



Legal Protection of Trafficking Victims (Court Review)

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Abstract. Legal protection for victims of trafficking, particularly the fulfillment of restitution rights, is regulated in Article 48 of Law Number 21 of 2007 concerning the Eradication of Trafficking in Persons. With regard to victims' rights to restitution, this study aims to analyze the implementation of trafficking rights in the form of compensation (restitution) and analyze legal protection for victims of human crimes. Human trafficking through court websites. The type of research used is normative research. The use of this method is carried out through the review of legal materials, both primary legal materials, secondary legal materials, and tertiary legal materials. The approach used is a legal or statutory approach and a case approach or case approach by examining cases related to the problems in this study. Based on the data, it is known that victims of human trafficking from time to time continue to increase in various modes. Most of the victims were women and children, but some court decisions, especially the Jambi District Court, had very few rulings in the form of restitution decisions given to victims, so the verdicts given did not provide justice for victims. The implementation of restitution in fulfilling the rights of trafficking victims is difficult due to several juridical problems in the Trafficking in Persons Act as stipulated in the provisions of Articles 48 to 50, namely the absence of regulations or guidelines regarding procedures for calculating nominal losses, both material and immaterial that can be used as guidelines in the application of restitution sanctions.

Keywords: victims of human trafficking · restitution · jurisprudence

1 Background

Human trafficking is one form of crime that is prioritized to be tackled, because the impact it causes is quite large, so efforts to overcome it need to be taken seriously. Emerging aspects include economic, political, cultural, humanitarian aspects. Human trafficking is also one of the crimes that is considered quite dangerous compared to other crimes, namely drug trafficking, money laundering, and illegal arms trafficking (Sibuea, 2018).

Human trafficking from the point of view of international law is a form of modern slavery and is considered a violation of human dignity. This crime has grown quite significantly locally and universally. The development of these actions cannot be separated

from the increasing advances in technology, information, communication and transportation. Thus, the ways of doing it are no longer conventional but already in a modern way. The perpetrators of these crimes in carrying out their operations are carried out in a well-organized manner, the network is quite extensive both nationally and internationally. The perpetrators also developed not only locally but developed into cross-country syndicates.

In addition to subjecting victims to commercial sex workers, traffickers also force them into forced labor and other services. Not only that, they were also forced to do something similar to slavery. In carrying out his actions, the perpetrator recruits, transports, moves, hides or receives people for the purpose of being framed, snared or exploited. In carrying out their actions, victims are threatened with violence, kidnapping, falsified identities, also deceived or promised something. The perpetrator with his power takes advantage of the victim's vulnerable condition. For example, they lend a certain amount of money to the victim, once the victim is unable to return the money, they will ask the victim to do whatever they want as a responsibility for not returning the money.

In Indonesia, the regulation of human trafficking and its prohibitions and threats of punishment are regulated in Law Number 21 of 2007 concerning the Eradication of Human Trafficking. Formulated in Article 2 paragraph 1 it is stated that no one may commit acts as mentioned above. In addition, such acts can be punished with criminal acts as stipulated in the law.

Although there are already regulations governing human trafficking, in reality there are still cases and cases are quite high. Based on data from the International Organization for Migration, Indonesia ranks highest in cases in the world with 3,785 people consisting of 3,417 women and 368 men. In relation to these data, victims of human trafficking can occur in all genders including men or women, regardless of age, the victims can be children or adults. Basically, victims are in vulnerable situations and conditions, but the most victims are women and children.

Women and children are more dominantly targeted, because they are vulnerable, weak and easily persuaded. Most victims are deceived by fraud, treated inhumanely and exploited. Perpetrators take them then they are employed for the practice of sexual exploitation and also in the form of organ transplants. Victims will experience physical and psychological suffering due to pressure and coercion.

Trafficking victims in Indonesia continue to increase over time. The number of victims is increasing day by day with various modes. Data obtained from KPAI (Indonesian National Commission for Child Protection) shows that from 2012 to August 2020 there were 2,534 cases of human trafficking. In 2014 the number of cases increased by almost 73% or 326 cases. In 2015 there were 548 cases, in 2016 there were 266 cases, in 2017 there were 347 cases, in 2018 there were 329 cases, in 2019 there were 244 cases, and in 2020 there were 144 cases (Indonesian Child Protection Commission, 2021).

