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The Problematics of Asset Seizure as Compensation for Fulfilling Victims' Rights in Human Trafficking Crimes

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Abstract

Providing restitution in cases of the crime of human trafficking in Indonesia is still not well realized because there is no law that specifically regulates the confiscation of the perpetrator's assets to provide restitution to the victim. Restitution is a compensation system that is carried out to restore the victim's rights when the victim experiences the crime. Restitution arrangements are contained in Law no. 31 of 2014, PerMa No. 1 of 2022. Restitution for criminal acts of human trafficking currently still does not have such strong power to provide compensation to victims in accordance with what the victim expects through LPSK calculations, in fact there are underpayments and no payment of restitution at all to victims. This is known from the 3 decisions raised in this writing, namely the first is Decision No. No. 592/Pid.Sus/2021/PN Ckr, Decision no. 168/Pid.Sus/2020/PN.Pml, and finally Decision No. 48/Pid.Sus/2021/PN.Cbn. The final solution for granting restitution ends in imprisonment for a maximum of one year if the TIP perpetrator is unable to pay the restitution. Making TIP perpetrators prefer to say they are unable to pay restitution. This writing uses normative research methods to emphasize the existence of a legal vacuum. This writing is written as literature and aims to encourage the revision and improvement of the Law regarding the regulation of restitution and confiscation of assets of TIP perpetrators. Legal interpretation by a judge is something that can be done by law to achieve restitution for victims based on article 1 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power.

INTRODUCTION

Human trafficking cases, hereinafter referred to as TPPO (Tindak Pidana Perdagangan Orang), have become a priority concern for the Witness and Victim Protection Agency (LPSK) in Indonesia. This is evidenced by the official website of LPSK (https://lpsk.go.id/home/prioritas), which includes TPPO as one of the cases receiving special attention. According to Press Release No. 79/SP/HM.01.02/POLHUKAM/7/2023, the number of TPPO cases involving

Indonesian Migrant Workers (Pekerja Migran Indonesia or PMI) abroad continues to increase. Data from the Ministry of Foreign Affairs of the Republic of Indonesia shows that, as of 2022, a total of 1,262 non-procedural PMIs had their cases handled by Indonesian representatives in Southeast Asia—an increase of up to 700% from the previous year. These alarming statistics demonstrate that human trafficking has escalated into a national issue that requires urgent and special attention.

Human trafficking is an act prohibited under a specific legal framework, namely Law No. 21 of 2007, which addresses the criminal offense of human trafficking. The definition of human trafficking is provided in Chapter I, General Provisions, Article 1, point 1, which states:

> *""Human trafficking refers to the act of recruiting, transporting, harboring, sending, transferring, or receiving a person by means of the threat or use of force, abduction, confinement, fraud, deception, abuse of power or position of vulnerability, debt bondage, or by giving payments or benefits to obtain the consent of a person who has control over another person, whether conducted within a country or across national borders, for the purpose of exploitation or resulting in the person being exploited."*

Forms of exploitation in human trafficking, as defined in Article 1 point 7 of Law No. 21 of 2007, encompass a wide range of acts involving individuals who become objects of trade. These include:

> "*Prostitution, forced labor or services, slavery or practices similar to slavery, oppression, extortion, exploitation of a person's physical, sexual, or reproductive organs, or the unlawful transfer or transplantation of organs and/or body tissues, as well as the exploitation of a person's labor or abilities by another party for material or immaterial gain."*

The elements of human trafficking (*TPPO*) according to legal scholar Syamsudin Aziz refer to the provisions of Indonesia's positive law and are outlined as follows (Kartanegara *et al.* n.d.):

a. **Perpetrator Element**
   "Any person," as referred to in the Law on the Eradication of the Criminal Act of Human Trafficking (UU PTPPO), is understood as either an individual or a corporate entity that commits the crime of human trafficking. (Article 1 point 4 of the UU PTPPO).
b. **Process Element**
   This refers to the sequence of actions or events that occur either naturally or by design, which include: recruitment, transportation, harboring, delivery, transfer, or receipt of a person.
c. **Means Element**
   This element refers to specific acts or methods used to ensure the trafficking process is carried out. These include: threats, coercion, use of force, abduction, confinement, forgery, deception, abuse of power or a position of

vulnerability, debt bondage, or giving payments or benefits to obtain the consent of a person having control over another individual.

d. **Purpose Element**

This refers to the intended outcome or objective to be achieved as a result of the actions committed by the perpetrator of human trafficking. It includes the exploitation of a person or causing a person to be exploited, as stated in Article 1 point 1 and Article 2 paragraph (1) of the Law on the Eradication of the UU PTPPO.

This occurred in several cases involving victims as reflected in three court decisions: Decision No. 592/Pid.Sus/2021/PN Ckr, Decision No. 168/Pid.Sus/2020/PN Pml, and Decision No. 48/Pid.Sus/2021/PN Cbn. The victims were recruited through deceptive means, involving document forgery to make the recruitment process appear legal. Tempting offers of high salaries were used to lure victims into participation. In Decision No. 592/Pid.Sus/2021/PN Ckr, it was stated that Hj. Tati brought the victim, Nengyati, to the house of witness Syarif Hasyim in Dusun Banteng Opong, Cikarang Village, Cilamaya Wetan District, West Java. Upon arrival, the victim was offered a job in Abu Dhabi by Syarif Hasyim, with a promised salary of USD 250–300 per month.

