



Fulfillment of Restitution Right of Human Trafficking Crime Victim through Restorative Justice Approach in Criminal Justice System in Indonesia

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Abstract

Fulfillment of restitution for victims of human trafficking through the restorative justice approach in the criminal system of Indonesia is done by making the offender responsible for the restitution. The role of the Public Prosecutor in optimizing the fulfillment of the restitution rights for victims of human trafficking crime can basically be carried out by adopting the concept of the Plea-Bargaining System and Deferred Prosecution Agreement which includes the Victim Impact Statement. However, in the practice of criminal justice, there are still obstacles in the application of restitution rights for victims of human trafficking which can cause obstruction to the law enforcement of human trafficking crime through a victim oriented restorative justice.

Keywords: *Restitution Rights; Human Trafficking; Restorative Justice*

Introduction

The high mobility of Human Trafficking Crime Act (TPPO) that is currently happening is caused by the difficulty of finding job opportunities, poverty and an increasingly unreachable economy, changes and developments that are increasingly unstoppable. This result in people doing work in an instant manner without paying attention to any violations of the law that have been committed by the community, both the perpetrators and the victims. Thus, the human trafficking crime becomes a choice and provides great benefits for traffickers. The condition of the poverty level is easily influenced if coupled with a low level of education (Marlina & Zuliah, 2015, p. 3). On the other hand, that the high rate of human trafficking crime is also caused by the law enforcement system that unable to reveal the human trafficking network to the roots (the funders) but is only limited to the executor at the low network or the field and the community culture as a support or access of human trafficking in Indonesia.

Considering the legal basis or legislation that has been formulated by lawmakers to protect the victims (both by the legislative and executive bodies), besides being realized in the form of imprisonment for the perpetrators, it is also put concern in fulfilling the right to the victims one of which is the right to receive restitution which is regulated in Law Number 21 of 2007 concerning Eradication of Human Trafficking Crime Act. The law discusses matters relates to witness and victim protection is implemented

under Law Number 13 of 2006 concerning Protection of Witnesses and Victims (amended by Law Number 31 of 2014) which derived into implementation regulations of Government Regulation Number 44 of 2008 concerning Provision of Compensation, Restitution and Assistance to Victim Witnesses amended by Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution and Assistance to Witnesses and Victims and Pem Regulation Government Regulation Number 43 of 2017 concerning Implementation of Restitution for Children Victims of Criminal Acts.

From the two laws, there are many juridical weaknesses to optimize the authority of law enforcement officers in fulfilling the restitution rights for victims of human trafficking crime. In addition, based on the two laws, restitution is not a type of punishment as contained in Article 10 of the Indonesian Criminal Code (KUHP) but only one of the rights of victims of human trafficking crime which arises to be an obligation of the perpetrator after the court decision which includes restitution in the ruling and has obtained permanent legal force. If the perpetrators do not pay, they will be subject to a substitute imprisonment for a maximum of one (1) year. Based on these laws, besides the concept of state responsibility (abstract legal protection) there is the concept of the responsibility of the perpetrator (concrete legal protection) to be able to return the victim's condition to its original situation before the incident. According to the definition, restitution is a form of legal protection in the form of payment of compensation which is charged to the perpetrator or defendant or a third party based on a court decision that has permanent legal force for material and / or immaterial losses suffered by the victim or his heir (Kementerian Sekretariat Negara Republik Indonesia [Kemensetneg], 2007).

Based on Article 7A of Law Number 13 of 2006 concerning Protection of Witnesses and Victims which has been amended by Law Number 31 of 2014, victims of criminal acts (not only criminal act of human trafficking) has the right to obtain restitution in the form of compensation for loss of wealth or income, compensation for losses incurred due to suffering directly related as a result of a crime and / or reimbursement of medical and or psychological care costs. However, only the TPPO law which constitutes a criminal act law outside the Indonesian Criminal Code (specifically) that is explicitly firm. In addition to give body punishment (non-custodial), fines and additional punishment criminal, it also regulates the obligation of the offender to provide or pay restitution which becomes victims' rights as is the existence of the state to guarantees a concrete victims' protection.

However, the policy is not balanced with other policies that related to the optimization of the fulfillment of restitution rights by law enforcement officers, in this context, the Prosecutor, through the role and function of public prosecutor as is regulated in Law Number 16 of 2004 concerning Prosecutor Office of the Republic of Indonesia. This result in halt to the implementation of restitution for TPPO victim becomes which cause by implementation regulations. This becomes an irony when there are regulations but cannot be implemented and consequently results in victims not receiving their rights which actually arranged in the law and legislation.

