

***FULFILLMENT OF RESTITUTION RIGHTS TO TRAFFICKING VICTIMS  
CRIMINAL ACT***

*(Study of Decision Number 322/Pid.Sus/2023/PN Jkt.Sel and Decision Number  
667/Pid.Sus/2023/PN Kis)*

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**ABSTRAK**

Tindak pidana perdagangan orang sudah diatur oleh Undang-Undang Nomor 21 Tahun 2007 tentang pemberantasan tindak pidana perdagangan. Ketika para korban sudah mengalami kerugian materiil dan immateriil restitusi adalah salah satu bantuan kepada para korban tindak pidana perdagangan orang. Metode penelitian yang digunakan dalam penelitian ini yaitu bersifat deskriptif analitis dengan jenis penelitian hukum normative. Data penelitian terdiri dari data primer dan sekunder. UU No. 21 tahun 2007 mengatur tentang restitusi bagi korban perdagangan orang. Putusan 322/Pid. Sus/2023/PN Jkt. Sel tidak memberikan restitusi, sementara Putusan 667/Pid. Sus/2023/PN Kis memberikannya. Hakim perlu konsisten dan objektif dalam menangani kasus perdagangan orang agar keadilan tercapai. Putusan 322/Pid. Sus/2023/PN Jkt. Sel dianggap kurang memperhatikan fakta persidangan, sedangkan Putusan 667/Pid. Sus/2023/PN Kis dianggap tepat karena hakim menciptakan kepastian hukum. Kepastian hukum dalam putusan hakim harus didasarkan pada fakta relevan.

**Kata Kunci: Pemenuhan Hak, Restitusi, Tindak Pidana Perdagangan Orang**

**ABSTRACT**

*Human trafficking crime has been regulated by Law No.21 of 2007 concerning the eradication of the crime of trafficking. When the victims have experienced material and immaterial losses, restitution is one of the forms of assistance to victims of the crime of human trafficking. The research method used in this study is descriptive-analytical with a normative legal research type. Research data consists of primary and secondary data. Law No.21 of 2007 regulates restitution for victims of human trafficking. Decision 322/Pid. Sus/2023/PN Jkt. Sel does not provide restitution, while Decision 667/Pid. Sus/2023/PN Kis does. Judges need to be consistent and objective in handling human trafficking cases so that justice is achieved. Decision 322/Pid. Sus/2023/PN Jkt. Sel is considered to have paid less attention to the facts of the trial, while Decision 667/Pid. Sus/2023/PN Kis is appropriate because the judge creates legal certainty. Legal certainty in a judge's decision must be based on relevant facts.*

**Keywords: Fulfillment of Rights, Restitution, Human Trafficking Crime**

## **A. INTRODUCTION**

In essence, humans live with many desires for the goals they want to achieve. However, obtaining these desires sometimes conflicts with existing legal regulations. This is what causes violations of the law amid community life. Thus, a legal system is needed. Law amid society has a very strategic role, including social interaction between citizens, relations between the state and its citizens, and relations between countries and countries and citizens of the world. The existence of law as social control, a tool of social engineering, a political tool, and a means of social integration. Law as social control means that law amid community life has a role in limiting human behavior and the consequences that will be received if actions do not comply with its restrictions.<sup>1</sup> The phenomenon of criminal behavior in society is a common problem. Until now, crimes that occur in the social environment are increasingly widespread. Crime is a social problem that can happen domestically and abroad. In this study, the focus of the discussion is on cases involving Indonesian workers. Based on data from the Indonesian Migrant Workers Protection Agency (BP2MI), in 2023, the number of PMI placements was recorded at 274,965, up 37% from 2022 and 176% from 2021. Although there was a decline in 2020 and 2021 due to the COVID-19 pandemic, the number of placements in 2023 has returned to pre-pandemic levels<sup>2</sup>.