Meanwhile, in Decision No. 168/Pid.Sus/2020/PN Pml, "*after witness Rohman returned to the office with the required documents and met with Togar, he was informed that he would be employed on a purse seine fishing vessel under the Korean flag, with an estimated salary of USD 400 (approximately IDR 6,500,720), along with a bonus that exceeded the base salary. Hearing this offer, Rohman became even more convinced and enthusiastic about accepting the job.*"

After the recruitment process was completed, the victims were then assisted in obtaining the necessary documents to work as crew members (ABK – *Anak Buah Kapal*), including passports, medical certificates, and supporting certifications to facilitate quick employment. Once all documents were prepared, the victims were deployed to their designated workplaces. Unfortunately, the reality of the work did not match what had been promised during the recruitment process. The victims experienced exploitation and physical abuse.

In the first case, Decision No. 592/Pid.Sus/2021/PN Ckr, the victim, Ani Nurani, was assigned to pick fruit and carry heavy loads from 4:30 a.m. until 11:00 p.m., for a period of three years. During her employment, she frequently heard the sound of bomb explosions, which caused her to fear for her life on a daily basis, as she worked in an area that was actively experiencing conflict.

In the second case, Decision No. 168/Pid.Sus/2020/PN Pml, victims Muhammad Yusup and Azuar suffered physical violence. Victims Muhammad Yusup, Muhammad Yani, Azuar, Riski Panggareza, and Bernardus Maturbongs were subjected to inhumane conditions, including being forced to eat bait fish, decaying chicken meat,

and drink desalinated seawater. They also received only partial payment of their promised wages, with the majority withheld.

In the third case, Decision No. 48/Pid.Sus/2021/PN Cbn, the victims were placed on vessels named Zhou Yu 603 and Zhou Yu (China), both of which were small ships, contrary to the original promise that they would work on a Korean purse seine vessel. Onboard, they suffered physical violence, including beatings from the captain of Zhou Yu 605, were given rotten vegetables to eat, desalinated seawater to drink, and forced to work excessive hours (up to 18 hours per day), while receiving wages that did not match the initial agreement. Similar abuse was experienced by victims Agung, Nugi, and Aidul, who also served as crew members on the Zhou Yu vessel. The promised wages, as outlined in the contracts signed in Indonesia with PT. Maritim Samudera Nusantara, were not fulfilled. Furthermore, the perpetrators profited financially from each successful recruitment of a person to be employed as a crew member.

The losses suffered by victims in these cases are by no means insignificant, encompassing both material and immaterial harm. Therefore, the State is obligated to protect the rights of all its citizens. The State's efforts to safeguard victims' rights are reflected in Law No. 21 of 2007 concerning the Eradication of the Criminal Act of Human Trafficking, which contains substantive provisions for punishing and prosecuting TPPO perpetrators. In addition, Law No. 31 of 2014, commonly referred to as the LPSK Law, serves to protect and restore the rights of victims through a dedicated institution established under this law.

The relevant law also includes provisions for compensation, known as restitution. Restitution is regulated under Article 1 point 11 of Law No. 21 of 2007, which states: "*Restitution is compensation provided to the victim or their family by the perpetrator or a third party.*" However, in several court decisions referenced, the provision of restitution was not realized due to partial payments, failure to pay, or a complete disregard of the obligation to pay restitution.

Law No. 21 of 2007 emphasizes restitution only as an additional punishment, stipulating in Article 50 paragraph (4): "*If the perpetrator is unable to pay restitution, they shall be subject to a substitute imprisonment of up to one (1) year.*" Meanwhile, Supreme Court Regulation (PerMa) No. 1 of 2022 offers further guidance on situations in which restitution is not fulfilled. According to Article 12 paragraph (11) of PerMa No. 1 of 2022: "*Upon receiving the notification as referred to in paragraph (10), the Attorney General/Public Prosecutor/Military Prosecutor shall seize the assets of the perpetrator and/or third party and auction the assets in order to fulfill the restitution payment within a maximum of 30 (thirty) days or 14 (fourteen) days in the case of restitution related to human trafficking crimes.*"

In human trafficking (TPPO) cases, there is currently no specific legislation that regulates the procedures and mechanisms for asset seizure. As a result, asset seizure in TPPO cases still relies on the legal framework established by the Indonesian Criminal

Procedure Code (KUHAP). Under KUHAP, seizure is defined in Article 1 point 16 as: "*Seizure is a series of actions taken by an investigator to take control of and/or store movable or immovable, tangible or intangible objects under their authority for the purpose of evidence in investigation, prosecution, and trial.*"

However, asset seizure under KUHAP primarily focuses on the confiscation of items or objects that are directly used in the commission of a criminal act. Assets owned by the perpetrator that are not directly linked to the crime are not considered as objects eligible for seizure. Types of items that may be seized under KUHAP are listed in Article 39 paragraph (1), which reads as follows:

"*Objects subject to seizure include:*

a. *Property or receivables of the suspect or defendant that are wholly or partially suspected to have been obtained through a criminal act or as proceeds of a criminal act;*
b. *Items that have been directly used to commit a criminal offense or to prepare for it;*
c. *Objects used to obstruct the investigation of a criminal act;*
d. *Items specifically made or intended for committing a criminal act;*
e. *Other objects that are directly related to the criminal offense committed."*

Furthermore, paragraph (2) provides:

"Objects under civil or bankruptcy seizure may also be seized for the purpose of criminal investigation, prosecution, and adjudication, as long as they meet the conditions set forth in paragraph (1)."

