

# Responsibilities of Illegal Workers Supplier For Migrant Workers Restitution (Decree Number 2710 / Special Crime / 2018 Tangerang District Court)

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## **ABSTRACT**

*The aim of this research is to find out the criminal liability of migrant workers supplier who illegally transport the victims to a destination country without any working documents which causes the victim to experience unpleasant things and being trafficked at the same time and then while the victim working abroad and then there is an act criminal trafficking in persons that befalls the victim and also to find out what form of restitution is given to migrant workers who are victims of trafficking in persons and can the restitution be given to the victim according to Law Number 21 of 2007 Concerning Human Trafficking in Persons, The research method in the discussion of this Thesis is normative research, the research is conducted to study criminal liability of migrant workers supplier and if the victim really experience Trafficking in Persons can they have a restitution that can help to recover from the trauma that they have face.*

**Keywords:** *Trafficking in Persons, Criminal liability, Restitution, Victim, Migrant Workers Supplier*

## **1. INTRODUCTION**

### **1.1 Background**

In this industrial era the need for low skill workers is still a lot of interest, especially foreign companies because the low skill worker salaries in developing countries and developed countries are very different levels of study value, it is certain that the salary for low skill workers in developed countries is more expensive and in developing countries it is much cheaper and in developing countries there is often a lot of exploitation of workers and developed countries also still face situations like in developing countries but the cases are far less than in developing countries, where the problem is about human trafficking. Indonesia still faces the problem of human trafficking which is indeed one of the very frightening specters and has a very large effect where almost every year many people must become victims of human trafficking crimes that sometimes the victim himself never realizes or feels that he is a cop Victims of human trafficking, indeed human trafficking is not a new problem and does not only occur in this country, but it also occurs throughout the world.

Human trafficking is an old problem that always occurs throughout the period that slavery has occurred since the time of the ancient kingdom, for example, the kingdom of Egypt and the Roman empire, where slaves were usually taken from prisoners of war or civilians under that time colony of the kingdom. A slavery is an act that demeans a human dignity for life in which that a human life is considered as an object or property because humans are traded or enslaved considered by individuals who sell as selling dead goods.

Human trafficking is a thing that has existed for a long time and does not get attention, so it is difficult to detect its existence and sometimes it does not appear on the surface, while its practice is a form of legal and social issues that slowly becomes a form of violations that occur in society where the human position is considered as an object or as a subject of the act of human trafficking itself. In addition to the main problem, namely the lack of legal remedies related to the prevention of strong and good human trafficking of the perpetrators, this problem can also be based on the low level of public awareness to be able to understand the threat posed by human trafficking practices.

Because indeed the low level of awareness in a community in relation to human trafficking is certainly going to be able to increasingly trigger problems with the occurrence of many human trafficking practices to continue to expand and expand. In this situation, in addition to having to urge the Indonesian government to continue to strive for a form of formality in a legal form and in its efforts to establish legal protection for victims of human trafficking as well as with a strict action and punishment for the perpetrators, then the need for a form of awareness that is with the awareness of the community itself and at the end the community itself can also play an active role in eradicating and preventing the practice of human trafficking so that the objective of eradication and prevention of human trafficking can be carried out maximally because of the existence of a form good and real cooperation between the government and the community can lead to trust between the community and the government.

In this definition of human trafficking, does not provide an element of consent (by consent) from the victim. Because it

is no longer in question whether or not there is an element of victim consent if it is done in the form of a mode of conduct committed for an act of trafficking in persons. The loss of these two elements in the formulation of the article will be an excuse to release the perpetrators, because the perpetrators will always express the existence of a form of consent from the victim [1].

In its worst conditions even trafficking in persons is said to be a violation of a number of human rights such as the right to life, the right to personal freedom, the right to security, the right to welfare, the right to justice, the right to decent working conditions, and the right to develop self.