Methodology

This study employs a normative juridical methodology which emphasizes secondary data which are legal materials that have been documented. The focus of research with a normative juridical approach is aimed at library research. This study examines more secondary data in the form of primary legal materials secondary legal materials and tertiary legal materials. Reasons that can be raised are due to the legal issues under investigation relating to regulations and court decisions. However, this juridical normative research method is supported by empirical juridical research methods with an emphasis on elements or factors related to the object of research as part of field research.

Findings and Discussion

Restitution Concept for Victims of Human Trafficking Crime through Restorative Justice Approach in Criminal System of Indonesia

Indonesia in the eyes of the world is suspected as a country with a fairly high case of trafficking, not only as the source country and transit for international trafficking, but also a recipient country. In this context, the Unitary State of the Republic of Indonesia is one of the countries that has a low economic growth and a very large population with a very high population level. This condition results in a very large potential for the emergence of human trafficking or other crimes.

Because Indonesian citizens have the potential for the emergence of human trafficking crime, according to one of the objectives of the state as stipulated in the opening of the 1945 Constitution of the Republic of Indonesia—"to protect all Indonesian blood, the direction is to protect Indonesian citizens without any exception". In order to anticipate and overcome various forms of trafficking and as one form of very deep concern over various trafficking cases that occur in Indonesia, the Government of the Republic of Indonesia has passed a special law as an evidence that the Indonesian Government does not close their eyes or remain silent on cases of Human Trafficking Crime. The law that was enacted by Government is Law Number 21 of 2007 concerning Eradication of Human Trafficking.

Law Number 21 of 2007 concerning Eradication of Human Trafficking in is meant to provide a legal basis to tackle human trafficking. Regulations regarding the definition of human trafficking and decisive actions against human traffickers. The law also provides clarity regarding the protection of victims and witnesses of human trafficking, including personal security from physical and mental threats, confidentiality of witnesses' identities, providing information during hearings in court without face to face meeting with suspects, and providing medical and social rehabilitation from the country.

Moreover, the Law Number 21 of 2007 concerning Eradication of Human Trafficking explicitly prohibits all forms of human trafficking, even the punishment for convicted offenders receiving a minimum prison sentence of 3 to 15 years plus a fine of Rp 120 million to Rp 600 million if the victim dies a threat the sentence increased to life plus a fine of Rp 200 million to Rp 5 billion. This sentence is quite severe and comparable to that applied for other serious crimes.

Law Number 21 of 2007 concerning Eradication of Human Trafficking also has guaranteed the granting of rights to victims of human trafficking including the right to confidentiality of the victim and their families to the second generation, the right to be protected from threats that endanger them, their lives and/or property, the right to receive restitution, the right to obtain health and social rehabilitation, return and social integration from the government, and also the right for victims who are abroad have the right to be protected and repatriated to Indonesia at state expense.

The grant of rights to victims as regulated in Law Number 21 of 2007 Concerning Eradication of Human Trafficking mentioned above shows that the right protection of victims to their rights are important in the criminal process and should not be limited to the punishment of the perpetrators only. Because the victim has suffered a direct loss as a result of his experience as a target of crime, the person who is a Victim of Human Trafficking has the right to get restitution, as stated in Article 48 paragraph (1) of Law Number 21 of 2007 concerning Eradication of Human Trafficking mentioned above.

Nevertheless, the reality on the ground is rarely even difficult to find a victim of Human Trafficking to receive restitution, as the data the writer has in 2019 from 21 cases with a total of 44 victims, the restitution is only given around Rp 91,268,000. This is the thing that must be considered that the attention to the interests of victims can be seen as an important element in the framework of law enforcement efforts correctly and appropriately.

Since the enactment of Law Number 21 of 2007 concerning Eradication of Human Trafficking Crime, there has only been 1 (one) case of trafficking where a person granted the right of restitution decided by the Tanjung Karang District Court No. Reg 1663 / Pid / B / 2008 / PN TK, on behalf of the defendant Fitriyani Binti Muradi. Restitution Right is Rp 10 million. If seen from the nominal rate of restitution it is not too big, but this decision is at least a learning material for law enforcement official in Indonesia to include this restitution right as part of victims' rights in settling cases of human trafficking.

In reference to Article 48 of Law Number 21 of 2007 concerning Eradication of the Human Trafficking Crime Act (TPPO) and the decision above, it can be seen that the form of compensation called restitution is in the form of money. Thus, the purpose of compensation is the fulfillment of demands in the form of compensation for a sum of money. There are several components related to the victims' restitution rights that must be replaced by the perpetrators against the victims, which are loss of wealth or income, victim suffering, costs for medical and / or psychological treatment and or other losses suffered by victims as a result of human trafficking. And the restitution is still ambiguous or unclear whether it is a crime or just an obligation that must be fulfilled by the perpetrators to TPPO victims (victims' rights). However, if the obligation is not fulfilled, then the perpetrators will be subject to a maximum sentence of imprisonment for 1 (one) year.

