



## FULFILLMENT OF RESTITUTION RIGHTS FOR CHILDREN AS VICTIMS OF TRAFFICKING CRIME (STUDY OF DECISION NUMBER 68/PID. SUS/2023/PN. TKN)

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**Abstract:** This research aims to see how the implementation of the right to restitution and legal protection for victims of crime, especially victims of trafficking in the form of restitution is regulated in Law Number 21 of 2007 concerning Trafficking in Persons (TPPO Law). The method used in this research is normative juridical, namely legal research conducted by examining secondary data, using a statutory approach (statue approach) and case approach.

The results of the research on the fulfillment of restitution rights for children as victims of human trafficking crimes (Study of Decision Number 68/Pid.Sus/2023/PN Tkn) the victim's family refused to apply for the victim's child restitution rights, this was confirmed by a statement made by the victim's family stating that they did not request restitution rights for the victim's child. It can be concluded that the right to restitution for child victims has not been implemented according to law enforcement officials in Central Aceh district.

**Keywords:** Implementation, Children, Restitution Rights, Human Trafficking

## INTRODUCTION

Children are an inseparable part of the sustainability of a nation and state. In order in the future to be responsible for the sustainability of the nation and state, every child needs to get the widest possible opportunity to grow and develop optimally, both physically, mentally, and socially. For this reason, it is necessary to make protective efforts to realize the welfare of children by providing guarantees for the fulfillment of their rights without discriminatory treatment. Protection of children is a human right that must be obtained by children. Related to this, Article 27 paragraph (1) of the 1945 Constitution stipulates that all citizens are equal in the eyes of the law and government and are obliged to uphold the law and government with no exception. The statement of the Article shows that there is no difference in position in law and government for all citizens, both women and men, adults and children in obtaining legal protection. (Mantali, 2022).

Children's rights are human rights that have been inherent since they were born into the world and who are still in the womb based on applicable laws and regulations such as human rights regarding the right to grow and develop, both mental and social and the right to be protected from various violence and discrimination from anyone. This as a guarantor can later be useful for the nation, religion, and family (Tegar Sukma Wahyudi, 2020). The fact is that children are unable to protect themselves from various threats in the form of mental, physical and social that exist in aspects of life (Lisnawati, 2020). One of the criminal offences that occur in children is trafficking in persons which is a modern form of human slavery.

Trafficking in persons is also one of the worst forms of human dignity and dignity violations. Trafficking is a form of conduct that has a devastating impact on victims of criminal acts (al, 2020). Trafficking syndicates only occur at the national level but have reached the international level (Wido Bayu Syaputra, 2019).

Human trafficking is closely related to an act of slavery or resembling slavery. According to the Palermo Protocol, human trafficking is closely related to an act or resembling slavery. Referring to the Palermo Protocol, human trafficking is defined as at least "prostitution of others" or "other forms of sexual exploitation", forced labor or service, slavery or slavery-like practices, servitude, organ harvesting, while human trafficking according to the United Nations Protocol (UN) has been ratified into Law Number 21 of 2017 which includes recruitment, delivery, or receipt by means of threats, coercion, violence, kidnapping, fraud, abuse of power, or debt bondage for the purpose of any form of exploitation (Kamal, 2019).

The crime of trafficking in persons is a crime that severely violates human rights, not only in terms of the form of its acts but also the consequences caused to victims of trafficking, especially children. The guarantee of protection for children who are victims of child trafficking is generally mandated in Article 28 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that "Every child has the right to survival, growth, and development and the right to protection from violence and discrimination" (Cindy Adiastari, 2018).

The psychological impact that occurs on children who experience criminal acts is prolonged trauma that causes unhealthy attitudes such as, inferiority, excessive fear, impaired mental development, and eventually causes mental retardation in children victims of sexual abuse (Silma Nurhaurima, 2021). Protection for all persons including children in Indonesian law which must be subject to applicable legal rules. This provision is the basis for the state to provide legal protection to all its people, be it men and women, adults and children, especially children who are very vulnerable to discrimination, the government should pay more attention in the form of protection through legal instruments (Maria Magdalena M. D. R Seran, 2023).

