

# IMPLEMENTATION OF RESTITUTION FOR VICTIMS OF THE CRIME OF TRAFFICKING AS A FORM OF CRIMINAL RESPONSIBILITY BY CORPORATIONS

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## Abstract

The crime of human trafficking (TPPO) is a severe offense with a detrimental impact on victims who often endure various losses, encompassing physical, mental, and economic aspects. Restitution is considered as one approach to alleviate these losses. This research aims to analyze the implementation of restitution for victims of human trafficking crimes as a form of criminal responsibility imposed on corporations. Qualitative research methods were employed, with literature study as the data collection technique. The collected data underwent three stages of analysis: data reduction, data presentation, and drawing conclusions. The findings indicate that corporations, as legal entities, can be held responsible for human trafficking crimes. Corporate liability is measured through subjective terms, including the fulfillment of liability obligations, the occurrence of errors (intentional or negligent), and the absence of reasons that eliminate criminal law liability. The application of the concept of vicarious liability is proposed to regulate corporate criminal liability related to human trafficking.

**Keywords:** Restitution, Victims, Human Trafficking Crimes, Corporations.

## INTRODUCTION

Human trafficking crimes often go unnoticed by victims, concealed behind economic and financial hardship. Perpetrators exploit the vulnerable situation of potential victims by offering promised solutions to life's needs, leading victims to lower their guard and scrutinize the job offers less critically due to the pressure of immediate life needs.

Indonesia, facing unstable economic conditions, witnesses a prevalent focus on financial aspects in society, particularly impacting women and children who constitute the majority of trafficking victims (Purwanegara, 2020).

Victims of human trafficking endure various forms of suffering, including psychological, mental, physical, sexual, economic, and social impacts.

Children, defined as individuals under 18, including those still in the womb, are particularly vulnerable to these crimes, facing a heightened risk of oppression and exploitation.

Therefore, a comprehensive understanding of the characteristics and impacts of human trafficking in Indonesia is crucial for designing more effective prevention and protection measures for victims (Andriyani, 2023).

Restitution is identified as one approach to alleviate the losses suffered by victims. In the legal framework, restitution refers to compensation provided to the victim or their family by the perpetrator or a third party, aiming to compensate for losses resulting from the criminal act (Murtadho, 2020).

The research explores the potential involvement of corporations in criminal acts of human trafficking. For instance, the provision of illegal services to Indonesian Migrant

Workers (TKI) may utilize various business forms like Commanditaire Vennootschap (CV) and Limited Liability Company (PT) to facilitate human trafficking.

The authority to impose sanctions on corporations is explicitly regulated by the Human Trafficking Law, which establishes regulations for combating human trafficking perpetrated by corporations as legal entities.

Recognizing corporations as legal subjects instills hope and optimism towards eradicating human trafficking (Paramudhitha et al., 2020).

Prior research conducted by Parawansa (2023) indicates that the implementation of providing restitution to victims of human trafficking, as well as the submission of restitution requests by the Bekasi District Prosecutor's Office, follows procedures outlined in Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking and Guidelines for Law Enforcement and Victim Protection in Handling Crimes of Human Trafficking.

Additionally, this process is guided by Law Number 31 of 2014, which amends Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, acknowledging the role of LPSK in implementing restitution.

Another study by Tukan et al. (2023) reveals limited corporate criminal liability in Indonesia. Despite Law Number 21 of 2007 acknowledging corporations as subjects of criminal law for human trafficking, corporate accountability is minimal. One crucial responsibility for corporations involved in criminal acts is ensuring the fulfillment of victims' rights to restitution.

The research is motivated by this context, with researchers aiming to investigate the "Implementation of Restitution for Victims of the Crime of Human Trafficking as a Form of Criminal Responsibility by Corporations."

This study seeks to enhance understanding of restitution in the criminal law context, particularly concerning corporate involvement.

The implications of the findings may contribute to the development of restitution theory as both a means of recovery for victims and an instrument of punishment for corporate perpetrators.

The research aims to analyze the implementation of restitution for victims of criminal acts of human trafficking as a form of criminal responsibility by corporations.

## **METHODS**

This study employed qualitative research methods, a scientific research approach utilized to comprehend and explain phenomena or events in the real world. The method aims to achieve a deep understanding of a context, process, or human life (Harahap, 2020). Data collection techniques in this research involve a literature study, utilizing literature, articles, books, and other sources of information as a database for analysis. The collected data undergoes three main stages: data reduction, data presentation, and drawing conclusions.

In the data reduction stage, relevant information is extracted and compiled to narrow the research focus. Subsequently, the data is presented in a systematic and structured manner, enabling the researcher to explore the meaning and patterns that emerge.

Finally, conclusions are drawn based on a thorough analysis of the data, aiding in presenting the research findings and interpretations in a comprehensive manner.

## RESULTS AND DISCUSSION

Human trafficking is a severe crime that not only involves individuals or criminal networks but can also implicate corporate entities. Corporations, as legal entities with organizational structures and business activities, can become entangled in human trafficking through various avenues. In some cases, large companies relying on specific industries, such as agriculture, construction, or manufacturing, may unknowingly have workers who are victims of human trafficking within their supply chains. The complexity of these supply chains makes it challenging to trace human rights violations and trafficking practices that may occur at the subcontractor or service provider level.

Companies, as legal entities, are legal subjects with independent rights and obligations. A company can be defined as a legal entity or organization formed by a group of individuals to achieve specific goals, possessing distinct assets. In the legal realm, a company is represented by its management, which acts on behalf of the legal entity for the common interest. As legal subjects with rights and obligations, companies have the potential to be involved in criminal acts, for which they can be held responsible. The development of legal knowledge related to criminal acts, particularly those tied to corporate crime, has gained acceptance among academics and legal practitioners. This type of crime is sometimes also referred to as organizational crime (Kusuma & