

Corporate Involvement In People Trafficking Cases

(Analysis of East Jakarta District Court Decision

Number: 289/Pid.Sus/2020/PN Jkt.Tim)

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ABSTRACT

The research objective in this research report is to find out the position of corporations in criminal liability for human trafficking in trafficking cases (Analysis of East Jakarta District Court Decision Number: 289/Pid.Sus/2020/PN Jkt.Tim) and to find out how legal certainty for victims of the crime of human trafficking committed by PT. Hassindo Karya Niaga (Analysis of the East Jakarta District Court Decision Number: 289/Pid.Sus/2020/PN Jkt.Tim). The research method used is a normative juridical method where data sources come from court decisions, books and journals and the internet. The research approach used in this research is a qualitative approach. The results of this research are pActions carried out by PT. Hassindo Karya Niaga is a criminal act of human trafficking as well as there is no legal certainty for victims of the PT Person Trafficking Crime case. Hassindo Karya Niaga due to the absence of implementation of the provision of restitution for victims contained in the decision. Actions carried out by PT. Hassindo Karya Niaga and its work constitute a criminal act of human trafficking. There is no legal certainty for victims of TIP cases committed by PT. Hassindo Karya Niaga due to the lack of implementation of the right to compensation (restitution) obtained by victims of criminal acts of human trafficking. East Jakarta District Court Decision Number: 289/Pid.Sus/2020/PN Jkt.Tim) and how legal certainty for victims of the crime of human trafficking committed by PT. Hassindo Karya Niaga (Analysis of East Jakarta District Court Decision Number: 289/Pid.Sus/2020/PN Jkt.Tim).

Keywords: Law, People, Trial, Crime, PN.

1. INTRODUCTION

Labor is one of the supporting factors for a country's economy. To advance a country's economy, a qualified workforce is needed. Law Number 14 of 1969 concerning basic provisions regarding labor and Law Number 3 of 1992 concerning the placement of foreign workers. What is meant by workforce is every person who is able to carry out work both within the employment relationship and outside the employment relationship in order to produce goods and services to meet the needs of society. The definition of labor here is very broad because people who are outside an employment relationship are also included in the workforce, so workers include workers, while workers do not include workers because workers are people who are already in an employment relationship. (Khairuni Lubis, 2014).



In reality, sending migrant workers abroad is still a controversial issue. On the one hand, sending migrant workers abroad can reduce the number of unemployed and is a source of foreign exchange for the country, but on the other hand, the fate and safety of migrant workers working abroad is at stake because of the weak legal protection and supervision provided by the Indonesian government.

Indonesian Migrant Workers (TKI) abroad are often subjected to human trafficking, including slavery and forced labor, victims of violence, abuse, crimes against human dignity, and other treatment that violates human rights. Under conditions like these, the state is obliged to guarantee and protect the human rights of its citizens who work both at home and abroad based on the principles of equal rights, democracy, social justice, gender equality and fairness, anti-discrimination and anti-human trafficking (Rosida, 2017).

Human trafficking is a modern form of human slavery (*Modern Day Slavery*) and is one of the worst forms of treatment that violates human dignity. (Explanation of Law No. 21 of 2007). *Modern Day Slavery* Here it means that the perpetrator preys on victims who are in a vulnerable position who are economically, physically and emotionally weak and by using modern methods to treat people like slaves. (IOM Indonesia, 2009), The practice of human trafficking in Indonesia has actually been around for a long time, but the lack of public awareness and the absence of comprehensive provisions for law enforcement as well as the lack of sensitivity of government officials have led to the high number of cases of human trafficking (Judge, 2012).

Public understanding of the criminal act of human trafficking is related to the attitude of legal awareness regarding the importance of rules in the form of positive law, which is related to the level of legal awareness (*legal consciousness*), therefore understanding the law is not only in understanding the enactment of legislation (*law in book*), but more at the implementation level (*law in action*), so that understanding the criminal act of trafficking in persons is not only at the conceptual level, but is prioritized at the implementation/application level which is related to legal awareness.

If regulations are felt as a necessity, they will become legal feelings (*right feeling*), so that legal regulations will be able to apply according to need and not because of compulsion, thus the objectives of law and law enforcement will operate in accordance with the supremacy of law (Henny Nuraeny, 2022).

Considering the function of law as a tool for development and renewal of society (*law as a tool of social engineering*), then the law also acts as a tool to change society in a better direction. The current reality is that most people do not trust the law, both towards law enforcement officials



and judicial institutions, so that people tend to take the law into their own hands. This action is partly due to a lack of public trust in the guarantees of justice provided by law.

The victims of human trafficking crimes, especially in Indonesia, are mostly women and children. Human trafficking is a type of slavery, in the news it has now been declared a global and serious problem, in fact human trafficking has turned into a business that has provided huge profits to the perpetrators. Over time, the practice of human trafficking crimes increasingly shows its quantity and quality. Human trafficking, which was previously carried out by individuals, is now carried out in organized groups and it is not uncommon for corporations to even be involved in this (Situngkir, 2022).