In Law Number 21 of 2007 concerning Eradication of Human Trafficking the right to restitution as one of the rights of victims of human trafficking should be the state's obligation to protect its citizens through law enforcement officials. Thus, seeing the difficulty of applying restitution for victims of human trafficking, the state must take over the responsibility of the perpetrators to provide restitution to victims. This can be done by the state by analyzing the loss of victims and giving restitution rights to victims.

Basically, the state's responsibility is already there, as according to Barda Nawawi (1998, p. 55) which states that there are various formulations of criminal acts in the legislation which means that there are essentially legal protections and victims' rights, but what happens in this case crime victims do not get the right to restitution as which is mandated in the Act. As a result, after the perpetrators of crime have been convicted by the court, the condition of the victim is not taken care of. People only pay attention in the analysis of crimes only to the criminal component, the law, and law enforcement as well as the interaction between the three components.

Restitution rights are directed more towards the responsibility of the convicted person as a result of the crime he committed, and his main goal is to overcome all losses suffered by the victim. Benchmarks to determine the amount or size of compensation in Law Number 21 of 2007 concerning Eradication of Trafficking in Crimes People do not specify explicitly but Law Number 21 of 2007 Concerning Eradication of Human Trafficking only explains that restitution is the right of the victim or his heirs and the restitution is given and stated in the court's ruling, it does not explain the size or indicator of the number of restitution and the appropriateness compensation given. Indeed, in practice the right to restitution for victims of human trafficking is very many obstacles encountered in fulfilling the rights for victims both at the investigation stage, the prosecution stage, and the implementation stage of the decision.

Law Enforcement Officials should provide understanding that victims have the right to apply for restitution rights but in practice our law enforcement officers also do not understand the mechanism for including restitution rights for victims of human trafficking. That is because restitution is a new paradigm in the world of criminal justice, of course it takes time to introduce restitution in the midst of a legal system that has been recognized hereditary. In addition, the existence of pragmatic thinking tends to dominate the thinking of law enforcement officials, such as the attitude of not accepting new developments and prioritizing the Indonesian Criminal Procedure Code (KUHAP) like a "holy book" as a reference for law enforcement.

Various efforts to repair and develop a legal system are certainly very necessary amid the rapid rise of new types of crime that are increasingly sophisticated and modern. This development is directly proportional to the increased capacity of law enforcement officers and the quality of existing normative legal instruments.

Many prosecutors in carrying out prosecutions had difficulty in summoning witnesses, while the requests for restitution must be supported by evidence of expenses and expert witnesses to determine the size of the compensation. In addition, if the suspect does not pay and chooses to add to the additional confinement, while the additional confinement in lieu of restitution is very mild, for example, a maximum of one year of confinement.

Actions that can be taken from the difficulty of the suspect for not paying sanctions is a use of the Restorative Justice concept by prosecutors. According to the author, addressing legal inequality and law enforcement in order to achieve justice, Restorative Justice is a form of conflict resolution and seeks to make clear to offenders that behavior does not forgive (welcome), at the same time as supporting and respecting individuals. As stated by Tony F. Marshall, Restorative justice is a process where all parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future (Marlina, 2010, p. 55). The confiscation of assets as the author describes in sub-chapter of this chapter is intended to bring up the Restorative Justice scheme as a catalyst for the implementation of law enforcement. Assets owned by perpetrators of human trafficking can be used as a means of mediating prosecutors and perpetrators in disclosing cases while reducing the burden of legal sanctions for perpetrators.

The principles in Restorative Justice which can be used as the basis for confiscation and restitution to victims of human trafficking include:

1. Hold the criminal offender responsible for repairing the damage caused by his mistakes;
2. Provide opportunities to criminal offenders to prove their capacity and quality while overcoming constructive guilt;
3. Involve victims, families and other parties in solving problems;
4. Create a forum to work together to solve problems; and
5. Establish a direct and tangible relationship between actions that are considered wrong or malevolent with formal social reactions.

Restorative Justice is a view of punishment aimed at the efforts to restore the situation that has been shaken by violence to its original state just before the act of violation. The settlement process is directed to produce justice for all parties whether victims, perpetrators and the community.

Responding to the implementation of court decisions, the Prosecutors faced obstacles in executing the restitution decision for witnesses and / or victims, because the application of confiscation of movable or immovable property belonging to the convicted person had no legal basis for confiscation. However, reviewing the provisions of Article 33 of the Indonesian Criminal Code that governs the provisions regarding objects that can be confiscated. The objects include:

1. Objects owned by a convict in whole or in part which are used by themselves or obtained from a crime;
2. Objects used for crime;
3. Objects with the help of crime;
4. Objects with help to obstruct investigations;
5. Objects that will be used for crime; and
6. Material rights.

