



CORPORATE CRIMINAL ACCOUNTABILITY IN FULFILLING THE RIGHT TO RESTITUTION OF VICTIMS OF PEOPLE TRAFFICKING

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Article history:	Abstract:
Received: January 10 th 2023 Accepted: February 10 th 2023 Published: March 11 th 2023	So far, the role of corporations in human trafficking has been quite significant. So that there needs to be a study related to criminal responsibility in fulfilling the rights of victims of the Crime of Human Trafficking (TPPO). The background of this writing discusses the formulation of the related problem: How is corporate criminal responsibility in TIP? And how is corporate criminal responsibility in fulfilling the rights of restitution for victims of TIP? This article uses a normative juridical research method that examines various laws and regulations in Indonesia, then is analyzed descriptively. Regarding corporate criminal responsibility, there is still very little going on in Indonesia. Whereas in Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, corporations have been accepted as subjects of criminal law on trafficking in persons who can be held criminally responsible. One of the responsibilities that must be fulfilled by corporations as criminal actors is the fulfillment of victims' rights of restitution.

Keywords: *accountability, criminal human trafficking, corporations, restitution, victims.*

INTRODUCTION

Indonesia is an archipelagic country with a fairly high demographic explosion. The country with the crossing point of two oceans, namely the Indian and the Pacific, is the link between Asia and Australia. Strategic topography for labor market traffic, as well as providing opportunities for countries of origin, transit and destination (*sending, transit and producing areas*) the operation of human trafficking (Ganewati Wuryandari, 2011) .

Currently, the phenomenon of trafficking in persons is a serious problem in Indonesia. The Joint Regional Police and Criminal Investigation Unit of the Republic of Indonesia Police reported that the 2011-2018 period handled 3561 (three thousand five hundred sixty one) victims of the Crime of Trafficking in Persons (TPPO). When comparing data from the Ministry of Foreign Affairs of the Republic of Indonesia, the dominance of victims is Indonesian Migrant Workers. East Nusa Tenggara Province itself is the fifth largest contributor of Indonesian workers after West Java, West Nusa Tenggara, Central Java and East Java (TPPO Task Force Secretariat, 2018). Most of these workers were sent without official documents or even without documents at all by individual brokers or brokers for

Indonesian Migrant Worker Placement Companies (P3MI).

Based on data from the Indonesian Migrant Workers Protection Agency (BP2MI) in 2022, Indonesia has 344 P3MIs. The unclear status of the labor service provider company is one of the causes of TIP . However, from the information in the data, not all P3MIs are active and there are placements. Companies that are not active and *updated* in providing reports to BP2MI, often become recruiters' tools to ensnare potential labor victims. This is evidenced by the fact that during the 2015-2022 period, BP2MI has revoked the permits of 201 P3MIs.

Although technically the departure of migrant workers is not with the aim of being trafficked to the receiving country, migrant workers are the group most vulnerable to exploitation and end up as victims. The use of perpetrator modes that were successfully disclosed by the police included commercial sex workers, domestic helpers, selling children, ship crew, and selling human organs (Sulistyowati Irianto, 2006) . The rapid pace of technology, information and communication as it is now has made the transformation of the modus operandi increasingly sophisticated and complicated . Trafficking in persons has become an *extraordinary*, organized and



transnational crime. Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons in Article 1 point 1 defines Trafficking in Persons as:

"The act of recruiting, transporting, harboring, sending, transferring, or receiving a person by means of threats of violence, use of force, kidnapping, confinement, forgery, fraud, abuse of power or position of vulnerability, debt bondage or giving payments or benefits, so as to obtain the consent of the person who holds control over the other person, both within the country and between countries, for the purpose of exploitation or causing people to be exploited".

