

LEGAL REFORM PROTECTION OF THE RIGHTS AND CONDITIONS OF VICTIMS OF THE CRIME OF TRAFFICKING IN PEOPLE THROUGH THE IMPLEMENTATION OF RESTITUTIONS

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Abstract

The restoration of the rights and conditions of victims of trafficking in persons has not yet been carried out properly. This paper aims to further analyze the protection of victims of the crime of trafficking in persons who have not been able to accommodate the rights and losses of victims. The method is non-doctrinal with a socio-legal approach. Based on the analysis of the existing findings, it is clear that the implementation of the protection of the rights of victims of trafficking in persons has not been running effectively due to unclear restitution arrangements, both in terms of magnitude and related to criminal arrangements for replacement of restitution. The Crime of Trafficking in Persons is a crime against humanity that can harm a person both materially and physically and mentally. In addition, it is necessary for victims of trafficking in persons to obtain protection of their rights, which in this case can be done through restitution. In practice, the amount of restitution is not clearly defined. In addition, the existence of a criminal substitute for compensation, which in this case includes restitution, makes the implementation of restitution constrained for victims of trafficking in persons. Such conditions clearly contradict the First Precepts, Second Precepts, and Fifth Precepts of Pancasila, as well as the Fourth Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia as the purpose of the state, as well as Article 28D paragraph (1) and Article 28G Paragraph (1) and Paragraph (2) of the 1945 Constitution of the Republic of Indonesia as the basic foundation related to the human rights of victims of human trafficking, and as a legal ratio in law in Indonesia. The update in this paper is to contribute thoughts regarding the importance of adding restitution as an additional crime in the provisions regarding criminal sanctions against perpetrators of criminal acts of trafficking in persons in Indonesia.

Keywords: (Analysis, Victims, Trafficking in Persons, Juridical)

A. Introduction

In addition to international instruments, human rights are also regulated in national instruments consisting of:

1. The 1945 Constitution of the Republic of Indonesia;
2. Law Number 68 of 1958 concerning Ratification of the Convention on Women's Political Rights;
3. Law of the Republic of Indonesia Number 7 of 1984 concerning Ratification of the Convention Regarding the Elimination of All Forms of Discrimination Against Women;
4. Law Number 39 of 1999 concerning Human Rights;
5. Law Number 23 of 2004 concerning the Elimination of Domestic Violence;
6. Law Number 11 of 2005 concerning Ratification of the International Covenant on Economic, Social and Cultural Rights;
7. Law Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights;
8. Law Number 21 of 2007 concerning the Eradication of Trafficking in Persons;
9. Presidential Instruction Number 9 of 2000 concerning Gender Mainstreaming in National Development;
10. Presidential Regulation Number 23 of 2011 concerning the 2011-2014 Human Rights Action Plan;
11. Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons; and
12. Government Regulation Number 9 of 2008 concerning Procedures and Mechanisms for Integrated Services for Witnesses and/or Victims of the Crime of Trafficking in Persons.

Although it already has international instruments and national instruments in upholding human rights, however, the cases of criminal acts of trafficking in persons occurring in this country are actually increasing day by day. The reason is that in 2018 there were 177 victims of human trafficking in this country,¹

Furthermore, KOMNAS PEREMPUAN CATAHU again noted that in 2020 there were 406,178 cases of violence against women or women, including 153 cases of human trafficking.² This clearly contradicts human values as mandated by the second principle of Pancasila and the fourth paragraph of the Preamble to the Constitution of the Republic of Indonesia. Trafficking in persons has contributed to the destruction of the future of the nation's future generations. This is because human trafficking can cause trafficking victims to suffer from various diseases and experience extraordinary trauma.

Problems related to the increasing number of trafficking in persons against women also occur in the city of Semarang. According to the Legal Resource Center for Gender Justice and Human Rights (LRC-KJHAM) in 2019, there have been 10 cases of trafficking in persons, according to the Legal Resource Center for Gender Justice and Human Rights. LRC-KJHAM stated that the highest number of human trafficking cases occurred in areas with weak economic levels of society.³

This dilemmatic situation is further exacerbated by the existence of a criminal justice system paradigm that only starts with revenge against the perpetrators through the provisions of existing criminal sanctions, while the restoration of the rights and conditions of victims of trafficking in persons has never been considered properly.