Based on the above provisions, the courage of prosecutors should be able to emerge and make the assets of traffickers confiscated. Especially by basing on the view of R. Sugandhi (1981, p. 46) which revealed that there was an expansion of the spoils including animals, in addition to which they were in the form of goods that are:

1. Obtained with a crime such as counterfeit money obtained by committing a crime of falsifying money, a crime of bribery and others
2. Deliberately used to commit a crime, for example; machete or firearm that is used to commit murder on purpose, tools used to abort the womb and so on.

In addition, by basing on the provisions of Article 39 of the Criminal Procedure Code which actually outlines the legal principles in the confiscation of objects that give limits on objects that can be subject to confiscation. In Article 39 of the Criminal Procedure Code, the object includes:

1. Objects or claims of a suspect or defendant, which are all or partly suspected to have been obtained from a criminal act or as a result of a criminal act
2. Objects that have been used directly to commit a crime or to prepare
3. Objects used to prevent criminal investigations
4. Objects specifically made or intended to commit a crime
5. Other objects that have a direct relationship with a criminal offense
6. Objects subject to confiscation due to civil cases or bankruptcy can also be confiscated for the purpose of investigating, prosecuting and trial of criminal cases.

Point 2, 4, 5 above can be used as legal arguments for prosecutors in making claims and confiscation of assets of perpetrators of human trafficking. In addition, by using Article 40 of the Indonesian Criminal Procedure Code which authorizes the investigator to confiscate objects and equipment which are evidently or reasonably suspected to have been used to carry out criminal acts or other objects that can be used as evidence in the case of being caught in the act and also the investigator is authorized to seize packages or the letter or the object of transportation or delivery is carried out by the Post and Telecommunications Office, the Office or the Communication or Transportation Company as

long as the package, letter or object is intended for the suspect or originating from it and for this purpose a letter of receipt must be given (Article 41 of the Criminal Procedure Code). Confiscated objects / goods can become part of Non-Tax State Revenue (PNBP), which is already regulated in Government Regulation Number 22 of 1997 dated 7 July 1997 concerning Types and Deposits of Non-Tax State Revenues.

Implementation of the Fulfillment of Restitution Right to Victim of Trafficking in Indonesian in the Criminal Justice Practice of Indonesia

Data from the Witness and Victim Protection Agency (LPSK) related to the protected victims shows that in 2018, 186 victims were protected and in 2019, 318 victims were protected. West Java Province occupies the highest position for protected victims, which is 88 victims protected, while West Kalimantan occupies the last position of protected victims, with only 10 victims protected (LPSK REPORT, 2019).

The interests of victims of crime in trafficking in crimes In the criminal justice system in Indonesia, represented by the Public Prosecutor who is part of the state's protection of society as a logical consequence of social contract argument and social solidarity argument (Gunarto, 2012, p. 85). The Public Prosecutor as a state institution representing victims of crime and the community, should in their criminal charges describe the suffering of victims as a result of criminal offenses committed by perpetrators. This is a form of protection for victims of crime. With these benchmarks, filing criminal charges should be based on justice from the perspective of the victim (Gunarto, 2012, p. 87).

Article 5 Paragraph (1) of Law Number 31 Year 2014 states that Witnesses and Victims are entitled to: obtain protection for their personal, family, and property security, and be free from threats relating to the testimony that will be, is, or has been given; participate in the process of selecting and determining forms of protection and security support; give information without pressure; get translator; free of entrapment questions; get information about the development of the case; get information about court decisions; get information in case the convict is released; withheld his identity; get a new identity; get a temporary residence; get a new residence; obtain reimbursement of transportation costs as needed; get legal advice; obtaining temporary living costs until the end of the Protection period; and / or get assistance.

However, the aforementioned rights are given to witnesses and / or victims of trafficking in accordance with the Decree of the Witness and Victim Protection Agency (LPSK). Protection of victims of crime is part of the protection of human rights.

In the life of society, human rights are often violated, both by individuals, groups, and the state. As a result of the violation, it certainly results in an imbalance in the victim (his family), such as an imbalance in the financial aspect if the victim is the head of the family and the family's life support, physical aspects that cause the victim to stop moving, psychological aspects that manifest the shock or psychological instability both temporarily or permanently from the victim.

In the context of protection of victims of crime, the existence of preventive and repressive measures carried out, both by the community and the government (through law enforcement officials) such as providing protection or supervision from various threats that can endanger the lives of victims, providing medical assistance, providing adequate legal assistance, a fair hearing and trial process for perpetrators of crimes is basically an embodiment of the protection of human rights and a balancing instrument (Mansur & Gultom, 2008, p. 161).

