



# The Inability of the Indonesian Government to Ensure Restitution Payments for Human Trafficking Victims

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**Abstract:** Victims of human trafficking experience an abstract position because, in criminal law, the disadvantaged party is the community. The Restitution that victims of human trafficking should receive is also not received by them. This article analyzes the factors causing the unpaid restitution rights for victims of human trafficking using normative and descriptive-analytical research methods to answer this problem. The purpose of this study is to answer the question of why restitution is not paid by perpetrators of human trafficking. Four main factors cause unpaid restitution for victims of human trafficking, including the incompetence of law enforcement in handling cases involving restitution, the amount of restitution exceeding the perpetrator's financial ability, the lack of case development by the police so that only field actors are arrested while intellectual actors are not, and the difficulty of collecting evidence. The government's failure to guarantee the payment of restitution impacts the victims and the community because there are no legal consequences for perpetrators who do not pay restitution. The current legal framework exacerbates this because of the limited definition of human trafficking and the inclusion of restitution as an additional punishment. This has implications for perpetrators who prefer to serve imprisonment rather than pay restitution, which can reach tens of millions of rupiah.

**Keywords:** Human Trafficking; Unpaid Restitution; Victim

## Introduction

Indonesia has a target of sending up to 425 thousand migrant workers from 1.3 million migrant worker applicants by 2025 (Mardianti, 2025). However, this increase is not accompanied by the government's awareness of the protection of migrant workers because the increasing number of migrant workers also increases the potential for human trafficking. This can be seen from the government's seriousness in identifying victims of trafficking. Identification is a crucial first step in providing support to someone experiencing trafficking (Macy et al., 2023). Indonesia is one of the countries that still uses the definition of trafficking as the recruitment, transportation, transfer, or harboring of people using threats, violence, or other forms of coercion for exploitation (Cockbain & Bowers, 2019).

In reality, human trafficking does not always use violence or transfer. For example, in Court Decision Number 2027/Pid.Sus/2023/PN Sby, where the trafficker used persuasion accompanied by the lure of money so that underage victims would want to serve customers.

Therefore, it can be understood that the current definition of trafficking in persons contained in the TPPO Law is outdated and needs to be changed. There has been collaboration between the International Organization for Migration and various UN agencies working with the Indonesian government to standardize the identification of trafficking victims, but this was not taken seriously by the government because it was only created and not implemented (Brunner, 2015).

Combating trafficking is important and has become an annual discussion agenda at the regional and international levels. Given that trafficking has a criminal hierarchy structure, distinctive features that distinguish it from other crimes, weak detection at borders, and the involvement of officials or law enforcement in corruption, it is difficult to detect (Orlovskiy & Kozak, 2024). The application of technology in human trafficking and the use of sophisticated modus operandi to appear legitimate and avoid detection by authorities make it difficult to eradicate (Gerry Qc et al., 2016). Furthermore, the Indonesian government's lack of seriousness in providing protection can also be seen in the issue of restitution.

Restitution is a court-ordered sanction as part of the punishment and restorative process that requires the perpetrator to compensate the victim (Cares & Haynes, 2017). Restitution is important in restorative justice because it addresses the real needs of victims and holds offenders accountable for public recognition of their actions, thus re-establishing a balance between victims, offenders, and society (Cares & Haynes, 2017). The use of restitution as a means of punishment is also appropriate with the objectives of the criminal justice system because restitution will provide protection for victims both from the actions of the perpetrator at the time of the crime and future retaliation and improve their position in society (Nagpal & Rawandale, 2023). However, if you look at the report of the Witness and Victim Protection Agency (LPSK), in 2024, LPSK facilitated 439 requests for restitution for victims of human trafficking with total compensation of more than 7 billion rupiahs, but only 968 million rupiahs was paid by the perpetrator (LPSK, 2025).

