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Topic: *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

Analysis from the Perspective of Victim Protection on the Effectiveness of Restitution Mechanisms for Victims of Human Trafficking

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Abstract. *Human trafficking is a form of transnational crime that constitutes a serious violation of human rights and human dignity. Victims of human trafficking suffer not only physical, psychological, social, and economic harm but also the deprivation of fundamental rights guaranteed by both national and international legal frameworks. One of the legal protection mechanisms available to victims is restitution, which aims to provide compensation for losses suffered by victims through the responsibility of offenders. Although restitution mechanisms have been regulated under various Indonesian laws and regulations, their implementation continues to face significant challenges, resulting in the inadequate fulfillment of victims' rights to recovery and redress. This situation raises concerns regarding the effectiveness of restitution mechanisms from a victim protection perspective. This study aims to analyze the effectiveness of restitution mechanisms for victims of human trafficking within the framework of victim protection, identify factors that hinder their implementation, and formulate a strengthened restitution model that is more responsive to the recovery of victims' rights. The research employs a normative juridical method using statutory, conceptual, case, and human rights approaches. Data were collected through library research involving legislation, court decisions, international legal instruments, and relevant academic literature. The data were analyzed qualitatively using descriptive-analytical, evaluative, and prescriptive methods. The findings indicate that restitution mechanisms have provided a legal basis for the recovery of human trafficking victims; however, their practical effectiveness remains limited. Obstacles such as insufficient understanding among law enforcement officials, difficulties in proving victims' losses, the economic incapacity of offenders, and weak enforcement mechanisms for restitution orders constitute major barriers to the fulfillment of victims' rights. Therefore, policy reforms and institutional strengthening are necessary to ensure the effective implementation of restitution as an integral part of a victim-centered and human rights-based protection system.*

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1. Introduction

Legal protection for individuals who are victims of crime is based on the understanding that victims are the parties who directly suffer as a result of the crime. However, in practice, there is still a significant difference in treatment between the protection provided to victims and the treatment of perpetrators of criminal acts. This situation has the potential to conflict with the principle of equality before the law, which guarantees that every citizen receives equal legal treatment. Therefore, an evaluation of the substance of applicable law is necessary to accommodate a broader range of interests, particularly the interests of victims.

As part of efforts to protect victims of crime by law, there are several fundamental principles that must be considered, including the principle of benefit, the principle of justice, the principle of balance, and the principle of legal certainty."¹Based on the theory of legal protection, it is explained that the primary goal of individuals in obtaining legal protection is to create order and stability stemming from the harmonization of fundamental legal values, namely legal certainty, utility, and justice. Although in practice these three values are often at odds with each other, efforts must be made to ensure that they are realized and implemented simultaneously.²

The legal protection provided to victims of human trafficking in obtaining restitution is interesting to study further, particularly from the perspective of legal certainty. It is important to examine how the restitution mechanism is implemented and the extent to which victims' rights are protected. Legal certainty is key to providing victims with a sense of security during the legal process and ensuring they can receive the restitution they deserve.³

Based on data collected by the Indonesian Human Trafficking Task Force (Satgas), there have been 864 reports of human trafficking cases. Of these reports, law enforcement has named 1,014 suspects. Furthermore, 2,710 victims have been rescued. The most dominant modus operandi is exploiting victims as illegal Indonesian migrant workers, with a total of 525 cases. Furthermore, human trafficking using the modus operandi of commercial sex workers (CSWs) was recorded in 283 cases, followed by child exploitation in 69 cases, and the involvement of

¹Dikdik M. Arief Mansur and Elisatris Gultom, *The Urgency of Protecting Crime Victims Between Norms and Reality*, Raja Grafindo Persada, Jakarta, 2007, p. 164

²Satijipto Raharjo, *Legal Studies*, PT. Citra Aditya Bakti, Bandung, 2000, p. 53.