In current developments, the existence of corporations as potential perpetrators of trafficking in persons is becoming increasingly significant. The relationship between trafficking in persons and corporations is found in the development of its prevalence in the business world (TM Parente, 2014). Its role is through supplying the labor market chain, as a provider of labor recruitment and delivery services, as well as as a recipient and employer. Kristian in his book "Corporate Criminal Responsibility" gives reasons for the need to justify a corporation to be held criminally responsible, namely (Kristian, 2016):

- 1) bearing in mind that in socio-economic life, corporations are increasingly playing a very important role;
- 2) the profits obtained by the corporation and the losses suffered by the community can be so large that it cannot be balanced if the corporation is only subject to civil sanctions (Beth Stephens, 2002) ;
- 3) corporations are the main actors in the world economy, so that the presence of criminal law is considered the most effective method to influence the actions of rational corporate actors (Pamela H. Buci, 2007) ;
- 4) corporate actions through its agents on the one hand often cause enormous losses in society, so that the presence of criminal sanctions is expected to prevent them from repeating their actions (Geraldine Szott Moohr, 2007) ;
- 5) the punishment of corporations with the threat of punishment is one of the efforts to avoid criminal acts against their own employees (Muladi and Dwidja Priyatno, 2012) ;
- 6) by being convicted of a corporation that commits a crime, Indonesia can prove to the international community that Indonesia is a legal state in accordance with world developments.

The authority to impose sanctions on corporations has been granted through Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons. This law regulates humans and corporations as legal subjects. The entry of corporations as subjects of criminal law provides hope, optimism and state commitment to efforts to investigate, investigate,

prosecute and fulfill the rights of victims of TIP . However, in its implementation, corporations are considered to often escape their accountability in law enforcement. One of the corporate responsibilities that is often neglected is the fulfillment of the victim's right to restitution .

Article 1 point 13 of the law *a quo* defines restitution as payment of compensation which is charged to the perpetrator based on a court decision that has permanent legal force for material and/or immaterial losses suffered by the victim or his heirs. Through this law, the state pays great attention to the suffering and fulfillment of victims' rights of restitution as a remedy for TIP . A number of court decisions so far have been deemed insufficient to position victims as subjects seeking justice whose rights are protected and restored. It seems that the focus of prosecution is still on individual actors and has not yet touched on corporations as legal entities. The orientation of accountability is still in imposing criminal sanctions on the perpetrator's confinement, while ensuring the fulfillment of the victim's right of restitution has not been a priority.

The lack of postulates that appear to respond to the issue of fulfilling the victim's right of restitution and the low efforts to restore the victim's condition by corporate perpetrators of criminal acts are the reasons researchers raise the research title "Corporate Criminal Responsibility in Fulfilling the Rights of Restitution for TIP Victims " . The formulation of the problem discussed in this article is: How is corporate criminal responsibility in TIP ? And what about corporate criminal responsibility in fulfilling the rights of restitution for TIP victims ?

RESEARCH METHODS

This article uses normative juridical research methods in examining various positive laws from the applicable laws and regulations. Then it will be analyzed descriptively to provide an overview of legal problems and phenomena that exist in society. In addition, this article also uses library research with book and journal sources related to corporate criminal responsibility in fulfilling TIP victim restitution .

DISCUSSION AND ANALYSIS OF RESULTS

1. Responsibility in TIP

Indonesian regulations are not clear enough to regulate the mechanism of sanctions given to corporations. The inclusion of corporations as legal subjects in the TIP Law should be followed by the accountability of corporate entities and their personnel independently and cumulatively. Because the punishment of the management alone is not enough to carry out repression against offenses committed by or with a corporation (Julia Planitzer and Nora Katona, 2017).



a. Corporations as subjects of criminal law

The dilemma of corporations being used as subjects of criminal law begins with the emergence of an important principle in ancient criminal law, namely *society delinquere non potest* where corporations cannot commit crimes (Muladi and Dwidja Priyatno, 2011). This doctrine was later adopted in criminal law in many countries including the Netherlands through *Wetboek van Strafrecht* (WvS) in 1881, which was then accepted by Indonesia in the Criminal Code (the old Criminal Code). The principle of no crime without error or *no crime without error / geen straf zonder schuld* provides a debate about the source of corporate guilt as a prerequisite for criminal law subjects to be held accountable (Moeljatno, 1987) .