According to the Global Alliance Against Traffic on Women (GAATW) report, there are 3 (three) aspects that cause human trafficking, including:

1. The existence of stressful conditions namely poverty and lack of work raises a strong desire to change their lives for the better.
2. The increase in illegal labor dealers in recruiting job seekers because the profits obtained are quite large.

3. Increasing cases of fraud, in the form of false promises, entanglement in lending money, coercion, and pressure for illegal levies (Putri & Arifin, 2019).

Harkrisnowo also found types of human trafficking, including: “As a domestic helper, as a worker in a nightclub, as a sex worker, as a model, a singer in the pornography industry. The victims are also forced to sell drugs, perform contract marriages, exploit children to become beggars, sell babies by kidnapping, kidnap pregnant women, give loans to the baby’s parents, if unable to return the baby will replace the baby, use the identity of a fake doctor in the hospital, triggered by a large salary, offer high-paying jobs turned out to be employed as prostitutes, Providing birth assistance is one of the ways used to trade.

Based on the causal factors and the high number of victims that occur in Indonesia both domestically and abroad, it shows that the problem of trafficking in persons is very concerning, so it certainly requires serious handling because the problem has become a public problem. A comprehensive solution is needed starting from the formulation of regulations in solving the case and of course providing protection to victims in the form of compensation and restitution (Diyamayati, 2013).

Human trafficking cases are also rife in Jambi City. There are several cases that have been handled and processed by the Jambi District Court, namely the number of cases over the last 6 years (2014–2020) with a total of 9 cases that have been convicted where the victims are dominated by women and children. They are exploited at least for prostitution or other sexual exploitation. Of these cases, there was only one case that imposed restitution and the rest of the victims did not get restitution. Looking at the verdict handed down against the perpetrator, it can be concluded that the provision of restitution to the victim is very minimal and the amount of compensation given is very low. Moreover, it is also not worth the suffering of the victim. That the provision of restitution given to victims is a form of fulfilling the rights of victims while providing legal protection for victims. In providing compensation to victims, there are two forms of compensation that can be done, namely those paid by authorized officials through official institutions appointed using state money with the term “compensation/compensation” and the other paid by perpetrators or called restitution/restitution (Diyamayati, 2013).

Restitution given to victims is a form of international human rights law. Restitution is part of victims’ efforts to get justice. The provision of restitution or compensation given by the perpetrator to the victim is a form of responsibility for the perpetrator as a citizen. However, this is difficult to realize if the court decision does not impose a decision on restitution or compensation to the perpetrator, so that the fulfillment of victims’ rights is difficult to implement and victim protection is far from successful.

Based on these things, this research is important to know and be a solution in fulfilling the rights of victims in order to achieve legal certainty, benefit and justice for them. However, two main research questions are formulated as follows:

1. How is the fulfillment of restitution rights for trafficking victims?
2. What is the legal protection for human victims through court rulings?

2 Research Methodology

This research was conducted with a normative juridical approach with several stages; a) describe legal principles, b) examine the systematics of laws and regulations, c) inventory positive laws d) synchronize positive laws and e) analyze positive laws [16]. The juridical approach is a statutory approach, namely research on legal products related to victims' rights in the form of restitution. In addition to using a juridical approach, this study also uses conceptual and case approaches. Conceptual approach, that is, research on legal concepts. The case approach is to analyze cases related to the problems discussed [16]. In using the case approach, this study uses the *decendendi ratio*, which is a legal consideration that is used as a basis for judges in determining their decisions [14]. The types and legal materials used include legal materials in the form of primary and secondary legal materials. Primary legal material is taken from laws and regulations relating to the issues discussed. While secondary materials are materials that have undergone processing in the form of scientific papers.

In analyzing the data, this study used a qualitative approach. Secondary data is obtained from literature (library research), primary data is obtained from the results of field research and laws and regulations. The analysis is carried out with the following steps: a). Interpret legal norms in accordance with their subject matter; b). Evaluate the norms under study related to the legal issues studied; c). Analyze legal materials formulated in legal norms in accordance with the problems discussed.

