

## **Right To Restitution For Victims of Human Trafficking**

### **Criminal ACTS**

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#### **ABSTRACT**

The aim is to find out about the Judge's Considerations in Deciding on the Right to Restitution in Decision Number 738/Pid.Sus/2023/Pt Sby) according to Positive Law. The research method used in the research carried out is the Normative Juridical legal research method, also called normative legal research or doctrinal legal research. Results of the Surabaya High Court Decision Number 738/PID.SUS/2023/PT SBY The judge's consideration in granting restitution to the victim was in accordance with the law and justice for the victim.

Keywords: Judge, Crime, Criminal, Decision, Constitution

#### **1. INTRODUCTION**

The Republic of Indonesia is a country that has a large population (Marumu & Peuru, 2022). Conditions like this sometimes create obstacles in realizing equitable development in all things and give rise to inequality in the social and economic fields. This could easily result in a crime. Crime will cause unrest in society, therefore crime requires special handling (Saraswati, 2015).

The increasing problem of human trafficking in various countries, including Indonesia and other developing countries, has become a concern for Indonesia as a nation, international community and member of international organizations, especially the United Nations (UN) (Togatorop, 2019). International human trafficking regulations have been recorded in several conventions including:

1. International Convention for the Suppression of White Slave Traffic (international convention to eliminate the White Slave Trade) 1910.
2. International Convention for the Suppression of Traffic in Women and Children (International Convention to Eliminate Trafficking in Women and Children) 1921.
3. International Convention for the Suppression of Traffic in Women of Full Age (International Convention to Abolish Trafficking in Adult Women) 1933.
4. Convention on the Elimination of All Forms of Discrimination Against Women, CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women (1979 which was ratified by Law Number 7 of 1984.
5. Palermo Protocol, (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplement to the United Nation Convention Against



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Transnational Organization Crime/ Protocol on preventing, taking action and punishing (perpetrators of) trafficking in persons, especially women and children). 2000.

Trafficking in persons violates human rights because trafficking in persons is carried out through threats, coercion, kidnapping, fraud, cheating, lies and abuse of power for the purposes of prostitution, pornography, violence or exploitation, forced labor, slavery or something similar. If one of the methods above is taken, human trafficking will occur which is considered a crime that violates human rights (Puji Yulia, 2017).

Every criminal act apart from having a perpetrator will also cause victims. Victims are those who suffer physically and spiritually as a result of their own actions or actions caused by other parties, who want to seek fulfillment of their own or other parties' interests which conflict with the human rights of those who are harmed (Yuliani & Nisa, 2023).

People who are victims of these crimes are certainly in a very disadvantaged position. The losses experienced by victims are not only physical, but also psychological, which can cause long-term trauma. Efforts to protect victims are actually very important. Because besides being able to reduce the suffering of victims due to the criminal acts they have experienced, it can also prevent continued victimization, so this can reduce crime.

One form of legal protection for victims of criminal acts of human trafficking is to receive restitution. The definition of restitution itself is compensation to victims of criminal acts given by the perpetrator as a form of accountability. Protection of victims to obtain compensation is an integral part of human rights in the field of welfare and social security. Law Number 21 of 2007 concerning the eradication of criminal acts of trafficking in persons gives great attention to victims by providing the right to restitution as explained in the explanation of Law Number 21 of 2007 concerning the eradication of criminal acts of trafficking in persons article 48 paragraph 1 (Nuraeni & Kania, 2017). Currently, there are many laws and regulations that regulate restitution, including: Law Number 26 of 2000 concerning Human Rights Courts, Law Number 8 of 1999 concerning Consumer Protection, Law Number 31 of 2006 concerning Protection of Witnesses and Victims, as well as Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking and most recently Government Regulation No. 7 of 2018 concerning Providing Compensation, Restitution and Assistance to Witnesses and Victims (Panjaitan, 2022).

The next question is how to strengthen the victim's side. The issue of victim protection is always an interesting topic that deserves attention, because the issue of victim protection is not only related to protection, but is also related to the obstacles faced by not actively participating in the investigation and trial process. So the victim loses the opportunity to fight for their rights and restore the situation caused by the crime. In relation to the investigation of a criminal act, the victim is often



only positioned as a witness, as a reporter in the investigation process, and as a source of information, or as a key to solving the case.

