



Policy for the Provision of Compensation, Restitution, Rehabilitation on the Rights of Trafficking Victims

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Abstract. Law enforcement against perpetrators of trafficking in persons mostly still uses the legal basis of Article 296 and Article 506 of the Criminal Code regarding pimping, without considering the laws and regulations of a specific nature as regulated in Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons. Considering Trafficking in Persons is a form of violation of Human Rights, Trafficking in Persons is an act of recruiting, transporting, harbouring, sending, transferring or receiving a person by means of threats of violence, use of force, kidnapping, confinement, fraud, fraud, abuse of power or a position of vulnerability, debt bondage or giving payments or benefits, so as to obtain the consent of the person who has control over the other person, whether carried out within a country or between countries, for the purpose of exploitation or causing people to be exploited. The rights of victims of trafficking in persons include compensation, restitution, physical and psychological rehabilitation as a result of trafficking and the right to be integrated or returned to the family, community, and educational institutions for those who are still in school. Although there are policies that are spread in several laws and regulations that regulate the rights of victims to obtain restitution or compensation, rehabilitation, but in the criminal justice process it is still not widely implemented.

Keywords: Compensation · Restitution · Rehabilitation · Victims · Trafficking In Persons

1 Introduction

Globalization that is happening in this world makes it seem as if every country has no boundaries anymore. This is due to the rapid transformation, especially in the development of aspects of information and communication technology. As a result of globalization entering all aspects of life, it not only has a positive influence, but also has a negative impact, one of which is the emergence of organized transnational crimes such as human trafficking.

The problem of Human Trafficking is a big problem that must get serious attention because it turns out that according to a report from the 2017 Global Slavery Index,

there are about 45 million people in the world who are victims of cases of Human Trafficking. Worse, this problem turns women and girls into the most threatened objects, and Indonesia is no exception. UNICEF has reported that as many as 100,000 women and children in Indonesia are trafficked each year for the purpose of commercial sexual exploitation at home and abroad. The data on cases of Human Trafficking in Indonesia continues to grow every year, even this makes Indonesia get the second position as the country with the most perpetrators of human trafficking crimes in the world [1].

The actions taken by traffickers in carrying out various exploitations of trafficked women are similar to the practice of slavery in the modern era. Trafficking in persons is a form of crime with low risk but high profits [2].

Trafficking in persons is a form of human rights violation, related to commercial sexual exploitation of the right to women's bodies, the body is a psychological determinant of a person, based on mental processes inherent in a person's body including the process of an individual evaluating his body. The human body does not escape the intervention of the logic of the global market economy, thus making the body the main target of consumption and tends to lead to exploitation. As in Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons, it is stated that body organs are often used as a means of sexual exploitation for profit. The human tendency to interpret the body as a commodity is often even used as an object, giving the impression that the body is no longer interpreted as something noble about the human body itself [3].

As for what is meant by trafficking in persons according to Article 1 point 1 of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, it is stated that Trafficking in Persons is the act of recruiting, transporting, harbouring, sending, transferring, or receiving someone with threats of violence, use of force, kidnapping, confinement, forgery, fraud, abuse of power or a position of vulnerability, debt bondage or giving payments or benefits, so as to obtain the consent of a person who has control over another person, whether carried out within countries or between countries, for the purpose of exploitation or result in people being exploited.

Indonesia is a country of origin for trafficking in persons abroad to Malaysia, Singapore, Brunei, Taiwan, Japan, Hong Kong, and the Middle East. Indonesia is also a destination country for trafficking in persons from China, Thailand, Hong Kong, Uzbekistan, the Netherlands, Poland, Venezuela, Spain, and Ukraine for the purpose of sexual exploitation. Trafficking in persons is not an ordinary, organized and transnational crime so that it can be categorized as a transnational organized crime. The way human trafficking works is so sophisticated, it must be followed by legal instruments that can ensnare the perpetrators. Special legal instruments are needed to protect victims. Every victim of trafficking in persons has the right to receive legal assistance based on the provisions of the applicable laws and regulations. The rights of victims of trafficking in persons include compensation, restitution, physical and psychological rehabilitation as a result of trafficking and the right to be integrated or returned to the family, community, and educational institutions for those who are still in school. The crime of trafficking in persons is perceived as a threat to society, the nation and the state, as well as to the norms of life based on respect for human rights [4].

The act of trafficking in persons with sexual exploitation for profit and prostitution of people is an act that is considered a crime against decency or a violation of public order.

Existing laws and regulations and law enforcement have so far been inadequate to deter trafficking in persons and bring traffickers to justice [5]. In practice cases of trafficking in persons intended for prostitution, commercial sex workers and other forms such as online prostitution are usually only charged with general laws and regulations such as those in Article 296 and Article 506 of the Criminal Code regarding pimping, without considering the applicable laws and regulations. Its special nature as regulated in Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons.

Human rights issues are not new to the world community, the act of trafficking in persons that afflicts women and children is a tangible manifestation of human rights violations, that every person as a creature of God Almighty has human rights in accordance with the honor and dignity of the individual. Protected by law based on Pancasila and the 1945 Constitution of the Republic of Indonesia. One part of human rights that needs serious attention that must be guaranteed, protected and fulfilled by parents, family, community, government and state is the right Child. Remembering that children are the next generation whose rights need to be considered so that they can live, grow, develop and participate optimally in accordance with human dignity. Various problems that occur today, which involve the exploitation of children both economically and sexually as well as various acts of violence against children both outside and inside the household, and what is more concerning are children who are trafficked both within the country or between countries which require serious handling. -really from the government and the state. Because what is included in the definition of a child is someone who is not yet an adult whose maximum age is 18 years and has never been married. Actually, both boys and girls have the potential to become victims of trafficking in persons, but especially girls are a vulnerable and vulnerable group as victims of the crime of trafficking in persons. The law enforcement process should also pay attention to the rights of victims of the crime of trafficking in persons to obtain compensation, restitution and rehabilitation, not only focusing on the rights of suspects and/or defendants.

Therefore, as a follow-up to the government's efforts to protect the rights of women and girls and law enforcement, several laws and regulations have been issued. The Indonesian government has signed the Convention on the Elimination of All Forms Discrimination against Women (CEDAW). Indonesia has ratified CEDAW ratified as Law No. 7/1984 on the Ratification of the Convention on the Elimination of All Forms of Discrimination against Women. The Protocol to Prevent, React and Punish Trafficking in Persons, Especially Women and Children is an integral part of the United Nations Convention Against Transnational Organized Crime, so that the prevention and eradication of the crime of trafficking in persons and the protection and rehabilitation of victims needs to be carried out at the national, regional and international levels which was later ratified as Law Number 14 of 2009.

Related to the protection of women from the vulnerability of trafficking in persons, it is also regulated in Law Number 39 of 1999 concerning Human Rights, Law Number 26 of 2000 concerning Human Rights Courts, Law Number 23 of 2002 concerning Child Protection, Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, Law Number 23 of 2004 concerning Elimination of Domestic Violence, Law Number 13 of 2006 concerning Protection of Witnesses and Victims updated with Law Number 31 of 2014 concerning Amendments to Law Number

13 of 2006 concerning Protection of Witnesses and Victims, Law Number 21 of 2007 concerning Eradication of Trafficking in Persons, the Government of Indonesia has also ratified the United Nations Convention Against Transnational Organized Crime through Law Number 5 of 2009, Law Number 14 of 2009 concerning Authorizers an Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime Against Organized Transnational Crime).

The influence of globalization on the law of a country is by signing international agreements between countries, there are international legal arrangements that must be applied to the national laws of each participating country. It can be seen that the content of the convention is an obligation that must be followed by the participating countries by ratifying and setting it in a law. Just as Indonesia has ratified the United Nations Convention against Organized Transnational Crime as outlined in Law Number 5 of 2009. Then, with trafficking in persons entering the criteria for Transnational Organized Crime, Indonesia has also ratified the Palermo Protocol in Law Number 14 of 2009.

In Article 2 of the Palermo Protocol for the Prevention, Suppression and Punishment of Trafficking in Persons. In particular, Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, it is stated that the objectives of this Protocol are: (a) To prevent and combat trafficking in persons, paying particular attention to women and children; (b) To protect and assist victims of trafficking in persons, with full respect for their human rights; (c) For the promotion of cooperation among States Parties in order to fulfil these objectives.

Furthermore, Article 6 point 3 states that each State Party should consider implementing physical, psychological and social recovery measures for victims of trafficking in persons, in appropriate cases, in collaboration with non-governmental organizations, other relevant organizations, and other elements of civil society and especially in terms of: (a) Adequate housing; (b) Counselling and information, especially related to their legal rights, using language that can be understood by victims of human trafficking; (c) Medical, psychological and material assistance; and (d) Opportunities for employment, education and training.

Jeremy Bentham issued Utility Theory in his book *The Theory of Legislation* stating that the purpose of law is as a source of livelihood, prosperity, equality and security, meaning that normatively it is determined by law. With the realization of a sense of security, the victim or every citizen will be guaranteed to get a living, prosperity and equality. Related to the functions and objectives of the law mentioned above, in addition to law enforcement by imposing imprisonment on perpetrators, it is also necessary to enforce law by implementing or implementing granting restitution to victims of crime from perpetrators of criminal acts, especially to victims of trafficking without having to take other legal remedies to obtain the right of restitution [6].

One form of protection for the community that must be carried out by the state is to provide legal protection through the judicial process if a crime occurs or is referred to as the criminal justice system. One of the parties who really need protection in a crime is the victim of a crime. The important role of the victim to be given attention and protection departs from the idea that the victim is the party who is harmed in the occurrence of a crime so that he must receive attention and service in order to provide

protection for his interests. In addition, the types of losses that can be prosecuted at the trial of criminal cases are only material losses and do not include immaterial losses. This causes the request for restitution and compensation is only intended for the type of crime [7].

One of the important considerations for the protection of victims is the loss they have suffered. Therefore, a very essential form of protection for victims is carried out through recovering losses suffered by victims as a result of a crime. The recovery can be in the form of compensation or restitution. The importance of compensation and restitution in order to provide protection for victims has been stated in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in 1985, namely Articles 8 to 11 concerning restitution, and Articles 12 to 13 concerning compensation [8]. For example, there is chapter 8 which reads:

“Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights”.

While at the chapter 12 show:

“When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to: (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes; (b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization”.

Based on the formulation of the two articles above, it can be understood that the perpetrators of

The criminal or other responsible party must provide restitution to the victim or his family, including compensation for damaged or lost property, compensation for recovery from suffering, and other victims' rights. Meanwhile, if the restitution is not fulfilled by the perpetrator of the crime or other responsible party, the state must take over the restitution by providing compensation to the victim.

Although there are already several laws and regulations that regulate the rights of victims to obtain restitution or compensation, but in the criminal justice process it is still not widely applied, the data for the last five years from 2014 to 2019 granting restitution granted by judges to victims of trafficking in persons throughout Indonesia is only new. There are 14 court decisions in the Supreme Court decision directory. Therefore, it is necessary to regulate the provision of compensation as the protection of the rights of victims of trafficking in persons as a state obligation. So that they do not have to wait for a court decision with permanent legal force, only to be given to victims of the crime of trafficking in persons. Ideally direct compensation is automatically given to victims of trafficking in persons. Actually, the provision of restitution refers to the restorative justice system (restorative justice system). Provisions regarding granting restitution wait until the court's decision has permanent legal force, and even then it is not certain that it will

be given because there is a possibility if the defendant is unable to pay the restitution and asks to be replaced with imprisonment. Traffickers as suspects/defendant have actually been able to provide restitution or compensation to victims before a court decision is made and can be taken into consideration by the judge as things that reduce punishment for defendants who are perpetrators of the crime of trafficking in persons. Restitution as a form of the defendant's moral responsibility to restore the condition of the victim or the family of the victim of the crime of trafficking in persons who suffered direct losses, both material and immaterial.

Therefore, it is interesting to discuss the identification of policies that have been carried out by the government and the state in protecting the rights of women and children, especially girls as victims of the crime of trafficking in persons, by providing restitution, compensation, rehabilitation and other assistance in a formal juridical manner against the laws and regulations that have been issued by the government which are interrelated, namely the Law on the Protection of Witnesses and Victims. The Human Rights Law and the Law on the Eradication of the Crime of Trafficking in Persons with their implementing regulations. Government Regulation Number 9 of 2008 concerning Procedures and Mechanisms for Integrated Services for Witnesses and/or Victims of the Crime of Trafficking in Persons. In this new Government Regulation, it is regulated regarding the rehabilitation of health rehabilitation, social rehabilitation, repatriation, social reintegration, and legal assistance to PPT for witnesses and/or victims of the crime of trafficking in persons.

Based on the description above, the problem that arises is how are the policies carried out by the Indonesian government in regulating the procedures and mechanisms for providing compensation, restitution, rehabilitation as a protection for the rights of women and children victims of the crime of trafficking in persons?

2 Discussion

2.1 Definition of Victims of Trafficking in Persons

Trafficking is the illegal trade in humans for the commercial purpose of sexual exploitation or forced labour. The term trafficking comes from English and has the meaning of "illegal trade" or illegal trade. This is a modern form of slavery. There is also an understanding which states that Trafficking comes from the word Traffic which means trade. The equivalent word for people who trade/sell is "Trafficker" which means trader. The term "trafficking" was first recognized from the United Nations instrument. Initially "traffic" was used to refer to the "white slave trade" experienced by women around 1900 [9].