The unpaid restitution by the perpetrators is caused by various reasons, such as victims who are not aware of the restitution mechanism or perpetrators who are arrested are only field actors, not the main perpetrators (LPSK, 2025). This article discusses the factors that lead to traffickers' unpaid restitution. The first section will briefly explain restitution, why restitution is important for victims, and the current implementation of restitution. The second section will briefly explain the research method used by the author. In the third section, the author will explain what factors influence traffickers' unpaid restitution.

## Methodology

This article uses normative research methods and utilizes journals, books, and reports related to human trafficking. The legal materials used in this article were collected through literature studies, and legal materials used were issued by official reports issued by government agencies, NGOs, Scopus-indexed journals, court decisions, and books related to human trafficking to obtain credible and reliable sources. The legal materials will then be processed and analyzed using descriptive analysis techniques to describe the facts that occurred and then analyzed to produce comprehensive answers regarding the factors

causing unpaid restitution in human trafficking. Therefore, this article will focus on the factual approach and the case approach, considering the use of descriptive analysis techniques (Silitonga et al., 2025).

## Result and Discussion

### Inadequacy of Law Enforcement In Handling Cases Involving Restitution

The underlying problem is that current laws have language too complex for law enforcement to apply consistently (J. B. Clark & Shone, 2019). The use of judges who are not properly trained in handling human trafficking cases results in misidentification, causing the victim to be classified in another criminal offense (J. B. Clark & Shone, 2019). For example, in Court Decision Number 2027/Pid.Sus/2023/PN Sby, where the defendant named Dzakiri An Nizami persuaded the victim named Vivi Maulidiah, who was 14 years old, to serve guests. In this case, alternative charges were used where the first charge used Article 2 paragraph (1) of the TPPO Law, while the second used Article 88 of the Child Protection Law. Alternative charges are used when law enforcement cannot be sure which criminal offense was committed by the perpetrator and avoid the perpetrator getting an acquittal (Saragi, 2012).

However, using alternative charges has implications for judges who can prove articles regardless of their order, so if one article has been proven, other charges do not need to be proven. In this case, the judge convicted the defendant under the Child Protection Law and did not use the TPPO Law even though the victim could obtain restitution by using the TPPO Law. Therefore, in order to provide legal protection, especially for human trafficking, it is necessary to have law enforcers who are well-trained in the field of human rights in general and the field of human trafficking to ensure that the rule of law prevails (McQuade, 2019).

The inadequacy of law enforcement in addressing complex restitution issues has also led to the rejection of restitution requests by judges. Often, public prosecutors do not understand restitution calculations and only focus on more pressing issues, such as the perpetrator's sentence length (Reid & Collier, 2012). For example, in Court Decision Number 359/Pid.Sus/2020/PN Cbi and Court Decision Number 175/Pid.Sus/2017/PN Amb. In Court Decision Number 359/Pid.Sus/2020/PN Cbi the Panel of Judges rejected the victim's request for restitution because during the trial, the prosecutor was unable to show and prove the calculation of restitution for Rp 22,300,000 (twenty-two million three hundred thousand rupiah), and the victim was not aware of the restitution. In addition, the prosecutor only presented the victim without any other victim-witnesses, so the Panel of Judges rejected the request for restitution.

Furthermore, in Court Decision Number 175/Pid.Sus/2017/PN Amb, the Panel of Judges rejected the request for restitution because, during the trial, based on the victim's testimony, no one explained that the victim suffered a loss due to the incident experienced. Although the prosecutor appealed the decision, the Panel of Judges also rejected the request for restitution for several reasons, including the fact that the request for restitution was not included in the prosecutor's indictment and suddenly appeared in the indictment. The

prosecutor could not prove the calculation of the restitution of Rp. 26,966.00 (twenty-six million nine hundred sixty-six thousand rupiah) as contained in Court Decision Number 57/Pid.Sus/2017/PT AMB. The restitution issue is complex because it is the only element of punishment that focuses on returning the victim to their pre-crime state (Reid & Collier, 2012).