The matter that must be considered by prosecutors as law enforcers in providing protection for victims of human trafficking must be based on three aspects, namely: first, the community is considered as an embodiment of an institutionalized belief system. This trust is integrated through norms expressed in institutional structures such as the police, prosecutors, courts, and so on. The occurrence of crime against the victim will mean the destruction of the belief system so that the regulation of criminal law and other laws relating to the victim will function as a means of restoring the belief system. Second, there are social contract arguments and social solidarity arguments because the state can be said to be monopolizing all social reactions to crime and prohibiting personal actions.

Based on the foregoing, the existence of victims of human trafficking, the state must pay attention to the needs of victims by providing services and regulating rights. Third, the protection of victims which is usually associated with one of the objectives of punishment, namely conflict resolution. Settlement of conflicts caused by criminal acts will restore balance and bring a sense of peace in society.

Marcus Priyo Gunarto said that basically there are two victim's protection models, namely the procedural rights model and the services model (2012, p. 86).

1. The procedural rights model emphasizes that the victim plays an active role in the criminal justice process, such as the victim helps the public prosecutor, the victim is involved at every stage of the examination of the case, the victim is heard when the convict is released on parole, and so forth. This first model allows victims to regain their self-esteem and confidence. The involvement of victims in the judicial process certainly has positive and negative impacts.
2. The service model emphasizes the provision of compensation in the form of compensation, restitution, and efforts to restore the condition of victims who have experienced trauma, fear, and pressure from crime.

The two victim protection models must be found in their midpoint, namely the protection of victims must be balanced between the interests of the victims themselves, the perpetrators of crime, the community, the state, and the public interest. With the starting point of the balance model, criminal sanctions must reflect harmonization between individual interests and the public interest, which according to Herbert L. Packer, sanctions that can be imposed on perpetrators of crime can be in the form of compensation, regulation, punishment, and treatment (Gunarto, 2012, p. 88).

The situation that occurs at this time, victims in criminal justice as justice seekers often occupy peripheral positions (peripherals) compared to the perpetrators of crime. In positive criminal law, the perpetrators of crimes receive more attention such as rehabilitation, treatment of offenders, social adaptation, correctional, and others. The rights of suspects or defendants are also more regulated in the Criminal Procedure Code compared to victims' rights, such as legal aid rights, submitting charge witnesses and expert witnesses, compensation, rehabilitation, and pre-trial (Indah, 2014, p. 97).

In response to compensation for victims, the concept of compensation in Indonesia is in the form of restitution and compensation. Compensation is one of the direct victims' protection, but the form of compensation, both restitution and compensation, is not yet widely understood by the people of Indonesia. The difference between restitution and compensation can be assessed in two ways. Compensation is a demand for compensation for compensation made by the victim through an application and paid for by the community or state. Compensation does not require the conviction of criminals. In restitution, claims for compensation are made through a criminal court ruling and paid by the perpetrator.

Restitution in accordance with the Principle of Restoration in the Original Condition (*restitutio in integrum*) is an attempt that the victim of a crime must be returned to its original condition before the crime occurred even though it is based on that it is impossible for the victim to return to its original condition.

The forms of restitution as stipulated in Article 7A paragraph (1) of the Witness and Victim Protection Law are: (i) compensation for loss of wealth or income; (ii) damages incurred due to suffering directly related as a result of criminal offenses; and / or (iii) reimbursement of medical and / or psychological care costs. The concept of restitution illustrates that victims and their families must obtain fair and appropriate compensation from the guilty person or the responsible third party. This compensation will include the return of property or payment for damage or loss suffered, reimbursement of costs incurred as a result of casualties, the provision of services and recovery rights.

The restitution scheme that can be carried out by prosecutors as law enforcers in protecting victims of human trafficking is based on the provisions of Article 199 of Draft of Indonesian Criminal Procedure Code (RKUHAP) which states that there is a Special Path. This mechanism may sound strange in the Indonesian criminal justice system, but this system has long been developed in several common law countries such as the United States, this mechanism can be paired with the Plea-Bargaining System.

The interesting thing in discussing the Plea-Bargaining System is the association of a confession as a means of resolving a case and torture carried out by the authorities to obtain that confession. basically, everyone has the right to be free from torture¹, but in reality, confession and torture are like two things that cannot be released from the criminal justice system in Indonesia.

A confession of a suspect or defendant as a result of torture practices basically cannot be used as evidence or a basis for determining whether a person is guilty or not. In accordance with the principle of Exclusionary Rules, the court must reject the evidence submitted if the evidence was obtained illegally, including through torture or intimidation of Illegally Secured Evidence. However, in practice, it is still common to find suspects who plead guilty because they are tortured and it is difficult to prove the torture they experienced by using the evidentiary mechanism stipulated in the Indonesia Criminal Procedure Code and ultimately led to the criminalization of innocent people or commonly referred to as cases of wrongful arrest.

