INTITIATING PAYMENT OF TRAFFICKING RESTITUTION FROM A VICTIM’S PERSPECTIVES

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ABSTRACT

The objective of this study was to offer policy concept ideas in fulfilling restitution for the victims in accordance with the required attainment of justice. Restitution related to the payment of costs charged to the person based on a court decision that has permanent legally enforceable for the costs suffered by the victim or heir. This study used a normative method using a statutory approach and a case approach. From the three court decisions and one trafficking case in the constabulary, the victim's comprehension of the legal handling experienced is sufficient to accommodate the victim's wishes in obtaining victim's rights. Conclusions are drawn through an inductive to deductive thought process. Of the three decisions reviewed, it proved that the application of restitution payments was not able to fulfill a sense of justice for the victim. In fact, in practice, the fulfillment of compensation payments is in the non-penal space, from the perspective of victim recognition, it is sufficient to accommodate their wishes and hopes for the fulfillment of the expected restitution rights. In order to provide legal certainty for victims of the fulfillment of restitution rights, a legal breakthrough is required. The diversion method as a confirmation of ensuring the payment of the victim's restitution right is an offer. The concept of diversion can be carried out with the limitation of the criteria for the impact experienced by the victim, and the legality of legality is determined through a court decision or decision, as legal achievement through restorative justice is able to restore conflicts from perpetrators and victims.

Key Words: restitution policy; diversion method; refund payment; victims of trafficking.

INTRODUCTION

The Constitution Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons as a manifestation of the state in efforts to protect victim witnesses from the act of trafficking in persons. The state does not tolerate the practice of acts because this form of crime is classified as a form of serious crime for gross human rights violations.
The provisions of the Trafficking Law reinforce the principles of criminal policies that outline the renewal of condemnation, the context of the Criminal Code so far has been more directed towards imprisonment. Gradually there is a shift in the approach to victims, how efforts to achieve victim recovery are imposed on the perpetrators for crimes that have been committed. The context of the provisions is in line with the goal of achieving the theory of restorative justice (Tridiatno, 2015).

The same thing is in putting forward the request for the restitution, the judge must have the courage to put forward the interests of the victim where the judge has the authority to find the law (rechtsvinding), so that the assumption of the concept of restitution in the failed restorative concept can be prevented (Rosnawati & Din, 2016). According to Mulyadi (Marasabessy, 2016), the position of victims from the framework of the concept of criminal policy in victim protection, the first thing that must be considered is the essence of the losses suffered by victims. The essence of the loss is not only related to material loss or physical suffering but also psychological in nature. That is the trauma of losing trust in front of society and a sense of security.

The political order of criminal law has opened up space for law enforcement processes through protection efforts for witnesses and victims by fulfilling the basic needs of victims in fulfilling their rights which are manifested in the provision of compensation and restitution for victims of gross human rights violations. As in this research setting, in the law enforcement application process, all the mistakes and weaknesses of law enforcement officials in protecting victims are important points of their desire to protect victims.

Restitution is directed as the responsibility of the suspect or convicted person for the legal consequences arising from the impact of the act he has committed. The main goal is to overcome all the losses suffered by the victims. However, the filing standards are regulated in the legal provisions of Law no. 21 of 2007 and the Amendment Law on witness protection are still being debated, so that the fulfillment of victims' rights is hampered.
Victims as apart from those who suffer and are disadvantaged for the actions of traffickers in legal traps tend to be involved only to provide testimony. Finally, victims often feel dissatisfied even though the criminal charges filed by the prosecutor against the perpetrators are quite high or the criminal decisions granted by the judges are fulfilled, so they are deemed not fulfilling the justice of the victims. This is because the criminal justice system is only limited to prosecuting perpetrators, not serving the interests of victims (Marasabessy, 2016).

Similar sentences regarding the process of handling victims of trafficking crimes are still limited to proving crimes, so that the process of obtaining the recovery of victims who should receive attention to the rights that have been harmed from crimes, namely the realization of material compensation and rehabilitation tends to be neglected (Jumiati, 2015).

Essentially, criminal policy is an integral part of protecting society (social defense) and efforts to achieve social welfare. It can be interpreted that the ultimate goal or main goal of criminal politics is the protection of the community to achieve prosperity (Arif, 2008). On the other hand, criminal law policy is part of the sanction/punishment policy, judicial policy through the criminal justice system, as well as law enforcement and criminal policy administration which is basically a rational effort to achieve social policy, namely the achievement of social welfare, and protection of the community (Kenedi, 2020).

