

Effectiveness of Imposing Restitution Sanctions for Victims of The Criminal Acts of Human Trafficking Based on Justice

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Abstract. *This research aims to identify and analyze the regulations regarding the imposition of restitution sanctions for victims of human trafficking under current laws, the weaknesses in the imposition of these sanctions, and the effectiveness of justice-based restitution for victims of human trafficking crimes. The method used in this research is the Empirical Juridical method, with a descriptive-analytical specification. The data consists of primary and secondary data, analyzed qualitatively. The problems are analyzed using the Theory of Legal Protection by Philipus M. Hadjon, the Legal System Theory by Lawrence M. Friedman, and the Pancasila Justice Theory by Yudhi Latief. The results of this research indicate that: 1) Regulations on restitution for human trafficking victims emphasize that the law functions not only as a punishing tool but also as a remedial instrument providing substantive justice based on legal certainty regulated in the Law on the Eradication of the Crime of Human Trafficking (UU TPPO) and the National Criminal Code (Law No. 1 of 2023). Specifically, Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, particularly Articles 48 to 50, stipulates that every victim has the right to restitution in the form of compensation for loss of wealth or income, suffering, medical and psychological treatment costs, and other losses suffered as a result of human trafficking. 2) Weaknesses in the imposition of restitution sanctions are evident from several factors, namely the ineffectiveness of substitute imprisonment, the gap between the value of restitution and psychological impact, dependence on the proactiveness of law enforcement officials, the risk of asset concealment in digital-based crimes, and sectoral ego conflicts during execution.*

Keywords: *Effectiveness; Human Trafficking (TPPO); Justice; Restitution; Sanctions.*

1. Introduction

Indonesia enjoys a strategic geographical position, situated along international trade and shipping routes. However, this geographical potential can pose a threat as a criminal traffic route. The increasingly sophisticated crime phenomenon has impacted various sectors, including politics, economics, and socio-cultural issues. One of the fastest-growing issues is human trafficking. This crime occurs because there is no respect for human dignity. Humans are viewed as commodities whose value can be determined without their consent, and they are transported, collected, confined, and placed without consideration for their needs as human beings.¹

Human trafficking is a crime against humanity that contradicts Islamic teachings. Anti-human trafficking jurisprudence (fiqh) is a religious understanding based on the spirit of humanity, affirmed by verses from the Quran and Hadith, to foster collective awareness of the dangers and prohibition of this crime and the need to protect victims.² Human trafficking in Islamic history has actually existed since the advent of slavery. Slavery existed among earlier religions long before the Prophet Muhammad (peace be upon him). Among the reasons for the proliferation of slavery at that time was the frequent wars between tribes and nations. Other factors, such as robbery, kidnapping, poverty, inability to repay debts, and so on, were also contributing factors. Slavery was also facilitated by the existence of slave markets at that time.³

The role of victims in criminal justice as those seeking justice has been neglected. Victims are denied authority and are not actively involved in the investigation and trial process, thus depriving them of the opportunity to fight for their rights and recover from the consequences of a crime. In the context of criminal investigations, victims are often positioned only as witnesses, reporters in the investigation, sources of information, or as key players in resolving the case.⁴ When examined from the perspective of the objectives of punishment in positive criminal law, criminals receive more attention, such as rehabilitation, treatment of offenders, social readaptation, correctional facilities, and so on.⁵ One form of legal protection for victims of human trafficking is receiving

¹Candra Muzaffar et al., 2007, "Human's wrong: The Bad Record of Western Domination over Human Rights", Yogyakarta: Pilar Media, p. 401.

²Faqihuddin Abdul Kodir, et al., 2006, *Anti-Trafficking Fiqh: Answers to Various Cases of Human Trafficking Crimes from an Islamic Law Perspective*, Fahmina Institute, Bandung, p. 12.

³Nurhayati, 2016, *Modern Slavery: Human Trafficking from the Perspective of Ulama*, Perdana Publishing, Medan, p. 109.

⁴M. Arief Mansur and Elistaris Gultom, 2007, "The Urgency of Protecting Crime Victims" *Between Norma and Reality*, Jakarta: PT. Raja Grafindo Persada, pp. 26-27.

