

Legal Certification of the Restitution of Criminal Sanctions for Trading of Criminal Trafficking Persons, Based on Law of Regulation, Component and Regulation of the Company, Regulation of the Republic of Indonesia 7, 2007

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ABSTRACT

Restitution is submitted by the Public Prosecutor by attaching the required documents for the application for restitution, which then the court judge will consider the application for restitution. The problem in this study is how the legal certainty of imposing criminal sanctions for restitution against perpetrators of trafficking in persons based on Law Number 21 of 2007 concerning Eradication of Trafficking in Persons Crime Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution, and Assistance to Witnesses and victim? The research method used is normative juridical using secondary data. The results of the study show that legal certainty regarding the imposition of criminal sanctions for restitution for perpetrators of criminal acts of trafficking has been regulated in Law Number 21 of 2007 concerning Eradication of Trafficking in Persons in Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution and Assistance to Witnesses and Victims are carried out with a mechanism for submitting restitution since the victim reports a case he has experienced to the local Republic of Indonesia National Police and is handled by the investigator together with the handling of the crime committed. However, in the application of criminal sanctions for restitution against perpetrators of criminal acts of trafficking in decisions of the Jambi District Court Number 538 / Pid.Sus / 2014 / PN.Jmb, on December 18, 2015 it was incorrect because the Court Judges did not examine the complete application for restitution submitted by the Public Prosecutor before deciding on sanctions for restitution, while the Public Prosecutor also carries out negligence by not attaching documents, so that the decision of the Jambi District Court Number 538 / Pid.Sus / 2014 / PN.Jmb can reduce the legal certainty.

Keywords: *restitution, crime of trafficking in persons, legal certainty*

on independence, eternal peace and social justice.¹

1. INTRODUCTION

The Unitary State of the Republic of Indonesia was formed based on its Constitution, namely the 1945 Constitution on August 18, 1945 the day after the Proclamation of Independence. In the 1945 Constitution stated about the purpose of the country. The purpose of the country is contained in the Preamble to the 1945 Constitution which, after four amendments, most recently in 2002, was given the full name of the 1945 Constitution of the Republic of Indonesia, the purpose of the state remained unchanged. The purpose of the state is the main interest rather than the order of a country. Organizing a country starts from the formation of law as a rule that regulates order in the life of the nation and state. The aim of the Indonesian state is to protect the entire nation of Indonesia and all of Indonesia's blood spill, promote public welfare, educate the nation's life and participate in carrying out world order based

The purpose of this country is then set out in the contents or body of the 1945 Constitution of the Republic of Indonesia. Its implementation in the form of various statutory regulations as immovable law in the form of law which moves into government based on law.²[1] One form of governance based on law is the

¹ Lihat Pembukaan Undang-Undang Dasar 1945 alinea keempat yaitu "Kemudian daripada itu untuk membentuk suatu pemerintah Negara Indonesia yang melindungi segenap bangsa Indonesia dan seluruh tumpah darah Indonesia dan untuk memajukan kesejahteraan umum, mencerdaskan kehidupan bangsa, dan ikut melaksanakan ketertiban dunia yang berdasarkan kemerdekaan, perdamaian abadi, dan keadilan sosial ...". Jaminan perlindungan warga negara telah diatur dalam beberapa pasal, di antaranya Pasal 27 ayat (2), Pasal 28 A, Pasal 28 B ayat (2), dan Pasal 28 D ayat (1).

² Ada teori yang mengajarkan, bahwa hukum semata-mata menghendaki keadilan. Teori-teori yang mengajarkan hal tersebut, disebut teori-teori yang etis karena menurut teori-teori itu, isi hukum semata-mata harus ditentukan oleh kesadaran etis kita mengenai apa yang adil dan apa yang tidak adil. Teori-teori tersebut berat sebelah. Ia melebih-lebihkan kadar keadilan hukum, karena ia tak cukup memperhatikan keadaan sebenarnya. Hukum

regulation of trafficking in persons. Human trafficking³ is a regional and global phenomenon which cannot always be dealt with effectively at the national level. A national response often results in traffickers moving their operations elsewhere. International cooperation both multilateral and bilateral is very important in eradicating trafficking in persons. Such cooperation can critically explore between countries involved at different stages in the trafficking cycle.