Petter Hoefnagel provides an understanding that criminal policy is a combination of efforts to apply criminal law (criminal law application), prevention without using criminal law (prevention without punishment) and efforts to influence people's views on crime and punishment through the mass media (influencing views of society on crime and punishment) mass media (Mulyadi, 2008).

Several articles describe the application in law enforcement regarding trafficking crimes in Indonesia which is still not optimal. It is proven by the large number of reports that are presented both in print and electronically about trafficking cases. It is difficult for the perpetrators to get caught and in the end the rights of the victims are neglected (Daud & Sopoyono, 2019). The
development of criminal law has progressed quite rapidly, both in terms of theory as well as the role of its pragmatic functions, as the legal context is seen as incapable of adjusting to the demands of the situation. It takes a means of change (agent of change law as a tool of social engineering), or a means of development to regulate the changes in society (Nuraeny, 2011). Law has a social meaning besides the inherent normative juridical meaning. The social meaning of law can provide an overview of how the legal concept works in the community. Because the social meaning when compared to the basic rule of law is part of the supremacy of law principle which is considered good, fair, but the social meaning of the principle will be different if it is applied in reality. Because the context of reality will deal with justiciable who have different economic capacities (Suteki, 2013).

The rampant of the criminal practice of trafficking is motivated by economic factors, the victims are vulnerable to being ensnared because it is to fulfill their income and living income. It is not uncommon for victims to be willing to leave their places of origin and their families to work in other areas. Medan is a sending area for trafficking geographically bordering Singapore and Malaysia (Nuraeny, 2011). Likewise, it has two Seaports as shipping locations and an international airport so that it becomes a strategic city as a distributor and even as a container city job seekers.

There are three cases of trafficking recorded at the Medan District Court which granted the verdict on payment of restitution but according to policy regulations have not been fulfilled. First, in 2012, in Decision Number 1554/Pid.B/2012/PN Mdn, by the name of the convict, Andreas Ginting, was charged to pay Restitution to Victims of Rp.64, 7 million, until now the payment from the Defendant has never been carried out or carried out even though the prison sentence has been carried out by the convict.

Second, in 2015, Decision Number 791/Pid.B/2015/ PN.Mdn, by the name the convict Alm. Bibi Randika, was sentenced in addition to corporal punishment as well as to pay a restitution of Rp.25 million to the heirs of victim by the name Hermin Ruswidiati als Cici. The Prosecutor's
information is that because the convict has died, the imprisonment is deemed to have been carried out and the payment of restitution cannot be carried out. However, different information from the convicted attorney has provided compensation for the heirs of the victim and also victim witnesses as each was given before the criminal verdict was read. (the debriefing from the Convict's Attorney; August 2020).

Third, in 2015, Decision Number 1083/Pid.B/2015/PN.Mdn, by the name Defendant Samsul Anwar, apart from the corporal punishment, was also sentenced to pay a restitution of Rp.25 million to the heirs of victim An. Hermin Ruswidiati als Cici. Until now, Jaska's information has concluded that there are difficulties in executing restitution payments. And information is that the Attorney of the Convict has handed over compensation in the form of compassion to the victim's heirs and also to other victim witnesses before the verdict is read.

The three decisions above are being the main focus of research from the results of the Court's decision as a concept of beautiful discourse in a theoretical setting. However, in practice the application is a little difficult to apply and apply. This situation is what makes this research conducted, to get an idea of how the concept of criminal law policy in fulfilling restitution payments, as well as trying to unravel how the implementation of compensation payments in fulfilling the rights of trafficking victims

**RESEARCH METHODS**

This research is a normative study, using a statutory approach and a case approach. The statutory approach includes a legal concept approach from criminal policies that concerns the existing restitution payment rules (Suteki & Taufani, 2018). Furthermore, the case approach is by examining the three decisions of the Medan District Court and one trafficking case that has been handled at the Medan Police which has quite a lot of attention but has stopped at the stage of
investigation. However, from the victim's understanding, the legal handling experienced is sufficient to accommodate the wishes of victims in obtaining koban rights.

Conclusion drawing is carried out through an inductive to deductive thought process, which describes a logical procedure that begins with a special concept of thinking in trafficking problems and ends in a general conclusion (Suteki & Taufani, 2018).

DISCUSSIONS AND ANALYSIS OF RESULTS

1) The Concept of Criminal Law Policy in Fulfilling Restitution Payments

The object of this study is to see the extent of criminal policies in fulfilling the restitution rights of trafficking victims. The criminal policy is still strong enough to see that crime prevention is carried out through the approach to the application of criminal law through the components of the justice system as an important instrument. However, the concept of punishment in depriving the perpetrator of the right to freedom is considered a failure in reducing crime.