It is very unfortunate that in practice many victims of criminal acts do not receive their full rights. In the case of victim protection in the form of compensation or restitution, many victims do not receive compensation for the events they experience due to many factors. One of them is that the victim does not know his or her right to obtain compensation from the perpetrator of the crime because of the lack of knowledge obtained by the victim during the trial process. The process of requesting compensation is an equally important factor in the non-fulfillment of victims' rights. The compensation process is complicated and takes a long time, which is an obstacle for victims, so that the problem of time becomes a stumbling block for victims. However, nowadays there are many criminal cases where the victims have received their rights in the form of compensation. Many requests for compensation have been approved by judges. But this cannot be separated from the process of applying for compensation which is very complicated and long. In fact, victims should have the convenience of fulfilling their rights.

Based on this background and considering the previous descriptions, the author is interested in discussing further the Juvenile Criminal Justice System, through a written work entitled "Restitution Rights for Victims of the Crime of Human Trafficking (Analysis of Decision Number: 738/Pid.Sus/2023 /Pt Sby)

## **2. RESEARCH METHODS**

The method used in the research carried out is the Normative Juridical legal research method, also called normative legal research or doctrinal legal research. In normative research secondary data as a source/material of information can be primary legal material, secondary legal material and tertiary legal material. in a qualitative way, namely by analyzing the data and then organizing it into opinions or responses and secondary data obtained from the library is then analyzed so that data is obtained that can answer the problem.

## **3. RESULTS AND DISCUSSION**

### **Analysis of Decision Number: 738/PID.SUS/2023/PT SBY**

#### **1. Legal Position**

The court institution is an institution that provides justice for justice seekers, while judges are instruments in the law enforcement process. In Article 1 of Law Number 14 of 2004 concerning Judicial power, what is meant by judicial power is the power of an independent state to administer

justice to uphold law and justice based on Pancasila, for the sake of the implementation of the Rule of Law of the Republic of Indonesia (Amarini, 2019).

According to Andi Hamzah: "A judge is a law enforcement officer or state judicial official who is authorized by law to judge or decide a case." He added that "the process of examining criminal cases in court carried out by judges is generally regulated in the Criminal Procedure Code and several other implementers, namely Government Regulation Number 27 of 1983 concerning the implementation of the Criminal Procedure Code and Regulation of the Minister of Justice of the Republic of Indonesia Number. M. 06.UM.1.06 of 1983 concerning court rules and regulations" After explaining the above, regarding the basis for the verdict, the author describes the criminal case of human trafficking that has occurred in the jurisdiction of the Surabaya High Court, one of the cases that the author examined is Decision Number 738/PID.SUS/2023/PT SBY which contains:

#### Case Position

To make it clearer, the author presents a case that has been decided by the Surabaya High Court, with the case: Article 81 Paragraph (1), (3), (5) Law of the Republic of Indonesia Number 17 of 2016 concerning Determination of Perpu Number 1 of 2016 concerning Second Amendment to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection Becomes Law j.o Article 64 Paragraph (1) of the Criminal Code (Number, 1 C.E.);

#### a. Identity of the perpetrator as the defendant

Full name: AHMAD FAUZI MUSTOFA ABDUL GHOFUR

AKA GUS FA BIN BISRI MUSTOFA;

Place of birth : Tuban;

Age/Date of Birth: 27 Years Old / January 16 1994; Gender : Man;

Nationality : Indonesia;

Residence: Dusun Ngarum RT. 01 RW. 02 Ngarum Village

Grabagan District, Tuban Regency;

Religion: Islam;

Work : Self-employed;

#### b. Public Prosecutor's Indictment

Read the Public Prosecutor's Criminal Complaint at the Tuban District Prosecutor's Office Number 14/TBN/1/2023 dated 3 May 2023 as follows:

1. Declare that the Defendant, AHMAD FAUZI MUSTOFA ABDUL GHOFUR AKA GUS FA BIN BISRI MUSTOFA, has been legally and convincingly proven guilty of committing the crime of "deliberately committing violence, forcing a child to have sexual intercourse with him, which was carried out by an educator, causing more than 1 (one) victim in a row. "



violates Article 81 Paragraph (1), (3), (5) of Law of the Republic of Indonesia Number 17 of 2016 concerning the Determination of Perpu Number 1 of 2016 concerning the Second Amendment to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection to Become Law -Invite jo. Article 64 Paragraph (1) of the Criminal Code as stated in the first alternative indictment of the Public Prosecutor (Number, 17 C.E.);

