

**Implementation of Compensation in the Form of Restitution  
for Child Victims of the Crime of Human Trafficking:  
Study on the Jurisdiction of the City of Padang**

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**Abstract:** *Trafficking in persons is regulated in Law Number 21 of 2007 concerning eradicating the Crime of Trafficking in Persons. One form of legal protection for victims is the provision of compensation in the form of restitution. Children and women were often victims of the crime of trafficking in persons. The problem how is the application of compensation in the form of restitution to children as victims of criminal acts of trafficking in persons in the jurisdiction of the city of Padang. What are the obstacles in the application of compensation in the form of restitution to children as victims of criminal acts of trafficking in persons in the jurisdiction of the city of Padang? The study uses an empirical legal. Data collection techniques are through interviews and document studies, and data analysis is qualitative. The conclusion is the application of restitution for children who are victims of criminal acts of trafficking in persons in the jurisdiction of the city of Padang has not been optimal. The obstacle in implementing restitution for children as victims of the crime of trafficking in persons is the lack of awareness of law enforcement officers on victim protection, especially restitution, which results in the rights of the victims of criminal acts being often neglected because they tend to be law enforcement are more focused on imposing criminal charges against perpetrators.*

**Keywords:** Compensation, Restitution, Child, Human Trafficking

**Abstrak:** Perdagangan orang diatur dalam Undang-Undang Nomor 21 Tahun 2007 tentang Pemberantasan Tindak Pidana Perdagangan Orang. Salah satu bentuk perlindungan hukum terhadap korban yang diatur adalah pemberian kompensasi berupa restitusi. Anak-anak dan perempuan seringkali menjadi korban tindak pidana perdagangan orang. Permasalahannya adalah bagaimana penerapan kompensasi berupa restitusi terhadap anak korban tindak pidana perdagangan orang di wilayah hukum Kota Padang. Apa saja kendala dalam penerapan kompensasi berupa restitusi kepada anak korban tindak pidana perdagangan orang di wilayah hukum Kota Padang. Penelitian ini menggunakan hukum empiris. Teknik pengumpulan data melalui wawancara dan studi dokumen, analisis data bersifat kualitatif. Kesimpulannya penerapan restitusi terhadap anak korban tindak pidana perdagangan orang di wilayah hukum kota Padang belum optimal. Kendala dalam pelaksanaan restitusi terhadap anak korban tindak pidana perdagangan orang adalah kurangnya kesadaran aparat penegak hukum terhadap perlindungan korban khususnya restitusi yang mengakibatkan hak-hak korban tindak pidana seringkali terabaikan karena cenderung penegak hukum lebih terfokus pada penjatuhan tuntutan pidana terhadap pelaku.

**Kata Kunci:** *Kompensasi, Restitusi, Anak sebagai Korban, Perdagangan Manusia.*

## A. Introduction

The crime of *human trafficking* is a significant problem that has threatened humanity since the existence of human life itself. Human *trafficking* is a crime against humans and humanity faced by every country. Indonesia, in particular, is a significant source and destination country for human trafficking, specifically forced labor and sexual trafficking. Women and children are the primary victims and continue to be the most vulnerable population to be victims of trafficking. Human trafficking is related to an act of slavery or slavery-like behavior.<sup>1</sup> Article 1 point 7 of the PTPPO Law also explains the category of exploitation, including prostitution or other forms of commercial sex, forced labor, slavery or practices similar to slavery, oppression, extortion, use of reproductive organs, transferring or transplanting organs, and or body tissues of a person to gain *material* or *immaterial* benefits.

According to R. Seosilo, women and minors, as the most common category of victims of human trafficking practices, are limited to forced exploitation or forced

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<sup>1</sup>Mohammad Al-Salamat, Zaid Garaibeh, and Mohamad Alshible, "The Effect of the Victim's Consent in the Crime of Human Trafficking Under the Jordanian Human Trafficking Prevention Law," *Pakistan Journal of Criminology* 15, no. 4 (2023); Tushar Daku, Margubur Rahaman, and K. C. Das, "An Analysis of the Spatial and Temporal Variations of Human Trafficking in India," *Cogent Social Sciences* 10, no. 1 (2023); Erinn C. Cameron et al., "Indicators of Gender Inequality and Violence against Women Predict Number of Reported Human Trafficking Legal Cases across Countries," *Journal of Human Trafficking* 9, no. 1 (2023); Yohanes Hermanto Sirait and Dian Narwastuty, "Dari Pelaku Ke Korban Penyelundupan Pekerja Migran Sukarela: Pilihan Hukum Internasional Atau Hukum Indonesia," *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum* 11, no. 1 (2022); Loisa Magdalena Gandhi and Hetty A Geru, *Trafiking Perempuan Dan Anak (Penanggulangan Komprehensif: Studi Kasus Sulawesi Utara)*, ed. Hetty A Geru and L.M. Gandhi Lapian, I (Jakarta: Yayasan Obor, 2006). 47;