Trafficking in people, the majority of whom are women and children, is a type of slavery in the modern era which is the impact of the multidimensional crisis experienced by Indonesia. In the current news it has been declared a serious global problem and has even become a global business that has provided huge profits to the perpetrators. From time to time the practice of human trafficking increasingly shows its quality and quantity. Every year it is estimated that two (2) million people are trafficked, the majority of whom are women and children.

ILO *Global Report on Forced Labour* estimates that nearly 2.5 million people are exploited through trafficking into labor throughout the world, and more than half of them are in the Asia and Pacific region and 40% are children.

Furthermore *International Organisation for Migration* (IOM), which has provided assistance to victims of human trafficking, stated that almost 90 percent of human trafficking victims are women, of which more than 25 percent are children who are the most vulnerable to being trafficked.

This exploitation of women and children occurs due to structural poverty which causes families to be unable to keep up with rising prices of basic commodities, which is why they are forced to send their family members, including women and children, to work. This human trafficking business has become global and has provided huge profits to the perpetrators.

The fact is that the dominant victims are women and children because they are the groups that are often targeted and are considered the most vulnerable. Trafficking victims are usually defrauded, subjected to inhumane treatment and exploited. The forms of exploitation include treating victims to work which leads to practices of sexual exploitation, slavery or forms of modern slavery, organ transplants for commercial purposes, and selling babies for the purpose and interest of making large profits. for human traffickers.



Corporations have a large role in the development of the Indonesian economy. Based on economic level, most of Indonesia's population is from the lower middle class. The need for employment opportunities is a crucial problem, especially considering that the number of unemployed is quite high in Indonesia. Limited employment opportunities will hamper government programs to improve community welfare. Without a job with a decent wage, it will be difficult for people to fulfill their daily needs. The existence of corporations as job providers makes it easier for people to find sources of income. A person who works in a corporation will receive payment or wages in accordance with the agreed terms so that with this wage they will be able to maintain their life. Apart from providing employment opportunities, some corporations also operate as a provider of work for the community. Corporate activities as job distributors make it easy for those who need work to get work according to their abilities. However, along the way, not all employment distribution companies carry out their activities in a clean manner (Faisol, 2014).

The crime of trafficking in persons is deemed to have been committed by a corporation if the crime is committed by people acting for and on behalf of the corporation or in the interests of the corporation, based on an employment relationship or based on other relationships within the scope of the corporation's business, either individually or jointly. . Sudarto, 1985 Article 13 paragraph (1) of Law No. 21 of 2007 reads *"The criminal act of trafficking in persons is deemed to have been committed by a corporation if the criminal act is committed by people acting for and/or on behalf of the corporation or in the interests of the corporation, whether based on work relationships or other relationships, acting within the corporation's environment either alone or together."*

That the criminal act of trafficking in persons can also be delegated to corporate management for an act carried out for and on behalf of the corporation. This is regulated in the provisions of the PTPPO Law article 13 paragraph (2) which reads *"In the event that the criminal act of trafficking in persons is committed by a corporation as intended in paragraph (1), then the investigation, prosecution and punishment shall be carried out against the corporation and/or its management."*

The crime of human trafficking occurs not only from developing countries to developed countries, but also continues to increase among each other and in developing countries. Often, people are trafficked from countries with problematic economic, environmental and political situations to countries or regions where the quality of life is higher (Sinlaeloe, 2017).

In response to the increasing number of cases of criminal acts of trafficking in persons (TPPO), Indonesia enacted Law no. 21 of 2007 concerning Eradication of the Crime of Human



Trafficking. This law is supported by the establishment of a Task Force for the Prevention and Handling of Human Trafficking Crimes through the enactment of Presidential Regulation no. 69 of 2008. Since 2018, *Zero Human Trafficking Network* (ZTN), continuously strives to be a forum for interfaith stakeholders, journalists, non-governmental organizations, universities and other components of civil society in synergistic and coordinating efforts in preventing and overcoming human trafficking in order to create situations and conditions free from human trafficking.

Law on the Eradication of Criminal Acts of Trafficking in Persons (PTPPO) article 1 paragraph 1, the definition of human trafficking is: *“The act of recruiting, transporting, harboring, sending, moving or receiving someone with the threat of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of power or a vulnerable position, debt bondage or providing payments or benefits, so as to obtain the consent of the person holding control over other people, whether carried out within countries or between countries, for the purpose of exploiting or causing people to be exploited”*.

According to Harkristuti Harkrisnowo, there are three main elements contained in the above definition of human trafficking. First, the act element, which includes: recruiting, transporting, transferring, concealing, or receiving. Second, the element of means (ways) to control the victim, which includes: threats, use of coercion, various forms of violence, kidnapping, fraud, cheating, abuse of power or vulnerable position or giving/receiving or profit to obtain consent from the person in control of the victim. Third, the purpose element, which includes: exploitation, at least for prostitution or other forms of sexual exploitation, forced labor, slavery, servitude, and organ harvesting.

