

IMPLEMENTATION OF COMPENSATION IN THE FORM OF RESTITUTION FOR CHILDREN AS A VICTIM OF THE CRIME OF TRAFFICKING IN PEOPLE (Case Study in The Jurisdiction of the City of Padang)

¹Harmelia, ²Prof. Dr. Ismansyah, ³Dr. Nani Mulyati

¹Master Of Law Student, ^{2,3}Master Of Law Lecture,
Faculty Of Law, Andalas University, Padang, West Sumatera, Indonesia
Email – harmeliahukum@gmail.com

Abstract: *Trafficking in persons is regulated and explained in Law Number 21 of 2007 concerning eradication of the Crime of Trafficking in Persons. This law is an effort to provide legal protecting, to victims of the crime of the trafficking in persons. One form of legal protection for victims regulates by the law is the provision of compensation in the form of restitution. Children and women wre often victims of the crime of trafficking in persons.*

Key Words: *Compensation, restitution, children as a victim, the crime of human trafficking.*

1. INTRODUCTION:

The crime of trafficking in persons (*human trafficking*) is a big problem that has threatened humans since the existence of human life itself. Anyone can be a victim of a criminal act of trafficking in persons. Women and children are very vulnerable to becoming victims of this crime. Children are creatures of God Almighty and social beings, from the time they are in the womb until they are born have the right to life, freedom and good protection from parents, family, community, nation and state.[1] The purpose of punishment in positive law in Indonesia is actually more focused on criminals, where criminals receive more treatment such as rehabilitation, *treatment of offenders*, social adaptation, correctional facilities, and others.[2]

2. THEORITICAL FRAMEWORK:

- Theory of Justice
John Rawls argues that justice is a virtue for the whole society, it cannot override or challenge the sense of justice of everyone who has obtained a sense of justice. Especially the weak people seeking justice.[3]
- Legal Certainty Theory
According to Sudikno Mertokusumo, legal certainty is a guarantee that the law is carried out, that those entitled by law can obtain their rights and that decisions can be implemented.[4]
- Benefit Theory
According to Jeremy Bentham, the most objective basis for assessing the merits of a policy is to see whether a policy or action brings benefits or useful results, or vice versa causes harm to the people concerned.[5]

3. LITERATURE REVIEW:

According to Mardjono Reksodiputro, the overall arrangements related to compensation given to victims in positive law in Indonesia can be distinguished between those paid by official agencies from state funds or what is known as "*compensation/compensation*" and those paid by the perpetrator or interpreted as restitution.[6]

Victims *are* those who suffer losses both physically and spiritually as a result of actions taken by other people to fulfill their own interests or those of others that are very contrary to the human rights or interests of the sufferer, victims can be individuals or groups, both private and public. or government, the most important thing is the existence of physical or spiritual suffering.[7]

According to Alfitra, "in the past, *trafficking* was defined as the movement of people by forcing women across national borders for the purpose of prostitution." [8]

4. METHOD:

The method used in this study is an empirical juridical approach, namely an approach based on field research methods, namely examining applicable legal provisions and what is happening in people's lives.[9]

5. DISCUSSION:

In the context of regulating the protection of victims of crime, the first thing that must be considered is the essence of the loss suffered by the victim. Therefore, the forms of protection given to victims in the form of compensation are restitution and compensation. It should be noted that what is meant by restitution is part of *reparation* or recovery to the victim in the form of compensation that must be given by the perpetrator of the crime. Meanwhile, compensation has almost the same understanding as restitution, only that it is given by the state and not the perpetrators of criminal acts.

6. ANALYSIS:

A. Application of Compensation in the Form of Restitution for Children as Victims of Trafficking in Persons (in the Legal Area of Padang City)

The application of the right of restitution to victims of criminal acts of trafficking in persons in the jurisdiction of Padang City for the last 5 (five) years has not reflected the principle of legal certainty. It can be seen that from several decisions on the criminal act of trafficking in persons that have permanent legal force, which in the decision does not include the right to restitution. Of course this does not achieve one of the objectives of the law, namely from the aspect of legal certainty. The absence of restitution in every decision on the crime of trafficking in persons in the city of Padang for the last 5 years is proof that the application of restitution is not optimal. Children are often victims of criminal acts of trafficking in persons where they should get protection from the adults around them.

B. Obstacles in Implementing Compensation in the Form of Restitution for Child Victims of the Crime of Trafficking in Persons (in the Legal Territory of Padang City)

One of the constraining factors in the application of restitution to victims of trafficking in persons, especially in the Padang City Legal Area, is the factor of law enforcement officers. *effectiveness* of the application of restitution is very dependent on the concern of law enforcement for the protection of victims of the crime of trafficking in persons. Law enforcement, which is an important element in the application of the law, is expected to be the milestone of a regulation that has been made, law enforcement is a tool so that the law can be implemented properly.

7. CONCLUSION:

From the discussion as explained earlier, several conclusions can be drawn, including:

- The application of compensation in the form of restitution to children as victims of criminal acts of trafficking in persons in the Legal Territory of Padang City was not carried out properly.
- Constraints in the application of compensation in the form of restitution to children who are victims of criminal acts of trafficking in persons in the Legal Territory of Padang City, can be divided into two factors, namely from the legal factor itself and factors from law enforcement officers.

REFERENCES:

1. Abdussalam dan Adri Desasfuryanto, 2014, *Hukum Perlindungan Anak*, PTIK, Jakarta, page14.
2. Maya Indah S, 2014, *Perlindungan Korban Suatu Prespektif Viktimologi dan Kriminologi*, Kencana, Jakarta, page 97.
3. Jhon Rawls dalam M. Solly Lubis, 1994, *Filsafat Ilmu dan Penelitian*, Mandar Maju, Bandung, page 139-140.
4. Sudikno Mertokusumo, 2007, *Mengenal Hukum Suatu Pengantar*, Liberty, Yogyakarta, page160.
5. Sonny Kerap, 1998, *Etika Bisnis Tuntunan dan Relevansinya*, Kanisius, Yogyakarta, page 93-94.
6. Mardjono Reskodiputro, 1994, *Kriminologi dan Sistem Peradilan Pidana, Buku Kedua*, Pusat Pelayanan Keadilan dan Pengabdian Hukum Universitas Indonesia, Jakarta, page 94.
7. Arif Gosita, 1989, *Masalah Perlindungan Anak*, Akademika Presindo, Jakarta, page75.
8. Alfitra, 2014, *Modus Operandi Pidana Khusus di Luar KUHP*, Penebar Swadaya Group, Jakarta, page 164.
9. Bambang Waluyo, 2002, *Penelitian Hukum Dalam Praktek*, Sinar Grafika, Jakarta, page 15.