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## THE ROLE OF RESTITUTION IN TRAFFICKING

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### ABSTRACT

**Keywords:** Restitution; Victim Restoration; Crime; Human Trafficking.

Trafficking in Persons (TPPO) is a grave human rights violation because it causes various negative impacts on victims physically, psychologically, or socio-economically; one of the efforts to restore victims of TPPO is through restitution. This research explores the role of restitution in the context of TPPO. This research adopts a qualitative approach by collecting data through a literature study. Furthermore, the data is analysed through three stages: data reduction, presentation, and conclusion drawing. The findings of the research indicate that restitution plays a vital role as a remedy and legal protection for victims of human trafficking. In its application, the punishment for the obligation to pay restitution can be replaced with imprisonment. Criminal punishment is not merely a deterrent effect on the convicted person, but recovery for the victim of the crime itself through restitution must be considered.



### Introduction

Trafficking in Persons is a severe crime, depriving persons of their rights, and is considered a form of modern slavery that defies human dignity. The number of cases continues to increase yearly in Indonesia and globally (Nofriandi, 2023). The growing problem of human trafficking in various countries is a significant concern for Indonesia as a country, the international community, and members of international organisations, especially the United Nations (UN) (Gagola, 2018).

Empirical data recorded in Law No. 21 of 2007 shows that women and children are the most vulnerable groups to become victims; the goal is not only sexual exploitation, such as prostitution but also experiencing other forms of exploitation, such as forced labour or other. The perpetrators engage in various activities such as recruiting, transporting, transferring, harbouring, or receiving people to trap, plunge, or exploit them in any form of exploitation. These actions can include threats of violence, use of force, kidnapping, forgery, fraud, and so on.

The negative impacts of trafficking that harm victims involve physical, psychological, and socioeconomic consequences. Victims often experience physical trauma as a result of their violence or exploitation. Psychologically, they can experience significant mental disorders, anxiety, and post-traumatic stress. In addition, the socioeconomic impact is also felt, with job losses, education, and often compromised social reputations. One step that can be taken to assist in the recovery of trafficking victims is through the implementation of restitution mechanisms (Henny Nuraeny, 2022).

Restitution is a form of financial compensation to victims to recover their losses due to criminal acts. By providing restitution, victims have better access to their lives,

including medical help, mental health services, and social support. Restitution can also help rebuild victims' economic stability, allowing them to restart their lives after experiencing traumatic experiences due to trafficking (Wijaya & Purwadi, 2018).

Previous research (MUSTAFA, 2023) explored the role of law enforcement in implementing restitution rights for trafficking victims in Indonesia. The results show a need for law enforcement involvement at the police, public prosecutor, and judge levels to apply restitution to victims effectively. The findings also highlight that protection efforts for victims have not been adequate. In sanctioning the defendant, the judge tends to focus only on sentencing the defendant without paying serious attention to the provision of restitution to the victim. Another study (Sihite & Hidayat, 2017) examined the right to restitution for trafficking victims under Law No. 21/2007, indicating that filing procedures in trafficking cases are specifically regulated in the law that governs them and refer to the provisions of the Code of Criminal Procedure (KUHAP) unless otherwise controlled by the Trafficking in Persons Act.

The novelty of this research lies in the object of research, namely the role of restitution in trafficking, which has never been studied before. This research has the potential to contribute to the legal and criminological research literature by providing a deeper understanding of the relevance and effectiveness of restitution in the context of trafficking offences. These theoretical implications may aid the development of theories related to criminal law, particularly in considering victim recovery and protection factors as integral aspects of the criminal justice system. This study aimed to analyse the role of restitution in trafficking.

## **Research Methods**

This study adopts a qualitative approach in its research methodology. (Hadi, 2017) states that qualitative research can be defined as a type of research that aims to comprehensively understand phenomena related to the experience of research subjects, such as behaviour, perception, motivation, action, and other aspects. This approach involves describing the phenomenon in words and language, placing a unique natural context, and using various natural methods. The data collection process is done through literature studies, including searching, selecting, and analysing relevant literature sources. Furthermore, the data is explored through data reduction, presentation, and conclusions.

## **Results and Discussion**

Trafficking in persons is one of the crimes of great concern to the Indonesian government. To enforce the law against the perpetrators of these crimes, providing restitution to victims is an essential element that supports the recovery process. In Indonesia, the right to restitution is regulated by several laws, particularly Law No. 21 of 2007 concerning the Eradication of Trafficking in Persons, which defines restitution as compensation to victims due to physical, psychological, or economic losses. This restitution is intended to return victims to the condition before they become victims, including overcoming losses experienced in various aspects. In addition, restitution also

serves as a form of justice for victims for the suffering they have experienced (Riza, 2023).

Victims are not only considered objects in a criminal act but are seen as subjects who need protection, both socially and legally. In Indonesia's criminal justice system, it is necessary to pay more intensive attention to trafficking victims, given that the criminal justice system still follows the theory of retribution. Therefore, case resolution tends to focus more on the perpetrator of the crime or the offender's orientation. In the context of trafficking cases, the rights of victims who have suffered and suffered losses are often forgotten (Plaikoil, 2021).

Legal protection for victims of criminal acts is currently regulated by Law No. 13 of 2006, which is in line with the provisions of Law No. 31 of 2014 concerning the Protection of Witnesses and Victims. The protection afforded to victims can be abstract or concrete. Abstract protection involves emotional aspects and inner satisfaction, such as the sense of satisfaction that arises after the victim achieves his goal. Substantial protection is natural and can be felt in material and non-material forms. Material protection includes compensation or restitution, exemption of living expenses, or educational assistance. On the other hand, non-material protection involves liberation from threats and news that can degrade humanity (Vitasari, Sukananda, & Wijaya, 2020).