Based on these provisions, the seizure of a perpetrator's assets is not explicitly defined or regulated beyond those directly linked to the commission of the criminal act. As such, asset seizure in human trafficking (TPPO) cases, particularly regarding assets not directly involved in the crime, remains legally ambiguous under the current procedural framework).

METHOD

The research method used in this paper is normative juridical research. Normative legal research essentially involves examining legal issues such as legal gaps (rechtsvacuum), legal obscurity (vagueness of norms), or normative conflicts—where a norm contradicts another norm. According to Petter Mahfud Marzuki, normative legal research aims to answer legal problems through legal rules, legal doctrines, and legal principles (Dr. Muhaimin, S.H., 2020).

This study qualifies as normative juridical research because the author seeks to analyze legal actions that can be undertaken to address the absence of specific regulations regarding the enforcement of restitution payments to victims of human trafficking. This will be done through judicial interpretation with the aim of achieving legal benefit (kemanfaatan hukum), in line with the objectives of modern penal policy, which emphasizes victim restoration and recovery.

This research employs a normative legal method, and therefore adopts three approaches. The first is the statutory approach, which involves examining all laws and regulations relevant to the legal issue being discussed or analyzed.

In this context, the author will examine statutory regulations concerning victims' rights, restitution for victims of human trafficking, and asset seizure. The legal instruments analyzed in this study include the 1945 Constitution of the Republic of Indonesia; Law No. 39 of 1999 concerning Human Rights; the Indonesian Penal Code (KUHP); the Indonesian Criminal Procedure Code (KUHAP); Law No. 13 of 2006 concerning the Protection of Witnesses and Victims as amended by Law No. 31 of 2014; Law No. 21 of 2007 concerning the Eradication of the Criminal Act of Human Trafficking; Law No. 19 of 2019 as the second amendment to Law No. 30 of 2002 concerning the Corruption Eradication Commission; Presidential Regulation No. 19 of 2023 concerning the National Action Plan for the Prevention and Handling of Human Trafficking 2020-2024; Supreme Court Regulation (Perma) No. 1 of 2022 concerning the Procedure for Restitution and Compensation for Victims of Crime; and the Regulation of the Attorney General of the Republic of Indonesia No. 10 of 2019 amending Regulation No. Per-002/A/Ja/05/2017 on the Auction and Direct Sale of Seized or Confiscated State Property or Executed Seized Goods.

The case approach is carried out by examining judicial decisions that have permanent legal force and are relevant to the legal issue being studied. In this research, the case approach involves an in-depth analysis of three court decisions: Decision No. 592/Pid.Sus/2021/PN Ckr, Decision No. 168/Pid.Sus/2020/PN.Pml, and Decision No. 48/Pid.Sus/2021/PN.Cbn. These three rulings concern confirmed incidents of TPPO in which the essential elements of the crime, as stipulated in Law No. 21 of 2007, were fulfilled. Unfortunately, in all three cases, the victims were denied their rights, particularly the right to restitution, as guaranteed under Law No. 31 of 2014, Article 1 point 11, which defines restitution as "compensation provided to the victim or their family by the perpetrator or a third party." This research seeks to explore this issue more comprehensively in order to propose new ideas or legal interpretations that could help ensure the realization of victims' rights to restitution.

The conceptual approach is based on legal doctrines and the development of legal science. This approach aligns established legal doctrines and evolving legal thought with the legal issue under examination (Dr. Muhaimin, S.H., 2020). In this study, the researcher employs a conceptual approach through the lens of legal interpretation theory. Legal interpretation is exercised through judicial authority, as stipulated in Article 1 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power, which states: "*Judicial power is the independent power of the state to administer justice in order to uphold law and justice based on Pancasila, for the realization of the rule of law in the Republic of Indonesia*." Through this interpretation, the researcher aims to explore how the judiciary can play a role in ensuring that the goals of modern penal policy, particularly those centered on restorative justice and victim recovery, are realized in practice.

RESULTS AND DISCUSSION

Case Facts

This study examines three court rulings in detail, with the first being Decision No. 592/Pid.Sus/2021/PN Ckr. The case revealed deficiencies in the payment of restitution that was supposed to be paid jointly and severally (tanggung renteng) by Defendant Syarif Hasyim, who was involved in the human trafficking offense. In a signed statement dated June 14, 2021, Syarif Hasyim declared his inability to pay restitution to the victims. As a result, the victims received only IDR 40,000,000 (forty million rupiahs) from Defendant Muhibah alias Habibah, which was to be equally divided between the two victims, each receiving IDR 20,000,000. The amount was deposited by the defendant through the Witness and Victim Protection Agency (LPSK).