One of them is the case of human trafficking. Human trafficking is a problem that must be resolved immediately by Indonesia as the country of origin of the victim and other countries that are the destination countries of human trafficking cases. Both countries must immediately cooperate closely and consistently in combating human trafficking activities that occur. Then, every country, especially Indonesia, must immediately form clear and firm legal regulations to tackle the practice of human trafficking that has long been developing in this country and must take firm action against all perpetrators of human trafficking practices. In addition to the resolution by the government, the resolution by each individual in society also needs to be improved and monitored.

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<sup>1</sup> P. Sukowati, *Arti, Tujuan, Fungsi Hukum dalam Masyarakat*. Universitas Merdeka Malang Press, Malang, 2020.

<sup>2</sup> Siaran Pers HM, *Kementerian Koordinator Bidang Perekonomian Republik Indonesia*, March 3, 2024.

For this, the government must continue to socialize with border communities or Indonesian society globally so that they know more about human trafficking and can protect themselves from human trafficking.<sup>3</sup> There are quite a few cases involving Indonesian workers, so the Government has created an Institution that aims to protect the rights of Indonesian Migrant Workers, namely the Indonesian Migrant Worker Placement and Protection Service Center, abbreviated as BP3TKI. BP3TKI is a place for placement and protection of PMI services carried out by the Government starting pre-, during, and after placement. Based on existing criminal cases, applicable legal force is needed. This is stated in the 1945 Constitution, Article 28 D point 1, which states that everyone has the right to recognition, guarantee of protection, fair legal certainty, and equal treatment before the law. However, the implementation based on the rule of law still has victims of a crime whose rights are neglected; victims are only involved in providing testimony as witness witnesses. This is considered inconsistent with the value of victim justice.<sup>4</sup>

The direction of legal policy aims to make the law a regulation that protects the rights of citizens and guarantees future life<sup>5</sup>. G. Pieter Hoefnagels said that community involvement in crime prevention policies (criminal policy) is very important because prevention policies are rational efforts by the community in reaction to crime.<sup>6</sup> The primary position of humans as legal subjects is challenged by human trafficking. In addition, this act raises humanitarian problems because it degrades human dignity and the nature that humans are social beings. Human trafficking occurs in various ways, including intimidation, coercion, kidnapping, fraud, cheating, lying, and abuse of authority. It is also done with the intention of prostitution, pornography, violence, exploitation, forced labor, slavery, or other similar acts. The human trafficking network can endanger society, the nation, and the state because of its breadth and is contrary to living standards that respect

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<sup>3</sup> Made Sidia Wedasmara, *Tindak Pidana Perdagangan Orang (Human Trafficking)*, Jurnal Yustitia, Vol.12, No.01 (2018).

<sup>4</sup> Pasal 28 D Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

<sup>5</sup> Marlina, *Peradilan Pidana Anak di Indonesia. Pengembangan Konsep Diversi dan Restoratif Justice*, Refika Aditama, Bandung, 2009.

<sup>6</sup> Marlina, *Ibid.*

Human Rights.<sup>7</sup>

One form of protection for the rights of witnesses and victims is the effort to provide rights to victims through compensation and Restitution. Restitution is compensation given by the perpetrator of a crime to the victim of a crime committed by the perpetrator. Government Regulation Number 35 of 2020 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims states that the perpetrator of a crime or a third party gives compensation to the victim or their family.<sup>8</sup> According to Article 2 of Perma Number 1 of 2022 concerning Procedures for Settlement of Applications and Granting of Restitution and Compensation to Victims of Criminal Acts, the types of criminal acts for which Restitution can be requested are criminal severe acts of Human Rights (HAM) violations, Terrorism, Human Trafficking, Racial and ethnic discrimination, criminal acts related to children, and other criminal acts stipulated by the LPSK Decree as referred to in the provisions of laws and regulations.<sup>9</sup> The mechanism for submitting a restitution application is to pay attention to administrative requirements, and the restitution application must be made in writing in Indonesian, signed by the applicant or his/her attorney, and submitted to the Chairman/Head of the Court, either directly or through LPSK, investigators, or public prosecutors. If the victim is a child, the application is submitted by the parents, family, guardian, heir or attorney, or LPSK, and if there is more than one applicant, the application can be combined; the Court is authorized to try the Restitution application is the Court that tries the perpetrator of the crime, namely the District Court, Human Rights Court, Military Court, High Military Court, and Sharia Court<sup>10</sup>.