As stipulated in Law Number 13 of 2006 concerning the protection of witnesses and victims in giving testimony in every criminal justice process. Protection in Law Number 13 of 2006 explains that all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses or victims must be carried out by the LPSK or other institutions that have been determined by law. Based on Article 3 of Law Number 13 of 2006, namely respect for dignity and dignity, a sense of security, justice, non-discrimination, and legal certainty (Tuage, 2013).

The government also regulates Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Child protection is also regulated in Aceh Qanun Number 11 of 2018 which regulates children's rights as referred to in Article 2 paragraph (1) including:

- a. non-discrimination
- b. Best Interests Of The Child
- c. the right to life, survival and development: and
- d. respect for the opinion of the child

Not only that, legal protection for victims of crime, especially victims of trafficking in persons in the form of restitution, is regulated in Law Number 21 of 2007 concerning Trafficking in Persons (UUTPPO), namely in Article 48 paragraphs (1) and (2) which states that: Paragraph (1): Every victim of trafficking in persons or their heirs is entitled to restitution. Paragraph (2): Restitution as referred to in paragraph (1) shall be in the form of compensation for:

- a. Loss of wealth or income;
- b. Suffering;
- c. Costs for medical and/or psychological treatment; and/or
- d. Other losses suffered by victims as a result of trafficking.

The government also regulates Government Regulation of the Republic of Indonesia Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims. Therefore, the government provides compensation to children as victims of sexual crimes in the form of restitution rights. The right of restitution is also regulated in Qanun Number 6 of 2014 concerning Jinayah Law in article 1 number 20 explaining that restitution is a certain amount of money or property, which must be paid by the perpetrator of Jarimah. His family or guardian by order of the judge to the victim or his family, for suffering, loss of property, or reimbursement for certain actions.

Government Regulation Number 43 of 2017 concerning the implementation of restitution for children who are victims of criminal acts. Explain in Article 1 paragraph (1), namely the payment of compensation charged to the perpetrator based on a court decision with permanent legal force for material and/or immaterial losses suffered by the victim or his heirs. And Supreme Court Regulation Number 1 of 2022 concerning Procedures for Settling Applications and Granting Restitution and Compensation to Victims of Criminal Acts. In fulfilling the restitution of child victims, law enforcement officials are obliged to prioritize the interests and needs of child victims. Because law enforcement officials cannot be passive in carrying out their obligations to seek the fulfillment of restitution for child victims (M Novrianto, 2023).

### **MAIN PROBLEM**

This study will elaborate further on the views of law enforcement officials regarding the fulfillment of child restitution rights as victims of trafficking in persons in Decision Study Number 68/Pid.Sus/2023/PN. Tkn and how the implementation of child restitution rights as victims of trafficking crimes by law enforcement officials.

### **METHOD OF RESEARCH**

The method used in this study is the normative juridical approach, which is legal research conducted by examining secondary data. The approach used in this study is the statutory approach (statue approach) and also the case approach. This normative juridical research is more qualitative, where this research refers to legal norms that exist in laws and

regulations, court decisions, and data collected either primary or secondary data, will be analyzed with perspective. The goal is to get suggestions on what to do to overcome certain problems.

### **RESEARCH RESULT AND DISCUSSION**

#### **A.The views of law enforcement officials regarding the fulfillment of child restitution rights as victims of trafficking in persons in the study of decision 68/Pid.Sus/2023/PN. Tkn**

Law enforcement officials handling case Number 68/Pid.Sus/2023/PN.Tkn argue that the right to restitution is a form of compensation obtained by child victims or victims who experience non-criminal harm to the child victim both materially and immaterially. One of the child victims who suffered losses that occurred in a human trafficking case that occurred in Central Aceh in 2023 was experienced by a minor. In the Takengon District Court Decision Number 68/Pid.Sus/2023/PN.Tkn, trafficking offenders are sentenced to imprisonment for 13 years in prison and a fine of Rp.120,000,00.00 (one hundred twenty million rupiah) provided that if the fine is not paid, it is replaced with imprisonment for 3 months. However, the verdict did not have the right to restitution of children as victims of trafficking.

Victims of crime in the criminal justice system according to Stanciu quoted by Teguh Prasetyo, in a broad sense victim are people who suffer the consequences of injustice. Stanciu stated that there are two inherent characteristics of the victim, namely suffering and injustice. The emergence of victims cannot be

viewed as a result of illegal acts because the law actually also causes injustice, and causes victims, such as victims due to legal procedures (Trias Saputra, 2022).