Restitution is the payment of compensation charged to the perpetrator based on a court decision which has permanent legal force for material and/or immaterial losses suffered by the victim or his heirs (Article 1 paragraph (15) of Law No. 21 of 2007). The same definition is also explained in Law No. 31 of 2014 concerning Amendments to Witness and Victim Protection Article 1 point 11 emphasizes that Restitution is compensation given to Victims or their families by the perpetrator or a third party.

The concept of Constitution’s Article 48 paragraph (1) of Law no. 21 of 2007 firmly states "Every victim of the criminal act of trafficking in persons or their heirs has the right to receive restitution". Likewise, the Amendment to the Law on Victim Witness Protection Law no. 31 of 2014 concerning Protection of Witnesses and Victims Article 7A states "Victims have the right to receive Restitution in the form of: (1) Compensation for lost wealth and income; (2) Compensation
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for losses arising out of suffering directly related to a criminal act, and / or; (3) Reimbursement of medical and / or psychological treatment costs.

In the principle of protecting victim witnesses, the provisions of Law No.13 of 2006 concerning Protection of witnesses and victims of Article 3 are based on the following criteria: (1) Respect for human dignity; (2) A sense of security; (3) Justice; (4) Not discriminatory; and (5) Legal certainty.

The process of submitting restitution in the conceptual framework of PP No. 40 of 2008 concerning Applications for Compensation and Restitution Article 20 can be submitted by victims, their families or proxies with a power of the attorney, and applications for restitution can also be submitted in writing to the court through the Witness and Victim Protection Agency. (Article 20 paragraph (1) and (2) PP No. 40/2008 and the Victim Witness Protection Amendment Law No. 31/2014, Article 7A paragraph (1)).

The criminal procedure system also provides an opportunity for the process of filing claims for compensation rights through combining criminal proceedings and filing lawsuits (Article 99 of the Criminal Procedure Code) with the context of Decision No. 1554/Pid.B/2012/PN.Mdn. The description for this case can be illustrated as follows.

Restitution is the responsibility of the suspect or defendant in fulfilling compensation to the head of trafficking. As the flow from under the process of submitting restitution first begins during the investigation, it must be presented in the BAP (Investigation Report) the amount of losses suffered by the victim must be stated. Furthermore, in the process of filing the Prosecutor's Claim, it has been easier to summarize the amount of compensation experienced by the victim in the prosecution. But if the police do not include it in the examination file, then the alternative of the victim can be filed in the form of a lawsuit after reading the demands from the public prosecutor.

The concept of restitution law must be stated through a district court decision, 14 days after the decision is read out. Because not all decisions in the special criminal offense of trafficking
impose an order to pay restitution, as in the 5 (five) decisions of the Medan District Court which charged the convict with the Article of the Crime of Trafficking but did not charge restitution, namely:

Tabel 1. The Examples of Medan District Court's Decision Of A Trafficking Criminal Offense Without Payment The Restitution

<table>
<thead>
<tr>
<th>No</th>
<th>Case Number</th>
<th>Article Offense</th>
<th>Verdict</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Number 3107/Pid.Sus/2018/PN Mdn</td>
<td>Article 2 paragraph (1) in conjunction with Article 10 and RI Constitution No. 21 of 2007 concerning the Eradication of the Criminal act of human trafficking</td>
<td>4 (four) years a fine of Rp.120,000,000, - (one hundred twenty million rupiahs) Subsidiary 3 (three) months in prison.</td>
</tr>
<tr>
<td>2</td>
<td>Number 2156/Pid.Sus/2019/PN Mdn</td>
<td>Article 10 yo Article 2 paragraph (1) RI Constitution no. 21 of 2007 concerning the Eradication of the Criminal act of human trafficking and article 197 of the Criminal Procedure Code</td>
<td>Imprisonment for 5 (five) years and 3 (three) months and a fine of Rp.100,000,000 (one hundred million rupiahs) provided that if the fine is not paid, it can be replaced by imprisonment for 2 (two) months.</td>
</tr>
<tr>
<td>3</td>
<td>Number 841/ Pid.Sus/2019/PN Mdn</td>
<td>Article 2 paragraph (1) Constitution RI No.21 of 2007 concerning the Eradication of the Criminal act of human trafficking</td>
<td>imprisonment for 3 (three) years and a fine of Rp.200,000,000, - (two hundred million rupiahs) and if not paid then it is replaced by imprisonment for 3 (three) months</td>
</tr>
<tr>
<td>4</td>
<td>Number 189/Pid Sus/2020/PT MDN dan the Verdict Number 2140/Pid Sus/2019/PN Mdn, Date 26 November 2019</td>
<td>Article 2 (1) of Constitution of the Republic of Indonesia No. 21 of 2007 concerning the Eradication of the Criminal Act of human trafficking</td>
<td>1 (one) year and 4 (four) months</td>
</tr>
<tr>
<td>5</td>
<td>Number 2185/Pid.Sus/2019/PN Mdn</td>
<td>Article 2 in conjunction with Article 10 of constitution no. 21 of 2007 concerning the Eradication of the Criminal act of human trafficking or the Actions of the Second</td>
<td>imprisonment for 1 (one) year each;</td>
</tr>
</tbody>
</table>
2) The Implementation of Compensation Payments in Fulfilling the Rights of Victims of Trafficking