Initially, the subject of criminal law was only humans (individuals), so that the provision of conventional punishment was colored by corporal punishment, such as death penalty and imprisonment, all of which were projected for humans (Anugerah Rizki Akbari & Aulia Ali Reza, 2017). This assumption arises as a response to the relationship between the element of error (*actus reus*) and the element of the inner attitude of the actor (*mens rea*) which only humans have as *natuurlijke person*. So that the formulation of the subject of a crime in criminal law is always determined by the term whoever (*bij die, een ieder* = everyone) (SR Sianturi, 1996). Corporations are seen as subjects who have no inner attitude to prove their mistakes.

However, in its development there are many facts that humans commit criminal acts through organizations so that legislators consider it necessary to formulate offenses by ensuring that corporations are the legal subjects. Doubts about the fulfillment of the element of guilt in the corporation as a subject of criminal law were then answered by several experts, including:

- a. Carl von Savigny, CW Opzoomer, AN Houwing and Langemeyer, put forward a theory of fiction, which states that a legal entity or corporation is a *persona ficta* "person" created by law as a persona. Meanwhile, Otto von Gierk, teaches organ theory which states that legal entities as something real (*re a liteit*) are not fictional. This theory is implied as a real theory which views that a legal entity is *the een bestaan, and the reality* of a juridical construction as if a real human being in the traffic of law also has his own will which is formed through its completeness tools, namely the management and its members;

- b. Moenaf H. Regar, a corporation is a business entity (both legal and non-legal) whose existence and legal status are equated with humans (people), regardless of the form of the organization (Edi Yunara , 2005) ;
- c. Satjipto Rahardjo, a corporation is a body created by law which consists of a "*corpus*" namely its physical structure and into which the law incorporates the element of "*animus*" which makes the body have a personality. Because this legal entity is a legal creation, except for the creator, his death is also determined by law (Satjipto Rahardjo , 2000) ;
- d. Sutan Remi Sjahdeini, gave a different view by defining corporations from a narrow and broad sense. In a narrow sense, namely a legal entity, a corporation is a legal figure whose existence and authority is to be able or authorized to carry out legal actions as a legal figure. In a broad sense, a corporation criminally includes both legal entities and non-legal entities. Not only legal entities such as limited liability companies, foundations, cooperatives, or associations that have been legalized as legal entities are classified as corporations according to criminal law, but also firms, limited partnerships or CVs, and partnerships or maatschap, namely business entities which *according* to civil law is not a legal entity (Sutan Remi Sjahdeini , 2006) .

The similarity of a number of expert views above is that as a legal subject, corporations have rights and obligations. Rights are powers, authorities granted by law to legal subjects, while obligations are burdens granted by law to legal subjects (Ammirullah, 2012). According to Sutan Remy, treating corporations like humans (*natural persons*) and burdening them with accountability for criminal acts committed by them is in line with the principle that everyone is equal before the law (*principle of equality before the law*) (Sutan Remy Sjahdeini, 2006) . Accountability follows the characteristics of the crime he committed.

b. Corporate involvement in T PPO

Law Number 21 of 2007 concerning the Eradication of TIP, provides a definition of trafficking in persons in 3 (three) elements, as follows:



Action	recruiting, transporting, harboring, sending, transferring, or receiving a person.
Suggestion	threats of violence, use of force, abduction, confinement, forgery, fraud, abuse of power or position of vulnerability, debt bondage or giving payments or benefits.
Objective	exploitation or causing people to be exploited.

From the elements above, according to Silvia Rodriguez-Lopez, the way corporations carry out acts of trafficking in persons can be classified into three different categories, namely:

- 1) *the first category*, companies directly and voluntarily recruit, transport and provide the necessary documents for people to be transferred to places where they will be exploited and benefit from the exploitation;
- 2) *the second category*, the company acts as a third party supplied by other parties both inside and outside the country;
- 3) *the third category*, the involvement of companies when their products, services or facilities are used in the process of trafficking in persons. This can occur in the hotel, tourism and transportation sectors.