The Public Prosecutor has discretion in determining whether he will be bound by a provision in Plea Bargaining, the defendant cannot dictate the public prosecutor so that he approves and is bound in the Plea-Bargaining process. Therefore, all bids that occur and are approved in the Plea-Bargaining stage must be with the approval of the public prosecutor.

Before entering the Plea Guilty stage, attorneys need to pay attention to three things which are incompetence, the defendant's mental capacity in conducting Plead Guilty, and whether the defendant at the time of confession is in a disturbed mental state. What is meant by incompetence is whether the defendant is mature and rational enough to understand a trial process, while what is meant by mental capacity is whether the defendant has reasonable knowledge or education capacity, while the disturbed mental condition refers to whether at the time of conducting Plead Guilty the defendant is conscious and sane (not mentally ill). Specific procedures taken after entering the Plea Guilty stage are in the form of notification to the defendant related to the waiver of their rights in the form of:

1. Waiver of the right to appeal
2. Dissemination of the right to non-self-incrimination

3. A guilty plea for a crime he admits he committed, but he cannot be forced to provide other information that may involve him as a defendant; and
4. Linkages with double jeopardy

The double jeopardy provisions are also attached to the Plea Agreement. Although through the Plea Guilty mechanism there was no trial process, the defendant still could not be trialed again. Although it has been stated that by conducting Plead Guilty, the right of an accused to make an appeal is ruled out but there is one way to oppose the Plea Guilty contained in the Plea Agreement, which is by submitting a motion to hold a new trial through submission of reasons in the form of constitutional errors in the Plea Bargaining process and there is no time period to submit this motion. Before agreeing to the plea agreement, the public prosecutor must consider such things as the defendant's cooperation in exposing other criminal acts, the history of the defendant's crime, the seriousness of the crime committed, the defendant's willingness to take responsibility for his mistakes including paying the restitution to the victim.

Another matter that must be considered by prosecutors in addressing the existence of prosecutors when related to the restitution mechanism is that the Victim Impact Statement is usually written by the victim of the crime itself. However, in certain cases, it could be someone else, for example a family member who writes the Victim Impact Statement if the victim cannot write it himself.

A Victim Impact Statement should avoid: writing the details of the criminal act itself (these criminal details are given to the court through statements given to the police or other prosecution documents); any reference to the offender's actions that is not relevant to the ongoing verdict session; abusive language directed at the defendant; and personal opinions regarding verdicts.

Victim Impact Statements are purely voluntary. If the victim does not want to make a statement like this, it is the victim's own decision, but to make the prosecutor's capacity have legal force in the implementation of restitution, the Victim Impact Statement must be done. In its concept, the Victim Impact Statement is submitted to the court after the offender has been proven guilty or pleaded guilty in court and before the verdict is handed down. Ideally, the Victim Impact Statement is received by at least a week before the verdict hearing to ensure that every problem in the contents of the letter has been addressed before the trial begins.

Besides the concept of the Plea-Bargaining System that can be used by prosecutors in the implementation of deciding restitution for victims of human trafficking, another concept that can be used is the concept of Deferred Prosecution Agreement. Basically, the concept of the Deferred Prosecution Agreement, in addition to having a close relationship with the economic analysis of the law enforcement process, also has the root of law enforcement against a number of minor criminal offenses that occurred in the United States where the Deferred Prosecution Agreement appears.

Different situations can be seen in Indonesia. Distributive justice which is still the basis of the philosophy of criminal law enforcement turns out to be some of the impacts that need to be resolved. Certain criteria are needed so that the Deferred Prosecution Agreement does not seem to simplify the legal process. For example, there are requests from litigants. In some countries, DPA or injunction or transaction is "carried out based on a request from one of the parties". The role of the prosecutor in this case may be based on victims of human trafficking who are clearly victims of human trafficking.

The concept of Responsive Regulation does not require that every violation must be processed up to the court. The basic rationale is how to lay down the responsibility to maintain harmony between the

parties concerned. Responsive Regulation also focuses on improving the perpetrators without having to go through prosecution and punishment as long as the perpetrators have a supportive track record.

In addition, no matter how heavy the sentence that is to be imposed, it must begin with persuasion, written warnings, civil sanctions, criminal sanctions, suspension of business licenses, and revocation of business licenses. This is the basis mindset of the concept of Responsive Regulation in handling cases of human trafficking which are basically economic crimes.

