

Legal Review of Asset Confiscation for Restitution in Human Trafficking Crimes Based on Justice Values

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Abstract. *In the crime of human trafficking that occurs, the victim needs to be given protection. One of the important considerations for protection for victims is because of the losses they suffer. To find out and analyze the implementation of asset confiscation for restitution in human trafficking crimes based on justice values, to find out and analyze the implementation of asset confiscation for restitution in human trafficking crimes in the future. This legal research uses an empirical legal research approach method. The implementation of asset confiscation in human trafficking crimes (TPPO) aims to provide justice for victims through restitution that includes compensation for material losses, psychological suffering, and rehabilitation costs, by prioritizing the principle of restorative justice. This approach ensures that assets resulting from crime, including other perpetrators' assets, are used for the recovery of victims without relying on the perpetrator's good faith. However, challenges such as tracking hidden assets, coordination between law enforcement agencies, and suboptimal regulations are still obstacles. Best practices in various countries demonstrate the effectiveness of asset confiscation, such as strict and transparent legal mechanisms in China, asset allocation for rehabilitation services in the Netherlands, management by social institutions in the Philippines, and the implementation of non-conviction based forfeiture (NCBF) in the United States that allows for asset seizure without a criminal conviction. Indonesia can adopt this approach by strengthening the legal framework, increasing transparency in asset management, involving specialized institutions such as LPSK, and integrating modern technology to ensure effective asset seizure implementation, so that the benefits are truly felt by victims fairly and evenly.*

Keywords: *Justice; Restitution; Trafficking.*

1. Introduction

The Republic of Indonesia is a state based on law (Rechtsstaats), not a state based on mere power (Machtsstaat), which is expressly regulated in the body, namely in

Article 1 paragraph (3) of the 1945 Constitution. In the concept of a state based on law, it is idealized that the law must be the commander in all dynamics of state life.¹Indonesia as a country of law implies that all systems in the life of the nation, state and society are based on applicable laws. The enactment of the law does not rule out the possibility of crime in the community. Crime is part of social life, life and inseparable from human activities, people judge each other, have relationships and sometimes have deviant behavior. A person becomes evil because of the label given to him.²One of the crimes that often occurs and is experienced by society is human trafficking.

Human trafficking is an act that is contrary to human dignity and violates human rights. Human trafficking has spread in the form of organized and unorganized crime networks, both inter-state and domestic, so that it becomes a threat to society, the nation and the state as well as to the norms of life that are based on respect for human rights.³

Human trafficking is a modernization practice of slavery that describes the worst treatment of violations of human dignity. This is in line with what is stated in Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking in considering letter b, that human trafficking, especially women and children, is an act that is contrary to human dignity and violates human rights, so it must be eradicated.

Human trafficking is one of the five biggest crimes in the world that must be addressed because its consequences are not only economic, but also political, cultural and humanitarian. Human trafficking is often referred to as "slavery without chains" which is widespread and profitable after the drug trade and the illegal arms trade. Human trafficking is often associated with the illegal arms trade as the second largest criminal industry in the world with the fastest growth.⁴

In the crime of human trafficking that occurs, victims need to be given protection. One of the important considerations for protection of victims is because of the losses they suffer. Therefore, a very essential form of protection for victims is carried out through the recovery of losses suffered by victims due to a crime. This recovery can be in the form of compensation and restitution.⁵

The position of victims in criminal justice as parties seeking justice has been neglected. When examined from the purpose of punishment in positive criminal law, perpetrators of crimes receive more attention such as rehabilitation,

¹Laurensius Arliman, *Realizing Good Law Enforcement to Realize Indonesia as a Legal State*, Al Qadau Journal, Vol 8 No 1, 2021, pp 509-534

²Milen Rukmini, *Aspects of Criminal Law and Criminology*, (Bandung: PT Alumni), Bandung, 2014, p. 81.