This study discusses the problem of human trafficking of Indonesian migrant workers. Human trafficking is not an ordinary crime (extraordinary),

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<sup>7</sup> Nur Insyani Tiara Safitri, Muhammad Ali, and Wahab Aznul Hidayat. *Perlindungan Hukum Bagi Korban Tindak Pidana Human Trafficking di Indonesia*, Hakim: Jurnal Hukum, Vol.05, No.02 (2024)

<sup>8</sup> Peraturan Pemerintah No. 35 Tahun 2020 tentang Perubahan Atas Peraturan Pemerintah No. 7 Tahun 2018 tentang Pemberian Kompensasi, Restitusi, Dan Bantuan Kepada Saksi Dan Korban.

<sup>9</sup> Peraturan Mahkamah Agung Nomor 1 Tahun 2022 tentang Tata Cara Penyelesaian Permohonan Dan Pemberian Restitusi Dan Kompensasi Kepada Korban Tindak Pidana.

<sup>10</sup> Peraturan Mahkamah Agung Nomor 1 Tahun 2022 tentang Tata Cara Penyelesaian Permohonan Dan Pemberian Restitusi Dan Kompensasi Kepada Korban Tindak Pidana.

organized and transnational so that it can be categorized as a transnational organized crime (TOC) <sup>11</sup>. The increase in human trafficking in recent years has occurred due to the economic crisis. The unemployment rate in Indonesia, especially in rural areas, is increasing even though life is getting more challenging due to the increase in various living needs. From the multiple cases of human trafficking obtained, those who have the potential to become victims are humans since they are still in the womb, children without age restrictions, women, or men. In addition to economic factors, there is also the influence of education; with a person's low education, it will be easier for that person to be deceived, so this is what has fostered human trafficking lately, especially in rural areas. <sup>12</sup>

About this, the author found several cases of Human Trafficking Crimes (TPPO) for which restitution was requested, one of which was the case in decision No. 322/Pid.Sus/2023/Pn Jkt. Sel is on behalf of Nunu Juhana (Defendant I) and RA. Ayu Nurfini Binti Djoko Djuharyantoko (Defendant II) and her colleagues named Sahidul Haque and Lusiana (both of whom were on the wanted list). It started with Lusiana offering cooperation with Defendant I to find prospective Indonesian Migrant Workers (PMI) who would be employed abroad, and if Defendant I succeeded in finding prospective Indonesian Migrant Workers, Defendant I would receive wages or benefits. Furthermore, Defendant I, together with Defendant II, began recruiting prospective PMI to victim-witnesses Mulyadi, victim-witnesses Revaldo Argantara, and victim-witnesses Rachmi Prandika. In general, the case explained that in June 2019, defendants I and II recruited prospective Indonesian Migrant Workers who promised to work abroad and had to pay a registration fee. However, the victim was employed as an online fraud. The victim was threatened and forced to work without rest. The victim reported this incident and asked for restitution for compensation. The Defendant was charged with violating the law on human trafficking and the protection of migrant workers. The prosecutor demanded that the Defendant pay restitution to the victim. Still, the judge decided that the Defendant violated the law on the

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<sup>11</sup> Supriyadi Widodo Eddyono, *Perdagangan Manusia dalam Rancangan KUHP*, ELSAM Lembaga Studi dan Advokasi Masyarakat, Jakarta, 2005, p.2–3.

<sup>12</sup> Cahya Wulandari and Sonny Saptoajie Wicaksono, *Tindak Pidana Perdagangan Orang (Human Trafficking) Khususnya terhadap Perempuan dan Anak: Suatu Permasalahan dan Penanganannya di Kota Semarang*, Yustisia, Vol.3. No.3 (2014), p.15–25.

protection of migrant workers and did not consider the crime of human trafficking. In another case, defendant Suhardi carried out illegal recruitment of PMI to Malaysia, and the Defendant was also charged with violating the law on the protection of migrant workers. The prosecutor demanded restitution, and the judge granted the restitution requested. The research on this problem focuses on the right to compensation the victim requests in court.