⁵Maya Indah S, 2008, "Victim Protection: A Victimology and Criminology Perspective", Jakarta: Kencana, p. 97

restitution.⁶The definition of restitution itself is the payment of compensation imposed on the perpetrator based on a legally binding court decision for material and/or immaterial losses suffered by the victim or their heirs. This is also recognized in the Universal Declaration of Human Rights, namely Article 25 paragraph 1, which states:

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

Legislation that includes the right to restitution includes: the Criminal Code (KUHP), Law Number 26 of 2000 concerning the Human Rights Court, Law Number 8 of 1999 concerning Consumer Protection, Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, and Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking. However, in practice, the law enforcement process related to restitution has not run as it should. In imposing sanctions, judges do not consider the suffering and losses experienced by victims for compensation (restitution). In addition, the restitution regulation in Law Number 21 of 2007 does not formulate a calculation method for restitution issues, making it very difficult to determine the appropriate amount of compensation for victims. Therefore, the implementation of restitution is important to reflect the functioning of the law or legal institutions in accommodating protection for victims.

In the case of Human trafficking, it has been regulated in the form of Law of the Republic of Indonesia Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking, the criminal provisions regulated in this law are in Article 2 paragraph 1 which states that: "any person who recruits, transports, shelters, sends, transfers, or receives a person with the threat of violence, Use of violence, kidnapping, confinement, forgery, fraud, abuse of power or vulnerable position, debt bondage or giving payment or benefits even though obtaining the consent of a person who holds control over another person, for the purpose of exploiting that person in the territory of the Republic of Indonesia, shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 120,000,000,000 (one hundred and twenty million rupiah) and a maximum of Rp. 600,000,000,000 (six hundred million rupiah).

Human trafficking according to the definition of Article 3 of the 2000 United Nations Palermo Protocol to Prevent, Suppress and Punish Trafficking in

⁶Ibid, p. 110.

Persons, Especially Women and Children; Supplement to the UN Convention on Transnational Crimes, means “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits or of achieving the consent of a person having control over another person, for the purpose of exploitation”.⁷

2. Research Methods

This type of research is normative legal research. According to Mukti Fajar and Yulianto Achmad, normative legal research is research that positions law as a system of norms. This system of norms refers to the principles, norms, and rules of statutory regulations, court decisions, agreements, and doctrines (teachings).⁸Ronny Hanitijo Soemitro stated that the normative juridical legal research approach is legal research conducted by identifying and conceptualizing law as norms, rules, regulations, laws that apply at a certain time and place as a product of a certain sovereign state power.⁹This research is an attempt to describe (reveal and explain) the effectiveness of imposing restitution sanctions for victims of human trafficking crimes based on justice.

3. Results and Discussion

3.1. Current Regulations on Imposing Restitution Sanctions for Victims of Human Trafficking Crimes

Human trafficking has become a serious issue, causing detrimental physical, psychological, and economic impacts on victims. However, despite ongoing prevention and law enforcement efforts, the recovery and fulfillment of victims' rights, including the right to restitution, remains a significant challenge. The crime of human trafficking undermines respect for human dignity. Humans are viewed as commodities whose value can be determined without their consent, then transported, collected, confined, and placed without consideration for their needs as human beings.¹⁰Restitution according to Article 1 number 13 of Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking defines restitution as the payment of compensation imposed on the perpetrator based on a court decision that has permanent legal force for material and/or immaterial losses suffered by the victim or his/her heirs. In Article 1 Paragraph 3,

⁷Riswan Munthe, 2015, “Human Trafficking as a Violation of Human Rights”, *Journal of Social Sciences Education*, Vol. 7, No. 2, p. 185

⁸Mukti Fajar and Yulianto Achmad, 2015, *Dualism of Normative and Empirical Legal Research*, 3rd Edition, Pustaka Pelajar, Yogyakarta, p.34.

⁹Soemitro Ronny Hanitijo, 2016, *Legal Research Methodology and Jurimetrics*, Ghalia Indonesia, Jakarta, p. 46.

