

# Human Rights Studies on Fulfillment of Restitution Rights for Children as Victims of Human Trafficking

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## Info Artikel

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## Abstract

*This paper aims to analyze the fulfillment the restitution rights for the children as victims after the enactment of government regulation Number 43 of 2017 in Medan based on human rights studies. This research is normative legal research with statute approach which is carried out by examining law and regulations related to the legal issue being raised that is regarding the provision of restitution for child victim of human trafficking in Medan and empirical legal research which gaining data by means direct observation in Medan District Court. Based on the studies, it can be related that restitution must be given to the victims of human trafficking because it is a part of fulfillment of human rights to compensate the victim for losses suffered as the result of a crime.*

## Abstrak

Tulisan ini bertujuan untuk menganalisa pemenuhan hak restitusi untuk anak sebagai korban tindak pidana setelah pemberlakuan Peraturan Pemerintah Nomor 43 Tahun 2017 di Kota Medan berdasarkan kajian hak asasi manusia. Penelitian ini adalah Penelitian Hukum Normatif dengan pendekatan Undang-Undang yang dilakukan dengan menguji hukum dan peraturan yang terkait dengan isu hukum yang diangkat yakni berkaitan dengan ketentuan restitusi bagi anak korban tindak pidana perdagangan orang di Kota Medan dan Penelitian Hukum Empiris yang memperoleh data dengan cara observasi secara langsung di Pengadilan Negeri Medan. Berdasarkan kajian tersebut, itu dapat dihubungkan bahwa restitusi harus diberikan kepada korban tindak pidana perdagangan orang karena itu adalah bagian dari pemenuhan hak asasi manusia untuk mengganti kerugian korban untuk menghilangkan penderitaan sebagai hasil dari sebuah kejahatan.

## I. Introduction

Children who are involved as victims of human trafficking in most of countries in the world are still cases that often occur. Indonesia itself noted that children who are involved as victims of human trafficking cases have increased every year. The Indonesia Child Protection Commission places the case of

trafficking and exploitation of children in Cluster 9. Data shows the cases always occur year by year from 2011 until 2019.

*Table 1.1. Data of children trafficking cases based on the child protection cluster by The Indonesia Child Protection Commission*

Cluster	Years	Amount
Trafficking and Exploitation (9)	2011	160
	2012	173
	2013	184
	2014	263
	2015	345
	2016	181
	2017	293
	2018	329
	2019	244

The data shows that children trafficking cases has increased from 2011 until 2015. In 2011 the case is 160 then it increases to 173 cases in 2012. In 2013 the cases increase to 184 then in 2014 become 263 cases and become the highest number in 2015 that is 345 cases. In 2016 the child trafficking cases decrease into 181 cases. According to data of children trafficking from The Indonesia Child Protection noted that in 2017, the cases increase to 293 cases. In 2018, the case number increases into 329 cases and in 2019 decrease into 244 cases.

Talking about human trafficking especially children as victims cannot be separated from human rights. The links between human trafficking and human rights are well established. Law No. 39 Year 1999 Concerning Human Rights in Article 20 Paragraph (1) said that No one shall be held and slavery or servitude, and Paragraph (2) said that slavery, the slave trade and servitude shall be prohibited in all their forms. It means although none of slavery happened nowadays, but another form of slavery that is human trafficking shall be prohibited and combated. It is because human trafficking is a kind of human rights violation.<sup>1</sup>

In Indonesia, most of human trafficking cases affect children in exploitative practices. Children as victims of human trafficking must have rights as trafficked person. Law No. 21 Year 2007 Concerning Elimination of Human Trafficking Crime has ruled about human trafficking in Indonesia. According to The Law, the perpetrator of human trafficking is punished with imprisonment, detention, and fine. In addition of the punishment, in The Law of Elimination of Human

<sup>1</sup> Sulistya Eviningrum, Hartiwiningsih Hartiwiningsih, and Mohamad Jamin, 'Human Rights Based Law Protection Model for the Mental, Spiritual and the Healing Victims of Child Trafficking in Indonesia', *Indian Journal of Forensic Medicine and Toxicology*, 14.3 (2020), 1098-1102.