2. for 17 (seventeen) years minus the time the Defendant is arrested and detained and pays a fine of Rp. 200,000,000.00 (two hundred million rupiah) and if the fine is not paid it will be replaced by imprisonment for 6 (six) months;
  3. Determine that the Defendant remains detained;
  4. Imposing restitution on the Defendant AHMAD FAUZI MUSTOFA ABDUL GHOFUR AKA GUS FA BIN BISRI MUSTOFA requested by the Child of the Victim PITASARI BINTI JASDI who was represented by LPSK in the amount of Rp. 8,950,000.00 (eight million nine hundred and fifty thousand rupiah) as well as the restitution assessment and details and calculation of losses from LPSK, and if the Defendant does not pay the restitution then the Defendant's property will be confiscated and then auctioned off to fulfill the payment of the restitution and if the Defendant does not have the property then it will be replaced by imprisonment for 6 (six) months;
  5. Determine evidence in the form of:
    - 1 (one) Samsung brand cellphone IMEI: 352166/47/479880/1;
    - 1 (one) Vivo 1820 brand cellphone IMEI: 86238744910584;
    - 1 (one) cream long-sleeved shirt;
    - 1 (one) dark brown plisket skirt;
    - 1 (one) maroon red backpack;
    - 1 (one) prayer mat;
    - 2 (two) mukenah fruits;
    - 1 (one) piece of jarik cloth;
    - 1 (one) red robe with white lace motif;
    - 3 (three) Vision brand red notebooks;
    - 1 (one) Sidu brand notebook;
    - 1 (one) textbook;
- Returned to the Victim's Child NURFADHILAH BINTI SUNARDI;
- 1 (one) FC birth certificate;
  - 1 (one) FC Madin Diploma;

Attached to the case file;

1 (one) Infinix brand cellphone;

Returned to Defendant AHMAD FAUZI MUSTOFA ABDUL GHOFUR;

6. Determine that the Defendant pay court costs of Rp. 5,000.00 (five thousand rupiah);

## **2. Judge's considerations**

1. Declare that the Defendant AHMAD FAUZI MUSTOFA ABDUL GHOFUR AKA GUS FA BIN BISRI MUSTOFA as mentioned above has been legally and convincingly proven guilty of committing the criminal act of "committing violence forcing a child to have sexual intercourse with him carried out by an educator which resulted in more than 1 (one) victim resulting in disturbance soul continuously as continued action";

2. Sentence the Defendant to imprisonment for 12 (twelve) years and a fine of IDR 200,000,000.00 (two hundred million rupiah) with the provision that if the fine is not paid it will be replaced by imprisonment for 6 (six) months;

3. Grant the request for restitution from the Witness and Victim Protection Agency through the Attorney/Public Prosecutor in its entirety;

4. Sentence the Defendant to pay restitution to Witness PITASARI in the amount of Rp. 36,700,000.00 (thirty six million seven hundred thousand rupiah) with the condition that if the restitution is not paid no later than 30 (thirty) days from the pronouncement of this decision or beyond the time period 30 (thirty) days, ordering the Prosecutor/Public Prosecutor to provide a Payment Order to carry out the granting of restitution no later than 14 (fourteen) days from the date the order is received, provided that if the granting of restitution to the PITASARI Witness is not fulfilled until the time limit is exceeded at the latest 14 (fourteen) days, the Prosecutor/Public Prosecutor confiscates the Defendant's assets and auctions the assets to fulfill the payment of restitution no later than 30 (thirty) days, provided that if the Defendant's assets are insufficient to fulfill the restitution, it will be replaced by a prison sentence. for 6 (six) months;

5. Determining that the period of arrest and detention that has been served by the Defendant shall be deducted entirely from the sentence imposed;

6. Determining that the Defendant remains detained;

7. Determine evidence in the form of:

1 (one) Samsung brand cellphone IMEI: 352166/47/479880/1;

1 (one) Vivo 1820 brand cellphone IMEI: 86238744910584;

1 (one) cream long-sleeved shirt;

1 (one) dark brown plisket skirt;

1 (one) maroon red backpack;

1 (one) prayer mat;

- 2 (two) mukenah fruits;
- 1 (one) piece of jarik cloth;
- 1 (one) red robe with white lace motif;
- 3 (three) Vision brand red notebooks;
- 1 (one) Sidu brand notebook;
- 1 (one) textbook;

Returned to Son NURFADHILAH BINTI SUNARDI;

- 1 (one) FC birth certificate;
- 1 (one) FC Madin Diploma;
- Photocopy of application letter on behalf of PITASARI;

