

The Authority of the Prosecutor in Demanding Restitution Payments in Human Trafficking Crime Cases (Analysis of Decision Number: 807/Pid.Sus/2019/PN.JKT.TIM)

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Abstract. *In handling cases of human trafficking, law enforcement is still focused on imposing criminal sentences on perpetrators of the crime. The focus of the discussion in this thesis is how the role of the Public Prosecutor in optimizing restitution payment demands in human trafficking cases, as well as the obstacles and solutions faced by the public prosecutor in implementing restitution payments in human trafficking cases based on court decisions Number: 807 / Pid.Sus / 2019 / PN.JKT.TIM. The approach method in this study uses empirical juridical in this study analyzing the problem is carried out by combining secondary data with primary data obtained in the field. The results of the study concluded that the Public Prosecutor has a role in optimizing restitution payments to victims of human trafficking with his authority. Things that can be done by the Public Prosecutor include playing an active role in notifying victims of human trafficking about their rights through investigators, blocking the perpetrator's assets, tracing the perpetrator's assets and including details of the losses experienced by the victim in the letter of demand. However, in its implementation, there are several obstacles, namely restitution payments are based only on the defendant's ability, there is an option for the defendant to replace the restitution payment sentence with imprisonment and the reluctance of law enforcement officers to implement the authority granted by the Law. To overcome these obstacles, law enforcement officers should be more active in seeking restitution, law enforcement agencies should hold special training for handling restitution, and public prosecutors should seek restitution as a form of additional punishment that must be fulfilled by the perpetrator.*

Keywords: Authority; Crime; Prosecutor; Restitution; Trafficking.

1. Introduction

Retributive justice that has been deeply rooted in the practice of criminal justice in Indonesia today has brought many pros and cons. The function of law enforcement officers who are interrelated in a criminal justice system is more functional in distancing perpetrators from society through the mechanism of criminal rehabilitation. Unfortunately, the retributive or rehabilitative approaches to criminal law enforcement have not been proven to be able to resolve conflicts arising from a crime. Therefore, there is a push for the direction of criminal law policy to shift to a restitutive and restorative approach in an effort to create a balance between perpetrators and victims.¹The representation of the restitutive and restorative approaches in achieving justice in criminal law can be reviewed, among others, in the provisions on restitution for victims of human trafficking as mandated in the Republic of Indonesia Law No. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking.

The Public Prosecutor has the authority to prosecute applications for restitution for victims of human trafficking crimes, where this authority is granted as regulated in Article 28 of Law No. 21 of 2007 concerning the Eradication of Human Trafficking Crimes, which states:

“Investigation, prosecution and examination in court in cases of human trafficking crimes shall be carried out based on the applicable Criminal Procedure Law, unless otherwise specified in this Law.”

So that the authority of Prosecution has been seen in accordance with the provisions contained in Law No. 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking. The authority of Prosecution is in line with the Duties of the Prosecutor as regulated in Article 30 paragraph (1) letter a of Law No. 16 of 2004 concerning the Prosecutor's Office as amended in Law No. 11 of 2021 as follows:

“that in the criminal field the prosecutor's office has the authority to carry out prosecution.”

Prosecution of the application for Restitution made by the public prosecutor is carried out in accordance with the provisions in the Letter of Jampidum Number 371/E/EJP/11/2012 dated 28 November 2012 Concerning Restitution in Cases of Human Trafficking Crimes, this aims to provide a form of law enforcement by prioritizing the aspect of legal certainty in providing compensation in this case restitution due to losses suffered by victims of Human Trafficking Crimes.

¹ Lilik Mulyadi. (2015). Penal Mediation in the Indonesian Criminal Justice System. Bandung: PT Alumni. p. 203

The spirit to create justice and restore the condition of victims of human trafficking crimes has not in reality been reflected in the laws and regulations on human trafficking crimes. The rules regarding restitution as stipulated in Article 48 of Law of the Republic of Indonesia Number 21 of 2007 concerning the Eradication of Human Trafficking Crimes still determine that the submission of restitution is the right of the victim or his/her heirs and is not an obligation that must be given to the victim as a manifestation of law enforcement that is oriented towards providing the fairest possible justice not only for the perpetrator but also for the victims of human trafficking crimes.