However, the restitution request granted by the court, as stated in the ruling, reads: "*To grant the restitution request of victim Ani Nurani in the amount of Rp 34.669.000,00 (thirty-four million six hundred sixty-nine thousand rupiahs) and victim Nengyati Binti Saliri Kamad in the amount of Rp 28.941.150,00 (twenty-eight million nine hundred forty-one thousand one hundred fifty rupiahs), to be jointly borne by the female defendant and witness Syarif Hasyim. Should the female defendant be unable to pay, the amount shall be substituted by two (2) months of imprisonment.*" The total restitution owed was IDR 63,610,150, whereas only IDR 40,000,000 was paid, leaving a shortfall of IDR 23,610,150 that remains unresolved.

The second ruling examined in this study is Decision No. 168/Pid.Sus/2020/PN.Pml, which involves Defendant Muhammad Zakaria. In this case, the defendant established a limited liability company (PT) under the name PT Sinar Muara Gemilang, which served as a front to legitimize the recruitment process and to deceive prospective victims into believing they were being hired legally as crew members (ABK – Anak Buah Kapal or ship workers). Muhammad Zakaria's primary role was to falsify official documents, including diplomas, identity cards (KTP), family cards (KK), police clearance certificates (SKCK), birth certificates, and other

supporting documents. These were used to facilitate the trafficking process and to mislead the victims into trusting the legitimacy of the recruitment scheme. Through this fabricated documentation and corporate facade, the defendant enabled the exploitation of the victims under the guise of lawful overseas employment.

In this case, the court sentenced Defendant Muhammad Zakaria alias Zakaria Bin Slamet to four years and six months of imprisonment, along with a fine of Rp 120.000.000,00 (one hundred and twenty million rupiahs). Should the defendant fail to pay the fine, it will be substituted by four months of imprisonment. Moreover, the court ordered the defendant to pay restitution to the victims, with the amounts claimed by each victim as follows:

1. Witness Muhammad Yusup submitted a restitution claim amounting to Rp 103.771.752,00 (one hundred and three million seven hundred seventy-one thousand seven hundred fifty-two rupiahs);
2. Witness Muhammad Yani submitted a restitution claim amounting to Rp 105.980.152,00 (one hundred and five million nine hundred eighty thousand one hundred fifty-two rupiahs);
3. Witness Azuar submitted a restitution claim amounting to Rp 105.789.752,00 (one hundred and five million seven hundred eighty-nine thousand seven hundred fifty-two rupiahs);
4. Witness Riski Panggareza submitted a restitution claim amounting to Rp 141.243.288,00 (one hundred forty-one million two hundred forty-three thousand two hundred eighty-eight rupiahs);
5. Witness Bernardus Maturbongs submitted a restitution claim amounting to Rp 101.200.252,00 (one hundred and one million two hundred thousand two hundred fifty-two rupiahs); and
6. Witness Yuda Pratama submitted a restitution claim amounting to Rp 125.141.700,00 (one hundred twenty-five million one hundred forty-one thousand seven hundred rupiahs).

In the event that the restitution is not paid, it shall be substituted with four (4) months of imprisonment.

The court decision also explicitly noted that the defendant had not shown good faith in fulfilling the restitution payment. The defendant only paid the victims' outstanding wages and had not taken any steps to compensate the victims through restitution as ordered. The judgment stated: "*The defendant, up to this point, has only paid the victims the wages that had not been paid, and has not fulfilled the restitution obligation*." This indicates the absence of voluntary compliance from the defendant to compensate the full extent of damages suffered by the victims, beyond the basic labor remuneration.

The third case also involved the use of a corporate entity to commit the crime, which aligns with the regulatory framework outlined in Supreme Court Regulation (PerMA) No. 16 of 2013 concerning corporate crime. In Decision No.

48/Pid.Sus/2021/PN.Cbn, the indictment clearly stated: "*Since the establishment of PT. Maritim Samudera Nusantara, the defendant, AULIA PUJI ASTUTI as known as AULIA, has held the position of Director of the company, as specified in the deed of establishment. As the Director, the defendant was responsible for representing the corporation and carrying out all actions related to both the management and ownership of the company*." This highlights that the corporation was deliberately used as a legal cover to facilitate acts of human trafficking, raising serious legal concerns about corporate accountability and the extent to which corporate structures are exploited in transnational crimes.

In this case, the court imposed joint and several liability for restitution upon the defendant. As stated in the ruling: "*The court sentenced the defendant, AULIA PUJI ASTUTI, together with witnesses IRWANTO alias TOGAR and CASWANDI alias IWAI, to pay restitution jointly and severally to the victims, ROHMAN, NUGI PANGESTU, AGUNG, EKO ABDULRACHMAN, and AIDUL BAHRI, in the amount of Rp 154.859.927,00 (one hundred fifty-four million eight hundred fifty-nine thousand nine hundred twenty-seven rupiah). If the restitution is not paid, each shall serve a substitute imprisonment of three (3) months.*" This decision reflects the court's effort to ensure victims' rights to compensation are fulfilled through a restorative justice approach, although its effectiveness remains questionable in the absence of enforcement mechanisms and willingness from the perpetrators.

In the judgment, the defendant, who served as the director of the company, stated: "*With regard to the expert's testimony, the defendant expressed that she did not understand the basis of the calculation but objected to the amount of the restitution*." The defendant also requested a reduction in the restitution amount. However, notably, the court's decision did not include any provision for the seizure or confiscation of the perpetrator's assets in the event of non-payment of restitution. This omission highlights a critical gap in the enforcement of victims' rights, as it leaves the burden of compliance entirely on the willingness of the perpetrator, without any coercive legal mechanism to ensure fulfillment of restitution obligations.