Cooperation between countries in eradicating trafficking in persons, the United Nations issued a guideline that the State and inter-governmental institutions and non-governmental organizations consider several things listed in the Recommended Principles and Guidelines on Human Rights and Human Trafficking as a report of the United Nations High Commissioner for Human Rights and to Economic and Social Council (its Principles and Guidelines Recommended Regarding Human Rights and Trafficking in Persons as a report of the United Nations High Commissioner for Human Rights for the Economic and Social Council).⁴

Based on these provisions, the crime of trafficking in persons is a transnational crime, so it cannot be overcome partially or individually by each country. Countries that do not agree with slavery and protect their citizens must come together to work together to tackle and prevent trafficking in persons. Government-to-government cooperation (G to G), between NGOs, between community organizations and individuals at home and abroad must be fostered and developed, so that forces are formed that can overcome and eradicate and prevent criminal acts of organized trafficking in persons.⁵

menetapkan peraturan-peraturan umum yang menjadi petunjuk untuk orang-orang dalam pergaulan hidup. Jika hukum semata-mata menghendaki keadilan, jadi semata-mata mempunyai tujuan memberi tiap-tiap orang apa yang patut diterimanya, maka ia tak dapat membentuk peraturan-peraturan umum. Dan yang terakhir inilah yang harus dilakukan. Adalah syarat baginya untuk dapat berfungsi. Tertib hukum yang tak mempunyai peraturan umum, tertulis atau tidak tertulis, tak mungkin. Tak adanya peraturan umum, berarti ketidaktentuan yang sungguh-sungguh, mengenai apa yang disebut adil atau tidak adil. Dan ketidaktentuan itu selalu akan menyebabkan perselisihan antara orang-orang jadi menyebabkan keadaan yang tiada teratur dan bukan keadaan yang teratur. Lihat L.J. van Apeldoorn, *Pengantar Ilmu Hukum*, Terjemahan, Diterjemahkan Oleh: Oetari Sadino, Jakarta: Pradnya Paramitha, 2009, hlm. 12.

³ Perdagangan orang adalah tindakan perekrutan, pengangkutan, penampungan, pengiriman, pemindahan, atau penerimaan seseorang dengan ancaman kekerasan, penggunaan kekerasan, penculikan, penyekapan, pemalsuan, penipuan, penyalahgunaan kekuasaan atau posisi rentan, penjeratan utang atau memberi bayaran atau manfaat, sehingga memperoleh persetujuan dari orang yang memegang kendali atas orang lain tersebut, baik yang dilakukan di dalam negara maupun antar negara, untuk tujuan eksploitasi atau mengakibatkan orang tereksplotasi. Lihat: Pasal 1 angka 1 Undang-Undang Nomor 21 Tahun 2007 Tentang Pemberantasan Tindak Pidana Perdagangan Orang (Lembaran Negara Republik Indonesia Tahun 2007 Nomor 58, Tambahan Lembaran Negara Republik Indonesia Nomor 4720).

⁴Farhana, *Aspek Hukum Perdagangan Orang di Indonesia*, Jakarta: Sinar Grafika, 2012, hlm. 138.

⁵ *Ibid.*, hlm. 140.

Indonesia is one of the main countries of origin, at a certain level, and destination, and transit for Indonesian men, women and children to become forced laborers and victims of sex trafficking. Every province in Indonesia is both the origin and destination human trafficking. The government estimates that around 1.9 million of the 4.5 million Indonesians working abroad, most of them women who do not have documents or have lived beyond the residence permit limit. This situation increases their vulnerability to trafficking in persons.⁶

Law enforcement of trafficking in persons in Indonesia has been regulated in Article 2 paragraph (1) of Law Number 21 Year 2007 concerning Eradication of Trafficking in Persons whose criminal threat is a prison term of at least 3 (three) years and a maximum of 15 (fifteen) year and a fine of at least Rp. 120,000,000 (one hundred and twenty million rupiah) and a maximum of Rp. 600,000,000 (six hundred million rupiah).⁷

In addition to imprisonment and fines, there are also provisions on restitution in Law No. 21 of 2007 concerning Eradication of the Trafficking in Persons Act regulated in Article 48 stipulates that every victim or his heir is entitled to a restitution in the form of compensation for:

1. Loss of wealth or income,
2. Suffering,
3. Costs for medical and / or psychological treatment measures, and / or
4. Other losses suffered by victims as a result of trafficking in persons.