Trafficking Crime appends that each victim or their heirs reserve the rights of restitution from the perpetrators.<sup>2</sup>

The fact is in the verdict of human trafficking case not all of the claim attaches restitution claim. If there is lawsuit for restitution and the judge grants it, most of the perpetrator will say unable to fulfill the restitution and prefer detention sentence.<sup>3</sup> The previous research in 2015 found that one of the reasons why the provision of restitution for the victim of human trafficking was hampered was none of the government regulations that ruled about granting restitution to the child victims of human trafficking Restitution is the right of the victims.<sup>4</sup>

Government regulation Number 43 of 2017 on the implementation of restitution for child victims of the criminal act issued in 2017. So, this research eagers to search the implementation of the regulation to fulfill restitution for child victims of the criminal act according to human rights studies because restitution is one of the rights that must be fulfilled as victims of a criminal activity. The method that is used in this research is normative legal research with statute approach which is carried out by examining law and regulations related to the legal issue being raised that is regarding the provision of restitution for child victims of human trafficking in Medan and it is combined with empirical research which gaining data by means of direct observation in Medan District Court.

## II. Methods

The method of this research is a combining of normative and empirical research method. Normative legal research is a type of research method which used a qualitative method to analyze data<sup>5</sup>. It also used secondary data as the source such as court decision, regulation, books, legal theory and also doctrine. This research uses some regulation to analyze the problem such as Law No. 39 Year 1999 Concerning Human Rights, Law No. 21 Year 2007 Concerning Elimination of Human Trafficking Crime, Government regulation Number 43 of 2017 on the Implementation of Restitution for Child Victim of Criminal Act.

Empirical legal research finds facts and also law as social phenomena. It used quantitative legal research by using primary source which is obtained first source

<sup>2</sup> Mas Pungky, Hendra Wijaya, and Mohammad Zulfikar Ali, 'Legislation Impediments in Reorganising Government Bodies in Indonesia', *Jurnal Bestuur*, 9.1 (2021), 1-12.

<sup>3</sup> Abdul Kadir Jaelani, I Gusti Ayu Ketut Rachmi Handayani, and Lego Karjoko, 'The Political Law of the Constitutional Court In Canceling the Concept of the Four Pillars as an Pancasila as the State Foundation', *Journal of Talent Development and Excellence*, 12.2 (2020), 1314-21.

<sup>4</sup> Eva Syahfitri Nasution, 'Pertanggungjawaban Pidana Terhadap Pelaku Kejahatan Eksploitasi Seksual Komersial Anak (Studi Putusan Pengadilan Negeri)', *USU Law Journal*, 3.1 (2015), 187-201.

<sup>5</sup> Theresia Anita Christiani, 'Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study Law as an Object', *Rocedia - Social and Behavioral Sciences*, 2.19 (2016), 201-7.

directly. 6 The research location is in Medan. The court decisions were got from Medan District Court which located at Pengadilan Street No. 8, Medan, in North Sumatera. When this research got the court decision of human trafficking in Medan, it was conducted an interview to the judge in Medan District Court which related to human trafficking case and found the relation with the fulfillment of human rights to criminal victims. When those methods, normative and empirical research method, were combined it was expected to answer the implementation of fulfillment restitution as a part of human rights to the children affected human trafficking.

### III. Results and Discussion

Human trafficking is commonly comprehended to refer to the process of moving or placing individual in exploitative situation. Trafficking can occurs to vulnerable groups, one of the vulnerable groups is children. In human trafficking, most of the victims are made into prostitution workers.<sup>7</sup> The Modus operandi of this crime is mostly done through seduction and persuasion of high salary.<sup>8</sup> One of the objectives of law is guarantee legal certainly as well as expediency and justice. But all of the law objections are related each other.<sup>9</sup> The purpose of law can be reached if it is in line with human rights enforcement. It is because human rights provide moral strength for protecting and guarantying human dignity based on regulation and law. It is not based on political tendency, situation and particular will.<sup>10</sup> Restitution as a remedy for human trafficking victims is appropriate with the aim of human rights.