In practice, victims of human trafficking (TPPO) will be asked for costs before being sent abroad. In this case, victims need work to earn money for living expenses or to support their families. However, a handful of people want to take advantage of the situation for their own interests by deceiving these victims. It should be that judges in Indonesia when handling TPPO cases, it is essential to grant and consider in depth the issues related to the Crime of Human Trafficking and restitution requested by victims who suffer material or immaterial losses in their decisions, but as the author has explained above, in practice there are still requests for restitution that are granted and not granted by the judge, based on this, it is the author's motivation to conduct research related to this matter. So, in this study, based on the phenomenon, the researcher examines the legal regulations governing restitution for victims of human trafficking (TPPO), a legal analysis related to the right to restitution for victims of human trafficking in Decision Number 322/Pid.Sus/2023/PN Jkt.Sel and in Decision Number 667/Pid.Sus/2023/PN Kis, and legal factors considered by the judge in Decision Number 322/Pid.Sus/2023/PN Jkt.Sel and in Decision Number 667/Pid.Sus/2023/PN Kis regarding the submitted restitution application.

## **B. RESULTS AND DISCUSSION**

### **1. Legal Regulations Governing Restitution for Victims of Human Trafficking (TPPO)**

The indictment submitted by the Public Prosecutor before the trial against Defendant I and Defendant II is in the form of an alternative indictment, with a description of the elements of the first alternative indictment alleged against the defendants as follows:

**Article 4 of Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking<sup>13</sup>:**

“Any person who takes an Indonesian citizen out of the territory of the Republic of Indonesia with the intention of exploiting him/her outside the territory of the Republic of Indonesia.”

**Article 48 of Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking<sup>14</sup>:**

- 1) Every victim of the crime of human trafficking or their heirs has the right to receive restitution.
- 2) Restitution, as referred to in paragraph (1), is in the form of compensation for:
  - a. loss of wealth or income;
  - b. suffering;
  - c. costs for medical and psychological care; and
  - d. other losses suffered by the victim as a result of human trafficking.
- 3) The restitution is given and included simultaneously in the court decision on the crime of human trafficking.
- 4) The Restitution provision, referred to in paragraph (1), has been implemented since the first-instance court decision was issued.
- 5) Restitution, as referred to in paragraph (4), may be deposited first at the court where the case was decided.
- 6) Restitution is provided within 14 (fourteen) days from the notification of the decision that has obtained permanent legal force.
- 7) If the appellate or cassation court acquits the perpetrator, the judge will order in his decision that the restitution money that was deposited be returned to the person concerned.

**Article 55 Paragraph (1) 1 of the Criminal Code/KUH:**

"Those who commit, order to commit, and participate in committing the act."

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<sup>13</sup> Undang-Undang Nomor 21 Tahun 2007 tentang Pemberantasan Tindak Pidana Perdagangan Orang.

<sup>14</sup> Undang-Undang Nomor 21 Tahun 2007 tentang Pemberantasan Tindak Pidana Perdagangan Orang.

Meanwhile, the description of the elements of the second alternative indictment article is as follows:

**Article 81 of Law Number 8 of 2017 concerning the Protection of Indonesian Migrant Workers:**

"Individuals who carry out the placement of Indonesian Migrant Workers as referred to in Article 69."

**Article 69 of Law Number 8 of 2017 concerning the Protection of Indonesian Migrant Workers:**

"Individuals are prohibited from carrying out the placement of Indonesian Migrant Workers."

**Article 55 Paragraph (1) 1 of the Criminal Code/KUHP:**

"Those who commit, order to commit, and participate in committing the act."

