

Managing Restitution Model During the Protection of Human Trafficking Victim's

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Abstract- This study aims to determine the right model for the protection of human trafficking victims. This research on the implementation of restitution for them that's persons committed by corporations in law enforcement is a normative legal research related to the theory of the rule of law, principles of criminal law, basic concepts of criminal law, rules / norms of criminal law that are specifically related to protection of victims, criminal liability and corporate criminal liability. The results of this study are human rights, criminal law and various efforts undertaken to improve corporate criminal liability and protection of victims of trafficking by referring to international treaties and customary international law.

Index Terms- Corporation, restitution, victim, protection, law

I. INTRODUCTION

Corporations have a large role in the development of the economy. Based on recruitment rates, most of the developing country population are middle to lower class. The need for employment is a crucial problem, especially considering the relatively high unemployment. Limited employment opportunities will hamper government programs in the welfare of the community. Without a job with a decent salary will make it difficult for people to meet their needs. The existence of a corporation as a provider of employment makes it easy for people to find sources of income. Someone who works in a corporation is promised to receive payment or wages in accordance with the provisions agreed upon periodically and continuously so that with these wages they will be able to maintain their lives. Apart from providing employment, some corporations also carry out business activities as job suppliers for the community.

Corporate activities as a job distributor makes it easy for those who need jobs to get jobs according to their abilities. But on the way, not all job distribution companies carry out their activities cleanly. The Criminal Act of Trafficking in Persons is deemed committed by a corporation if the crime is committed by persons acting for and on behalf of the corporation or for the benefit of the corporation, based on employment relations or based on other relationships within the scope of the corporation's business, either individually or jointly.

Criminal Trafficking in Persons is usually carried out by several individuals, organized and divides tasks both in their respective roles as individuals or for and on behalf of a corporation. The element of criminal offense of trafficking in persons can be fulfilled if there is at least the party sending, the

party receiving, the party exploiting the victim. Party Individuals who have a role in the Crime of Trafficking in Persons usually through the use of economic weakness potential victims, individuals will cooperate or commit to the corporation to supply manpower. This is done because most individuals rely on salaries as employees or commissions as payment, while corporations rely on the difference in profits from Trafficking in Persons.

Related to the legal protection of the victims' rights, it is time for handling cases of trafficking in persons to pay special attention to the interests of the victims, in addition to being a witness who knows the occurrence of a crime as well as the position of the victim as a legal subject having an equal position before the law (equality before of the law). Attention to victims in handling criminal cases should be done on the basis of compassion and respect for the dignity of victims (compassion and respect for their dignity). [2] How to judge is not only using ratio (logic), but also loaded with conscience or compassion. [3]

Trade Crime develops due to various driving factors, one of which is poverty. The poor who live in remote areas are promised work with large salaries, thus encouraging these children to follow the invitations of traffickers. The condition of the poverty level is more easily influenced if accompanied by a low level of education. On the other hand, that the high number of trafficking offenses is also caused by the legal system, law enforcement system, and the culture of the community as a support or access to trafficking

The application of restitution sanctions is often ineffective because of the stipulation of legal subjects which often only ensnare the perpetrators of the field, there are arrangements for substitution of restitution in the form of confinement for a maximum of 1 year confinement, the perpetrators consider fulfilling restitution only as an option and not a requirement, so it is very depends on the will of the offender not on the ability of the offender so that this further obscures the purpose of holding restitution in criminal law, especially in Trafficking in Crimes because victims often do not feel the benefits of the restitution .

II. METHOD

The research method is a method used by researchers to approach, study, and solve problems from a study. In this research based on the identification of the problems raised, the law is conceived as the principle of morality or the principle of justice, which is natural and universally applicable; law as a positive rule generally accepted in abstract; and law as decisions created by judges in concerto in judicial processes as part of judges' efforts to resolve cases or cases. The approach used in this study uses a

normative juridical approach. In addition, in order to analyze the rights of victims of trafficking in persons who have been violated by human rights, and to calculate the amount of loss, compensation, restitution both materially and or immaterially, this study also uses an empirical approach.

