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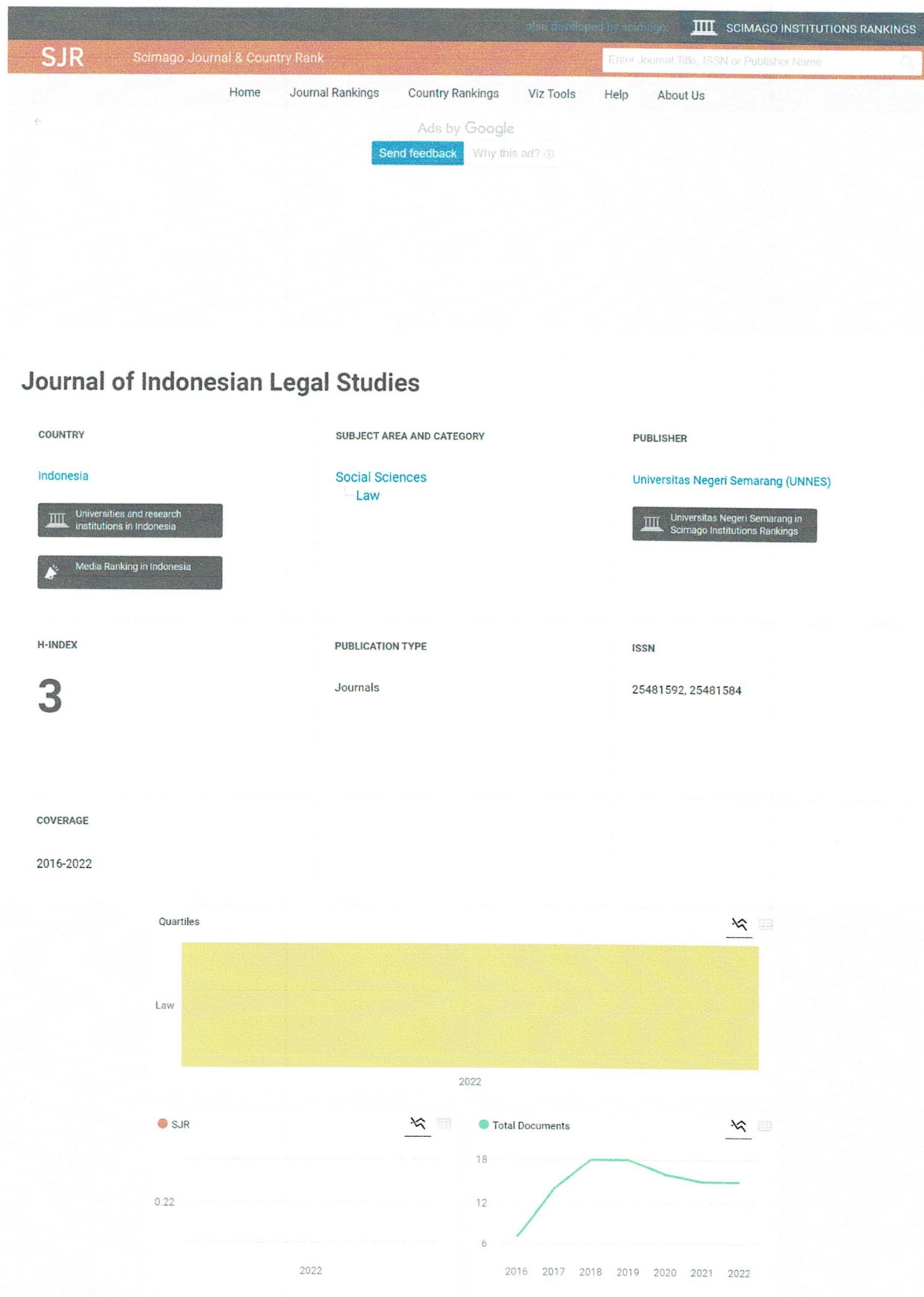
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Development of a Restitution Model in Optimizing Legal Protection for Victims of Human Trafficking in Indonesia

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Abstract

This study aims to design a model for implementing criminal sanctions for restitution for traffickers. The design has strategic value for the legal protection of victims and the nature of restitution. The study was based on the effectiveness of victim restitution sanctions imposed by judges for trafficking offenders in Indonesia. The object of study is to examine the practice of trafficking in Indonesia and its law enforcement that runs through the corridors of the criminal justice system in Indonesia. Using sociological juridical legal research, this study identifies legal norms and court judges' rulings which contain prosecutors' charges against perpetrators of criminal acts. Of the judges' rulings reviewed, only 7 rulings included restitution sanctions and none of the perpetrators carried out restitution, because the perpetrators preferred to serve prison sentences rather than pay compensation to the victim. For this reason, prosecutors need to prioritize prosecuting perpetrators with the law on

eradicating criminal acts, judges also use the law on eradication of non-criminal persons, and the sentence of confinement in lieu of restitution is maximized.

Keywords: Restitution, Criminal Trafficking in Persons, Legal Protection, Victims

1. Introduction

Restitution is a form of legal protection in Indonesia that can be provided to victims of trafficking crimes. This is as stipulated in Article 48 of Law Number 21 of 2007 concerning the Eradication of Trafficking in Persons. In accordance with its character, restitution is the provision of compensation charged to the perpetrator of a criminal act to the victim/heir based on a court decision with permanent legal force for material and/or immaterial losses suffered by the victim or his heirs. In addition to restitution, victims also have the right to medical and social rehabilitation, repatriation, and reintegration that must be carried out by the state, especially for those who experience physical, psychological, and social suffering due to trafficking crimes. Basing the nature of providing restitution in the perspective of victimology is related to the repair or restoration of repairs for physical, moral and property losses, the position and rights of victims against attacks by criminal offenders (criminals). Restitution is an indication of the responsibility of the perpetrator of a criminal act. Restitution is a restitutive action against criminal offenders of criminal character and describes a corrective purpose in criminal cases.

From the limitations mentioned above, there is an interesting aspect that restitution has a correctional purpose or improvement for victims for losses and / or suffering of victims due to criminal acts that befall them. This concept and goal is very good, meaning that attention to those seen in the occurrence of victimization becomes more balanced, which is different from the attention so far that victims in the criminal justice system are marginalized or forgotten. However, in its implementation, restitution must be monitored in order to maintain the integrity of the

restitution sanction itself.¹ Shapland writes that victims of criminal acts become "forgotten men"² or lack of attention to the victim's role in criminal proceedings.³ Christie stated that the victim was a total loser and lost the victim's involvement in the criminal case that happened to her, because it had been taken over by the Criminal Justice System⁴. Harding said that the state through officials in the Criminal Justice System paid little attention to the needs of victims.⁵ Similarly, Karmen and Graborsky describe victims of crime as "invisible" or "forgotten".⁶ Karmen stated "... crime victim were pictured as "invisible" or "forgotten".⁷ Grabosky stated that "... crime victim as the forgotten and neglected participant in the criminal justice system".⁸ Stefan Zweig also gave a similar statement about how legal protection for marginalized victims is. Zweig stated: "In our time we experience too many things too quickly for us to have good memories", We forget the victim".⁹ Criminology scholar Stephen Schafer explains that restitution and the idea of addressing victim neglect bear a relationship with one another, and that merging victimology with penology can refine the concept of punishment in a positive manner.¹⁰

The good intentions of the Indonesian government's legislators are in practice widely questioned about their effectiveness, especially for victims. Is it immediately formulated in the nature of positive legal norms and also stated in the judge's decision then the victim can feel the benefits of restitution. This turns out to be contrary to the policymakers' goal of restitution sanctions because many judges' decisions in which restitution is carried out tend not to be carried out by convicts on the grounds that

¹ DiBari, D. F. (2011). Restoring restitution: The role of proximate causation in child pornography possession cases where restitution is sought. *Cardozo Law Review*, 33 (1), hlm. 299.

² Joanna Shapland, Jon Willmore, Peter Duff, 1985, *Shapland, J., Willmore, J., Duff, P. 1985. Victim in The Criminal Justice System. A.E. Bottonms (ed.), Aldershot: Gower Publishing Company Limited. Thing. 496.*

³ *Ibid. Thing. 181-182*

⁴ In more fully Nils Christie states the following. *The victim is a particularly heavy loser in this situation. Not only he has suffered, lost materially or become hurt, physically or otherwise. And not only does the State take the compensation. But above all he has lost participation in his own case. Ibid. Thing. 175.*

⁵ John Harding, 1982. *Victims and Offenders: Needs and Responsibilities*, Bedford Square Press, NCVO, London, UK. P.1.

⁶ Andrew, Karmen 1984. *Crime Victim An Introduction to Victimology*, Books/Cole Publishing Company Monterey, California. *Thing. 3.* See also Peter Graborsky, 1987: *Victims dalam The Criminal Injustice System*, Editor: George Zdenkowski, Chris Rolands dan Richardson. Pluto Press. Australia. *Thing. 143*

⁷ Andrew Karmen, 1984, *Crime Victims*. Monterey, California. P.3.

⁸ Peter Grabosky, 1987, *Victimsdeep The Criminal Injustice System*, editor: George Zdenkowski, Chris Ronalds and Richardson, Pluto Press, Sydney and London. *Thing. 143.*

⁹ Zvonimir Paul Seprovic, 1985 *Loc.cit.* *Thing. 42.*

¹⁰ Hong, R. K. (2002). Nothing to fear: Establishing an equality of rights for crime victim through. *Notre Dame Journal of Law, Ethics & Public Policy*, 16(1), Hlm. 232

they do not have the financial ability or prefer to carry out criminal confinement in lieu of restitution rather than carrying out criminal restitution sanctions. This is certainly very concerning and there is a need for the development of a restitution model that can touch the essential purpose for victims in the form of improvement or correctional due to the criminal acts that befall them

2. Metodology

This research uses a sociological juridical approach that aims to obtain legal knowledge empirically by plunging directly into its object. Respondents included police, prosecutors, judges, convicted persons and victims of purposive trafficking offenses. The data sources are in the form of laws and regulations consisting of the Criminal Code (KUHP), Law Number 21 of 2007 concerning the Eradication of Trafficking Crimes, Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers. The review of laws and regulations refers to basic legal regulations and restitution implementation mechanisms. In addition, court decisions are observed about the charges and demands of prosecutors and judges' decisions, including those that include restitution as one of the sanctions imposed. For convicts, the aspect studied is the response to the restitution sanctions imposed and the reasons. Based on one hundred verdicts searched through the supreme court's directory website on trafficking offenses, only thirty verdicts were found that the defendant was legally and convincingly proven to have committed a trafficking offense. In a total of seventy other verdicts, the judge did not single out Trafficking in Persons as a criminal offense committed by the defendant, as the prosecutor charged. Of the thirty convictions that found the defendant guilty of trafficking, there were only seven in which the judge ordered the defendant to pay restitution to the victim.