In fact, the opportunity to implement the spirit of providing justice and restoring the condition of victims of human trafficking has not been fully realized, which is reflected in the fact that there are still court decisions that do not grant all or part of the Public Prosecutor's demands to impose a sentence in the form of restitution payments to the victim. The inappropriateness of the application of restitution payments in handling the case on behalf of the Convict ERNA RACHMAWATI Binti Alm. Supeno Alias Yolanda who violated Article 4 Jo Article 48 paragraph (1) of Law No. 2 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking Jo Article 55 paragraph (1) ke-1 of the Criminal Code in which the Public Prosecutor demanded that the Panel of Judges sentence the Convict to pay Restitution in the amount of:

- 1) Witness IDA ROSIDA BT ANWAR in the amount of IDR 171,360,000,- (one hundred and seventy one million three hundred and sixty thousand rupiah).
- 2) Witness MARTINI Binti SUBAGIO in the amount of IDR 270,781,000,- (two hundred seventy million seven hundred eighty one thousand rupiah).

However The Judges' Panel in Decision Number: 807/Pid.Sus/2019/PN.JKT.TIM ordered the convict to pay restitution to the victim Ida Rosida Bt Anwar in the amount of IDR 25,000,000,- (twenty five million rupiah) and to the victim Martini Binti Subagio in the amount of IDR 25,000,000,- (twenty five million rupiah) and if the restitution is not paid then it will be replaced with a substitute imprisonment for 3 (three) months. In this case there is a difference in the amount of restitution payment decided by the court and the amount of restitution payment requested by the Public Prosecutor in his Letter of Charge. The difference in the amount of restitution payment decided by the court and the demands of the Public Prosecutor certainly causes the sense of justice for the victim not to be fulfilled for the losses he suffered.

Starting from this, the author then assumes that as a Public Prosecutor, the Prosecutor must take a role and maximize the authority to carry out prosecutions granted by law to ensure that the victim's right to receive restitution for material and immaterial losses suffered as a result of the crime of

human trafficking can be realized. This problem then became the author's concern so that the author interested in researching and writing a thesis entitled **PROSECUTOR'S AUTHORITY IN PROSECUTING RESTITUTION PAYMENTS IN CASES OF HUMAN TRAFFICKING CRIMINAL ACTIONS (ANALYSIS OF DECISION NUMBER: 807/Pid.Sus/2019/PN.JKT.TIM)**. The writing of this thesis essentially wants to analyze how the authority of the Prosecutor in demanding restitution payments with the hope that the Public Prosecutor can contribute maximally in protecting the rights of victims and upholding justice as fairly as possible not only for perpetrators of criminal acts but also for victims of human trafficking.

2. Research Methods

The method used in this study is the empirical juridical method. The research in this writing is a qualitative research in which the data in the study are not in the form of numbers, but verbal words. The sources and types of data in this study are secondary data obtained from literature studies. The data is analyzed qualitatively.

3. Results and Discussion

3.1. The Role of Prosecutors in Optimizing Restitution Payment Demands in Human Trafficking Cases

The authority of the public prosecutor to submit restitution in Law 21 of 2004 (Explanation of Article 48 paragraph (1)) states:

In this provision, the restitution submission mechanism is implemented since the victim reported the case to the local Indonesian National Police and is handled by investigators together with the handling of the crime committed. The public prosecutor informs the victim of his/her right to file for restitution, then the public prosecutor submits the amount of loss suffered by the victim due to the crime of human trafficking together with the charges. This mechanism does not eliminate the victim's right to file a lawsuit for his/her losses.

The same thing is also regulated in JAMPIDUM LETTER NO. 3718/E/EJP/11/2012 dated 28 November 2012 Concerning Restitution in Human Trafficking Crime Cases: which states:

"....reminds Public Prosecutors (JPU) who handle cases of Human Trafficking in Persons where the victim has not filed for restitution at the investigation stage:

- a. So that the Public Prosecutor informs the victim about his/her right to file for restitution in the form of compensation for:

1. Loss of wealth or income
 2. Suffering
 3. Costs for medical care
 4. Other losses suffered by victims due to human trafficking
- b. In the criminal charges, the Public Prosecutor simultaneously conveys the amount of losses suffered by the victim due to human trafficking.

