

Fulfillment of the Rights of Crime Victims Trafficking in People

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Abstract

This research aims to analyze and find fulfilling the rights of victims of criminal acts of human trafficking. This research is socio-legal research using primary data and secondary data. The results of the research show that the fulfilling the rights of victims of criminal acts of trafficking in persons does not have the value of justice is less specific and incomplete in defining procedures and criteria for restitution, causing uncertainty for victims about the rights and processes available to them, delays in implementing restitution and a lack of Monitoring and accountability mechanisms hamper the effective and fair distribution of restitution, lack of protection and support for victims during the legal process, as well as limited involvement of victims in determining restitution, causing a mismatch between victims' needs and the support provided.

Keywords: Victims' Rights, Crime of Human Trafficking, Justice

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A. Introduction

In Article 1 of Law Number 21 of 2007 concerning the Eradication of the Criminal Act of Trafficking in Persons, it is stated that "Trafficking in persons is the act of recruiting, transporting, harboring, sending, transferring or receiving someone with the threat of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of power or a vulnerable position, debt bondage or giving payments or benefits, so as to obtain the consent of the person who has control over another person, whether carried out within countries or between countries, for the purpose of exploitation or resulting in people being exploited".¹

Human rights are violated and human trafficking can also be seen as slavery. Human rights violations in the form of slavery usually involve deprivation of liberty and are committed by powerful economic groups against weaker economic groups.

Women are the group most vulnerable to becoming victims of criminal acts of human trafficking. Victims are trafficked not only for the purpose of prostitution or other forms of sexual exploitation, but also include other forms of exploitation, for example forced labor or forced servitude and slavery. The International Organization for Migration (OMI) report states that the number

Human trafficking victims in Indonesia between 2005 and 2017 reached 8876 people. Female victims remain the largest number of victims of human trafficking. In 2018, the Indonesian National Police (POLRI) reported 95 human trafficking crimes, this was a decrease compared to 123 cases in 2017.

Those who are serious victims of human trafficking are often ignored by the legal system. Every person who suffers from the crime of trafficking in persons and/or experiences psychological, mental, physical, sexual, economic or social suffering is considered a victim in this case. This is due to the systematic nature of human trafficking crimes, which makes it difficult for victims to escape.

Slavery, trafficking in body parts and tissues, prostitution, labor, narcotics trafficking and manufacturing, illegal adoption, and other forms of trafficking in women are common. Women who become victims of trafficking activities will suffer greatly from the consequences. Considering that the social and psychological impacts on victims make them unable to function socially, contribute to the development process, and maintain a quality regeneration process, human resource development is hampered by women trafficking.

B. Research Methods

The research method used is socio-legal research.² This research is a qualitative research³, the type of data used

¹ H.R. Abdussalam dan Adri Desasfuryanto, *Victimology (Ilmu Tentang Korban)*, PTIK Press, Jakarta, 2018, page. 8.

² Esmi Warassih. Pranata Hukum: Sebuah Telaah Sosiologis, (Semarang: Suryandaru Utama, 2005), page. 23-24. See too Anis Mashdurohatun, Gunarto & Oktavianto Setyo Nugroho Concept Of Appraisal Institutions In Assessing The Valuation Of Intangible Assets On Small Medium Enterprises Intellectual Property As Object Of Credit Guarantee To Improve Community's Creative Economy, JPH: Jurnal Pembaharuan Hukum, Volume 8, Number 3, December 2021.

³ Bagong Suyanto dan Sutinah, *Metode Penelitian Sosial*. Berbagai Pendekatan Alternatif. Kencana, Jakarta, 2015, hlm. 21. See too Anis Mashdurohatun, The Urgency of Legal Protection to the Trademarks in the Global Era, Jurnal Pembaharuan Hukum.Vol 5, No 3 (2018) , See too Wawan Setiyawan and Anis Mashdurohatun, The Reforming Of Money Politics Cases In Election Law As Corruption Crime. Law Development Journal, Volume 3 Issue 3, September 2021, pp.621 – 629.

is primary and secondary data.¹ Data collection techniques through literature and field studies, interviews and questionnaires). The data collected were analyzed through descriptive analytic.²

C. Discussion

The crime of trafficking in persons (TPPO) is a serious crime that is disturbing the global community, including Indonesia. These crimes violate human rights and exploit victims, especially women and children, for economic gain. Given the complexity of TIP, victims often experience deep trauma, economic loss and social stigma.³

The Indonesian National Police plays an important role in eradicating TIP and restoring victims' rights. In handling TIP cases, The police not only focuses on law enforcement but also on protecting and fulfilling victims' rights. The police coordinate with related agencies, such as the Ministry of Social Affairs, to ensure victims receive rehabilitation and social reintegration services.

The legal regulation of the role of the police in fulfilling the right to restitution for victims of criminal acts of human trafficking in Indonesia is regulated in Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking (UU PTTPO). Restitution is a form of legal protection for victims to receive compensation for material or immaterial losses imposed on perpetrators as a result of criminal acts of human trafficking.

Restitution can take the form of compensation for loss of wealth or income, suffering, costs for medical and/or psychological treatment, and/or other losses suffered by the victim as a result of human trafficking. The provision of restitution is carried out from the time the first instance court decision is handed down and is carried out within 14 (fourteen) days from the notification of the decision which has obtained permanent legal force.

The role of the police in fulfilling the rights of restitution for victims of human trafficking crimes begins with investigations. The police are tasked with handling cases reported by victims and carrying out investigations simultaneously with handling criminal acts experienced by victims. Apart from that, the police too play a role in informing victims of their rights to apply for restitution.

Law Number 21 of 2007 concerning Eradication of the Crime of Human Trafficking in Indonesia regulates various aspects related to human trafficking. This law defines human trafficking as the act of recruiting, transporting, harboring, sending, transferring, or receiving a person by threat of force, use of force, kidnapping, fraud, abuse of power, abuse of position or vulnerability, or giving or receiving payments or benefits to obtain the consent of a person who has control over another person, for the purpose of exploitation.⁴

This law stipulates criminal threats for perpetrators who commit criminal acts of human trafficking. This law also regulates the protection of witnesses and victims as an important aspect in law enforcement. The aim is to provide protection and redress for victims of human trafficking, and ensure that they can participate fully and effectively in the criminal justice process. This law regulates in a comprehensive and integrated manner the prevention and control of criminal acts of human trafficking.

This law revokes and amends several provisions in Law Number 1 of 1946 concerning Criminal Law Regulations. The implementation of this law is further regulated in Government Regulation Number 9 of 2008 concerning Procedures and Mechanisms for Integrated Services for Witnesses and/or Victims of Human Trafficking Crimes. Thus, Law Number 21 of 2007 is an important legal instrument in efforts to eradicate criminal acts of human trafficking in Indonesia.

The right to restitution for victims of the crime of trafficking in persons (TPPO) in Indonesia is regulated in Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons. The articles that discuss the right to restitution are Articles 48 to Article 50 of Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking.

Article 48 paragraph (1) states that every victim of human trafficking or their heirs has the right to receive restitution. The restitution is given and included at the same time in the court decision regarding the criminal case of human trafficking, as stated in paragraph (3) of the same article. The article states that restitution includes the return of medical and medical care costs, compensation for loss of income, compensation for physical and psychological losses, as well as rehabilitation and social reintegration costs.

Articles 49 and Article 50 then provide further explanation regarding the mechanisms and procedures for providing restitution, including the obligation of criminal perpetrators to pay restitution and the process of collecting restitution if the perpetrator is unable to pay. Article 49 emphasizes that TIP victims have the right to receive information regarding their right to restitution. Investigators have the authority to submit requests for

¹Sunaryati Hartono. *Legal Research in Indonesia at the End of the 20th Century*, Bandung: Alumni,1994. see too Maniah; Bin Bon, Abdul Talib; Hariadi, Andi Kahar; Gunarto; Mashdurohaturun, Anis; et al. Mapping the Competencies and Training Needs of Human Resources to Improve Employee Performance in Indonesia After the Covid-19 Pandemic, *Quality - Access to Success*, 2023, 24(195), pp. 219–225.