3 Results and Discussion

3.1 Implementation of the Right to Restitution as a Form of Protection for Trafficking Victims

Legal protection is basically a responsibility given by law, because in essence legal protection aims to provide peace, comfort to the community. This protection has an impact on all aspects of people's lives. Such conditions can be carried out if there is a strong will from the apparatus / government, but in handling many victims have not received maximum legal protection. Legal settlement and protection for victims of criminal acts has not been maximized, this shows that the fulfillment of rights and assistance provided to victims has not provided comfort and security for victims so that the development of justice and welfare in the community has not been achieved. Gosita, 2014: 17).

The importance of victim protection is an effort to realize social comfort. Its realization is carried out continuously by all parties as an effort to provide protection for the rights of everyone who is a victim or receives equal treatment in law. Indirect or direct forms of protection. Indirect protection is a form of protection that can only be felt in feelings, such as the feeling of pleasure that arises after what the victim wants is obtained. While direct protection is a form of protection that can be felt directly by victims, both material and non-material, for example getting compensation or restitution. Non-material protection can be free from degrading news and honor. (Salsabila et al., 2020:12).

Legal protection for victims is also a form of manifestation in protecting the rights of victims. One of the things that must be done in providing protection and fulfillment of victims' rights is in the form of providing restitution. Romli (2009: 9) explains that since medieval times national reparations have arranged the payment of compensation to victims due to the crimes they experienced. The explanation for restitution is formulated in Article 1 number 13 of the Trafficking in Persons Law. It states that restitution is "the provision of compensation to the victim due to the perpetrator's actions, both material and immaterial based on permanent legal force as a legal remedy to restore the victim to its original state". The importance of protecting victims because of the losses they have suffered.

Restitution given by the perpetrator to the victim is a form of accountability of the perpetrator for the crimes he committed against the victim. So that the main purpose expected from providing restitution is one way to overcome all losses suffered by victims, because restitution is basically also to restore the victim's condition as before the crime occurred. Galaway mentioned seven reasons perpetrators should provide compensation: (1) Reduce the suffering of the victim and also reduce the guilt of the perpetrator, (2) As something that can be considered by the judge in implementing the decision in the form of reducing the perpetrator's sentence, (3) As a form of rehabilitation, (4) Speed up the judicial process, (5) Avoid actions from the community in the form of revenge and threats (Hudson 2010, 121).

Provisions regarding restitution are regulated in several laws and regulations; (1) Law No. 31/2014 on Amendments to Law No. 13/2006 on Protection of Witnesses and Victims (LPSK Law), (2) Government Regulation No. 44/2008 on Providing Restitution, Compensation and Assistance to Witnesses and Victims (Government Regulation on Providing Restitution, Compensation), (3) Law on Trafficking in Persons.

The trafficking law specifically provides victims with the right to restitution, as defined in Article 48, paragraph 1, "Every trafficking victim is entitled to restitution." Furthermore, restitution is in the form of reimbursement for: (a) loss of property or income; b) cause suffering; (c) Financing for medical and/or psychological treatment; and/or (d) other losses suffered by victims as a result of trafficking.

Under Article 48 of the anti-trafficking law, victims can apply for restitution after reporting their cases to the police. This means that since the victim has submitted the case to the police and the police have received a report from the victim or her family, the police must include the restitution in the minutes of the police investigation. The investigator must convey to the victim that he is entitled to compensation from the perpetrator, namely by collecting all evidence in the form of costs incurred during the victim's absence, such as receipts or medical expenses and others. Proof of expenditure must be attached with the case file. The investigator collects as much information as possible from the victim about the losses suffered and informs the perpetrator of his ability to compensate the victim. The authority of the National Police to include restitution at the investigation level is regulated in the Regulation of the Chief of the National Police of the Republic of Indonesia Number 3 of 2008 concerning the Establishment of Special Service Rooms and Procedures for Examining Witnesses and/or Victims. In the examination of the victim, one of the things that the investigator must do is to ask about the losses suffered by the victim and include it in the substance of the case as material for filing restitution.

Thus, the police have a very important role in handling victims by seeking restitution in trafficking cases by taking into account the interests of victims in addition to their main task in solving the case. In this case, the investigator is the first source in providing information related to legal efforts that can be taken by victims to obtain compensation from perpetrators. So that the important thing that investigators do is not only prioritize legal certainty but also oriented towards victim protection (Ismail, 2017: 46).