Basically, it is clear that the influence of utility philosophy in the framework of law enforcement is like this: promoting certainty, fairness, and expediency; well-being; peace; and emphasize aspects of quality or impact. Thus, the interests of victims can be fulfilled, because basically the suspension is carried out on the basis of the obligations of the perpetrators of the results of negotiations between prosecutors and perpetrators. The obligation is in the form of payment of restitution. However, in the practice of criminal justice in Indonesia there are still many court decisions that do not carry out restitution as can be seen in the Banjar City District Court Decision Number 12 / Pid.Sus / 2019 / PN. the court did not give restitution obligations to the defendant in a case of human trafficking, which in his ruling other than a corporate crime, the defendant was only sentenced to a fine of Rp 200 million provided that if the fine is not paid then it will be replaced with imprisonment for 3 (three) months. Besides that, in the Prosecutor's letter of demand, Prosecutor Yunny did not demand that the defendant pay restitution to the victim.

Basically, the Public Prosecutor as executor of a court decision that has obtained permanent legal force (executor) can order a criminal or third party to carry out restitution and can confiscate the assets of the convicted person as contained in Article 33 of the Indonesian Criminal Code and auction off the assets for payment of restitution. Confiscation of assets from TPPO convicted in the phase after the decision of the court with permanent legal force by the Prosecutor has very little chance of being able to be carried out, because it takes steps to search or trace assets from the TPPO convicted to confiscate and then auction them in exchange for restitution payments to TPPO victims. Despite this, the claim can be indicted.

In the provision of Article 28 of the TPPO Law it is stated that the investigation, prosecution and examination in a court of law in a case of human trafficking is carried out under the Criminal Procedure Code (general) except as otherwise specified in the TPPO (special) law. Which in the general provisions applicable in the Criminal Procedure Code, confiscation is one of the forced efforts (*dwang middelen*) which is only owned by an investigator for the purpose of proof in the investigation, prosecution and trial stages, by reporting to obtain approval or permission from the Head of District Court. This implies that to ensure legal certainty and fairness, confiscation of TPPO convicted assets stipulated in the TPPO law cannot be carried out directly by the Public Prosecutor and must re-coordinate with police investigators resulting in ineffective and inefficient implementation of the law the.

In addition to these obstacles, the perpetrators' liability for the victims is constrained by the willingness and financial capability of the perpetrators, but it is not uncommon for financially capable perpetrators not to have good faith to victims to pay for restitution. The perpetrators assume that with imprisonment and fines (cumulative) that have been imposed on him and will be carried out, it has been seen as a punishment worthy of the victim's suffering and at least has provided inner satisfaction to the victim so that compensation is no longer needed. This reflects the lack of legal awareness of the TPPO perpetrators to realize that the consequences of their actions have caused harm or suffering to other parties. So that most TPPO convicts prefer alternative sanctions as stipulated in Article 50 paragraph (4) of the TPPO Law in the form of a maximum confinement for 1 (one) year which renders the victim's right to restitution. Whereas the objective of the restitution obligation to the TPPO perpetrators is expected to

be a concrete effort to restore the perpetrators' relations with the victims (peace) and influence the community not to commit the crime of human trafficking.

Things that must be considered in the treatment of victims are the views of supporters of the Just Deserts theory stating that:

It is unjust that offenders get unequal treatment depending on whether they have a merciful or a punitive victim, a poor one who needs compensation or a rich one who does not, a victim who will cooperate in the diversion from court or one who will not” (Waite as cited in Ariyanti, 2019, p. 41)

The implementation of paying respect for victims and the form of legal respect for victims can also be applied in the Victim Impact Statement which is a written statement containing details of the impact of a criminal action on a victim (Commonwealth Director of Public Prosecutor [CDPP], 2013). This statement was given to the judge who sentenced the defendant to assist in determining the verdict for violators. If the impact of a crime is known by the court, then the court must consider this and a number of related issues in deciding a sentence. A Victim Impact Statement can contain accurate details of personal injury, loss or damage suffered by the victim due to a criminal act, both in the short term and long term, which is a direct result of the criminal act. Details of emotional and psychological injury can be included, and related medical reports and treatment costs can be attached (CDPP, 2013).

Based on the foregoing, the role of the Public Prosecutor (*dominis litis*) in accordance with his duties and authority in the criminal field regulated in Law Number 16 of 2004 concerning the Prosecutor Office of the Republic of Indonesia, carrying out the determination of judges and court decisions that have obtained power permanent law, supervises the implementation of conditional criminal decisions, oversight criminal decisions, and conditional release decisions (Sekretariat Negara [Setneg], 2004). With their duties and authority (*dominis litis*), the Public Prosecutor plays a large role in realizing law enforcement efforts oriented to the fulfillment of victims' rights in the form of restorative justice as regulated in Article 48 through Article 50 of Law Number 21 Year 2007 concerning the Eradication of Human Trafficking.

According to J. E. Sahetapy (1987, p. 43), the importance of paying attention to the interests of victims is not just to fulfill the rights of victims, nor because the logic is indeed so, but far more than that is in the interests of the perpetrators themselves. Perpetrators doing good to their victims will be easier to foster because by doing so the perpetrators have felt concrete in order to remove the stains caused by their actions. Attention to victims in handling criminal cases should be done on the basis of compassion and respect for the dignity of victims (compassion and respect for their dignity). Therefore, the method of law is not only using ratio (logic), but also loaded with conscience or compassion (Rahardjo, 2009, p. 92).