It was found that in all three court decisions, there was a failure to fully pay restitution, refusal to pay, and an evident lack of good faith on the part of the perpetrators in fulfilling their restitution obligations. In light of this, a follow-up legal action is necessary in the form of asset seizure of the perpetrators of human trafficking crimes. This is in accordance with Article 50 paragraph (3) of Law No. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, which states: "*In the event that the warning letter as referred to in paragraph (2) is not complied with within 14 (fourteen) days, the court shall instruct the public prosecutor to seize the convicted person's assets and auction them off to pay restitution*."

One of the primary reasons the warning letter stipulated in Article 50 paragraph (3) of Law No. 21 of 2007 is disregarded by perpetrators is due to their inability to pay restitution. A perpetrator of a criminal act can be considered unable to pay restitution

if they meet the criteria set forth in Supreme Court Regulation (PerMa) No. 1 of 2022 concerning the Procedures for Granting Restitution, particularly Article 30 paragraph (12), which states: "*In the event that the perpetrator's and/or third party's assets are insufficient to fulfill the restitution payment, and the defendant is sentenced to a substitute penalty of imprisonment or detention as referred to in Article 8 paragraphs (13) and (14), the Attorney General/Prosecutor/Military Prosecutor shall execute the sentence related to the substitute imprisonment or detention*."

The phrase "*the perpetrator's or third party's assets are insufficient*" fulfills the element referred to in Law No. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking. Supreme Court Regulation (PerMa) No. 1 of 2022 serves as a legal reference that outlines the Procedure for the Submission and Granting of Restitution and Compensation to Victims of Criminal Acts. This regulation provides a concrete framework for determining the perpetrator's financial incapacity and the subsequent legal steps that can be taken when restitution cannot be fulfilled through voluntary means.

To determine whether the assets of a defendant or perpetrator of a criminal act are insufficient, an asset tracing process must be carried out by investigators. This process often involves the assistance of forensic auditors who help trace the assets owned by the defendant. The assets in question refer to those used in, derived from, or otherwise connected to the alleged criminal offense. As stipulated in Article 39 paragraph (1) of the Indonesian Criminal Procedure Code (KUHAP):

a. Objects or claims belonging to the suspect or defendant which are wholly or partly suspected to have been obtained through or as a result of the criminal act;
b. Objects that have been directly used to commit or prepare the criminal act;
c. Object used to obstruct the investigation of the criminal act;
d. Objects specifically made or designated to commit the criminal act;
e. Other objects that have a direct connection to the committed criminal act.

The assets subject to seizure under Indonesian law are limited to those defined in Article 39 paragraph (1) of the Criminal Procedure Code (KUHAP). This legal framework is grounded in the 1945 Constitution of the Republic of Indonesia, specifically Article 28D paragraph (1), which affirms that "*every person shall have the right to the recognition, guarantees, protection, and certainty before a just law, and equal treatment before the law*." Moreover, Article 28H paragraph (4) guarantees that "*every person shall have the right to own private property, and such property rights shall not be taken arbitrarily by anyone*."

In this context, the author raises a critical objection to Article 39 paragraph (1) letters b and e of KUHAP. Letter b refers to "objects that have been directly used to commit or prepare the criminal offense", while letter e mentions "other objects that have a direct connection to the criminal offense committed." These provisions, though seemingly sufficient, are arguably too narrow in scope to accommodate the broader

goal of ensuring justice for victims, particularly in trafficking in persons (TIP) cases, where the full extent of a perpetrator's illicit gains may not be covered under the existing asset categories.

Legal Provisions Hindering the Full Implementation of Restitution for Victims of Human Trafficking

One of the key legal barriers to the full realization of restitution for victims of trafficking in persons (TIP) lies in the interpretation and scope of "assets" that can be seized from perpetrators. For a perpetrator to be declared unable to pay restitution, it must be established that the assets, traced and identified by investigators and law enforcement—are insufficient to compensate victims. However, the seizure is often limited only to assets directly used in committing, facilitating, or benefiting from the TIP offense.

This limitation is evident in Supreme Court Regulation (Peraturan Mahkamah Agung/PerMA) No. 1 of 2022, particularly Article 30 paragraph (12), which states: "*In the event that the perpetrator's and/or third party's assets are insufficient to fulfill restitution payments, and the defendant has been sentenced to a substitute imprisonment as referred to in Article 8 paragraphs (13) and (14), the Attorney General/Prosecutor/Military Prosecutor shall enforce the substitute imprisonment sentence.*"

The phrase "assets" within this article remains legally ambiguous and lacks specific definition. This ambiguity can lead to narrow interpretations by law enforcement and judicial authorities, ultimately resulting in inadequate asset recovery and failure to fulfill victims' rights to restitution. As a consequence, many victims are left uncompensated despite the court's decision to award restitution.

The phrase "assets" within the aforementioned article remains ambiguous and open to multiple interpretations, particularly in the absence of further legal clarification or judicial interpretation. This lack of specificity gives rise to a fundamental question: does the term refer exclusively to assets that are eligible for seizure under the KUHAP, or does it also extend to include the personal assets of perpetrators of TPPO, regardless of whether such assets were directly involved in the commission of the crime? Without a more detailed statutory interpretation, this ambiguity may lead to inconsistencies in law enforcement and judicial decisions, ultimately hindering the realization of full restitution for victims of TIP.