For more clearly the author will mention relating to this understanding specifically explain the crime of trafficking in persons according to the law of the Republic of Indonesia Concerning Trafficking in Persons 2007 number 21 article 1 number 1 about the Definition of Trafficking in Persons, namely:

"Trafficking in persons is the act of recruiting, transporting, collecting, transporting, transferring, or accepting someone with the threat of violence, use of force, kidnapping, confiscation, forgery, fraud, abuse of power or vulnerable position, entrapment of debt or providing payment or benefits, so that they obtain approval from the person who holds control over that other person, whether carried out within the state or between countries, for the purpose of exploitation or to cause the person to be exploited "[2].

In this case Indonesian Migrant Workers (PMI) or Indonesian Citizens (WNI) who work working abroad are protected by Law Number. 18 of 2017 concerning the Protection of Indonesian Migrant Workers and the Republic of Indonesia Law No. 21/2007 concerning TPPO, if labor suppliers in Indonesia violate regulations in the sense of promising something to a worker but after arriving at the workplace it is not in accordance with reality such as for example workers are forced to work under physical and mental threats and salary that is not in accordance with the agreement has been entered into fraud and exploitation and it often happens to ship crews, domestic servants, factory workers and various kinds of work carried out by PMI or Indonesian citizens outside country.

And people who distribute jobs to Indonesian citizens or PMI if they are still in the territory of the Unitary Republic of Indonesia and if there are reports of Indonesian citizens who are victims of trafficking through the Indonesian embassy where he is or through Non-governmental organizations (NGOs) which means non-governmental organizations whether international or local organizations report to embassies or Indonesian security forces.

And if the individual sends an Indonesian citizen or PMI abroad and is exploited, that person will be subject to Law Number 21 of 2007 concerning Criminal Acts of Trafficking in Persons Article 4 which regulates criminal sanctions for Indonesian labor distributors to be exploited outside the territory Indonesia which contains:

"Every person who brings Indonesian citizens outside the territory of the Republic of Indonesia with the intention to be exploited outside the territory of the Republic of Indonesia is sentenced to a minimum of 3 (three) years in

prison and a maximum of 15 (fifteen) years and a minimum fine of Rp120. 000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah) " [2].

Meanwhile, in terms of the perpetrators, it is generally carried out by labor recruitment agencies with the mode of promise to give work done either passively (job advertisements) or actively (directly to people's homes), recruiting those who really want to expect a job. This labor exploitation plunges workers into an unclear work system without pay, without conditions of work, without labor protection, and so on, like a forced labor force.

Actors in the context of the Criminal Act on Trafficking in Persons can be understood as parties or legal subjects who commit the crime of trafficking in persons. The scope of these actors includes [3] :

1. Individual, which includes every individual / individual who conducts a TPPO (Article 1 number 4 of the Trafficking in Persons Act)
2. Organized groups, i.e. structured groups consisting of 3 or more people, whose existence within a certain time, and acting with the aim of Preventing Trafficking in Persons People carry out one or more acts of Trafficking in Persons with the aim of obtaining material or financial benefits either directly or indirectly directly (Elucidation of Article 16 of the Trafficking in Persons Act).
3. Corporations, namely organized groups of people and / or assets, both legal entities and non-legal entities whose work does not comply with the applicable laws and regulations so that there is a Criminal Act of Trafficking in Persons (Article 1 number 6 of the Law on the Criminal Act of Trafficking in Persons ).
4. State administrators, i.e. civil servants or government officials (NB: including members of the Indonesian National Army, members of the Indonesian National Police, security forces, law enforcement or public officials) who abuse their power to commit acts of Trafficking in Persons or facilitate the occurrence of Criminal Acts on Trafficking in Persons (Elucidation of Article 8 paragraph (1) of the Trafficking in Persons Act).

The law on trafficking in persons also regulates the protection of witnesses and victims as an important aspect of law enforcement against victims and witnesses involved in human trafficking cases. which receives special attention in this law is the right of victims to get restitution or compensation for the suffering they have suffered as a result of human trafficking perpetrators.