B. Method Used

The type of research used in this study is a non-doctrinal legal research type. Non-doctrinal research is research that uses methods taken from other disciplines to produce empirical data that answers research questions.⁴ Approach using socio-legal, socio-legal approach is an approach with a philosophical, historical, sociological, and juridical perspective.⁵ The specification in this paper is descriptive analytical. Methods of collecting data by means of field studies and literature studies. Methods of data analysis using qualitative methods.

C. Discussion

1. Implementation of the Current Law for the Protection of Victims of Trafficking in Persons

Today, the issue of human rights has become a global issue in addition to democracy and environmental issues, and has even become a demand that really needs serious attention for the state to respect, protect, defend and guarantee the human rights of citizens and residents without discrimination. - Law Number 39 of 1999 states that human rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld, and protected by the state, law, government and everyone. for the honor and protection of human dignity.⁶

The criminal act of trafficking in persons is a violation of human rights, as stated in Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons in considering letter b, that trafficking in persons, especially women and children, is an act that is contrary to human dignity. and

1 Retno Listyarti in nasional.tempco, *KPAI: Pelanggaran Hak Anak Di Tahun 2018 Didominasi Tindak Kekerasan*, Downloaded On January 12, 2021.

2 *Loc, cit*

3 <https://serat.id/2019/07/25/kasus-kekerasan-seksual-di-jateng-masih-tinggi/>, On 21 April 2020

4 Salim Ibrahim Ali, Zuryati Mohamed Yusoff, Zainal Amin Ayub, Legal Research of Doctrinal and Non-Doctrinal, *International Journal of Trend in Research and Development*, Volume 4(1), 2017, page. 494.

5 *Ibid*, hlm. 7

6 Mahrus Ali dan Syarif Nurhidayat, *Penyelesaian Pelanggaran HAM Berat In Court System & Out Court System*, Gramata Publishing, Jakarta, 2011, hlm. 7.

violates human rights, so it must be eradicated. Furthermore, letter c states that trafficking in persons has spread in the form of organized and unorganized crime networks, both international and domestic, so that it becomes a threat to society, the nation and the state, as well as to the norms of life based on respect for human rights.⁷

In line with this, legal protection for the community can be achieved properly if it is carried out with integrated and effective law enforcement. Legal protection or law enforcement is the same as law enforcement against criminal acts of trafficking in persons or human trafficking. Law enforcement regulated in the laws and regulations of the criminal act of trafficking in persons in Indonesia is carried out by means of punishment in the form of imprisonment, confinement, fines, and restitution.⁸

Other legal protection is the rehabilitation of victims, both medically, psychologically and socially, repatriation and integration that must be carried out by the state, especially for victims who experience physical, psychological, and social suffering as a result of the crime of trafficking in persons. This law also stipulates provisions regarding the prevention and handling of victims of the crime of trafficking in persons as the responsibility of the government, local governments, communities, and families, as well as the establishment of a task force to realize integrated steps in the implementation of prevention and handling of trafficking in persons.

Increased protection for victims of trafficking in persons is also implemented by increasing the accessibility of services through the establishment of Integrated Service Centers in public hospitals owned by the central and provincial governments, and districts/cities as well as central police hospitals and Bhayangkara hospitals in the regions. Special police service rooms managed by female police officers have been added to the number which now amounts to 226 units in 26 regional (provincial) police forces and will continue to be expanded to other regional police and resort police (districts/municipalities) throughout Indonesia. In addition, more and more non-governmental organizations and community organizations are establishing women's crisis centers, drop-in centers, or shelters, now there are 23 units spread across 15 provinces. In addition, at least 20 units of children center were established for refugees in collaboration with UNICEF and the Ministry of Social Affairs.

2. Juridical Analysis of the Current Protection of Victims of Trafficking in Persons

In its development, the protection of victims of trafficking in victims has not been able to realize justice. This can be seen in the regulation of restitution in Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons. Regarding restitution in Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons, it is regulated in Articles 48 to 50.

Article 48

- (1) Every victim of the criminal act of trafficking in persons or their heirs has the right to obtain restitution.
- (2) The restitution as referred to in paragraph (1) shall be in the form of compensation for:
 - a. loss of wealth or income;

⁷ Sarwadi dan Bambang Tri Bawono, Restorative Justice Approach in Diversion System for Settlement of Criminal Cases for Children in Indonesia, *Jurnal Daulat Hukum* Volume 3 Issue 4, December 2020, page. 377-400.

