



Legal Protection in Restitution to the Victims of Human Trafficking

Giofanni Dian Novika^{1*}, Hari Sutra Disemadi², Nur Rochaeti³

¹ Faculty of Law, University of Tanjungpura, Pontianak, West Kalimantan, 78124, Indonesia

^{2,3} Faculty of Law, University of Diponegoro, Semarang, Central Java, 50275 Indonesia

* corresponding author: giofannidn@gmail.com

Article Info	Abstract
<p>Keywords: Human Trafficking; Women and Children; Restitution</p> <p>Article History Received: Nov 24, 2019; Reviewed: Dec 01, 2019; Accepted: Mar 11, 2020; Published: Mar 31, 2020.</p> <p>DOI: 10.22219/ljih.v28i1.10374</p>	<p><i>This research is taking a main topic about human trafficking. The modus operandi offered by traffickers makes victims often deceived by these enticements. This phenomenon is caused by various social factors such as poverty. Reality like this is what makes them easily trapped in the world of slavery. From that reality, the author want to discuss about what are the obstacles in implementing legal protection for victims of human trafficking; and what is the form of law enforcement in providing restitution to victims of human trafficking. The research method used in this paper is normative juridical research, using the statutory approach and the conceptual approach. This research aims that an increase in cases of human trafficking is a serious problem that requires a quick reaction in handling. Contribution of this study in legal protection for victims can be specifically protected by restitution or compensation given to the victim or family by the perpetrator, including psychological satisfaction.</i></p>

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INTRODUCTION

The case of human trafficking is a social and humanitarian problem that plagues many ASEAN countries. These countries are both the source and the destination of human trafficking (Astrid 2011). This crime is cross-territorial which requires the government to cooperate with other countries in solving the problem (Disemadi & Roisah 2019). The problem of human trafficking belongs to a group of extraordinary crimes. The practice of human trafficking crimes crosses national (transnational) boundaries. Trafficking of women and children is the worst form of treatment of power experienced by women and children which is included as a crime and violations of human rights (Abdullah 2010). The problem of human trafficking is

also multidimensional; in this case the problem arises due to various social problems that lie behind it.

In the opinion of Ebbed, an economic determinism is a very important factor that causes trafficking in children and women. Between the poor and the rich, who are very vulnerable to becoming victims of trafficking are the poor, with reasons for survival. This poverty is the main tool of oppression for the helplessness of rural women, they have low education, and very limited competitiveness (Niko 2016). The modus operandi is to look for young women who are interested in the arts by promising potential victims to appear in several countries as ambassadors of the arts.

Article 1 of Law Number 21 the Year 2007 Regarding Eradication of the Criminal Act of Trafficking in Persons, defines human trafficking as an act of recruitment, holding, transportation, sending, transferring or accepting someone (Farhan 2010). The human trafficking syndicate mode is manifested in various forms, namely kidnapping, the use of violence, confinement, fraud, counterfeiting, abuse of power, making payments to the bondage of debt. Simply put, human trafficking can be understood as a form of intimidation of the values and freedoms of basic human rights. There is a universal aspect to the problem of human trafficking that is experienced by countries throughout the world. The causes are poverty, globalization, the sex tourism industry, women's right and general global education levels (Betz 2009). The impact of human trafficking greatly disrupts the stability of people's lives, especially victims, which results in mental disorder due to the effects of psychological trauma (Daniel, Mulyana, & Wibhawa 2017).

Based on the description above, the formulation of the problems that need to be studied are, *first*, what are the obstacles in implementing legal protection for victims of human trafficking; and *second*, what is the form of law enforcement in providing restitution to victims of human trafficking. Contribution of this research is to emphasize the protection against the victims of human trafficking.

METHOD

The research method used in this paper is normative juridical research, using the statutory approach (statue approach) and the conceptual approach. The type of data used is secondary data that is data obtained indirectly (Disemadi et al. 2019). This secondary data includes primary legal materials, secondary legal materials, and tertiary legal materials. The primary legal material used in this study was obtained from statutory regulations, specifically Law Number 11 of 2012 and other relevant laws. Secondary legal material in the form of literature books, research results, papers from seminars, journals, newspapers, and internet. Then tertiary legal material in the form of legal dictionaries. Data analysis in this research is analytical descriptive, to help the writer find the right conclusion.