Criminal act of people-trafficking is a form of violation of human rights which is accompanied by the process of recruitment, transportation, oppression, shelter and reception using threats, coercion, kidnapping, fraud, lies and abuse of power for purposes such as prostitution, violence, sexual exploitation and forced labor with inadequate wages or other practices similar to slavery (Andenny & Natangsa Surbakti, 2018).

Based on the above, in order to protect workers from criminal acts human trafficking This means, of course, that the State, through every element of law enforcement, has the obligation to protect the rights of these workers, including protection in the legal aspect. For example, researchers looked at the case of the East Jakarta District Court decision Number 289/Pid.Sus/2020/PN Jkt. Team. The chronology of the case is as follows: On Monday 28 October 2019 at around 15.30 WIB at the PMI candidate shelter at Cibubur Indah II Housing Complex Jl. Rawa Bola Raya No.60 RT.02/07 Kel. Kelapa Dua Wetan District. Ciracas, East Jakarta, used by



PT. Hassindo Karya Niaga, to accommodate prospective PMIs who were going abroad, was visited by police officers and found around 48 (forty eight) prospective Indonesian Migrant Workers (PMI) who will be sent abroad, including around 25 (twenty five) PMI candidates who are ready to depart on October 30 2019 as domestic servants destined for Saudi Arabia. Even though it is known that there is a prohibition against this, namely based on the Decree of the Minister of Manpower of the Republic of Indonesia Number 260 of 2015 concerning Termination and Prohibition of the Placement of Indonesian Workers with Individual Users in Countries in the Middle East Region.

Then the Defendant Ahmad Ronas alias Ahmad bin H. Zakaria and the Defendant Maman Suryaman bin Abdul Rohim and the Defendant Sutikno bin Imam Sugiri (alm) and other perpetrators who were tried separately, namely Aceng bin Cece, Agus Wijaya bin Abdullah and Armansyah Saputra bin Jamran, knew that the PMI candidate was being accommodated in a shelter owned by PT. Hassindo Karya Niaga which is located at Cibubur Indah II Housing Complex Jl. Rawa Bola Raya No.60 RT.02/07 Kel. Kelapa Dua Wetan District. Ciracas, East Jakarta and will be sent as a housemaid with the destination country being Saudi Arabia. That the Defendants were aware that the process of accommodation and departure to the destination country was not carried out as it should have been, including that the PMI candidates were promised official jobs and received large wages, apart from that the PMI candidates had been given money in advance as a token from the company so that the The PMI candidate is interested in going to work abroad and if he resigns while in detention, the PMI candidate must return the money he has received.

The PMI candidates did not receive insurance, no work contracts, PMI candidates did not have work permits from the relevant agencies and PMI candidates did not receive training and the defendants knew that sending workers abroad, especially Saudi Arabia, was indeed prohibited by the government according to the Ministerial Decree. Republic of Indonesia Employment Number. 260 of 2015 concerning Termination and Prohibition of the Placement of Indonesian Workers with Individual Users in Middle Eastern Countries. That the Defendants continued to carry out the illegal acts mentioned above because they wanted to get money/wages.

Starting from the case example above, this problem from time to time is very complex and overlaps between one problem and another (Hermawan, 1919). One of the complexities of the issue of human trafficking can be seen from the perpetrators who do not only involve individuals but also involve corporations, as in the case described above. By law, corporations that commit criminal acts of human trafficking can be held criminally liable. Criminal responsibility is defined as the continuation of the objective conditions that exist in a criminal act and subjectively that exist



to meet the requirements to be punished for the act. Corporations as perpetrators of criminal acts, in positive law it is recognized that corporations can be held criminally responsible and punished.

In Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons as a legal instrument that regulates the crime of trafficking in persons, the type of criminal liability can be divided into two, namely the main punishment which generally takes the form of imprisonment and additional punishment which generally takes the form of a fine or providing restitution to injured victims. Due to the increasing complexity of the criminal act of human trafficking from various aspects, the sense of urgency in terms of issuing and enforcing laws dealing with criminal acts of human trafficking is deemed very urgent to immediately receive top priority for the State to be able to eradicate or at least narrow the space for perpetrators to carry out the act. this crime.

The issuance of two legal instruments, namely Law Number 21 of 2007 concerning Eradication of the Crime of Human Trafficking in order to eradicate and minimize the crime of human trafficking. Apart from this law, Indonesia also ratified a number of international legal regulations related to the criminal act of trafficking in persons because the scope of this criminal act does not only occur regionally but its spread has spread widely both internationally so that Indonesia needs to cooperate with the international community to overcome this problem of trafficking in persons.