³Yohanes Suhardin, "Legal Review of Human Trafficking from a Human Rights Perspective," *Mimbar Hukum*, Vol. 20, No. 3, (2018), p. 474

⁴Andi Jefri Ardin and Beniharmoni Harefa, "Fulfillment of the Rights of Child Victims of Human Trafficking," *Suara Hukum Journal*, Vol. 3, No. 1, (June 2021), p. 175

⁵Mahrus Ali and Ari Wibowo, *Victim-Oriented Compensation and Restitution of Criminal Acts*, *Jurnal Yuridika*, Vol. 33, No. 2, (May, 2018): p. 262,

treatment of offenders, social readaptation, correctional, and others. This is a form of injustice to victims, because as the injured party they are only used as a means of proof, and not infrequently the basic rights of victims are neglected. The working of criminal justice, both in institutions and legal institutions, is more oriented towards perpetrators of crimes (offender oriented). The existence of victims is subordinated and eliminated as a risk of secondary victimizations in the working of criminal justice.⁶

Restitution given to victims of human trafficking is an effort to provide special protection as mandated in Article 48 paragraph (1) of the PTPPO Law which states that the origin of Article 48 paragraph (1) determines that "every victim of the crime of human trafficking or their heirs have the right to receive restitution". Restitution is given to victims who experience loss of wealth or loss of income, suffer suffering, costs for medical and/or psychological care and/or other losses, suffering arising from human trafficking.⁷ Meanwhile, other losses include loss of property, basic transportation costs, attorney fees or other costs related to the legal process, or loss of income promised by the perpetrator.

The criminal threat does not apply because there is a substitute criminal threat as a substitute for restitution stipulated in Article 50 paragraph (4) of the PTPPO Law which causes problems, including the stipulation of imprisonment as a substitute for restitution, the victim and/or his/her heirs do not receive the right to restitution. Meanwhile, if the restitution decision is large, with the provisions of this article, the perpetrator will tend to choose to serve a prison sentence of only 1 (one) year. Another problem is that the maximum prison sentence of 1 (one) year is too short as a sanction due to the perpetrator refusing or being unable to pay restitution.

One example of a case On January 31, 2024, the victims through their attorneys filed a restitution application for criminal case No. 686/Pid.Sus/2023/PN.Jkt.Sel to the Defendants Arif Abdul Karim Rosyid and Mohammad Rif'an alias Rif'an. The restitution application was addressed to the South Jakarta District Court with the restitution value submitted amounting to IDR 1,494,500,000 (one billion four hundred ninety-four million five hundred thousand rupiah). The Public Prosecutor in his indictment demanded that each defendant pay restitution of IDR 498,166,666 with a subsidiary of 1 year in prison. However, the Public Prosecutor did not state at all in his indictment that restitution must be given to the victim, as well as details of who was entitled to receive restitution and the respective amounts. The Public Prosecutor also did not carry out the mandate of Articles 48–50 of the TPPO Law in detail. The Public Prosecutor has not fully considered the interests and restitution of the victims, only focusing on sentencing the defendants.

⁶C. Maya Indah, *Protection of Victims: A Victimology and Chrominology Perspective*, (Jakarta: Kencana Publisher), 2015, p. 97.

⁷Republic of Indonesia Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking Article 48 paragraph (2)

In the demands, the Public Prosecutor did not explain in detail how to ensure that the restitution could actually be given to the victim, the Public Prosecutor's mistakes include: The demands did not explain how many components of each restitution each victim had, whereas the value of the losses given by the victim differed from one another, this needs to be attempted in accordance with the mandate of Article 48 paragraph (1) and (3) of the TPPO Law; The demands did not explain the list of assets owned by the Defendants which could then be confiscated if the Defendant did not pay the victim's restitution, this needs to be attempted in accordance with the mandate of Article 50 paragraph (3) of the TPPO Law; The demands instead went straight to efforts to replace restitution payments with imprisonment, whereas there should have been efforts to register assets that could be confiscated, payments with deposits at the District Court, confiscation and auction of assets for restitution payments, and finally replacing them with imprisonment.