There are two models of payment of compensation for legal handling of the crime of trafficking, in which the recognition of the victim's payment from the perpetrator can maximize their physical recovery. Namely: the criminal case of trafficking in Decision Number 791/Pid.B/2015/PN.Mdn, by the name The convict Alm. Bibi Randika and Decision Number 1083/Pid.B/2015/PN.Mdn, by the name the defendant Samsul Anwar. Furthermore, the criminal case of trafficking in the investigation process stage at the Medan Police No. 2014 with LP/114/SPKT/II/2014 with the suspect Mohar who had exploited the work of 12 victims from NTT.

The terms of payment made by the Suspect and the Defendant refer to the provisions of Article 48 paragraph (2) of Law no. 21 of 2007 Jo. Article 7A paragraph (1) of Law no. 32 of 2014 the payment falls into the category referred to in the scope of restitution. Likewise, the understanding of the legal counsel accompanying the Defendant in Decision Number 791/Pid.B/2015/PN.Mdn and Number 1083/Pid.B/2015/PN.Mdn, the payment made by the Defendant was solely due to a form of remorse and a sense of responsibility. that appears, so that the payment effort is expected to be able to accept forgiveness from the victims. Based on the interviews with the defendant's attorney, that although it is recognized that the payment made will not immediately be able to change the condition to return the victim's position to normal, The Defendant's intention becomes a special note in the course of the law regarding a consequence of existing legal policies.

<table>
<thead>
<tr>
<th>Defendant as referred to</th>
<th>Regulate and punishable under Article 296 of the Criminal Code in conjunction with the Article 53 of the Criminal Code</th>
</tr>
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</table>
Likewise, the expressions of several victims, where the payments they have received give a special sense of satisfaction as a right of their hard work so far. The proceeds paid by the Suspect / Defendant will be the initial capital for their new venture. From the interview with the victim in the case of one of the suspects, although the payment received was not based on the decision from the Medan District Court, it was very useful for them. Imprisonment of a suspect or convict does not necessarily bring happiness or cure the pain they have suffered, but instead benefits the perpetrator / defendant who neglects his responsibility to pay for the rights of the victim.

The results of the research in the data collection process were the convict Alm. Bibi Randika and the convict Syamsul Anwar, through the convict's attorney, have paid the love affair to each of the victims: The late Cici was paid to the heirs in the amount of Rp. 60 million, to the victim witness, namely Anis, Rp.60 million, Endang Rp.60 million, and Rukmiani Rp.30 million (each Notarial deed).

When confirming with the Medan District Prosecutor's team, they did not know the payment process carried out by the Defendant, because the court's ruling ordered the Defendant to pay restitution payments to the victim's heirs. Payment should be made after the decision is made, not before the decision is read out (vide Article 48 paragraph (4) of Law No. 21 of 2007) or that payment can be deposited in the Court first (Vide Article 48 paragraph (5) of Law No. 21 of 2007).

However, until now, regarding the 3 (three) decisions of the Medan District Court, there has not been a single provision for payment of restitution made by the convicted person. Likewise, the Attorney General's Office has not succeeded in coercing the perpetrators to fulfill their responsibility for paying restitution. According to the results of an interview with one of the prosecutors, the obstacle was due to the absence of a reference as the prosecutor's operational guide to force or execute payments. The prosecutor is able to act if there is a strict order in the judge's decision, the order to pay Restitution if the Defendant does not carry out can be replaced by confiscation of assets or an additional prison sentence.
The obstacles in the execution step in paying restitutions based on court decisions, was admitted by one of the LPSK deputy commissioners. A strict amendment to Law no. 21 of 2007 concerning the eradication of the crime of trafficking, in order to facilitate the application of decisions handed down by district courts for criminal cases of trafficking.