³Kapa, Adrianus, "Juridical analysis of legal protection of victims' rights to restitution payments which are the responsibility of perpetrators of human trafficking" *Journal of Law*, 2023, p. 13.

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children as ship crew in 7 cases. In East Nusa Tenggara alone, 256 NTT residents have been recorded as victims of human trafficking since 2023.⁴

In addition, the lack of understanding among law enforcement officials regarding the urgency of restitution, limited legal access for victims, and the less than optimal role of the Witness and Victim Protection Agency (LPSK) are inhibiting factors.⁵

2. Research Methods

This research is a normative legal research (doctrinal research), that is, research that positions law as the norms, principles, and rules governing restitution mechanisms for victims of human trafficking. The research focuses on analyzing the effectiveness of restitution regulations in the Indonesian legal system and their compliance with the principles of victim protection and human rights. Normative legal research was chosen because the main objects of the research are laws and regulations, court decisions, legal doctrine, and national and international legal instruments that regulate the rights of victims to obtain restitution as a form of recovery for the losses they have experienced. This study uses a normative juridical approach, combining several relevant legal research approaches to examine the effectiveness of the restitution mechanism as an instrument for protecting and restoring the rights of victims of human trafficking. This approach is used to obtain a comprehensive, critical, and constructive analysis in order to develop a victim-centered restitution model. Data Source: Primary Legal Materials: Law No. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking (TPPO). Law No. 31 of 2014 (Amendment to Law No. 13). Criminal Procedure Code (KUHP). Supreme Court Regulation (Perma) No. 1 of 2022. PP No. 43 of 2017. Secondary Legal Materials: Legal Literature and Books. Expert Scientific Works. Analysis Method: This research uses a normative legal qualitative analysis method, focusing on: legal norms, legal principles, synchronization of rules, and the effectiveness of restitution regulations. However, it can be strengthened by: Empirical approach (optional / socio-legal) to see the implementation of restitution in the field.

3. Results and Discussion

Human trafficking is not only a crime against individuals, but also a violation of humanitarian values upheld by national and international legal systems. Its handling should not only focus on

⁴Accessed from the internet <https://databoks.katadata.co.id/datapublish/2023/09/26/korban-tpo-capai-2710-orang-pada-september-2023-inimodusnya>. June 19, 2026

⁵Zaky Alkazar Nasution, "Legal Protection for Women and Children Victims of Human Trafficking (Trafficking in Persons)," (Diponegoro University, 2008). P. 64

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imposing sanctions on perpetrators, but also on restoring victims' rights through legal protection, rehabilitation, and appropriate restitution and compensation.

The law has three primary objectives that underpin its existence: justice, benefit, and legal certainty. These three objectives are not only directed at perpetrators of crimes but must also address and guarantee the rights of victims of crimes. Therefore, providing legal protection to victims is not only a requirement within the national legal system but also a crucial issue in international law.

Until now, the suffering of crime victims has often been considered merely a supporting instrument in proving cases and in the process of sentencing perpetrators. The offender-oriented perspective of criminal law tends to ignore the full extent of the victim's suffering. Psychologically, however, crime victims often experience severe emotional distress, such as stress, trauma, depression, and prolonged feelings of fear and insecurity. Victims often isolate themselves from their social environment, distance themselves from their families, and even lose opportunities for social, moral, and spiritual development.

This situation demonstrates that victims experience not only physical or material suffering, but also profound psychological and social suffering. Therefore, legal protection for victims is an urgent need that must be guaranteed by the state through adequate legal instruments and effective implementation.

Legal protection for victims must encompass various aspects, including: 1. Recognition of victims' rights in the judicial process; 2. Access to restitution or compensation for losses suffered; 3. Physical and psychological recovery through health and rehabilitation services; 4. Protection against threats or intimidation during the legal process; 5. Empowerment of victims to return to normal life. Thus, the law must be positioned as an instrument that not only punishes perpetrators of crimes, but also as a tool to restore victims and restore their balance in society, as a form of substantive justice.