2. Research methods

This legal research uses an empirical legal research approach method. Empirical legal research is legal research using legal principles and principles in reviewing, viewing, and analyzing problems in research, in addition to reviewing the implementation of law in practice.⁸ The empirical research method is a combination of doctrinal legal research methods and empirical legal research methods, so what is done by the researcher is a document study accompanied by a field study. The document study in this study is a literature study using laws and regulations.

The data analysis used in this study is a qualitative analysis, namely data that has been obtained from field studies and literature studies will be collected and grouped systematically according to the facts and characteristics of the objects being studied precisely and then analyzed qualitatively with the aim of obtaining a conclusion from the research problem.⁹

3. Results and Discussion

3.1. Implementation of Asset Confiscation for Restitution in Criminal Acts of Human Trafficking Based on Justice Values

The state has a constitutional obligation to protect its citizens. As stated in the Preamble to the 1945 Constitution, this is one of the objectives of the establishment of the government of the Unitary State of the Republic of Indonesia which aims to protect all Indonesian people and all of Indonesia's territory, advance public welfare, and improve the life of the nation. The Human Rights Instrument further emphasizes that the state's responsibility is to respect, protect and fulfill Human Rights.¹⁰ It is the state's responsibility to ensure that law

⁸Ronny Hanitijo Soemitro, *Legal Research Methodology and Jurimetrics*, Ghalia Indonesia, Jakarta, 1990, p. 33.

⁹Sudarwan Denim, *Becoming a Qualitative Researcher*, Pustaka Setia, Bandung, 2012, p. 62.

¹⁰Deypend Tommy Sibuea. *Eradication of Human Trafficking Through National Legal Instruments and International Law in Indonesia*. *Jurnal Cendekia Hukum*, vol.3(2), 2018, p. 237.

enforcement is guaranteed so that if there is a violation of human rights principles. For example, if the state allows the absence of law enforcement or becomes part of a human rights violation, then the state has taken action that can be said to be impunity.

The crime of human trafficking can be known that the handling of every problem of violation of Human Rights during an emergency must be carried out immediately from the emergency regulations whose solutions are strictly limited, through the courts. Based on Article 13 of Law Number 21 of 2007 concerning the Crime of Human Trafficking, it states that, The crime of human trafficking is considered to be committed by a corporation if the crime is committed by people acting for and/or on behalf of the corporation or for the benefit of the corporation, either based on employment relationships or other relationships, acting in the environment of the corporation either alone or together. Talking about human rights, the first thing that needs to be reviewed is in terms of the understanding that the rule of law or better known as the rule of law. The rule of law or rule of law according to today's concept, has universal joints, such as recognition and protection of human rights, the legality of state actions in the sense of actions of state apparatus that can be legally accounted for and the guarantee of an independent trial.¹¹

Victims of human trafficking often experience trauma or illnesses that endanger them. Therefore, efforts to restore the condition of victims of human trafficking are carried out by providing legal protection related to the rights of victims. In the Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power in 1985, it is stated that the rights of victims are the right to receive compensation, restitution, rehabilitation, and reintegration for victims of human trafficking. Compensation must also be provided by the State to victims of human trafficking if the perpetrator does not carry out the provision of restitution rights to the victim.¹²The state is obliged to seek financial compensation to victims of human trafficking because the perpetrators are unable to provide compensation to the victims. However, the restitution that should be given to victims is not easy to provide in its implementation.

In a criminal case decision, asset confiscation is a type of confiscation of a person's wealth.¹³originating from a crime. Confiscation of assets is an in personam action for the perpetrator of the crime, not an in rem action against assets related to a crime. In making a decision, the Judge will impose sanctions on the convict to pay court costs and/or pay fines and pay compensation, pay replacement money or

¹¹Riswan Munthe. "Human Trafficking as a Violation of Human Rights". *Journal of Social Sciences Education*, Vol.7(2), 2015, p. 186.

¹²Rochmah, S & Simangunsong, (2022). *Criminal Accountability for Perpetrators of Human Trafficking Crimes*. *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance*, 3(1), pp. 231–243.