Other losses referred to in this provision are loss of property, basic transportation costs, attorney's fees or other costs related to the legal process or loss of income promised by the perpetrator. The restitution is given and stated at the same time in the court ruling. Implementing regulations for these provisions have been regulated in Government Regulation No. 7 of 2018 concerning Provision of Compensation, Restitution and Assistance to Witnesses and Victims.

The provisions of Article 20 paragraph (1) of Government Regulation No. 7 of 2018 concerning the Granting of Compensation, Restitution and Assistance to Witnesses and Victims, regulates the provisions regarding submission of applications for Restitution that can be made before or after a court decision which has obtained permanent legal force through LPSK, where the application restitution must be accompanied by several documents as regulated in Law Number 21 Year 2007 concerning Eradication of the Criminal Act of Trafficking in Persons in conjunction with Article 21 Paragraph (3) Government Regulation Number 7 of 2018 concerning Provision

⁶ Laporan Tahunan Perdagangan Orang 2016., <https://id.usembassy.gov/id/our-relationship-id/official-reports-id/laporan-tahunan-perdagangan-orang-2016/>., diakses pada tanggal 24 Mei 2019.

⁷ Aziz Syamsuddin, *Tindak Pidana Khusus*, Jakarta: Sinar Grafika, 2011, hlm. 59.

of Compensation, Restitution and Assistance to Witnesses and Victims.⁸

Problems arise when court judges impose sanctions for restitution on perpetrators, however the Public Prosecutor did not attach the required documents for the application for restitution as stipulated in Article 21 paragraph (3) of Government Regulation No. 7 of 2018 concerning Granting Compensation, Restitution and Assistance to Witnesses and Victim, so raises legal uncertainty over sanctions for restitution. This happened in the case of trafficking in persons as in the Judgment of the Jambi District Court Number 538 / Pid.Sus / 2014 / PN.Jmb, December 18, 2014.

In that case, the Public Prosecutor demanded that Defendant I Daniah Binti Daspul, and Defendant II Wawan Sumitra Bin Mudrika Wawan, pay the Restitution fee of Defendant I and Defendant II, amounting to Rp. 2,500,000 (two million and five hundred thousand rupiah) subsidair each of 3 (three) months of confinement, but the Public Prosecutor in the trial did not submit a restitution request document as evidence as well as a basis for the panel of judges in imposing penalties for restitution. Based on this request, the Panel of Judges decided to grant the request of the Public Prosecutor by imposing penalties for restitution on the defendants. In this decision, none of the judges' considerations gave legal considerations regarding the restitutionary suit filed by the public prosecutor. In fact, according to the principle of criminal procedure law, the court in passing the conviction to the defendant must be based on the facts of the trial and legal considerations that enough before ruling.

Based on the background of the problem above, the author is interested and would like to examine more deeply the results of which are set forth in the form of a study entitled "LEGAL SATISFACTION ON THE RULING OF RESTITUTIONAL CRIMINAL SANCTIONS FOR THE ACTION OF CRIMINAL TRADING PERSONNELS BASED ON THE ACT OF LAW OF THE REPUBLIC OF INDONESIA PEOPLE JO

GOVERNMENT REGULATION NUMBER 7 OF 2018 CONCERNING PROVISION OF COMPENSATION, RESTITUTION, AND ASSISTANCE TO WITNESS AND VICTIMS

Problem Formulations

Based on the above background, the formulation of the problem in this study is how the legal certainty of the imposition of penal sanctions restitution against perpetrators of trafficking in persons based on Act Number 21 of 2007 concerning Eradication of Criminal Acts of Trafficking in People jo Government Regulation Number 7 of 2018 concerning Granting Compensation, Restitution and Assistance to Witnesses and Victims?