The short position case in the South Jakarta District Court Decision Number 322/Pid.Sus/2023/PN. Jkt. Sel can be described by the author as follows:

- a. That around June 2019, Defendant I and Defendant II began recruiting prospective Indonesian Migrant Workers. Initially, Defendant, I recruited the victim witness, Muhammad Revaldo Argantara, who was promised to work as a gardener in England on the condition that he pays a registration fee of Rp. 60,000,000, - (Sixty million rupiah), then Defendant I recruited the victim witness, Mulyadi, who was promised to work as a factory worker in South Korea on condition that he pay a registration fee of Rp. 30,000,000, - (Thirty million rupiah), while Defendant II, on the orders of Defendant I, recruited the victim witness, Rachmi Prandika, who was promised to work as a Customer Service in Cambodia on condition that he pay a registration fee of Rp. 20,000,000,- (Twenty million rupiah) where each victim has paid all registration fees, but the three victims were sent to Cambodia to be employed as scammers or online fraud based on online shopping applications and online gambling.

- b. The victim witnesses were threatened that if they did not want to work, they would be fined. They were forced to work between 12 and 15 hours per day without being given days off or rest hours except for going to the toilet and eating. Even the victim witnesses were transferred or sold from one company to another if they did not achieve the work target.
- c. That Furthermore, the victim witnesses reported the incident, and for the victim-witnesses, on behalf of witnesses Muhammad Revaldo Argantara and witness Rachmi Prandika, filed for restitution to compensate for the losses experienced by each witness due to the actions of Defendant I, together with Defendant II as stated in the Letter of the Witness and Victim Protection Agency Number: R-1093/4.1IP/LPSK/05/2023.

Based on the indictment and Decision of the South Jakarta District Court Number 322/Pid.Sus/2023/PN. Jkt. Sel, the legal panel's considerations are as follows:

Considering that the Defendants have been charged by the Public Prosecutor with the First indictment of Article 4 in conjunction with Article 48 of Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking in conjunction with Article 55 paragraph (1) 1 of the Criminal Code or Second Article 81 of Law Number 8 of 2017 concerning the Protection of Indonesian Migrant Workers in conjunction with Article 55 paragraph (1) 1 of the Criminal Code, therefore the indictment is in the form of an alternative, the Panel of Judges, by considering the legal facts above, directly chooses the Second indictment as regulated in Article 81 of Law Number 8 of 2017 concerning the Protection of Indonesian Migrant Workers in conjunction with Article 55 paragraph (1) 1 of the Criminal Code, the elements of which are as follows:

- 1) Every person;

They were considering Article 1 number 19 (Nineteen) of Law No. 18 of 2017, what a person means is an individual and corporation, in the trial of Defendant I NUNU JUHANA Bin H. IBIN SARBINI and

Defendant II RA. AYU NURAFINI Als AYU Binti DJOKO DJUHARYANTOKO have confirmed their identities by those listed in the indictment. During the trial, the Defendants showed themselves as legal subjects who were physically and mentally healthy. The Defendant had no justification for coercive power (*Overmacht*), forced defense (*noodles*), implementing the law, or carrying out legitimate office orders. In the Defendant, there was also no excuse for either being unable to be responsible (Article 44 of the Criminal Code), coercive power (*Overmacht*), forced defense that exceeds the limit (*noodles excess*), or carrying out actions in good faith to carry out illegitimate office orders, and during the trial process the Defendant was able to explain everything asked of him well and smoothly, thus the Defendant was able to be held accountable for his actions. Based on the statements of witnesses, both victim witness RACHMI PRANDIKA and victim witness MUHAMAD REVALDO ARGANATA, as well as witnesses a de charge presented by Defendant I, namely witness ISMUASIH and witness EDI WIJAYA, in essence, each witness explained that Defendant I and Defendant II were the people who had sent victim witness RACHMI PRANDIKA, victim witness MUHAMMAD REVALDO ARGANATA and MULYADI to work in Cambodia. The statement is also by the statements of the Defendants and the evidence submitted to the trial;

Considering that thus the element of "Every person" has been fulfilled according to the law;

2) Carrying out the placement of individual Indonesian Migrant Workers;

Considering that Article 1 number 9 (nine) of Law No. 18 of 2017 states, "The Indonesian Migrant Placement Company is a business entity in the form of a limited liability company that has obtained written permission from the Minister to provide placement services for Indonesian Migrant Workers";