¹⁰Candra Muzaffar, “Human's Wrong: The Bad Record of Western Domination over Human Rights”, (Pilar Yogyakarta, Media, 2007), p. 63.

a victim is defined as a person who experiences psychological, mental, physical, sexual, economic, and/or social suffering caused by the crime of human trafficking.¹¹

In criminal justice, it appears that there is still neglect and even violation of the individual rights of victims of human trafficking crimes in the process of resolving these crimes.¹² Protection for crime victims can be provided in several ways, depending on the suffering or loss they have suffered. One form of legal protection for victims is restitution.¹³ Restitution in accordance with the Principle of Restoration to the Original State (*restitutio in integrum*) is an effort that the victim of a crime must be returned to the condition before the crime occurred even though it is based on the fact that it will not be possible for the victim to return to the original condition. With restitution, the victim can be restored to freedom, legal rights, social status, family life and citizenship, return to their place of residence, have their job restored, and have their assets restored.¹⁴

The victim's right to restitution and rehabilitation can be fulfilled if the following three things are related. First, law enforcement officials, including victim advocates, the police, the prosecutor's office, and the courts understand the restitution application mechanism, including how to formulate and obtain evidence of material and immaterial losses suffered by the victim. Therefore, many future judges' decisions will be carried out in addition to imposing criminal penalties and fines on perpetrators and also imposing restitution on perpetrators in human trafficking cases. Second, investigators and public prosecutors are required to inform victims of their right to apply for restitution so that victims can exercise their rights to obtain justice. Third, coordination between various parties, including victim advocates, law enforcement officials, social services, health services, and other relevant agencies is important so that maximum penalties can be imposed on perpetrators to prevent the recurrence of human trafficking crimes against other victims. and restore the dignity of victims as human beings through various rehabilitation and restitution programs.¹⁵ Fauzy Marasabessy explained that a new mechanism is needed for filing restitution requests, allowing the Public Prosecutor to compel the perpetrator to pay by confiscating or auctioning off their property as collateral for restitution.

¹¹Farhana, *Legal Aspects of Human Trafficking in Indonesia*, (Sinar Grafika, Jakarta, 2010), p. 158

¹²Dikdik, et al., *The Urgency of Protecting Crime Victims Between Norms and Reality*, (Jakarta: Raja Grafindo Persada, 2008), pp. 165–166.

¹³Gomgom TP Siregar and Rudolf Silaban, *Victims' Rights in Criminal Law Enforcement*, (Medan, CV. Manhaji, 2020), p. 74.

¹⁴Dahlia Sasmita, 2024, *Fulfillment of Restitution Rights for Victims of Human Trafficking Crimes*, Student Scientific Journal (JIM-FH) E-ISSN: 2798-8457 Volume VII, Number 3, p. 3 <http://digilib.unila.ac.id/70507/3/SKRIPSI%20TANPA%20BAB%20PEMBAHASAN.pdf>

¹⁵Dedy Jaya Sihite and Atang Hidayat, *The Role of Restitution in Human Trafficking Crimes*, Unes Law Review, Vol. 6, No. 3, March 2024, p. 81.

However, if the perpetrator attempts to avoid paying restitution to the victim, they are not entitled to a reduction in their sentence or parole.¹⁶

The legal protection efforts provided by the Law for victims of criminal acts in Indonesia are actually sufficient when seen from the substance of the legislation, but in its implementation (*ius operatum*) it still depends on the legal structure (in case law enforcement officers as the organizers) so that in order to fulfill the rights of victims in criminal justice it is necessary to see it from the legal side as a system that cannot work separately but must be integrated into a unit that supports and complements each other.¹⁷ The amount the victim receives in restitution represents a process of realizing the perpetrator's responsibility, demonstrating guilt for what they did to their victim. Likewise, imprisoning the perpetrator does not necessarily bring happiness or heal the pain the victim has suffered; it only benefits the perpetrator who neglected his responsibility to pay the victim's rights.¹⁸

Legal protection for victims of crime has been regulated in Law Number 13 of 2006, in line with Law Number 31 of 2014 concerning Witness and Victim Protection. The protection provided to victims can be abstract or concrete. Abstract protection is emotional and involves inner satisfaction, such as the feeling of satisfaction that arises after the victim obtains what they desire. Concrete protection, on the other hand, is tangible and can be felt, both in material and non-material forms. Material protection includes compensation or restitution, exemption from living expenses, or educational assistance. On the other hand, non-material protection involves freedom from threats and news that can demean human dignity.