2. RESEARCH METHODS

1. Type of Research

This research is basically a normative juridical research, because the target of this study is the normative law or method in the form of legal principles and the legal system. Normative research in this study is a study that describes or describes in detail, systematic, comprehensive and in-depth about legal certainty regarding the imposition of criminal sanctions for the restitution of trafficking in persons based on Law Number 21 Year 2007 concerning Eradication of Criminal Acts of Trafficking in People jo Government Regulation Number 7 of 2018 concerning the provision of compensation, restitution and assistance to witnesses and victims.⁹

2. Nature of Research

This research is descriptive because it illustrates the applicable laws and regulations and is associated with legal theories in the practice of its implementation relating to the problem to be examined.

3. Data Analysis

The data obtained will be analyzed by qualitative analysis.

3. RESEARCH RESULTS AND ANALISYS

The eradication of the crime of trafficking in persons begins with a report on the crime of trafficking in persons on the Beijing Platform Action which underlies the formation of the Convention of the Elimination of all Forms of Discrimination Against Woman (CEDAW).¹⁰ The regulation was later ratified by the Government of Indonesia with Law Number 7 of 1984 concerning the Elimination of All Forms of Discrimination Against Women. These conventions exist to reinforce Articles 3 and 4 of the Universal Declaration of Human Rights (UDHR) of

⁸ Pasal 21 ayat (3) Peraturan Pemerintah Nomor 7 Tahun 2018 Tentang Pemberian Kompensasi, Restitusi, dan Bantuan Kepada Saksi dan Korban menyatakan:

Permohonan Restitusi sebagaimana dimaksud pada ayat (2) harus dilampiri dengan:

- a. fotokopi identitas Korban yang disahkan oleh pejabat yang berwenang;
- b. bukti kerugian yang nyata-nyata diderita oleh Korban atau Keluarga yang dibuat atau disahkan oleh pejabat yang berwenang;
- c. bukti biaya yang akan atau telah dikeluarkan selama perawatan dan/atau pengobatan yang disahkan oleh instansi atau pihak yang melakukan perawatan atau pengobatan;
- d. fotokopi surat kematian, jika Korban meninggal dunia;
- e. surat keterangan dari Kepolisian Negara Republik Indonesia yang menunjuk pemohon sebagai Korban tindak pidana;
- f. surat keterangan hubungan Keluarga, jika permohonan diajukan oleh Keluarga;
- g. surat kuasa khusus, jika permohonan Restitusi diajukan oleh kuasa Korban atau kuasa Keluarga; dan
- h. kutipan putusan pengadilan, jika perkaranya telah diputus pengadilan dan telah memperoleh kekuatan hukum tetap.

⁹ Soerjono Soekanto dan Sri Mamuji, *Penelitian Hukum Normatif-Suatu Tinjauan Singkat*, Jakarta: Rajawali Press, 2007, hlm. 10

¹⁰ Hanafi Rachman, "Penegakan Hukum Terhadap Tindak Pidana Perdagangan Orang Dalam Sistem Peradilan Pidana Indonesia", *Tesis*, Universitas Indonesia, Fakultas Hukum, Juni 2012, hlm. 1.

1948 which guarantees the freedom of the individual over his life.¹¹

Every victim of a criminal act of trafficking in persons or their heirs is entitled to get restitution from the perpetrator. This restitution is compensation for loss of wealth or income, suffering, costs for medical and / or psychological treatment measures and / or other losses suffered by victims as a result of trafficking in persons.¹²

Viewed from the interests of victims in the concept of compensation contained two benefits, namely to meet the material loss of all costs incurred and is the emotional satisfaction of the victim. As for the views of the interests of the perpetrators, the obligation to compensate for the losses is seen as a form of crime imposed and felt as a concrete and directly related to the mistakes made by the perpetrators.

The first purpose of this restitution is to alleviate the suffering of victims can be understood as an effort to alleviate the burden of victims, both physical and non-physical suffering. However, any losses must also be determined that would be appropriate compensation. The compensation that will be charged to the perpetrators must still be seen as a criminal form and must be adjusted to the economic capabilities of the perpetrators.

As for the second purpose, compensation that can only be applied to types of crime that can be replaced with other forms that provide the effect of reducing the criminal penalties. For the third purpose, it relates to people's perceptions and attitudes in accepting the return of the perpetrators of crime.