prostitution.<sup>2</sup> Furthermore, on average, young women are targeted by perpetrators of human trafficking practices and leave the country for prostitution.<sup>3</sup> Besides sexual exploitation, human trafficking can also take the form of non-sexual exploitation, such as forced labor. *Forced labor is a form of slavery that takes place in domestic workers*, as well as slavery that occurs in the field of public sector work. Most victims are women and children. They experience various forms of exploitation, where initially, they are paid a decent salary. Still, their documents are withheld, and then slowly, their movement and mobility begin to be restricted, locked in the house, and then their salary is stopped; they are also forced to work without rest or even without holidays.<sup>4</sup> Based on data from the Ministry of Social Affairs of the Republic of Indonesia, the five-year report of the Task Force for the Prevention and Handling of Trafficking in Persons (GTPP-TPPO) in 2015-2019 shows that there were 2,648 victims of trafficking consisting of 2,319 women and 329 men.<sup>5</sup> The data shows that cases of human trafficking continue to increase, especially during the COVID-19 pandemic, which has a devastating impact on the economy.

The PTPPO Law is present as an effort from the government to eradicate trafficking in persons, especially those carried out on women and children who are vulnerable to becoming victims because trafficking in persons is an act that is contrary to human dignity and human rights. The criminal provisions stipulated in the PTPPO Law are in Article 2 paragraph (1), which states that:

Any person who recruits, transports, harbors, sends, transfers, or receives a person by threat of force, use of force, abduction, harboring, falsification, deception, abuse of power or position of vulnerability, debt bondage, or giving payment or benefit despite having the consent of the person having control over the other person, to exploit that person in the territory of the Republic of Indonesia, shall be punished with imprisonment of not less than 3 (three) years and not more than 15 (fifteen) years and a fine of not less than Rp120.000,000.00 (one hundred twenty million rupiahs) and a maximum of Rp600,000,000.00 (six hundred million rupiah).

Anyone can become a victim of human trafficking. Women and children are particularly vulnerable to becoming victims of this crime. The child is a creature of God

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<sup>2</sup>Raden Soesilo, "Kitab Undang-Undang Hukum Pidana (KUHP): Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal," 1995, 186.

<sup>3</sup>Soesilo, "Kitab Undang-Undang Hukum Pidana (KUHP): Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal."

<sup>4</sup>Anggie Rizqita Herda Putri and Ridwan Arifin, "Legal Protection for Victims of Human Trafficking Crimes in Indonesia," *Res Judicata* 2, no. 1 (June 2019): 170–85. Autumn D. Tolar, "Human Trafficking Analyzed as a Crime against Humanity," *International and Comparative Law Review* 20, no. 1 (2020); Matthew Hall, "Victims of Crime: Constructions, Governance and Policy," in *Victims of Crime*, 2017, [https://doi.org/10.1007/978-3-319-64589-6\\_7](https://doi.org/10.1007/978-3-319-64589-6_7);

<sup>5</sup>Humas Ditjen Rehabilitasi Sosial, "Hari Dunia Anti Perdagangan Orang, Kemensos Siap Bersinergi," *Kemensos RI*, July 2021; Antonius PS Wibowo dkk, *Penanggulangan Tindak Pidana Perdagangan Orang Kajian Hukum Dalam Perspektif Nasional Dan Internasional* (Jakarta: Universitas Katolik Indonesia Atma Jaya, 2020); Marlina and Azmiati, *Hak Restitusi Terhadap Korban Tindak Pidana Perdagangan Orang* (Bandung: Refika Aditama, 2015).