RESULTS AND DISCUSSION

Obstacles In The Implementation Of Legal Protection For Victims Of Human Trafficking

Trafficking in persons can occur if the perpetrator or the seller of a person is hidden or kept secret beyond the conditions of slavery, or if the victim's person does not immediately receive services provided to him from the perpetrator and is caused by being forced to work to pay the debt to the perpetrator (Oppong 2012). There are generally 5 criminal acts of trafficking in persons, which are as follows:

- a. Actors involving victims to be trafficked and transported
- b. The perpetrators recruit victims for transportation and in some cases collect fees by paying all transportation costs
- c. Buyers who claim ownership of the victim. buyer has no prior relationship with the victim, so the buyer can use force and coercion to maintain the victim's compliance to submit
- d. Enablers, those who work behind the event consciously or unconsciously help facilitate the movement of victims from one place to another
- e. Consumers of sex prostitutes and pimps who offer customer service on an hourly basis using victims (Rahman 2011).

According to Musdah Mulia, trafficking of women and children in Indonesia generally starts with migration. Trafficking of women is actually nothing but a form of migration carried out with pressure not of their own because in practice women are recruited through various forms of fraud including marriages to subsequently be brought to other countries for the purpose of being forcibly trafficked and usually accompanied by threats of violence (Mulia 2004). Meanwhile, according to Koentjoro, trafficking in women is inseparable from the problem of prostitution as an industrial form, that there is an increase in community needs in this regard (Koentjoro 2004).

Efforts to tackle the crime of trafficking in persons are regulated in Law number 21 of 2007 concerning Eradication of Trafficking in Persons. As a special law, determines the forms of criminal sanctions for traffickers, whether the perpetrators are committed by individuals or corporations. This law states that for every trafficker who recruits, transports, holds, transfers, transfers or accepts someone with the threat of violence, use of force, abduction, confinement, forgery, fraud, abuse of power, debt bondage with the aim of exploiting the person in the territory of the country itself (Indonesia), these criminal offenders may be subject to a maximum of 3 years imprisonment and 15 years and / or be sentenced to a minimum fine of IDR.120,000,000 and a maximum of IDR. 600,000,000.

Victims of human trafficking need to get guarantees that are not only in the form of legal protection but are also highly recommended for psychological assistance. The purpose of the assistance in collaboration with Non-Governmental

Organizations (NGOs) is to restore their psychological state due to trauma and be able to return to normal life in the community. The impact that resulted from these actions directly caused suffering in the form of physical and psychological violence, victims who were trafficked for sexual activity suffered greatly from premature sexual activity, were treated harshly and suffered from sexually transmitted diseases. They are often sedated with drugs and suffer extraordinary violence that causes death. The victims became the party who was badly harmed by the perpetrators, they were also used as a tool for the realization of certainty by giving testimony and reconstructing the events they experienced during the examination process.

This is inversely proportional to the treatment of actors who are considered more special, such as:

- a. The time of arrest must be accompanied by an official arrest warrant
- b. the investigation process is allowed to be accompanied by a lawyer
- c. After the verdict is still allowed to submit legal remedies in the form of appeals, cassation, and review
- d. Given a sentence of imprisonment while in detention (Mardiyati 2017).

In the framework of the protection of human rights, in the protection of women and children is one manifestation of the right to life, the right to be free from servitude or slavery. This human right is lasting and universal, meaning that it applies to everyone without discriminating origin, gender, religion, and age so that every country is obliged to enforce it without exception (Sumirat 2016). Efforts to protect the law against women and children, one of which is through the prevention and eradication of human trafficking needs to be continuously carried out to preserve quality human resources. The quality of protection for women and children should have the same degree or level of protection for both adults and men because everyone has the same position (equality before the law) (Suryadi 2014).

Barda Nawawi Arief said that the definition of protection of victims of crime can be seen from two meanings, namely:

- a. Can be seen as legal protection for not being a victim of a criminal offense (meaning Human Right's protection of one's legal interests)
- b. It can be interpreted as protection to obtain a guarantee / legal compensation for the suffering/loss of people who have become victims of criminal acts (so identical with the victim's sponsorship). The form of compensation can be in the form of restoration of a good name (rehabilitation), restoration of equanimity (for example, by forgiveness), compensation (restitution, compensation, guarantee / social welfare compensation) (Arief 2010).

Muladi said there were several arguments why victims of crime needed to be protected, namely:

- a. The process of punishment, in this case, contains the understanding, both in general terms and in concrete terms. In a general sense, the criminal process is a lawmaker's authority, by the principle of legality, which emphasizes that and crimes must be determined in advance if they want to impose a crime on a criminal offender. In a concrete sense, the criminal process is related to the determination of a crime through a penitentiary infrastructure (judges, prison officers)
- b. The state can be said to monopolize all social reactions to crime and prohibit acts of a personal nature. Therefore, if there is a crime and bring the victims of the state must be responsible to pay attention to the needs of the victims
- c. Settlement of conflicts caused by criminal acts, restoring balance and bringing a sense of peace in society. This was also adopted in the draft of the new National Criminal Code Concept (Article 47 paragraph 1 to 3) (Muladi 2002).