The attitude to choose to provide compensation to the victim will provide an opportunity for the perpetrator to re-enter as a member of the community than if he had to undergo a criminal period. The fourth objective will simplify the judicial process and the fifth objective relates to the third objective which is a step to reduce public reaction in the form of acts of revenge.¹³

The core objectives and obligations of compensation are nothing but to develop justice and welfare of victims as members of the community and the measure of their implementation is to provide opportunities for victims to develop their rights and obligations as human beings.

However, in practice in the field, sometimes the Court Judge decides to impose sanctions for restitution against perpetrators of trafficking in persons, however, the judge does not examine the completeness of the application for restitution, causing legal uncertainty over the termination of the restitution

sanction. This is as happened in Jambi District Court Decision Number 538 / Pid.Sus / 2014 / PN.Jmb.

In that case, the Public Prosecutor demanded that Defendant I Daniah Binti Daspul, and Defendant II Wawan Sumitra Bin Mudrika Wawan, pay the Restitution fee of Defendant I and Defendant II, amounting to Rp. 2,500,000 (two million and five hundred thousand rupiah) subsidair each of 3 (three) months of confinement, but the Public Prosecutor in the trial did not attach a restitution request document. Based on this request, the Panel of Judges decided to grant the request of the Public Prosecutor. In the judge's consideration, none of the judges' considerations considered the request of the Public Prosecutor, even though the Judge had the task of examining all the demands of the Public Prosecutor before making a decision.

Provisions in Article 20 paragraph (1) Government Regulation Number 7 of 2018 concerning the granting of compensation, restitution and assistance to witnesses and victims, regulates the provisions on the application for restitution that can be done before or after a court decision which has obtained permanent legal force through the LPSK, where the request for restitution must be accompanied by several documents as regulated in the law. Law Number 21 of 2007 concerning Eradication of Trafficking in Persons in conjunction with Article 21 paragraph (3) and Article 30 paragraph (1) of Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution and Assistance to Witnesses and Victims.¹⁴

Based on this, the Jambi District Court Decision Number 538 / Pid.Sus / 2014 / PN.Jmb, December 18, 2014 is incorrect, because in its consideration, the Court Judge must examine the completeness of the restitution request documents submitted by the Public Prosecutor before decide on sanctions for restitution, while the Public Prosecutor must prove everything the indictment is included in the case of restitution charges related to the completeness of the document.

An examination of the completeness of the documents for a request for restitution is carried out in an effort to ensure that the restitution dropped can be received by the right person, namely a victim of trafficking. The necessity for the completeness of the documents that must be submitted in the trial as can be seen in the example of the Class II District Court Decision Kefamenanu Number 22 / Pid.Sus / 2017 / PN.Kfm.

The Public Prosecutor in the case charged Defendant Agus Prayitno alias Agus by charging the Defendant to pay Restitution to Victim Witness Maria Regalinda Leuf in the amount of Rp. 5,000,000 (five million rupiahs) Subsidiary for 5 months confinement. However, in the case file submitted by the Public Prosecutor, there was no request for restitution and the amount of loss suffered by the victim for the crime he experienced, so the Panel of Judges rejected the Prosecutor's

¹¹ Pasal 3 Deklarasi Universal Hak-Hak Asasi Manusia (DUHAM) diterima dan diumumkan oleh Majelis Umum Perserikatan Bangsa-Bangsa pada tanggal 10 Desember melalui resolusi 217 A (III) berbunyi "Setiap orang berhak atas kehidupan, kebebasan dan keselamatan bagi individu". Sementara itu Pasal 4 DUHAM menyatakan "Tidak seorang pun boleh diperbudak atau diperhambakan; perhambaan dan perdagangan budak dalam bentuk apa pun mesti dilarang". Lihat: Achmad Fikri Rasyidi, "Anotasi Putusan Kasus Tindak Pidana Perdagangan Orang No. Register Perkara: 396/Pid.B/2012/PN.Cbd (terdakwa Seng Kong Ang alias Johan bin Ang)", Jakarta: Masyarakat Pemantau Peradilan Indonesia Fakultas Hukum Universitas Indonesia (MaPPI - FHUI), 2015, hlm. 19.

¹¹ Farhana, *Loc.Cit.*

¹² Farhana, *Loc.Cit.*

¹³ *Ibid.*, hlm. 165.