Almighty and a social being from the womb until birth and has the right to life, independence, and good protection from parents, family, community, nation, and state.<sup>6</sup> Children who are victims of human trafficking offenses experience the same suffering as adult victims. However, because of their age and vulnerability due to exploitation, children who experience violence in human trafficking can be traumatized. All parties need to recognize that children are vulnerable and need special protection.<sup>7</sup> Another consideration underlying the establishment of the PTPPO Law is the desire to prevent and overcome the criminal act of trafficking in persons based on noble values, national and international commitments to make early prevention efforts, prosecution of perpetrators, protection of victims, and increased cooperation.<sup>8</sup>

The Law explains that the purpose of witness and victim protection is to protect witnesses and victims at all stages of the criminal justice process in the judicial environment, considering that one of the valid evidence in the criminal justice process is the testimony of witnesses and testimony of victims who hear, see, and experience a criminal act themselves as an effort to find clarity about a criminal case. The interests of victims of criminal offenses litigated in court have been represented by state officials such as prosecutors and the police. Unfortunately, the relationship between victims and state officials who are supposed to pay attention to the interests of victims is only a formality. This is inversely proportional to the relationship between the defendant and the legal counsel, which, in principle, contains the relationship between the service provider and the service recipient as regulated in civil law.<sup>9</sup>

The PTPPO Law recognizes two forms of legal protection for victims of human trafficking, namely the right to restitution and rehabilitation, which are regulated in Chapter V on witness and victim protection. One form of legal protection for victims of trafficking offenses is restitution. Article 48 paragraph (1) of the PTPPO Law states that

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<sup>6</sup>Amangeldy Khamzin, Yermek Buribayev, and Kaliya Sartayeva, "Prevention of Human Trafficking Crime: A View from Kazakhstan and Central Asian Countries," *International Journal of Criminal Justice Sciences* 17, no. 1 (2022); Sheeba Shamsudeen, "Human Trafficking: Vulnerability, Impact, and Action," in *Victimology: A Comprehensive Approach to Forensic, Psychosocial and Legal Perspectives*, 2022; Sobhagmal C. Bhandari, "Human Trafficking, Prostitution, and the Law," in *Gender, Law and Social Transformation in India*, 2022; Abdussalam and Adri Desasfuryanto, *Hukum Perlindungan Anak* (Jakarta: PTK, 2014). 14.

<sup>7</sup>Swati Kaushal, "Punishment for Crimes: An Instrument of Social Change," *Proceedings of International Young Scholars Workshop* 9 (2020); Holly Hargreaves-Cormany et al., "Psychopathy in Human Trafficking Offenders: Current Trends and Challenges," in *Psychopathy and Criminal Behavior*, 2022; Yazid Effendi, *Pengantar Victimologi Rekonsiliasi Korban Dan Pelaku Kejahatan*, (Purwokerto: Universitas Jenderal Soedirman, 2001). 35

<sup>8</sup>O. H. Eddy, *Bunga Rampai Hukum Pidana Khusus* (Jakarta: Pena, 2006); Azis Syamsuddin, *Tindak Pidana Khusus* (Jakarta: Sinar Grafika, 2011). 57; Ildar Begishev et al., "Research of Artificial Intelligence as a Subject of Crime," in *E3S Web of Conferences*, vol. 449, 2023.

<sup>9</sup>Tanja Altunjan, "The International Criminal Court and Sexual Violence: Between Aspirations and Reality," *German Law Journal* 22, no. 5 (2021); Fareed Mohd Hassan, Mohd Hazmi Bin Mohd Rusli, and Amalina Ahmad Tajudin, "Malaysia and the Rome Statute of the International Criminal Court," *Brawijaya Law Journal* 9, no. 1 (2022); Siswanto Sunarso, *Viktimologi Dalam Sistem Peradilan Pidana* (Jakarta: Sinar Grafika, 2012). 50; Binsar Zaroha Ritonga and Eko Soponyono, "Pembentukan Lembaga Pelaksana Pidana Sebagai Wujud Sistem Peradilan Pidana Integral," *Jurnal Pembangunan Hukum Indonesia* 5, no. 1 (2023).

every victim of trafficking offences or their heirs are entitled to restitution. Restitution is the payment of compensation imposed on the perpetrator based on a court decision with permanent legal force for *material* or *immaterial* losses suffered by the victim or his heirs. Meanwhile, psychological rehabilitation (social rehabilitation) is the reunification of victims of human trafficking crimes with their families or family substitutes for victims. Restitution and medical and psychological rehabilitation are forms of legal protection for victims of human trafficking crimes that aim to replace and restore all losses or suffering received by victims as a result of human trafficking crimes.

This is as regulated in Law Number 8 of 1981 concerning Criminal Procedure, hereinafter referred to as KUHAP and the PTPPO Law, as well as in Government Regulation Number 7 of 2018 concerning Providing Compensation, Restitution and Assistance to Witnesses and Victims and Government Regulation Number 43 of 2017 concerning the Application of Restitution for Children who are Victims of Crime. Although there are many laws and regulations that regulate the protection of witnesses and victims, especially the protection of victims as a form of compensation in the form of restitution, in practice, there are still obstacles that hinder the application of restitution. Article 48, paragraph (3) clearly states that restitution is given and included simultaneously in the court's verdict on the criminal offense of trafficking in persons. This article is the legal basis that victims of trafficking offenses should have the right to restitution as compensation for the criminal acts they have experienced, especially since the victims are children who should receive more legal protection. Based on the description of the background above, it is necessary to discuss further the application of compensation in the form of restitution to child victims of trafficking crime in Padang City and factors inhibiting the application of restitution rights.