¹³Gumilang Fuadi, Windy Virdinia Putri, Trisno Raharjo, *Review of Asset Confiscation in Money Laundering Crimes from a Justice Perspective*, *Journal of Law Enforcement and Justice*, Vol 5 No 1, 2024, p. 53068

confiscate assets owned by the convict to pay replacement money if the assets directly related to the crime have been transferred or not found. It must be remembered that assets that can be confiscated are assets used to finance, become tools, facilities or infrastructure in committing the crime of human trafficking. The public prosecutor can also confiscate the perpetrator's assets if he can prove that the assets were indeed obtained by having a close relationship between the assets and the crime charged.

Assets resulting from crime are: all movable or immovable objects, both tangible and intangible, that have economic value obtained or are suspected of originating from criminal acts or are intentionally used to commit crimes.¹⁴ Meanwhile, according to Romli Atmasasmita¹⁵ states that criminal assets are the subject and object of criminal law. Assets as the subject of criminal law are assets that are used as a means to commit a crime, have helped or supported the preparation and planning of a crime. While what is meant by assets as the object of criminal law is an asset from a crime.

The essence of efforts to obtain restitution for victims of human trafficking can be done through preventive measures, repressive measures and restorative measures. Preventive measures have been taken by the government by issuing various laws and regulations to ensure that victims receive compensation through restitution.

The implementation of asset confiscation in human trafficking crimes (TPPO) aims to ensure justice for victims by providing restitution as a form of recovery for the losses they have experienced. Restitution in this context includes compensation for material losses, psychological suffering, and medical or rehabilitation costs. Asset confiscation is carried out against perpetrators as an effort to ensure that victims receive their rights without depending on the good intentions of the perpetrators who are often uncooperative.

From the perspective of justice values, this step is an implementation of the principle of restorative justice, where the main focus is on the recovery of the victim. The confiscated assets of the perpetrators include not only the proceeds of the crime but also other assets that can be used to cover restitution. In practice, the implementation of asset confiscation must be carried out in accordance with strict legal procedures to avoid abuse of power or violation of the perpetrator's human rights.

However, in its implementation there are a number of challenges, including weak tracking and identification of perpetrators' assets which are often hidden or transferred to third parties. In addition, coordination between law enforcement

¹⁴Roberts.K, Return of Criminal Assets in the Perspective of Anti-Money Laundering Regime, Depok: PT. Rajagrafindo Persada, 2017, p. 37

¹⁵Romli Atmasasmita, Post-Ratification Asset Confiscation Policy of the 2003 UN Convention Against Corruption in the Indonesian Criminal Law System, <https://interspinas.wordpress.com/2012/02/18/kebijakan-perampasan-aset-pascatifikasi-konvensi-pbb-anti-korupsi-2003-dalam-sistem-hukum-pidana-indonesia/> accessed 09 November 2024

agencies, such as the police, prosecutors, and courts, needs to be improved so that the asset confiscation process runs effectively and transparently. The aspect of strengthening regulations is also important, considering that existing regulations must support an efficient asset confiscation mechanism and ensure that restitution funds actually reach the victims.

3.2. Implementation of Asset Confiscation for Restitution in Future Human Trafficking Crimes

In the Netherlands, confiscation of assets of perpetrators of human trafficking crimes¹⁶(TPPO) is carried out as part of fair and effective law enforcement efforts. Assets obtained from these illegal activities are confiscated by the state to prevent perpetrators from enjoying the proceeds of their crimes. This step also serves as a form of additional punishment that provides a deterrent effect for perpetrators and other parties who may consider committing similar crimes.

The funds raised from the asset seizure are then allocated to programs that support victims of human trafficking. While not always in the form of direct payments to individual victims, these funds are used to provide services such as rehabilitation, counseling, and reintegration assistance into the community. This approach ensures that victims receive the support they need to recover from their trauma and rebuild their lives.

The implementation of asset confiscation in the Netherlands is carried out with due regard to the principles of justice and human rights. A transparent and accountable legal process is implemented to ensure that only assets that are truly connected to criminal activity are seized. This is important to prevent violations of individual rights and to ensure that asset confiscation is not abused.