3. Theories on restitution for victims of crime

Systems of restitution, in which the perpetrator compensates the victim for her losses, have taken various forms since ancient times.¹¹ In

¹¹ Julie Goldscheid, Crime Victim Compensation in a Post 9/11 World, Tulane Law Review, Vol 79 Nomor 167, Hlm. 177

general, restitution has enjoyed a warm reception from victims, offenders, the general public and system personal.¹² Criminal restitution is a court order directing an offender to financially compensate his victim for the expenses and losses incurred by the victim as a result of the offender's crime. Restitution typically does not compensate a victim for mental pain and suffering, as might a civil remedy; rather, it only compensates for tangible losses.¹³ Restitution is the act of repairing, or providing an equivalent for, any loss, damage, or injury inflicted by the offender to the victim.¹⁴

Restitution is beneficial for the benefit of victims and perpetrators as well, as stated by Margery Fry that restitution is a system that will benefit victims and perpetrators.¹⁵ Especially for victims, based on Barnet and Mc. Donald's study, restitution can be a means to help victims on the grounds that so far victims have only been the aggrieved party when the criminal justice system is operated.¹⁶ Although it must be admitted that restitution will not be able to fully fulfill the wishes of the victim.¹⁷ This is partly because the perpetrator does not have sufficient ability to pay restitution.¹⁸ This means that many of the perpetrators have spent money on the judicial process so that they no longer have the ability to pay restitution.¹⁹ Then the benefits of restitution for perpetrators were stated by Margery Fry who also held the view that although restitution cannot erase the guilt of the perpetrator, it will be able to treat the wounds caused and have good educational value for the perpetrators.²⁰

In addition to victims and perpetrators, for the community or government, restitution programs also provide many benefits. Some of

¹² William G. Doerner, Steven P. Lab, 1998, *Op. cit.* Hal. 77.

¹³ Anderson, R. (2017). Criminal law: The system is rigged: criminal restitution is blind to the victim's Fault- State v. Riggs. *Mitchell Hamline Law Review*, 43(1), 142 Hlm. 142

¹⁴ Shephard, B. N. (2014). Classifying crime victim restitution: the theoretical arguments and practical consequences of labeling restitution as either a criminal or civil law concept. *Lewis & Clark Law Review*, 18 (3) Hlm. 804

¹⁵ Sandra Walklate, 1989, *Victimology, The Victim And The Criminal Justice Process*, London .UK.: The Academic Division of Unwin Hyman Ltd. Thing. 117.

¹⁶ Andrew Karmen, 1984. *Op.cit.* Thing. 186.

¹⁷ Julie Goldscheid, Crime Victim Compensation in a Post 9/11 World, *Tulane Law Review*, Vol 79 Nomor 167, Hlm. 222

¹⁸ Benjamin M. Birney, What Can The Feds And The French Teach Us About Criminal Restitution In Maine?, *Maine Law Review*, Vol. 65:1, hlm. 248

¹⁹ Bennett Capers. (2020). Against Prosecutors. *Cornell Law Review*, 105 (6), 1598. Web of Science Hlm. 1581

²⁰ John Harding, 1982, *Op.cit.* Thing. 8.

the capabilities of restitution programs based on restitution studies are useful in reducing recidivism rates. In addition to the effect of reducing recidivism rates, based on the Title study, restitution also has a preventive effect for perpetrators. Has a preventive effect because it is assumed that a person will not return to commit a crime when his criminal period is over.²¹

Albert Eglash, an American psychologist, introduced the term "creative restitution" to explain the theory of *restitution*. Eglash described restitution as an effective way of rehabilitation for perpetrators. *First*, restitution provides access and opportunities for perpetrators to engage in meaningful activities that are beneficial to upholding self-esteem. *Furthermore*, Eglash believes that restitution makes feelings better. Restitution is a psychological exercise that can train the ego of the perpetrator.²² In addition to the advantages mentioned above in the form of reduced recidivism rates and more economical than ordinary criminal process procedures, restitution also has other advantages. The benefits of restitution in lieu of imprisonment can reduce overcrowding and save minor offenders from the influence of bad habits of life in prison. ²³ Howard League secretary Willian Tallack stated that: *Restitution was wiser in principle, more reformatory in its influence, more deterrent in its tendency and more economic to the community than the modern practice*".²⁴ In the above view, restitution is seen as wiser in principle, more renewing in its effect on reconciliation between perpetrators, victims and society, more likely to have a more deterrent effect on perpetrators and more economical for society than modern practice. It is more economical because through restitution it can affect the length of imprisonment to be shorter, so that public money paid in the form of taxes and then used by the state is more efficient in using it for operational funds in prisons. Based on the above views, restitution for victims of trafficking is appropriate because it is appropriate in accordance with the needs of victims and there is theoretical support. By getting restitution, losses and/or suffering of victims which can include 4 types can be reduced. In addition, there are also benefits for

²¹ William G. Doerner , Steven P. Lab, 1998,*Loc.cit.*.

²² *Ibid.* Thing. 10

²³ Andrew Karmen,1984, *Op.cit.* Thing. 177

²⁴ John Harding, 1982, *Op.cit.* Thing. 15-16.

perpetrators because they contain a deterrent effect, and have benefits for reconciliation between victims, as well as ease the burden on community institutions.

Restitution in Van Dijk's view can be based on several ideologies. He recommended several ideologies on which policy could be based. Van Dijk refers to the term "*victimagogic*" which includes the following four main ideologies: *First, the care ideology, second, the resocialisation or rehabilitation ideology, the third the retribution or criminal justice ideology, and the fourth radical or anti-criminal justice ideology.*²⁵ The ideology of attention (the care ideology), is based on the principle of the welfare state (welfare state) which views that the community must participate in bearing the burden of suffering from other communities affected by disasters in the form of disease outbreaks, accidents or unemployment. The main essence of this ideology is welfare. The resocialisation or *rehabilitation ideology* focuses not on the victim but rather on understanding the perpetrator in the hope of constructive resocialisation of the perpetrator. An example that can be presented is in restitution programs or other mediation programs in the United States that are believed to have a rehabilitative effect on the perpetrator rather than providing compensation alone to the victim.

The *retribution or criminal justice ideology* emphasizes the need to compensate victims according to the level of crime inflicted on the victim, as well as provide opportunities for victims to access the Criminal Justice System to state their demands in the form of requests for compensation and punishment of the perpetrators. *Radical or anti-criminal justice ideology* focuses on implementing a new system based on civil law principles and not criminal law principles. The implementation of radical ideology has been implemented in America, England and Scotland.

Restitution based on Galaway's opinion can be divided into four types, namely monetary-victim restitution, monetary-community restitution, service-victim restitution *and* service-community restitution. Galaway in compiling the type of restitution is based on two variables, namely (1). The offender provides restitution in the form of money or

²⁵ *Ibid.* Thing. 178. Use of terms "*victimagogic*" by Van Dijk was intended to distinguish it from other works intended solely for the sake of science.

services and (2). The recipient of restitution is the real victim or the party who replaces him.²⁶

Monetary-victim restitution, the perpetrator directly pays the victim in the form of money whose amount is based on the amount of loss or suffering of the victim. Its magnitude and implementation are determined and supervised by the courts. *Monetary-community restitution*, the perpetrator pays compensation not to the individuals mentioned above, but to the community group. This kind of restitution is applied to criminal acts whose victims are the community. For example, acts of vandalism, or destruction of facilities or public interest. It can also be assigned to victims who do not want to enter the restitution program.

Service-victim restitution and *service-community restitution*, in essence, are the same as the definitions of the two types of restitution mentioned above. The difference lies in *service-victim restitution* and *service-community restitution*, the form of restitution is not money but in the form of service. This is because the perpetrators do not have the financial ability. For example, if the perpetrator has a low income and/or the perpetrator is a teenager.²⁷

5. Law enforcement against trafficking in persons in Indonesia

There are several positive legal norms that can be used as a basis for law enforcement related to trafficking in persons. The application of criminal sanctions in Indonesia is implemented into the Criminal Code (KUHP), the imposition of criminal sanctions for human trafficking in persons (*human trafficking*) in the Criminal Code is regulated in book II Article 295 paragraph (1) numbers 1 and 2, Article 295 paragraph (2), Article 296, Article 297, Article 298 paragraph (1), (2) and Article 506. The laws and regulations outside the Criminal Code include Law No. 39 of 1999 concerning Human Rights; Law Number 13 of 2003 concerning Manpower; Law No. 21 of 2007 concerning the Eradication of

²⁶ *Ibid.*, Thing. 16.

²⁷ William G. Doerner, Steven P. Lab, 1998. *Op.cit.* Thing. 76. Check out Andrew Karmen, 1984 *Crime Victims*. Monterey, California. p. 176. Karmen with reference to Galaway (1977) also mentions: "Four combinations of restitution arrangements are possible payments by the offender to the actual victim, perhaps through an intermediary (the most common); earnings shared with some community agency or group serving as a substitute victim (rather than a fine collected by the government); personal services performed by the offender to benefit the victim (an uncommon outcome); and labor donated by the offender for the good of the community (frequently ordered).

Trafficking; Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning the Protection of Witnesses and Victims; Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection; Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers. This is intended to prevent the occurrence of trafficking crimes and protect their victims, including Law Number 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women; Law Number 14 of 2009 concerning the ratification of the Protocol to Prevent, Act and Punish, especially women, and children, supplement to the UN convention against transnational organized crime (protocol to prevent, suppress, punish, trafficking in persons, especially women and children, Supplementing the United Nations convention Against Transnational organized crime); Law No.6 of 2011 concerning Immigration.

In practice, law enforcement against trafficking in persons has been carried out by the Indonesian government through institutions incorporated in the Criminal Justice System consisting of the Police sub-system, the Prosecutor's Sub-System, the Court Sub-System and the Criminal Institution Sub-System. To optimize law enforcement against trafficking in persons, the government of Indonesia established a Task Force for the Prevention and Handling of Trafficking in Persons.²⁸ It coordinates efforts to prevent and address trafficking in persons.²⁹

The Sub-Police is at the forefront not only in disclosing trafficking cases but also handling victims. The majority of victims of criminal acts are women and children, therefore victims will be handled by the Women and Children Service Unit (UPPA) both at the police and police levels. Especially for certain areas that have the potential to become areas of origin, transit and destination of trafficking crimes, in this case, of course, the police have a strategic role in disclosing cases and handling victims. Based on 2019 data compiled by the Counter Trafficking and

²⁸ The task force has the following duties: 1) to coordinate efforts to prevent and address trafficking offenses; 2) carry out advocacy, socialization, training, and cooperation in both national and international cooperation; 3) monitor the progress of victim protection implementation which includes rehabilitation, repatriation, and social reintegration; 4) monitor the progress of implementation, law enforcement; 5) carry out reporting and evaluation. Establishment of this task force Based on Article 58 of Law No. 21 of 2007, the government established a task force consisting of representatives from the government, law enforcement, civil society organizations, NGOs, professional organizations, and researchers/academics aimed at streamlining and ensuring the implementation of the eradication of trafficking crimes.

²⁹ Yenny Chandrawaty, Law Enforcement and State Responsibility towards Women Human Trafficking Victims as a Form of Human Rights Protection, Indonesian Journal of Legislation Vol 17 No. 4 - December 2020, p. 465

Labour Migration Unit Team, the International Organization for Migration (IOM) Indonesia, the Ministry of Women's Empowerment and Child Protection of the Republic and the Coordinating Ministry for Human Development and Culture,³⁰ it shows that in Batam, the Women and Children Protection Unit in the Police annually conducts anti-trafficking training for staff in addition to including the Cyber Police as Participants. In Bandung, the local police's anti-trafficking unit trained the heads of women and child protection units from all police units in the province. However, the main function of the police here is its ability to elaborate on the fulfillment of the elements of trafficking in the determination of suspects. Casuistically it is possible that it is considered not to meet the elements of trafficking, so it is entangled with other regulations. This can certainly have implications for the rights of victims.