## **B. Implementation of Restitution for Children as Victims of Human Trafficking Crime in the Legal Area of Padang City**

The passing of Law Number 21 of 2007 on the Eradication of Trafficking in Persons (PTPPO) has provided legal certainty regarding legal protection for victims of trafficking in persons or their heirs, namely greater attention to the suffering of victims as a result of TTPPO in the form of restitution rights. According to Ferry Hardiansyah, S.H., M.H., as a judge at the Padang District Court, restitution is the payment of compensation imposed on the perpetrator based on a court decision with permanent legal force for *material and/or immaterial* losses suffered by the victim or his heirs. The perpetrator of TTPPO must give the right of restitution as compensation for the victim. In addition to restitution, the PTPPO Law also regulates the right of victims to rehabilitation for those who experience physical, psychological, and social suffering as a result of trafficking in persons.<sup>10</sup>

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<sup>10</sup> Interview with Ferry Hardiansyah, S.H., M.H., Judge of Padang District Court, 2022

The fulfillment of the right to restitution for victims of trafficking in persons should be accepted by every Indonesian citizen who is a victim of trafficking in persons because it is a form of legal protection for victims, which has also been guaranteed by law. Provisions regarding the protection of victims must be respected and guaranteed. Article 27, paragraph (1) of the 1945 Constitution states that "all citizens shall be equal before the law and government and shall uphold the law and government with no exception". So far, the suffering felt by victims of crime has only been used as an instrument to determine the verdict and impose punishment on the perpetrator. In contrast, in fact, the suffering experienced by the perpetrator is not related to the suffering felt by the victim of the crime; in fact, the victim will feel more suffering than what they have experienced. From a psychological perspective, victims of criminal offenses will experience stress and depression over what they have experienced, victims will also often isolate themselves from the surrounding environment, it can even be exacerbated by victims who distance themselves from their own families, and victims also often lose their opportunity to participate in social, moral and spiritual changes. Therefore, victims are in dire need of legal protection for the crimes they have suffered.<sup>11</sup>

In the Indonesian legal system, efforts to protect victims of crime related to restitution are not only found in the 1945 Constitution but also the Criminal Code, Criminal Procedure Code, and Civil Code for victims of TPPO in Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons. In the PTPO Law, restitution is regulated in Article 1 paragraph (13) and Articles 48 to 50:

Restitution is the payment of compensation charged to the perpetrator based on a court decision with permanent legal force for *material* and/or *immaterial* losses suffered by victims or their heirs.

Based on the author's interview with Ferry Hardiansyah, S.H., M.H., restitution is still difficult to apply, especially for the crime of trafficking in persons.<sup>12</sup> Restitution is regulated in the Law, especially in the TPPO Law Article 48 paragraph (1). It has also been confirmed that every victim of trafficking is entitled to receive restitution. Still, in its application in Padang City for the last 5 years, it has not been optimally applied. There are many factors behind the non-optimal application of restitution in Padang City, especially for victims of trafficking in persons, both from legal factors and from law enforcement officials themselves. The data on trafficking in persons that occurred in Padang City during the last 5 years can be seen in the following table:

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<sup>11</sup>Nathalina Naibaho, "Victim Protection and The Dynamic Situation of Human Trafficking: Indonesia Experience," *Indonesian Journal of International Law* 20, no. 4 (2023); Ngo Thi Minh Huong and Giao Cong Vu, "Criminal Justice Responses to Trafficking in Persons," *Journal of Southeast Asian Human Rights* 7, no. 1 (2023).