Rules regarding restitution for victims have been regulated in various laws in Indonesia, including the Criminal Code, Criminal Procedure Code, Law Number 13 of 2006, and Law Number 31 of 2014 concerning the Protection of Witnesses and Victims. In addition, Government Regulation Number 7 of 2018 regulates the provision of compensation, restitution, and assistance to witnesses and victims. The Trafficking in Persons Eradication Law (PTPPO) also includes provisions related to restitution. In addition to these regulations, several other regulations still regulate aspects related to restitution (Murtadho, 2020).

Article 48 of the Law on the Eradication of Trafficking in Persons (UU PTPPO) regulates the right to receive restitution under the following conditions (Hendrawan, 2022):

1. Every trafficking victim or their heirs had the right to receive restitution.
2. Restitution, as referred to in paragraph (1), includes compensation for:
  - a. loss of wealth or income;
  - b. suffering;
  - c. medical and psychological treatment costs; and
  - d. Other losses suffered by victims as a result of trafficking.
3. These restitution determinations were simultaneously included in court rulings related to trafficking.
4. The grant of restitution, by the provisions of paragraph (1), shall be made from the moment the court's decision of the first instance is enacted.
5. Restitution, as described in sub-article (4), may be temporarily deposited in the court where the settlement of the case is made.

6. The process of granting restitution shall be carried out within 14 (fourteen) days from the notification of the decision that has permanent legal force.
7. If the offender is declared acquitted by an appellate or cassation court, the judge orders in a ruling that the restitution money that has been deposited be returned to the party concerned.

The right to restitution is also regulated in the LPSK Law, which is contained in one article, namely Article 7A, which explains:

1. Victims of criminal acts have the right to receive restitution, which includes compensation for loss of wealth or income, compensation related to direct suffering resulting from the crime, and reimbursement of medical and psychological treatment costs.
2. The determination of eligible criminal acts, described in paragraph (1), is taken through the LPSK Decree.
3. Restitution can be requested before or after a court decision has permanent legal force, and the LPSK reserves the right to propose restitution to the public prosecutor if the request is filed before a court decision with permanent legal force.
4. If the request for restitution is submitted after the court decision has obtained permanent legal force, the LPSK has the authority to propose restitution to the court for decision.
5. If the victim of the crime dies, restitution is given to the victim's family, who is the heir.

In Indonesia's criminal justice system, penalties requiring restitution payments can be commuted to imprisonment. For example, Tual District Court Decision Number 109/PID. SUS/2015/PN Tul states that the obligation to pay restitution of Rp.239,900,000 can be replaced by serving a period of confinement for 1 ( ) year. Replacing restitution with imprisonment is an option for convicts involved in trafficking, mainly to avoid the obligation to pay restitution, especially with the opportunity to obtain remission rights that can reduce the sentences of convicts. However, regarding the right to remission, there are exceptions stipulated in Article 133 paragraph (3) of the Draft Code of Criminal Procedure in 2012 (RKUHAP), which states that "If proven to have tried to avoid paying compensation to the victim, the convict is not entitled to a reduced sentence and does not get parole (Paramudhita & Sinaga, 2021).

The loss of remission rights for convicts who seek to avoid paying restitution to victims is the right step. To date, there is a fact that to replace restitution with imprisonment, individual prisoners and companies have sought to shirk the responsibility of paying restitution. With the enforcement of government power, as explained in the RKUHAP, it is expected that the convicted person fulfils the responsibility of paying restitution to protect the rights of victims, as stated in the explanation of Article 133 paragraph (3) of the RKUHAP which states "A convict who can pay compensation is not entitled to a lighter sentence than a person who is incapable because he has money to pay compensation." This rule applies to convicts who can pay damages but seek to avoid such liability.

It is important to remember that crime is not only a deterrent effect for the convict but also a means to recover victims of crime through restitution. Therefore, the replacement of restitution with criminal confinement, especially by utilising the right of remission, can lead to a disregard for the rights of victims, as if only the deterrent effect is the focus, not the fulfilment of the rights of victims. Therefore, replacing restitution with imprisonment is unsuitable to ensure that victims' rights are fully fulfilled.

Providing legal protection to victims of crime has an impact comparable to protecting the general public. Such legal protection does not only cover physical and material aspects; Victims of crime also often experience psychological suffering resulting in trauma. Therefore, the type of protection provided needs to be adjusted to the losses suffered by the victim. Trafficking victims were often placed in jobs as domestic helpers or nightlife workers, and these problems were often rooted in rising poverty and unemployment. Therefore, it is essential that the government addresses the root causes of these problems and increases efforts to protect victims. One step that the government can take is to manage and strengthen the task force responsible for combating trafficking in persons (Saodana et al., 2023).

## **Conclusion**

Restitution has a significant role as a legal recovery and protection mechanism for trafficking victims. In criminal justice practice in Indonesia, the sanction of obligation to pay restitution can replace imprisonment as a form of punishment imposed. Criminal sanctions are not only a deterrent effect on convicts but also have an essential dimension in recovering victims of crime. As part of the judicial process, restitution reflects a moral and legal responsibility towards the victim. In the case of human trafficking, this mechanism offers solutions to compensate victims for the harm suffered, both financially and to restore their dignity and well-being. Although criminal punishment remains an instrument of law enforcement, the emphasis on recovery through restitution demonstrates a paradigm shift that recognises the rights and needs of victims as a central aspect of the criminal justice system. In addition, replacing imprisonment with restitution reflects a more holistic approach to tackling crime, prioritising justice and rehabilitation.

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