Based on the provisions of Article 1 number 13 of Law Number: 21 of 2007 concerning the crime of trafficking in persons, so-called restitution is a payment of a form of compensation that is charged to the perpetrators of a crime based on a decision that has permanent legal force for the loss suffered by the victim by relating to material and / or immaterial losses suffered by the victim or his heir. Article 48 further states that the victim or his heirs are entitled to obtain a form of restitution, in the form of compensation for:

1. Loss of personal property or work due to trafficking in persons

2. Suffering experienced by the victim
3. Costs for medical treatment physically or psychologically; and or
4. Other losses in this case suffered by the victim due to the consequences of acts of trafficking in persons.

What is meant by "other losses" in situations like this example is the loss of property owned by the victim personally owned by the victim, and also the basic transportation costs used by the victim, as well as advocate fees or other costs that correlate with the legal process or loss of work victims promised by the perpetrators, the author can explain related restitution rights and the rights of other victims, both procedural rights and service rights for victims of human trafficking [4].

In accordance with the laws and regulations, there are two provisions / ways to obtain restitution rights, namely[4]:

1. Through Criminal Claims

Submission of restitution can be carried out when the victim reports his case to the Police and is processed by the Investigators in tandem with the administration of the criminal act which is done, this is in accordance with the explanation of Article 48 paragraph (1) of the Trafficking of Persons Act which explicitly states that a restitution submission is made and carried out since the victim reports her case to the National Police of the Republic of Indonesia where she is located and is processed by the Investigator together with the administration of a criminal action made by the perpetrator.

In this matter, it means that the request for restitution by a victim of a human trafficking crime must be included in a Minutes of the Witness (victim) Examination. Failure to include requests / restitution for victims of human trafficking in the investigation stage may result in rejection of the claim for restitution of victims by the court (the panel which investigates and determines a case).

This is based on the determination of the Court in relation to the case on behalf of Sanidi binti Basro, who at the time of his refusal was submitted by the Public Prosecutor on the grounds that "the gani loss claim was made concurrently with the Prosecutor's claim letter. This is not in accordance with the procedure for filing a request for restitution based on an authentic interpretation of Article 48 paragraph (1) of the Trafficking in Persons Act as formulated in the explanation of that article which should have been submitted since the Investigation stage. "

The public prosecutor must inform the victim of their right to apply for restitution. Furthermore, the Prosecutor announced the amount of property lost by the victim due to human trafficking in his lawsuit. In connection with the inclusion of restitution in a criminal suit (requisitoir), JAMPIDUM technical instruction number: 36 3718 / E / EJP / 11/2012 on November 28, 2012 has been issued relating to Restitution in TPPO or human trafficking cases, which explicitly states [4]:

"The prosecutors were reminded that those holding cases of TPPO or human trafficking cases when the

victim had not yet applied for restitution at the Investigation stage:

- a. So that the Prosecutor can inform the victim of his rights in order to provide a restitution request in the form of compensation for:
  - 1) Loss of assets or loss of livelihood
  - 2) Misery
  - 3) Funds for administering medical actions
  - 4) Impact of loss felt by victims of the effects of trafficking

- b. In a criminal suit, the prosecutor provides information at once related to the total amount of loss suffered by victims due to human trafficking. "

The judge also included the restitution of the victim in his sentence. Some court decisions related to claims for compensation for TPPO victims to those who committed the act (the defendant).

2. Through Civil Lawsuit

A mechanism in criminal prosecution, can not negate a right possessed by the victim to individually advocate in relation to a claim for loss suffered by the victim [4].

Starting with the case that was handed over at the Tangerang district court office of the court on December 28, 2018, with a case register that had received a decision of permanent legal force (Inkrah), namely through decision No.2710 / Pidsus / 2018 / PN.Tng, that its The convicted is a Manpower Distributor who receives a Request to send Pmi to Bahrain. That the witness was promised to work as PMI to the State of Bahrain.

And there will be employed as domestic helpers with a wage / salary of Rp. 2,500,000 (two million and five hundred thousand rupiah) per month, and also the defendant submits to the Victim when there will be a fellow PMI friend from Indonesia who comes from the same area as the Victim Then the convicted contacted potential employers in the State of Bahrain through HP and introduce Victims of prospective PMI.