<sup>12</sup>Interview with Ferry Hardiansyah, S.H., M.H., Judge of Padang District Court, 2022

Table 1: List of Trafficking offenses in the Padang City jurisdiction

No	Decision No.	Age of Victim	Delict	Demands	The Verdict	
					Criminal Principal	Criminal Additional
1	657/Pid.Sus/2018/PN.Pdg	-	Article 2 paragraph (2) of Law No. 21 of 2007 concerning PTPPO <i>Juncto</i> Article 2 paragraph (1) of Law No.21 of 2007 concerning PTPPO	<ul style="list-style-type: none"> <li>• 4 years imprisonment;</li> <li>• Fine of 120 million subsidized by 6 months imprisonment</li> </ul>	4 (four) years imprisonment	800 million fine in lieu of 2 months imprisonment
2	347/Pid.Sus/2019/PN.Pdg	15 Years	Article 2 paragraph (1) in conjunction with Article 17 of Law No.21 of 2007 concerning PTPPO	<ul style="list-style-type: none"> <li>• 6 years imprisonment;</li> <li>• Fine of 300 million subsidised by 3 months imprisonment</li> </ul>	4 (four) years imprisonment	300 million fine in lieu of 1 month in prison
3	239/Pid.Sus/2020/PN.Pdg	17 Years	Article 2 paragraph (1) in conjunction with Article 17 in conjunction with Article 11 of Law No.21 of 2007 concerning PTPPO Article 76 I in conjunction with Article 11 of Law No.35 Year 2014 on Child Protection	<ul style="list-style-type: none"> <li>• 6 years imprisonment;</li> <li>• Fine of 200 million subsidised by 3 months imprisonment</li> </ul>	5 (five) years imprisonment	200 million fine in lieu of 6 months imprisonment
4	240/Pid/Sus/2020/PN.Pdg	17 Years	Article 2 paragraph (1) in conjunction with Article 17 in conjunction with Article 11 of Law No.21 of 2007 concerning PTPPO	<ul style="list-style-type: none"> <li>• 6 years imprisonment;</li> <li>• Fine of 200 million subsidized by 3 months imprisonment</li> </ul>	5 (five) years imprisonment	200 million fine in lieu of 6 months imprisonment

5	890/Pid.Sus/2020/PN.Pdg	17 Years	Article 76 I in conjunction with Article 11 of Law No.35 Year 2014 on Child Protection Article 2 paragraph (1) of Law No.21 of 2007 concerning PTPPO	<ul style="list-style-type: none"> <li>• 3 years imprisonment;</li> <li>• Fine of 120 million subsidised by 2 months imprisonment</li> </ul>	Imprisonment of 2 years and 3 months	120 million fine in lieu of 2 months imprisonment
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Data Source: Based on data from the Case Tracking Information Source (SIPP) of the Padang District Court.<sup>13</sup>

The table shows that in the last 5 (five) years, there have been 5 (five) cases of trafficking in persons in the jurisdiction of Padang City, of which none of the decisions contained restitution rights for victims of trafficking in persons. Applying the right of restitution to victims of trafficking in persons in the jurisdiction of Padang City over the last 5 (five) years has not reflected the principle of legal certainty. This can be seen from several decisions on human trafficking crimes that have permanent legal force, where the verdict does not include restitution rights; this certainly does not achieve one of the objectives of the law, namely from the aspect of legal certainty. According to Sudikno Mertokusumo, legal certainty guarantees that the law is carried out, that those entitled according to the law can obtain their rights, and that decisions can be implemented.<sup>14</sup> Legal certainty is closely related to justice and expediency, because if a legal regulation has implemented the principle of legal certainty, then the principles of justice and legal expediency will also be implemented. Legal certainty is the implementation of the law by its contents so that the community can ensure that the law is implemented, and it is hoped that justice and benefit can be created from the enactment of the implementation of the law.

Legal certainty is not only written in the laws and regulations but must also be applied to concrete events or their application in the field. Something that is contained in the Law is an abstract thing. Therefore, the abstract can be realized concretely if it is implemented by those with the authority to do so.<sup>15</sup>

Restitution was not found in every decision of trafficking offences in Padang City for the last 5 years, proving that the application of restitution is not optimal. Children

<sup>13</sup><http://pn-padang.go.id:8060/> accessed on June 17, 2022, at 14.35 WIB.

<sup>14</sup>Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar* (Yogyakarta: Liberty, 2007). 160

<sup>15</sup>Giofanni Dian Novika, Hari Sutra Disemadi, and Nur Rochaeti, "Legal Protection in Restitution to the Victims of Human Trafficking," *Legality: Jurnal Ilmiah Hukum* 28, no. 1 (2020). Angkasa Angkasa et al., "Development of a Restitution Model in Optimizing Legal Protection for Victims of Human Trafficking in Indonesia," *Journal of Indonesian Legal Studies* 8, no. 1 (2023); Christina Maya Indah Susilowati, "The Restitution in Human Trafficking Law Enforcement in Relation to Victim Protection," *Jurnal Pembaharuan Hukum* 9, no. 2 (2022).



are often victims of trafficking offences where they should get protection from the adults around them.