From these three categories, Silvia's view limits the role of corporations as direct agents and intermediaries. The researcher wants to add one company's actions as the fourth category, namely:

- 4) *fourth category*, the company acts as a supplier / provider of jobs that receives labor market supplies from intermediary parties or companies as explained in the second category.

c. Response to Corporate Involvement in TIP

The United Nations Convention Against Transnational Organized Crime *and the Protocols Thereto* (UNTOC), in general, emphasizes that corporate responsibility is considered very important in instruments against organized crime such as trafficking in persons, environmental crimes, corruption and terrorism. Article 5 of the Palermo Protocol obliges the state to take the necessary steps to determine the responsibility of each party, including corporations, in human trafficking. According to UNTOC corporate responsibility is mandatory, in so far as it is consistent with the legal principles of the country concerned. Considering that the different legal systems of each country result in different adoption approaches to corporate responsibility. The choice of type of liability such as criminal, civil or

administrative depends on the principles of each country.

Given the high probability that private agents are involved in trafficking in persons, another legal instrument that is referred to is the *International Labor Organization (ILO) Convention on Private Employment Agencies*. This convention encourages member states to take adequate protective measures to prevent crimes against migrant workers who are recruited and placed on their territory. In addition, at the European level, there are legal instruments in the form of the European Council Convention on *Action Against Trafficking in Human Beings (European Trafficking Convention)* and the European Parliament Directive 2011/36/EU on *Preventing and Combating Trafficking in Human Beings and Protecting its Victims (EU Trafficking Directive)*. This instrument obliges its member states to establish the responsibility of legal entities for trafficking in persons. The liability options are criminal, civil or administrative. The choice of mandatory sanctions must consider effectiveness, proportionateness, and prevention (Silvia Rodriguez-Lopez, 2017).

d. Scope of TIP in Indonesian law

Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons includes corporations as legal subjects. The position of the corporation in the elements of trafficking in persons according to *the a quo* law is explained as follows:

- a) The scope/categories of perpetrators include: 1) individuals, which includes every individual who directly commits TIP; 2) organized group, namely a group of two or more people who work together to commit TIP; 3) corporations, namely organized groups of people and/or assets, both legal entities and non-legal entities whose work is not in accordance with applicable laws and regulations resulting in TIP; and 4) state administrators, namely civil servants or government officials (including members of the Indonesian National Armed Forces, members of the Indonesian National Police, security forces, law enforcers or public officials) who abuse their power to commit or facilitate TIP.
- b) The scope of the victim, namely every person, if that person is experiencing psychological, mental, physical, sexual, economic and/or social suffering, which is caused by TIP.
- c) The scope of action that meets the elements of TIP is formulated as follows:



- any action or series of actions that fulfill the elements of a criminal act specified in the TIP Eradication Law;
- everyone who brings people into the territory of the Republic of Indonesia with the intention of being exploited in the territory of the Republic of Indonesia or exploited in other countries;
- any person who brings Indonesian citizens outside the territory of the Indonesian state with the intention of being exploited outside the territory of the Republic of Indonesia;
- everyone adopts a child by promising something or giving something with the intention of being exploited;
- every state administrator who uses power to cause TIP;
- everyone who tries to move other people to commit TIP;
- everyone who helps or tries to commit TIP;
- everyone who plans or carries out an evil conspiracy to commit TIP;
- any person who provides or enters false information on state documents or other documents or falsifies state documents or other documents to facilitate TIP;
- any person who intentionally prevents, hinders or frustrates directly or indirectly the investigation, prosecution and examination in court of a suspect, defendant or witness in a TIP case;
- everyone who assists the escape of TIP perpetrators from the criminal justice process;
- any person who informs the identity of a witness or victim, even though he has been notified, that the identity of the witness or victim must be kept confidential.

e. Directions for corporate criminal responsibility regulated in Indonesian laws and regulations related to TIP

The Indonesian Constitution implicitly provides mandates and responsibilities to all parties, both individuals in society, organizations, corporations and the government to guarantee and recognize human rights. This constitution directs the development of Indonesian law, placing corporations as legal subjects. There are a number of arrangements regarding corporate responsibility

in TIP which are sporadically scattered in various laws and regulations, including:

- 1) The Criminal Code (the old Criminal Code);
- 2) Law Number 8 of 1981 concerning the Criminal Procedure Code *jo.* Government Regulation Number 27 of 1983 concerning Implementing the Criminal Procedure Code;
- 3) Law Number 1 of 2023 concerning the Criminal Code (the new Criminal Code);
- 4) Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection;
- 5) Law Number 13 of 2006 concerning Protection of Witnesses and Victims as amended by Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims;
- 6) Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons;
- 7) Law Number 18 of 2017 concerning Protection of Indonesian Migrant Workers *jo.* Government Regulation Number 59 of 2021 concerning Implementation of Protection for Indonesian Migrant Workers;
- 8) Law Number 12 of 2022 concerning Crimes of Sexual Violence;
- 9) Regulation of the Minister of Manpower Number 9 of 2019 concerning Procedures for Placement of Indonesian Migrant Workers *jo.* Regulation of the Minister of Manpower Number 10 of 2019 concerning Procedures for Granting Company Permits for Placement of Indonesian Migrant Workers;
- 10) Attorney General Regulation Number Per-028/A/Ja/10/2014 of 2014 concerning Guidelines for Handling Criminal Cases with Corporate Law Subjects;
- 11) Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations; And
- 12) Draft Law on Criminal Procedure Code (RUUHAP).

The number of regulations above has resulted in differences in regulations, both formal and material regarding the acknowledgment of corporate criminal responsibility. In general, the summary of corporate criminal liability arrangements in TIP can be explained as follows:



Regarding	Arrangement
Views on Corporate Crime	Crime by a Corporation is a Crime committed by a board member who has a functional position in the organizational structure of the Corporation or a person based on a work relationship or based on another relationship acting for and on behalf of the Corporation or acting in the interest of the Corporation, within the scope of the Corporation's business or activities, either individually or jointly (Article 46 of the new Criminal Code)
Identification of perpetrators of Corporate Crime	In addition to administrators and people who have a working relationship with the corporation, Corporate Crime can be committed by givers of orders, control holders, or corporate beneficial owners who are outside the organizational structure, but can control the Corporation (Article 47 of the new Criminal Code)
Reasons for corporate criminal liability	Criminal acts by Corporations can be accounted for, if (Article 48 of the new Criminal Code): a. included in the scope of business or activity as specified in the articles of association or other provisions applicable to the corporation; b. unlawfully benefiting corporations; c. accepted as corporate policy; d. the corporation does not take the necessary steps to take precautions, prevent a bigger impact and ensure compliance with applicable legal provisions in order to prevent a crime from occurring; and/or e. Corporations allow crime to occur.
Consideration of aggravating / mitigating corporate crime	In sentencing against corporations must be considered (Article 56 of the new Criminal Code): a. the level of loss or impact incurred; b. the level of involvement of management who has a functional corporate position and/or the role of giving orders, control holders, and/or beneficial owners of the corporation ;

	<ul style="list-style-type: none"> c. length of time the crime has been committed; d. frequency of criminal acts by corporations; e. form of criminal offense; f. official involvement; g. the value of law and justice that lives in society; h. corporate track record in conducting business or activities; i. the influence of punishment on corporations; and/or j. corporate cooperation in handling criminal acts.
Criminal sanctions for corporations	<p>The new Criminal Code regulates criminal penalties for corporations consisting of (Article 118 to Article 120):</p> <ul style="list-style-type: none"> a. principal punishment, namely fines; b. 2) additional punishment, consisting of: a) payment of compensation; b) improvement as a result of a crime; c) implementation of obligations that have been neglected; d) fulfillment of customary obligations; e) job training financing; f) confiscation of goods or profits obtained from criminal acts; g) announcement of court decisions; h) revocation of certain permits; i) permanent prohibition to perform certain actions; j) closure of all or part of the Corporation's business premises and/or activities; k) suspension of all or part of the Corporation's business activities; and l) dissolution of the Corporation. <p>In contrast to Article 15 of the TIP Law:</p> <p>(1) In the event that TIP is committed by a corporation, in addition to imprisonment and fines against its management, the punishment that can be imposed on the corporation is in the form of a fine with a weighting of 3 (three) times the fine as referred to in Article 2, Article 3, Article 4, Article 5, and Article 6.</p>