¹⁴ Pasal 30 ayat (1) Peraturan Pemerintah Nomor 7 Tahun 2018 Tentang Pemberian Kompensasi, Restitusi, dan Bantuan Kepada Saksi dan Korban menyatakan "Dalam hal LPSK mengajukan permohonan Restitusi sebagaimana dimaksud dalam Pasal 27, pengadilan memeriksa dan memutus permohonan Restitusi sesuai dengan ketentuan peraturan perundang-undangan."

charges relating to sanctions for restitution. The Panel of Judges provides the following considerations:

"Considering, that the Public Prosecutor in his claim letter, requested the Panel of Judges that the defendant be sentenced to prison for 2 (Two) Years and a fine of Rp. 120,000,000 (one hundred and twenty million rupiahs) Subsidiary for 6 (six) months of confinement and charges the Defendant to pay Restitution to Victim Witness MARIA REGALINDA LEUF in the amount of Rp. 5,000,000 (five million rupiahs) Subsidiary for 5 months confinement. Based on this demand, there is now a criminal sentence (sentencing or straftoemeting), which is roughly fair to the defendant in accordance with the crime he committed, whether the request of the Public Prosecutor has been sufficient or if it is considered too severe, or is it still not fair enough the defendant's mistake, then to answer this question here the Panel of Judges is obliged to consider everything apart from the juridical aspects that have been stated above, namely the psychological / psychological aspects, as well as the educational aspects.

Considering, that in the demands of the Public Prosecutor, the Defendant is charged to pay Restitution to the victim's witness MARIA REGALINDA LEUF of Rp. 5,000,000 (five million rupiahs) 5 months Subsidiary, for this matter the Panel of Judges provides their views, the decision to provide restitution to victims is a form of development of a balanced justice value between the perpetrators of criminal acts and victims of criminal offenses in terms of material, the restitution issue in the crime of trafficking, of course, refers to Article 48 of Law Number 21 Year 2007 concerning Eradication of Criminal Acts of People, in the explanation of Article 48 states "the mechanism for filing a restitution is carried out since the victim reports the case in it to the local Indonesian National Police and handled by investigators together with the handling of criminal acts committed. The Public Prosecutor notifies the victim of his right to apply for restitution, then the Public Prosecutor submits the amount of loss suffered by the victim due to the crime of trafficking in persons together with demands. This mechanism does not deprive the victim of the right to bring her own claim for damages".

Based on the explanation of Article 48, then the mechanism for filing restitution has officially begun since the police whether during the investigation or during the investigation, accompanied by notification of the restitution by the Public Prosecutor to the victim, but in the case file there is no request for restitution and the amount of the loss suffered by the victim for the crime he experienced, but suddenly appeared in a criminal suit, so that criminal charges regarding restitution submitted by the Public Prosecutor jumped from the specified method;

Considering, that the granting of restitution in addition to being regulated in Article 48 of Law Number 21 Year 2007 concerning Eradication of Criminal Acts of Persons, is also more stringent in the implementing regulations in the form of Government Regulation of the Republic of Indonesia Number 43 of 2017, requests for restitution are submitted in written in Indonesian on stamped paper to the Court (vide Article 5 paragraph (1)), then it is also explained that the request for restitution to the court as referred to in Article 5 paragraph (1)

submitted before the court's decision, submitted through stage a. Investigation, b. Prosecution, so that it can be interpreted as a mechanism for the submission of restitution by victims must go through a predetermined mechanism, because the restitution submitted by the Public Prosecutor does not go through a normatively determined mechanism, the restitution demands demanded by the Public Prosecutor cannot be accepted."

Based on 2 (two) comparisons between the Jambi District Court Decision Number 538 / Pid.Sus / 2014 / PN.Jmb, and the Decision of the Class II Kefamenanu District Court Number 22 / Pid.Sus / 2017 / PN.Kfm, it appears that the Judges' decision The Class II Kefamenanu District Court is appropriate because the Panel of Judges carries out the mandate regulated by the Laws and Government Regulations related to the Prosecutor's obligations The Public Prosecutor must attach a file requesting restitution and the amount of loss suffered by the victim for the crime he experienced, and also proves that the amount of the loss was in accordance with what was experienced by the victim.

