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

Analysis of the Study of Victims' Rights to Compensation and Restitution in Unlawful Acts in Human Trafficking Cases

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Abstract. *Human trafficking is a serious crime that not only violates human rights but also causes physical, psychological, social, and economic harm to victims. From the perspective of victim protection, the right to compensation and restitution constitute essential mechanisms for restoring victims' conditions and promoting restorative justice. However, in practice, the implementation of victims' rights to compensation and restitution continues to face various normative and practical challenges, including weak enforcement mechanisms, offenders' inability to fulfill restitution obligations, and the limited role of the state in ensuring the realization of victims' rights. This study aims to analyze the legal framework governing victims' rights to compensation and restitution in human trafficking cases, evaluate the effectiveness of its implementation, and formulate a more responsive legal protection model that addresses victims' needs. The research employs a normative legal method with statutory, conceptual, and case approaches. Data are collected through library research involving legislation, court decisions, legal literature, academic journals, and international instruments related to the protection of trafficking victims. The findings reveal that although the rights to compensation and restitution have been recognized in various legal instruments, their implementation has not yet provided optimal protection for victims. Therefore, stronger regulatory frameworks, improved enforcement mechanisms, and enhanced state responsibility are necessary to ensure the effective and equitable fulfillment of victims' rights.*

Keywords: *Compensation; Justice; Legal; Protection; Restitution.*

1. Introduction

Legal protection for individuals who are victims of crime is based on the understanding that victims are the parties who directly experience suffering due to criminal acts. However, in practice, there is still a quite striking difference in treatment between the protection provided

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to victims and the treatment of perpetrators of criminal acts. This condition 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 the applicable law is necessary to accommodate the aspect of interests that cover a broader scope, especially the interests of victims. As part of the legal protection efforts for victims of crime, 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.¹

Based 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

The most dominant modus operandi is exploiting victims as illegal Indonesian migrant workers, with a total of 525 cases. Furthermore, human trafficking using commercial sex workers (CSWs) was recorded in 283 cases, followed by child exploitation in 69 cases, and the involvement of children as ship crew members 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

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.

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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2. Research Methods

This research is a normative legal study focusing on the legal norms governing victims' rights to compensation and restitution in human trafficking cases. It aims to analyze the alignment between legal regulations, implementation, and victims' protection needs from the perspective of justice, human rights, and victim recovery. This research uses a normative legal approach with a combination of several legal approaches (doctrinal approaches) that are analytical, evaluative, and prescriptive. Data Source: Primary Legal Materials. The 1945 Constitution of the Republic of Indonesia. Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking. Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims. Law Number 39 of 1999 concerning Human Rights. Criminal Code (KUHP). Criminal Procedure Code (KUHP). Government Regulation Number 43 of 2017 concerning the Implementation of Restitution for Children Who Are Victims of Crime. Technical regulations and policies governing compensation and restitution for victims of crime. Secondary Legal Materials: Legal Literature and Books. Scientific Works. Expert Opinions. This research uses qualitative legal analysis with a normative-analytical approach combined with socio-legal analysis (normative-empirical), which is evaluative, interpretative, and prescriptive-reconstructive.

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 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 crime. Therefore, providing legal protection to victims is not only a requirement of the national legal system but also a crucial issue in international law. To date, the suffering of victims of crime has often been viewed merely as 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, victims of crime 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.

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

The existence of clear trade laws, specifically Article 48 of Law Number 21 of 2007 and Supreme Court Regulation Number 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 strengthening public trust in the judiciary. Conversely, if restitution is ignored, the legal benefits are felt only by the state and not by the victims, for example through fines.

However, this regulation still has a number of legal weaknesses, including: 1. The mechanism for submitting and determining restitution is not regulated in detail in the body of the article, but only in the explanation, 2. There are no technical guidelines regarding the calculation of the amount of restitution, 3. The phrase "can be deposited" in Article 48 paragraph (5) is voluntary, not binding, so it does not provide legal certainty, 4. There are no provisions for sanctions for law enforcement officers who ignore the obligation to submit restitution.

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These weaknesses demonstrate that legal protection for victims of human trafficking is not yet fully effective and comprehensive, as it still relies on law enforcement initiatives and is not supported by clear implementing instruments. These provisions demonstrate that the law recognizes that victims should not simply be objects in the judicial process but rather should be positioned as legal subjects with rights guaranteed by the state.

The Importance of Ratio Decidendi for the Legitimacy of a Decision. A court decision is not simply a statement of the judge's will; it must possess legal, scientific, and moral legitimacy. This legitimacy lies in the ratio decidendi, because without a detailed explanation of the legal reasoning, a decision will appear arbitrary and irresponsible. Clear and structured legal reasoning ensures that the judge acts based on law and facts, not on personal subjectivity. This is crucial so that the public, academics, and other involved parties can understand the legal logic underlying a decision.

From this description, it is clear that legal certainty, consistency, and predictability are not standalone concepts, but rather interdependent. Legal certainty provides a clear foundation for norms, consistency ensures that those norms are applied uniformly, and predictability is the end result felt by society. In the context of protecting victims of human trafficking, these three values play a vital role. Without certainty, victims' rights exist only on paper; without consistency, victims are treated differently even though they have experienced similar suffering; and without predictability, society loses trust in the law.

Thus, strengthening judges' decisions through a clear ratio decidendi, maintaining consistency in jurisprudence, and guaranteeing an executable restitution mechanism are concrete steps to present laws that are not only normative, but also functional in protecting victims and maintaining public trust in judicial institutions.

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

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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 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 the victim 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. 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.

Requiring judges to consider restitution in their verdicts, as stipulated in Supreme Court Regulation No. 1 of 2022. Improving the capacity of prosecutors, judges, and investigators through specialized training on 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.

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