This provision is what then becomes the legal basis for the Public Prosecutor to be able to file Restitution for Victims of human trafficking in their indictment. Often the victims of human trafficking are individuals who do not have higher education, who have little understanding of the rules of law, who are in a vulnerable emotional or economic condition and are very easy to exploit. Starting from such conditions, the author is of the opinion that the Public Prosecutor plays a very important role in ensuring that victims receive compensation through restitution payments from the perpetrators of the crime for all the suffering they have gone through as a result of human trafficking.

However, Law No. 21 of 2007 concerning the Eradication of Human Trafficking Crimes has not fully accommodated the provision of restitution to victims of human trafficking crimes. This can be seen from the legal vacuum regarding how to apply for restitution. This law also still states that every victim of human trafficking crimes or their heirs have the right to receive restitution. This phrase then becomes odd in its application because considering how important restitution is for victims, the law actually includes restitution as an option, which means that without a restitution application from the victim, the perpetrator will not be charged with the penalty of paying restitution to the victim so that there is still a big gap in restitution not being included in the Public Prosecutor's demands and Judge's Decisions only because the victim did not file for restitution before the Public Prosecutor's demands were read.

Based on Government Regulation Number 7 of 2018 concerning Provision of Compensation. Restitution and Assistance to witnesses and victims, Submission of Restitution application can be made before or after a court decision that has obtained permanent legal force through LPSK. This means that LPSK based on the application and data and documents submitted by the victim conducts an examination and calculation related to the submitted restitution application, the results of the examination of the restitution application are determined in an LPSK decision letter accompanied by considerations containing recommendations to grant or reject the restitution application.

In the 2021 Guidelines for Handling Criminal Acts of Human Trafficking, it is stated that PP No. 7 of 2018 regulates the requirements for submitting restitution as follows:

- a. Submission of a restitution application can be made by the victim, family and/or attorney;
- b. If the request is submitted other than by the victim directly, then if using power of attorney a special power of attorney is attached and if the request is submitted by his family then a family relationship certificate is attached;
- c. LPSK submits the restitution application along with its decision and considerations to the public prosecutor;
- d. The public prosecutor as referred to in paragraph (1) in his/her demands shall include a request for restitution along with the LPSK decision and its considerations;
- e. Submission of a restitution application can be made before or after a court decision that has obtained permanent legal force through LPSK;
- f. In the event that a request for Restitution is submitted before the court decision has permanent legal force, the LPSK may submit a request for Restitution to the Public Prosecutor to be included in the indictment;
- g. In the event that a request for Restitution is submitted after a court decision that has obtained permanent legal force has been read out, the LPSK can submit a Restitution request to the court to obtain a decision.

That in handling the Human Trafficking Crime case as stated in the decision Number: 807/Pid.Sus/2019/PN.JKT.TIM, the Restitution Application for Victims IDA and MARTINI has been carried out in accordance with the provisions of PP No. 7 of 2018, where the application for restitution is submitted before the court decision is read and the Public Prosecutor has submitted a demand to sentence the Criminal Act Perpetrator to pay restitution based on the calculation submitted by LPSK with details as stated in the LPSK Letter Number: R-557/1.5.2.HSKR/LPSK/07/2019 dated July 3, 2019 Regarding the Restitution Application Application, which in essence states that witness IDA ROSIDA BT ANWAR suffered a loss of IDR 171,360,000, - and witness MARTINI Binti SUBAGIO suffered a loss of IDR 270,781,000, -.

One form of effort to optimize the role of law enforcement officers, especially Public Prosecutors in providing restitution to victims of human trafficking crimes, is manifested in the form of blocking the assets of perpetrators of human trafficking crimes as stipulated in Article 32 of Law No. 21 of 2007 concerning the Eradication of Human Trafficking Crimes which stipulates:

Investigators, public prosecutors or judges have the authority to order financial service providers to block the assets of any person suspected or accused of committing the crime of human trafficking.

Based on these provisions, it can be interpreted that at every stage of case handling, law enforcement officers have the right to block the assets of perpetrators of human trafficking. The explanation of Law No. 21 of 2007 does not describe the purpose of blocking the assets of perpetrators of human trafficking, but it can be assumed that the purpose of blocking assets in human trafficking here is the same as the purpose of blocking assets in money laundering and taxation crimes, namely to secure the suspect's assets as a guarantee for recovering losses arising from the crime so that the assets are not lost, transferred or transferred.