In understanding the definition of trafficking in persons, as regulated in Article 1 point 1 of Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons, the definition can be divided into three main elements as elements of trafficking in persons, namely: actions, means, and objectives. However, in this perspective, not all of the elements described must be used, only with the use of one element, it has fulfilled the requirements [10]. The elements referred to are: (1) action means the recruitment, transportation, storage, delivery, transfer or acceptance of a person. In perspective, not all specified elements must be met, (2) the method relates to the method used to lure the

victim. Possible means are the threat or use of force, abduction, detention, fraud, fraud, abuse of power or a position of vulnerability, debt bondage or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, whether made within the country or cross border, (3) purpose refers to the purpose of exploitation or that causes the exploitation of a person. Exploitation includes but is not limited to prostitution, forced labour or services, slavery or practices similar to slavery, oppression, extortion, physical abuse, sexual harassment, abuse of reproductive organs, or the illegal transfer or transplantation of organs or the use of force or ability of another person to own material or immaterial benefits. The purpose of exploitation, it must be understood that exploitation does not need to actually happen. If the intention to exploit the victim can be proven, the perpetrator can be charged according to law.

The definition of a victim of a crime in principle is regulated in various laws and regulations related to the economic and sexual exploitation of women and children such as the Human Rights Law, the Law on Human Rights Courts, the Law on Child Protection, the Law on the Elimination of Domestic Violence., the Law on the Protection of Witnesses and Victims, the Law on Trafficking in Persons and so on. However, in this discussion only the definition of victim is described in two regulations, namely the Law on the Eradication of the Crime of Trafficking in Persons and the Law on the Protection of Witnesses and Victims.

Based on the General Elucidation of Law Number 31 of 2014 it is explained that the presence of Witnesses and Victims is a very decisive thing in the disclosure of criminal acts in the criminal justice process. Therefore, the Witnesses and Victims are given protection at all stages of the criminal justice process. Provisions regarding legal subjects protected in this Law are expanded in line with legal developments in society. Apart from Witnesses and Victims, there are other parties who also have a major contribution to make in uncovering certain criminal acts, namely Perpetrator Witness (justice collaborator), Reporter (whistle-blower), and experts, including people who can provide information related to a criminal case. Although he has not heard it himself, he has not seen it himself, and he has not experienced it himself, as long as the person's information relates to a criminal act, so that they need to be given protection. The specific crimes mentioned above are serious human rights violations, corruption crimes, money laundering crimes, terrorism crimes, trafficking in persons, narcotics crimes, psychotropic crimes, sexual crimes against children, and criminal acts. Other crimes that result in the position of the Witness and/or Victim being faced with a situation that is very dangerous to his life.

Regarding the definition of victim, it is regulated in Article 1 point 3 of Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons, which states that "Victim is someone who experiences psychological, mental, physical, sexual, economic, and/or social suffering, as a result of the crime, and trafficking in persons".

It is also regulated in Article 1 number 2 of Government Regulation Number 7 of 2018 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims which states "Victim is someone who experiences physical, mental, and/or economic loss caused by a criminal act".

Furthermore, the definition of victim is also regulated according to Article 1 point 3 of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, formulating the definition of victim

that “Victim is someone who experiences physical, mental and/or economic loss caused by a criminal act”.

Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons also provides criteria for the criminal act of trafficking in persons as regulated in Chapter 2 to 6 which are cumulatively punishable by imprisonment for a minimum of 3 years, a maximum of 15 (fifteen) years and a minimum fine of Rp. 120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah), as follows:

2.1.1 Chapter 2

1. Any person who recruits, transports, harbors, sends, transfers or receives a person by means of the threat of force, use of force, abduction, confinement, fraud, deception, abuse of power or position of vulnerability, debt bondage or providing payments or benefits despite obtaining approval of a person who has control over another person, for the purpose of exploiting that person in the territory of the Republic of Indonesia, shall be punished with a minimum imprisonment of 3 (three) years and a maximum of 15 (fifteen) years and a minimum fine of Rp. 120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp.600,000,000.00 (six hundred million rupiah).
2. If the act as referred to in paragraph (1) results in people being exploited, then the perpetrator shall be punished with the same punishment as referred to in paragraph (1).

2.1.2 Chapter 3

Everyone who imports people into the territory of the Republic of Indonesia with the intention of being exploited in the territory of the Republic of Indonesia or exploited in another country shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a minimum fine of Rp. 120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah).

2.1.3 Chapter 4

Everyone who brings Indonesian citizens outside the territory of the Republic of Indonesia with the intention of being exploited outside the territory of the Republic of Indonesia shall be punished with imprisonment for a minimum of 3 years and a maximum of 15 years and a minimum fine of Rp. 120,000,000.00 (one hundred and twenty million rupiah) and a maximum of Rp.600, 000,000.00 (six hundred million rupiah).