Article 39 paragraph (1) of the KUHAP remains a significant obstacle for law enforcement authorities in executing asset seizures against perpetrators of criminal offenses, particularly in cases of TPPO. The article strictly limits seizure to property or assets that were directly used in the commission of a crime. Consequently, assets indirectly connected, such as tools, equipment, or property purchased with personal funds but later used to facilitate or support the trafficking operations, fall outside the legal scope of seizure. This legal limitation hinders the state's ability to maximize asset

confiscation, despite the fact that these indirectly used assets often play an essential enabling role in the trafficking process. The failure to account for such assets in the seizure process undermines the broader objectives of justice, including the fulfillment of victims' rights to restitution, and diminishes the deterrent effect of asset-based punishment in anti-trafficking enforcement.

Law No. 31 of 2014, commonly referred to as the Witness and Victim Protection Law (LPSK Law), primarily provides protection measures for witnesses and victims. One of its main provisions is outlined in Article 12A paragraph (1), which states: "*In carrying out the duties as referred to in Article 12, LPSK shall have the authority to:*

a. *Request verbal and/or written information from the applicant and other relevant parties;*
b. *Examine statements, letters, and/or related documents to verify the truth of the application;*
c. *Request copies or duplicates of letters and/or relevant documents from any agency needed to examine the applicant's report in accordance with prevailing laws and regulations;*
d. *Request case progress information from law enforcement officers;*
e. *Change the identity of the protected person in accordance with laws and regulations;*
f. *Manage safe houses;*
g. *Relocate the protected person to a safer location;*
h. *Provide security and escort services;*
i. *Assist witnesses and/or victims in judicial proceedings; and*
j. *Assess compensation in the provision of restitution and compensation*."

It is stated in point (j) that LPSK is only authorized to assess compensation, and does not have specific authority to enforce or carry out coercive measures against perpetrators of TPPO in order to ensure the payment of restitution.

Furthermore, there is currently no specific legal regulation governing the procedure for seizing assets of perpetrators of TPPO. This legal gap is reinforced by the Regulation of the Prosecutor's Office of the Republic of Indonesia Number 10 of 2019, which amends the Attorney General's Regulation Number Per-002/A/Ja/05/2017 concerning Auction and Direct Sale of Seized Property, State-Confiscated Goods, or Execution-Seized Items. The regulation acknowledges that establishing procedures for asset seizure is a new challenge. For now, law enforcement still relies on outdated procedural laws, particularly the KUHAP, which are no longer relevant to the current legal paradigm, especially in relation to the modern goals of criminal law, namely victim restitution and recovery.

Seizing and confiscating the proceeds and instruments of crime from perpetrators is not merely about transferring a portion of wealth from criminals to society. More importantly, it increases the potential for the community to realize collective goals, namely the establishment of justice and the well-being of all members of society (Ananda Kurniawan, 2019).

To achieve the welfare of victims of TPPO, this paper discusses how the confiscation of assets can serve as a means for compensating victims, through legal

interpretations that can be made by judges, particularly in relation to the modern objectives of criminal law, which emphasize restorative justice. This approach is necessary because, as reflected in the case studies analyzed by the author, there are recurring issues such as incomplete restitution payments, lack of good faith from perpetrators, and payment limited only to wages, excluding restitution.

These conditions reveal that victims' rights to recovery are not being fulfilled, even though Law No. 21 of 2007 concerning the Eradication of Human Trafficking has been enacted. Moreover, the restitution obligation does not seem to present a serious deterrent for perpetrators, primarily due to the weak enforcement mechanism. Article 50 paragraph (4) of the law stipulates that: "*If the perpetrator is unable to pay restitution, the perpetrator shall be subject to substitute imprisonment for a maximum of 1 (one) year.*" This provision reduces restitution to a secondary consequence rather than a binding and enforceable obligation, thus undermining the broader goal of victim-centered justice in TPPO cases.

The wealth acquired by perpetrators of TPPO should be utilized to provide restitution to victims, as long as the profits obtained from exploiting these victims are not entirely exhausted for the perpetrators' own living expenses. The financial benefits gained by the perpetrators are not limited to the recruitment stage but are also accumulated through various means, such as forging documents to legitimize illegal employment and deducting or seizing the wages of victims. These profits are often funneled into corporate accounts under the guise of legitimate business entities or into the perpetrators' personal accounts. The more victims are recruited, the greater the profit obtained by the traffickers. Therefore, such profits, regardless of how they are disguised, should be considered part of the perpetrator's assets and made subject to seizure to fulfill restitution obligations and ensure justice for the victims.

Legal Interpretation as a Means of Restructuring the Concept of Seizable Assets of TPPO Perpetrators Based on Legal Doctrine

It is recognized that in the process of seizing the assets of perpetrators of TPPO, investigators and law enforcement officers cannot arbitrarily confiscate all property owned by the accused. In principle, the assets that may be seized are those directly connected to the commission of the criminal act. This creates a limitation in fulfilling the rights of the victims, particularly in the context of restitution. If the assets traceable to the criminal act are insufficient to compensate the victims, the perpetrator is then subjected to a substitute penalty in the form of imprisonment, with a maximum of one year.