	(2) In addition to fines as referred to in paragraph (1), corporations may be subject to additional penalties in the form of: a. revocation of business license; b. confiscation of proceeds of crime; c. revocation of legal entity status; d. management dismissal; and/or e. prohibition on the management to establish a corporation in the same line of business.
Action sanctions for corporations	Actions that can be imposed on corporations, namely: a) corporate takeover; b) placement under supervision; and/or c) placement of corporations under guardianship (Article 123 of the new Criminal Code)
Confiscation of corporate assets to fulfill additional crimes	In the event that the corporation does not carry out the additional punishment as referred to in paragraph (1) letter a to letter e, the property or income of the corporation can be confiscated and auctioned off by the prosecutor to fulfill the additional sentence that is not fulfilled (Article 120 paragraph (3) of the new Criminal Code)
Requirements for the responsibility of corporations that commit TIP (Article 13 of the TIP Law)	(1) TIP is considered committed by a corporation if the crime is committed by people acting for and/or on behalf of the corporation or for the benefit of the corporation, either based on work relations or other relationships, acting within the corporate environment either alone or together. (2) In the event that TIP is committed by a corporation as referred to in paragraph (1), then investigation, prosecution and punishment are carried out against the corporation and/or its management
The potential for TIP to be carried out in a corporate syndicate (Article 16 of the TIP Law)	In the event that TIP is committed by an organized group, then each TIP perpetrator is a person in the organized group shall be punished with the same sentence as referred to in Article 2 plus 1/3 (one third).

c. Alternative Solutions to Strengthening Corporate Criminal Arrangements in the Indonesian Legal System

Based on the regulation regarding corporate criminal liability in a number of regulations above, solutions that can be proposed as an offer for setting corporate punishment include:

- 1) codification of regulations regarding corporate punishment; And
- 2) revamping Law Enforcement Officials (APH) resources.

2. Responsibility in Fulfilling the Rights of Restitution for TIP Victims

Understanding corporate criminal responsibility in fulfilling the right to restitution, this section generally reviews the understanding regarding the rights of victims of TIP, directives on regulations governing restitution, as well as the obstacles and challenges of fulfilling victim restitution by corporations:

a) Fulfillment of the rights of victims of TIP

In *the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985)*, victims are defined as people who personally or collectively have suffered losses, including physical or mental injuries, emotional suffering, economic losses or considerable destruction. of their basic rights, through acts or omissions contrary to the penal laws in force in member countries, including laws prohibiting the abuse of power which can be subject to criminal penalties. A person can be considered a victim based on this declaration, regardless of whether the perpetrator of the crime is identified, detained, brought to trial or sentenced and regardless of the family relationship between the perpetrator and the victim. The term victim also includes, where appropriate, the immediate family or dependents of the immediate victim or persons who have suffered harm by intervening to assist victims in distress or prevent victimization.

This definition is almost the same as Article 1 number 3 of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, namely "a *victim is someone who experiences psychological, mental, physical, sexual, economic and/or social suffering, which is caused by TIP*". According to Farhana, the scope of crime victims including victims of TIP includes 3 (three) things, namely: 1) who is the victim; 2) what kind of suffering or loss did the victim experience; 3) who is responsible and/or how the suffering and loss and loss experienced by the victim can be recovered (Farhana, 2012).

Article 48 paragraph (2) of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons along with explanations of



related paragraphs, states that the losses experienced by victims may include:

- a. loss of wealth or income;
- b. suffering;
- c. costs for medical and/or psychological treatment; and/or
- d. other losses suffered by victims as a result of trafficking in persons, for example: loss of property, basic transportation costs, attorney's fees or other costs related to legal proceedings, or loss of income promised by the perpetrator.

b) Directions of laws and regulations related to the responsibility for fulfilling restitution for victims of TIP by corporations

Acceptance of the corporation as a subject of criminal law in *the lex generalis* of Indonesian criminal law and *lex specialis* of criminal law on trafficking in persons, the consequences of its responsibility to victims of course include the fulfillment of restitution. Arrangements for the fulfillment of restitution by corporations have been regulated sporadically in various laws and regulations, both within and outside the Criminal Procedure Code (KUHAP) and the Criminal Procedure Code (KUHP). A number of legal instruments that provide arrangements regarding victims as an important approach in determining the right to restitution, include:

- 1) Criminal Code (the old Criminal Code);
- 2) Law Number 1 of 2023 concerning the Criminal Code (the new Criminal Code);
- 3) Code of Civil law;
- 4) Law Number 8 of 1981 concerning the Criminal Procedure Code;
- 5) Law Number 26 of 2000 concerning the Human Rights Court;
- 6) Law Number 23 of 2002 concerning Child Protection, as amended by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection *jo*. Government Regulation Number 43 of 2017 concerning Implementation of Restitution for Children who are Victims of Crime;
- 7) Law Number 13 of 2006 concerning Protection of Witnesses and Victims as amended by Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims *jo* . Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution and Assistance to Witnesses and Victims, as amended by Government Regulation Number 35 of 2020

- concerning Amendments to Government Regulation Number 7 of 2018 concerning Provision of Compensation, Restitution and Assistance to Witnesses and Victims;
- 8) Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons;
- 9) Law Number 12 of 2022 concerning Eradication of Criminal Sexual Violence;
- 10) Attorney General Regulation Number Per-027/A/Ja/10/2014 concerning Asset Recovery Guidelines, as amended several times, most recently by Attorney General Regulation Number 7 of 2020 concerning Second Amendment to Attorney General Regulation Number Per-027/A/Ja/10 /2014 concerning Guidelines for Asset Recovery;
- 11) Attorney General Regulation Number Per-028/A/Ja/10/2014 of 2014 concerning Guidelines for Handling Criminal Cases with Corporate Law Subjects;
- 12) Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations;
- 13) Supreme Court Regulation Number 1 of 2022 concerning Procedures for Completing Applications and Granting Restitution and Compensation to Victims of Crime;
- 14) Regulation of the Witness and Victim Protection Agency (LPSK) Number 1 of 2010 concerning Standard Operational Procedures for Requests and Implementation of LPSK Restitution *jo*. Decree of the Chairperson of the LPSK Number 407/1.5.2.HSKR/LPSK/05/2018 concerning Instructions for Implementing Restitution Assessment by LPSK Officers;
- 15) Draft Law on Criminal Procedure Code.

In general, a summary of the arrangements regarding restitution in regulations regarding the protection of witnesses and victims can be broken down as follows:

Regarding	Arrangement
Restitution coverage	- According to Law No. 31/2014 concerning PKS, victims of criminal acts have the right to obtain restitution in the form of: a) compensation for loss of wealth or income; b) compensation for losses caused by suffering directly related to a crime; and/or c) reimbursement for medical and/or psychological treatment costs (Article 19 paragraph (1) of Law No 31/2014



	<p>concerning PSK <i>jo.</i> PP No 7/2018).</p> <ul style="list-style-type: none"> - In addition to the scope of losses above, Law No. 21/2007 concerning TIP, Article 48 paragraph (2) and its explanation adds the scope of restitution, namely: other losses suffered by victims as a result of trafficking in persons. What is meant by "other losses" in this provision are, for example: a. loss of property; b. basic transportation costs; c. attorney's fees or other costs related to legal proceedings; or d. loss of promised income
The party filing for refund	Applications for restitution are submitted by victims, their families or their proxies (Article 19 paragraph (2) PP No 7/2018).
Restitution filing mechanism	<ul style="list-style-type: none"> - Submission of requests for restitution can be made before or after a court decision that has obtained permanent legal force through the LPSK. - In the event that the application for restitution is filed before the court decision has permanent legal force, the LPSK may apply for restitution to the public prosecutor to be included in its claim. - In the event that a request for restitution is filed after a court decision which has permanent legal force has been read out, the LPSK may apply for restitution to the court to obtain a determination (Article 20 PP No 7/2018)
The role of the LPSK	LPSK has the authority to assist Witnesses and/or Victims in the judicial process; and assess compensation in granting Restitution and Compensation (Article 12 A of Law No 31/2014)
The mechanism for requesting restitution is through the civil process	<ul style="list-style-type: none"> - The restitution mechanism through the public prosecutor does not eliminate the victim's right to file a lawsuit for his losses (Explanation of Article 48 paragraph (1)). - In this provision, safekeeping of restitution in the form of money