Victims of human trafficking have experienced some horrific acts. Physical and psychological injuries to illnesses have had a significant effect on making them alienated from their families and communities. The stigmatization given by the community to those who have been exploited in prostitution, for example, is a significant obstacle for women to exist. It is not impossible that the victims of human trafficking were excluded from society. This symptom must be eradicated because the victims have suffered so much, so people's perceptions must be changed (Indrawati 2017).

With the increase in the number of human trafficking, the victims are trafficked from one place to another and treated cruelly. One way to save victims by organizations or individuals is to pay a ransom so that victims are freed from bondage. But the reality at the time it was implied was even more complicated. The money from the victims' sales income becomes a way to facilitate them in finding new victims. So it is very difficult to establish that in this way can reduce the number of victims or not. From the difficulty of the case to be tracked, slavery continued and the perpetrators were not caught in punishment. Traffickers also quickly evolve into cross-border syndication through deadly work (Sumangkut 2015).

Violence against women can produce victims with varying degrees of seriousness. Therefore various aspects need to be considered and implemented in an integrated manner to carry out physical, psychological and social rehabilitation of victims by legal procedures without violating the rights of victims and witnesses. At present, the handling of victims is still directed and not as is, not yet gender-sensitive and not yet comprehensive in handling victims so that it often constitutes "secondary violence"(Sulistiyo 2012). Besides, the lack of adequate shelter to accommodate victims of violence is an important obstacle in the field of handling these victims. Safe houses are subsystems of the violence management system which involve many

other sub-systems. If one sub-system cannot function properly then another sub-system will take over the function that causes a system dysfunction to occur due to one sub-system being unable to control the role of one another.

The material for regulating articles on trafficking in persons has been regulated in Article 297 of the Criminal Code, but at present, there is no benefit from these provisions. According to Arif Gosita, the criminal law system is still inclined to highlight a crime from a crime maker. According to him, there is something lacking and unbalanced if the victim's point of view is ignored. However, the element that causes crime will not occur if there are no victims (Gosita 1983). The condition of the victim was not given enough attention because the focus of the sentence was only given to the perpetrators. Many victims still have not received justice and the return of the victim's position in the community due to trauma that received a lot of sharp psychic exposure so difficult to change (Alfian 2016). The Criminal Procedure Code only provides legal protection to victims in the form of compensation through a merger of cases and does not regulate other forms of legal protection. Not specifically regulating legal protection for victims of crime, especially victims of human trafficking, has caused injustice, because often the public prosecutor who represents the victim just drops the charge or the judge only gives a relatively mild sentence against the culprit (Indarti 2007). Some factors that become obstacles in providing protection to victims of trafficking in addition to the government and law enforcement agencies, namely from the victims themselves due to the inability to speak out of irregularities for fear of the consequences arising from the conflict.

The reality in society shows that in the field of law, both the problem of violence and the protection of women victims of violence are still inadequate. Various factors affect the law enforcement process, namely: substance, structural and culture. Substantially the existing legal products are Law Number 23 the Year 2004 concerning the Elimination of Domestic Violence or *Penghapusan Kekerasan Dalam Rumah Tangga* (PKDRT). Criminal provisions in the Criminal Code specifically mention women as victims regulated in Article 285 of the Criminal Code (rape), Article 297 of the Criminal Code (abortion without the permission of the woman concerned), and Article 332 of the Criminal Code (fleeing women). Regarding compensation, it is regulated in Article 98 of the Criminal Procedure Code Law No. 8 of 1981, which is about compensation for victims by perpetrators if it is requested by the victim. Such conditions are inadequate and very inhibiting for women is Law No. 13 of 2006 concerning witness and victim protection (Rochaety 2014).

Legal Second, comes from structural. Because of the understanding of the community and law enforcement officials on the issue of violence against violence is not yet gender-sensitive, there is even a tendency to not take sides with women as victims. There is an assumption that acts of violence against women are only

physical, it is not understood that acts of violence against women can also occur non-physically, namely psychologically, socially, economically and politically (Sumera 2013). As a result, cases handled by the police are more in cases of physical violence. Strict structures and procedures prevent law enforcement from making breakthroughs and interpretations

The last comes from culture, which is closely related to the culture of "patriarchy" or "culture of male domination" (Sakina and A. 2017). Realizing equality between men and women is not an easy problem to solve. The available law is an appropriate basis for realizing protection for women victims of gender-based violence. The efforts of the government to protect women have many aspects, so their realization requires cooperation in networking. When the government commits to protect women, victims of violence, it is our shared responsibility to work towards the prevention of protection, prevention for women victims of violence to obtain their rights as provided for in the law while taking into account aspects that effect in society.