2.1.4 Chapter 5

Anyone who adopts a child by promising something or giving something with the intention of being exploited shall be punished with a minimum imprisonment of 3 years and a maximum of 15 years and a minimum fine of Rp. 120,000,000.00 (one hundred

and twenty million rupiah) and a maximum of Rp.600,000,000.00 (six hundred million rupiah).

2.1.5 Chapter 6

Anyone who sends a child into or out of the country in any way that results in the child being exploited shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 (fifteen) years and a minimum fine of Rp. 120,000,000. 00 (one hundred and twenty million rupiah) and a maximum of Rp. 600,000,000.00 (six hundred million rupiah).

Furthermore, in Chapter 7–17, in essence it regulates the severity of the crime with the addition of 1/3 (one third) of the criminal threat in Article 2, Article 3, Article 4, Article 5, and Article 6. Serious mental illness, other infectious diseases that endanger their lives, pregnancy, or their reproductive function is disturbed or lost, child victims are carried out by organized groups. If it results in the death of the victim, the punishment is a minimum imprisonment of 5 (five) years and a maximum of life imprisonment and a minimum fine of Rp. 200,000,000.00 (two hundred million rupiah) and a maximum of Rp. 5,000,000,000.00 (five billion rupiah). If a criminal act is committed by a state administrator who abuses his power, other than a criminal offense plus an additional penalty of dishonourable dismissal from his position. If ordered to commit the crime of trafficking in persons but fails to reduce the punishment. However, they are given the same criminal threat as the main perpetrators of Articles 2 to 6 for criminal acts of assistance, experimentation, planning and conspiracy, exploiting victims. If it is done by a corporation, in addition to imprisonment, the weighting is 3 times the fine and there is an additional penalty a. revocation of business license; b. confiscation of assets resulting from criminal acts; c. revocation of legal entity status; d. dismissal of management; and/or e. prohibition of the management from establishing a corporation in the same line of business. However, in Article 18 it is stated that, Victims who commit criminal acts because they are forced by the perpetrators of the crime of trafficking in persons, are not punished.

2.2 Policy on Compensation and Restitution as a Protection for Victims of Crime

Policies in law enforcement that can guarantee legal certainty, order and legal protection in modern times and today's globalization, can only be implemented if the various dimensions of legal life always maintain harmony, balance and harmony between social morality, institutional morality and civil morality based on values. -actual values in civilized society, both nationally and internationally. In the era of globalization, it is no longer possible for people to only operationalize domestic values, for example in terms of trends in international crimes, human rights crimes, and the new trend, namely the dimension of the protection of victims of crime (victim dimension). This new dimension not only gave rise to a movement to pay more attention to victims in access to justice, but also a movement that grew what was called restorative justice which puts the judiciary in the position of a mediator [11].

Victims of crime are parties who feel directly the consequences of a crime committed by someone. Victims who are parties who directly feel the consequences of a crime should

receive special attention in the legal system in Indonesia. The enforcement of criminal law has a weakness, namely it is more difficult to focus on the perpetrators of crime, while the loss, suffering and efforts to restore/restore crime victims receive less attention. In fact, in the Criminal Procedure Code there are only a few articles that discuss victims and their rights as parties who are harmed by a criminal act. Article 160 paragraph (1) letter b of the Criminal Procedure Code states that “the first to be heard is the victim as a witness”. It can be interpreted that the position of the victim is only limited to a witness whose testimony is heard in the interest of investigating a crime. When the perpetrator is sentenced, it is assumed that the interests of the victim have been considered and the value of justice for the victim has been properly accommodated. The reality is that even though the perpetrator has been sentenced to a criminal sentence, the victim still feels the suffering due to the crime that has been committed by the perpetrator [12].

Legal protection for victims of the crimes mentioned above should ideally be regulated in more detail and firmly in laws and regulations to provide guidelines for law enforcement officers in carrying out law enforcement and become the basis for community participation in supporting legal protection for victims of trafficking in persons. This can be done, among other things, by placing the victim as a party who must be given a special place in the law enforcement process. In the current legislation. Victim protection is mostly “abstract protection” or indirect protection. This is because criminal acts according to criminal legislation are not seen as acts that attack/violate the legal interests of a person (victim) personally and concretely, but can only be seen as a violation of “law order in abstract”.