When the case was forwarded to the prosecution, the JPU informed the victim of her right to apply for restitution and the amount of losses she suffered along with the JPU's demands. In the Technical Guidelines for the application of restitution based on JAMPIDUM letter No. 3618/E/EJP/11/2012 dated November 28, 2012 concerning restitution in human trafficking cases: "... Regarding the prosecutor in charge of trafficking cases, in the event that the victim has not applied for restitution at the investigative level, the public prosecutor will inform the victim of his right to apply for restitution in the form of compensation for property or income losses, medical expenses and other losses suffered. by him.

In the pre-prosecution stage, the prosecution examines the trafficking case file, if restitution is not listed, the prosecution instructs that restitution be used as examination material, both the examination of victim witnesses and the suspect and asks the investigator to mediate to obtain agreement on the amount of restitution requested by the victim taking into account the suspect's ability to pay restitution. This arrangement is also consistent with Article 48 of the anti-trafficking law, under which the Public Prosecutor is obligated to convey to victims their right to seek restitution. The position of the public prosecutor is very important as a representative of victims, because most victims are children and women whose knowledge and understanding is very minimal about their right to restitution. Thus, the restitution process carried out by the public prosecutor as a criminal justice process must receive special attention from the prosecutor's office. Prosecutors as representatives of victims can take steps to provide protection to victims so that victims feel represented (Rena & Prakasa, 2020: 5). The Public Prosecutor who represents the interests of victims must know and understand the interests that can be provided to victims through the law enforcement process.

Yulia (2016: 9) stated that regarding the handling of victims in obtaining restitution, it is very necessary to Circular Letter of the Attorney General's Office No. B-63 / E / 2 / 1994 concerning Protection of Victims of Criminal Acts that prioritizes the legal interests of victims. The Presidential Instruction regulates matters related to the legal interests of victims of criminal acts in the criminal justice system, including victim losses. This refers to Article 98 of the Code of Criminal Procedure. The Warrant governs: (a) The merging of damages filed by victims of crime with criminal cases. (b) It has been communicated to the victim or her family from the outset of her right to make a claim for compensation against the perpetrator. (c) assist victims by enhancing the role of society in crime prevention.

The instruction was then strengthened by instruction Number: B-187/E/5/3/95 concerning the Protection of Victims of Criminal Acts. The instruction formulates as follows: (1) Starting from the pre-prosecution stage, the Public Prosecutor has submitted a statement regarding the right of the victim to file a claim for material losses suffered. While other victim losses can be submitted through civil proceedings as described in Chapter

IV of the Decree of the Minister of Justice of the Republic of Indonesia Number: M.01 / PW.07.03 of 1982. (2) If Article 14c of the Criminal Code applies, then there is an obligation for the perpetrator to pay compensation to the victim as a special condition. (3) Take other actions that can help recover losses suffered by victims, both material and immaterial. (3) This Decree is to confirm and complement Decree Number B-63/E/2/94 dated February 4, 1994 concerning the Protection of Victims of Crime (Yulia & Prakasa, 2020: 10).

The directive is a directive that can be applied by the prosecutor's office in protecting the rights and interests of victims, especially in combining claims for compensation. JPU will be more communicative with related victims to obtain information about material losses suffered by victims. The charges made by the JPU are taken into consideration in calculating the material losses of victims. While the charges filed contain criminal sanctions against the perpetrators and are submitted as compensation in fulfilling the rights of victims (Rena Yulia, 2016). The provisions regarding the inclusion of claims for compensation are quite clear, but in their implementation the provisions of Article 98 of the Code of Criminal Procedure are rarely used. So even though it is equipped with the prosecutor's regulation on the application of the provisions of Article 98 of the Criminal Procedure Code, there are several weaknesses, according to R. Soeparmono in Yulia (2010) these weaknesses include: (1) The way to combine compensation claims is not in accordance with the purpose of the compensation itself. (2) Limited to material losses only. (3) For immaterial damages filed through civil lawsuits which of course can take a long time, which means different from the purpose of which is to facilitate the process. (4) In practice it creates problems related to the payment of damages. (5) Claims for immaterial damages are difficult to realize, because the judgment has no technical instructions.