Specifications This study is a descriptive analysis, the research seeks to explain or illustrate the principles of criminal law, the basic concepts of criminal law, international law, Countries of law relevant foreign and court decisions in law enforcement against human trafficking crime henceforth analyzed in order to examine the implementation of restitution of victims of trafficking in persons committed by corporations. This study uses secondary data that is data obtained from library materials. Secondary data in this study will be obtained from the legislation in force in the implementation of restitution instruments in trafficking in persons carried out by corporations linked to the criminal justice system, legislation with international treaties in the field of human rights relating to restitution, as well as from the draft laws in the national legal system that contain concepts of corporate criminal liability and protection of victims of crime in the legal system . The technique of data collection is done by the method of library study, which is obtaining secondary data which can be in the form of primary and secondary materials. All data obtained will be analyzed using qualitative juridical methods. The data obtained were compiled systematically and analyzed qualitatively using the theory of rule of law as Grand Theory , Legal Theory of development as Middle Range Theory and Law Enforcement, Corporate criminal liability as Applied Theory , taking into account the relationship between national law and international law. [6] The scope of this research includes the implementation of restitution on trafficking in persons connected with the criminal justice system, criminal justice system and victim protection in Indonesia. Related to the approach in this research is a normative juridical method that uses secondary data.

III. DISCUSSION

Legal protection for the community can be achieved well if it is done with integrated and effective law enforcement. Legal protection or law enforcement is the same as law enforcement against the crime of trafficking in persons . The law enforcement regulated in the laws and regulations of trafficking in persons in Indonesia is carried out by way of punishment in the form of imprisonment, confinement, fines and restitution. However, in the level of implementation, that the Indonesian legal system in particular is a criminal justice system, especially with the imposition of sanctions restitution on perpetrators is still a taboo to be applied in the criminal justice system in Indonesia. This is because restitution sanctions are civil sanctions, and have not made the restitution sanctions criminal sanctions such as prison sanctions that cannot be negotiated or replaced with other sanctions.

Considering the loss suffered by the victim, it should be a sanction of restitution on the perpetrators or convicted persons of trafficking in persons can be carried out or applied. However, in the criminal justice process, negligence and even violations of the individual rights of victims of crime, in particular the crime of trafficking in persons, are seen in the process of solving the crime problem, along with the need for adequate legal protection for

victims of crime. Therefore this problem needs to get serious attention. [7]

But in practice, there is a substitute for restitution, not to mention the substitute criminal restitution can still be reduced through remission. If that happens then the position of restitution will be of no benefit to both the newspaper and the perpetrator. The restitution of substitution becomes a cage, can be an alibi for the offender to avoid paying money to the victim or avoiding other fines.

Substitution of restitution by confinement opens a gap for those convicted as criminals of trafficking in persons to avoid restitution. Sanctions in the form of fines imposed by judges on the defendants, there is no guarantee that the defendants will pay the fines. Because it prefers confinement rather than paying the fine. In addition, in the case of fines, it is not yet known whether if paid by the defendant the fines are paid to the victim or whether the fines are given to the state. Such matters still require clear and concrete regulations in the implementation of decisions and as an implementation of the making of these laws and regulations. According to the author, to function or implement sanctions in the form of restitution, it is necessary to confiscate the assets of the defendant as collateral for restitution sanctions that must be paid by the defendants. Thus, new regulations need to be carried out so that the fulfillment of the rights of the victims can be carried out by the judge in enforcing the crime of trafficking in persons properly.

Barda Nawawi Arief writes, one alternative study that is very urgent and in accordance with the current idea of reforming national law, is the study of the legal system that lives in society. It is said so, because it is often stated, that the national legal system in addition to being able to support national development and the needs of international relations, must also be sourced and not ignore the legal values and aspirations that live and develop in people's lives. The legal values that live in the community can be sourced or extracted from the values of customary law and religious law values.

In relation to the perpetrators' responsibility for the loss or suffering suffered by the victim (as a result of his actions), for some criminal acts that occur in the community, often the settlement is done on the basis of peace between the two parties. This method of resolution is a living reality among certain members of the community in Indonesia which bases the settlement on cultural of law.

IV. RESULT

The provision of restitution to victims of Trafficking in Crimes is a very important component. In Trafficking in Crimes it is not enough to just impose criminal sanctions on the perpetrators, because in this case there are victims whose rights must be considered and recovery needs to be done for material and immaterial losses suffered by victims as a result of the Trafficking Acts.

Prosecution and conviction of trafficking offenders tend to be given to individual perpetrators, whereas in trafficking corporations are often the tools used by perpetrators to commit trafficking crimes. In connection with this it is proper that if trafficking is carried out by individuals who are corporate administrators then individuals and corporations are both given

criminal penalties. This can be related to the concept of *deelneming* in criminal law. The crime of trafficking in persons is deemed committed by a corporation if the crime is committed by persons acting for and on behalf of the corporation or for the benefit of the corporation, based on work relationships or based on other relationships within the scope of the corporation's business, either individually or jointly.