According to Lusita Amelia Rafilis, S.H., as the Public Prosecutor handling this case, from the investigation stage, the right of restitution was not included by the investigator in the BAP.<sup>16</sup> As the prosecutor handling the case, although the prosecutor was also authorized to inform the victim about the right to restitution, Lusita as the prosecutor, also did not include restitution in her charges because, according to Lusita, the victim of the criminal offense was not eligible to receive restitution. This is based on Article 48, paragraph (2), which states that:

Restitution, as referred to in paragraph (1), in the form of compensation for :

- a. loss of wealth or income;
- b. suffering;
- c. costs for medical and/or psychological treatment measures; and/or
- d. other losses suffered by victims as a result of trafficking in persons.

According to Lusita, victims are not eligible to receive restitution because they do not fulfill the element of loss by Article 48, paragraph (2). Andi Salim S.H., M.H, as the Public Prosecutor at the West Sumatra High Prosecutor's Office, said that in addition to not fulfilling the elements of Article 48 paragraph (2), the victim is said to not fulfill the element of loss to be eligible to receive restitution because, in this case, the victim also benefited from the crime of prostitution, and it can be said that whether or not the perpetrator facilitated the victim in the crime of prostitution, the victim would still do it herself, in other words, this can be said to be a 'job' for the victim to get income.<sup>17</sup>

Even though the victim is a minor, this cannot be a reason for the victim to receive restitution, because of several reasons explained above. Therefore, the verdict Number 347/Pid.Sus/2019/PN.Pdg does not contain restitution for the victim because the public prosecutor did not include it in his charges, and the judge certainly cannot decide a verdict outside of what the public prosecutor demands.

However, Ferry Hardiansyah, S.H, M.H, expressed a different opinion as a judge at the Padang District Court. Although the child benefits from a criminal offense, the child is still a victim who should be protected by the state, which in this case has been represented to the state through Investigators and Public Prosecutors who should pay attention to the rights of children as victims of criminal acts, especially human trafficking.<sup>18</sup>

Renol Wedi, S.H., also said the same thing as a Padang City District Attorney's prosecutor. Children as victims are still eligible to receive restitution even though they benefit from the criminal offenses they experience. This is based on the provisions of

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<sup>16</sup>Interview with Lusita Amelia Rafilis, S.H., Prosecutor at the High Prosecutor's Office West Sumatera, 2022.

<sup>17</sup>Interview with Andi Salim, S.H., M.H., Prosecutor at the High Prosecutor's Office West Sumatera, 2022.

<sup>18</sup>Interview with Ferry Hardiansyah, S.H., M.H., Judge of District Court Padang, West Sumatera, 2022.

Article 48 paragraph (2) letter d, which states that victims suffer other losses as a result of trafficking. This could be the legal basis for the prosecutor to include restitution for child victims of trafficking offences which focuses more on the *immaterial* losses felt by the child as a victim of trafficking offences.<sup>19</sup> Renol Wedi, S.H. states that restitution has not been optimally implemented, especially in Padang City. It can be said that it is still rare to find a BAP from investigators that contains restitution for the victim. However, if the public prosecutor believes that the victim of the crime deserves restitution, then before the file is P21, the prosecutor has the right to give instructions to the investigator to include a request for restitution for the victim. What is meant by P21 is a form code used in the process of handling and resolving a criminal case, which states that the results of the criminal case investigation are complete. If the status of the case file is P21, then here, the role of the prosecutor at the prosecution stage is obliged to inform the victim about the right to restitution owned as a victim of human trafficking.<sup>20</sup>

### **C. Obstacles in the Implementation of Restitution for Children as Victims of Human Trafficking Crime in the Legal Area of Padang City**

#### **1. Legal Factors**

The handling of TPPO cases based on the articles in the PTPPO Law provides protection to victims; in addition to criminalizing the perpetrator, it is also realized in the form of fulfilling the rights of victims. One of the rights of victims of TPPO is the right to obtain compensation for what they have suffered as victims of trafficking in persons in the form of restitution payments from the perpetrator.

Referring to the provisions of Articles 48-50 of the PTPPO Law, which regulate the rights of victims of TPPO in the form of restitution or compensation, has juridical weaknesses, namely:<sup>21</sup>

- a. The Anti-Trafficking Law does not imitatively regulate the prosecutor's authority to take legal remedies, both at the appeal and cassation levels, against court decisions in TPPO cases. However, Article 28 of the PTPPO Law states that:

Investigation, prosecution, and examination in court in the case of TPPO shall be conducted based on the applicable Criminal Procedure Law unless otherwise provided in this Law. This article will harm victims in fulfilling their right to restitution, for example, in the case of merging criminal cases as stipulated in Articles 98-101 of KUHAP. Article 101 paragraph (2) of KUHAP states that: If no

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<sup>19</sup>Interview with Renol Wedi, S.H., M.H., Prosecutor at the High Prosecutor's Office West Sumatera, 2022.