This shows that the system of sanctions and criminal responsibility is not focused on direct and concrete victim protection, but only indirect and abstract victim protection. So criminal responsibility for the perpetrator is not direct and concrete responsibility for the loss or suffering of the victim, but is more focused on individual personal responsibility for the criminal acts committed by the accused perpetrator of the crime. In the proving process, *actus reus* is an objective element while *mens rea* is a subjective element. It is said to be objective because *actus reus* refers to a crime that actually happened empirically (external element); is against the law, and causes harm to other parties. For example, say, acts of torture. Apart from being categorized as a criminal act by law (the principle of legality), torture perpetrated by a person certainly causes harm to the victim, both materially and immaterially. Meanwhile, *mens rea* is called subjective because it resides in the mind of the perpetrator (internal element); namely in the form of awareness (intentions and wills) and knowledge. In the case of torture, this is manifested through awareness (the will to torture) and knowledge of the perpetrator (that torture can harm a person) [13]. In accordance with the nature of the public in the enforcement of criminal law, so that the rights of the state through law enforcement officers if there is sufficient evidence to take action against the perpetrators. However, it will not automatically decide on granting restitution, compensation, or rehabilitation to victims of criminal acts.

The purpose of providing compensation is none other than to develop justice and the welfare of the victim as a member of the community with a benchmark for its implementation, the victim is given rights and obligations to be developed as a person (children as well as people). Therefore, strict, simple, and easy-to-understand regulations are needed so that discrimination in application by law enforcement and intimidation

from certain parties can be avoided which further aggravates the condition of the victim in prolonged suffering [14].

The rights of witnesses and victims are regulated under Article 5 of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims as follows:

a) Obtain protection for the security of his personal, family, and property, as well as being free from threats related to the testimony that he will, is currently, or has given; b) participate in the process of selecting and determining the form of security protection and support; c) provide information without pressure; d) get a translator; e) free from entangling questions; f) obtain information regarding the development of the case; g) obtain information regarding court decisions; h) obtain information in the event that the convict is released; i) their identity is kept confidential; j) get a new identity; k) get a temporary residence; l) get a new place of residence; m) obtain reimbursement of transportation costs as needed; n) obtain legal advice; o) obtain temporary living expenses assistance until the protection period ends; and/or p) receive assistance.

In addition to being regulated regarding the rights of witnesses and victims according to the Law on the Protection of Witnesses and Victims, the Regulation on Restitution for the Rights of Victims of the Crime of Trafficking in Persons is regulated in Article 1 number 13 which states, “Restitution is the payment of compensation charged to the perpetrator based on a court decision. Permanent legal force for material and/or immaterial losses suffered by the victim or his heirs”.

Furthermore, the regulation regarding restitution as protection for victims of the crime of trafficking in persons is regulated in three articles, namely Article 48, Article 49 and Article 50 of Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons, as follows

2.2.1 Chapter 48

1. Every victim of the crime of trafficking in persons or their heirs has the right to obtain restitution.
2. Restitution as referred to in paragraph (1) is in the form of compensation for:
 - a. loss of wealth or income;
 - b. suffering;
 - c. costs for medical and/or psychological treatment measures; and/or
 - d. other losses suffered by the victim as a result of trafficking in persons.
3. The restitution is given and included at the same time in the decision court on cases of criminal acts of trafficking in persons.
4. The granting of restitution as referred to in paragraph (1) shall be implemented since a court of first instance was rendered.
5. The restitution as referred to in paragraph (4) may be deposited first in the court where the case was decided.
6. Restitution is given within 14 (fourteen) days as of the notification of the decision that has obtained permanent legal force.

7. In the event that the perpetrator is acquitted by the court of appeal or cassation, the judge shall order in his decision that the restitution money deposited be returned to the person concerned.

2.2.2 Chapter 49

1. The implementation of the granting of restitution is reported to the head of the court that decides the case, accompanied by evidence of the implementation of the granting of the restitution.
2. After the chairman of the court receives the evidence as referred to in paragraph (1), the chairman of the court announces the implementation on the notice board of the court concerned.
3. A copy of the proof of implementation of the provision of restitution as referred to in paragraph (1) shall be submitted by the court to the victim or his heirs.

2.2.3 Chapter 50

1. In the event that the provision of restitution to the victim is not fulfilled beyond the time limit as referred to in Article 48 paragraph (6), the victim or his heirs shall notify the court.
2. The court as referred to in paragraph (1) shall issue a written warning letter to the giver of restitution, to immediately fulfil the obligation to provide restitution to the victim or his heirs.
3. In the event that the warning letter as referred to in paragraph is not executed within 14 (fourteen) days, the court orders the public prosecutor to confiscate the assets of the convict and auction the property for the payment of restitution.
4. If the perpetrator is unable to pay the restitution, the perpetrator is subject to a maximum imprisonment of 1 (one) year.