This concept needs to get a shift in meaning, because often law enforcement continues to focus only on individual actors, even though these actors are corporate administrators but only individuals are legally processed. This will be different if the corporation is seen as a means or means or facilities supporting the crime of trafficking or jointly carrying out the crime. If it is associated with *deelneming*, then both individual corporate management and corporations as legal entities should be subject to criminal sanctions.

In the case of material suffering or loss suffered by the victim as a result of a criminal act committed by another person, according to Mardjono Reksodiputro, it is appropriate that the perpetrator of the criminal act (the other person) provides the compensation. The same thing was also stated by Purwoto S. Gandasubrata, "A criminal act that is against the law but does not violate someone's rights and therefore does not because real harm, is sufficiently given a criminal (prison), whereas conversely, only if this criminal act violates the rights and causes harm, then deserves compensation (restitution)".

Furthermore, the issue of restitution to victims of crime in the context of the relationship between perpetrators and victims, according to Romli Atmasasmita, is an embodiment of the resocialization of the responsibility of the perpetrators as citizens. Through the process of socialization intended and expected to be embedded a sense of social responsibility in the perpetrators, so that the value of restitution in this case does not lie in its efficacy to help the victim, but serves as a tool to further sensitize the perpetrators of criminal acts over their "debt" (due to their actions) to the victim.

Those are how the system of restitution and compensation to victims of crime can be done, as follows:

1. Civil damages are given through a civil process. This system separates claims for compensation from victims from criminal proceedings.

2. Civil compensation is provided through criminal proceedings.

3. Compensation that is civil and mixed with criminal nature is given through criminal proceedings. Although the Restitution here is still civil, there is no doubt about the nature of the crime. One form of Restitution under this system is Compensation fines. This fine is a monetary obligation that is imposed on the convicted person as a form of compensation that should be given.

4. Compensation that is civil, provided through a criminal process and supported by sources of state income. Here compensation does not have any criminal aspects, even though it is given in criminal proceedings. So Compensation remains a pure civil institution, but it is the state that fulfills or bears the compensation obligations imposed by the Court on the perpetrators. This is an acknowledgment that the state has failed to carry out its duties to protect victims and fail to prevent criminal acts.

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V. CONCLUSION

The restitution model in Indonesia refers to the PTPO Law, which in the implementation of restitution is carried out in two ways, namely: Efforts by law enforcers themselves, including the police, prosecutors and judges;

From the first way, that victims of trafficking in persons are notified by law enforcement about their rights. This is very reasonable with the victim's lack of knowledge of their rights, so it is feared that victims do not understand or even know what their rights are. Therefore, if there is an effort from the law enforcers themselves to submit or pay attention to the victims' rights, the possibility of granting restitution will be fulfilled by supplementing with evidence to explain / a letter related to the loss suffered by the victim. Victims by submitting themselves by submitting a new lawsuit to the court.

For the second one, the victim filed a lawsuit separately, it would slow down the victim to obtain her rights. Considering that, in the law enforcement system / legal justice system in Indonesia, especially regarding civil lawsuits takes a long time, and administration is very complicated, on the other hand that most victims come from disadvantaged families.

Implementation of the granting of restitution to the victim is not fulfilled until it exceeds the 14 day limit, the victim or his heir inform the matter to the court. The court will give a written warning letter to the restitution provider to immediately fulfill the obligation to give restitution to the victim or his heir. If the warning letter is not implemented, the public prosecutor confiscates the assets of the convicted person and auction off the assets of the perpetrator. If the perpetrators are unable to pay restitution, then the perpetrators will be imposed with substitute imprisonment because it is difficult for the TPPO perpetrators to have no more money or assets. The assets owned may have been transferred on behalf of others or squandered before the perpetrators' assets were executed. Movable property to be confiscated, for example a two-wheeled or four-wheeled vehicle if it is executed and placed in an unfavorable place and is not used, the value of the vehicle when auctioned will decrease in value.

There is a concept of fulfilling restitution as legal protection for victims of crime as a corporate criminal liability that can be a solution so that victims get restitution, namely the concept of fulfilling restitution carried out before a court ruling. The concept of fulfilling restitution carried out before this court ruling refers to the model adopted in Japan that uses the culture of apology it forgiveness in offering Shimashosu and jidan as an attempt to apologize, show guilt and also provide restitution for victims. This concept is different from the definition of restitution under the PTTPO Law in article 1 paragraph 12 which reads: Restitution is the payment of compensation which is charged to the offender based on a court decision that has permanent legal force for material and / or immaterial losses suffered by the victim or his heir.