<sup>20</sup>Interview with Renol Wedi, S.H., M.H., Prosecutor at the High Prosecutor's Office West Sumatera, 2022.

<sup>21</sup>Angkasa Angkasa et al., "Development of a Restitution Model in Optimizing Legal Protection for Victims of Human Trafficking in Indonesia," *Journal of Indonesian Legal Studies* 8, no. 1 (2023); Harshvardhaan M et al., "Criminality Of Ecocide And Environmental Laws: A Case Of Legislative Interventions," *Russian Law Journal* 11, no. 1S (2023); Marlina and Azmiati, *Hak Restitusi Terhadap Korban Tindak Pidana Perdagangan Orang*. 125-128.

appeal is filed against a criminal case, then an appeal regarding a decision on restitution is not permitted.

In this case, the victim will be disadvantaged if the application of the TPPO investigation, prosecution, and trial is based on the Criminal Procedure Code. The victim must accept the court's decision if restitution for the victim is not granted, because the victim is not allowed to appeal the compensation or restitution claim if the decision is deemed not by the burden of the loss suffered by the victim, both material and immaterial.

b. The elucidation of Article 48(1) states that:

The mechanism for filing restitution is implemented from the time the victim reports the case to the local Indonesian National Police, and the investigator handles it along with the criminal offense committed. The public prosecutor informs the victim of his/her right to apply for restitution. Furthermore, the public prosecutor submits the amount of loss suffered by the victim as a result of TPPO together with the indictment. This mechanism does not eliminate the victim's right to file a lawsuit for his/her losses. Although the Public Prosecutor has the authority to file for restitution, the mechanism for its implementation has not been clearly regulated by the legislation, such as how to determine the amount of restitution to be filed, whether it is allowed if the public prosecutor has filed it, the victim can file for restitution on his/her own. The provisions of the article regulating the restitution mechanism are not located in the substantial article but are only included in the explanatory article. Article 48, paragraph (1) only states that every victim of trafficking in persons or their heirs is entitled to restitution.

The substance of the Article only states that victims of TPPO or their heirs are entitled to restitution, without any explanation of the mechanism for applying for restitution. This should have been included in the substance of the Article rather than in the explanation. As a result, police, prosecutors, or judges can immediately understand and integrate the provisions of this Article.

c. Article 48 paragraph (5) of the PTTPO Law states that:

Restitution can be deposited in advance at the court where the case is decided. This means that in the PTTPO Law, there are regulations that do not support the spirit of the Law to protect victims, namely in the provisions regarding the deposit of restitution, which is voluntary. The timing of the deposit of restitution is carried out from the investigation stage. The word "may" in this Article implies no "obligation" for restitution to be deposited in court first. The word "may" should be changed to "shall" because the word "shall" implies that the law must be followed by everyone without exception. In other words, the perpetrator of TPPO must deposit the restitution money at the local District Court. The word obliged to deposit the money if it is not followed by a forced effort then the provision will be useless. This is because if the perpetrator still does not want to deposit the restitution money with the court, no sanctions will be imposed on the perpetrator. This means that one

of the elements of the legal system, namely the applicability of regulations, has not been realized. If one of the elements is not functioning, the legal system will not run effectively.

d. Article 50 paragraph (4) of the PTPPO Law states that:

If the perpetrator cannot pay restitution, the perpetrator is subject to substitute imprisonment for a maximum of 1 (one) year. This provision should be amended and adjusted to the loss suffered by the victim. This is intended to avoid the tendency of the perpetrator to undergo imprisonment rather than having to pay restitution because the imprisonment is not long. Restitution should not be replaced with imprisonment because it contradicts the spirit of the PTPPO Law itself, which wants to protect victims through financial compensation. Restitution imposed on the perpetrator is intended not only to compensate for the suffering resulting from the criminal act as a form of responsibility for the criminal act committed but also to alleviate suffering and uphold justice for victims, especially children who are victims of TPPO.

