

The Concept of Restitution as Legal Accountability in the Crime of Human Trafficking

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Abstract

Indonesia as a country that has problems in human trafficking, not only functions as a country of origin (source) and transit point for international human trafficking, but also as a country that receives victims. The increasing number of workers that is not accompanied by the availability of employment opportunities is a very complex problem to overcome. This research is a normative legal research, namely a legal study that positions law as a structured norm system. In Indonesian legal regulations, it has been regulated in Law No. 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking related to legal accountability for criminal acts of human trafficking. This law also regulates the rights of victims to receive medical and social rehabilitation, repatriation, and reintegration that must be provided by the state, especially for those who experience physical, psychological, and social suffering due to the crime of human trafficking. Restitution prioritizes the perpetrator's responsibility for the impacts caused by the crime. Therefore, the main target is to handle all losses experienced by the victim.

I. Introduction

Indonesia is one of the countries widely known as a country of law at the global level. Currently, Indonesia is facing various cases related to human trafficking crimes. Human trafficking is a form of transnational crime, which can involve more than one country. Human trafficking is a very serious crime that is against human rights. This crime is seen as a type of slavery that is currently happening and is against human dignity. Cases of human trafficking continue to increase every year, not only in Indonesia but also in various countries around the world (Elia Daniel Gagola, 2018). Crime in Indonesia causes many people to become victims. This is due to the very low economic conditions of the community. The economy has an impact on the community so that they seek work outside the country and have the potential to become victims of human trafficking.

Indonesia as a country that has problems in human trafficking, not only functions as a country of origin (source) and transit point for international human trafficking, but also as a country that receives victims. The increasing number of workers that is not accompanied by the availability of jobs is a very complex problem to overcome. As a result, this causes criminogenic factors that give rise to various types of crimes, such as crimes that harm life, body, property, and morality. One type of crime that arises related to employment problems is fraud against Indonesian workers who are abroad. The problem of labor fraud can arise both during the recruitment process and at the stage of implementing the work contract (Agus Hasanudin, 2015).

Human trafficking has a detrimental impact on victims, including physical, mental, and socio-economic consequences. Victims of human trafficking often experience physical trauma due to the violence or exploitation they experience. Psychologically, these individuals can face mental health problems, anxiety, and stress related to serious traumatic experiences. In addition, the social and economic effects are also visible, with the emergence of losses in the form of loss of employment, education, and often disruption of social reputation. One step that can be taken to support the recovery of victims of human trafficking is to use a restitution mechanism (Indah Damayanti, 2024).

In the context of restitution, this can be interpreted as a return or compensation. In the field of criminal law, restitution is understood as a compensation payment that aims to show good faith in the rehabilitation process for the suffering experienced by the injured party, even though their condition will never fully recover. Restitution can be in the form of returning lost goods, compensation for losses or pain, and reimbursement of costs for certain actions (Aim Abdulkarim, 2007).

The term "restitution" is often used to refer to restitution for people affected by

criminal acts. In criminal procedure law, provisions on restitution for injured parties are still considered inadequate. This situation is clearly seen in Article 98 paragraph (1), which states, "If an action that is the basis for an accusation in a criminal case examination in the district court causes harm to another party, then the chief judge, at the request of that party, may decide to combine the compensation claim case with the criminal case". In other words, individuals who suffer losses due to criminal acts have the right to file a restitution application related to the actions taken by the perpetrator that caused the loss. However, it should be noted that this regulation only regulates restitution related to physical goods. For material restitution, individuals who suffer losses are required to file cases through civil law. Thus, it can be concluded that in the context of protecting the rights of affected individuals, the provisions in criminal procedure law are still considered inadequate when compared to the protection provided to individuals who have the status of suspects, defendants, and convicts (Theodora Syahputri, 2006).