Law of the Republic of Indonesia Number 21 of 2007 concerning the eradication of Trafficking in Persons, Article 1 point 3: the victim is someone who experiences psychological suffering. Mental, Physical, Sexual, Economic, and/or Social, resulting from trafficking in persons. Trafficking in persons is the act of recruiting, transporting, sheltering, sending, transferring, or receiving a person by threat of violence, use of force, kidnapping, captivity, forgery. Fraud, abuse of power or vulnerable position, debt bondage or payment or benefit, so as to obtain the consent of the person in control of the other person, whether committed within the country or between countries, for the purpose of exploitation or resulting in the exploitation of the person.

In Indonesia, cases of commercial sexual exploitation of children or child trafficking are increasing, this does not only occur in the surrounding environment or within the country, but this also occurs across countries or transnationally. The Indonesian government is making efforts to deal with child trafficking cases that occur in Indonesia (Adelya Devanda Pratista, 2021). One of them is restitution given as a form of compensation provided by the government. Restitution in the history of law in Indonesia, interpreted by the term "Indemnity", the concept of compensation has long existed and applies in customary law in Indonesia (Sinlaeloe, 2017).

Then the birth of the UN Declaration on the basic principles of justice for

victims encouraged UN member states to provide special legal care and protection for victims of crime. In recent years, legislation accommodating the interests of crime victims has been passed in several countries around the world. One of them is America, whose legislature has passed various laws that recognize basic rights for victims in almost all parts of America, including the right to be protected from sharing, intimidation, sexual harassment, and the right to receive restitution or compensation. Restitution is a form of compensation given to victims or their families by perpetrators or third parties. The form of restitution, which is in the form of returning property, paying compensation for loss of suffering, and replacing the costs of certain actions (Amira Paripurna, 2021).

Where remedies are not fully available from the guilty or other sources, the State shall endeavor to compensate for:

- 1) Victims who suffer severe physical injuries or deterioration in physical or mental health as a result of serious crimes.
- 2) Families, especially dependents of people who died or who were physically or mentally incapacitated as a result of the crime (Amira Paripurna, 2021).

Law of the Republic of Indonesia Number 21 of 2008 concerning the Eradication of Trafficking in Persons, Article 1 point 13: Restitution is a payment charged to the perpetrator based on a court decision with permanent legal force for material and/or immaterial losses suffered by the victim or his heirs.

Based on the results of interviews at the investigator level with Briptu

Muhammad Hatta and Briptu Aji Rangga Pratama, S.Kom. As an investigator at the Central Aceh Police in the Women and Children Protection Unit stated that at the investigation stage, investigators only focus on suspects because the criminal acts committed by the suspect are pure criminal acts and the perpetrator is also a recidivist who has repeatedly committed crimes. The police also do not ask the victim whether to apply for restitution at the investigation stage, this happens because not all investigators understand and know the existence of children's rights in the form of restitution or compensation. Furthermore, a statement from the child companion Mrs. Ernawati as the legal and child companion in case Number 68/Pid.Sus/2023/PN Tkn stated that during his duty to accompany the victim's child, all clients who were accompanied by him, whether rape cases or the like were indeed he did not justify receiving or asking for his restitution rights because in the Gayo custom that developed When a victim receives a nominal amount will get a new impact, namely the defense that it is true that the victim seeks profit / sells himself to the perpetrator. And it is often the subject of ridicule, in the community, so the point is that it only reduces the new risks that arise after the Case Runs and the verdict against the suspect is set, actually thinking more about the side effects, but regardless of that, the child victim will still be fulfilled his rights such as getting justice, being protected, and given health and psychological assistance. In this case, it also did not escape the supervision and protection of P2TP2A, Mr. Ali Husin from the P2TP2A section gave similar information that the child

victim was still fulfilled his right to be protected, as well as health and psychological assistance to help the recovery of the child victim.

Furthermore, at the level of the Public Prosecutor, a statement was delivered by Mr. Aldo Pradiki Sitepu, S.H., M.H as the Public Prosecutor handling case Number 68/Pid.Sus/2023/PN Tkn he said at this level the prosecutor still informed about the right to restitution of the victim's child. But here the victim's family refused to apply for the right to restitution of the victim's child, it was confirmed by a statement made by the victim's family stating they did not ask for the right of restitution for the victim's child.