Law enforcement carried out by the Public Prosecutor sub-Prosecutor also plays a strategic role, this is related to the legal provisions included in his indictment and demands. As it is known that many laws and regulations outside the Criminal Code that regulate specifically and the substance of the law in this case need to be considered if casuistically there are special circumstances, for example if victims of trafficking crimes fall into the category of children, it may be that the Public Prosecutor will use alternative charges, namely using the TTPO Law or the Child Protection Law. Meanwhile, the penalty of fines with child victims in the trafficking law is higher than the child protection law itself. It is also possible to casuistically use the Manpower Law more than the trafficking law. Based on this, it not only requires the ability of the Public Prosecutor to describe and prove the elements of the criminal act, but also to be able to see the interests and justice for the victim.

Law enforcement carried out by the sub-Court certainly plays a strategic role in determining the final legal trap and sanctions for defendants. Matters are not much different as in sub-police and sub-prosecution. Judges' scrutiny is needed in deciding with trafficking laws or other regulations. This will also have implications for the rights of victims.

6. Restitution for Trafficking Victims

³⁰ <https://www.kemenpppa.go.id/lib/uploads/list/ca5bf-pedoman-teknis-untuk-gugus-tugas-tpo.pdf>, p. 73

Law of the Republic of Indonesia Number 21 of 2007 concerning the Eradication of Trafficking in Persons, Article 1 point 13: Restitution is the payment of compensation imposed on the perpetrator based on a court decision with permanent legal force for material and/or immaterial losses suffered by the victim or his heirs. Restitution for victims of trafficking offenses is appropriate. Precisely restitution for trafficking victims considering that trafficking can experience 4 types or types of loss and/or suffering. Four types of victim suffering are in accordance with the opinions Shapland has discussed in his article entitled *The effects of the offence*.³¹ These effects include *financial losses*, *psychological effects*, and *physical effects*, as well as *social effects*.³² This is in accordance with Karmen's opinion which states that the impact caused and suffered by victims due to victimization that befalls them is not limited to financial losses in the form of spending money, but can simultaneously experience physical injury and psychological suffering.³³

In Indonesian practice, restitution under Law No. 21/2007 on trafficking is granted and included at once in court rulings, but the granting of restitution to victims is carried out when the verdict has permanent legal force. This means that victims can only enjoy their rights after the *inkracht* verdict, while the victim's suffering continues and it is not clear whether restitution is granted or not by the judge. This further demonstrates the victim's position as "Secondary Victimization In The Criminal Justice System". The development of regulations shows a progressive direction, where the existence of Law No. 31 of 2014 concerning Amendments or Law No. 13 of 2006 concerning the Protection of Witnesses and Victims, and Perma No. 1 of 2022 concerning Procedures for Completing Applications and Granting Retitution and Compensation to Victims of Criminal Acts (Perma No. 1 of 2022), regulates the existence of two mechanisms for submitting restitution, namely submitting restitution before a court decision with permanent legal force and submitting restitution after The court's decision has the force of law.

The application for restitution before a court decision has permanent legal force, begins with a request for restitution to the Court through the

³¹ Joanna Shapland, Jon Willmore, Peter Duff, 1985, *Victim in The Criminal Justice System*, A.E. Bottomms (ed.), Aldershot: Gower Publishing Company Limited, Thing. 97.

³² Joanna Shapland, *Ibid.* Thing. 219

³³ *Loc.cit.* Hal 218.

LPSK, investigators, or Public Prosecutors, or it can also be submitted by the Victim. The application is accompanied by the LPSK Decision regarding the amount of Restitution. The Public Prosecutor in this case must include the application for Restitution in the criminal prosecution. With regard to trafficking in persons, in particular, this Perma stipulates that the judgment contains the length of imprisonment or substitute confinement in the event that the assets of the accused and/or Third Parties are insufficient.

In substance, this Perma guarantees restitution for trafficking victims compared to other regulations, marked by the judge's duty that if the victim does not apply for restitution, the judge notifies the victim of the right to obtain restitution that can be filed before the Public Prosecutor files charges or after *an inkraht* verdict . Even the Public Prosecutor is given the capacity and authority to file an appeal or cassation if the accused is found guilty but the request for restitution is rejected in part or in full.

Mekanime application for restitution after a court decision with permanent legal force, begins with a Request for Restitution which can be submitted by the Applicant to the Court directly or through LPSK. The Attorney General/Military Prosecutor/Prosecutor is a party to the Restitution request. In substance, this Perma further guarantees the implementation of restitution for trafficking victims submitted after a court decision with permanent legal force, where it is expressly stipulated that the Court must decide the application in the form of a restitution determination no later than 21 (twenty-one) days from the first hearing. Even the determination of restitution is final and binding. Referring to all of the above shows that in terms of loss or suffering, trafficking victims deserve restitution. Currently, the laws and regulations related to restitution are also quite comprehensive. Therefore, the effectiveness of restitution for trafficking victims lies in its implementation.

7. A model of Restitution Development in Indonesia that is able to provide effective legal protection for victims.

The practice of restitution so far shows that restitution sanctions are not effective for victims. The victim cannot feel the protection of the law and the nature of the restitution sanction cannot be felt by the victim. This means that restitution sanctions are only a kind of hope that can reduce suffering for victims but in fact it never materializes.

There are several models proposed for the effectiveness of restitution sanctions and optimization of benefits for victims. First, for the obligation of prosecutors to prioritize using the Law on the eradication of criminal acts of persons and at the same time include restitution sanctions in their prosecution as contained in Article 48. In this case, the prosecutor proactively seeks information from victims about the loss and / or suffering of victims due to criminal acts that befall them or as a Voice impact This is a statement. This VIS can be used as a basis for the public prosecutor to determine the amount of restitution requested³⁴. If the prosecutor's calculation of the claim for restitution to the offender is correct and proportional, then restitution tends to be obeyed and implemented by the offender.³⁵ In addition, if the perpetrator is unable to pay restitution, the duration of substitute confinement is not at most 1 (one) year but can be increased to 6 years in accordance with the maximum threat of trade loans against people. In addition, judges also have the spirit to apply the maximum criminal confinement in lieu of restitution. This is in response to the ineffectiveness of benefits for victims of restitution sanctions for perpetrators. Perpetrators tend to choose imprisonment in lieu of restitution rather than having to pay reprisal. In addition, it can be considered providing funds to victims from the community to reduce victim suffering or known as the Crime Victims' Compensation Program (CVC).³⁶

To effectively implement this model of sanski restitution, it is also necessary to increase the ability of law enforcement officials to analyze the fulfillment of the elements of trafficking crimes. Meanwhile, if there are special circumstances so that other more special regulations are applied, then the victim is still entitled to apply for restitution

8. Conclusion

³⁴ Bridgett N. Shephard, Classifying Crime Victim Restitution: The Theoretical Arguments And Practical Consequences Of Labeling Restitution As Either A Criminal Or Civil Law Concept, *Lewis & Clark Law Review* , Vol. 18 No. 3, Hlm. 826

³⁵ Morris, T. (2012). Perverted justice: why courts are ruling against restitution in child pornography possession cases, and how a victim compensation fund can fix the broken restitution framework. *Villanova Law Review*, 57 (2), hlm. 418

³⁶ Rutledge, N. M. (2011). Looking a gift horse in the mouth-the underutilization of crime victim compensation funds by domestic violence victims. *Duke Journal of Gender Law & Policy*, 19(1), Hlm. 260

- Bridgett N. Shephard. *Classifying Crime Victim Restitution: The Theoretical Arguments And Practical Consequences Of Labeling Restitution As Either A Criminal Or Civil Law Concept*. Lewis & Clark Law Review. Vol. 18 No. 3.
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Restitution has various benefits for victims, perpetrators and the community even though there are limited benefits to victims when there are financial limitations from perpetrators. Restitution for Trafficking Victims in Indonesia is ineffective because perpetrators tend to choose to undergo imprisonment in lieu of restitution. A restitution model can be developed that can be optimally felt by the victim. First, for the obligation of prosecutors to prioritize using the Law on the eradication of criminal acts of persons and at the same time include restitution sanctions in their demands and the amount of restitution demands is based on the Victim Impact Statement. The sentence of confinement in lieu of restitution to be aggravated to match the principal crime. Second, a service-victim restitution and *service-community restitution model can be developed*, in addition to substitute imprisonment if the victim states incapacity and the assets owned and confiscated which are then auctioned are insufficient to pay the amount of restitution sanctions that have been decided by the judge

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Angkasa Angkasa, Rani Hendrinan, Filep Wamafma, Ogiandhafiz Juanda:

We have reached a decision regarding your submission to Journal of Indonesian Legal Studies, "Development of a Restitution Model in Optimizing Legal Protection for Victims of Human Trafficking in Indonesia".

Our decision is: **Revision Required**

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¹ UNITED NATION OFFICE ON DRUGS AND CRIME, *United Nations Convention against Corruption* (2004), https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf.

² Breanna Boppre & Mark G. Harmon, *The Unintended consequences of sentencing reforms: Using social chain theory to examine racial disparities in Female imprisonment*, 15 J. ETHN. CRIM. JUSTICE 394-423 (2017), <https://www.tandfonline.com/doi/full/10.1080/15377938.2017.1385557>; Ayon Diniyanto, *Indonesian's Pillars Democracy: How This Country Survives*, 1 JILS (JOURNAL INDONES. LEG. STUD. 105-114 (2016); Low Choo Chin, *A Strategy of Attrition through Enforcement: The Unmaking of Irregular Migration in Malaysia* 101-136 (2017).

³ Dani Muhtada, *Human Rights in Indonesia: A Never Ending Topic*, 1 JILS (JOURNAL INDONES. LEG. STUD. 2016-2017 (2017); Nehginpao Kipgen, *Addressing the Rohingya Problem*, 49 J. ASIAN AFR. STUD. 234-247 (2014); Brigitte Geissel, Marianne Kneuer & Hans-Joachim Lauth, *Measuring the quality of democracy: Introduction*, 37 INT. POLIT. SCI. REV. 571-579 (2016), <http://journals.sagepub.com/doi/10.1177/0192512116669141>; Riska Alkadri, *Role of the Regional Representatives Council on Bicameral Parliament System*, 1 JILS (JOURNAL INDONES. LEG. STUD. 3-12 (2016).

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14. Penulisan undang-undang/aturan hukum di Indonesia wajib menyertakan informasi perihal Nomor Lembaran Negara dan menyertakan link UU tersebut, sementara untuk aturan Internasional juga wajib menyertakan link peraturan tersebut yang bisa dilacak secara langsung

4. EDITOR DECISION TAHAP KEDUA (EXTERNAL REVIEW)

From: "Editor JILS" editor_jils@mail.unnes.ac.id

To: "Angkasa Angkasa" drangkasa_64@yahoo.com, "Rani Hendrinan" ranihendrina27@gmail.com, "Filep Wamafma" aweko007@gmail.com, "Ogiandhafiz Juanda" ogiandhafizjuanda@gmail.com

Subject: [JILS] Editor Decision

Angkasa Angkasa, Rani Hendrinan, Filep Wamafma, Ogiandhafiz Juanda:

We have reached a decision regarding your submission to Journal of Indonesian Legal Studies, "Development of a Restitution Model in Optimizing Legal Protection for Victims of Human Trafficking in Indonesia".