Then at that time the prospective employer agreed the victim was sent as PMI to the State of Bahrain or as a domestic servant there, after arriving there the victim was treated inhumanely and the victim also experienced sexual harassment while there and the victim was made PMI without going through official procedures and lack of insurance and an official work agreement with the Victim, in which the victim feels physically and financially disadvantaged that the victim reports to the convicted for deliberately using the victim for personal gain.

And in this case the convicted person must also be held accountable for his actions which intentionally sent victims abroad to be exploited as domestic servants without getting paid and physically and mentally tortured while working abroad.

Wherein restitution is also the right of victims of trafficking in persons where victims of a criminal offense ask for compensation because they feel financially and psychologically disadvantaged because

of the occurrence of these offenses which afflict them where the convicted person must pay the restitution right, where this must be done in accordance with the provisions in Law No. 21 of 2007 concerning the Criminal Act of Trafficking in Persons Article 48 and Article 49 and Article 50.

## 1.2 Problems

Based on the background description above, the problem is:

1. How is the Criminal Liability of migrant worker supplier illegally sending victims to work abroad without a work permit or legal work documents?
2. What is the form of restitution to the migrant worker?

## 1.3 Research Methods

The method is a form of technique or principles or a way to solve a form of a problem, while yakmi research is a careful, painstaking, and complete review of a form of symptoms in order to increase human understanding. This research method is interpreted as a technique of principles or a way to solve problems faced by someone who is conducting research [5].

The research method used by the author is a normative legal research method. The methods of collecting legal materials are as follows:

### 1. Type of Research

The type or type of research that the author uses is normative legal research. This normative legal research is a type of legal research that encompasses research on the principles of law, legal systematics, law synchronization, legal history, and comparative law in both horizontal and vertical forms [5].

### 2. Nature of Research

The nature of the research used is the nature of descriptive research which is a form of research that has the aim of conveying a description or factual description of the state of an object or related to the problem being investigated at this time without making a general conclusion. Explanation Specifications or the nature of descriptive research made by Soerjono Soekanto in his book *Introduction to Legal Research* is interpreted as follows: Descriptive research is a study that has the intention to be able to share information as thoroughly as possible with humans, situations or other symptoms, also only describe the state of an the main problem without having the intention to provide a generally accepted conclusion.

### 3. Data Types

The type of data used by the authors in this study is secondary data. Secondary data or library data is known as legal material. This legal material is in the form of literature which is categorized into[5]:

- a. Primary legal material, consisting of statutory regulations, jurisprudence or court decisions. Primary legal materials in this study are divided into:

- 1) The 1945 Constitution of the Republic of Indonesia
  - 2) Law Number 13 of 2006 concerning Protection and Victims
  - 3) Law Number 39 of 2004 Placement and Protection of Indonesian Workers Abroad.
  - 4) Law Number 21 Year 2007 Regarding Criminal Acts on Trafficking in Persons
  - 5) Law Number 18 Year 2017 Concerning Protection of Indonesian Migrant Workers
- b. Secondary legal materials, namely legal materials that can provide an explanation of primary legal materials, which can be in the form of draft legislation, text books, scientific journals, newspapers and internet news.
  - c. Tertiary legal material, is a legal material that can explain both primary and secondary legal materials, in the form of dictionaries, encyclopedias, and others[5].

### 4. Data Collection Techniques

At this writing the mechanism of data accumulation used is the study of literature. Literature study is an item carried out by researchers or writers to be able to gather information related to themes or problems that will or are being researched by the process of examining library materials or so-called secondary data. This information was obtained from scientific books, research reports, articles, scientific essays [5].

### 5. Data Analysis Techniques

Data analysis is an activity that is in the form of research in normative legal research, the preparation of data is made in a systematic way against written legal materials. Systematization means the implementation of the classification of legal materials to simplify the profession of analysis and construction. This activity is carried out in the analysis of normative legal research data by having data obtained in a qualitative descriptive analysis, namely an analysis of data that cannot be calculated. The legal materials collected are then discussed, examined and grouped into certain sections to be worked on as information data.