Human Trafficking deprives victims of their rights because they are controlled by other people who take advantage of the victim, both material and immaterial. Most human trafficking victims, especially children as victims, of course have the trauma they get as a result of various things such as physical violence, psychological violence and or sexual violence that they receive.<sup>11</sup> From the various things that the victim has obtained, protection of the victim should be the most important component in the effort to handle the criminal case of trafficking

<sup>6</sup> Soeleman Djaiz Baranyanan, I. Gusti Ayu Ketut Rachmi Handayani, and Isharyanto, 'Political Law of Local Government to Resolve Disputes Adat Law in Kei Island', *International Journal of Advanced Science and Technology*, 28.20 (2019), 494-99.

<sup>7</sup> Utkarsh K. Mishra and Abhishek Negi, 'Transgender and the Right to Employment in India: Analysing the Trajectories of Discrimination', *Bestuur*, 9.1 (2021), 26-33.

<sup>8</sup> Emmy Suryana Lubis, 'Implementasi Kebijakan Pemerintah Provinsi Sumatera Utara Dalam Pencegahan Dan Penanggulangan Perdagangan Orang (Trafiking) Perempuan Dan Anak', *Jurnal Administrasi Publik*, 1.1 (2012), 108-41.

<sup>9</sup> Fauzi Marasabessy, 'Restitusi Bagi Korban Tindak Pidana: Sebuah Tawaran Mekanisme Baru', *Jurnal Hukum Dan Pembangunan*, 45.1 (2015), 53-75.

<sup>10</sup> Saidah Fasihah Binti Che Yusoff and Rohaida Nordin, 'Freedom of Expression in Malaysia: Compatibility with the International Human Rights Standard', *Bestuur*, 9.1 (2021), 34-42.

<sup>11</sup> Alfian Alfian, 'Upaya Perlindungan Hukum Terhadap Korban Tindak Pidana Perdagangan Orang', *Fiat Justisia Jurnal Hukum*, 9.3 (2015), 331-39.

in persons. One form of rights that a victim of the crime of trafficking in persons has the right to obtain restitution.<sup>12</sup> Restitution in accordance with the principle of restoration is an effort that victims of crime must be returned to their original condition. This principle emphasizes that recovery for victims must be as complete as possible and include various aspects that result from crimes and it is appropriate with the aim of human rights enforcement. With restitution, the victim can be restored to freedom, legal rights, social status, family life and citizenship, return to their place of residence, restore their job, and have their assets restore.<sup>13</sup>

Efforts to protect the law against children as victims of trafficking in persons after the issuance of a court decision against the perpetrator is the granting of restitution rights which are first proposed by the victim or his heir. According to the applicable law, this compensation or restitution can be prosecuted through a civil suit or through a criminal court process.<sup>14</sup> Restitution tends to be the perpetrator's responsibility for the consequences of the crime. Thus, the main target is efforts to overcome the losses suffered by the victims of the crime. In Medan as the location of the research is found that from 2017 until 2020 there are 15 cases that have been decided in Medan District Court.

Table 2.1 The list of human trafficking lawsuits that have been decided in Medan District Court From 2017 until 2020

Year	Lawsuit Number	Imprisonment	Punishment Detention	Fine
2017	3329/Pid.Sus/2017/PN Mdn	3 Years	Subsidiary 1 Month	Rp.200.000.000
	3516/Pid.Sus/2017/PN Mdn	3 Years	Subsidiary 1 Month	Rp.120.000.000
2018	244/Pid.Sus/2018/PN Mdn	9 Months	-	-
	338/Pid.Sus/2018/PN Mdn	2 Years	Subsidiary 2 Month	Rp.150.000.000
	667/Pid.Sus/2018/PN Mdn	3 Years	Subsidiary 4 Month	Rp.150.000.000
	668/Pid.Sus/2018/PN Mdn	3 Years	Subsidiary 4 Month	Rp.1500.000.000
	1047/Pid.Sus/2018/PN Mdn	7 Montths	Subsidiary 1 Month	Rp.5.000.000
2018	1118/Pid.Sus/2018/PN Mdn	3 Years	Subsidiary 3 Month	Rp.150.000.000
	3107/Pid.Sus/2018/PN Mdn	3 Years	Subsidiary 1 Month	Rp.120.000.000

<sup>12</sup> G. Permatasari, H. Wirastuti Sawitri, and Maryono. A. Sidik, 'Pelaksanaan Pemberian Restitusi Terhadap Korban Tindak Pidana Perdagangan Orang (Studi Kasus Di Kejaksaan Negeri Indramayu)', *Jurnal S.L.R.*, 1.1 (2019), 52-65.