Our decision is: **Revision Required (Accepted with Revision)**

Editor JILS
Universitas Negeri Semarang
editor_jils@mail.unnes.ac.id

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[Journal of Indonesian Legal Studies](#)

Reviewer Manuscript Evaluation Form
Journal of Indonesian Legal Studies

Article ID: ID67866

Title of Manuscript:

Development of a Restitution Model in Optimizing Legal Protection for Victims of Human Trafficking in Indonesia

QUALITY ASSESSMENT

1. Does this paper present new ideas or results that have not been previously published?
☒ Yes ☐ No
2. Are the results/ideas presented in this paper important enough for publication?
☒ Yes ☐ No
3. Is the paper technically correct?
☒ Yes ☐ No
4. Are the conclusions and interpretations valid and are they supported by the data?
☒ Yes ☐ No
5. Is the article clear and comprehensible?
☒ Yes ☐ No
6. Please choose one of the following:

☐ Q1 Exceptional work – makes a major contribution to the advancement of the subject (falls within the top 10% of papers in the field)
☒ Q2 Good quality work - significant, novel, interesting, and influential
☐ Q3 Borderline work – correct but of low interest, unlikely to have an impact
☐ Q4 Low quality work – adds little or no new knowledge to the field
☐ Q5 Poor work – not free from basic errors and/or faulty judgments
7. Does this paper address a subject of current interest?
☒ Yes ☐ No
8. In your opinion, will the paper be cited by others?
☒ Yes ☐ No

RECOMMENDATION (please tick as appropriate)

- ☐ Accept for publication in present form
- ☒ Accept but the authors should consider the optional amendments suggested
- ☐ Accept provided the author complies with the points listed
- ☐ Revise substantially along the lines indicated, further peer review necessary
- ☐ Reject in present form, but may be resubmitted after major revision.
- ☐ Reject

YOUR REPORT: PLEASE COMPLETE THE FOLLOWING:

Comments to the editor

By addressing these revisions and improvements, the article will significantly strengthen its contribution to the field of legal protection for victims of human trafficking in Indonesia. The research has the potential to inform policy decisions and promote positive changes in the legal framework to better support and protect victims of human trafficking. **However**, please check some parts:

1. Check for some typo and grammatical errors.
2. Check for table and figure, please check the sources and validity as well as the format
3. Check all references. Information provided should be valid and clear.

Comments to the author(s)

The article titled "*Development of a Restitution Model in Optimizing Legal Protection for Victims of Human Trafficking in Indonesia*" explores an important topic regarding the legal protection of victims of human trafficking in Indonesia. The study aims to develop a restitution model that can enhance the legal safeguards and support available to victims. While the article addresses a relevant and pressing issue, several areas require improvement to enhance the overall quality and impact of the research.

Clear Objectives	The article would benefit from clearly stating the specific objectives of the study. By defining the research objectives, the readers can better understand the intended outcomes and scope of the research.
Methodological Details	The article lacks sufficient information on the research methodology employed. It is crucial to provide details regarding the research design, data

	collection methods, sample size, and data analysis techniques. This information is essential for readers to assess the validity and reliability of the findings.
Literature Review	The article could be strengthened by providing a comprehensive literature review. A thorough examination of existing research, laws, and policies related to human trafficking in Indonesia would enhance the contextual understanding and help situate the proposed restitution model within the existing legal framework.
Empirical Evidence	To support the development of the restitution model, the article should incorporate empirical evidence. Including case studies, interviews with stakeholders, or statistical data would provide a more robust foundation for the proposed model and increase its credibility.
Practical Implementation	While the article highlights the development of the restitution model, it would be beneficial to discuss the practical aspects of implementing such a model. Addressing the potential challenges, resource requirements, and strategies for overcoming barriers would enhance the article's applicability and provide guidance for policymakers and practitioners.
Conclusion and Recommendations	The conclusion should succinctly summarize the key findings of the research and link them back to the stated objectives. Additionally, the article should offer specific recommendations for policymakers, legal practitioners, and relevant stakeholders based on the research findings and proposed restitution model.
Clarity and Structure	The article would benefit from improved clarity and structure. The ideas and arguments should be presented in a logical flow, and paragraphs should be well-organized. Additionally, the use of clear and concise language will help readers understand the content more effectively.

By addressing these key areas, the article could significantly enhance its contribution to the field of legal protection for victims of human trafficking in Indonesia. The research has the potential to inform policy decisions and drive positive change in the legal framework to support and protect victims of human trafficking more effectively.

Thank you very much for your time, effort and contribution to *the Journal of Indonesian Legal Studies*

5. FINAL DECISION (EDITOR DECISION)

From: "Handling Editor JILS" jils@mail.unnes.ac.id
To: "Angkasa Angkasa" drangkasa_64@yahoo.com, "Rani Hendrinan" ranihendrina27@gmail.com, "Filep Wamafma" aweko007@gmail.com, "Ogiandhafiz Juanda" ogiandhafizjuanda@gmail.com

Subject: [JILS] Editor Decision

Angkasa Angkasa, Rani Hendrinan, Filep Wamafma, Ogiandhafiz Juanda:

We have reached a decision regarding your submission to Journal of Indonesian Legal Studies, "Development of a Restitution Model in Optimizing Legal Protection for Victims of Human Trafficking in Indonesia".

Our decision is to: **ACCEPT SUBMISSION**

Handling Editor JILS
jils@mail.unnes.ac.id

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[Journal of Indonesian Legal Studies](#)

Type: **Research Article**

Development of a Restitution Model in Optimizing Legal Protection for Victims of Human Trafficking in Indonesia

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ABSTRACT

This study aims to develop a model for the effective implementation of restitution criminal sanctions against individuals involved in trafficking in persons. The findings of this research hold strategic significance in terms of providing legal protection to victims and enhancing the concept of restitution. The study focuses on evaluating the effectiveness of imposing restitution sanctions on traffickers through judicial decisions in Indonesia. By employing a sociological juridical approach, this research examines legal norms and court rulings pertaining to prosecutors' charges against individuals involved in trafficking crimes. The analysis of these judicial decisions reveals that out of the cases reviewed, only seven included restitution sanctions, and none of the perpetrators fulfilled their restitution



obligations. Instead, the offenders prioritized serving prison sentences over compensating the victims. Consequently, it is essential for prosecutors to prioritize the prosecution of perpetrators under the Law on the Eradication of Criminal Acts of Individuals. Furthermore, judges should consider utilizing the Law on the Eradication of Non-Criminal Persons and emphasizing imprisonment as an alternative to restitution.

Keywords: Restitution, Human Trafficking, Legal Protection, Victim

INTRODUCTION

Restitution is a crucial aspect of legal protection for victims of trafficking crimes in Indonesia, as outlined in Article 48 of Law Number 21 of 2007 concerning the Eradication of Trafficking in Persons. It entails the compensation provided by the perpetrator of a criminal act to the victim or their heirs, based on a court decision that holds permanent legal authority. Restitution aims to address both material and immaterial losses suffered by the victim or their heirs. Alongside restitution, victims are entitled to medical and social rehabilitation, repatriation, and reintegration, which are the responsibilities of the state, particularly for those who have endured physical, psychological, and social distress due to trafficking crimes.

The concept of restitution, from a victimological perspective, centers around repairing or restoring the physical, moral, and property losses endured by the victim. It also emphasizes the position and rights of victims in relation to the perpetrators of criminal acts.

Restitution serves as an indication of the offender's accountability and demonstrates a corrective purpose within the realm of criminal cases.

The aforementioned limitations shed light on an intriguing aspect: restitution serves a corrective or rehabilitative purpose for victims who have suffered losses and/or endured suffering due to criminal acts perpetrated against them. This concept and objective are highly commendable, as they ensure a more balanced focus on victims within the criminal justice system, contrasting with the prevailing marginalization or neglect of victims thus far. However, in order to uphold the integrity of the restitution sanction, diligent monitoring of its implementation is essential.¹

Shapland highlights the plight of victims of criminal acts, often referred to as the "*forgotten men*", as their role in criminal proceedings lacks attention.² Christie, in a similar vein, argues that victims are left completely marginalized, with their involvement in the criminal case overshadowed by the Criminal Justice System.³ Harding further asserts that the needs of victims receive little consideration from state

¹ DiBari, Dennis F. "Restoring Restitution: The Role of Proximate Causation in Child Pornography Possession Cases where Restitution is Sought." *Cardozo Law Review* 33 (2011): 297-329

² Shapland, Joanna, et al. "Situating Restorative Justice within Criminal Justice." *Theoretical Criminology* 10, No. 4 (2006): 505-532. <https://doi.org/10.1177/1362480606068876>. See also Shapland, Joanna, Gwen Robinson, and Angela Sorsby. *Restorative Justice in Practice: Evaluating what works for Victims and Offenders*. (London: Taylor & Francis, 2011); Shapland, Joanna, et al. *Restorative Justice: The Views of Victims and Offenders*, Ministry of Justice Research Series 3, No. 7 June 2007. (Sheffield, South Yorkshire: Centre for Criminological Research University of Sheffield, 2007).

³ In more comprehensive, Nils Christie also highlighted that the victim is a particularly heavy loser in this situation. Not only he has suffered, lost materially or become hurt, physically or otherwise. And not only does the State take the compensation. But above all he has lost participation in his own case. See Christie, Nils. "The Ideal Victim." *From Crime Policy to Victim Policy: Reorienting the Justice System* (1986): 17-30. See also Christie, Nils. "Restorative justice: Five dangers ahead." In *Urban Crime Prevention, Surveillance, and Restorative Justice*. (London: Routledge, 2017), pp. 229-238.

officials within the Criminal Justice System.⁴ Similarly, Karmen and Graborsky depict crime victims as "invisible" or "forgotten" participants in the criminal justice process.⁵ Stefan Zweig echoes this sentiment, emphasizing the lack of legal protection afforded to marginalized victims. Zweig poignantly states, "In our time, we experience too many things too quickly for us to have good memories. We forget the victim."⁶

Criminology scholar Stephen Schafer draws a connection between restitution and addressing the neglect of victims, suggesting that merging victimology with penology can positively reshape the concept of punishment. This alignment has the potential to refine and improve the overall treatment of victims within the criminal justice system.⁷

⁴ Harding, John. *Victims and Offenders: Needs and Responsibilities*. (London: Bedford Square Press, 1982).

⁵ Karmen, Andrew. *Crime victims*. (California: Brooks/Cole Publishing Company, 1984); Karmen, Andrew. *Crime Victims: An Introduction to Victimology*. (Massachusetts: Cengage Learning, 2015); Zdenkowski, George, Chris Ronalds, and Mark Richardson, eds. *The Criminal Injustice System. Volume Two*. (London: Pluto Press, 1987).