The commitment of the Indonesian State in terms of legal regulations shows that the government in this case is serious about eradicating the criminal act of human trafficking, although there are still several shortcomings in various aspects, then the existence of this commitment also shows that the Indonesian State is a country based on law. (*rule of law*) as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that the Indonesian state is a legal state, then based on this provision, the Indonesian state is obliged to pay more attention to issues relating to law, including in matters This concerns issues regarding human trafficking (Tibaka & Rosdian, 2017).

However, there are still many cases of human trafficking that occur, such as the examples above, which certainly proves that protection, prevention, eradication and handling related to criminal acts of human trafficking It is not just the job of the police, judges or other law enforcers, but must involve all aspects of the state, in this case the community as well as other agencies and institutions that are directly or indirectly related to dealing with legal issues regarding human trafficking., because according to (Adi, 2021), the aim of criminal law is not only to seek the truth



but the most important thing is to achieve order, tranquility, peace, justice and prosperity in society.

2. RESEARCH METHODS

In carrying out research, it is necessary to have a research design so that researchers can focus on carrying out research according to the title and theme chosen. In this chapter the researcher wants to explain how and what the researcher did in using this research methodology with the following steps:

1. Research Type

The type of research used in this research report is a normative juridical research method (based on the decision of the East Jakarta District Court Number 289/Pid.Sus/2020/PN Jkt. Tim). The normative juridical research method is a research method carried out by examining library materials or secondary data related to the criminal act of trafficking in persons using the mode of labor recruitment, in which case the act is within the realm of criminal law.

2. Problem Approach

The problem approach used in this research report is to use a qualitative approach. Qualitative research is research that produces analytical procedures in which the analytical procedures do not use statistical analysis procedures or other methods of quantification.

3. Source of legal materials

The data used in writing this research report is secondary data, secondary data is data obtained from the literature including official documents, books, research results in the form of reports and so on. The main data collection tool is an empirical approach or study document. The legal materials used in this research are as follows:

a. Primary Legal Materials

Primary legal materials are legal materials that are binding and determined by the competent authorities. This research includes the Criminal Code (KUHP), Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking and related laws and regulations.

b. Secondary Legal Materials

It is legal material that provides explanations of primary legal materials such as documents which are information and articles related to human trafficking, research

results, opinions of legal experts and several sources from the internet related to the issues discussed.

c. Tertiary Legal Materials

These are legal materials that provide instructions and explanations for primary legal materials and secondary legal materials such as dictionaries, encyclopedias, etc.

4. Legal Material Collection Procedures

To make data collection easier in this research report, the data collection technique was carried out by means of library research. Library research is research by examining library materials or what is called secondary data. The secondary data used in writing this report includes books from both personal collections and library collections, articles related to research objects, government documents, including statutory regulations.

5. Analysis of Legal Materials

After all the necessary data has been collected, the data is analyzed using qualitative analysis methods, namely the data obtained is then compiled systematically, then analyzed qualitatively, to achieve clarity on the problems discussed, through:

a. Data reduction

Data reduction is part of the analysis process, namely a form of analysis to emphasize, shorten, focus, remove things that are not important, and organize the data, so that conclusions can be drawn. Data reduction is a process of selecting, focusing, simplifying and abstracting from rough data in field notes. This process continues throughout the research, in the form of abbreviations, coding, focusing on themes, defining problem boundaries, and writing memos. Reduced data such as research findings by processing and presenting them as they are and so on.

b. Data presentation

Data presentation is an arrangement of information from which research conclusions may be drawn. By looking at the data presented, understanding what is happening and providing opportunities to do something in the analysis or other actions based on the understanding.

c. Drawing conclusions/verification

Final conclusions in qualitative research will not be accepted unless the data collection process ends. The conclusions made need to be verified by looking and questioning them again, while reviewing field notes cursorily to gain a more precise understanding.

3. RESULTS AND DISCUSSION

The position of corporations in criminal liability for human trafficking in human trafficking cases (Analysis of the East Jakarta District Court Decision Number: 289/Pid.Sus/2020/PN Jkt.Tim) Based on research findings in the East Jakarta District Court Decision Number: 289/Pid.Sus/ 2020/PN Jkt.Tim can be found that:

- a. The defendant Ahmad Ronas alias Ahmad bin H. Zakaria worked as the Main Director in charge of PT. Hassindo Karya Niaga which operates in the field of mobilizing Indonesian Migrant Workers from recruitment, accommodation, to the placement process in destination countries. The defendant Ahmad Ronas alias Ahmad bin H. Zakaria is also the owner of the company and is the one who arranges the tasks for his workers.
- b. The defendant Maman Suryaman bin Abdul Rohim worked as *security* or security from PT. Hassindo Karya Niaga, where the Defendant in his work is responsible to the Defendant Ahmad Ronas alias Ahmad bin H. Zakaria as the Main Director of PT. Hassindo Karya Niaga.
- c. The defendant Sutikno bin Imam Sugiri (deceased) worked as *Handling and Ticketing* PT. Hassindo Karya Niaga which organizes and buys tickets for Indonesian Migrant Workers (PMI) who will be sent abroad and accompany the Indonesian Migrant Workers (PMI) to the airport. The defendant is responsible to Ahmad Ronas alias Ahmad bin H. Zakaria as the main director of PT. Hassindo Karya Niaga.