<sup>13</sup> Yussoff and Nordin.

<sup>14</sup> Nelsa Fadilla, 'Upaya Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Perdagangan Orang', *Jurnal Hukum Dan Peradilan*, 5.2 (2016), 181-94.

2019	841/Pid.Sus/2019/PN Mdn	3 Years	Subsidiary 3 Month	Rp.200.000.000
	2140/Pid.Sus/2019/PN Mdn	1 Year 4 Months	-	-
	2156/Pid.Sus/2019/PN Mdn	5 Years 3Months	Subsidiary 2 Month	Rp.100.000.000
	2185/Pid.Sus/2019/PN Mdn	1 Year	-	-
2020	262/Pid.Sus/2020/PN Mdn	3 Years	Subsidiary 1 Month	Rp.120.000.000
	1625/Pid.Sus/2020/PN Mdn	5 Years 6 Months	Subsidiary 4 Month	Rp.200.000.000

According to the following primary data, it can be seen that in the 15 (fifteen) cases of criminal trafficking in persons that were decided by judges in Medan District Court. None of the case was handed down a verdict in the form of restitution to the perpetrator of the criminal act. From these data, court decisions are more likely to impose decisions, namely imprisonment, detention and fine. From the following table it can be seen that in 2017 there are 2 (two) cases of human trafficking.<sup>15</sup> The punishment is imprisonment, detention and fine. In 2018, there are 7 (seven) cases of human trafficking, according to the 7 (seven) cases 6 cases decided to give imprisonment, detention and fine punishment to the perpetrator. In 1 (one) case, the judge only gives an imprisonment punishment. In 2019, there are 4 (four) human trafficking cases that have been decided. Two cases are decided to get imprisonment, detention and fine punishment, and the other get imprisonment punishment. In 2020, there are 2 (two) cases of human trafficking. The punishment is imprisonment, detention and fine.<sup>16</sup>

Children are a gift from God the Almighty that must be kept for. It is because children have rights as human beings and have to be protected. Declaration Universal of Human Rights that has been pledged in Indonesia's constitution describes that there are human rights in every human being as personal or social person. Children rights are a kind of human rights that have been regulated in Indonesia in the Constitution of Indonesia and United Nation Convention of Children Rights. Indonesia must protect the children because it is legal trust of Constitution in Article 28 B paragraph (2). It is also regulated in Article 33 paragraph (1) Law No. 39 Year 1999 Concerning Human Rights. Children must be protected from criminal act because it can destroy their physic and physiologist. As the susceptible group, children are easy to be victims of criminal act, especially human trafficking crime.

<sup>15</sup> Sulistya Eviningrum, Hartiwiningsih, and Moh Jamin, 'Strengthening Human Rights-Based Legal Protection on Victims of Child Trafficking in Indonesia', *International Journal of Advanced Science and Technology*, 28.20 (2019), 296-300.

<sup>16</sup> I Dewa Made Suartha, 'Criminal Policy Formulation on Regulation of Death Penalties for Criminal Actors', *Journal of Morality and Legal Culture*, 1.1 (2020), 12 <<https://doi.org/10.20961/jmail.v1i1.44743>>.

From the following data of human trafficking lawsuits that have been decided in Medan District Court shows that none of the judge decision decides the perpetrator to pay restitution to the victims. According to primary data obtained from interviews on August 6, 2020 at the Medan District Court with the Court Judge, Dahlia Panjaitan, SH. explained that far from the Medan District Court from November 2015 to June 2020 there have been 39 cases of criminal trafficking in persons. Of the cases that have been tried, there are a number of cases which include victims of minors. However, none of them have filed a claim for restitution in their lawsuit. One of the reasons for not proposing restitution which was disclosed by the Judge of the Medan District Court was the lack of understanding on the part of the victim regarding the existence of restitution as regulated in the Prevailing Laws including in this case regarding Government Regulation No. 43 of 2017 concerning the Implementation of Restitution Rights for Children Who Are Victims of Criminal Acts.