3.2. Weaknesses in Imposing Restitution Sanctions for Victims of Human Trafficking Crimes

Human trafficking is an activity that includes the process of recruitment, sending, transferring, harboring, and sending, both within a country's territory and across national borders for work or services using violence or threats of violence, lies, abuse of power, or positions of vulnerability, servitude, and deception for the purpose of exploitation.¹⁹ Victims are the ones who suffer the greatest losses in a crime, yet they do not receive the same protections as the law provides to perpetrators. Besides being witnesses who know about and experience a crime,

¹⁶Fauzy Marasabessy, "Restitution for Victims of Crime: A New Mechanism Offered", *Journal of Law and Development*, Faculty of Law, University of Indonesia, No. 1, January 2015, p. 68.

¹⁷Hana Krisnamurti, "Fulfillment of the Rights of Victims of Human Trafficking Through Restitution According to Law Number 21 of 2007 Concerning the Eradication of the Crime of Human Trafficking," *Journal of Legal Studies*, Vol. 20, No. 2, August, 2021, p. 66.

¹⁸Rina Melati Sitompul and Andi Maysarah, "Initiating Payment of Trafficking Restitution from a Victim's Perspective," *Kanun Jurnal Ilmu Hukum*, Vol. 23, No. 1, 2021, pp. 101–115.

¹⁹Alfitra, *The Crime of Human Trafficking*, (West Java: Raih Harapan Sukses, 2022) p.6

victims are also legal subjects with equal standing before the law.²⁰By exploiting a vulnerable position, giving or receiving payments or benefits, the employed person is used for personal gain. The core element of human trafficking is exploitation, such as sexual exploitation, forced labor, murder for organ harvesting, and other forms of exploitation.²¹

Human trafficking Human trafficking is a form of crime that is extremely difficult to eradicate and is often referred to by the international community as a form of modern-day slavery. This crime continues to grow both nationally and internationally, driven by advances in information and communication technology and transportation. Human trafficking perpetrators, commonly referred to as traffickers, are also rapidly expanding, and can target anyone, both men and women. The methods used in this crime vary widely.²²Referring to the crime of illegal trafficking, the author is of the opinion that the above is related to justice collaborators and whistle blowers that are already known in Indonesia, which are regulated in various regulations as will be explained below, although it must be acknowledged that justice collaborators and whistle blowers that are already known in Indonesia have not been widely linked to criminal organizations as referred to in Article 26 Paragraph (1) of the United Nations Convention against Transnational Organized Crime (UNTOC). However, there is still the possibility of utilizing the rules on justice collaborators and whistle blowers for revealing the crime of human trafficking which is one form of crime in UNTOC, which is very likely to involve criminal organizations.²³

The crime of human trafficking continues to show a growing trend, accompanied by increasingly diverse and complex modus operandi, necessitating comprehensive and synergistic action. The persistence of human trafficking becomes even more concerning when it restricts the human rights and freedom of victims, mostly women, or hinders the growth and development of their children's personalities. This, in turn, hampers the development of Indonesia's potential and high-quality human resources.²⁴The enactment of Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking is expected to become a legal umbrella in providing treatment and protection for victims of the Crime of Human Trafficking. Law Number 21 of 2007 concerning the Crime of Human Trafficking, brings new hopes and challenges, especially for law

²⁰Muhadar, et al., "Witness & Victim Protection in the Criminal Justice System", (Putra Media Nusantara, Surabaya), 2009, p. 10

²¹Loc.cit. Interview

²²Made Sidia Wedasmara, The Crime of Human Trafficking, Yustitia Journal, Vol. 12, No. 1, 2018, p. 25.

²³Antonius PS Wibowo, et.al, 2020, Combating the Crime of Human Trafficking: A Legal Study from a National and International Perspective, Atma Jaya Catholic University of Indonesia, Jakarta, pp. 6-7.

²⁴Wiwit Sholehah, 2011, Legal Analysis of the Increase in Criminal Sentences for Human Trafficking, p. 3.

enforcement to pay attention to and study the elements and systems of legal protection in the Crime of Human Trafficking. This is because criminal acts always focus on the perpetrators of the crime/perpetrators of the crime, while the victims of the crime seem to be forgotten, even getting less space.²⁵

Restitution for victims of crimes is required by Article 48 paragraph (2) of the PTPPO Law. Criminals are required to provide restitution to victims. Restitution includes compensation for the suffering experienced by victims, the return of rights that have been seized or damaged, and the restoration of victims' rights due to criminal acts.²⁶ Meanwhile, more specific restitution compensation is contained in Article 7A paragraph (1) of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims, namely that victims of criminal acts have the right to receive restitution in the form of: a. Compensation for loss of wealth or income; b. Compensation for losses caused by suffering directly related to the result of the criminal act; and/or c. Compensation for medical and/or psychological care costs.