The three defendants mentioned above knew that since 2015 there had been a moratorium on stopping and prohibiting the placement of Indonesian workers in the Middle East region, namely Minister of Manpower Regulation Number 260 of 2015 concerning stopping and prohibiting the placement of Indonesian workers with individual users in countries in the Middle East region.

If it is related to the Identification Theory which states that a corporation can commit a number of offenses directly through management who are closely connected with the corporation, acting for and on behalf of the corporation so that it is seen as the company itself, then it is appropriate for PT. Hassindo Karya Niaga was also found guilty of the crime of human trafficking.

As for the workers at PT. Hassindo Karya Niaga which was convicted based on the East Jakarta District Court Decision Number: 289/Pid.Sus/2020/PN Jkt.Tim is an application of the theory *Vicarious Liability* which states that a person is legally responsible for wrongful acts



committed by others. There are three conditions that must be met, namely; the agent commits a crime; the crime committed was still within the scope of his employment; and carried out with the aim of benefiting the corporation.

When a corporation is declared criminally responsible for a criminal act committed, there are three systems of corporate responsibility; namely, the corporate management is the maker, the management is responsible, the corporation is the maker, the management is responsible, and the corporation is the maker and responsible.

Legal certainty for victims of the crime of human trafficking committed by PT. Hassindo Karya Niaga (Analysis of East Jakarta District Court Decision Number: 289/Pid.Sus/2020/PN Jkt.Tim)

The use of criminal law in dealing with crime in society is considered a normal thing in eradicating crime. The use of criminal law in eradicating a crime must of course think about the goals to be achieved, choosing the right ways and means to return the condition of society to the condition before the crime occurred. In terms of crimes experienced by someone who is a victim of criminal acts of human trafficking, they often experience trauma or illness that endangers them. Therefore, as a result of these criminal acts of trafficking, a policy and legal regulations are needed that can provide justice, provide legal protection and legal certainty.

Efforts to restore the condition of victims of criminal acts of human trafficking are carried out by providing legal protection relating to victims' rights. In *Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power* In 1985 it was stated that victims' rights are the right to obtain compensation, restitution, rehabilitation and reintegration for victims of criminal acts of human trafficking. Compensation is provided by the state to victims of criminal acts of human trafficking if the perpetrator does not implement the right to restitution to the victim. The state is obliged to provide financial compensation to victims of criminal acts of human trafficking because perpetrators are unable to provide compensation to victims. Providing compensation by the government is an effort to develop truth and justice for victims.

In fact, the judge must have the courage to knock the gavel, siding with the victim as the applicant for restitution. Likewise with determining the amount of compensation. Judges must discard the idea of "conservative compensation", such as compensation which is only based on the presence or absence of written evidence such as receipts or "direct losses, but rather consider the conscience of the victim's suffering as a result of criminal acts in a broad sense, as far as compensation is concerned." The claim submitted by the victim has a strong basis for argumentation.



This problem will certainly disturb and even eliminate the victim's right to obtain restitution. Based on the description above, it can be said that there are weaknesses in the regulations for providing restitution for crime victims, including;

- a. Weak coercive efforts and execution of restitution. Law Number 13/2006 concerning Protection of Witnesses and Victims and Law Number 21 of 2007 concerning PTPPO do not regulate forced efforts to make payments and which institution has the authority to execute such restitution.
- b. Unlike in criminal acts of corruption or money laundering, the confiscation of assets of suspects/defendants in human trafficking crimes is based on a judge's decision, not from the start of the investigation process. This of course will cause difficulties when the victim asks for compensation.
- c. The failure to provide restitution is due to the provision of a substitute prison sentence if the perpetrator is unable to provide compensation to the victim of human trafficking.

Weaknesses in these regulations will hinder the implementation of law enforcement in providing restitution to victims of human trafficking. Weak regulation of legal substance regarding law enforcement against victims of criminal acts of trafficking in persons should enable coercive measures to be made against the perpetrators to be able to carry out criminal restitution and substitute imprisonment so as to guarantee justice for the victims.

The right to obtain restitution for the crime of trafficking in persons is as if guaranteed by Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, but to obtain this right the provisions must be included in the complaint (*requisition*) in accordance with the explanation of Article 48 paragraph (1), apart from that there is a provision in Article 50 paragraph (4) which states that "*If the perpetrator is unable to pay restitution, then the perpetrator is subject to substitute imprisonment for a maximum of 1 (one) year*". This means providing relief to perpetrators, especially corporate actors, in their obligation to provide restitution. In this way, this makes it even more difficult for victims to obtain restitution, so that the right to obtain restitution as implemented in this law does not guarantee protection for victims. Law Number 21 of 2007 concerning Eradication of the Crime of Human Trafficking does not yet reflect protection for direct victims (*actual victim*), this is because the right to obtain restitution is not yet guaranteed.