The imposition of substitute imprisonment for unpaid restitution, limited to a maximum of one year, is based on Article 18 paragraph (1) of the KUHP, which states that the duration of confinement ranges from a minimum of one day to a maximum of one year. However, this limitation can create a legal disparity that undermines

justice, especially in cases involving restitution claims reaching hundreds of millions of rupiah. When victims urgently require funds for medical treatment, psychological support, legal aid, and other recovery-related needs, such a lenient sentence becomes disproportionate and fails to reflect the gravity of the harm suffered.

For example, if a victim is entitled to more than Rp300,000,000 in restitution but the offender avoids payment and only receives a substitute prison sentence of up to one year, this does not serve as a deterrent nor does it fulfill the principle of justice for the victim. This is particularly critical in the context of TPPO, where the impact on victims is not only financial but also deeply psychological and social.

The Supreme Court Regulation No. 1 of 2022 Article 30 paragraph (13) emphasizes that the execution of substitute imprisonment must be proportional, considering how much restitution has been paid. This clause provides a foothold for judges to make more equitable decisions. However, because the KUHP still sets a rigid maximum limit, judges must go beyond literal interpretation and apply judicial creativity through legal discovery to ensure that restitution fulfills its restorative purpose.

The method of legal discovery (rechtsvinding) refers to the process by which a judge uncovers or constructs applicable legal norms from written laws (textual) into contextually relevant interpretations (contextual), especially when legal provisions are vague, ambiguous, or incomplete. This process involves various forms of interpretation and logical reasoning to reach a fair and just decision in the absence of clear statutory guidance.

The foundation of legal discovery lies in Article 1 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power, which asserts that "*Judicial power is the power of an independent state authority to administer justice in order to uphold law and justice based on Pancasila, for the realization of the State of Law of the Republic of Indonesia*." This provision guarantees the independence of judges, granting them the autonomy to adjudicate free from extrajudicial interference. Such independence also empowers judges to creatively discover or develop the law, as long as their reasoning aligns with the values of Pancasila and constitutional justice (Rivki *et al.*, n.d.).

Moreover, Article 10 paragraph (1) of the same law affirms that "*Courts shall not refuse to examine, try, and decide a case brought before them on the grounds that the law does not exist or is unclear, but are obligated to examine and adjudicate it.*" This legal obligation places a duty upon judges to interpret and apply the law using logical reasoning and legal principles, even in the absence of explicit regulation.

In the context of restitution for victims of TPPO, where current legal provisions (e.g., KUHAP and existing regulations) do not comprehensively address the mechanism of asset seizure for restitution, judges are encouraged to apply interpretive methods. One potential approach is to reinterpret Article 50 paragraph (3) of Law No. 21 of 2007 concerning the Eradication of Human Trafficking using teleological

(purposive) interpretation. This method allows the judge to go beyond the literal wording and instead focus on the goal or purpose of the regulation, namely the protection and restoration of victims' rights.

a. Systematic Interpretation

The interpretation in Article 50 paragraph (3) of Law No. 21 of 2007 states: "*In the event that the warning letter as referred to in paragraph (2) is not complied with within 14 (fourteen) days, the court shall instruct the public prosecutor to confiscate the convicted person's assets and auction said assets to pay restitution*." The phrase "assets" (harta kekayaan) can be interpreted further through other laws. According to Article 1 point 4 of Law No. 25 of 2003, assets are defined as all movable or immovable objects, whether tangible or intangible. Additionally, the Supreme Court Regulation No. 13 of 2016 on Procedures for Handling Criminal Cases by Corporations, Article 1 point 9, also defines assets as all movable or immovable objects, whether tangible or intangible, obtained directly or indirectly from the proceeds of crime.

b. Teleological Interpretation

This interpretation aims to interpret a law based on its purpose and by considering the social context. A classic example is the interpretation of electricity theft under Article 372 of KUHP, which originally defined theft as the act of unlawfully taking an object belonging to someone else. At that time, electrical current was not considered an object under this definition. However, the judge interpreted electricity as an object because it is owned and has economic value. In the context of restitution for victims of human trafficking, if the assets confiscated from the perpetrator are insufficient to compensate the victim, who may urgently require psychological or medical treatment, the judge must adopt a solution-oriented approach. This includes emphasizing that all assets obtained from criminal activities, whether they have materialized into tangible property or not, must be subject to confiscation. Thus, the interpretation must shift from being purely textual to contextual

c. Extensive Interpretation

Extensive interpretation is a method that allows legal interpretation to go beyond the ordinary grammatical meaning. For example, in a legal case involving Article 406 of the KUHP concerning the destruction of property, a question may arise: does the term "property" in this provision also include a "corpse"? This is where logical, analytical, and juridical reasoning is applied through extensive interpretation of the term "property." According to a ruling by the Banyumas District Court, the term "corpse" can indeed be classified as "property" under Article 406 of the KUHP on the grounds that a corpse becomes the legal possession of the heirs and holds significant value for its rightful owners (Christianto 2010). In the context of this study, judges may categorize personal assets acquired by the defendant under their own name as subject to confiscation,

provided that these assets have served as facilitators in the commission of the crime of human trafficking.