Photocopy of the Restitution Application Form for the Witness and Victim Protection Agency on behalf of PITASARI;

- Photocopy of statement letter on behalf of PITASARI;
- Photocopy of KTP in the name of PITASARI;
- Photocopy of KK in the name of the Head of the HASDI Family;
- Photocopy of Psychological Examination Results on behalf of PITASARI;

Photocopy of letter from the Minister of Finance of the Republic of Indonesia regarding unit costs for witness and victim protection at the Witness and Victim Protection Agency (LPSK) of the Ministry of State Secretariat;

Attached to the case file;

- 1 (one) Infinix brand cellphone;

Returned to the Defendant AHMAD FAUZI MUSTOFA ABDUL GHOFUR AKA GUS FA BIN BISRI MUSTOFA;

8. Charging case costs to the Defendant at two levels of court at the appeal level in the amount of Rp. 2,500.00 (two thousand five hundred rupiah);

### **3. Analysis**

A judge's decision or what is usually referred to as a court decision is something that is desired or wanted by the parties involved in a case in order to resolve a case as well as possible. Because with the judge's decision, it is hoped that there will be legal certainty and justice in the cases they face. Legal certainty in a judge's decision is the implementation of the law in accordance with its sound, where legal regulations must be upheld in order to create legal certainty. This provision is in accordance with what was explained by Sudikno Mertokusumo, legal certainty is a guarantee that the law is implemented, that those who are entitled according to the law can obtain their rights.



If we look at decision number 738/PID.SUS/2023/PT SBY, the author finds the judge's shortcomings in implementing Law No. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking. The Panel of Judges in providing legal certainty only lies in imposing a crime on the defendant in accordance with Article 81 Paragraph (1), (3), (5) of Law of the Republic of Indonesia Number 17 of 2016 concerning the Determination of Perpu Number 1 of 2016 concerning the Second Amendment to Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection Becomes Law jo. Article 64 Paragraph (1) of the Criminal Code.

Assembly The judge in decision 738/PID.SUS/2023/PT SBY apart from sentencing defendant AHMAD FAUZI MUSTOFA ABDUL GHOFUR ALIAS GUS FA BIN BISRI MUSTOFA to 12 (twelve) years in prison, the panel of judges also approved the request for restitution submitted by the public prosecutor in his lawsuit. The panel of judges in their decision decided for the defendant to pay restitution to Witness PITASARI in the amount of Rp. 36,700,000.00 (thirty-six million seven hundred thousand rupiah) provided that if the restitution is not paid no later than 30 (thirty) days from the decision This statement is made or exceeds the period of 30 (thirty) days, ordering the Prosecutor/Public Prosecutor to provide a Payment Order to carry out the granting of restitution no later than 14 (fourteen) days from the date the order is received, provided that if the granting of restitution to the PITASARI Witness is not fulfilled until the time limit of at least 14 (fourteen) days has passed, the Prosecutor/Public Prosecutor confiscates the Defendant's assets and auctions them off. The judge's considerations in approving the request for restitution for the victims were in accordance with the facts at trial where the victims had clearly suffered losses in terms of income and suffering while being victims of the actions committed by the defendant. The panel of judges in their decision was also in accordance with the indictment submitted by the public prosecutor who asked the defendant to pay restitution to the victim based on Article 48 paragraph (1) of Law No. 21 of 2007. Where victims of human trafficking have the right to receive restitution for losses in the form of loss of wealth or income, suffering, costs for medical and/or psychological treatment and other losses suffered by victims as a result of human trafficking.

According to the author, in the case of the Surabaya High Court decision number 738/PID.SUS/2023/PT SBY, the team of judges in handing down restitution or compensation to the defendant was correct where the judge had created legal certainty to be strictly enforced. Legal certainty as outlined in the judge's decision is a product of law enforcement based on relevant facts at trial. The judge also did not forget to hand down a decision based on the principle of justice for the victims who were harmed by the crimes committed by the defendant.

#### **4. CONCLUSION**

Restitution in Indonesia is a form of protection for victims of criminal acts. The purpose of this restitution is to compensate for the losses experienced by the victim and force the perpetrator to admit the losses caused by his actions by ordering him to pay a certain amount of money to the victim. Surabaya High Court Decision Number 738/PID.SUS/2023/PT SBY The judge's consideration in granting restitution to the victim was in accordance with the law and justice for the victim.

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