In the provisions of Law No. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, there are no regulations regarding the procedures for blocking the assets of perpetrators of the crime of human trafficking. The 2021 Guidelines for Handling the Crime of Human Trafficking state that because there is no mechanism for blocking assets in Law 21/2007, the blocking of assets in the crime of human trafficking can adopt the provisions contained in Law No. 8 of 2010 concerning Money Laundering with the following blocking procedures:

- Clearly state the name and position of the investigator, public prosecutor or judge.
- Identity of the person reported
- State the reasons for blocking, the alleged or charged crime
- Mentioning the place of wealth
- Blocking will be carried out for a maximum of 30 (thirty) working days

Explanation of Article 32 of Law No. 21/2007 further explains that what is meant by "financial service providers" include banks, securities companies, mutual funds, custodians and foreign exchange traders. The explanation of this article confirms that the blocking of assets belonging to perpetrators of human trafficking crimes is limited to assets under the control of financial service providers as mentioned.

In order to ensure that victims of human trafficking can obtain their rights in the form of compensation for the suffering they have experienced, the Public Prosecutor needs to know data on the assets owned by the perpetrators of the crime. To obtain this data, the Public Prosecutor can provide instructions to investigators to conduct a search for the assets of the perpetrators of the crime. The purpose of this asset search is to conduct a data collection on the assets of the perpetrators of the crime of human trafficking, based on which data the public prosecutor can determine the economic capacity of the perpetrators of

the crime to pay restitution as proposed by the victim based on the LPSK calculation.

Asset tracing is important in ensuring that the restitution payment sentence is actually carried out by the perpetrator of the crime so that the victims can receive compensation for the suffering they have experienced as a form of realizing a sense of justice for victims of human trafficking. In several cases, what happened was that the request for restitution submitted by the victim based on LPSK calculations was not granted by the judge or was granted not in accordance with the amount submitted by the victim and demanded by the public prosecutor in his indictment. This can happen for various reasons, one of which is because of the inability of the perpetrator to pay the restitution requested by the victim. To anticipate this situation, the Public Prosecutor's accuracy is needed to ensure that the perpetrator of the crime has the economic ability to pay restitution to the victims. One way that can be taken is to conduct a census of the assets owned by the perpetrator of the crime. Based on this, in order to optimize the demands for restitution payments to the victims, it is very necessary to trace the assets belonging to the perpetrator of the crime of human trafficking.

The Public Prosecutor also needs to include in the letter of indictment clearly and in detail the losses and suffering experienced by the victim as a result of the crime of human trafficking committed by the perpetrator. The aim is to create the judge's belief that the restitution proposed is very much needed by the victim and its value is appropriate or reasonable when compared to the suffering experienced by the victim. One way is to provide instructions to investigators to ask for expert testimony to clearly describe the suffering experienced by the victims as a result of the crime of human trafficking committed by the perpetrator.

The authority held by the public prosecutor to optimize the provision of restitution that leads to the representation of restitutive and restorative approaches in achieving justice in criminal law can be reviewed, one of which is in the provisions of restitution for victims of human trafficking as mandated in the Republic of Indonesia Law No. 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking in line with the Pancasila theory of justice which contains a meaning that the nature of humans as cultured and natural beings must be naturally just, namely fair in relation to oneself, fair to other humans, fair to society, nation and state, fair to the environment and fair to God Almighty.

3.2. Obstacles Faced by Prosecutors in Implementing Restitution Payments in Criminal Cases of Human Trafficking Based on Court Decision Number: 807/Pid.Sus.2019/PN.JKT.TIM

In the case study Based on Court Decision Number: 807/Pid.Sus/2019/PN.JKT.TIM this occurred in the period of September 2018-January 2019 where the Convict in the name of. ERNA RACHMAWATI BT Alm. SUPENO Alias YOLANDA was an unofficial distributor of Indonesian workers abroad (Middle East region). In carrying out his work, the Convict was assisted by SALEHA, KHAIRUL IMAM and DENIS who acted as sponsors with the task of recruiting workers to be sent abroad.