The weakness of combining compensation cases is not optimal in protecting the rights of victims. For example, at the district court level, the perpetrator is subject to criminal sanctions, but the judge's claim for compensation is not granted. Under Article 48 of the anti-trafficking law, there are also weaknesses in the fulfillment of restitution for victims. First, the fulfillment of restitution related to the verdict of criminal cases. If the perpetrator is found innocent (acquittal) by the court, the victim will not receive any form of compensation, despite the fact that the victim suffers material and immaterial losses as a victim of human trafficking. Second, if the perpetrator does not provide compensation because he does not have enough property, then the victim will not get any compensation because the perpetrator will only be subject to a substitute prison sentence of no more than one year (Ali & Wibowo, 2018: 278). This weakness shows that the regulation for the fulfillment of restitution rights in Law No. 21 of 2017 has not been oriented towards victim protection.

This shows that victim protection in obtaining restitution has encountered many obstacles, so the interests of trafficking victims to obtain restitution rights are difficult to realize even though restitution is an effort to achieve justice for victims.

3.2 Legal Protection of Victims Through Court Decisions

The anti-trafficking law is a tangible manifestation of the state in caring for and protecting victims, including fighting for the right to obtain restitution from perpetrators due to losses suffered by victims. The application of restitution in trafficking cases is very important and needs to be implemented as a form of accountability for the perpetrators for the suffering of victims. As stated by Romli Atmasasmita, the provision of restitution to victims is part of the relationship between perpetrators and victims in carrying out the perpetrator's responsibilities as citizens. It will also attach a sense of social responsibility to the perpetrator, so that the value of restitution in this case is not only the value of helping the victim.

The implementation of restitution is not in line with the provisions of Article 48 of the Trafficking in Persons Law. In reality, quite a lot of restitution rights are not obtained by victims through court decisions. If a court decision containing restitution is found, the perpetrator will choose to serve an additional prison sentence. The facts show that the application of restitution to trafficking cases is still rare.

There are several juridical issues (legal aspects) related to court decisions that do not provide protection for victims through their decisions or the non-implementation of restitution in court decisions, so that victims and their heirs are not entitled to receive restitution. This is inseparable from the arrangements governing restitution as stipulated in the provisions of Articles 48 to 50, (Paul Sinlaeloe, 2017: 159).

a. Definition of Restitution

The explanation of the definition of restitution as stated in Article 1 number 13, is not the same as what is meant by compensation in the criminal procedure law which only mentions material losses. Trafficking in persons laws must include material and/or immaterial losses as well. There is no provision in the criminal procedure code for determining immaterial harm from victims, whereas legal proceedings in the trafficking law refer to Article 28, prosecution proceedings and court trials conducted under the Code of Criminal Procedure unless there is a separate provision in the trafficking law. Thus, there will be problems in the procedure for obtaining restitution rights for victims, because there is no clear arrangement, so even if it is filed, the prosecutor's office is very difficult to determine the size of the amount of restitution to be submitted.

b. Authority of the Prosecutor's Office

The position of the prosecutor is in accordance with his authority, which is to prosecute defendants who represent the interests of the victim. So that the prosecution is an effort to fulfill the interests of the victim. However, there has been no further explanation of the relationship between prosecutors and victims and the extent of the prosecutor's role and authority in filing legal remedies. There is no regulation regarding the authority of the prosecutor's office as the executor of restitution decisions as well. The authority of the prosecutor's office is only on the confiscation of the perpetrator's property and even then it is carried out after an order from the chief justice as stipulated in Article 50 paragraph (3). If the perpetrator tries to evade (does not want to) pay compensation to the victim, then the prosecutor does not have the power to coerce to take action. This problem certainly makes it difficult for victims to get their restitution rights (Sariyono, 2017: 378).

c. Criminal Substitute

Furthermore, the provisions of Article 50 Paragraph (4), if the perpetrator does not have enough money to pay compensation and prefers to serve a substitute sentence for a maximum of 1 year, then the victim's right is automatically lost to get restitution. With this arrangement, the perpetrator will prefer to serve a maximum prison sentence of 1 (one) year as a sanction if the perpetrator is unable to pay compensation. The substitute sentence in the form of imprisonment for a maximum of one year is considered very short compared to the losses suffered by the victim. So the perpetrator is more likely to choose a substitute sentence than to pay damages. As long as the substitute sentence is still arranged, it is difficult for the victim to get restitution. Therefore, the substitute criminal must be abolished or the offender is given the obligation to return the substitute money until the specified time limit. Another problem is that there is no provision regarding coercion of perpetrators, so it has not provided legal implications in supporting victim protection (Permatasari et al., 2021).