The crime of human trafficking is specifically regulated in Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking (UU PTPPO). This definition is regulated in Article 1 number 1 which states that "Human trafficking is the act of recruiting, harboring, sending, transferring, or receiving a person by means of threats of violence, use of violence, abduction, confinement, forgery, fraud, abuse of power or position of vulnerability, debt bondage or giving payments or benefits, so as to obtain the consent of a person who holds control over the other person, whether carried out within the country or between countries, for the purpose of exploitation or resulting in the exploitation of people." Perpetrators in human trafficking can be categorized into three main groups based on their role in the process:²⁷

1. Parties involved in the initial stages of trading;
2. The party acting as an intermediary or selling the transacted individual;
3. Parties involved at the end of the trafficking chain as recipients or buyers of trafficked individuals, as well as parties who detain victims for forced labor and profit from that exploitation.

²⁵Head of Criminal Investigation Unit of Cirebon City Police, AKP Adam Gana, STK, SIK, M.Si. Interview on April 12, 2026.

²⁶R. A Muljohadi, Legal Analysis of the Right to Restitution of Victims of Human Trafficking Article 48 Paragraph 1 of Law Number 21 of 2007 on the Eradication of Criminal Acts of Trafficking from an Islamic Criminal Law Perspective, *The Jure: Journal of Islamic Law* 2, no. 1 (December 2024), pp. 125–36.

²⁷Yudhya Prasetya, Trafficking of Women and Children as a Transnational Crime, *Jurnal Yustitia* 7, no. 2 (November 2021), pp. 185–95.

In reality, it can be seen that children and women are the dominant victims of human trafficking, because they are considered a vulnerable group and are targeted by human trafficking crimes, forced to engage in activities that have a harmful impact on their health and physical and psychological development. A child who should be treated with love and attention is instead exploited for certain purposes to benefit the perpetrator. Therefore, anything that can violate basic rights in any form, including exploitation, must be stopped. The legal subjects who are most easily victimized in human trafficking cases are children, especially children who are economically and educationally weak. Those who become victims of human trafficking crimes will be treated inhumanely and exploited, which often leads to sexual exploitation, all forms of modern slavery, organ transplants for commercial purposes, and all forms of inhumane acts for illegal gain and power.²⁸

Legal protection for crime victims as part of community protection can be realized in various forms, such as through the provision of restitution and compensation, medical services, and legal aid.²⁹ More specifically, there are two ways to fulfill the right to restitution for victims of human trafficking, namely, the integration of law enforcers is needed so that the implementation of the right to restitution from the perpetrator to the victim is more effective and law enforcers need technical guidance in implementing the right to restitution. The form of protection for victims through the fulfillment of the right to restitution as regulated in Article 7A of Law Number 31 of 2014 is more or less adopted from the regulation on the fulfillment of restitution regulated in Law Number 21 of 2007. The regulation on restitution regulated in Law Number 13 of 2006 which has not explained in detail what rights can be obtained by victims as a result of the crime has been corrected by the amended Law.³⁰

The imposition of restitution is stated in Law No. 1 of 2023 concerning the Criminal Code, namely Article 66 paragraph (1) letter d (Restitution as an Additional Criminal Offense). This article is the main basis that stipulates that "payment of compensation" or restitution is a type of additional criminal offense. With its status as an additional criminal offense, the judge has the authority to impose this payment obligation in addition to the main criminal offense (such as imprisonment), thereby strengthening the victim's bargaining position in obtaining economic recovery. Then it is emphasized in the provisions of Article 51 concerning (Purpose of Criminalization) that one of the objectives of

²⁸Mona Lasisca Sugiyanto, "Fulfillment of the Rights of Restitution for Victims of Human Trafficking Crimes, Thesis," Faculty of Law, Hasanuddin University, 2022, p.2.https://repository.unhas.ac.id/23578/2/B012202079_tesis_21-10-2022%201-2.pdf

²⁹Muhammad Arief Mansyur, *The Urgency of Protecting Crime Victims Between Norms and Reality*, (Pt. Raja Grafindo Persada, Jakarta, 2007), p. 31.