Another obstacle is reflected in the implementation of the Bandung District Court Decision Number 1329 / Pid.Sus / 2018 / PN Bdg May 2, 2019 imposed a fine of Rp 200 million provided that if the fine is not paid then it will be replaced with imprisonment for 5 (five) months and pay restitution to Yulisdiana in the amount of Rp 7 million and to Lena Liana in the amount of Rp 15 million provided that if the Defendant is unable to pay the restitution money it is replaced with a sentence of imprisonment for 5 (five) months that differs from the demands of the Public Prosecutor who in his Claims demand that the defendant pay restitution to Yulisdiana Rp 26 million and to Lena Liana Rp 69,3 million and subsidiary of 6 (six) months in captivity.

In addition to the case above, there are other decisions relating to restitution payments, namely Decision Number 267 / Pid.Sus / 2017 / PN Pya. The Praya District Court who tried a criminal case with a Biaca examination in the first instance handed down the verdict of Alwy Tofan Barakbah Bin Abu Bakar, residing in Gang Nurul Iman Kekari Timur Hamlet RT.007 RW.000 Kekari Village, Gunung Sari District, West Lombok Regency, Nusa Tenggara Barat. Alwy Tofan Barakbah Bin Abu Bakar was detained in State Detention House detention including by the Investigator from May 11, 2017 to May 30, 2017 Investigator Extension by the Public Prosecutor since May 31. The interesting thing about the contents of the decision is that the public prosecutor made a restitution lawsuit and was granted by the judge. The content of the lawsuit is to charge the Defendant to pay restitution to the Witness Misnah Binti Masturi Marsoang in the amount of Rp 33,429,000. Provided that if the restitution is not paid, then it will be replaced with imprisonment for 2 (Two) months.

On the other hand, throughout 2017, LPSK has facilitated restitution for 55 victims. A total of 54 people was victims of human trafficking (TPPO) and the remaining one person is a victim of domestic violence (KDRT). The amount of facilitated restitution is Rp 1,082,534. The amount will still increase with the restitution of one protected person who today (Wednesday, 10 / 1-2018) will only be submitted to the Praya District Court, Central Lombok, in the amount of Rp 33 million.

Restorative justice is a concept in criminal law that can be applied in a TPPO given the difficulty of the perpetrators carrying out restitution. Restitution in TPPO crime according to the researchers is very interesting when it is related to the suffering of victims who have been sold (trafficked) because of the trafficking, the victim may become a prostitute or unskilled worker full of employer torture, however, giving the amount of restitution money according to researchers cannot treat the suffering victims, such as the Bandung City Court Number 1329 / Pid.Sus / 2018 / PN Bg who gave restitution to Yulisdiana in the amount of Rp 7 million and to Lena Liana in the amount of Rp 15 million, while the Decision of the Banjar City District Court Number: 12 / Pid.Sus / 2019 / PN.Bjr there is no restriction demands.

In addition, when a perpetrator does not pay restitution, the offender is subject to a substitute imprisonment for a maximum of one year (Kemensetneg, 2007). This will result in difficulties for the Prosecutor to fight for the victim's right of restitution because the defendants, after receiving the court's decision, choose to undergo a criminal substitute for a fine and restitution in the form of a body punishment rather than having to pay a fine or restitution because the substitute imprisonment does not take too long so it makes the perpetrator liable to pay restitution is automatically canceled. Perpetrators of crimes have a thousand and one ways to refuse to pay compensation or restitution to their victims. They prefer to replace the obligation to pay restitution with imprisonment (MYS, 2016).

Conclusion

Fulfillment of restitution right for victims of human trafficking through the restorative justice approach in the Indonesian criminal system is done by making the offender responsible for the restitution. However, taking into account the Indonesian criminal justice system, the responsibility may be charge to the state with the consequence of the confiscation of assets of the human trafficking crime perpetrators who will later be given to the victims of human trafficking. In addition, the role of the Public Prosecutor in optimizing the fulfillment of the restitution rights of victims of human trafficking can basically be done by adopting the concept of the Plea Bargaining System and Deferred Prosecution Agreement which includes the Victim Impact Statement. The application of this concept is based on the implementation of restorative justice with a scheme to prioritize the role of prosecutors as law enforcers with an approach to the perpetrators to carry out obligations. The existence of legal rules regarding the confiscation of assets of the human trafficking perpetrators is very necessary, so that it will be easier to do the restitution and

restitution can be made as a forced effort by the Public Prosecutor to include restitution in one of the types of punishment set out in the Indonesian Criminal Code.

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