## 2. DISCUSSION

### 2.1 Legal Responsibility of Distributors Illegally Sending Victims to Work Abroad without a Work Permit or Legal Work Documents.

Frensy Angkaw, S.Si Alias Sisi Bin Tedy Angkaw is a convict who has been convicted in a trafficking case involving him and a victim named Salma Rianti who is an Indonesian Migrant Worker or PMI who works as a Household Assistant or ART in Bahrain and was deceived by the convicted person to work there because the convict had been promised a salary of Rp 2,500,000 (two million five hundred thousand rupiah) and was also placed together

with his friends who were also PMI and also came from Sumbawa Besar.

However, and met with an employer who has been in contact with the convicted person, then the victim Salma Riyanti worked as a housemaid or household assistant for the employer for approximately 1 (one) week, but then the victim ran away or ran away from her employer's place after less out of 1 (one) month of work, because the Victim suffers from unsuitable conditions while working for his employer in Bahrain feeling tortured by not being fed, beaten, working for 24 (twenty four) hours, and being locked up in a room and guarded.

Also while at home or the residence of the convicted victim has never attended formal training by working abroad and the victim has never been given life insurance or work insurance and also the victim is not registered on the Overseas Workers Card or KTKLN.

The convict had a Company Placement and Protection of Overseas Workers (PPTKLN) named PT. Gayung Mulya Ikif, whose address is in Depok, but since January 2017, the company license has been revoked by the Ministry of Manpower of the Republic of Indonesia, so that when the convicted sent PMI named Salma Riyanti, who again does not have official permission by the government and the defendant sent individually.

The victim uses a Visa to work as PMI in the State of Bahrain, is a Gazette Visa sent by a prospective employer in Bahrain through the defendant and has not yet signed his Placement Agreement is a very important aspect so the worker knows where he will be placed.

In this case convicted Frensy Angkaw, S.Si Alias Sisi Bin Tedy Angkaw was charged with punishment as regulated and threatened with criminal offenses under Article 4jo Article 48 of Law Number 21 Year 2007 concerning Eradication of Criminal Acts on Trafficking in Persons and also as regulated and threatened with criminal sanctions in Article 81 Law No. 18 of 2017 concerning Protection of Indonesian Migrant Workers (PPMI).

In this case the convicted person is threatened with criminal acts as regulated in Article 86 Letter (b) of Law Number 18 Year 2017 concerning the Protection of Indonesian Migrant Workers (PPMI).

Based on legal facts at the trial that were included in the decision of the District Court of Tangerrang Number 2710 / Special Crime / 2018 / PN.Tng. indeed explained very clearly that the defendant was involved in sending victims of Trafficking in Persons namely Salma Rianti abroad with the aim of seeking personal financial benefits and making victims exploited while the victim was there. And the process of sending victims to Bahrain was not according to procedure and violated the law.

The defendant, who in this case acts as a labor distributor or Indonesian migrant worker, does not provide formal training facilities related to how to work as prospective workers to the victim and also the victim is not given a foreign language training and the victim has never received health insurance or health insurance for work overseas and also the victim is not made an Overseas Workers Card (KTKLN), this KTKLN has a function as an identity card for Indonesian Migrant Workers (PMI) in

addition to the KTP which also serves as evidence that the PMI has fulfilled the procedures required to be able to work outside country, the defendant in this case only gave a medical check-up to see if the victim Salma Rianti was physically fit.

nd indeed when warmed up to Bahrain, the victim only brought her ID card and passport and visa to work as PMI that had been sent to the prospective victim's employer in Bahrain and the placement agreement had not been signed. contains the rights and obligations of each party in the context of placing migrant workers in the destination country in accordance with statutory regulations.

