still not achieved in law enforcement in this TPPO, because even if fines are not necessarily paid convict, but clearly stated State fined Rp300,000,000.00 (three hundred million), while each of the victims only get 25,000,000.00 (twenty five million rupiah).

Another issue that must be addressed and regulated by law TPPO in the future, is a priority of who should be paid, whether the fines to the State or restitution to the victim if the spoils belonged to the accused is not sufficient to pay fines and restitution, for example, the spoils after the auction is only Rp300,000,000.00 (three hundred million) is sufficient to pay the fine, whether fines precedence or be divided to pay restitution, such provision should also be regulated, lest such a travel case *Haji / Umrah* wherein the spoils handed over to the State, while the victim bite the fingers.

2.2. Obstacles Giving Restitution of Victim of Crime Against Trafficking

In this study, the author uses the theory of the law enforcement effectiveness in analyzing the constraints of restitution to the victim TPPO.

2.2.1. Law Factors

⁹ Results Interview with Chief Unit II Subdit IV Dtreskrimum West Java Police, dated December 18, 2009 at 12:15 pm up to 13,000 hrs.

Law Factors is meant here the author is limited to the UUPTPO. The protection is direct to the victim TPPO or heirs that greater attention to the suffering of the victims as a result TPPO in the form of the right of restitution to be paid by the perpetrator TPPO as compensation for the victims, and also regulate the rights of the victims to medical and social rehabilitation, repatriation and reintegration should be done by the state, especially for those who have suffered physical, psychological, and social due TPPO.

Thus the legal factors which do not provide legal certainty for victims to obtain restitution TPPO is the main factor that will affect the other factors that will author further description.

2.2.2. Law Enforcement Factors

In line with the legal factors that do not support the victim TPPO to obtain restitution for certain, because even though law enforcement has sought as much as possible, but the regulations (laws) governing restitution law enforcement to help victims to obtain restitution, then the impact to the frustration of law enforcement in particular Police investigators and the Prosecution to seek restitution by offenders to victims TPPO.

2.2.3. Facilities and Amenities Factors

Factors of facilities not only include equipment of buildings and / or equipment complementary course, the sophistication of the means and facilities of law enforcement does not by itself be able to function optimally, if not supported facilities for the laws that govern it, which means that facilities and advanced facilities of law enforcement that have been owned, would just be a pile of goods that are not useful in law enforcement TPPO if regulation (law) does not support the use of facilities owned by law enforcement.

2.2.4. Society Factors

The occurrence of the graph TPPO continue to increase both in the West Java Police Jurisdiction and in other jurisdictions in the Unitary Republic of Indonesia, certainly not without the knowledge and understanding of their own community.

2.3. The Efforts to Giving Restitution for Victims of Crime of Trafficking in People Can Be Implemented

In line with the view Mardjono Reksodiputro have emerged and attracted the attention of scientist with the reality that: a). Countries were responsible in case of the onset of the victim (victimization), and because it is natural that the state gives compensation to victims, in addition to the possibility of restitution given by the perpetrator to the victim, b). Their new thinking in criminology who left the positivism approach (seeking causes crime, criminal etiology) and more attention to the processes that occur within the criminal justice system and the structure of society (critical approach to criminology).¹⁰ Thus in looking at the causes of victimization

¹⁰ Mardjono Reksodiputro, 2007, *Hak Asasi Manusia dalam Sistem Peradilan Pidana*, Jakarta: Service Center for Justice and Legal Service (d / h Criminology Institute), University of Indonesia, set Authorship (Third Book), p. 98.

(onset of victims) can not only be seen as factual relationship between victim and perpetrator, but more broadly that the state had a role in the event of victimization.

In essence, that the dimensions of state obligations in this study, there are two things:

- Dimensions obligation of the state to fulfill the constitutional rights of citizens to be protected (protected) in accordance with Article 28 G paragraph (1) Amendment 1945.
- Dimensions of the state's obligation to provide compensation when the state fails to protect its citizens and victims of crime.

On the fundamental rights of citizens is the state's obligation and duty of citizens is the right country. State is authorized to impose citizens can fulfill their responsibilities and also vice versa. Thus the rights and obligations of the state and citizens must be based by law (constitution). Therefore, the concept of state law is guarantee the upholding of human rights protection.

UUPTPO greater emphasis to the fines for the benefit of the State to the value of fines in detail regulated minimum-maximum, but does not set out clear value of restitution into the victims' rights TPPO, and that right is the obligation of the victim TPPO to go through the process that has been set up mechanisms the law so that such rights depends obligation to process them by victims TPPO away from knowledge and understanding of the law relating to TPPO so that he became a victim TPPO, reflecting injustice, and because the State is putting its interests than the interests of the victim.