³⁰Head of Criminal Investigation Unit of Cirebon City Police, AKP Adam Gana, STK, SIK, M.Si. Interview on April 12, 2026. Loc.cit.

criminalization is to resolve conflicts caused by criminal acts, restore balance, and bring a sense of security and peace in society. This provision is the philosophical basis for why restitution for victims of human trafficking in this case is very important to restore the victim's dignity. Lastly implemented in the provisions of Article 52 (Principle of Restorative Justice), which emphasizes that punishment must as far as possible consider the victim's recovery aspect, so that the judge in deciding the case does not only focus on punishing the perpetrator, but also on how much the victim's loss can be recovered through the sanctions imposed. Based on Article 66 paragraph (1) letter d and Article 52 of the New Criminal Code, the judge in the sexual exploitation case in Surabaya has a strong legal umbrella to determine the confiscated Rp. 2,000,000.00 as part of the restitution payment to the wife (victim), while also requiring the defendant to pay immaterial losses as part of his criminal decision.³¹The weaknesses of imposing restitution sanctions on victims of Human Trafficking Crimes (TPPO) are:

1. Based on the Legal Structure, weaknesses in the legal structure lie in the unpreparedness of law enforcement officials and the lack of technical mechanisms in the restitution execution process. Investigators and prosecutors still tend to be offender-oriented rather than focusing on data collection and proving the victim's losses from the outset of the judicial process. Furthermore, the highly technical and complex restitution application procedure is often not accompanied by support from expert counsel or forensic auditors for victims, resulting in inaccurate restitution determinations in court. Furthermore, our judicial system lacks robust mechanisms for quickly tracking and confiscating the perpetrator's assets. Therefore, when a restitution decision is made, the perpetrator is often insolvent, making the decision difficult to enforce or lacking any real financial binding force.
2. Based on Legal Culture, the weakness of legal culture is reflected in the dominance of a retributive mindset that prioritizes the imprisonment of perpetrators over the restoration of victims' rights through restorative mechanisms. In practice, the public and law enforcement officers still tend to measure the success of handling human trafficking cases by the length of the perpetrator's prison sentence, while the right to financial recovery for victims is often seen as an additional burden or a secondary interest. Furthermore, the negative stigma and victim-blaming attitudes that are still rooted in society make victims reluctant or powerless to demand restitution, because they believe that the legal process will only embarrass themselves rather than provide justice that restores their economic and psychological condition.

³¹Head of Criminal Investigation Unit of Cirebon City Police, AKP Adam Gana, STK, SIK, M.Si. Interview on April 12, 2026.

This is in line with Lawrence M. Friedman's theory, the success of imposing restitution sanctions in this case is highly dependent on the synchronized legal substance between the Anti-Trafficking Law and the National Criminal Code, a proactive legal structure in confiscating the perpetrator's assets, and a community legal culture that must view restitution not as an option, but as an absolute obligation to restore the dignity of victims who have been exploited. Restitution is granted and included simultaneously in the court's decision on human trafficking cases. The provision of restitution is implemented from the time the first instance court's decision is issued. The restitution can be deposited in advance at the court where the case was decided. Restitution is granted within 14 days from the notification of the decision that has obtained permanent legal force. Restitution in accordance with the Principle of Restitutio in integrum is an effort that victims of crime must be returned to their original condition before the crime occurred even though it is based on the basis that the victim will not be able to return to their original condition. With restitution, victims can be restored to their freedom, legal rights, social status, family life and citizenship, return to their homes, restore their jobs, and restore their assets. If the perpetrator is acquitted by the appellate court, the judge will order in his/her decision that the restitution money deposited be returned to the person concerned. The restitution payment must be reported to the presiding judge of the court that decided the case and marked with proof of its implementation.

3.3. The Effectiveness of Imposing Justice-Based Restitution Sanctions for Victims of Human Trafficking Crimes

The role and contribution of victims of human trafficking (TPPO) in the criminal justice system must be given greater consideration, considering that the Indonesian criminal justice system still adheres to the theory of retributism or revenge, so that case resolution in the criminal justice system focuses only on the perpetrator or offender-oriented. In cases of human trafficking, the victims who have suffered and experienced losses are neglected their rights. The government's role in addressing the problem of human trafficking and granting restitution to victims is still considered suboptimal in its implementation. This is evident in the increasing number of cases that occur each year.³² Human trafficking victims often don't receive serious attention. This is evident in the limited rights they receive, as outlined in the law. In essence, victims of a crime are the ones who are severely harmed and experience prolonged suffering due to the trauma they experience as a result of the crime. Victims often lack the protection they deserve. This inevitably leads to the fact that even when the perpetrators have been sentenced by the court, the victims' rights remain