⁸ Ibnu Suka, Gunarto, dan Umar Ma'ruf, Peran Dan Tanggung Jawab Polri Sebagai Penegak Hukum Dalam Melaksanakan Restorative Justice Untuk Keadilan Dan Kemanfaatan Masyarakat, *Jurnal Hukum Khaira Ummah* Vol. 13. No. 1 Maret 2018, page. 115-116.

- b. suffering;
 - c. costs for medical and/or psychological treatment measures; and/or
 - d. other losses suffered by the victim as a result of trafficking in persons.
- (3) The restitution is given and included at the same time in the court's decision regarding the criminal act of trafficking in persons.
 - (4) The granting of restitution as referred to in paragraph (1) shall be implemented since the decision of the first instance court is rendered.
 - (5) The restitution as referred to in paragraph (4) may be deposited in advance at the court where the case was decided.
 - (6) Restitution shall be granted within 14 (fourteen) days as of the notification of the decision which has obtained permanent legal force.
 - (7) In the event that the perpetrator is acquitted by the court of appeal or cassation, the judge shall order in his decision that the restitution money deposited be returned to the person concerned.

Article 49

- (1) The implementation of the granting of restitution is reported to the head of the court that decides the case, accompanied by evidence of the implementation of the granting of the restitution.
- (2) After the chairman of the court receives the evidence as referred to in paragraph (1), the chairman of the court announces the implementation on the notice board of the court concerned.
- (3) A copy of the proof of implementation of the granting of restitution as referred to in paragraph (1) shall be submitted by the court to the victim or his/her heirs.

Article 50

- (1) In the event that the provision of restitution to the victim is not fulfilled beyond the time limit as referred to in Article 48 paragraph (6), the victim or his/her heirs shall notify the court.
- (2) The court as referred to in paragraph (1) shall issue a written warning letter to the giver of restitution, to immediately fulfill the obligation to provide restitution to the victim or his heirs.
- (3) In the event that the warning letter as referred to in paragraph (2) is not executed within 14 (fourteen) days, the court orders the public prosecutor to confiscate the assets of the convict and auction the assets for restitution.
- (4) If the perpetrator is unable to pay the restitution, the perpetrator is subject to a maximum imprisonment of 1 (one) year.

Based on the explanation above, it can be seen that in its development the implementation of restitution⁹ has become an alternative in an effort to protect and restore the rights of victims who have been injured as a result of the criminal act of Trafficking in Persons. Regarding restitution in its development, it has been clearly regulated in the United Nations Declaration on the Prosecution and Assistance of

9 Restitution is the restoration of the rights of the victim from the existence of a criminal act in the community. Galeway stated that the purpose of restitution is to recover the losses suffered by the victim as a result of a criminal act, 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 No. 31 of 2016 and Government Regulation No. 44 of 2008. The weakness of this restitution system is that the juridical rights of victims are difficult to determine due to non-compliance. The clear separation between the victim's personal interests and the public interest, and the next weakness is that the restitution system adopted in Indonesia tends to be easy to abuse. See: Ahmad Sofyan, Giving Restitution to Victims of Criminal Acts in the Indonesian Criminal Justice System, Accessed Through business-law.binus.ac.id, On 12 May 2021.

Crime Victims in item 4 part 1 of the General Principles.¹⁰

Meanwhile, regarding the regulation of restitution in national legal regulations, it is clearly regulated in Law Number 31 of 2014. In Article 1 number 11 of Law Number 31 of 2014 it is stated that “restitution is compensation given to victims or their families by perpetrators or other parties. third.” Furthermore, Article 7A number 1 of Law Number 31 of 2014 states that:

Victims of criminal acts are entitled to restitution in the form of:

- a. compensation for loss of property or income;
- b. compensation for losses caused by suffering directly related as a result of a criminal act; and/or
- c. reimbursement of medical and/or psychological treatment costs.

Furthermore, Article 3 of the Government Regulation of the Republic of Indonesia Number 43 of 2017 concerning the Implementation of Restitution for Children Who Become Victims of Crime states that:

Restitution for children who are victims of criminal acts in the form of:

- a. compensation for loss of property;
- b. compensation for suffering as a result of not being criminal; and/or
- c. reimbursement of medical and/or psychological treatment costs.