Victims of human trafficking are not only considered as objects in a crime, but are also seen as individuals who need protection, both socially and legally. In the context of law, the state is obliged to provide protection for all its people, as outlined in the opening of the 1945 Constitution. One of the objectives of the establishment of the Republic of Indonesia government is to protect all Indonesian people and the territory of Indonesia and to improve the common welfare and education of the nation (Maureen Vinalia, 2021). The significance of providing adequate legal protection for victims of crime is not only a national issue, but also an international one. In the criminal justice system in Indonesia, it is important to pay greater attention to victims of Human Trafficking, because the justice system in Indonesia still follows the theory of retributivism or revenge. As a result, the resolution of cases in the criminal justice system prioritizes the perpetrators of the crime or an approach that is oriented towards the perpetrators. In the context of TPPO cases, the rights of victims, who have actually experienced suffering and loss, are often not considered (Achmad Murtadho, 2020).

2. Research Method

This research is a normative legal research, namely a legal study that positions law as a structured system of norms (Mukti Fajar dan Yulianto Achmad, 2019). The type of normative legal research is law that is formulated based on norms or rules that apply in society and become a guideline for the behavior of each individual (Abdul Kadir Muhammad, 2004). Normative research is a type of legal study that focuses on the study of literature sources or documents (Ismail Koto, 2024). The characteristics of normative legal research are seen as being able to provide solutions to the problems being researched

because normative law discusses doctrines (expert views) or principles (basic principles) in the field of legal science (Rajarif Syah Akbar Simatupang, 2024).

3. Results and Discussion

a. Form of Legal Responsibility for Criminal Acts of Human Trafficking

Every individual involved in the crime of human trafficking must be held accountable for all their actions before the law. Criminal liability is basically a negative consequence that arises from deviant behavior carried out by individuals who commit crimes. In addition, criminal liability can also be useful for realizing a desired event that comes from the application of the punishment. On the other hand, criminal liability aims to improve the behavior or actions of convicts and to prevent others from committing similar crimes (Siti Rochmah, 2023).

In accordance with this understanding, the concept of legal responsibility in crime is the conditions needed to impose sanctions on someone who commits a criminal act. Meanwhile, based on the monodualistic concept (and the perpetrator in criminal law), a fair process (due process) in determining criminal responsibility not only considers the interests of society, but also the interests of the perpetrator himself. This process depends on the fulfillment of the terms and conditions that allow the perpetrator of the crime to be subject to punishment, so that the imposition of a sentence can be considered legitimate (D.J. Galligan, 1996).

In Indonesian legal regulations, it has been regulated in Law No. 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking regarding legal responsibility for criminal acts of human trafficking, as follows:

1. Article 2 paragraph 1 of Law No. 21 of 2007 states that: "Any person who recruits, transports, shelters, sends, punishes, or receives a person with the threat of violence, use of violence, kidnapping, confinement, forgery, fraud, or abuse of power or vulnerable position, debt trapping or giving payment or benefits even though obtaining the consent of a person who has control over another person, for the purpose of exploiting the person in the territory of the Republic of Indonesia, shall be punished with imprisonment of at least 3 (three) years and a maximum of 15 years and a fine of at least Rp. 120,000,000 and a maximum of Rp. 600,000,000".
2. Article 3 of Law No. 21 of 2007 states that: "Any person who brings people into the territory of the Republic of Indonesia with the intention of exploiting them in the territory of the Republic of Indonesia or exploiting them in another country shall be punished with imprisonment of at least 3 (three) years and a maximum of 15 years and a fine of at least Rp. 120,000,000 and a maximum of Rp. 600,000,000."

3. Article 4 of Law No. 21 of 2007 states that: "Any person who takes an Indonesian citizen outside the territory of the Republic of Indonesia with the intention of exploiting him/her outside the territory of the Republic of Indonesia shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 years and a fine of at least Rp. 120,000,000 and a maximum of Rp. 600,000,000."
4. Article 5 of Law No. 21 of 2007 states that: "Any person who adopts a child by promising something or giving something with the intention of exploiting it shall be punished with imprisonment of at least 3 (three) years and a maximum of 15 years and a fine of at least Rp. 120,000,000 and a maximum of Rp. 600,000,000".
5. Article 6 of Law No. 21 of 2007 states that: "Any person 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 years and a fine of at least Rp. 120,000,000 and a maximum of Rp. 600,000,000". So that a person who assists or attempts to commit a crime of human trafficking, his/her responsibility is the same as someone who commits a crime individually, namely if he/she assists in a crime, he/she will be punished with imprisonment for a minimum of 3 (three) years and a maximum of 15 years and a fine of at least Rp. 120,000,000 and a maximum of Rp. 600,000,000 the same as someone who commits a crime individually.