⁶ Zweig, Stefan. *The World of Yesterday. Vol. 181*. (Massachusetts: Plunkett Lake Press, 2013); Lederer, Max. "Nazi Victims in the World of Books." *Quarterly Journal of Current Acquisitions* 2, No.1 (1944): 91-94. <https://www.jstor.org/stable/29780364>; Šeparović, Zvonimir. *Victimology: Studies of Victims*. (Zagreb: Pravni Fakultet, 1985).

⁷ Schafer, Stephen. *The Victim and His Criminal: A Study in Functional Responsibility. Vol. 34*. (New York: Random House, 1968); Schafer, Stephen. *Victimology: The Victim and His Criminal*. (Reston, VA: Reston Publishing Company, 1977). It is further emphasized that by merging victimology (the study of victims and their experiences) with penology (the study of punishment and rehabilitation), there is an opportunity to reshape the concept of punishment in a more victim-centered manner. This alignment recognizes that punishment should not solely focus on the offender but should also consider the needs, rights, and recovery of the victim. By integrating victimological principles into penological practices, the criminal justice system can refine and improve its treatment of victims. This can be achieved through various means, such as: (1). Prioritizing the rights and well-being of victims: Placing greater emphasis on the needs and rights of victims throughout the criminal justice process, ensuring their active involvement, and providing them with support and services tailored to their specific needs. (2). Promoting restorative justice approaches: Restorative justice seeks to address the harm caused by the offense and repair the harm done to the victim, the community, and the offender. It encourages dialogue, accountability, and restitution, allowing victims to have a voice and be active participants in the resolution process. (3). Enhancing victim support and

Furthermore, in Indonesian context, the effectiveness of the Indonesian government's legislative efforts, particularly concerning restitution for victims, is widely questioned in practice. While positive legal norms are formulated and stated in judges' decisions, the actual benefits of restitution for victims are often not realized. This discrepancy undermines the policymakers' goal of implementing restitution sanctions.

Many instances exist where judges' decisions regarding restitution are not fulfilled by the convicted offenders.⁸ They either claim a lack of financial ability or choose to serve prison sentences

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- services: Ensuring that victims have access to comprehensive support and services, including medical and psychological assistance, social rehabilitation, and practical assistance. This can aid in their recovery and help restore their sense of security and well-being. (4). Strengthening victim impact statements: Allowing victims to express the impact of the crime on their lives and the restitution they deem appropriate can ensure their voices are heard and considered during sentencing and decision-making processes. See also Van Ness, Daniel W., et al. *Restoring Justice: An Introduction to Restorative Justice*. (London: Routledge, 2022); Johnstone, Gerry. *Restorative Justice: Ideas, Values, Debates*. (London: Routledge, 2013); Braithwaite, John. "Principles of Restorative Justice." In Andrew von Hirsch, et.al (eds). *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms* (Oxford: Hart Publishing, 2003), pp. 1-20.
- ⁸ See Dahlia, Cornelia Agatha. "Kebijakan Kriminal Tentang Hak Restitusi Terhadap Anak Korban Kekerasan Seksual (Kajian Falsafah Pemidanaan salam Penegakan Keadilan Berdasarkan Pancasila)". *Thesis* (Jakarta: Universitas Kristen Indonesia, 2022); Alexandra, Halomoan Freddy Sitinjak. "Pemberian Restitusi dan Kompensasi Bagi Korban Tindak Pidana Berdasarkan Nilai Keadilan." *Jurnal Pendidikan dan Konseling (JPDK)* 4, No. 5 (2022): 5975-5984. <https://doi.org/10.31004/jpdk.v4i5.7637>; Yulianti, Swi Wahyuningsih. "Kebijakan Pengaturan Pemberian Kompensasi dan Restitusi bagi Korban Tindak Pidana Berbasis Prinsip Keadilan dan Kemanusiaan Perspektif Hukum Inklusif." *Jurnal Pendidikan Politik, Hukum dan Kewarganegaraan* 11, No. 2 (2021): 1-22; Aji, Wikan Sinatrio. "The Implementation of Diversion and Restorative Justice in the Juvenile Criminal Justice System in Indonesia." *Journal of Indonesian Legal Studies* 4, No. 1 (2019): 73-88. <https://doi.org/10.15294/jils.v4i01.23339>; Prastyawan, Bachtiar Adi. "Juridical Review of Legal Protection for Victims of Sexual Harassment as a Form of State Responsibility." *Journal of Creativity Student* 5, No. 2 (2020): 129-148. <https://doi.org/10.15294/jcs.v5i2.36274>; Sitorus, Jeremy Chandra. "Victims of Sexual Abuse: How Does the Law Protect Her?." *Unnes Law Journal* 5, No. 2 (2019): 255-270. <https://doi.org/10.15294/ulj.v5i1.29864>.

specifically those that involve restitution as one of the imposed sanctions.

Regarding the convicts, the research examines their responses to the restitution sanctions imposed and the reasons behind those responses. By conducting a comprehensive search through the Supreme Court's directory website for trafficking offenses, one hundred verdicts were examined. Out of these, only thirty verdicts found the defendants to be legally and convincingly proven guilty of trafficking offenses. In the remaining seventy verdicts, the judges did not specifically identify Trafficking in Persons as a criminal offense committed by the defendants, contrary to the charges brought forth by the prosecutors. Among the thirty convictions where defendants were found guilty of trafficking, only seven cases involved judges ordering restitution payments to the victims.

These findings highlight the limited implementation of restitution as a sanction in trafficking cases, with a significant number of defendants not being held accountable for this specific offense. Furthermore, the low number of restitution orders indicates a need for further examination and improvement in ensuring that victims receive appropriate compensation for the harm they have endured.

THEORIES ON RESTITUTION FOR VICTIMS OF CRIME

Restitution systems, dating back to ancient times, have taken various forms throughout history.¹⁰ Generally, restitution has been well received by victims, offenders, the general public, and individuals

¹⁰ Goldscheid, Julie. "Crime Victim Compensation in a Post-9/11 World." *Tulane Law Review* 79 (2004): 167-233.

within the criminal justice system.¹¹ Criminal restitution refers to a court-ordered directive, requiring the offender to financially compensate the victim for expenses and losses incurred as a result of the offender's crime. However, it is important to note that restitution typically does not cover compensation for mental pain and suffering, as a civil remedy might, but rather focuses on tangible losses suffered by the victim.¹² The essence of restitution lies in the act of repairing or providing an equivalent for any loss, damage, or injury inflicted by the offender upon the victim.¹³

Restitution proves to be beneficial for both victims and perpetrators, as emphasized by Margery Fry, who highlights its advantages for both parties involved. Specifically, for victims, Barnett and Mc. Donald's study suggests that restitution can serve as a means of assistance. Traditionally, victims have been viewed solely as the aggrieved party within the criminal justice system.¹⁴ However, it must be acknowledged that restitution may not fully meet the desires and needs of victims. This limitation arises in part from the financial incapacity of perpetrators to fulfill restitution obligations. Many

¹¹ Doerner, William G., and P. Steven. *Victimology*. (Cincinnati: Anderson Publishing Co., 1998).

¹² Anderson, Ryan. "Criminal Law: The System is Rigged: Criminal Restitution is Blind to the Victim's Fault-State v. Riggs." *Mitchell Hamline Law Review* 43, No. 1 (2017): 140-180. <https://open.mitchellhamline.edu/mhlr/vol43/iss1/4>

¹³ Shephard, Bridgett N. "Classifying Crime Victim Restitution: The Theoretical Arguments and Practical Consequences of Labeling Restitution as Either a Criminal or Civil Law Concept." *Lewis & Clark Law Review* 18 (2014): 801; Fry, Margery. "Justice for Victims." *Journal of Public Law* 8, No. 1 (1959): 191-253.

¹⁴ Karmen, 1984; Karmen, 2015. See also McDonald, Christina L. *Victim Advocate Program Internship Manual*. Thesis. (Muncie, Indiana: Ball State University, 2001); Burrows, Andrew S., Ewan McKendrick, and James Edelman. *Cases and Materials on the Law of Restitution*. (Oxford University Press, USA, 2007); Virgo, Graham. *The Principles of the Law of Restitution*. (Oxford University Press, USA, 2015).

instead of fulfilling their restitution obligations.⁹ This worrisome trend highlights the need for the development of a restitution model that truly serves the essential purpose of improving and rehabilitating victims affected by criminal acts.

To address this issue, it is crucial to refine the current restitution system. The developed model should be designed to effectively benefit victims, allowing for correctional measures and improvements in their overall well-being. By focusing on the genuine needs and recovery of victims, this new model can ensure that restitution serves its intended purpose, providing meaningful support and rehabilitation to those impacted by criminal acts.

This research adopts a sociological juridical approach, aiming to acquire empirical legal knowledge by directly engaging with its subject matter. The study involves multiple respondents, including police officers, prosecutors, judges, convicted individuals, and victims of purposeful trafficking crimes. The data sources comprise relevant laws and regulations, such as the Criminal Code (KUHP), Law Number 21 of 2007 concerning the Eradication of Human Trafficking, Law Number 35 of 2014 amending Law Number 23 of 2002 concerning Child Protection, and Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers. The analysis of laws and regulations focuses on fundamental legal provisions and the mechanisms of restitution implementation. Additionally, the study examines court decisions concerning the charges and sentencing decisions of prosecutors and judges,

⁹ Lukwira, Andreas Lucky. "Restitusi Sebagai Hukuman Tambahan yang Bermanfaat Bagi Pelaku dan Korban Tindak Pidana." *Deviance Jurnal Kriminologi* 1, No. 1 (2017): 56-69; Setiawan, Ferry. "Pertanggungjawaban Tindak Pidana Perdagangan Orang Serta Hak Restitusi Korban Tindak Pidana Perdagangan Orang Ditinjau dari Undang Undang Nomor 21 Tahun 2007." *Deliberatif* 1, No. 1 (2017): 150-166; Putri, Anggie Rizqita Herda, and Ridwan Arifin. "Perlindungan Hukum Bagi Korban Tindak Pidana Perdagangan Orang di Indonesia (Legal Protection for Victims of Human Trafficking Crimes in Indonesia)." *Res Judicata* 2, No. 1 (2019): 170-185. <http://dx.doi.org/10.29406/rj.v2i1.1340>

perpetrators have already expended resources during the judicial process, leaving them unable to fulfill their restitution requirements.¹⁵

Despite this, restitution offers benefits to perpetrators as well. Margery Fry asserts that while it cannot absolve perpetrators of their guilt, restitution can contribute to healing the wounds caused and holds educational value for the offenders.¹⁶ In this sense, restitution offers an opportunity for perpetrators to acknowledge their responsibility and actively participate in the process of repairing the harm they have caused.

Restitution programs not only benefit victims and perpetrators but also offer advantages for the community and the government. Restitution studies have revealed several capabilities of restitution programs that contribute to these benefits, particularly in reducing recidivism rates. The effectiveness of restitution in this regard has been highlighted in various studies.

The findings of the study, for example, demonstrate that restitution has a preventive effect on perpetrators. This preventive effect is based on the assumption that individuals are less likely to reoffend once their criminal sentence, including the restitution requirement, is completed. By holding offenders accountable and providing them with the opportunity to make amends through restitution, the likelihood of their future criminal behavior is reduced.¹⁷

¹⁵ Birney, Benjamin M. "What Can the Feds and the French Teach Us About Criminal Restitution in Maine." *Maine Law Review* 65 (2012): 247-284.