#### **B. Implementation of the right to restitution of children as victims of trafficking crimes by law enforcement officials**

Regulations regarding the right to restitution of victims of criminal acts of trade in Indonesia are regulated in several laws and regulations, namely: Criminal Code, Criminal Procedure Code, Law Number 13 of 2006 jo Law Number 31 of 2014 concerning Protection of Witnesses and Victims, the Government also regulates Government Regulation of the Republic of Indonesia Number 35 of 2020 concerning Amendments to Government Regulation Number 7 of 2018 concerning the Granting of Compensation, Restitution, and Assistance to Witnesses and Victims, Law Number 21 of 2007 concerning Trafficking in Persons (UUPTPO), Government Regulation Number 43 of 2017 concerning the implementation of restitution for children who are victims of criminal acts, and Supreme Court Regulation Number 1 of 2022 concerning Procedures for Completing

Applications and Granting Restitution and Compensation to Victims of Criminal Acts.

For administrative submission of applications, applications regulated in Article 5 of Perma Number 1 of 2022 concerning Procedures for Completing Applications and Granting Restitution and Compensation to Victims of Criminal Acts, requests for restitution are made in writing in Indonesian then submitted to the head of the court either directly or through the LPSK, investigators, or public prosecutors.

According to Article 9 of Perma, an application for restitution will not remove the right of the victim, family, heirs and guardians to file a civil lawsuit in the event that:

1. The restitution request was denied because the defendant was acquitted or released from prosecution;
2. The request for restitution is granted and the defendant is convicted, but there are injuries suffered by the victim who have not been asked for restitution to the court or have been requested but not considered by the court (Nursobah, 2022).

For case number 68/Pid.Sus/2023/PN Tkn as a result of an interview with Mr. Bani Muhammad Alif, S.H., M.H as the judge handling case Number 68/Pid.Sus/2023/PN Tkn he said that during the trial at the prosecution level, the judge confirmed to the Public Prosecutor whether the child victim was notified and submitted his rights. According to the statement of the prosecutor who handled the victim's family refused to apply for the right to restitution of the victim's child, this was confirmed by a statement made by the victim's family stating that they did not

ask for the right to restitution for the victim's child.

Furthermore, from the Welfare Center with Mr. Irvan as a companion to the community, the Lhokseumawe Advisory Center argues that in cases where the victims are children, they are tried not to enter the realm of trial or settlement by family (restorative justice). However, in this case, it is a pure criminal offense, not a complaint offense, therefore the Public Service Center still notifies law enforcement officials to inform the rights of child victims who suffer losses due to criminal acts.

In its implementation, the right to restitution has not been running because there are still obstacles in its implementation such as proving immaterial losses from victims, then in determining the amount of compensation given by perpetrators to victims. Regarding this, a third party is needed to determine how much compensation must be given to the child victim. However, the third party here is still questioned by law enforcement officials in this case whether the third party here is the Witness and Victim Protection Agency (LPSK) or another party, and the next obstacle is the economic problem of the perpetrators who are still unable to pay the right to restitution due to economic problems. The implementation of this right of restitution has not yet taken place in case Number 68/Pid.Sus/2023/PN Tkn and in Central Aceh. From this study, the fulfillment of child victim restitution, law enforcement officials are obliged to prioritize the interests and needs of child victims. Because law enforcement officials cannot be passive in carrying out their

obligations to seek the fulfillment of restitution for child victims.

## CONCLUSION

It can be concluded that the result of the implementation of the right to restitution of children as victims of trafficking crimes in the study of decision Number 68/Pid.Sus/2023/PN Tkn. the child victim did not claim her rights as a victim and made a statement that she did not claim her rights as a victim. In its implementation, the right of restitution has not been running because there are still obstacles in its implementation, such as in determining the amount of compensation given by the perpetrator to the victim. Regarding this, a third party is needed to determine how much compensation must be given to the child victim. However, the third party here is still questioned by law enforcement officials in this case whether the third party here is the Witness and Victim Protection Agency (LPSK) or another party and the next obstacle is the economic problem of the perpetrators who are still unable to pay the right to restitution due to economic problems. From this study, the fulfillment of child victim restitution, law enforcement officials are obliged to prioritize the interests and needs of child victims. Because law enforcement officials cannot be passive in carrying out their obligations to seek the fulfillment of restitution for child victims.

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