Criminal responsibility is related to punishment that aims to prevent crime by enforcing the law to protect society. It also aims to resolve conflicts resulting from criminal acts, restore balance, create peace in society, and help criminals so that they can integrate and become productive members of society (O. C. Nugroho, 2018).

b. The Concept of Restitution in Criminal Acts of Responsibility for Human Trafficking

In the explanation of the Republic of Indonesia Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, this Law regulates protection for witnesses and victims as an important element in law enforcement, with the aim of providing basic protection to victims and witnesses. In addition, this Law also pays great attention to the suffering of victims experienced as a result of the crime of human trafficking. This is reflected in the right to restitution that must be given by perpetrators of the crime of human trafficking as compensation for the losses experienced by the victim. This Law also regulates the rights of victims to receive medical and social rehabilitation, repatriation, and reintegration that must be provided by the state, especially for those who experience physical, psychological, and social suffering as a

result of the crime of human trafficking (Greufid Katimpali, 2015).

Restitution is more focused on the perpetrator's obligations to the impacts caused by the criminal act. Therefore, the main goal is to address all losses experienced by the victims (Rena Yulia, 2010). The forms of restitution regulated in Article 7A paragraph (1) of the Law on Protection of Witnesses and Victims:

1. Compensation for loss of wealth or income;
2. Compensation for losses caused by suffering directly related to the criminal act and/or;
3. Reimbursement of medical and/or psychological treatment costs (Edi Abdullah Muhadar dan Husni Thamrin, 2009).

Law of the Republic of Indonesia Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, Article 1 number 13: Restitution is defined as the payment of compensation that must be paid by the perpetrator in accordance with a court decision that has permanent legal force, as compensation for material and/or immaterial losses experienced by the victim or his/her heirs.

Law of the Republic of Indonesia Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking, Article 1 number 13 states that restitution is compensation that must be paid by the perpetrator in accordance with a court decision that has permanent legal force, as compensation for material and/or immaterial losses experienced by the victim or his/her heirs.

Legal protection can be seen in three aspects. First, there is the ratification of regulations related to the crime of human trafficking. Second, there is collaboration with social services that accompany victims during the trial, starting from the first stage (investigation), the second stage (the case is submitted to the prosecutor's office), to the court hearing, especially related to individuals who are convicted of exploiting women in society (Farhana, 2010). Third, victims receive protection through the imposition of criminal sanctions for human trafficking in accordance with the specified procedures. This shows that there is a legal system that implements sanctions as a preventive measure, so that victims of human trafficking cannot report with preventive legal protection (Ramdhan Kasim, 2020).

Restitution prioritizes the perpetrator's responsibility for the impacts caused by the crime. Therefore, the main goal is to handle all losses experienced by the victim. Victims of crime who feel less cared for or do not receive legal protection are only one aspect. Legal protection related to the rights of victims and the protection provided is responsive. There are several types of protection, namely restitution, compensation, rehabilitation, and reintegration (Hery Firmansyah dan Lisyah Sun Lisyah, 2023).

4. Conclusion

In the field of criminal law, restitution is understood as a compensation payment that aims to show good faith in the rehabilitation process for the suffering experienced by the injured party, even though their condition will never fully recover. The concept of criminal responsibility relates to punishment that aims to prevent crime by enforcing the law to protect society. Law of the Republic of Indonesia Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, Article 1 number 13 states that restitution is compensation that must be paid by the perpetrator in accordance with a court decision that has permanent legal force, as compensation for material and/or immaterial losses experienced by the victim or his/her heirs.

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