Forms of Law Enforcement in Providing Restitution to Trafficking Victims

Based on Article 1 number 13 of Law Number 21 the Year 2007, restitution is the payment of compensation which is charged to the perpetrator or defendant based on a court decision that has permanent legal force for material and / or immaterial losses suffered by the victim or his heirs. In its implementation, the mandate of the law is not carried out by the law enforcers themselves, so the government needs to make new regulations on the criminal acts of trafficking in persons, especially regarding the replacement of imprisonment for restitution sanctions imposed by the judge on the defendant. This means that traffickers must be convicted or sentenced in addition to sanctions imprisonment, sanctions against the confiscation of assets from the perpetrators as collateral for granting or fulfilling sanctions in the form of restitution that must be given to trafficking victims need to be included in legislation to combat trafficking in persons (Takariawan & Putri 2018).

Restitution is submitted from the time the victim reports her case to the local police and is dealt with by the investigator together with the handling of the crime committed. The public prosecutor will notify the victim of the existence of restitution rights granted to the victim, which will then be conveyed with the amount of the loss received by the victim of the crime of trafficking in conjunction with the claim (Putri & Arifin 2019). Restitution realizes several goals. First, restitution functions both to replace the losses suffered by the victim and to convict the perpetrators. Secondly, the ability of restitution to trace losses caused by (perpetrators) of crime serves as an instrument of prevention because it gives a warning to potential perpetrators that they will also be held accountable for any

losses incurred. Third, restitution also forces the perpetrator to acknowledge the loss caused by his act by ordering him to pay a sum of money to the victim. This condition makes the perpetrators specifically responsible for what has been done. Unlike fines paid by offenders to the state, restitution is more intimate because it is given directly by the offender to the victim and his whereabouts are specifically related to the actual loss suffered by the victim caused by the perpetrator's deeds. Therefore, in restitution, there is a causal relationship between crime and loss suffered by the victim (DiBari 2018).

To achieve the restitution goals, Burt Galaway put forward the following four benefits of restitution:

- a. Restitution as a condition for the imposition of probation allows the court to refuse to impose severe penalties
- b. Restitution orders help to renew the perpetrator's self-respect by holding him accountable for what he has done
- c. Restitution as a criminal sanction and alternative imprisonment is cheaper
- d. Restitution can provide victims with material fulfillment and psychological satisfaction (Ali and Wibowo 2018)

Law enforcement is required by implementing the provision of restitution for victims of crime from perpetrators of crime, especially against victims of trafficking without having to make legal efforts either appeal, cassation or reconsideration to obtain their restitution rights. The law enforcement cannot be separated from the role of the judge as to the jury or final decision maker in handling any problems that are brought before the court. Thus, the judge in passing a decision or conviction as a conditional criminal. This is as regulated in Criminal Code or *Kitab Undang-Undang Hukum Pidana* (KUHP) Article 14 letter C, whereby the judge only gives a verdict of compensation specifically for the convicted person to "compensate" (all / in part) arising from a criminal offense. So the compensation here seems to function as a substitute for the principal crime (Takariawan & Putri 2018). According to Barda Nawawi Arief, the determination of compensation is rarely applied in practice because it contains weaknesses, including:

- a. The determination of this compensation is not given by the judge as an independent sanction in addition to the principal crime, he can only be imposed in the event that the judge intends to impose conditional penalties, so only as a "special condition" not to carry out or carry out the basic crime imposed on the convicted person
- b. Determination of special conditions in the form of compensation can only be given if the judge sentenced to a maximum of one-year imprisonment or imprisonment

- c. This special requirement in the form of compensation according to the Criminal Code is only facultative, not imperative (Takariawan & Putri 2018).

CONCLUSION

The increase of the number of human trafficking, victims of human trafficking who are exploited for the benefit of the parties, the efforts in overcoming the crime of trafficking in persons are regulated in Law number 21 of 2007 concerning Eradication of the Criminal Act of Trafficking in Persons. The obstacle factor in protecting victims apart from the government and law enforcement agencies is the victim who is unable to report for fear of the consequences of the conflict. Various factors affect the law enforcement process, namely: substance, structural and culture. The numbers of victims who still have not received justice for that in protecting the interests of victims, the perpetrators are responsible for their actions by providing restitution or compensation. Restitution is submitted from the time the victim reports, there is a causal relationship between the crime and the loss suffered by the victim.

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