- e. In general, the Anti-Trafficking Law does not further explain the role of public prosecutors, especially the role of prosecutors with victims of TPPO, the role of prosecutors is very important in the application of restitution rights for victims of TPPO so that aspects of victim protection mandated by the Anti-Trafficking Law can be applied effectively. Article 50, paragraph (3) of the TPPO Law only authorizes the Public Prosecutor as the executor of the restitution decision to confiscate the perpetrator's assets after an order from the head of the court if the restitution is not paid by the perpetrator. As described in the article, "If the warning letter as referred to in paragraph (2) is not implemented within 14 days (fourteen days), the court shall order the public prosecutor to confiscate the assets of the convicted person and auction the assets for the payment of restitution". The substance of the article should also mention the prosecutor's authority to represent victims in claiming their rights as victims of TPPO, for example, such as the authority of the public prosecutor to notify victims of TPPO of their restitution rights.
- f. The PTPPO Law does not impose a timeframe within which restitution can be requested, whether immediately after the TPPO has occurred or up to several years. This is different from some countries that have restitution programs. The Netherlands, for example, sets a timeframe for filing restitution with the police of 3 years from the time of the criminal offense, while there is no restriction on the filing of the application. The UK, on the other hand, reports to the police as soon as possible after the criminal offense and applies the criminal offense.

2. Law Enforcement Factor

The practice of law implementation in the field sometimes conflicts between legal certainty and justice because the conception of justice is an abstract formulation. In contrast, legal certainty is a procedure that has been determined normatively. In fact,

an action or policy that is not fully based on the law can be justified if the policy or action is not contrary to the law. So, in essence, law enforcement does not only include law enforcement but also peace maintenance because law enforcement is actually a process of adjusting between the value of rules and real behavior patterns aimed at achieving peace.<sup>22</sup>

In addition to legal factors that become obstacles in the application of restitution to victims of human trafficking, especially in the Padang City jurisdiction, there are also other factors, namely factors from law enforcement officials. The effectiveness of the application of restitution is highly dependent on the concern of law enforcers for the protection of victims of human trafficking crimes. Law enforcers, who are an important element in the application of the law, are expected to be a milestone of a regulation that has been made; law enforcers are a tool so that the law can be implemented properly.

Based on an interview with Renol Wedi, S.H., as a prosecutor at the Padang District Attorney's Office, the application of restitution has not been maximally implemented, specifically for human trafficking offenses that occurred in Padang City. According to Renol, law enforcement officers in the field have not been aware of the importance of legal protection for victims, especially regarding the right to restitution, law enforcement officers tend to focus more on punishing the perpetrators. The lack of awareness of law enforcers about the importance of the right to restitution has resulted in restitution, which is the right of victims, especially children who are victims of trafficking offenses, which is very useful in efforts to recover victims who are neglected.<sup>23</sup> Law enforcement factors, legal functions, mentality, or personality of law enforcement officers play an important role; if the rules are good, but the quality of the officers is not good, there will be problems. Therefore, one of the keys or success in law enforcement is the mentality or personality of law enforcement.

#### **D. Conclusion**

The implementation of compensation in the form of restitution for children as victims of trafficking offenses in the Padang City jurisdiction is not well implemented. This is because in the last 5 years, from 5 cases of trafficking in persons, there were no decisions that contained restitution for victims of trafficking in persons. Although restitution for victims has been explicitly stated in the Law, especially the PTPPO Law, it does not guarantee legal certainty, which is one of the legal objectives of implementing restitution in the field, especially in the Padang City jurisdiction, which, of course, also affects other legal objectives, namely justice and legal benefits. Restitution is still considered a new thing by law enforcement officials so that law enforcement officials pay less attention to aspects of victim protection, especially regarding the right to restitution owned by victims of human trafficking crimes, tending to law enforcement officials only focus on the imposition of crimes against the

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<sup>22</sup>Ismansyah, *Meretas Tindak Pidana Korupsi Dan Upaya Penegakan Hukum* (Depok: PT Raja Grafindo Persada, 2020). 212

<sup>23</sup>Interview with Renol Wedi, S.H., M.H., Public Prosecutor, District Attorney, Padang City 2022.

perpetrators of criminal acts. Obstacles in the application of compensation in the form of restitution for children who are victims of human trafficking crimes in the Padang City Legal Area, can be divided into two factors, namely from the legal factors themselves and factors from law enforcement officials. The legal factor itself is in the form of juridical weaknesses that become obstacles in the application of restitution in the field by law enforcement officials. Factors from law enforcement officials, is the lack of responsiveness of law enforcement officials to the importance of victim protection aspects in every criminal offence case, often the rights of victims are neglected by law enforcement officials because they tend to focus on punishing the perpetrator. It should be the victim who should get the attention of law enforcement officials, because it is actually the victim who suffers and bears the loss of the criminal offence committed by the perpetrator.

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### **Interview:**

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