In this article restitution can only be made after a court decision has a permanent legal force. This has clear legal certainty in which the process of requesting restitution will be tested for eligibility based on legal facts in court. In addition, based on Article 7 of Article 7 paragraphs 2 and 3 of the PSK Law, the filing of a request for Restitution before a criminal decision is made by a LPSK decision. The LPSK decision was made based on the request of the victim and law enforcer, in this case the police and the public prosecutor's request for restitution for the loss of the victim he suffered. LPSK accepts the request and then collects data and analyzes and calculates the appropriate loss requested based on the method and method determined by LPSK. LPSK can grant requests in the form of LPSK decisions and or also refuse to grant based on considerations from LPSK.

This mechanism has a less effective impact in terms of fulfilling restitution where victims should receive restitution as quickly as possible without waiting for the trial process. The victims who have suffered material and immaterial losses need immediate relief. Referring to the culture of Shimatsusho and jidan who provided a loophole for perpetrators to make a written apology statement with deep remorse for their mistakes and offer a sum of money as a symbol of remorse and accountability to the victim. Jidan is a contract between the perpetrator and the victim which is an out-of-court settlement of the victim's claim for damage, material or emotional damage. The perpetrators offer a Jidan by giving some money to compensate the victim.

Both Shimatsusho and Jidan, both are the same thing for fulfilling restiusi, only shimatsusho is used in mild criminal cases and is more informal than Jidan which is more formal and is used in criminal cases which are quite serious. Fulfillment of restitution by means of Shimatsusho and jidan did not stop the criminal process in question. The fulfillment of restitution by way of shimatsusho and jidan will be considered by the judge in terms of lightening the sentence and also indicates the good will of the perpetrators in regretting his actions. This fulfillment is beneficial for both the perpetrators and victims, the perpetrators are given the opportunity with conscience for shimatsusho and jidan by hoping that the sentence will be lightened . The advantage of using shimatsusho and jidan to the victim is very beneficial because the victim can receive restitution as the right to recover and overcome the loss suffered without having to wait for the trial process.

Need for adjustments due sense of restitution based on court decisions have followed the principle of different models with shimatsusho and jidan restitution. Restitution that is carried out is not made easy in the sentence sentenced, but only the perpetrator

will not be subject to additional penalties which are always mentioned in the ruling that if the restitution is not carried out then the convicted person will receive additional punishment. Alternatives to additional confinement become a clear obstacle to fulfilling restitution. Perpetrators prefer to receive additional criminal penalties in addition to paying restitution for victims. Added force in article 45 is not carried out properly so that restitution will be a wishful dream for the victim when dealing with perpetrators who do not have awareness of the importance of fulfilling restitution for victims of crime.

The implementation of the Jidan is carried out by the Corporation by giving a sum of money to victims of crime resulting from corporate misconduct after calculating the loss and also the cost of repairs to provide a fine and criminal penalty for the director. Corporate responsibility that is implemented in Japan adheres to the dual penalties given to corporations and also the management of a corporation that is the person responsible for a crime committed. The retribution granted by the Japanese court to corporate liability is only a criminal fine, penalty of revocation of a license / license, closure of the company becomes a punishment that must be received by the corporation so that the corporation cannot commit similar acts in the future.

Shimatshuho and Jidan are a model of restitution that can be implemented in Indonesia. Shimatsusho and jidan did not change the core understanding of restitution as legal protection for victims of crime. The condition of victims of trafficking in persons who have suffered material and immaterial losses will greatly require recovery in the form of restitution. The meaning of restitution in the Government Regulation of the Republic of Indonesia Number 44 Year 2008 concerning the granting of Compensation, Restitution and Assistance to Witnesses and Victims in Article 1 paragraph 5, which reads:

Restitution is compensation given to the victim or his family by the perpetrator or a third party, which can be in the form of returning property, payment of compensation for loss or suffering, or reimbursement for certain actions.

The definition of restitution above does not require a court decision with permanent legal force, so this understanding is more in line with the restitution model by way of shimatsusho and jidan. Apology forgiveness culture is a culture that can be emulated by actors. Law enforcement should provide a loophole and appreciation for perpetrators who provide restitution before a court decision and consider mitigation of the sentence so that restitution before the decision becomes a culture that can benefit both the perpetrator and the victim.

Nonetheless, the fulfillment of restitution made after a decision which has legal force can still be carried out with the condition that the restitution cannot be replaced by additional confinement, or at least a maximum effort is made to meet the sanction of retribution based on a court decision that has permanent legal force.

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