In October 2018, IDA ROSIDA (the victim in this case) who lives in Bima City, West Nusa Tenggara, was offered to work as a domestic helper in Turkey with a salary of IDR 7,000,000 per month. IDA ROSIDA agreed and wanted the job. SALEHA then communicated with the Convict regarding the processing of IDA ROSIDA's passport and departure ticket to Jakarta. The Convict transferred money to SALEHA for passport needs amounting to IDR 2,000,000 and shopping for IDA ROSIDA's needs before leaving for Turkey amounting to IDR 6,000,000.

The convict ordered a plane ticket for IDA ROSIDA's departure to Jakarta. In Jakarta, IDA ROSIDA stayed at the convict's shelter located in Kramatjati, East Jakarta for 10 days. During that time, IDA ROSIDA did not do any activities related to preparation as a worker. The convict also gave a fee of IDR 1,000,000 to IDA ROSIDA and promised that the remaining fee payment of IDR 4,000,000 would be paid by the convict to IDA ROSIDA's family through SALEHA. The convict contacted WALID (a labor agent in Istanbul, Turkey) to take care of IDA ROSIDA's departure to Turkey, WALID sent money to SITI ALAWIYAH, then SITI ALAWIYAH bought IDA ROSIDA's departure ticket, then the flight ticket with Oman Air on November 27, 2018 was sent by WALID to the convict.

That upon IDA ROSIDA's arrival in Turkey, IDA ROSIDA was housed in an agency called BABA NASAR for 1 week. During that time, IDA ROSIDA experienced sexual harassment by two men. After 1 week, IDA ROSIDA was sent to her employer's house named MADAM, there IDA ROSIDA worked as a domestic helper for 1 week with working hours starting from 05.00 to 24.00 Turkish time without pay. Due to her sick condition, IDA ROSIDA asked to be sent back to Indonesia. Then asked to wait for 1 month at the BABA NASAR agency. 1 month later, IDA ROSIDA was taken to the airport and IDA ROSIDA learned that she would be sent to Syria, IDA ROSIDA ran away and went to the Indonesian Consulate General in Istanbul, after waiting for 20 days at the Indonesian Consulate General shelter, IDA ROSIDA was then sent back to Indonesia.

Something similar also happened to MARTINI who was told that she would work as a restaurant employee in Turkey with a salary of 300 US dollars with a 2-year contract. Then MARTINI was taken to the Convict's shelter and the Convict handed over a fee of IDR 1,500,000 to MARTINI and an amount of IDR 500,000 was transferred to MARTINI's account. On September 16, 2018, the Convict sent

MARTINI from Jakarta to Batam, then MARTINI left Batam for Malaysia and waited in Malaysia for 2 days then sent to Turkey upon arrival in Turkey MARTINI was sent again to Libya. In Libya MARTINI was told to work at a kitchen set shop for 3 days and was paid 25 dinars after that MARTINI was returned to the shelter in Tripoli and was abused which resulted in injuries to her mouth. Furthermore, MARTINI worked at her brother KHALID's house for 25 days as a housemaid without pay. Because he couldn't stand it, MARTINI returned to Indonesia through an agency called SALIM.

That the Convict received a profit of IDR 21,000,000,- from WALID for sending IDA ROSIDA and IDR 26,000,000,- for sending MARTINI after deducting operational costs for sending IDA ROSIDA and MARTINI and fees for sponsors and IDA ROSIDA and MARTINI, the Convict received a profit of IDR 12,000,000,-.

That the convict's actions violate the provisions of Article 4 in conjunction with Article 48 paragraph (1) of Law No. 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking in conjunction with Article 55 paragraph (1) 1 of the Criminal Code.

The Public Prosecutor in the Letter of Indictment Number: PDM-103/JKT.TIM/07/2019 demanded that the Panel of Judges at the East Jakarta District Court, Ordering the convict to pay restitution to:

- 1) Witness IDA ROSIDA BT ANWAR in the amount of IDR 171,360,000,- (one hundred and seventy one million three hundred and sixty thousand rupiah).
 - 2) Witness MARTINI Binti SUBAGIO in the amount of IDR 270,781,000,- (two hundred seventy million seven hundred eighty one thousand rupiah).
- Subsidiary for 3 (three) months imprisonment.

That the determination of the amount of restitution in the letter of demand is made based on LPSK Letter Number: R-557/1.5.2.HSKR/LPSK/07/2019 dated July 3, 2019 Regarding the Submission of a Restitution Application, which in essence states that witness IDA ROSIDA BT ANWAR suffered a loss of IDR 171,360,000,- and witness MARTINI Binti SUBAGIO suffered a loss of IDR 270,781,000,-.