³²Head of Criminal Investigation Unit of Cirebon City Police, AKP Adam Gana, STK, SIK, M.Si. Interview on April 12, 2026. Ibid,

neglected, as their rights are not fulfilled.³³In accordance with Article 48 of Law No. 21 of 2007 paragraph (1), it states that every victim of human trafficking or their heirs have the right to receive restitution, namely in the form of compensation for loss of wealth or income, compensation for losses caused by suffering directly related to the crime, and/or reimbursement of medical and/or psychological treatment costs. However, because in Law No. 21 of 2007 Article 50 paragraph (4) it states that if the perpetrator is unable to pay restitution, then the perpetrator is subject to a substitute prison sentence of a maximum of 1 year, so that it can cause the perpetrator not to carry out the obligations that should be carried out optimally so that the victim can obtain justice for the crime that occurred. Therefore, the Government and society need to work together to ensure that the restitution rights of victims of human trafficking can be fulfilled. The government needs to provide an effective mechanism for providing restitution to victims. The community also needs to support efforts to provide restitution to victims of human trafficking.

Malaysia has established several specific forms of legal protection for victims of human trafficking through articles in the ATIPSOM and Child Act, including:

1. Social and medical rehabilitation, regulated in Article 5 Number 51 of ATIPSOM 2007.
2. Legal assistance and protection in legal processes are regulated in Article 5 Number 52 and Article 4 Number 15 of the Child Act 2001.
3. Temporary protection in a shelter or place of safety, as regulated in Article 9 and Articles 54-55 of the Child Act 2001
4. Psychological assistance, as regulated in Article 51 of ATIPSOM 2007.

However, unlike Indonesia, which explicitly regulates the right to restitution and compensation in the Human Trafficking Law (UUTPPPO) and the Child Protection Law (UUUPSK), Malaysian law does not explicitly mention the right to restitution. Compensation can only be awarded based on a judge's decision on a case-by-case basis. The implementation of the 2007 ATIPSOM regulations and the 2001 Child Act is under the supervision of the Council Against Trafficking in Persons and Migrant Smuggling (MAPO). MAPO is responsible for coordinating victim protection, providing shelter, and rehabilitation. Shelters, or places of safety, are crucial institutions within this system, serving to protect child victims from further threats, provide physical and psychological recovery, and ensure the legal

³³Ika Dewi Sartika Saimima, *Criminal Reconstruction of Restitution and Substitute Imprisonment*, (Sleman: Deepublish, 2020), p. 14

process proceeds without intimidation.³⁴ Unlike many countries that still strictly separate criminal and civil prosecutions, Malaysia has integrated compensation into the criminal justice process through provisions in ATIPSOM. This structural advantage in Malaysia lies in the role of the Anti-Trafficking and Migrant Smuggling Council (MAPO), which coordinates various agencies to ensure victims receive prompt protection, including legal assistance. Malaysian procedures allow courts to order perpetrators to pay compensation to victims as part of a verdict, supported by prosecutors' authority to seize the perpetrator's assets to secure the payment of compensation. In terms of legal culture, Malaysia faces challenges similar to many developing countries, namely the social stigma attached to migrant worker victims. Malaysia's legal culture often views trafficking through an immigration lens, resulting in law enforcement sometimes focusing more on deportation (as violators of immigration laws) than on redressing victims' rights. However, in recent years, there has been a shift in legal culture at the judicial level, prioritizing the protection of witnesses and victims as vulnerable subjects, driven by international pressure related to Tier rankings in the Trafficking in Persons Report. In the United States, the Trafficking Victims Protection Act (TVPA) makes restitution mandatory for traffickers, not simply a matter of judicial discretion. The advantage of this system lies in the prosecutor's obligation to proactively calculate the victim's losses, including non-material losses such as lost income and mental health costs, as an integral part of the indictment. If the perpetrator is found guilty, the judge has no legal loopholes to refuse to award restitution, thus strengthening the victim's position compared to if restitution were solely left to the victim's initiative or the judge's discretion.