In the Philippines, the confiscation of assets of perpetrators of human trafficking (TPPO) is regulated through the Anti-Trafficking in Persons Act of 2003 or Republic Act No. 9208.¹⁷This law provides a legal basis for the government to seize assets obtained from human trafficking activities. The seized assets are then used to support rehabilitation and reintegration programs for victims, including the provision of medical, psychological and legal services.

The Philippine government works with non-governmental organizations (NGOs) and international organizations to provide services to victims of human trafficking. For example, the Department of Social Welfare and Development (DSWD) has established 42 temporary shelters for victims, with 13 of them supported by non-profit charities. In addition, the government sends social workers to Philippine diplomatic missions to provide psychosocial counseling to Filipino migrant workers in distress.

¹⁶Andy Shen and Loria-Mae Heywood, *Asset Recovery and Restitution: Leveraging Inter-agency and Multi-stakeholder Cooperation to Facilitate Compensation for Victims and Survivors of Forced Labor and Human Trafficking* (New York: United Nations University, 2023). Pg 18

¹⁷Khadifa, Ramanitya C., *Human Security In The Protection of Indonesian Migrant Workers: A Case Study of Trafficking In Persons 'Online Scams' In The Philippines.**Dynasty International Journal of Education Management & Social Science*, 2024, Vol 5, Issue 6, p1698

In China, the confiscation of assets of perpetrators of human trafficking (TPPO) is carried out as part of law enforcement efforts to ensure that perpetrators do not profit from their illegal activities.¹⁸ Assets seized by the state are used to support programs that help victims, such as rehabilitation, counseling, and social reintegration. While not always in the form of direct payments to victims, these funds are intended to facilitate their recovery and well-being.

The asset forfeiture process in China is carried out through strict legal procedures to ensure fairness and transparency. This includes identifying and seizing assets obtained from trafficking activities, as well as ensuring that the funds generated are used for appropriate purposes. However, specific information on the asset forfeiture mechanism for restitution of trafficking victims in China is scarcely available in open sources.

In the future, the implementation of asset confiscation for restitution in cases of human trafficking (TPPO) will be increasingly important as an effort to provide justice for victims and prevent perpetrators from enjoying the proceeds of their crimes. Global trends show that developed and developing countries are adopting a more integrated approach in implementing asset confiscation. This approach includes international cooperation, the use of technology for asset tracking, and stronger and more flexible legal regulations to support the transfer of assets to victims.

In the future, countries will rely on more flexible legal frameworks to seize assets of perpetrators, including through non-convictionbased forfeiture (NCBF) mechanisms. This allows for the seizure of assets even if the perpetrator has fled or cannot be prosecuted. Assets seized from perpetrators will be allocated directly to victims' rehabilitation, such as medical services, counseling, skills training, or reintegration into society. This victim-centric approach provides a more tangible guarantee of justice. Asset tracking using technologies such as blockchain and AI will become a trend to detect hidden assets, both domestically and across borders. Cooperation between countries will also be strengthened through extradition and legal aid agreements. The establishment of a national fund that is managed transparently and professionally will be key to ensuring that seized assets are used to directly support victims.

4. Conclusion

Asset confiscation in human trafficking crimes (TPPO) aims to provide restitution to victims through compensation for material losses, psychological suffering, and rehabilitation, while preventing perpetrators from enjoying the proceeds of the crime. This approach prioritizes the principle of restorative justice, although its implementation in Indonesia faces challenges such as tracking hidden assets, suboptimal regulations, and limited capacity of officers. International practices, such as asset management by social institutions in the Philippines or the

¹⁸ Blair, S.L., Madigan, T.J. and Fang, F. (2022), "Criminal Consequences: Prostitution and Human Trafficking", *Mate Selection in China: Causes and Consequences in the Search for a Spouse*, Emerald Publishing Limited, Leeds, pp. 165-182

implementation of non-conviction based forfeiture (NCBF) in the United States, can be models for Indonesia. Strengthening the legal framework, transparency in asset management, and the active role of institutions such as LPSK are needed so that funds from confiscation are used directly to support victim recovery effectively and fairly.

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