Considering that in Article 49 of Law No. 18 of 2017, it is regulated that those who can carry out the placement of Migrant

workers abroad are Agencies, Indonesian Migrant Worker Placement Companies, and Companies that place Indonesian Migrant Workers for the interests of the Company itself, where the placement of Migrant workers abroad carried out by Agencies is carried out based on a written agreement between the government and the government of the Indonesian Migrant Employer country or Employer with a legal entity in the destination country of placement, while for Companies must have a SIP3MI (Indonesian Migrant Worker Placement Company Permit), while in Article 69 of Law No. 18 of 2017 prohibits individuals from carrying out the placement of Indonesian Migrant Workers; Considering that based on the facts revealed in the examination at the trial in the form of witness statements, statements from the Defendants and linked to the evidence in this case

- 3) Those who did, who ordered to do, or who participated in doing the act.

Considering Thus, the elements of those who did, who ordered to do, or who participated in doing the act have been fulfilled according to law.

## **2. Legal Analysis Regarding the Right to Restitution of Victims of Human Trafficking Crimes in Decision Number 322/Pid.Sus/2023/PN Jkt.Sel and in Decision Number 667/Pid.Sus/2023/PN Kis**

Based on the results of the judge's considerations in the Decision of the Panel of Judges of the South Jakarta District Court Number 322/PID.SUS/2023/PN JKT. SEL, the Author thinks that there are trial facts that were not considered by the panel of judges who tried the quo case. The Author will present them in the form of a description of the elements of the articles that were proven at the trial based on the statements of witnesses, letters, instructions, and statements of the defendant linked to evidence.

### **a.Element of every person**

Analysis based on the provisions of Article 1 number 4 of the Republic of Indonesia Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking regulates that:

"Every person is an individual or corporation that commits the crime of human trafficking."

According to Article 1 number 6 of the Republic of Indonesia Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking regulates:

"A corporation is a group of people and/or wealth that is organized, whether a legal entity or not a legal entity."

The general formulation of addressing Norm generally uses the idiom 'anyone' as the equivalent of 'hij die'. In several laws outside the Criminal Code, "everyone" is also used. The idiom "anyone" in the Criminal Code refers to an individual. In contrast "everyone" in several laws outside the Criminal Code is clearly defined as "an individual" or "corporation."

In the quo case, each person is an individual, namely Defendant I NUNU JUHANA together with Defendant II R.A. AYU NURFINI, who is named as the perpetrators in the Public Prosecutor's Indictment, with identities as wholly outlined in the indictment, which at the trial have been presented by the Public Prosecutor and witnesses and the defendant has confirmed his identity, is considered competent and can be held criminally responsible; Thus, this element has been fulfilled.

**b. Elements that take Indonesian citizens outside the territory of the Republic of Indonesia to be exploited outside the territory of the Republic of Indonesia**

According to the provisions of Article 1 number 7 of the Republic of Indonesia Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking regulates the definition of exploitation, namely:

"Exploitation of actions with or without the consent of the victim which include but are not limited to prostitution, forced labor or service, slavery or practices similar to slavery, oppression, extortion, physical, sexual, reproductive organ exploitation, or unlawfully moving or transplanting organs and body tissue or utilizing a person's energy or ability by another party to obtain material or immaterial benefits."

That according to Article 1 number 3 of the Republic of Indonesia Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking regulates the definition of a victim, namely:

"A victim is someone who experiences psychological, mental, physical, sexual, economic, and/or social suffering caused by the crime of human trafficking."

According to Article 1 number 9 of the Republic of Indonesia Law Number 21 of 2007, concerning the Eradication of the Crime of Human Trafficking, regulates the definition of Recruitment, namely:

"Actions that include inviting, collecting, bringing, or separating someone from their family or community"

That according to Article 1 number 10 of the Republic of Indonesia Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, regulates the definition of Delivery, namely:

"The act of sending or landing someone from one place to another."

That according to Article 1 number 15 of the Republic of Indonesia Law Number 21 of 2007, concerning the Eradication of Criminal Acts of Human Trafficking, regulates the definition of Debt Trapping, namely:

"The act of placing a person in a status or condition of guaranteeing or being forced to guarantee himself or his family or people who are his responsibility, or his personal services as a form of debt repayment."