Responsibility The social responsibility of the perpetrator towards the victim by providing restitution is a form of the criminal responsibility system. As is known, Indonesian positive criminal law adheres to the principle of error as one of the principles in addition to the principle of legality. Criminal liability results from the actions of the perpetrator of a criminal act for the



wrongdoing he or she committed. Perpetrators who violate the provisions of the PTPPO Law must be responsible for their mistakes.

The lawsuit for restitution in the TIP case was carried out by PT. Hassindo Karya Niaga, should have been submitted from the start of the investigation process. Apart from that, a lawsuit for restitution can also be filed by the Public Prosecutor as the victim's representative in the prosecution. Providing restitution for victims of TIP cases committed by PT. Hassindo Karya Niaga, is an effort to realize justice by restoring the rights of victims lost as a result of crimes, so that these lost rights must be immediately restored.

In connection with justice for victims of TIP cases committed by PT. Hassindo Karya Niaga can refer to Aristotle's theory of distributive justice. In his view, distributive justice is justice that is proportional in nature. That everyone has the right to receive justice equally, without discrimination. In the PTPPO Law, it is stated that victims have the right to receive restitution for what they experienced. This means that every victim, regardless of who they are, has the right to apply for restitution as mandated by law. To realize justice, law enforcers have the responsibility to carry out legal analysis of a case they resolve and be sensitive to problems arising from the case using their conscience.

If it is related to the theory of criminal responsibility, when discussing criminal responsibility, it cannot be separated from one or two aspects that must be seen from philosophical views. One of them is justice, so discussions about criminal responsibility will provide a clearer form. Criminal liability as a matter of criminal law is intertwined with justice as a matter of philosophy.

Restitution is a form of criminal responsibility that can be carried out by perpetrators so that they can provide justice and legal certainty for victims of trafficking crimes. The main interest in restitution is basically the state's efforts to provide protection and fulfillment of victims' rights.

In Article 1 Number 13 of the PTPPO Law, it is stated that what is meant by restitution is: *"payment of compensation charged to the perpetrator based on a court decision that has permanent legal force for material and/or immaterial losses suffered by the victim or his heirs."* Compensation as defined in the crime of human trafficking is material and/or immaterial compensation. Ideally the recovery of victims of TIP cases carried out by PT. Hassindo Karya Niaga, does not need to be linked to whether or not there is a judicial process, because basically the concept of restitution is substantially part of the victim's recovery so that they return to their original condition before the crime occurred.



In terms of law enforcement to provide restitution to victims of TIP cases committed by PT. Hassindo Karya Niaga, clearly explains that the mechanism for applying for restitution is carried out from the moment the victim reports the case they experienced to the National Police of the Republic of Indonesia. The restitution requested by the victim was submitted from the investigation process until it was finally included in the court decision. Meanwhile, the provision of restitution is carried out within 14 (fourteen) days from the notification of the decision which has permanent legal force.

The report is handled by investigators at the same time as handling the criminal act committed. In the process of handling TIP cases carried out by PT. Hassindo Karya Niaga, the public prosecutor is obliged to notify the victim of their right to apply for restitution. The public prosecutor can convey the amount of losses suffered by the victim as a result of the crime of human trafficking along with the demands. Submitting restitution using this mechanism does not eliminate the victim's right to file a lawsuit for their losses themselves. If you look closely at Article 28 of the PTPPO Law, it is stated that it is mandatory to submit restitution from the start of the investigation, prosecution and examination in court related to law enforcement for the crime of human trafficking.

Law enforcement efforts to propose restitution for victims of TIP cases carried out by PT. Hassindo Karya Niaga had to do this from the start of the investigation process. However, in practice the application for restitution was not carried out. Based on this, if we refer to Article 48 paragraph (5) which contains provisions regarding the deposit of restitution in the form of money in court in accordance with statutory regulations, it must be implemented in order to achieve legal enforcement of the restitution itself.

During the investigation process, it was discovered that it was in accordance with the process for handling civil cases in consignment. Based on this, from the beginning of the investigation a calculation of the losses suffered by victims of TIP cases carried out by PT. Hassindo Karya Niaga. The amount of loss suffered by the victim will be reported by investigators to the Prosecutor as public prosecutor. On the basis of this report, the Prosecutor can submit a request to the Head of the local Court through the clerk to make a determination letter so that the perpetrator entrusts the amount of money according to the Prosecutor's request. The restitution money can also be deposited after a decision has been made by the District Court.