Regarding the issue of providing restitution, there are a number of things that underlie why there was no claim for restitution at the time the trial was carried out related to the crime of trafficking in persons, such as:

- a. During the investigation and prosecution, the investigator has explained to the victim the right of the victim to file a claim for restitution to the perpetrator. However, the victim refused and some even asked that the perpetrator be released because the perpetrator was deemed to have helped the victim to get money as his income. This condition resulted in the public prosecutor at the North Sumatra High Prosecutor's Office not filing for restitution in the criminal case of trafficking in persons because on the one hand the victim did not feel that he was being trafficked by the perpetrator because the victim needed a job to earn money to meet his daily needs;
- b. Many cases were handled by the North Sumatra High Prosecutor's Office found to be prolonged. This is because the victim does not want to attend the trial because the victim feels embarrassed even though the trial is closed. There were even victims who fled to their hometowns or moved addresses because in general the victims were middle to lower class people so they did not have a permanent place to live, for example renting a house. So that it can easily change places and makes it difficult for investigators and public prosecutors to trace the whereabouts of the victim in order to present the victim at trial;
- c. The perpetrators of the criminal act of trafficking in persons generally come from the lower middle class. The perpetrators sometimes do not have assets to confiscate as restitution for the victim. Because the profits earned by the perpetrators only ranged from Rp. 150,000 to Rp. 300,000;

- d. Often the victim moved places or deliberately avoided giving information because in the criminal case of trafficking in persons, neither the investigator nor the public prosecutor had a basis for detaining the victim. In addition, there is no place for the victim to care for his personal needs while the trial is in progress.

Child victims of criminal acts should be entitled to compensation in this case in the form of restitution for what they have experienced, both material and immaterial losses. Then, the perpetrators are obliged to provide compensation to the victim if during the investigation process the perpetrator is deemed able to provide the compensation. If unable, then according to statutory regulations it can be replaced with a maximum imprisonment of 1 (one) year.

Apart from that, basically the application of this restitution is also quite difficult because the judge has to look at each case very carefully in order to make a decision. Actually, in his or her prosecution, the public prosecutor has to submit a request for restitution based on evidence brought to the court and inform the amount of the requested restitution to the witness and the victim protection agency after the request or the complete document is submitted.<sup>17</sup> Regarding the absence of a claim for restitution filed by the victim, it is also very unfortunate for the judge because laws and government regulations have provided a great opportunity related to the rights of victims. So, it is hoped that in the future the community, investigators and prosecutors will be more active and work together to protect the rights of children who are victims of criminal acts, especially the crime of trafficking in persons.<sup>18</sup>

The absence of a lawsuit for restitution shows awareness of the rights of children as victims of criminal acts. The restitution can be used for the victims to treat the physically and mentally. Victim should be treated with respect and humanity for their dignity and as the fulfillment of their rights as human being. The appropriate measure must be taken to protect them and make sure that children and their family are safe in physical, mental, and get protection in their privacy. The treatment should be done to make sure that the children as the victims of human trafficking suffered from the trauma. They must be given special treatment to avoid their re-traumatization.

#### **IV. Conclusion**

In Medan District courts since Government regulation Number 43 of 2017 on the Implementation of Restitution for Child Victim of Criminal Act has been

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<sup>17</sup> Azmiati Zuliah, 'Rights to Restitution for Child Victim of Criminal Act Under Government Regulation Number 43 Year 2017', in *E3S Web of Conference 5 (CSSPO)*, 2018, pp. 1-7.

<sup>18</sup> Arif Purnama Oktora and Hilaire Tegnau, 'Strategy for Implementing Operations to Handle the Crime of Narcotics', *Journal of Human Rights, Culture and Legal System*, 1.3 (2021).

issued none of human trafficking case is decided the perpetrators to pay the restitution to the victims. The judges punished the perpetrator with the main sentenced such as imprisonment, detention and fine. Whereas, restitution is kind of criminal victim's rights and it must be fulfilled as the part of human rights enforcement. One of the obstacles that happened in fulfillment of restitution is the lack of understanding on the part of the victim regarding the existence of restitution as regulated in the Prevailing Laws.

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