(Explanation of Article 48 paragraph (5) of the TIP Law)	in court is carried out in accordance with statutory regulations. This provision is equated with the process of handling civil cases on a consignment
Requirements for getting refund	The request for restitution at least contains: a. applicant's identity; b. a description of the crime; c. identity of the perpetrator of the crime; d. description of losses actually suffered; and e. the form of Restitution requested (Article 21 paragraph (2) PP No 7/2018)
Restitution execution mechanism (Article 50 of the TIP Law)	<ul style="list-style-type: none"> - In the event that the implementation of the provision of restitution to the victim is not fulfilled to the extent that the limit has been exceeded, the victim or his/her heir shall notify the court about this. - The court issues a written warning letter to the restitution provider, to immediately fulfill the obligation to provide restitution to the victim or their heirs. - In the event that the warning letter is not executed within 14 (fourteen) days, the court orders the public prosecutor to confiscate the convict's assets and auction off said assets for payment of restitution. - If the perpetrator is unable to pay restitution, then the perpetrator is subject to imprisonment for a maximum of 1 (one) year.

c) Corporate responsibility in fulfilling restitution as stipulated in Indonesian laws and regulations

The conclusions regarding the arrangements regarding the restitution of victims of TIP according to statutory regulations can be explained as follows:

- a. The inclusion of a corporation in the element of "everyone", in the various regulations above, the corporation becomes a subject of criminal law which can be held accountable for fulfilling the right of restitution for victims of TIP;
- b. Restitution is calculated and submitted by the LPSK through the demands of the



Public Prosecutor. In TIP cases where the victims are children, restitution can be independently calculated and submitted by APH, both investigators and the Public Prosecutor.

- c. The court that has the authority to try and decide on requests for restitution is the court that tries the perpetrators of criminal acts.
- d. Filing for restitution can be made before or after a court decision with permanent legal force.

CONCLUSION

Corporations are accepted as legal subjects in *the lex generalis* of Indonesian criminal law and *lex specialis* in the laws and regulations on TIP. As a consequence, corporations that commit TIP can be legally prosecuted and held accountable. The scope of responsibility can be given to corporations, management, and/or corporations and management simultaneously, as well as managers and people who have a working relationship with the corporation. In addition, criminal acts by corporations can also be committed by givers of orders, control holders, or corporate beneficial owners who are outside the organizational structure, but can control the corporation.

This research normatively maps the role of corporations which are quite significant as perpetrators of TIP. Its role starts from the recruitment, delivery and placement of workers. The role of corporations in trafficking in persons is generally identified as 2 (two), namely: 1) the role of corporations directly, namely through P3MI, business partner companies, and provider companies/employers ; 2) the role of corporations indirectly, namely through transportation service companies, *medical check-up companies*, financial service institutions, shelter and lodging services, as well as brokerage agents for making passports and identity cards. However, in the implementation of law enforcement, corporations always escape investigation, prosecution and punishment. One of the corporate responsibilities that is often neglected to victims of TIP is the fulfillment of the right of restitution .

Restitution is a compensation payment that is charged to the perpetrator based on a court decision that has permanent legal force for material and/or immaterial losses suffered by the victim or his heirs. In the TIP case , restitution is the right of the victim as well as the responsibility of the perpetrator to recover materially and immaterially the condition of the victim and the victim's family. Acceptance of the corporation as a subject of criminal law in *the lex generalis* of Indonesian criminal law and *lex specialis* of criminal law on trafficking in persons, the consequences of its

responsibility to victims of course include the fulfillment of restitution. However, this accountability is inconsistent with reality, because corporations often escape the law.

This research summarizes 7 (seven) challenges faced in fulfilling victim restitution by corporations, including: 1) low understanding and perspective of APH; 2) limited resources and range of LPSK services ; 3) the low value of restitution decided by the court; 4) the unavailability of regulatory instruments, both criminal procedural law and its derivatives regarding the fulfillment of restitution by corporate actors ; 5) the difficulty of disclosing foreign corporate actors; 6) low awareness of TIP victims; and 7) the perpetrator's low intention to pay restitution.

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