Weak legal frameworks also exacerbate this; for example, if the victim of trafficking is an illegal immigrant, then they will be vulnerable to deportation by the local government if they are not considered a victim when they report. With the deportation of the victim, the case is closed, and the trafficker is free to practice. In addition, the inclusion of restitution as an additional punishment only and the use of restitution and fines together also result in unpaid restitution. Perpetrators will prefer imprisonment, which ranges from one month to one year, rather than paying restitution, which can amount to hundreds of millions of rupiah (Ali et al., 2022). However, if the purpose of restitution is to restore the victim's condition before the crime occurred, then restitution should not be categorized as an additional punishment but as punitive damages (Reid & Collier, 2012). Furthermore, the current legal framework has a criminal justice-based approach that prioritizes the punishment of traffickers so that trafficking can be eradicated (Demeke, 2024). In addition, bringing traffickers to justice sends a message to the public not to do the same.

However, this practice has been criticized for its neglect of victims' rights because, in the criminal justice approach, victims are needed as witnesses only so that the perpetrators can be prosecuted, but aspects of victims' rights such as Restitution, identity confidentiality, and secondary victimization are ignored (Demeke, 2024). Therefore, it is necessary to update the legal framework prioritizing human rights; for example, Bangladesh implemented The Prevention and Suppression of Human Trafficking Act (PSHT Act) in 2012. The PSHT Act has several advantages, such as a more comprehensive definition of human trafficking, criminalization of various forms of human trafficking, expansion of victim protection aspects so that they can be integrated into society, and asset forfeiture to ensure compensation to victims (Islam, 2024).

### **The Amount of Restitution Exceeds The Perpetrator's Financial Capabilities**

In Court Decision Number 64/Pid.Sus/2021 PN Nba and Court Decision Number 65/Pid.Sus/2021 PN NBA, where the perpetrators, Susanti and Wan Wan, recruited the victim, Monika Jailan, to be married off to a foreign man from China. In this case, Susanti worked as a housewife while Wan Wan did not work, but in the court decision, she was ordered to pay the restitution of Rp120,000,000.00 (one hundred and twenty million rupiah). In the TPPO Law, restitution can include material and immaterial losses, so it is not surprising that the amount of restitution can reach hundreds of millions in one case. At the beginning of the restitution concept, there was confusion for judges in deciding the amount of restitution because judges had to consider whether Restitution was focused on the benefits the defendant received from the crime or on the victim's losses from the crime (Reid & Collier, 2012).

However, in Indonesia, Restitution focuses on the victim dimension. This can be seen from Article 48, paragraph (2) of the TPPO Law, which states that restitution is based on the loss of wealth or income, suffering, treatment costs, and losses experienced by the victim. The central point of the TPPO Law, which is centered on the victim, is indeed a good thing, but there is a problem in the form of a very large amount of restitution, and often, the defendant cannot pay it. Judges should also consider this when imposing restitution by looking at the defendant's financial capacity. The consideration of the defendant's financial capacity is based on the reason that the use of threats (confiscation of the defendant's property to pay restitution) and detention (imprisonment) is counterproductive from a financial aspect because the costs incurred in doing so can exceed the money that can be collected (Sobol, 2016).

In addition, restitution is inherently regressive and has a greater impact on the financial situation of someone with limited financial means (Colgan, 207 C.E.). The responsibility to provide for the family accompanied by the imposition of restitution may, for some defendants, increase the financial burden. One example of the consequences of imposing restitution on defendants with limited financial means occurred in the United States in the 1980s, when there were mass arrests in various regions and overcrowding in prisons (Colgan, 207 C.E.). People who have been incarcerated also have difficulty finding work, and even if they can work, the income they get is very limited (Lattimore et al., 2021). Criminal offenders who have low income and education will experience difficulties in meeting the restitution deadline by the judge, causing the offender to re-offend (recidivism) (Link et al., 2021).