However, in the court decision Number: 807/Pid.Sus/2019/PN.JKT.TIM the Panel of Judges at the East Jakarta District Court ordered the convict to pay restitution to the victim Ida Rosida Bt Anwar in the amount of IDR 25,000,000,- (twenty five million rupiah) and to the victim Martini Binti Subagio in the amount of IDR 25,000,000,- (twenty five million rupiah) and if the restitution is not paid then it is replaced with a substitute imprisonment for 3 (three) months.

There is a difference in the amount of restitution requested by the victim based on the LPSK calculation through the demands of the Public Prosecutor with the sentence to pay restitution decided by the panel of judges so that based on this it can be seen that there are obstacles that cause a difference between the amount of restitution demanded by the Public Prosecutor and the amount of restitution that must be paid by the Convict based on the court's decision.

In the court decision Number: 807/Pid.Sus/2019/PN.JKT.TIM the first obstacle encountered was that the payment of restitution was based on considerations in the form of a statement from the Convict alone, that the convict was able to provide restitution to witness IDA ROSIDA BT ANWAR worth IDR 3,000,000, and for witness MARTINI BT SUBAGIO the convict was unable to provide restitution because the convict had already covered the return ticket for witness MARTINI BT SUBAGIO from Libya to Indonesia amounting to IDR 12,000,000.

In the court decision Number: 807/Pid.Sus/2019/PN.JKT.TIM and the Letter of Indictment Number Reg. Case: PDM- 103/JKT.TIM/07/2019, facts regarding the actions of the public prosecutor to block the assets belonging to the Convict as regulated in Article 32 of Law No. 21/2007 concerning the Eradication of Criminal Acts of Human Trafficking were also not included.

The next obstacle encountered in the court decision Number: 807/Pid.Sus/2019/PN.JKT.TIM is that there is an option for the convict to replace the restitution payment sentence stipulated in the decision with a substitute imprisonment sentence of 3 (three) months. The replacement of the restitution payment sentence is basically not contrary to the provisions of applicable laws and regulations. Article 50 paragraph (4) of Law No. 21 of 2007 regulates:

If the perpetrator is unable to pay restitution, the perpetrator will be subject to a substitute prison sentence of a maximum of 1 (one) year.

In the case study, law enforcement officers still prioritize punishment as a form of retaliation that is in line with the absolute theory of punishment. Based on Muladi's opinion, punishment is considered as retaliation for mistakes that have been made so that it is oriented towards actions and lies in the occurrence of the crime itself. This theory emphasizes that sanctions in criminal law are imposed solely because people have committed a crime which is an absolute consequence that must exist as a retaliation for people who commit crimes so that sanctions aim to satisfy the demands of justice.

Ultimately, the sentencing regarding restitution payments remains entirely the Judge's authority, regardless of all efforts permitted by law that can be made by the Public Prosecutor to optimize restitution payments in human trafficking

cases. What the Public Prosecutor can do to ensure that victims of human trafficking receive restitution for the suffering they have experienced is to present the facts and efforts that have been made to ensure that the convict is able to pay the restitution requested by the victim based on LPSK calculations so that the judge is convinced that it is true that the amount of restitution requested by the victim is appropriate for the consequences caused by the Convict due to the human trafficking crime he committed.

3.3. Solutions to Obstacles Faced by Prosecutors in Implementing Restitution Payments in Human Trafficking Crime Cases Based on Court Decision Number: 807/Pid.Sus/2019/PN.JKT.TIM

The same consideration regarding the inability of the convict to pay restitution submitted by the victim based on LPSK calculations is also contained in the Letter of Claim Number Reg. Case: PDM- 103 / JKT.TIM / 07/2019 which was included by the public prosecutor in the legal analysis of the explanation of the element 'With the intent to be exploited outside the territory of the Republic of Indonesia'. Based on court decision Number: 807 / Pid.Sus / 2019 / PN.JKT.TIM and Letter of Claim Number Reg. Case: PDM- 103 / JKT.TIM / 07/2019, there is no explanation regarding how the statement of inability to pay restitution was obtained. It is not explained whether the Public Prosecutor has attempted to optimize restitution payments for victims by tracing the assets of the Convict, so that based on the wealth data obtained from tracing the assets of the Convict, information is obtained regarding the Convict's economic condition, thus a statement regarding the Convict's economic inability to be able or unable to pay the restitution requested by the victim can be obtained based on the Convict's actual economic condition.