Several human trafficking cases handled by the Jambi Provincial District Attorney's Office over the past 6 years (2014–2020) with a total of 9 cases and all of them have been decided by judges and have permanent legal force. Of the verdicts handed down by the judge, only 1 (one) case was carried out for restitution for the victim. The approved restitution has a very small value of only Rp. 2,500,000, - the value is not worth the suffering of the victims. While the other 8 (eight) verdicts did not get restitution. Looking at some of the verdicts handed down without any restitution verdict given to the victim, it shows that the verdict does not consider the losses suffered by the victim and the protection of the victim's interests is also not optimal. The findings of research in the field show that many court decisions do not impose restitution, this cannot be separated from the application for restitution made by victims. Some victims did not apply for restitution, because they were unaware of victim redress arrangements under trafficking laws and the difficulty of gathering evidence for their losses. Some victims do not get restitution because the perpetrator does not have the property to pay for the victim's losses and the perpetrator tends to choose a substitute sentence. One of the decisions of the prosecutor's office in Jambi Province is decision number 121/Pid.Sus/2018/PN Jmb. In that decision, the judge sentenced him to imprisonment for 3 years and a fine of Rp. 120,000,000 to the perpetrators of the crime according to article 2 of the Trafficking in Persons Law. In the ruling, the victim does not get restitution because the perpetrator prefers a substitute sentence imposed by the judge for a maximum of 1 (one) year. The existence of substitute money arrangements as formulated in Article 50 paragraph (4) of the trafficking law greatly opens up opportunities for perpetrators to avoid restitution and choose to serve prison sentences. Thus, the fulfillment of the victim's right to restitution does not materialize.

Regarding the judge's decision in deciding a case, the judge is the most influential person in giving consideration to both criminal charges and compensation. In the case of imposing criminal sanctions on the perpetrators, it is not enough to solve the case. Although the application of criminal sanctions has been given and has fulfilled the purpose of punishment, in reality the provision of criminal punishment alone is not enough, the judge also needs to force the perpetrator to pay compensation. This is also

important to be considered by the judge, for the sake of peace and comfort for the perpetrator in the form of suitability in imposing appropriate criminal sanctions for himself, as well as peace and comfort for victims in the form of compensation. (Ismail, 2017: 65). In addition, the purpose of compensation is none other than to build justice and welfare for victims and the benchmark of its implementation is to provide opportunities for victims to obtain their rights and obligations as human beings.

The provision of restitution as stipulated in Article 48 of the Trafficking in Persons Law has not been fully implemented. There are still many trafficking cases that do not provide restitution rights to victims, as well as the verdict of trafficking cases at the Jambi Provincial District Attorney's Office. This is inseparable from the weakness of the Law in providing restitution, namely the absence of implementing rules in applying for restitution, technical regulations and guidelines for the implementation of restitution are also limited. Not providing legal certainty and binding force in its implementation makes it difficult to implement. Existing legal provisions must be able to provide a sense of justice and legal certainty. The position of victims in the legal system has not received serious attention and the form of legal protection in fulfilling the right to restitution is still abstract even though what is desired is legal protection that can be realized in court decisions.

4 Conclusion

The Jambi Provincial Prosecutor's Office continued to experience obstacles in granting restitution rights to trafficking victims as stipulated in Article 48 of the anti-trafficking law. The defendant prefers a substitute sentence of imprisonment if decided by the Court to pay damages. Facts show that the application of restitution is still rare in cases of human trafficking. The judge's decision consideration prioritizes criminal sanctions against perpetrators, while the fulfillment of restitution rights to victims is still not fully prioritized.

Advice

1. It is necessary to improve the arrangement of substitute money, so that the fulfillment of victims' restitution rights can be properly organized.
2. There needs to be an update in the regulations regarding the nominal replacement money.

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