An example is found in Court Decision Number 84/Pid.Sus/2018/PN Soe and Court Decision Number 85/Pid.Sus/2018/PN Soe, out of 4 perpetrators, one perpetrator did not graduate from elementary school, 2 had elementary school certificates, and 1 had a junior high school certificate. Restitution is important for the defendant because it is rehabilitative, forcing the defendant to face the real losses of his actions through compensation to the victim (The National Center for Victims of Crime, 2011). A person who commits a crime in the future will also ultimately increase the burden on the judicial budget because recidivism ultimately requires case handling, personnel, and prison costs (Dickman, 2009). The relationship between recidivism and restitution can be seen from the fact that offenders often have few assets and, therefore, cannot afford to pay restitution, which has consequences for the length of detention; the impact after the offender's release from prison makes it difficult for the offender to obtain credit and employment, which limits the offender's reintegration into society, and the indirect impact on the offender's family because during detention the offender, who is the head of the family, has difficulty meeting the needs of his family (Ruback et al., 2018).

The simultaneous use of fines and restitution also aggravates offenders. The amount of fines that can reach tens of millions and the addition of large amounts of restitution regardless of the financial capacity of the offender, although the state has a legitimate reason for this to provide a deterrent effect, the state should also ensure that how this causes the impact (Brennan Center for Justice, 2010). Research conducted by the Brennan Center for



Justice also found that the amount of restitution that exceeded the financial capacity of the offender, resulting in unpaid restitution, led to a return to crime (Brennan Center for Justice, 2010). Therefore, it can be understood that the problem of unpaid restitution by the perpetrator of the crime is not necessarily because the perpetrator does not comply with the court's decision but because the perpetrator does not have the financial capacity to pay it (Ruhland et al., 2020).

### **Lack Of Case Development by The Police so That Only Field Actors are Arrested, But Intellectual Actors Are Not Caught**

Human trafficking not only occurs within countries but also transnationally, targeting low-income communities. One example is found in Court Decision Number 592/Pid.Sus/2021/PN Ckr, where the perpetrators named Yuna and Tati, recruited victims named Ani Nuraini and Nengyati to work in Abu Dhabi as domestic assistants through the intermediary Muhibah. However, it turned out that the two victims did not work in Abu Dhabi but in Damascus, Syria, and while working there for approximately 2 years, they worked for 17 hours a day. In addition, the victims also did not receive a salary from their employer for 13 months.

In this case, Yuna and Tati, as intellectual actors, are still at large, and only Habibah, as an intermediary, was tried in the case of a quo. Other actors above Yuna and Tati are involved in the case. It is undeniable that trafficking in persons can be an organized crime. This can be seen from the elements contained in organized crime, which consist of actions planned by a group of people, crimes committed are a response to public demand for illegal goods and services, the purpose of the crime is financial gain, and corruption and intimidation are used to protect their activities (Albanese, 2021).

In addition, based on the above elements, organized crime is difficult to eradicate because it involves many actors and victims (Albanese, 2021). Jurisdictional differences between countries also make it difficult for law enforcement to arrest traffickers in other countries. In Court Decision Number 592/Pid.Sus/2021/PN Ckr, law enforcers should develop the case to arrest the intellectual actors, not only Habibah, who acts as an intermediary. Case development is crucial in combating organized crime because, with case development, law enforcement can obtain how, where, when, why, and by whom the crime was committed (Pajón & Walsh, 2020). The use of complex covert routes and methods in trafficking to circumvent law enforcement is another reason for the need for case development (Usman et al., 2021). In addition, law enforcement also needs to understand the times and coordinate with other institutions nationally and internationally to eradicate trafficking.