These steps are intended to make it easier for judges to calculate the losses suffered by victims. Providing restitution to victims of TIP cases committed by PT. Hassindo Karya Niaga or its heirs are given and included at once in the court decision (Article 48 paragraph (3)), and



implemented since the first instance court decision (Article 48 paragraph (4)). In Article 48 paragraph (6) restitution is given within a period of 14 (fourteen) days from the notification of the decision which has permanent legal force. The restitution payment is a real payment of the amount of restitution decided which was previously entrusted to the court of first instance.

Based on the provisions of the PTPPO Law, the provisions regarding restitution cover loss of wealth or income, suffering, costs for medical and/or psychological treatment and/or other losses suffered by victims as a result of human trafficking. These other damages may include loss of property, basic transportation costs, attorney's fees or other costs related to legal proceedings, or loss of income promised by the perpetrator.

Any losses experienced by victims of TIP cases will be submitted for restitution. The provisions in Article 49 of the PTPPO Law state that the implementation of the granting of restitution must be reported to the head of the court deciding the case, accompanied by proof of the implementation of the granting of restitution. The evidence is received by the Chairman of the Court and will be announced on the notice board of the relevant court. A copy of the proof of implementation of the provision of restitution will finally be delivered by the court to the victim or his heirs.

If the restitution is not carried out by the perpetrator, then according to the provisions of Article 50 paragraph (1), the victim or his heirs must immediately notify the court of this matter. provide a written warning letter to the restitution provider, to immediately fulfill the obligation to provide restitution to the victim or their heirs. The court will issue a warning letter so that the restitution must be carried out within a period of 14 (fourteen) days. When the warning letter is not implemented, the court will issue an order to the Public Prosecutor to confiscate the convict's assets and auction the assets to pay restitution to the victim and his heirs.

Regulations regarding the provision of restitution for victims of TIP cases aim to create a balance between the perpetrator and the victim. In this case, the victim of a TIP case committed by PT. Hassindo Karya Niaga, has the right to receive the same treatment, position and attention in the trial process. The perpetrator receives sanctions in the form of criminal penalties and actions. The application of these sanctions is a manifestation that everyone has the same position before the law if they violate the law. Meanwhile, the victim will receive protection for his or her right to restitution which must be provided by the perpetrator.

The application of equality in law is a consequence of respecting and protecting human rights and is in accordance with Aristotle's distributive justice. Regarding the implementation of criminal restitution, currently it is not running as it should. As explained previously, several court



decisions regarding human trafficking do not grant restitution to victims. Even if submitted, the claim was rejected because it was deemed that there was no complaint from the victim. Even if it is submitted during the investigation process, the victim must be able to provide clear evidence, both proof of receipts for costs incurred and evidence of damaged or lost assets to the public prosecutor. Based on this evidence, the public prosecutor will ask the court to punish the perpetrator by paying restitution.

In several decisions that are the object of this research, it can be seen that the final verdict against the defendant for the crime of human trafficking does not reflect justice for the victims of TIP cases committed by PT. Hassindo Karya Niaga. Basically, the decision handed down by the judge must take into account the legal facts presented in the lawsuit and at trial. These legal facts must be adjusted to the rules of law and legal arguments that can interpret the law to seek true justice for the victim. Judges must be able to carry out justice-based interpretations without forgetting legal certainty, expediency and legal equality of the criminal imposition itself.

Legal equality or *equality of law* is a propriety thing that must be done when looking at a case. In law, values are usually described as pairs, but in formation they are always in tension, as for example between equality or conclusion (*justice, fairness*) with legal certainty (*legal certainty*). Legal certainty and equality are the two main tasks of law. However, in the implementation of these two tasks cannot be determined equally. The principle of legal certainty is a guarantee that in its implementation the law must be implemented in a good and correct manner.

Certainty is the goal of implementing the law itself, if there is no legal certainty then the law will lose its identity. When imposing a sentence in a criminal case involving human trafficking, the judge must prioritize justice and the expediency of the sentence itself. In accordance with the principle of expediency, the imposition of a crime must be beneficial for the victim, perpetrator and fulfill the interests of society. Justice itself is basically a condition that must be realized by law.

Justice in criminal acts of human trafficking must include procedural dimensions of justice, access to justice for victims to obtain the right to restitution, and implementation of the judge's decision in imposing substitute imprisonment for the perpetrator. Judges in adjudicating and imposing sentences will not be separated from the criminal regulation system. However, judges are given the power to explore and observe social change and fulfill a sense of justice for society for actions prohibited by statutory regulations.

Providing restitution rights to victims of TIP cases committed by PT. Hassindo Karya Niaga which is in the decision of the East Jakarta District Court (Number: 289/Pid.Sus/2020/PN.Jkt.Tim)

Does not yet reflect legal certainty. This can be seen from the decision on a TIP case which has permanent legal force, where the decision does not mention restitution. Legal certainty is not only written in statutory regulations, but must also be applied to concrete events. Something that is contained in a law is an abstract thing. Therefore, the abstract can be realized concretely if it is carried out or carried out by someone who has authority over this matter. Guaranteeing certainty in law enforcement in the implementation of the restitution rights of TIP victims as stated in the PTPPO Law, which is expressly regulated in Article 48, cannot be separated from the role of law enforcement officials, namely the role of Investigators, Public Prosecutors and Judges in handling requests for restitution by TIP victims.