Although the provision of restitution to victims has been explicitly regulated both in the Criminal Code, Law No. 21 of 2007 concerning Eradication of Trafficking in Persons, Law Number 13 of 2006 concerning Protection of Witnesses and Victims, as well as in Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution and Assistance to Witnesses and Victims. However, the author is of the opinion that restitution is only regulated in a number of separate articles and the mechanism in the form of a Government Regulation gives the impression that the government is not serious about providing protection and the rights of victims of trafficking in persons related to restitution. This is due to several things, namely:¹⁵

1. The mandate for restitution arrangements is weak because of the charge UU no. 13 of 2006 along with PP restitution in some cases contrary to Article 98 of the Criminal Procedure Code regarding the merging of cases in particular relating to the procedural law to be used. Judges and prosecutors tend to prefer the merger of Article 98 of the Criminal Procedure Code¹⁶ because the event law is considered more certain, strong and flexible, while the procedural law for the mechanism of restitution in Law No. 13 of 2006 is actually spelled out in PP 44 of 2008. In this context many law enforcement officials consider the procedure of procedural law or mechanism of restitution in the PP referred to, are not aligned with the provisions in the Criminal Procedure Code, do not have the power as under the Criminal Procedure Code.

¹⁵ Supriyadi Widodo Eddyono, "Problem Implementasi Hak Restitusi Korban Berdasarkan UU No 13 Tahun 2006." *Makalah*, 2010. Lihat: Draft RUU LPSK (Rancangan Undang-undang Lembaga Perlindungan Saksi dan Korban), hlm. 25.

¹⁶ (1) Jika suatu perbuatan yang menjadi dasar dakwaan di dalam suatu pemeriksaan perkara pidana oleh pengadilan negeri menimbulkan kerugian bagi orang lain, maka hakim ketua sidang atas permintaan orang itu dapat menetapkan untuk menggabungkan perkara gugatan ganti kerugian kepada perkara pidana itu.

(2) Permintaan sebagaimana dimaksud dalam ayat (1) hanya dapat diajukan selambat-lambatnya sebelum penuntut umum mengajukan tuntutan pidana. Dalam hal penuntut umum tidak hadir, permintaan diajukan selambat-lambatnya sebelum hakim menjatuhkan putusan.

2. Because the mechanism of Article 98 of the Criminal Procedure Code is used, it is related to the scope of restitution in Law No. 13 of 2006 to be non-applicative, even though in Law No. 13 of 2006 has a range of restitution that can be more in the form of return of property, payment of compensation for loss or suffering, or reimbursement of costs for certain actions, whereas in the Criminal Procedure Code on compensation is only focused on real losses due to not criminal. So that in practice, only material losses can be examined by the judge in question, the claim for compensation for losses for victims is considered as immaterial, the acquisition of which must then use a civil law mechanism.

3. Regarding the ability of the execution power of decisions and forced efforts. Law No. 13 of 2006 does not regulate forced power to make payments. If there is no intention of the offender to pay restitution to the victim, then it will not have any implications for the offender. This is the most difficult challenge in the implementation of restitution for victims. So that efforts need to be made to improve the mechanism of restitution.

Based on this, the restitution calculation for the victim should have been made when the case was handled by the Police, then proceed to the Public Prosecutor to determine whether the calculation of the restitution was appropriate or not. Although the Public Prosecutor charged in his indictment with Article 48 of Law No. 21 of 2007 concerning Eradication of Trafficking in Persons in connection with granting restitution to Victims, but the Court Judge should be able to expressly and based on his authority to order the Public Prosecutor to complete the restitution request document in an effort to obtain legal certainty for restitution sanctions as stated by Satjipto Rahardjo that legal certainty is created when the community and law enforcement officers carry out the mandate ordered by the law.¹⁷

According to the author, Law No. 21 of 2007 concerning Eradication of Trafficking in Persons and Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution and Assistance to Witnesses and Victims governing the provisions regarding the provision of restitution is very good, however in its implementation, there are still law enforcement officials who impose sanctions for restitution without checking the completeness of the documents as a condition for the procedure for granting restitution.

