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

Analysis of the Study Between Victim Protection and Legal Certainty Regarding the Model of Evidence in Prosecuting Human Trafficking Crimes

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Abstract. *Human trafficking is a serious crime that constitutes a violation of human rights and causes extensive physical, psychological, social, and economic harm to victims. In criminal justice proceedings, evidentiary mechanisms play a crucial role in ensuring the successful prosecution of human trafficking offenders. However, the organized, transnational, and covert nature of human trafficking often creates a dilemma between victim protection and legal certainty. On the one hand, victims require evidentiary procedures that safeguard their rights, security, and dignity throughout the judicial process. On the other hand, the principles of due process of law and legal certainty require that evidence be assessed objectively, fairly, and in accordance with applicable legal standards. This study aims to analyze evidentiary models in the prosecution of human trafficking crimes, examine the balance between victim protection and legal certainty, and formulate an ideal evidentiary framework within the criminal justice system. The research employs a normative legal method using statutory, conceptual, case, and comparative approaches. Research data are obtained through library research involving legislation, court decisions, international legal instruments, academic literature, and studies related to human trafficking. The findings indicate that the existing evidentiary model continues to face significant challenges, particularly in protecting victims as key witnesses and in proving elements of exploitation. Therefore, it is necessary to strengthen evidentiary mechanisms that are victim-oriented while maintaining legal certainty and protecting the rights of the accused, thereby ensuring a fair and effective criminal justice process in human trafficking cases.*

Keywords: *Evidence; Legal; Prosecution; Protection; Trafficking.*

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1. Introduction

The National Commission on Violence Against Women (Komnas Perempuan) has again recorded that in 2020 there were 406,178 cases of violence against women, including 153 cases of human trafficking.¹ This clearly contradicts the values of humanity as mandated by the second principle of Pancasila and the fourth paragraph of the Preamble to the Constitution of the Republic of Indonesia. Human trafficking has contributed significantly to the destruction of the future of the nation's future generations. This is because human trafficking can cause victims to suffer various illnesses and experience extraordinary trauma.

The increasing number of human trafficking cases against women is also occurring in Semarang. According to the Legal Resource Center for Gender Justice and Human Rights (LRC-KJHAM), 10 cases of human trafficking were recorded in 2019. The LRC-KJHAM stated that the highest number of human trafficking cases occurred in areas with low economic levels.²

This dilemmatic situation is further exacerbated by the paradigm of the criminal justice system which only focuses on revenge against the perpetrators through existing criminal sanctions, while the matter of restoring the rights and conditions of victims of human trafficking has never been properly addressed.

Based on the explanation above, it can be seen that in its development the implementation of restitution³ It is an alternative to protect and restore the rights of victims injured by human trafficking. Restitution has been clearly regulated in the United Nations Declaration on the Prosecution and Assistance of Crime Victims, in point 4, part 1, of the General Principles.⁴

Meanwhile, the regulation of restitution in national legal regulations is clearly regulated in Law Number 31 of 2014. Article 1 number 11 of Law Number 31 of 2014 states that "restitution is compensation given to the victim or his family by the perpetrator or a third party."

In its development, the implementation of restitution for the recovery of victims of human trafficking has not been effective, this is because Article 7 of the Republic of Indonesia

¹National Commission on Women, op, cit

² <https://serat.id/2019/07/25/kasus-kekerasan-seksual-di-jateng-masih-tinggi/>, accessed on June 19, 2026

³Restitution is the restoration of the rights of victims of a criminal act in society. Galeway states that the purpose of restitution is to restore the losses suffered by victims due to a crime, namely by providing appropriate sanctions to the convict and preventing retaliation against the victim. In Indonesia, the restitution system adopted is a procedural rights approach, this is clearly seen in Law Number 3 of 2016 and Government Regulations.

⁴Romli Atmasasmita, Writing a Scientific Paper on the Problem of Compensation for Victims of Crime, National Legal Development Agency, Department of Justice, Jakarta, 1992, p. 4

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Government Regulation Number 43 of 2017 still contains administrative requirements that still make things difficult for victims, so that the authorities should be able to facilitate the fulfillment of administrative requirements as regulated in Article 7 of the Regulation.

Government of the Republic of Indonesia Number 43 of 2017. In addition, perpetrators of criminal acts are reluctant to pay restitution on the grounds of economic inability, this becomes even more unfair because the perpetrator's inability to pay restitution is only replaced with a subsidiary sentence in the form of imprisonment for 2 to 3 months. Meanwhile, according to Law Number 21 of 2007, the substitute for restitution compensation for victims of human trafficking is only replaced with a prison sentence of 1 year. In addition, the time to receive restitution by child victims of human trafficking is also quite long considering the long judicial process, not to mention the perpetrators who are in detention or sentenced to death which can then be a reason for not paying restitution.