The victim's right to restitution and rehabilitation can be fulfilled if the following three things are related. First, law enforcement officials, including victim advocates, the police, the prosecutor's office, and the courts understand the restitution application mechanism, including how to formulate and obtain evidence of material and immaterial losses suffered by the victim. Therefore, many future judges' decisions will be carried out in addition to imposing criminal penalties and fines on perpetrators and also imposing restitution on perpetrators in human trafficking cases. Second, investigators and public prosecutors are required to inform victims of their right to apply for restitution so that victims can exercise their rights to obtain justice. Third, coordination between various parties, including victim advocates, law enforcement officials, social services, health services, and other relevant agencies is important so that maximum penalties can be imposed on perpetrators to prevent the recurrence of human trafficking crimes against other victims. and restore the dignity of victims as

³⁴Rizki Dwi Kusuma, 2025 Comparative Legal Concepts in Malaysia and Indonesia on Trade, *Gorontalo Law Review* Volume 8 - No. 1, E-ISSN: 2614-5030 P-ISSN: 2614-5022, Pg. 207-208 <https://jurnal.unigo.ac.id/index.php/golrev/article/view/4328>

human beings through various rehabilitation and restitution programs.³⁵The obligation to pay restitution to victims is difficult to implement in practice, even though the application of this restitution has been stipulated in a court decision, due to the complexity of submitting a restitution application and the process of completing the restitution requirements is time-consuming and incurs costs. The restitution application should be made from the time the victim reports the case to the local Indonesian National Police and handled by investigators simultaneously with the handling of the crime committed. The public prosecutor informs the victim of their right to file for restitution, then the public prosecutor conveys the amount of losses suffered by the victim due to the crime of human trafficking along with the charges. To determine the effectiveness of imposing restitution sanctions for victims of the crime of human trafficking based on justice, several factors are considered, namely:³⁶

1. The certainty of restoring the victim's rights (restorative justice), the effectiveness of which is first measured by the extent to which restitution is able to restore the victim's condition, both materially (loss of wealth/income) and immaterially (psychological suffering). Based on justice, restitution is not merely a formality of the judge's decision, but must be truly received by the victim to finance medical, social, and psychological rehabilitation so that the victim can return to functioning in society.
2. Optimizing asset recovery. Restitution sanctions are considered effective if law enforcement officers track and seize the perpetrator's assets from the investigation stage. Justice is not achieved if the judge imposes a large restitution amount but the perpetrator does not own the assets to be seized, making the restitution impossible to actually enforce.
3. One of the barriers to effectiveness in limiting substitute imprisonment is the loopholes that allow perpetrators to choose to serve their sentence rather than pay restitution. Justice-based sanctions must ensure that restitution is the primary punishment. Effectiveness is achieved if regulations can compel perpetrators to pay, for example through the confiscation of corporate assets or the seizure of third-party property related to the proceeds of crime.

4. Conclusion

1. The regulation on imposing restitution sanctions for victims of human trafficking crimes considers that the law does not only function as a means of punishment, but also as a remedy that provides substantive justice for victims on the basis of legal certainty as regulated in the Anti-Trafficking Law and the

³⁵Dedy Jaya Sihite and Atang Hidayat, *The Role of Restitution in Human Trafficking Crimes*, *Unes Law Review*, Vol. 6, No. 3, March 2024, p. 81.

³⁶Head of Criminal Investigation Unit of Cirebon City Police, AKP Adam Gana, STK, SIK, M.Si. Interview on April 12, 2026.

National Criminal Code No. 1 of 2023, but specifically in Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, especially in Articles 48 to 50, which stipulate that every victim has the right to receive restitution in the form of compensation for loss of wealth or income, suffering, medical and psychological care costs, and other losses suffered by the victim as a result of human trafficking. 2. The weaknesses in imposing restitution sanctions for victims of human trafficking crimes are evident from several factors, namely the ineffectiveness of substitute imprisonment, the gap between the value of restitution and the psychological impact, dependence on the proactiveness of law enforcement officers, the risk of concealing assets in digital-based crimes, and sectoral ego clashes in execution. 3. The effectiveness of imposing restitution sanctions for victims of human trafficking crimes based on justice. Certainty of restoration of victims' rights (restorative justice), Optimization of confiscation of perpetrators' assets (asset recovery), Limitation of substitute imprisonment (subsidiary), Accountability of submission and execution mechanisms, and the lack of regulations regarding restitution will certainly make it difficult for victims of crimes who will submit restitution applications.

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