¹⁶ Walklate, Sandra L. *Victimology: The Victim and the Criminal Justice Process*. (London: Routledge, 2013); Capers, I. Bennett. "Against Prosecutors." *Cornell Law Review* 105 (2019): 1561-1610.

¹⁷ Ali, Mahrus, et al. "Compensation and Restitution for Victims of Crime in Indonesia: Regulatory Flaws, Judicial Response, and Proposed Solution." *Cogent Social Sciences* 8, No. 1 (2022): 2069910. <https://doi.org/10.1080/23311886.2022.2069910>; Hakim, Lukman, and Endang Hadrian. "The Issue of Restitution for Victims in Trafficking in Indonesia." *Solid State Technology* 63, No. 3 (2020): 1640-1648; Pasaribu, Ratno Timur Habeahan. "Fulfillment of Restitution Right of Human Trafficking Crime Victim

Reducing recidivism rates is another significant benefit of restitution programs. Studies have indicated that the implementation of restitution can play a role in lowering the chances of reoffending among perpetrators. By requiring them to take responsibility for their actions and provide restitution to their victims, restitution programs promote a sense of accountability and encourage positive behavioral changes. This, in turn, contributes to a safer and more rehabilitative community.¹⁸

In the similar context, Albert Eglash, an American psychologist, introduced the concept of "*creative restitution*" to describe the theory behind restitution. According to Eglash, restitution serves as an effective method of rehabilitation for perpetrators. Firstly, restitution provides perpetrators with access to meaningful activities that help maintain their self-esteem. Eglash also believes that restitution has a positive impact on one's emotions, acting as a psychological exercise that trains the perpetrator's ego.¹⁹

Furthermore, restitution offers additional advantages beyond its ability to reduce recidivism rates and being more cost-effective than traditional criminal procedures. One such benefit is its potential to alleviate overcrowding in prisons and spare minor offenders from the negative influences of prison life. William Tallack, secretary of the

Through Restorative Justice Approach in Criminal Justice System in Indonesia." *International Journal of Multicultural and Multireligious Understanding* 7, No. 2 (2020): 504-518. <http://dx.doi.org/10.18415/ijmmu.v7i2.1521>

¹⁸ Takariawan, Agus, and Sherly Ayuna Putri. "Perlindungan hukum terhadap korban human trafficking dalam perspektif Hak Asasi Manusia." *Jurnal Hukum Ius Quia Iustum* 25, No. 2 (2018): 237-255. <https://doi.org/10.20885/iustum.vol25.iss2.art2>; Apriyani, Maria Novita. "Restitusi Sebagai Wujud Pemenuhan Hak Korban Tindak Pidana Kekerasan Seksual di Indonesia." *Risalah Hukum* 17, No. 1(2021): 1-10. <https://doi.org/10.30872/risalah.v17i1.492>

¹⁹ Eglash, Albert. "Creative Restitution--A Broader Meaning for an Old Term." *Journal of Criminal Law and Criminology* 48, No. 6 (1958): 617-620; Eglash, Albert. "Creative restitution: some suggestions for prison rehabilitation programs." *American Journal of Correction* 20, No. 6 (1958): 20-34.

Howard League, stated that restitution is wiser in principle, more reformatory in its influence, more deterrent in nature, and more economically beneficial to the community compared to current practices.²⁰

In this perspective, restitution is viewed as a principled approach that fosters reconciliation between perpetrators, victims, and society. It is seen as more likely to have a deterrent effect on offenders and is economically advantageous for society, as it can lead to shorter prison sentences and more efficient allocation of taxpayer funds for prison operations. According to these views, restitution is deemed appropriate for victims of trafficking as it aligns with their needs and is supported by theoretical frameworks. By receiving restitution, victims can experience a reduction in their losses and suffering, encompassing various aspects. Additionally, there are benefits for perpetrators, including a deterrent effect and the potential for reconciliation with victims, while also easing the burden on community institutions.²¹

Restitution encompasses various ideologies according to Jan Van Dijk. He proposed several ideologies that can serve as a basis for policy development. Van Dijk introduces the term "*victimagic*"²² and

²⁰ Tallack, William. *Humanity and Humanitarianism: With Special Reference to the Prison Systems of Great Britain and the United States, the Question of Criminal Lunacy, and Capital Punishment*. (London: F.B. Kitto, 1871). See also Duckworth, A. M. E. "Restitution an Analysis of the Victim-Offender Relationship: Towards a Working Model in Australia." *Australian & New Zealand Journal of Criminology* 13, No. 4 (1980): 227-240. <https://doi.org/10.1177/000486588001300402>

²¹ Ali, Mahrus, and Ari Wibowo. "Kompensasi dan Restitusi yang Berorientasi Pada Korban Tindak Pidana." *Yuridika* 33, No. 2 (2018): 260-289. <https://doi.org/10.20473/ydk.v33i2.7414>; Wijaya, Irawan Adi, and Hari Purwadi. "Pemberian Restitusi sebagai Perlindungan Hukum Korban Tindak Pidana." *Jurnal Hukum dan Pembangunan Ekonomi* 6, No. 2 (2018): 93-111. <https://doi.org/10.20961/hpe.v6i2.17728>

²² The term "*victimagic*" used by Van Dijk serves a specific purpose of distinguishing it from other works that focus solely on scientific exploration. Van Dijk introduces this term to highlight the unique nature of his approach, which goes beyond pure academic study

identifies four main ideologies: the care ideology, resocialization or rehabilitation ideology, retribution or criminal justice ideology, and radical or anti-criminal justice ideology.²³

The care ideology, also known as the ideology of attention, is rooted in the principle of the welfare state. It emphasizes community participation in shouldering the burden of suffering experienced by individuals affected by various disasters such as disease outbreaks, accidents, or unemployment. The central concept of this ideology is the promotion of welfare and support for those in need. The resocialization or rehabilitation ideology focuses on understanding and rehabilitating the perpetrator rather than solely focusing on the victim. This ideology seeks to facilitate the constructive resocialization of offenders. For instance, restitution programs and mediation programs in the United States are examples that aim to have a rehabilitative effect on the perpetrator, going beyond providing compensation solely to the victim.

These ideologies offer different perspectives on restitution and shape the underlying principles of the policies and programs implemented in response to crimes. They highlight the importance of

and aims to address real-world issues and policy implications. By using the term "*victimagic*," Van Dijk emphasizes the practical application and relevance of his work in the field of victimology. This term signifies that his research and recommendations are not confined to theoretical or abstract discussions but are grounded in the goal of improving the lives of victims and informing policy decisions. In essence, Van Dijk's use of the term "*victimagic*" underscores his commitment to bridging the gap between academia and practical solutions. It signifies his intention to move beyond scientific inquiry and contribute to meaningful changes in the field of victimology, thereby highlighting the importance of considering the real-life implications and consequences of victimization.

²³ Van Dijk, Jan. "Crime Prevention Policy: Current State and Prospects." *Crime and Criminal Policy in Europe, Criminological Research Report* 43 (1990): 205-220; Van Dijk, Jan. *Compensation: by the State or by the Offender*. (The Hague, Netherlands: Ministry of Justice, 1985). See also Van Dijk, Jan. "Free the victim: A critique of the western conception of victimhood." *International Review of Victimology* 16, No. 1 (2009): 1-33.

considering both the needs of the victim and the potential for rehabilitation and resocialization of the offender.

The retribution or criminal justice ideology underscores the importance of providing victims with compensation that aligns with the severity of the crime committed against them. It also emphasizes the need for victims to have the opportunity to participate in the Criminal Justice System, where they can assert their demands for compensation and seek punishment for the perpetrators.

The retribution or criminal justice ideology in the context of victim compensation and participation emphasizes the principle that offenders should be held accountable for their actions by providing appropriate compensation to the victims. This ideology recognizes the harm caused to victims and seeks to restore a sense of justice by ensuring that offenders face consequences that align with the severity of their crimes. Under this ideology, compensation is seen as a means of addressing the harm suffered by victims. It is believed that victims should receive restitution or financial compensation that reflects the level of harm inflicted upon them. This compensation can help alleviate the financial burdens and losses experienced by victims, providing some form of reparation for the harm they have endured.

In addition to compensation, the retribution ideology acknowledges the importance of victim participation in the Criminal Justice System. It emphasizes that victims should have the opportunity to voice their demands for compensation and contribute to decisions regarding the punishment of the perpetrators. This involvement allows victims to assert their rights, have their voices heard, and seek the appropriate level of punishment for the offenders.

Victim participation can take various forms, such as providing victim impact statements during sentencing hearings or participating in restorative justice processes. By actively involving victims in the Criminal Justice System, this ideology aims to empower them,

recognize their experiences, and ensure that their interests and demands are taken into account.

On the other hand, the radical or anti-criminal justice ideology advocates for a new system based on civil law principles rather than criminal law principles. This approach aims to prioritize alternative methods of resolving conflicts and addressing harm, focusing on restorative justice and non-punitive measures. The implementation of this ideology has already been observed in countries like America²⁴, England²⁵, and Scotland²⁶.

²⁴ In the United States, retribution is reflected in sentencing practices and the determination of penalties for criminal offenses. Judges and juries consider the nature of the crime, the harm inflicted on the victim, and the culpability of the offender when determining the appropriate punishment. The severity of the punishment may vary depending on factors such as the degree of violence involved, the criminal record of the offender, and the overall circumstances of the case. Retribution is often manifested through the imposition of prison sentences, fines, or other punitive measures. The goal is to hold the offender accountable for their actions and to satisfy society's sense of justice by ensuring that the punishment fits the crime. See Moore, Michael. "Victims and retribution: a reply to Professor Fletcher." *Buffalo Criminal Law Review* 3, No. 1 (1999): 65-89; Golash, Deirdre. *The Case Against Punishment: Retribution, Crime Prevention, and the Law*. (New York: NYU Press, 2005).

²⁵ In England, retribution is reflected in sentencing practices, where judges consider the seriousness of the offense and the culpability of the offender when determining the appropriate punishment. The principle of proportionality is central to retribution, aiming to ensure that the punishment is commensurate with the gravity of the crime committed. The concept of retribution is guided by the idea that punishment serves both a symbolic and moral purpose. It seeks to satisfy the sense of justice and moral outrage of the community by holding offenders accountable for their actions. Retribution acknowledges the harm done to victims and seeks to restore a sense of balance by imposing appropriate punishment on the offender. In practical terms, retribution in English criminal law is often implemented through custodial sentences, fines, or community-based penalties. The length of the prison sentence or the amount of the fine may vary depending on the severity of the offense, aggravating or mitigating factors, and the individual circumstances of the case.