Based on this, it is necessary to have a legal culture that must be directed at building awareness in law enforcement. Efforts to create legal certainty in imposing restitution sanctions on perpetrators of trafficking in persons themselves can be done through revision of Government Regulation No. 7 of 2018 concerning Granting Compensation, Restitution, and Assistance to Witnesses and Victims governing the provisions on the provision of restitution must be upgraded to law -invite. Apart from that, the government can conduct socialization to the public and law enforcement officers against Law No. 21 of 2007 concerning Eradication of the Criminal Act of Trafficking in Persons and Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution and

Assistance to Witnesses and Victims in providing restitution sanctions.

That is because in its implementation, there are still law enforcement officers who impose sanctions for restitution without checking the completeness of documents as a condition for the procedure for granting restitution. Through this socialization, it is expected that the decisions of judges who impose restitution sanctions on perpetrators have a clear legal basis, so that the restitution sanctions can be carried out appropriately and correctly.

4. CONCLUSIONS

Legal certainty regarding the imposition of criminal sanctions for restitution for perpetrators of trafficking in persons has been regulated in Act Number 21 of 2007 concerning Eradication of Trafficking in Persons in conjunction with Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution and Assistance to Witnesses and Victims carried out with the mechanism for filing a restitution from the time the victim reports her case to the National Police of the Republic of Indonesia and is handled by the investigator together with the handling of the criminal act committed. However, in the application of the imposition of penal sanctions for restitution of perpetrators of trafficking in persons in the decision of the Jambi District Court Number 538 / Pid.Sus / 2014 / PN.Jmb, December 18, 2015 was not appropriate because the Court Judge did not examine the completeness of the restitution request documents. submitted by the Public Prosecutor before deciding on sanctions for restitution, while the Public Prosecutor also neglected by not attaching the completeness of the documents, so that the decision of the Jambi District Court Number 538 / Pid.Sus / 2014 / PN.Jmb can reduce the marwah legal certainty.

REFERENCES

- [2] Fikri Rasyidi, *Anotasi Putusan Kasus Tindak Pidana Perdagangan Orang*. Jakarta: MaPPI-FHUI, 2015.
- [3] Aziz Syamsuddin, *Tindak Pidana Khusus*. Jakarta: Sinar Grafika, 2011.
- [4] Farhana, *Aspek Hukum Perdagangan Orang di Indonesia*. Jakarta: Sinar Grafika.
- [5] I made Pasek Diantha, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum*. Jakarta: Prenada Media Group, 2016.
- [6] Satjipto Rahardjo, *Hukum Progresif, Sebuah Sintesa Hukum Indonesia*. Yogyakarta: Genta Publishing, 2009.
- [7] S. Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*. Jakarta: Rajawali Press, 2016.
- [8] Hanafi Rachman, "Penegakan Hukum Terhadap Tindak Pidana Perdagangan Orang Dalam Sistem Peradilan Pidana Indonesia," Universitas Indonesia, 2012.

¹⁷ Satjipto Rahardjo, *Hukum Progresif, Sebuah Sintesa Hukum Indonesia*, Yogyakarta: Genta Publishing, 2009, hlm. 37.

- [9] Undang-Undang Dasar Negara Republik Indonesia Tahun 1945. .
- [10] Kitab Undang-Undang Hukum Pidana. .
- [11] Kitab Undang-Undang Hukum Acara Pidana. .
- [12] Undang-Undang Nomor 21 Tahun 2007 Tentang Pemberantasan Tindak Pidana Perdagangan Orang. .
- [13] Peraturan Pemerintah Nomor 7 Tahun 2018 Tentang Pemberian Kompensasi, Restitusi, dan Bantuan Kepada Saksi dan Korban. .
- [14] Putusan Pengadilan Negeri Jambi Nomor 538/Pid.Sus/2014/PN.Jmb. .
- [15] Putusan Pengadilan Negeri Kefamenanu Kelas II Nomor 22/Pid.Sus/2017/PN.Kfm. .
- [16] Kedutaan Besar dan Konsulat Besar AS di Indonesia, "Laporan Perdagangan Orang," 2016. [Online]. Available: <https://id.usembassy.gov/id/our-relationship-id/official-reports-id/laporan-tahunan-perdagangan-orang-2016/>.,.