In addition to restitution for victims of the crime of trafficking in persons, Rehabilitation is also regulated in Article 51 of Law Number 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons, as follows:

2.2.4 Chapter 51

1. The victim has the right to obtain health rehabilitation, social rehabilitation, repatriation, and social reintegration from the government if the person concerned experiences physical or psychological suffering as a result of the criminal act of trafficking in persons.
2. The rights as referred to in paragraph (1) are proposed by the victim or victim's family, friend of the victim, police, companion volunteer, or social worker after the victim reports the case he or she has experienced or other parties report it to the Indonesian National Police.
3. The application as referred to in paragraph (2) is submitted to the government through the minister or agency that handles health and social problems in the regions.

The regulation regarding Restitution to Witnesses and Victims is further regulated in Article 1 number 5 of Government Regulation Number 44 of 2008 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims. The Government Regulation states that: “Restitution is compensation given to the victim or her family by the perpetrator or a third party, it can be in the form of returning property, paying compensation for loss or suffering, or reimbursement of costs for certain actions.”

Furthermore, it is regulated regarding the procedure for applying for restitution submitted by the victim, family, or proxy with a special power of attorney in writing to the court through the Witness and Victim Protection Agency (LPSK) Article 20 paragraphs (2) and (3)). The application can be submitted before or after the perpetrator is found guilty based on a court decision that has permanent legal force (Article 21). Perpetrators of criminal acts and/or third parties carry out court decisions or decisions within a period of no later than 30 (thirty) days from receiving a copy of the court decision or decision (Article 31). If the implementation of the provision of restitution exceeds the period of 30 days, then after the victim reports the matter to the court and LPSK, the court immediately orders the perpetrator of the crime to carry out the granting of restitution, within a period of no later than 14 (fourteen) days from the date the order was received (Article 32).

In addition to being regulated in the Law on the Eradication of the Crime of Trafficking in Persons and the Law on the Protection of Witnesses and Victims, provisions relating to the provision of protection for victims of serious human rights crimes, including the crime of trafficking in persons in the form of providing compensation and restitution according to Law Number 26 of 2000 concerning Human Rights Court, provisions regarding compensation and restitution are regulated in Chapter 35, such:

1. Every victim and witness in gross violation of human rights and or their heirs can obtain compensation, restitution, and rehabilitation;
2. Compensation, restitution, and rehabilitation as referred to in paragraph (1) shall be included in the decision of the Human Rights Court, and
3. Provisions regarding compensation, restitution, and rehabilitation shall be further regulated by a Government Regulation.

Further provisions related to compensation and restitution for gross human rights violations are regulated in Government Regulation Number 3 of 2002 concerning Compensation, Restitution and Rehabilitation of Victims of Serious Human Rights Violations. In the General Provisions Chapter of Article 1 point 4 of Government Regulation Number 3 of 2002 it is explained that “Compensation is compensation given by the state because the perpetrator is unable to provide full compensation for which he is responsible”. Whereas in Article 1 point 5 it is explained “Restitution is compensation given to the victim or her family by the perpetrator or a third party, it can be in the form of returning property, paying compensation for loss or suffering, or reimbursement of costs for certain actions”.

The compensation and restitution are given to the victim or the victim’s family who are their heirs. Relevant government agencies, including the Ministry of Finance, which are explicitly mentioned in the decision, are tasked with implementing compensation based on the decision of the Human Rights Court which has permanent legal force. In

terms of compensation related to financing and calculating state finances, the implementation is carried out by the Ministry of Finance. The granting of restitution is carried out by the perpetrator or a third party based on the orders contained in the decision of the Human Rights Court.

Procedures the procedure for providing compensation and restitution as regulated in Government Regulation Number 3 of 2002 is as follows:

1. The Human Rights Court shall send a copy of the decision of the Human Rights Court, High Court, or Supreme Court, which has obtained permanent legal force to the Attorney General.
2. The Attorney General implements the decision by making an official report on the implementation of the court decision to the relevant government agencies to provide compensation, and to the perpetrators or third parties to provide restitution.
3. Relevant Government Agencies carry out compensation and perpetrators or a third party carries out the granting of restitution, no later than 30 working days from the receipt of the official report.
4. Implementation of compensation or restitution is reported by the Agency Related Government, perpetrators, or third parties to the Chairperson of the Human Rights Court who decides the case, accompanied by evidence of the implementation of the grant compensation or restitution.
5. A copy of the proof of the implementation of the compensation or restitution delivered to the victim or the victim's family who are his heirs.
6. After receiving evidence of the implementation of the provision of compensation or restitution, the Chairperson of the Human Rights Court shall announce the implementation on the notice board of the court concerned.
7. In the event that the implementation of providing compensation or restitution to the victim exceeds the predetermined time limit, the victim or family the victim who is the heir can report this to the Attorney General.
8. The Attorney General after receiving the report immediately orders the Relevant Government Agencies, perpetrators, or third parties to implement the decision no later than seven working days from the date the order is received.
9. In the event that compensation and restitution can be carried out in stages, each stage of implementation or delay in implementation must be reported to the Attorney General.