²⁶ Retribution in Scottish criminal law emphasizes the need to hold offenders accountable for their actions and to provide a just response to the harm caused to individuals and society. The focus is on the moral and symbolic aspects of punishment, aiming to maintain public confidence in the justice system and affirm societal values of fairness and accountability. In practical terms, retribution in Scottish criminal law can be manifested through custodial sentences, community-based penalties, fines, or other forms of punishment deemed appropriate for the offense committed. The length of the

In the further context, restitution, according to Galaway's opinion, can be classified into four distinct types: monetary-victim restitution, monetary-community restitution, service-victim restitution, and service-community restitution. Galaway developed this classification by considering two variables: (1) the nature of the restitution provided by the offender, whether it involves monetary compensation or services, and (2) the recipient of the restitution, whether it is the actual victim or a representative party.²⁷ The four types of restitution can be described as follows:

1. Monetary-Victim Restitution: in this type, the offender compensates the actual victim by providing monetary restitution. This can involve paying a sum of money to the victim to compensate for the harm or loss they have suffered.
2. Monetary-Community Restitution: this type of restitution involves the offender providing monetary restitution to the community affected by their actions. The aim is to address the broader impact of the offense on the community as a whole.
3. Service-Victim Restitution: in this type, instead of monetary compensation, the offender provides services directly to the victim. These services are intended to help the victim in some way, such as repairing damage caused by the offense or assisting them in recovering from the harm they experienced.

sentence or the severity of the punishment may vary depending on the circumstances of the case and the individual offender's culpability. Like in England, the application of retribution in Scottish criminal law is subject to ongoing discussions and debates to ensure that punishment remains fair, just, and proportionate. The Scottish legal system is committed to maintaining a balance between the various aims of punishment and continually reviewing and adapting sentencing practices to uphold principles of retribution and justice.

²⁷ Galaway, Burt. "The use of restitution." *Crime & Delinquency* 23, No. 1 (1977): 57-67. <https://doi.org/10.1177/001112877702300106>; Heinz, Joe, Burt Galaway, and Joe Hudson. "Restitution or parole: A follow-up study of adult offenders." *Social Service Review* 50, No. 1 (1976): 148-156; Galaway, Burt. "Restitution as Innovation or Unfilled Promise?." In *Towards a Critical Victimology* (London: Springer, 1992), pp. 347-371.

4. Service-Community Restitution: this type of restitution focuses on the offender providing services to the community as a whole. These services aim to benefit the community and address the broader consequences of the offense.

Galaway's categorization of restitution types considers the form of compensation and the recipient, whether it is the individual victim or the community. By analyzing these variables, it becomes possible to better understand and classify different forms of restitution in a more nuanced manner.²⁸

LAW ENFORCEMENT AGAINST HUMAN TRAFFICKING IN INDONESIA

There are various positive legal norms that serve as the basis for law enforcement related to human trafficking. In Indonesia, the application of criminal sanctions for human trafficking is primarily governed by the Criminal Code (KUHP). The relevant provisions in the Criminal Code include Book II, Article 295, paragraph (1), numbers 1 and 2, Article 295, paragraph (2), Article 296, Article 297, Article 298, paragraph (1) and (2), and Article 506.

In addition to the Criminal Code, there are other laws and regulations outside of it that address human trafficking. These include:

1. Law No. 39 of 1999 concerning Human Rights.
2. Law No. 13 of 2003 concerning Manpower.

²⁸ It is also further explained that: "Four combinations of restitution arrangements are possible payments by the offender to the actual victim, perhaps through an intermediary (the most common); earnings shared with some community agency or group serving as a substitute victim (rather than a fine collected by the government); personal services performed by the offender to benefit the victim (an uncommon outcome); and labor donated by the offender for the good of the community (frequently ordered).

3. Law No. 21 of 2007 concerning the Eradication of Trafficking.
4. Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning the Protection of Witnesses and Victims.
5. Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection.
6. Law No. 18 of 2017 concerning the Protection of Indonesian Migrant Workers.²⁹

These laws are aimed at preventing trafficking crimes and providing protection for the victims. Additionally, there are international conventions and protocols ratified by Indonesia that contribute to the legal framework against trafficking, such as:

1. Law No. 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women.
2. Law No. 14 of 2009 concerning the Ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (also known as the Palermo Protocol).
3. Law No. 6 of 2011 concerning Immigration.

These legal instruments collectively form the foundation for combating human trafficking in Indonesia, ensuring the prevention of such crimes and the protection of the victims.

In the realm of law enforcement, the Indonesian government has taken proactive measures to combat trafficking in persons. These efforts are primarily executed through institutions within the Criminal Justice System, which comprise the Police sub-system, the

²⁹ Rahman, Dina. "Perlindungan Pekerja Migran Indonesia Ditinjau dari Asas Kesetaraan dan Keadilan Gender". *Indonesian State Law Review (ISLRev)* 3, No. 2 (2021): 110-134. <https://doi.org/10.15294/islrev.v3i2.46975>.

Prosecutor's Sub-System, the Court Sub-System, and the Criminal Institution Sub-System.

To enhance the effectiveness of law enforcement against trafficking in persons, the government of Indonesia has established a dedicated Task Force for the Prevention and Handling of Human Trafficking.³⁰ This Task Force plays a pivotal role in coordinating and streamlining efforts to prevent and address human trafficking.³¹

By bringing together relevant stakeholders and agencies, the Task Force ensures a cohesive and collaborative approach to combatting trafficking. Its mandate includes coordinating various activities, such as prevention initiatives, investigations, prosecutions, victim support, and public awareness campaigns. Through the Task Force, the government aims to optimize the impact of law enforcement efforts and foster a comprehensive response to human trafficking.³²

³⁰ The task force has the following duties: 1) to coordinate efforts to prevent and address trafficking offenses; 2) carry out advocacy, socialization, training, and cooperation in both national and international cooperation; 3) monitor the progress of victim protection implementation which includes rehabilitation, repatriation, and social reintegration; 4) monitor the progress of implementation, law enforcement; 5) carry out reporting and evaluation. Establishment of this task force Based on Article 58 of Law No. 21 of 2007, the government established a task force consisting of representatives from the government, law enforcement, civil society organizations, NGOs, professional organizations, and researchers/academics aimed at streamlining and ensuring the implementation of the eradication of trafficking crimes.

³¹ Chandrawaty, Yenny. "Penegakan Hukum dan Tanggung Jawab Negara Terhadap Perempuan Korban Human Trafficking Sebagai Wujud Perlindungan Hak Asasi Manusia." *Jurnal Legislasi Indonesia* 17, No. 4 (2020): 459-476.

³² Daud, Brian Septiadi, and Eko Sopoyono. "Penerapan Sanksi Pidana Terhadap Pelaku Perdagangan Manusia (Human Trafficking) di Indonesia." *Jurnal Pembangunan Hukum Indonesia* 1, No. 3 (2019): 352-365. <https://doi.org/10.14710/jphi.v1i3.352-365>; Naibaho, Nathalina. "Human Trafficking in Indonesia: Law Enforcement Problems." *Indonesia Law Review* 1, No. 1 (2011): 83-99. <https://doi.org/10.15742/ilrev.v1n1.48>; Prasetya, Yuda. "Legal Analysis of Human Trafficking Case as a Transnational Organized Crime that is Threatening State Security." *Lex Scientia Law Review* 4, No. 1 (2020): 134-141. <https://doi.org/10.15294/lesrev.v4i1.38635>

In the context law enforcement on human trafficking case, the Sub-Police plays a crucial role in combating trafficking in persons by not only investigating and exposing trafficking cases but also providing support to the victims. Given that women and children constitute the majority of victims, specialized units such as the Women and Children Service Unit are responsible for handling these cases within the police force.³³

In areas that are identified as potential origin, transit, or destination points for trafficking crimes, the police have a strategic role in both disclosing cases and assisting victims. In Batam, for instance, the Women and Children Protection Unit conducts annual anti-trafficking training for its staff, which includes the participation of the Cyber Police.³⁴ Similarly, in Bandung, the local police's anti-trafficking unit trains the heads of women and child protection units from all police units in the province.

However, it is important to note that the primary function of the police in these cases lies in their ability to establish the fulfillment of the elements required to determine suspects involved in trafficking. In some instances, there may be complexities in proving that all elements of trafficking are present, leading to potential challenges when applying appropriate legal regulations. This situation can have implications for the rights of the victims involved.

In the other hands, law enforcement carried out by the Public Prosecutor sub-Prosecutor holds a strategic role, particularly concerning the legal provisions stated in their indictment and

³³ See Thilma, Dellya Ivonne. "Studi Deskriptif Mengenai Peranan Unit Pelayanan Perempuan dan Anak (UPPA) dalam Melaksanakan Upaya Preventif dan Memberikan Perlindungan Hukum Terhadap Anak Yang Melakukan Tindak Pidana di Wilayah Hukum Bareskrim Mabes Polri". *Thesis* (Jakarta: Universitas Bhayangkara Jakarta Raya, 2014).

³⁴ Ridho, Musa. "Peran Kepolisian dalam Pemberantasan Tindak Pidana Perdagangan Orang (Eksplotasi Seksual) Melalui Media Elektronik." *IJCLS (Indonesian Journal of Criminal Law Studies)* 1, No. 1 (2017): 1-17. <https://doi.org/10.15294/ijcls.v1i1.10800>

demands. Given that numerous laws and regulations beyond the Criminal Code specifically regulate trafficking offenses, these aspects must be considered, especially when special circumstances arise. For instance, if trafficking victims are children, the Public Prosecutor may opt for alternative charges, such as utilizing the Anti-Human Trafficking Law or the Child Protection Law. It is worth noting that the penalties for fines in trafficking cases involving child victims are typically higher under trafficking laws than under the Child Protection Law itself. In some cases, the Manpower Law might be applied more prominently than the trafficking law. Consequently, the Public Prosecutor needs not only to demonstrate and substantiate the elements of the criminal act but also to ensure that the victim's interests and justice are taken into account.³⁵ Similarly, law enforcement carried out by the sub-Court plays a crucial role in determining the ultimate legal framework and sanctions for defendants. Similar to the sub-police and sub-prosecution levels, judges must carefully consider whether to apply trafficking laws or other regulations in their decisions. This consideration also has implications for the rights of the victims involved.

In both instances, it is vital for law enforcement officials and judges to exercise scrutiny and understanding when selecting the appropriate legal provisions to apply. This will help ensure the protection of victims' rights and promote a just legal process in trafficking cases.

³⁵ Aisyah, Nurul. "Peran Kejaksaan dalam Penegakan Hukum Terhadap Pelaku Perdagangan Orang." *Thesis*. (Tarakan: Universitas Borneo Tarakan, 2022); Erlangga, Yogi. "Peran Jaksa Penuntut Umum dalam Penuntutan Tindak Pidana Perdagangan Orang Berdasarkan Uu No. 21 Tahun 2007 Tentang Pemberantasan Tindak Pidana Perdagangan Orang Studi Kasus di Pengadilan Negeri Medan". *Thesis*. (Medan: Universitas Medan Area, 2011); Azalia, Savira Nur. "Peran Dan Efektivitas Lembaga Bantuan Hukum Asosiasi Perempuan Indonesia Untuk Keadilan Dalam Pendampingan Kasus Kekerasan Terhadap Perempuan". *The Digest: Journal of Jurisprudence and Legisprudence* 1, No. 2 (2020): 79-104. <https://doi.org/10.15294/digest.v1i2.48622>.