Law number 21 of 2007 defines restitution as the payment of compensation imposed on the perpetrator based on a decision that has permanent legal force, including material and/or immaterial losses of the victim or their heirs as stated in Article 1 number 13, and, in Article 48, affirms the right of every victim or their heirs to receive restitution. The restitution order must be included simultaneously in the decision of the TPPO case, implemented from the first level decision, can be deposited in the court, and must be realized 14 days after the decision has permanent legal force. If the perpetrator is acquitted at the appeal/cassation level, then the

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deposit is returned. This provision shows the design of protection based on due processes as well as certainty of the time of its implementation.

Supreme Court Regulation (Perma) No. 1 of 2022 operationalizes the right to restitution through its forms, procedures, and applications. Restitution covers loss of wealth/income, material/immaterial losses due to suffering directly related to medical and psychological costs, and legal costs, including basic transportation, legal representation, and other expenses.

This regulation also stipulates formal requirements for applications, including the identity of the applicant or victim, a description of the crime, the identity of the defendant, a description of the loss, the amount of restitution, and supporting evidence. Legal protection for victims of human trafficking related to restitution is regulated in Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, and provisions regarding the procedures for applying for and granting restitution are regulated in Supreme Court Regulation Number 1 of 2022.

The existence of clear trade laws, specifically Article 48 of Law No. 21 of 2007 and Supreme Court Regulation No. 1 of 2022, provides hope for victims of legal certainty and the ability to obtain their rights. Decisions that do not include restitution create substantive injustice for victims. Justice not only punishes the perpetrator but also restores the victim. Decisions that accommodate restitution provide tangible benefits in the form of economic, psychological, and physical recovery for victims, while also strengthening public trust in the judiciary.

4. Conclusion

Legal protection for victims of human trafficking (TPPO) in obtaining restitution is essentially guaranteed normatively through Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking and Supreme Court Regulation Number 1 of 2022 concerning the Procedures for Applying for and Granting Restitution. However, its implementation still faces many obstacles, including a lack of consistency among judges in issuing restitution orders, limited law enforcement officers in demanding restitution, and the absence of an effective mechanism for perpetrators who are unable to pay restitution. This indicates that legal certainty is formal, but has not yet been fully realized substantively. The ratio decidendi of judges in TIP cases shows variation in the application of restitution decisions. Some decisions include restitution as mandated by law, but others only impose the principal penalty without restitution. This difference results in inconsistent legal protection for victims. Judges in their decisions are required not only to uphold the law textually, but also to pay attention to the juridical, sociological, and philosophical aspects, and to prioritize the values of legal certainty, justice, and

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expediency as stated by Gustav Radbruch. From the analyzed decisions, it is clear that restitution is more often focused on material losses, while the psychological and social losses of victims have not been fully considered. This results in less than optimal victim recovery, so that the goal of restitution as a form of legal protection has not been fully achieved. Based on the conclusions and explanations explained in the previous chapters, the author suggests the following: To ensure legal certainty, every law enforcement officer is required to socialize the right to restitution to victims of human trafficking. Judges are also expected to be consistent in including restitution in human trafficking decisions, and law enforcement officers must increase their capacity in submitting and calculating restitution. Require judges to consider restitution in decisions, as regulated in PERMA No. 1 of 2022. Increase the capacity of prosecutors, judges, and investigators through special training related to victims' rights and restitution mechanisms. Strengthening the role of the LPSK (Lembaga Penitentiary Agency) and legal aid to help victims calculate and apply for restitution. Establishing a restitution advance fund so the state can guarantee restitution payments to victims when perpetrators are unable to pay. Internal oversight of the Supreme Court to ensure the comprehensive implementation of PERMA No. 1 of 2022. Judges in ratio decidendi should balance legal, sociological, and philosophical aspects by emphasizing justice, legal certainty, and expediency so that decisions not only punish perpetrators but also provide real restitution for victims.

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