Based on several studies and research results, such as what has been done by M. Chaerul Risal et al., and Umi Rahmi. et al. show that, the specific rules on restitution that have just been regulated in Government Regulation No. 44 of 2008 have actually caused problems in practice. Many judges and public prosecutors tend to prefer to use the amalgamation of claims for compensation as regulated in Article 98 of the Criminal Procedure Code because the procedural law is considered more certain, strong, and flexible than the restitution mechanism in Law No. 13 of 2006 which is actually spelled out in Government Regulation No. 44 of 2008. Many law enforcement officers consider that the regulation of the restitution mechanism in Government Regulation No. 44 of 2008 is not in line with the provisions of the Criminal Procedure Code so that it does not have the power as under the Criminal Procedure Code. Therefore, the restitution mechanism

that should be used is the mechanism regulated by Article 98 of the Criminal Procedure Code.

3 Conclusion

The policies issued by the Government in an effort to provide protection for the rights of women and girls who are victims of the crime of trafficking in persons are deemed adequate, especially as a form of protection that has been regulated in the Law on the Eradication of the Crime of Trafficking in Persons, formulated criminal sanctions and fairly heavy fines. Including regulation of criminal penalties under special conditions for perpetrators of the crime of trafficking in persons. Although the legal umbrella has been given to eradicate the crime of trafficking in persons, there are still many cases of criminal acts of trafficking in persons with the most victims being women and girls, most of whom are employed in the world of prostitution, UNICEF has reported as many as 100,000 women and children in Indonesia have been trafficked annually for the purpose of commercial sexual exploitation at home and abroad. The data on cases of Human Trafficking in Indonesia continues to grow every year, even this makes Indonesia get the second position as the country with the most perpetrators of human trafficking crimes in the world. So that law enforcement has not been maximized, because there are many factors that cause it, both in terms of regulations, law enforcement officers, and the culture of the people who do not want to report or complain about the occurrence of criminal acts of trafficking in persons. So that the implementation of the Trafficking in Persons Law is difficult to prove in court even though the testimony of one victim witness is sufficient, but it is considered *unus testis nullus testis*, so that investigators and public prosecutors still often use the general provisions in the Criminal Code to prosecute traffickers.

Likewise, regarding the regulation of protection of the rights of victims of trafficking in persons in the form of providing restitution or compensation or compensation or medical and social rehabilitation for one type of Trafficking in Persons Crime, it is still scattered in several laws and regulations, regulations that are interrelated, overlapping, contradictory, do not synchronous so that it is difficult to implement, the provision of restitution or compensation uses the basis of the Trafficking in Persons Law, the Witness and Victim Protection Law with PP no. 44 of 2008, using the Human Rights Law with PP no. 3 of 2002 or with the Criminal Procedure Code [15].

Suggestion

In order to be able to implement policies, comprehensive cooperation from all parties is needed in prevention efforts, to take preventive and repressive actions to tackle the crime of trafficking in persons, both government elements including law enforcement officers (police, prosecutors as public prosecutors and judges), religious leaders, religious leaders community, social organizations, community organizations, professional organizations, Integrated Service Center for Women and Children Empowerment (P2TP2A), KPAI, LPSK, Komnas Perempuan, Komnas HAM, non-governmental organizations (NGOs), the business world, and community groups who care about criminal acts human trafficking. The most important thing as a follow-up to the policies that have been carried

out by the Government is that the Law on the Eradication of the Crime of Trafficking in Persons can be implemented, implemented in its enforcement.

As an effort to protect victims of trafficking in persons in the form of providing restitution or compensation or compensation or medical and social rehabilitation and other assistance, there are still obstacles in its implementation in terms of submitting applications, the examination process in court trials, criteria for determining the appropriate amount for losses. material and immaterial, further review is needed to determine the synchronization of arrangements in the relevant laws and regulations and ideal provisions are made to fulfill the principles of justice and humanity as a form of respect for human rights based on Pancasila and the 1945 Constitution. Therefore, If it is related to victims of trafficking in persons, amendments to the Law on Trafficking in Persons should be made regarding the regulation on the mechanism for providing restitution, compensation, rehabilitation or other assistance to victims of trafficking in persons, or issued a Government Regulation that the new procedure and mechanism for providing restitution, compensation, rehabilitation or other assistance to victims of trafficking in persons as the implementation of Law 21 of 2007 concerning Eradication of the Crime of Trafficking in Persons.

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