In the *Memorie van Toelichting* or history of the formation of the Criminal Code in the Netherlands, what is meant by the word law in the phrase against the law is not found. If referring to the postulate *contra legem facit qui id facit quod lex prohibet*, in *fraud vero qui, salvis verbis legis, sententiam ejus circumvent*, then it can be interpreted that a person is declared against the law when the act committed is an act that is prohibited by law.<sup>15</sup>

**c. Element of those who carry out, order to carry out, or participate in carrying out actions:**

In the form of participation in doing, cooperation between those who do (*pleger*) and those who participate in doing (*medepleger*) is necessary. In other words, only with cooperation can the crime be realized, or the crime will not occur without cooperation. The authors use the term "close cooperation" to describe this, although it is acknowledged that not all must realize they act together and be in the same place. In short, they "work together" and "work together" to learn

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<sup>15</sup> Eddy O.S. Hiariej, *Prinsip-Prinsip Hukum Pidana Edisi Revisi*, Cahaya Atma Pustaka, Yogyakarta, 2016.

the crime. Close cooperation alone is not enough to convict the participants of the crime. The cooperation must arise from their awareness or knowledge (*willen en wetens*). In other words, cooperation in participation must be done intentionally (*opzettelijke*). Furthermore, after it can be proven that there is an intention to cooperate in participation, it must also be followed by intention towards the crime itself. Criminal Law literature says it is "double intention" or "double *opzet*." The first intention, earlier, was directed at the cooperation, namely the awareness or knowledge of those involved in a collaboration between them. The second intention was directed at the crime itself, namely the understanding or knowledge that all of them were involved in realizing a crime.

That Law No. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking (UUTPPO) also regulates criminal conspiracy as in Article 11 of the UUTPPO it is emphasized that:

"Any person who plans or carries out a criminal conspiracy to commit the crime of human trafficking, shall be punished with the same punishment as the perpetrator as referred to in Article 2, Article 3, Article 4, Article 5, and Article 6".

The presence of articles related to criminal conspiracy in the UUTPPO is a manifestation of the determination of policymakers to eradicate TPPO by preventing TPPO from occurring as early as possible (Compared with Article 56 of the UUTPPO). As an early effort to avoid (preventive) so that TPPO does not occur, the provisions on criminal conspiracy in the UUTPPO must be interpreted as a repressive effort with a preventive approach to eradicating TPPO. Repressive efforts with a preventive approach to eradicating TPPO are significant because TPPO is a serious crime and has spread in the form of organized and unorganized crime networks, both inter-state and domestic, so that it becomes a threat to society, the nation, and the state, as well as to the norms of life that are based on respect for human rights as stated in the General Explanation of the UUTPPO. Thus, based on the facts at the trial, Defendant I was tasked with recruiting prospective Indonesian Migrant Workers. In contrast, Defendant II was tasked with taking care

of making Visas, Passports, and departure tickets abroad, and as a result of recruiting and sending victim witnesses MULYADI, victim-witnesses MUHAMMAD REVALDO ARGANATA and victim-witnesses RACHMI PRANDIKA, made Defendant I and Defendant II have received benefits from the registration fees requested from each victim witness where for victim witness MULYADI it was Rp. 30,000,000,- (thirty million rupiah), victim witness MUHAMMAD REVALDO ARGANATA it was Rp. 60,000,000 (sixty million rupiahs), and the victim witnessed RACHMI PRANDIKA, which was Rp. 10,000,000,- (ten million rupiah).