The failure to force the convict to fulfill demands for restitution was also due to the fact that the investigation process was not fulfilled in the amount of assets owned by the perpetrator himself. Because not all traffickers are the ones who have the ability to fulfill the demands for restitution. So it requires a classification of the requirements of the suspect or perpetrator to be charged with the fulfillment of responsibility in asking for responsibility for paying the losses suffered by the victim. According to the results of interviews with the investigator, before entering the investigation stage, the investigator will first question the wishes of the victim himself. If the impact experienced by the victim is not widespread and does not have a serious impact, it will be more humane to lead to a family-like approach as what the victim wants.

Two models of fulfilling the responsibility of the suspect or defendant, if referred to the provisions of the concept of restorative justice, the fulfillment of each perpetrator for payment is expecting an apology and an expression of guilt for the impact of the actions experienced by the victims. It is not that the amount received by the victim is the determinant, but a process of manifesting the perpetrator's responsibility shows that guilt has become a part of fulfilling what the victim expects.

The implementation of criminal law according to penalties certainly puts forward the process of accountability for corporal punishment which is classified in the context of public law, which guarantees from the state to be able to balance and achieve the welfare of the community. Whereas restitution in terms of the nature of criminal law is a form of responsibility of a suspect or defendant which can be categorized as a private domain, the impact of the act implies the payment of compensation as a private relationship between the perpetrator and the victim (Hamzah, 2008)
Ideally, the attainment of the law as in the criminal liability system is reflected in the fulfillment of the sanctions imposed on the Defendant, as experienced by the late Alm. Aunt Randika and Syamsul Anwar. However, what was experienced was different in the process of paying compensation, as was done by Suspect Mohar, as a comparison of the application of the law that stopped at the stage of investigation. However, the termination did not receive an objection from the victims.

However, the two depictions of the concept of accepting victims have different legal actors as well as the accountability process for the concept of criminal policy. It is clearly seen that the goal of achieving the law has a deterrent effect as with the imposition of a sentence through a criminal decision on behalf of the convict Alm. Aunt Randika and the convict Syamsul Anwar. Meanwhile, An. The convict, Andreas Ginting, was only a normative verdict which did not provide an explanation for payment.

The position of the assistance process in the case of payment of restitution paid by the perpetrator in the case of Alm. Bibi Randika and Syamsul Anwar, if linked in the legal theory concept of Lawrence Friedmen, the achievement of justice can be seen through the fulfillment of the approach concept, namely procedural fulfillment as a legal typology, or the fulfillment of substance as the concept of norms in which law must be able to be neutral, both from a system point of view and also support from structural support systems (Ali, 2012).

An important note in this case is the luck of the victim who gets the proper level of perspective on implementing the legal structure. The right prosecutor and the Defendant's attorney and so is the right victim assistant. But not all victims have the same luck as the comparison experienced by the victims with the suspect Mohar who stopped at the investigative stage at the Medan Police.

However, if it is linked to the opinion of Jeremy Bantham, which provides space that the law should be able to provide benefit or happiness for all parties (Ali, 2012) the settlement is by
terminating the police report No. LP./114/SPKT/II/2014 with the suspect. Mohar, who was used as a comparison writer, became the point of recognition for Jeremy Banham's legal concept. By expressing the hopes and wishes of the victim himself, it has reduced the value of the criminal responsibility of the suspect's body. The concept of restorative justice is put forward by the investigator, until finally the investigation process has stopped, which until now the progress of the filing has never reached the prosecution. (Proof of Police SP2HP)

To provide certainty in the process of fulfilling restitution, as illustrated in the context of the position and function of legal policies even though it has provided room for the fulfillment of compensation to victims. However, the fact is that the legal decisions made are deemed incapable of providing legal certainty for the fulfillment of victims' rights

CONCLUSIONS

The concept of a criminal policy in fulfilling restitution payments, although it has regulated the concept of fulfillment for victims of trafficking, has yet to guarantee the certainty that restitution payments can be executed. Although it was there has a decision that has been upheld by the Medan District Court. However, until now, the payment execution for 3 (three) decisions has not been fulfilled.

New ideas are needed to ensure the implementation of compensation payments, so that the rights of victims of trafficking are fulfilled. As referring to the definition of restitution, it is the payment of losses borne by the perpetrator based on a court decision which has permanent legal force for the losses suffered by the victim or heir (Vide Article 1 point 15, Law No. 21 of 2007). Referring to the concept of a legal policy which states that the space for restitution payments can be made before or after the suspect is found guilty (Vide Article 21 PP No. 44 of 2008). So it is necessary to design a new legal breakthrough, for legal certainty in every stage of the criminal
settlement process through the concept of diversion of restitution payments, with the concept of restorative justice method being the right offer for legal certainty in the protection of victims.

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Books


Journal Articles