In its development, the implementation of restitution for the recovery of victims of trafficking in persons has not been effective, this is because Article 7 of the Government Regulation of the Republic of Indonesia Number 43 of 2017 still contains administrative requirements that still make it difficult for victims, so that the competent authorities should be able to facilitate the fulfillment of administrative requirements as regulated in Article 7 Government Regulation of the Republic of Indonesia Number 43 of 2017. In addition, the perpetrators of criminal acts are reluctant to pay restitution on the grounds of economic incapacity, it becomes even more unfair because the inability of the perpetrator to pay restitution is only replaced with a subsidiary punishment in the form of imprisonment for 2 to 3 months. Meanwhile, according to Law Number 21 Number 2007, the substitute for criminal compensation for restitution for victims of trafficking in persons is only replaced with 1 year¹¹ imprisonment. In addition, the time for receiving restitution by child victims of trafficking in persons is also quite long considering the long judicial process, not to mention the perpetrators who are in detention or subject to the death penalty which can then be an excuse for not doing restitution.¹²

Then in 2018 the government issued Government Regulation Number 7 of 2018 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims. However, in its development the implementation of compensation as another alternative to restitution is also not easy, this is because there is no institution appointed in the Government Regulation to interpret the amount of loss suffered by the victim, besides that it has not been clearly regulated which state institution has the authority to distribute compensation from the victim. country to victims of trafficking in persons, espe-

10 Romli Atmasasmita, *Penulisan Karya Ilmiah Tentang Masalah Santunan Terhadap Korban Tindak Pidana*, Badan Pembinaan Hukum Nasional, Departemen Kehakiman, Jakarta, 1992, page 4.

11 Ragil Tri Wibowo dan Akhmad Khisni, Restorative Justice in Application for Crime Investigation on Property, *Jurnal Daulat Hukum* Volume 1 No. 2 June 2018, page. 555-556.

12 C.Kamea dan Herlien, Penegakan Hukum Pidana Terhadap Kejahatan Perdagangan Orang According to Law Number 21 Tahun 2007, *Lex Crimen*, V, No. 2, 2016, hlm. 126–32.

ciallywomen.¹³ In addition, the administrative requirements for submitting a request for compensation by the victim are so complicated that it will also become a problem for the victim. In the existing explanation, it is clear that the legal umbrella regarding the restoration of the rights and conditions of victims of trafficking in persons is not yet clear in terms of its implementation, while regarding the restoration of conditions and rights of victims of the crime of trafficking in persons, it is specifically regulated for child victims as stated in Article 3 of the Government Regulation of the Republic of Indonesia. Number 43 of 2017 concerning the Implementation of Restitution for Victims of the Crime of Trafficking in Persons. This situation is getting worse with the absence of regional formulations related to the restoration of the rights and conditions of victims both materially and immaterially, this clearly also has an impact on the lack of effectiveness in eradicating criminal acts of people in various regions. In addition, most judicial decisions only focus on elements in the law relating to the criminal act of trafficking in persons, not specifically on the law on eradicating the crime of trafficking in persons. This can be seen in the criminal case of trafficking in persons in Semarang City with Case Number 49/Pid.Sus/2018/PN SMG. In case No. 49/Pid.Sus/2018/PN SMG, the judge decided that the defendant was acquitted of all lawsuits because the judge only saw that the defendant's actions did not sufficiently meet the legal elements.

Article 103 letter E of Law no. 39 of 2004 concerning the Placement and Protection of Indonesian Migrant Workers Abroad, not based on the elements regulated in Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons. This is very unfair considering the consequences of trafficking in persons can result in physical and psychological losses. Until now, it cannot be said that compensation and restitution can recover psychologically from victims of trafficking in persons. This is because psychological violence can have a short impact or a long impact.¹⁴ The short impact is in the form of endangering the safety of the victim, damage to the family structure, and mental and mental disorders. The trauma and experience of being a victim of a criminal act of trafficking in persons also results in the victim being a perpetrator of violence in adulthood if the victim is still a child. This can be seen with symptoms of aggression, phobias, insomnia, low self-esteem, and depression.¹⁵ This is unfair to victims of the crime of trafficking in persons.

Such conditions clearly contradict the First Precepts, Second Precepts, and Fifth Precepts of Pancasila, as well as the Fourth Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia as the purpose of the state, as well as Article 28D paragraph (1) and Article 28G Paragraph (1) and Paragraph (2) of the 1945 Constitution of the Republic of Indonesia as the basic foundation related to the human rights of victims of human trafficking, and as a legal ratio in law in Indonesia.¹⁶

This situation has also violated the basic idea of criminal law development. It is well known that Pancasila and the 1945 Constitution of the Republic of Indonesia have mandated the realization of the life of the nation and the state based on the value of the Godhead of YME as the essence of the religiosity of the Indonesian nation and state, the value of Humanity as a mode of recognition, appreciation and protection of human rights in the life of the Indonesian nation and state. social values of society that show the life style of the Indonesian nation and state which is nationalist, democratic, and upholds the value of

13 Roswati Dewi, Sri Endah Wahyuningsih, dan Umar Ma'ruf, Law Enforcement Of Giving Restitution For Victims Of Trafficking In The State Court Of Central Jakarta, *Jurnal Daulat Hukum* Volume 2 Issue 4, December 2019, page. 537.