It is not uncommon to find that the perpetrators of TPPO are corporations rather than individuals. For example, the case of Noviana Indah Susanti, who became a victim of trafficking in Myanmar. While in Myanmar, she worked to cheat in a fraudulent crypto investment scheme, and if she did not meet the target, she would receive punishment in the form of diestrum, whipping, or beating (Singgih, 2024). After asking for help from her friend in Indonesia, Noviana managed to get free. However, until now, the company that

employed Noviana is still running and has received no punishment (Singgih, 2024). Corporations are one of the main actors in human trafficking. According to the ILO, 86% of traffickers are corporations (International Labour Organization et al., 2022).

Although corporations are the majority actors in human trafficking, this is not balanced with the arrest of the perpetrators. There are several obstacles experienced by law enforcement in arresting corporations that commit human trafficking, including (Planitzer & Katona, 2017):

- a) The regulation in the TPPO Law does regulate corporations in human trafficking. However, those who act and are arrested are individuals, so prosecution of corporations is often considered an additional effort only.
- b) Victims of trafficking who enter illegally will prefer not to report it because often, the results in court show that judges consider illegal migrant workers to be considered working. After all, the work performed is not legal because they do not have documents. In some cases, undocumented victims are considered to violate public order.
- c) Lack of trafficking victim support and inter-jurisdictional cooperation.

### **Difficulty In Collecting Evidence**

Human trafficking is a complex and difficult crime to detect because traffickers organize their activities in such a way that victims are not easily visible to the public or the police (Pajón & Walsh, 2023). In trafficking offenses, victims are often dependent on traffickers who provide shelter and fulfill some of the victim's basic needs, even if this is done under duress (Farrell et al., 2019). The resolution of trafficking cases, from investigation to prosecution, also requires a lot of time and resources (Millar et al., 2017). Therefore, cooperation between countries and institutions plays an important role in combating trafficking. The transnational nature of trafficking hampers eradication efforts.

Although countries recognize that cooperation is necessary to eradicate trafficking, many are unwilling or unable to share data on trafficking (Harkins, 2017). Even if countries are willing to cooperate, there are barriers to the differences in legal systems and ways of obtaining evidence between countries that cause law enforcement to avoid solving cases from a multilateral aspect (Meneses-Falcón et al., 2022). In addition to cooperation, evidence can be obtained from witness testimony, expert testimony, letters, clues, and the defendant's testimony. However, to collect evidence, it is necessary first to report the occurrence of a criminal offense. Victims of trafficking often prefer not to report to law enforcement for fear of retaliation from the perpetrator to themselves or their families (Macy et al., 2023). It is not uncommon for victims to find out that they have become victims of trafficking (Macy et al., 2023).

Law enforcers also find themselves in a dilemma as they are faced with preventing further suffering for the victim that could arise when the victim recounts her experience. Law enforcement must gather evidence to prosecute (Pajon & Walsh, 2025). Another difficulty that arises is that even if the victim reports to law enforcement, law enforcement has difficulty collecting evidence because traffickers move very flexibly and in the shadows

(Meneses-Falcón et al., 2022). The failure of the government through law enforcement to ensure that restitution is paid to victims of trafficking not only affects the victims themselves, who have suffered cumulative losses from the time they are recruited until they return to society, but also affects the wider community.

The impact on the wider community is in the form of a growing distrust of law enforcement because ignoring court decisions with permanent legal force has no consequences for the perpetrators of crimes (Fetsco, 2012). In addition, unpaid restitution may result in underreporting crimes to law enforcement (Tsoudis, 2000). It can also be noted that the current legal framework and law enforcement have not been able to guarantee the restitution rights of trafficking victims. Although the TPPO Law includes severe penalties for traffickers, it is not enough to prevent perpetrators from committing criminal acts (Farrell et al., 2019).

## Conclusion

Indonesian government still considers migrant workers as a "commodity" only to absorb remittances and increase foreign exchange but forgets the protection aspect because, with the increase in the number of migrant workers, cases of human trafficking also increase. Victims' rights, such as restitution, are often ignored. A long journey needs to be taken for victims of trafficking to get their rights. After taking this step, victims of trafficking often do not get restitution even though there is a legally binding court decision.

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