And the facts of the trial also showed that the defendant had a Foreign Workers Placement and Protection Company (PPTKLN) named PT. Gayung Mulya Ikif having his address in the Depok area, but since January 2017, the company permit has been revoked by the Ministry of Manpower of the Republic of Indonesia, so that when the defendant sent PMI namely the victim named Salma Rianti, did not have official permission by the government and the defendant sent individually which is prohibited according to the Law on the Protection of Indonesian Migrant Workers (PPMI) Number 8 of 2017 in Article 69.

And based on the actions of the Defendant who had dispatched or made PMI without going through formal procedures and the absence of insurance and also an official employment agreement with the victim Salma Rianti, then the defendant has benefited from 300 (three hundred) US dollars.

Based on the testimony of the victim Salma Riyanti, the victim while working in Bahrain was always tortured by her employer and the employer was physically and mentally tortured, in which the victim was sexually harassed by her employer and also scolded by her employer because the victim could not speak Arabic or English to communicate , the victim can only use Sign Language, the victim only works for 10 days at his employer's house because the victim cannot stand working there because he is treated inhumanely and then the victim runs away from his employer's house.

After escaping from his employer's house the victim did not know where he was going and he actually wanted to seek help, while the victim was walking the victim was approached by a stranger (whose name was unknown) was carrying a taxi, then offered his help to bring witnesses to the Indonesian Embassy (Indonesian Embassy) ). then the victim follows the person and climbs into his taxi. But the witness was not brought to the Indonesian Embassy but was taken to his friend's house. Arriving at the place, the victim was raped, held captive and forced to serve the sexual desires of foreign men unknown to the victim. That it was true that the victim had been taken to serve people many times in hotels or in their homes. Which in this case the victim was forced as a sex worker. After one month there the victim was finally able to flee to the Indonesian Embassy in Bahrain, for that the victim asked for compensation to the defendant because the victim experienced something she didn't want.

In this case the defendant Frensy Angkaw has fulfilled 3 (three) of the 4 (four) elements of criminal liability

because in this context, frensy angkaw has indeed committed this act for personal gain, sending migrant workers or Indonesian workers who do not fulfill the appropriate procedures with Law Number 18 Year 2017 Regarding the Protection of Indonesian Migrant Workers, is an illegal and unjustified shipment.

The Law on the Protection of Indonesian Migrant Workers No. 18 of 2017 was made by the Indonesian government to guarantee the rights and obligations of migrant workers and to help protect them from all kinds of things that might threaten the physical or mental security of the worker and also create labor or company distribution the sender of labor must comply with regulations relating to the sending of labor and can be held liable if a situation does not apply to the worker he is sending which means the company must provide evidence stating that the company sent the worker or labor according to existing regulations and is not in violation regulations related to sending workers or Indonesian workers abroad, and if the company is known to send migrant workers or Indonesian workers illegally, the company can revoke the permit to send its workers or a license Recruitment of Indonesian Migrant Workers, hereinafter referred to as (SIP2MI), is a license granted by the head of the Agency to an Indonesian Migrant Worker Placement Company that is used to place Prospective Indonesian Migrant Workers.

And individuals who are directly involved in sending and recruiting illegally will be punished according to the rules in law number 21 of 2007 concerning Eradication of Trafficking in Persons.

#### Forms of Restitution To Migrant Workers

In accordance with statutory regulations, there are two procedures / procedures for obtaining restitution rights, namely:

##### 1. Through the Criminal Claims Line

The rules used are the provisions of the Criminal Procedure Code. In the Criminal Procedure Code there is a mechanism regarding compensation and rehabilitation of victims of compensation that can be requested from suspects or defendants in connection with the examination process and the unlawful trial of law enforcement officials as well as by the victim for the loss suffered to him by the perpetrators. the mechanism offered by the Criminal Procedure Code for victims' rights is the mechanism for compensation for victims by the perpetrators. The compensation submission mechanism in Kuhap can be done in two ways, namely:

- a. File a civil suit after the case has been decided.
- b. Combine the submission of compensation and the principal case.