In urgent circumstances, the confiscation of assets owned by perpetrators of criminal acts should be permitted as a means of fulfilling restitution for victims. However, there are several legal obstacles to realizing the fulfillment of victims' rights. One such obstacle stems from existing laws that form the backbone of the criminal justice system, laws that often serve as stronger legal references compared to newer legislation (Taufiq, 2013).

For example, the maximum penalty for imprisonment is limited to only one year, as stipulated in Article 18 paragraph (1) of the Indonesian Penal Code (KUHP): "*Imprisonment shall be for no less than one day and no more than one year.*" This provision obliges judges to adhere to the KUHAP, even though KUHAP may no longer be sufficient in serving justice for victims, particularly in cases where imprisonment is imposed as a substitute for substantial restitution payments. Consequently, the author finds the additional imprisonment sentence imposed by judges to be disproportionate when compared to the amount of restitution owed to the victims.

This is in stark contrast to the provisions under Law No. 19 of 2019 concerning the seizure and recovery of assets in corruption cases, and the Supreme Court Regulation (PerMA) No. 1 of 2022 concerning the implementation of restitution in human trafficking cases. Although both laws address special crimes, the legal mechanisms under TPPO are far less detailed and insufficient in enabling the fulfillment of victims' rights.

This disparity becomes even more apparent when referring to Article 18 paragraph (2) of Law No. 31 of 1999 concerning the Eradication of Corruption, which states: "*The payment of compensation shall be equal to the amount of wealth obtained from the act of corruption.*" Such clarity and enforceability are not yet present in the regulation of asset confiscation for restitution in TPPO cases.

CONCLUSION

The confiscation of assets in criminal law is still based on the KUHAP, and there is currently no updated or relevant regulation that specifically governs asset confiscation in special crimes, particularly in cases of TPPO. As a result, asset confiscation in TPPO cases still refers to KUHAP, which obstructs the fulfillment of victims' rights and fails to provide tangible benefits to victims through the imposed criminal sanctions. The procedure for asset confiscation is also outlined in the Regulation of the Prosecutor General of the Republic of Indonesia Number 10 of 2019, which amends Prosecutor General Regulation Number Per-002/A/Ja/05/2017 concerning the Auction and Direct Sale of Seized Items, State Confiscated Property, or Execution Seizure Objects. This regulation emphasizes the ongoing challenge in

confiscating the assets of the accused due to the absence of a specific law that serves as a legal basis for the confiscation process.

In contrast, Law No. 19 of 2019, which governs the confiscation of assets in corruption cases, offers detailed procedures. Meanwhile, Supreme Court Regulation (PerMa) No. 1 of 2022 concerning the implementation of restitution in TPPO cases, lacks such comprehensive guidance, despite the fact that both forms of crime fall under the category of special crimes. Furthermore, the LPSK, as regulated in Article 12A paragraph (1) letter j of Law No. 31 of 2014, is only authorized to assess the value of restitution and compensation. It does not possess significant enforcement powers like the Corruption Eradication Commission (KPK), which is empowered to participate in investigation, prosecution, and litigation of corruption cases under Law No. 19 of 2019 concerning the Second Amendment to Law No. 30 of 2002 concerning the Corruption Eradication Commission.

Fundamentally, Article 5 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power affirms that "*Judges shall be obliged to explore, follow, and understand the values of law and justice that live within society*." However, what if the law fails to guarantee legal certainty and justice within society? For example, the imposition of a maximum additional prison term of one year if the perpetrator is unable to pay restitution, as regulated in Article 50 paragraph (4) of Law No. 21 of 2007, which states: "*If the perpetrator is unable to pay restitution, the perpetrator shall be subject to a substitute imprisonment for a maximum of one (1) year*." This is further supported by Article 30 paragraph (13) of PerMa No. 1 of 2022, which states: "*The execution of substitute imprisonment or substitute incarceration shall be carried out proportionally by considering the amount of restitution paid by the perpetrator and/or third parties in accordance with applicable laws and regulations*."

The additional imprisonment sanction relatively minor in duration, lacks the necessary coercive power to compel perpetrators of human trafficking to fulfill restitution obligations. This ineffectiveness in enforcement represents a significant weakness in the prosecution of TPPO cases. Such a penalty functions as a "toothless tiger." Therefore, legal interpretation by judges becomes necessary to conceptualize the regulation of asset confiscation from perpetrators, in order to realize the objective of punishment that prioritizes victim recovery.

Recommendation

Based on the findings and discussion presented in this study, several key recommendations can be drawn. The LPSK must be strengthened and empowered to function as a principal mechanism for recovering losses suffered by victims, similar to the role of the KPK, which holds the authority to execute, monitor, and confiscate assets of criminal offenders, as well as to oversee compensation payments. This recommendation is grounded in the fact that LPSK is the institution most directly connected to victims.

It is therefore imperative to establish a specific legal framework regulating the confiscation of assets in cases of human trafficking. This would eliminate the need for legal reinterpretation or reliance on ambiguous statutory provisions, and in turn, ensure legal certainty and the fair fulfillment of victims' rights to restitution and recovery. In addition, there is a need to reevaluate the function of substitute imprisonment as a supplementary punishment. It should either be significantly reinforced or abolished altogether, with a shift in focus toward fully restoring victims' rights, particularly the right to financial compensation. Ultimately, criminal cases must be resolved comprehensively within the criminal justice process, with a justice system that is both restorative and victim-centered.

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