From the construction of social justice can conclude that it is the duty of government to its citizens to determine what can be demanded by citizens, therefore it is the duty of the legislators to pay attention in the formulation of legislation, including in it is related to the restitution against the victim TPPO, in UUPTPO reflected that the man intended for UUPTPO, not the other way that UUPTPO TPPO made for the benefit of victims.

Construction UUPTPO should such, if it refers to the Progressive legal theory which advanced by Satjipto Rahardjo, then it is very contradictory. There affirmation of the principle of progressive legal theory that "the law is for man" and not vice versa.¹¹ In connection with that that law does not exist for itself, but for something larger and larger. Whenever there is a problem with the law, is the law that is reviewed and improved and not the man who pushed for inclusion in the legal scheme.¹²

So is the case with the legal provisions concerning the restitution to victims TPPO experiencing numerous obstacles making it difficult for the victim TPPO to obtain restitution as a right, it indicates the presence of legal uncertainty for victims TPPO, then refers to view progressive law, the provisions of the law that must be should be corrected or completed, within the meaning constructed norm, thus opening up opportunities for TPPO victims to obtain legal protection and rights, as part of efforts to make the public (human) prosperous and happy.

Progressive law rejects the argument that the order only work through state institutions. Progressive law intended to protect the people towards the ideal of law and reject the status quo, and do not want to make the law as a technology that is not

¹¹ Satjipto Rahardjo, *Hukum Progresif, Hukum Yang Membebaskan*, Jurnal Hukum Progresif, PDIH Semarang, Volume I No. 1, April, 2005, p. 5.

¹² Endang Sutrisno, *op.cit*, p. 67.

conscience, but rather a moral institution.¹³ In line with the above description, that the law of conscience and side with the people, then UUPTPPO be reconstructed.

Reconstruction UUPTPPO that must be considered is, clarify the understanding of the restitution of the aspects of material loss and immaterial loss. Material loss is the loss of the victims can be counted, counts the loss of material required to Investigator Police and / or the Prosecution to calculate it based on the evidence and testimony of the victim. While immaterial loss is a loss that should be set by lawmakers that the government and the House of Representatives in article UUPTPPO, for immaterial losses relative value, if not set it will be difficult for fulfillment. In line with the theory that has been stated above, if the offender TPPO not fulfill the obligation to provide restitution, it is the state that is responsible to pay particular immaterial loss,

3. Closing

3.1. Conclusion

Based on the description above can be concluded that:

- Law enforcement in the eradication of human trafficking hampered by the law, because the law regulates the process of filing restitution for victims who are new to the complex legal process and should be a long way, so that not every Victims of Crime of Trafficking Got granting restitution if No verdict that sentenced the defendant to pay restitution, the majority of perpetrators TPPO more have criminal surrogate form of confinement rather than give restitution to the victim TPPO, and legislation TPPO not set to plunder convicted person is not enough to pay fines and restitution after the auction, whether to prioritize putting the victim or the State.
- Obstacles Giving Restitution Against Victims of Crime of Trafficking in Person as the theory of the factors that affect law enforcement put forward by Soerjono Soekanto legal factors is the dominant factor affecting law enforcement TPPO and implications for four other factors, namely the law enforcement apparatus, factors of facilities , community factors; and culture.
- Efforts for restitution to victims of criminal acts of trafficking can be implemented, it must be carried out reconstruction or revision of the UUPTPPO, so that the next victim TPPO not only entitled to receive restitution through the legal process that should be pursued by the victims of blind law, but the State's duty to be sought victims get right, either through the agency TPPO or granted by the State as a consequence of the State against the TPPO if the perpetrator does not give refunds.

3.2 Suggestion

- Relative UUPTPPO judged as not meeting demands for social justice, especially for the victims TPPO rare obtain restitution, then UUPTPPO be revised and more protection of victims' rights TPPO to get restitution from the perpetrators, as well as from the State if the perpetrator does not provide restitution and choose confinement / imprisonment as criminal replacement.

¹³ Satjipto Rahardjo I, H.2.

- UUPTPO forward to restitution should be accepted by the victim TPPO should organize and establish that the State through the investigating police and / prosecutor who shall seek fulfillment of restitution by the offender TPPO against the victim TPPO, because legally the deal in court is a country with offenders who do not obey the law, not state pitting victims and perpetrators in court, if such countries do not attend to the victims of the people.
- UUPTPO future should be set up and clarify what is meant by the loss of material and / or immaterial damages, immaterial damages are the responsibility of the State must fulfill if it is not met by the offender TPPO, as a form of state presence to the people.

4. References

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