² Anis Mashdurohaturun, Gunarto & Adhi Budi Susilo, The Transfer Of Intellectual Property Rights As Object Of Fiduciary Guarantee, *Jurnal Akta*. Volume 9 No. 3, September 2022.

³ Asikin, Zainal. 2018. *Pemberantasan Tindak Pidana Perdagangan Orang*. Pustaka Setia, Bandung., page. 63

⁴ Romli, Lili. 2018. *Hak Restitusi Korban Tindak Pidana*. Pustaka Reka Cipta, Bandung.,Page.172

restitution to the judge during the trial process. Decisions regarding restitution are determined by the judge and the amount and form must be clear in the court decision.

In the event that the perpetrator of the crime is unable or unwilling to pay restitution, the government plays a role in ensuring the fulfillment of the victim's right to restitution. This is explained in Article 51, where it is stated that the government is responsible for allocating a budget to fulfill the right to restitution.

Restitution is compensation given to victims to recover the losses they have experienced, whether physical, psychological or economic. Providing restitution aims to return the victim's condition to its original state before becoming a victim of TIP.¹

According to Law Number 21 of 2007 concerning Eradication of the Crime of Human Trafficking, the right to restitution given to victims of criminal acts of human trafficking includes several aspects:

- 1) Compensation for Loss of Wealth or Income: Victims have the right to receive compensation for loss of wealth or income caused by the crime of human trafficking.
- 2) Medical and/or Psychological Treatment Costs: Victims are also entitled to compensation for medical and/or psychological treatment costs required as a result of criminal acts of human trafficking.
- 3) Other Losses Due to Human Trafficking: In addition, victims are also entitled to compensation for other losses suffered as a result human trafficking. These losses can take the form of physical, psychological, mental, sexual, economic and/or social losses.
- 4) Suffering: Victims also have the right to receive compensation for the suffering experienced as a result of criminal acts of human trafficking.

This restitution is given and included at the same time in the court decision regarding the criminal case of human trafficking. The provision of restitution is carried out from the time the first instance court decision is handed down and is carried out within 14 (fourteen) days from the notification of the decision which has obtained permanent legal force.²

To apply for restitution as a victim of the crime of human trafficking according to Law Number 21 of 2007, the following are the steps you can follow:

- 1) Report the incident to Law Enforcement Officials
Victims must report incidents of criminal acts of human trafficking to law enforcement officials, such as the police. In this report, the victim must convey the losses experienced as a result of the criminal act.
- 2) Submit a Request for Restitution to the Court
After reporting the incident, the victim can submit a request for restitution to the court. This request must be made in writing in Indonesian and submitted to the Chairman/Head of the Court. Requests for restitution can be submitted either directly or through the Witness and Victim Protection Agency (LPSK), investigators or public prosecutors.
- 3) Follow the process of providing restitution
After a request for restitution is submitted, the victim must follow the process of providing restitution as regulated in Law Number 21 of 2007. This process involves various law enforcement agencies, including the LPSK and the Public Prosecutor.
- 4) Carrying out the Restitution Collection Process
If the perpetrator of the crime is unable to pay restitution, the victim can carry out the process of collecting restitution. In this case, the perpetrator can be subject to a maximum imprisonment of 1 (one) year.

Victims must understand the rights and mechanisms for applying for restitution as regulated in Law Number 21 of 2007. This is important because in practice, there are several obstacles in the process of applying for restitution, such as the victim's lack of understanding of the mechanism for applying for restitution and a lack of effectiveness in implementing restitution.

Victims are advised to get legal assistance in the process of applying for restitution. This legal assistance can help victims understand their rights and mechanisms for applying for restitution, as well as assist victims in facing the legal process related to applying for restitution. By paying attention to these matters, victims of criminal acts of human trafficking can apply for restitution more effectively and obtain their rights as regulated in Law Number 21 of 2007.

The right to restitution for victims of criminal acts of human trafficking in Indonesia shows the government's commitment to providing protection and recovery for victims. However, implementation in the field requires better coordination between relevant agencies and a deep understanding of victims' rights to ensure that restitution truly provides benefits for victims' recovery.

Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking can be seen as an order from the authorities (in this case the Indonesian government through the DPR and the President) to the Indonesian people, including law enforcement officials such as the police. This law reflects the government's

¹ Siregar Masdiana, 2017, *Perlindungan Hukum Bagi Korban TPPO*, Kencana, Jakarta. page.132.

² Sri Handayani, *Hak Asasi Korban Tindak Pidana: Studi Terhadap Hak Restitusi*, Deepublish, Yogyakarta, 2018. Page.18.

authority in dealing with the problem of human trafficking and providing protection to victims.

Law Number 21 of 2007 has an imperative nature that requires the police to protect the rights of victims, including the right to restitution. The police have an obligation to implement and ensure the implementation of these laws in the field.

The importance of sanctions in positive law. In Law Number 21 of 2007, clear sanctions are applied to perpetrators of TIP. In addition, the law also regulates the responsibilities of the police and related agencies in protecting and restoring victims' rights, although sanctions against the police who do not carry this out may be less explicit.

The police as law enforcement officers represent the ruling authority in eradicating TIP. Through this law, the police are given the authority and responsibility to ensure that victims' rights to restitution are fulfilled. They must work in accordance with the mandate given by the authorities through Law Number 21 of 2007.

In the context of Austin's theory, law aims to create order. With the existence of Law Number 21 of 2007, it is hoped that there will be order in handling TIP and protecting victims. Viewed from the perspective of Austin's positive legal theory, Law Number 21 of 2007 reflects orders from the authorities to the public and law enforcement officials to protect TIP victims. The police, as representatives of the ruling authority in the field, have an imperative obligation to ensure compliance.

Regulations on fulfilling the right to restitution for victims of criminal acts of human trafficking in Indonesia which are not yet fully based on the value of justice can be attributed to several factors and challenges. Often, existing regulations do not provide clear guidance on how restitution should be calculated and provided to victims. This includes the lack of specific criteria for determining the amount of restitution and the procedures to be followed to claim it.

Victims often experience difficulties in accessing restitution rights due to complicated procedures and lack of information. In addition, implementation of regulations is often hampered by bureaucracy and a lack of resources in the responsible institutions. Providing restitution requires significant financial resources. In many cases, there are limitations in resources the financial power of the government or agency responsible for providing restitution to victims.

In many cases, restitution depends on the perpetrator's financial ability to pay. If the perpetrator does not have sufficient financial resources, the victim may not receive proper restitution. Victims often do not receive sufficient protection and support during the legal process, which makes them vulnerable to pressure and manipulation. This may hinder their ability to claim restitution rights.

A lack of awareness and legal education among victims and the general public regarding the right to restitution also acts as a barrier. Many victims are unaware of their rights or how to claim them. And often, the legal system focuses more on prosecuting perpetrators than on recovering victims. This reflects an approach that is not entirely victim-centred, where their needs and rights are not always a priority.

To make restitution regulations more justice-based, there needs to be a change in the legal system's approach to focus more on victims' rights and recovery, including simplifying the restitution claims process, increasing access and support for victims, and ensuring sufficient resources for providing restitution. A more inclusive and victim-centered approach will help ensure that restitution is not just a right on paper, but also an accessible reality for victims of human trafficking. Victims will endure protracted suffering, even the most severe, which will divide and destroy the integrity of community life as well as the life of the nation and state. This will happen if sources of livelihood, welfare, equality and a sense of security are disrupted. To end or reduce the suffering of victims and their families, victims must receive legal protection which includes guarantees, legal support, information, medical services and assistance, as well as restitution and compensation.

D. Conclusion

Fulfillment of the rights of victims of criminal acts of human trafficking is not worth justice, lack of specificity and incompleteness in defining procedures and criteria for restitution, causing uncertainty for victims about the rights and processes available to them, delays in implementing restitution and a lack of monitoring and accountability mechanisms hinders Effective and fair distribution of restitution, lack of protection and support for victims during the legal process, as well as limited involvement of victims in determining restitution, cause a mismatch between victims' needs and the support provided.

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