Submission of restitution can be done and carried out since the victim reported her case to the Police R.I. and handled by the Investigator in conjunction with the handling of criminal acts committed, this is in accordance with the explanation of Article 48 paragraph (1) of Law Number: 21 of 2007 concerning Eradication of Terrorism Crimes which explicitly states that a restitution submission is made and carried out since the victim reports the case he experienced with

the Indonesian National Police local and handled by the Investigator together with the handling of criminal acts committed.

This means that requests / requests for restitution by victims of trafficking in persons must be included in a Minutes of the Inspection of Witnesses (victims). Not including requests / restitution for victims of trafficking in persons during the investigation stage (in the Minutes of Examination) may result in the court's rejection of the claim for victim's restitution (the judge examining and deciding the case).

##### 2. Through Civil Lawsuit

The criminal prosecution mechanism does not eliminate the victim's right to file a lawsuit for her own loss.

In the case of the writer who took this victim Salma Riyanti asked for compensation or restitution from Fresny Angkaw because Salma Riyanti felt that while working in Bahrain she was employed inhumanely and she felt exploited, in this case it would be explained in advance what was meant by restitution. , Restitution is the payment of compensation charged to the offender based on a court decision that has permanent legal force for material and / or immaterial losses suffered by the victim or his heir as an understanding or definition of restitution according to Law Number. 21 of 2007 concerning Eradication of Trafficking in Persons in Article 1 number 13.

Restitution is one form of legal protection for victims of criminal acts that legal protection is all efforts to fulfill rights and provide assistance to provide a sense of security and comfort to witnesses and / or victims, legal protection for victims of crime as part of community protection.

In this case what is used is repressive legal protection is a form of final protection in the form of sanctions such as fines, imprisonment, and additional punishment given if a dispute has occurred or a violation has been committed by someone.

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In this case what is used is repressive legal protection is a form of final protection in the form of sanctions such as fines, imprisonment, and additional punishment given if a dispute has occurred or a violation has been committed by someone.

So indeed Fresny Angkaw as convicted of trafficking in persons was given a prison sentence of 4 years in prison and a fine of Rp 150,000,000

(one hundred and fifty million rupiah) and a criminal confinement for a one-month subsidier fine and was asked for a restitution approved by the court of Rp. 25,000 .000 (twenty-five million rupiah) and imprisonment for restitution for 6 months.

nd will be discussed further how the form and filing and implementation of restitution can be carried out form of restitution is in the form of money or funds that serves to compensate for the loss of wealth, compensation for suffering as a result of a crime, and / or reimbursement of medical care costs, and / or Psychologically as a form of responsibility for a criminal act carried out, it is also intended to alleviate suffering and uphold justice for people or individuals who are victims of criminal acts as a result of the occurrence of criminal acts committed by criminal offenders.

Based on the Elucidation of article 48 paragraph 1 of the Law on the Eradication of the Criminal Act of Trafficking in Persons Filing for restitution can be done since the victim reports the case she experienced to the police of the state of the Republic of Indonesia and then handled by the investigator together with the handling of criminal acts committed. In this case the public prosecutor also told the victim about their right to apply for restitution. This mechanism does not diminish the victim's right to file a claim for her own loss. Although the public prosecutor has the authority to apply for restitution, the implementation of the laws and regulations has not yet been clearly regulated by the statutory regulations, such as how to determine the size of the proposed restitution, if it is permitted by the public prosecutor, the victim can submit his own restitution.

So according to the panel of judges, there is no specific evidence that states that in fact the things that were explained by the victim at trial in relation to the actual loss actually happened or were experienced by the victim.

So the panel of judges took into account the compensation or restitution given to the victim only in the amount of Rp. 25,000,000.00 (twenty-five million rupiah) which was to be paid to the victims of Salma Riyanti.

Because Rp. 200,000,000 (two hundred million rupiah) according to the panel of judges it was too much and did not reflect the loss suffered by the victim because according to the judge the victim only worked for 10 days at his employer's house and according to the panel of judges that the natural events by the victim did not reflect restitution requested by the victim as much as Rp. 200,000,000 (two hundred million rupiah).