RESTITUTION FOR VICTIMS OF HUMAN TRAFFICKING: RECENT DEVELOPMENT IN INDONESIA

The Law of the Republic of Indonesia Number 21 of 2007 concerning the Eradication of Trafficking in Persons defines restitution in Article 1 point 13 as the payment of compensation imposed on the perpetrator, based on a court decision with permanent legal force, for both material and immaterial losses suffered by the victim or their heirs. Restitution is an appropriate measure for victims of trafficking offenses, considering the various types of loss and suffering they may experience.

In particular, restitution for trafficking victims is relevant because trafficking can result in four types or categories of loss and suffering. These categories align with the discussions presented by Shapland in his article titled "*The effects of the offense*." The effects include financial losses, psychological impacts, physical harm, and social consequences.³⁶ This perspective is supported by Karmen's opinion, which emphasizes that the impact experienced by victims of victimization extends beyond mere financial losses. Victims can also endure physical injuries and psychological distress simultaneously.³⁷

Therefore, restitution for trafficking victims should encompass not only the financial aspect but also address the physical, psychological, and social effects they have endured. This comprehensive approach acknowledges the multifaceted nature of the harm caused by trafficking and ensures that victims receive appropriate compensation for the various forms of suffering they have experienced.

³⁶ Shapland, 2007.

³⁷ Karmen, 1984.

In the Indonesian context, restitution granted under Law No. 21 of 2007 on trafficking is included in court rulings, but the actual awarding of restitution to victims occurs only after the verdict has obtained permanent legal force. This means that victims can only exercise their rights and receive restitution once the verdict is finalized. However, during this time, the victims' suffering continues, and it remains uncertain whether restitution will be granted by the judge. This situation highlights the victim's position as experiencing "*Secondary Victimization in the Criminal Justice System*," where their rights are not fully addressed or prioritized.³⁸

Nevertheless, there have been progressive developments in regulations to address this issue. Laws such as Law No. 31 of 2014, concerning Amendments to Law No. 13 of 2006 on the Protection of Witnesses and Victims, and Perma No. 1 of 2022, which pertains to Procedures for Completing Applications and Granting Restitution and Compensation to Victims of Criminal Acts, have introduced mechanisms for submitting restitution claims. These mechanisms allow victims to seek restitution both before and after the court decision has obtained permanent legal force.

These regulatory advancements reflect a positive direction towards enhancing the rights and support provided to victims of trafficking. By providing options for submitting restitution claims at different stages of the legal process, victims have a better chance of obtaining timely and fair compensation for the harm they have endured. This approach acknowledges the ongoing suffering of victims and strives to mitigate the secondary victimization they may experience within the criminal justice system.

³⁸ Gekoski, Anna, Joanna R. Adler, and Jacqueline M. Gray. "Interviewing women bereaved by homicide: Reports of secondary victimization by the criminal justice system." *International Review of Victimology* 19, No. 3 (2013): 307-329. See also Orth, Uli. "Secondary victimization of crime victims by criminal proceedings." *Social Justice Research* 15 (2002): 313-325. <https://doi.org/10.1023/A:1021210323461>

Furthermore, the process of applying for restitution before a court decision obtains permanent legal force involves several steps. The application is initiated by submitting a request for restitution to the Court, which can be done through the LPSK (Indonesian National Commission on Violence Against Women), investigators, Public Prosecutors, or even directly by the victim. Alongside the application, the LPSK Decision regarding the restitution amount is provided as supporting documentation. It is the responsibility of the Public Prosecutor to ensure that the application for restitution is included in the criminal prosecution.

In the case of trafficking in persons, the aforementioned Perma (Supreme Court Regulation) specifies that the court judgment should also address the duration of imprisonment or alternative confinement in situations where the assets of the accused and/or third parties are insufficient to cover the restitution amount. This regulation aims to ensure that victims of trafficking receive appropriate restitution, even if the accused or relevant third parties are unable to provide the full financial compensation. By including provisions for substitute confinement, the court can guarantee that victims are not left without restitution simply due to the lack of financial resources from the responsible parties.

Therefore, it is highlighted that the process of applying for restitution before a court decision with permanent legal force involves submitting a request to the Court, supported by the LPSK Decision. The Public Prosecutor is responsible for including the restitution application in the criminal prosecution. In cases of trafficking, the court judgment should address the duration of imprisonment or alternative confinement when the accused or third parties are unable to fulfill the restitution amount. This mechanism ensures that victims of trafficking are not deprived of restitution solely due to financial limitations.

The Perma (Supreme Court Regulation) ensures the provision of restitution for trafficking victims, distinguishing it from other regulations. Notably, it imposes a duty on the judge to inform victims of their right to seek restitution if they have not already applied for it. The victims can file for restitution either before the Public Prosecutor files charges or after a verdict has obtained permanent legal force. Moreover, the Public Prosecutor is empowered to appeal or file for cassation if the request for restitution is partially or fully rejected, even when the accused is found guilty.

Regarding the application for restitution after a court decision with permanent legal force, it starts with a Request for Restitution, which can be directly submitted to the Court by the Applicant or through the LPSK. The Attorney General, Military Prosecutor, or Prosecutor is involved as a party to the restitution request. The Perma further ensures the implementation of restitution for trafficking victims in this context. It explicitly states that the Court must decide on the restitution application within 21 days from the first hearing, and the determination of restitution is considered final and binding.

Considering the provisions outlined above, it becomes evident that trafficking victims are entitled to restitution for their losses and suffering. The existing laws and regulations related to restitution are comprehensive. However, the effectiveness of restitution for trafficking victims ultimately depends on its proper implementation. Ensuring that the rights of victims are upheld and that the restitution process is carried out efficiently and timely is crucial in providing meaningful support and redress for trafficking victims.

The current practice of restitution sanctions in Indonesia has demonstrated a lack of effectiveness in providing adequate protection for victims. Victims often do not experience the benefits or the tangible impact of restitution sanctions. Consequently, restitution

remains merely a hopeful concept that fails to materialize in reality, leaving victims without the expected support and redress.

To address these issues, several models have been proposed to enhance the effectiveness of restitution sanctions and optimize benefits for victims.

Firstly, it is crucial for prosecutors to prioritize the utilization of the Law on the Eradication of Trafficking in Persons and simultaneously include restitution sanctions in their prosecution strategies, as outlined in Article 48. In this context, prosecutors should actively seek information from victims regarding their losses and suffering resulting from the criminal acts inflicted upon them. Victim Impact Statements (VIS) can serve as a basis for prosecutors to determine the appropriate amount of restitution to be sought from the offender. When the restitution claim is calculated accurately and proportionally, there is a higher likelihood that offenders will comply with and fulfill their restitution obligations.

Furthermore, if an offender is unable to fulfill their restitution payment, the substitute confinement period should be extended to a maximum of 6 years, aligning with the maximum penalty for trafficking in persons offenses. Judges should also be encouraged to apply the maximum substitute confinement period in cases where restitution is not adequately fulfilled. This response aims to counter the tendency of offenders to choose imprisonment instead of paying restitution, ensuring that restitution remains a viable and meaningful sanction.

Additionally, considering the ineffectiveness of restitution sanctions in benefiting victims, it may be beneficial to explore the implementation of the Crime Victims' Compensation Program (CVC). This program would involve providing financial assistance to victims from community funds, alleviating their suffering and providing a measure of compensation.

To effectively implement this model of restitution sanctions, it is essential to enhance the analytical capabilities of law enforcement officials in assessing the elements of trafficking crimes. Moreover, in cases involving special circumstances that require the application of specific regulations, victims should still have the right to seek restitution. By implementing this model, it is expected that restitution sanctions will become more effective in providing tangible benefits and legal protection for victims of trafficking crimes in Indonesia.

In the further discussion, the current implementation of restitution sanctions in Indonesia has revealed significant shortcomings in providing robust legal protection for victims. To address these challenges and ensure the effective implementation of restitution sanctions, a comprehensive model is proposed. This model aims to prioritize the rights and well-being of victims, while also encouraging offender accountability and compliance with restitution obligations.

1. Strengthening Legal Framework:

- a. Amend existing laws and regulations to explicitly emphasize the importance of restitution for victims of trafficking crimes.
- b. Establish clear guidelines and procedures for the application, calculation, and enforcement of restitution sanctions, ensuring consistency and fairness throughout the process.

2. Victim-Centered Approach:

- a. Enhance victim participation and empowerment by ensuring their active involvement in the restitution process.
- b. Develop comprehensive victim impact assessment mechanisms to accurately determine the extent of losses and suffering experienced by victims.
- c. Provide training and resources for law enforcement officials, prosecutors, and judges to better understand and respond to

the specific needs and challenges faced by victims of trafficking.

3. Proactive Prosecution:

- a. Implement proactive measures that require prosecutors to actively seek information from victims regarding their losses and suffering caused by trafficking crimes.
- b. Utilize Victim Impact Statements (VIS) as an essential tool for determining the appropriate amount of restitution sought from offenders.
- c. Ensure that prosecutors prioritize the inclusion of restitution sanctions in their prosecution strategies, promoting offender accountability and the fulfillment of restitution obligations.

4. Judicial Accountability:

- a. Encourage judges to impose meaningful and proportionate restitution orders based on the circumstances of each case.
- b. Strengthen the enforcement mechanisms to monitor and ensure the timely and complete fulfillment of restitution orders by offenders.
- c. Establish guidelines for judges to consider the maximum substitute confinement period as an alternative to restitution when offenders fail to fulfill their obligations.

5. Victim Compensation Programs:

- a. Establish or enhance the Crime Victims' Compensation Program (CVC) to provide financial assistance and support to victims of trafficking crimes.
- b. Allocate adequate funds and resources to the CVC to ensure its effective operation and availability to victims in need.
- c. Promote public awareness and engagement to encourage contributions to the CVC, fostering community support for victims.

6. Continuous Evaluation and Improvement:

- a. Establish a monitoring and evaluation mechanism to assess the effectiveness and impact of the implemented restitution model.
- b. Regularly review and update the legal framework and procedures to address any emerging challenges or gaps in the restitution process.
- c. Foster collaboration and knowledge-sharing among relevant stakeholders, including government agencies, NGOs, and international organizations, to enhance the implementation of restitution sanctions and improve the overall protection of trafficking victims.

By adopting this proposed model, Indonesia can strengthen its legal protection for victims of trafficking by ensuring the effective implementation of restitution sanctions. It is imperative to prioritize the rights and well-being of victims, hold offenders accountable, and provide meaningful support to aid in their recovery and restoration.

CONCLUSION

This research highlighted and confirmed that restitution has various benefits for victims, perpetrators and the community even though there are limited benefits to victims when there are financial limitations from perpetrators. Restitution for Trafficking Victims in Indonesia is ineffective because perpetrators tend to choose to undergo imprisonment in lieu of restitution. A restitution model can be developed that can be optimally felt by the victim. First, for the obligation of prosecutors to prioritize using the Law on the eradication of criminal acts of persons and at the same time include restitution sanctions in their demands and the amount of restitution demands is based on the Victim Impact Statement. The sentence of

confinement in lieu of restitution to be aggravated to match the principal crime. Second, a service-victim restitution and *service-community restitution model can be developed*, in addition to substitute imprisonment if the victim states incapacity and the assets owned and confiscated which are then auctioned are insufficient to pay the amount of restitution sanctions that have been decided by the judge

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