Tracing the assets belonging to the convict is also closely related to the authority of the public prosecutor as regulated in Article 50 paragraph (3) of Law No. 21 of 2007. In the event that the warning letter as referred to in paragraph (2) is not implemented within 14 (fourteen) days, the court will order the public prosecutor to confiscate the convict's assets and auction these assets to pay restitution.

If the Public Prosecutor has conducted an asset search, then the Public Prosecutor's authority to confiscate the convict's assets based on a court order can be carried out. If the Court and Public Prosecutor apply this provision, then the Convict's statement regarding his inability to pay restitution submitted by the victims can be subject to coercive measures by confiscating and auctioning the convict's assets, then the money from the auction can be given to the victims as a form of restitution payment by the convict.

In the court decision Number: 807/Pid.Sus/2019/PN.JKT.TIM and the Letter of

Indictment Number Reg. Case: PDM- 103/JKT.TIM/07/2019, facts regarding the actions of the public prosecutor to block the assets belonging to the Convict as regulated in Article 32 of Law No. 21/2007 concerning the Eradication of the Crime of Human Trafficking were also not included. This is very important to do in handling human trafficking cases because it is related to the convict's ability to provide restitution to the victim. As explained, blocking assets is intended as a guarantee of recovery for losses incurred due to the crime of human trafficking committed by the perpetrator. In handling this case, if the public prosecutor blocks the assets belonging to the convict, there is a guarantee that the restitution submitted by the victims will be paid by the Convict.

The next obstacle encountered in the court decision Number: 807/Pid.Sus/2019/PN.JKT.TIM is that there is an option for the convict to replace the restitution payment sentence stipulated in the decision with a substitute imprisonment sentence of 3 (three) months. The replacement of the restitution payment sentence is basically not contrary to the provisions of applicable laws and regulations. Article 50 paragraph (4) of Law No. 21 of 2007 regulates:

If the perpetrator is unable to pay restitution, the perpetrator will be subject to a substitute prison sentence of a maximum of 1 (one) year.

The existence of the provision of a substitute imprisonment for 1 (one) year is not in line with the spirit of providing the fairest possible justice for victims of human trafficking, not only by giving corporal punishment or fines to the perpetrators of the crime but also by providing compensation for the suffering they have experienced, both material and immaterial. Associated with the option for the convict to replace the restitution payment sentence stipulated in the verdict with a substitute imprisonment sentence of 3 (three) months, it has an impact on the absence of coercive power to make the Convict pay the restitution that has been decided by the panel of judges. Law enforcement officers should dare to make breakthroughs by seeking restitution as a form of additional punishment that must be fulfilled by the perpetrators of the crime as a manifestation of a sense of justice for victims of human trafficking.

4. Conclusion

Based on the discussion that the author has presented above, the author can conclude that the Public Prosecutor has a role in optimizing restitution payments to victims of human trafficking. That the obstacles of the Public Prosecutor in implementing restitution payments in human trafficking cases based on Court Decision Number: 807/Pid.Sus/2019/PN.JKT.TIM, namely restitution payments are based only on the convict's ability, there is an option for the convict to replace the restitution payment sentence stipulated in the decision with a substitute imprisonment of 3 (three) months, the reluctance of law enforcement

officers, especially Public Prosecutors and Judges to apply the authority granted by Law in order to fulfill the rights of victims to obtain restitution. That the solution to these obstacles can be overcome by tracing the assets of the convict as regulated in Article 50 paragraph (3) of Law No. 21 of 2007 and law enforcement officers dare to make breakthroughs by seeking restitution as a form of additional punishment that must be fulfilled by the perpetrator of the crime as a manifestation of a sense of justice for victims of human trafficking.

The author's suggestion is that in the future the Indonesian Attorney General's Office can hold training/seminars related to the role of the Public Prosecutor in optimizing restitution payments to victims in human trafficking cases so that justice can be given to the victims not only through imprisonment for the perpetrators, but also in the form of compensation for all the suffering that arises and is experienced as a result of the crime of human trafficking.

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