Enforcement of the right to restitution depends on the role of law enforcement officers, especially investigators, prosecutors and judges. Whether they will guard the rights stipulated by law or ignore them, all depends on the "sense of justice" and the courage they have to fulfill the victims' rights through restitution.

In the end, what is hoped for is the Judge's understanding of this restitution. If the judge continues to respond conservatively to requests for restitution, it is conceivable that restitution will be part of *restorative justice* failed, this must be prevented. This kind of Judge's view must be "dismantled". Judges should not be able to dodge, for example, there are no detailed regulations from the Chief Justice of the Supreme Court, through SEMA (Supreme Supreme Court Circular) for example, regarding how to decide or deal with requests for restitution. Judges should rely on the rights and authority they have: *finding of law*. Moreover, the legal basis for restitution is clear.

4. CONCLUSIONS

Actions carried out by PT. Hassindo Karya Niaga and its work constitute a criminal act of human trafficking. There is no legal certainty for victims of TIP cases committed by PT. Hassindo Karya Niaga due to the lack of implementation of the right to compensation (restitution) obtained by victims of criminal acts of human trafficking. There is a need for clearer legal sanctions against corporations, there are many ways that must be taken, such as prohibiting them from operating, attempting to confiscate assets resulting from criminal acts, providing binding legal sanctions to provide a deterrent effect. The need for judges to consider the provision of restitution for victims of the crime of trafficking in persons is contained in the court's decision.



REFERENCES

- Adi, E. A. W. (2021). Penal Mediation as the Concept of Restorative Justice in the Draft Criminal Procedure Code. *Lex Scientia Law Review*, 5(1), 139–164.
- Decree of the Minister of Manpower of the Republic of Indonesia Number. 260 of 2015 concerning Termination and Prohibition of the Placement of Indonesian Workers with Individual Users in Countries in the Middle East Region
- East Jakarta District Court Decision Number: 289/Pid.Sus/2020/PN Jkt.Tim Abdul Wahid and Muhammad Irfan. 2001. Protection for Victims of Sexual Violence, PT. Refika Aditama, Bandung.
- Andenny, A., & Natangsa Surbakti, S. H. (2018). *Perlindungan Hukum Terhadap Anak Korban Perdagangan (Human Trafficking)(Studi Kasus Di Wilayah Surakarta)*. Universitas Muhammadiyah Surakarta.
- Faisol, F. (2014). *Pengaturan Pertanggungjawaban Pidana Korporasi Terkait Tindak Pidana Perdagangan Orang*. Brawijaya University.
- Henny Nuraeny, S. H. (2022). *Tindak Pidana Perdagangan Orang Kebijakan Hukum Pidana dan Pencegahannya*. Sinar Grafika.
- Hermawan, Y. P. (1919). *Transformasi dalam Studi Hubungan Internasional: Aktor, Isu dan Metodologi*. -.
- Judge, Z. (2012). *Perlindungan Hukum Bagi Tenaga Kerja Indonesia Di Luar Negeri*. Esa Unggul University.
- Law Number 14 of 1969 concerning Basic Provisions Regarding Labor
- Law Number 3 of 1992 concerning the Placement of Foreign Workers
- Law no. 21 of 2007 concerning Eradication of the Crime of Human Trafficking
- Law of the Republic of Indonesia Number 40 of 2007 concerning Limited Liability Companies
- Rosida, N. (2017). Perlindungan Hukum bagi Tenaga Kerja Indonesia di Luar Negeri. *Jurnal Muara Ilmu Sosial, Humaniora, Dan Seni*, 1(1), 95–104.
- Regulation of the Attorney General of the Republic of Indonesia Number: PER-028/A/JA/10/2014, Concerning Guidelines for Handling Criminal Cases with Corporate Legal Subjects
- Presidential Regulation no. 69 of 2008 concerning the Task Force for the Prevention and Handling of Human Trafficking Crimes
- Perma Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations
- The 1945 Constitution of the Republic of Indonesia



Sinlaeloe, M. L. J. P. (2017). *Tindak Pidana Perdagangan Orang*. Setara Press.

Situngkir, I. L. (2022). *Tinjauan Yuridis Seorang Ibu dalam Melakukan Tindak Pidana Perdagangan Orang (Studi Putusan Nomor 1451/Pid. Sus/2021/PN Mdn)*. Universitas Medan Area.

Tibaka, L., & Rosdian, R. (2017). The Protection of human rights in Indonesian constitutional law after the amendment of the 1945 constitution of the republic of Indonesia. *FIAT JUSTISIA: Jurnal Ilmu Hukum*, 11(3), 266–288.