14 Yenny AS, Anita Yulastini, dan Rini Setiawati, The Handling Of Human Trafficking With Mail Order Bride Mode In West Kalimantan, *International Journal of Law Reconstruction* Volume 4, Number 2, September 2020. page. 75-80.

15 Maria Advianti, *KPAI: Pelaku Kekerasan Terhadap Anak Tiap Tahun Meningkat*, Diakses Melalui [www. KPAI.go.id](http://www.KPAI.go.id), Pada 12 Mei 2021. Lihat juga: Margaretha, Rahmaniar Nuringtyas, dan Rani Rachim, *Trauma Masa Kanak Dan Kekerasan Dalam Relasi Intim*, Makara Seri Sosial Humaniora, 2013, page. 34.

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social justice for all groups of Indonesian society.¹⁷

This is clearly shown that the criminal application of the crime of trafficking in persons only relies on the actions and the perpetrators while the victims are excluded.¹⁸ This is also clearly contrary to the purpose of law according to Islam. In its development, the maqsid al-Syariah principle has explained that the law must be able to protect five things, as for the five things:¹⁹

- 1) Religion;
- 2) Intellect;
- 3) Soul;
- 4) property;
- 5) Descendants.

This has clearly violated the mandate of the teachings of Islam. Islam has taught every human being to always protect fellow human beings as brothers, and teaches to eradicate slavery because it is far from the value of the purpose of life which is based on the values of God, Humanity, and Justice.²⁰

D. Update

1. In General

Contribute new ideas in the field of legal science, especially with regard to the law on the protection of victims of trafficking in persons. Offering new ideas for the government to revise the system for protecting the rights of victims of trafficking in persons through optimizing the implementation of restitution.

1. Specifically

A specific update in this paper is to offer the concept of a legal reconstruction of the protection of the rights of victims of human trafficking based on the value of human justice through the reconstruction of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons by adding a dictum related to criminal compensation for victims as an additional crime. Furthermore, provisions related to the amount of restitution that will be submitted to victims of trafficking in persons in Indonesia are also added.

E. Closing

As for the implementation of the provision of restitution, compensation and rehabilitation for

17 M.Gargarin Friyandi dan Aryani Witasari, Restorative Justice In Application For Crime Investigation Abuse In Polsek Middle Semarang, *Jurnal Daulat Hukum* Volume 2 Issue 1, March 2019, page. 41-44.

18 Barda Nawawie Arief, *Masalah Penegakan Hukum Dan Kebijakan Hukum Pidana Dalam Penanggulangan Kejahatan*, Kencana Prenada Media, Jakarta, 2014, page. 55-64. Lihat juga: Barda Nawawie Arief, *Bunga Rampai Kebijakan Hukum Pidana*, Citra Aditya Bakti, 2005, page. 27-29.

19 Sri Endah Wahyu Ningsih, *Perbandingan Hukum Pidana Dari Perspektif Religious Law system*, UNISSUIA Press, Semarang, 2012, page. 48.

20 Human trafficking has existed since the time of the Prophet, this is shown by the increasingly rampant slavery at that time. This made the Messenger of Allah take actions to eradicate slavery through various da'wah that made every human being at that time aware to stay away from slavery because it was against the teachings of Islam and human values. See: Karen Armstrong, *Mohammad Prophet for Our Time*, Mirza Media Utama, Bandung, 2007, 267-268.

victims of the crime of trafficking in persons as a form of legal protection, it cannot be applied because there is no clear mechanism or indicator regarding the mechanism for granting restitution and the calculation procedure used as a measuring tool used by law enforcement, namely judges in imposing restitution sanctions that must be given to human trafficking. In addition, that victims and law enforcers find it difficult to prove or detail the total losses suffered by victims, so that law enforcers, especially judges, cannot determine the number of victims' losses in evidence in court. So it is necessary to regulate the amount of restitution for victims of the crime of trafficking in persons.

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