2. Research Methods

This research is a normative legal study that aims to examine and analyze the legal norms governing the evidentiary model in the prosecution of human trafficking crimes and the relationship between victim protection and legal certainty in the criminal justice process. 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, the Criminal Procedure Code (KUHP), the Criminal Code (KUHP), Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, Law Number 31 of 2014 concerning the Protection of Witnesses and Victims, Law Number 39 of 1999 concerning Human Rights, Supreme Court Regulation Number 1 of 2022 concerning Procedures for Settling Requests for the Granting of Restitution and Compensation to Victims of Crime. Secondary Legal Materials: Legal Literature and Books, Scientific Works, Expert Opinions. Research Analysis Method 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.

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

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Supreme Court Regulation (Perma) Number 1 of 2022 operationalizes the right to restitution through forms, procedures, and applications. The forms of restitution include loss of wealth/income, material/immaterial losses due to suffering directly related to medical and psychological treatment costs, and legal costs, including basic transportation, legal representation, and other expenses. This Perma also establishes 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.

Although the normative provisions are clear, their implementation still faces various obstacles. For example, many victims are still unaware of their rights, law enforcement officers are inconsistent in demanding restitution, and the mechanism for executing restitution payments is often ineffective because perpetrators are unable to pay restitution, so many are replaced with prison sentences. However, legal certainty alone is not enough. Certainty must be accompanied by consistent application. Consistency means that legal rules are not applied arbitrarily or discriminatorily. In Indonesian legal doctrine, consistency is often associated with the permanent jurisprudence of the Supreme Court, which, while not binding by stare decisis as in the common law system, still serves as a guideline so that similar decisions produce similar legal principles. Paulus E. Lotulung emphasized that the quality of decisions depends heavily on their consistency; if decisions vary too much without a clear basis, the legitimacy of the judicial institution will be weakened.

In practice, particularly in cases of human trafficking (TPPO), consistency remains a serious challenge. Analysis of court decisions reveals disparities: some judges award full restitution to victims, others reject it on the grounds that the damages have not been definitively proven, and some even replace it with a substitute prison sentence if the perpetrator is unable to pay. This variation demonstrates inconsistency in the application of the law, even though the restitution mechanism is clearly regulated in Law No. 21 of 2007 concerning the Eradication of TPPO and is reinforced by the Supreme Court Regulation concerning the procedures for victim restitution.

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.

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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 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 consider 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 victims are not fully considered. This results in less than optimal victim recovery, so that the goal of restitution as a form of legal protection is not 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 consistently include restitution in human trafficking decisions, and law enforcement officers must increase their capacity to submit and calculate restitution. Require judges to consider restitution in decisions, as stipulated in PERMA No. 1 of 2022. Increase the capacity of prosecutors, judges, and investigators through special training related to victims' rights and restitution mechanisms. Strengthen the role of the LPSK (Lembaga Penitentiary Agency) and legal aid, to help victims calculate and submit restitution. Establishment of a restitution bridging 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 the ratio decidendi should balance the legal, sociological, and philosophical aspects by emphasizing justice, legal certainty, and expediency so that decisions not only punish perpetrators but also provide real reparation for victims.

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5. References

Komisi Nasional Perempuan.

Restitusi adalah pemulihan hak-hak korban dari adanya suatu perbuatan tindak pidana di masyarakat. Galeway menyatakan bahwa tujuan dari restitusi adalah memulihkan kerugian yang diderita oleh korban akibat adanya suatu tindak pidana yaitu dengan cara memberikan sanksi yang tepat kepada terpidana dan mencegah terjadinya tindakan balasan terhadap korban. Di Indonesia sistem restitusi yang dianut adalah sistem pendekatan hak-hak prosedural, hal tersebut dengan tegas terlihat pada Undang-Undang Nomer 3 tahun 2016 dan Peraturan Pemerintah

Romli Atmasasmita, *Penulisan Karya Ilmiah Tentang Masalah Santunan Terhadap Korban Tindak Pidana*, Badan Pembinaan Hukum Nasional, Departemen Kehakiman, Jakarta, 1992.

<https://serat.id/2019/07/25/kasus-kekerasan-seksual-di-jateng-masih-tinggi/>, Accessed on 19 June 2026