In this case there was no deposit for restitution money in court because the defendant did not want to pay in this case, I did research with the South Tangerang District Prosecutor's Office and asked the South Tangerang City Prosecutor's Office, and

the Prosecutor's Office informed and confirmed to me that the Prosecutor's Office had asked the family of the convicted person is willing to pay restitution to the victim and the family of the convicted person will not pay the restitution.

So the convict confessed that he was indeed unable to pay the restitution and thus he must undergo a substitute imprisonment for a maximum of one year but in a court decision the criminal sentence for a substitute confinement was only given for 6 months.

The absence of good faith from the perpetrators to pay the compensation money and and the existence of a legal loophole in which many perpetrators are asked for recitution by victims of unlawful acts committed by the perpetrators, the perpetrators prefer to undergo punishment in lieu of restitution rather than paying money the restitution for paying the restitution fee is too burdensome for the perpetrators' finances because based on article 50 of the TPPO Law paragraph 4 number 21 of 2007 states that if an offender is unable to pay the restitution then the offender is subject to a maximum sentence of one year in confinement. the writer of a substitute sentence for a maximum of one year is still too short and this is what makes many perpetrators choose a substitute sentence because the sentence includes a short period of time and many actors logically definitely prefer this sentence because after deciding to serve this sentence, the obligation n to pay for these recitals is automatically lost or dropped.

And because of this the legal protection of the victim cannot be fulfilled because the victim does not get her right of restitution because there is a legal loophole that causes the victim to feel unprotected by the law because her rights are not fulfilled.

Restitution appropriately cannot be replaced by imprisonment or restitution substitute penalties because it contradicts the spirit of Law number 21 of 2007 concerning the Criminal Act of Trafficking This person himself wants to provide protection to victims in the form of material compensation. So if a substitute criminal is applied, then the victim cannot be compensated or compensated materially and immaterially for the suffering he received.

### **3. CLOSING**

#### **3.1 Conclusion**

Based on the research described in the previous chapter, the writer concludes that the criminal liability of convicted traffickers in the Frensy Angkaw case in the Tangerang District Court decision number 2710 / Pidsus / 2018 has clearly fulfilled 3 elements of criminal liability, namely the first clearly convicted person committing acts against existing law or criminal acts regulated in the Law on the Protection of Indonesian Migrant Workers number 18 of 2017 and the Law on Combating Trafficking in

Persons and secondly that the convicted person has the ability to be responsible because the convicted person can distinguish between good and bad deeds, and those that are appropriate the law and those who oppose the law and also the ability to determine their will according to their conviction about the good and bad actions, and the convict confesses his guilt and promises not to repeat the act again. this is due to an element of intent to send victims abroad to be exploited for personal financial gain.

That the research in this case concluded that the restitution requested by the victim was not ultimately paid by the convicted person because the convicted person preferred to carry out a criminal confinement in lieu of restitution rather than having to pay a restitution fee of Rp. 25,000,000 (twenty five million rupiah) which has been determined by the court, what the convict did in accordance with article 50 paragraph 4 of the Law on the Eradication of Trafficking in Persons, because it is certain that the convicted person would claim to be unable to pay the restitution to avoid paying the restitution fee.

#### **3.2 Suggestions**

The author gives several suggestions which could be used as consideration for the government related to restitution of victims of crime. The advice can provide knowledge and as a form of legal protection for parties who have been harmed by a crime and want to get compensation for the events experienced by that party.

In the TPPO Law there must be rules in relation to the defendant's obligation to deposit restitution money in court from the time of the investigation of the defendant and there must be sanctions imposed on the defendant if the defendant does not want to deposit restitution money in this case to guarantee the victim's right to get right compensation for the actions of the defendant which caused material and immaterial damages to the victim.

Must be a rule in the TPPO Law that regulates the length of imprisonment in lieu of restitution should be in accordance with the amount of loss suffered by the victim, this is intended so as to avoid the defendant's fraud to undergo confinement rather than having to pay reimbursement because the criminal imprisonment is not long.

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