**Thus, This Element Has Been Legally Fulfilled According To The Law.**

### **3. Legal Factors Considered by the Judge in Decision Number 322/Pid.Sus/2023/PN Jkt.Sel and in Decision Number 667/Pid.Sus/2023/PN Kis regarding the Submitted Restitution Application**

Human trafficking is an organized crime carried out in a well-organized network in an illegal organization and carried out in a sophisticated manner. The increase in victims of human trafficking is due to a lack of education and economic factors. Victims are sold domestically or abroad to be used as labor. Weak law enforcement makes it difficult to eradicate human trafficking, so it is necessary to protect Human Rights at every stage of its handling. The crime of human trafficking includes several causal factors, such as environmental, economic, educational, and socio-cultural factors. Organized crime involves groups with organized criminal goals. Economic factors encourage victims to seek work abroad in the hope of getting a higher salary, so they are easily trapped in human trafficking. The legal factors hinder the non-consideration of the restitution application submitted by the victim in Decision Number 322 / PID.SUS / 2023 / PN JKT. SEL, due to the weakness of normative rules, is one of the primary triggers for the obstruction of the fulfillment of restitution rights for victims of human trafficking, namely:

- a) Article 48 Paragraph (1) of Law Number 21 of 2007 concerning the Eradication of Human Trafficking Crimes regulates restitution for victims, but its implementation in practice is still not optimal. Article 50 Paragraph (4) states that if the perpetrator does not pay restitution, they will only be sentenced to 1 year. However, the purpose of restitution is to compensate the victim's losses, and often, the perpetrator prefers imprisonment rather than paying compensation, indicating the weak implementation of restitution. In addition, the internal regulations of each law enforcement agency regarding restitution procedures need to be revised, resulting in a lack of common understanding among law enforcement officers.
- b) Another influencing factor is the nature of the judge, including experience, educational background, and pressure from external parties, which can impact the judge's decision. This gives rise to various interpretations in the application of articles that should regulate similar matters, making the victim's restitution request often ignored by the judge. A clear explanation of the limitations and procedures for applying the articles in the law is needed so that there is no difference in the handling of cases by the Prosecutor and Judge, which could result in the victim's right to restitution not being fulfilled.
- c) In Decision Number: 322/PID. SUS/2023/PN JKT. SEL, the judge did not explore the legal facts in the trial, so the decision did not provide legal certainty and affected the fulfillment of restitution for the victim. The judge focused more on the defendant's sentence without considering the rights of the victim, who was only seen as a witness without considering their suffering.
- d) In Decision Number 667/Pid. Sus/2023/PN. Kis, the judge, decided that the defendant violated the law and had to pay restitution to the victim. Despite the weaknesses in the regulation, the judge still considered the victim's right to compensation, reflecting justice's importance. This decision shows that judges can provide legal certainty by trying to fulfill the victims' right to restitution based on the facts in the trial.

### **C. CONCLUSION**

1. Legal provisions related to restitution for victims of human trafficking are regulated in Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, which is further regulated in Supreme Court Regulation Number 1 of 2022 concerning Procedures for Settlement of Applications and Granting of Restitution and Compensation to Victims of Crimes which aims to ensure that punishment does not only focus on the defendant's actions alone but also accommodates the interests of the victims of the crime themselves. Thus, the fulfillment of the right to restitution for victims of human trafficking should have been accommodated; however, in practice, it turns out that there are still loopholes that cause the right to restitution for victims of human trafficking not to be achieved.
2. Judge's considerations in Decision Number 322/Pid.Sus/2023/PN Jkt. Sel dated August 29, 2023, on behalf of defendant Nunu Juhana and defendant RA. Ayu Nurfini Binti Djoko Djuharyantoko showed that the panel of judges solely focused on the defendant's actions but did not thoroughly consider the defendants' actions in committing the crime of human trafficking as per the facts at trial, which had an impact on the non-fulfillment of the victim's rights (right to restitution) requested—meanwhile, the judge's consideration in Decision Number 667/Pid. Sus/2023/PN Kis dated January 17, 2024, on behalf of the defendant Suhardi, the judge explored and considered all the trial facts related to the defendant's actions in committing the crime of human trafficking and the fulfillment of the victim's right to restitution as mandated by law and a sense of justice.
3. Legal factors the judge considers in Decision Number 322/Pid.Sus/2023/PN Jkt. Sel, dated August 29, 2023, and Decision Number: 667/Pid. Sus/2023/PN Kis dated January 17, 2024, due to the existence of statutory regulatory factors and the personality factors of the judges themselves, which in practice result in differences between judges in deciding cases of human trafficking related to requests for restitution rights.

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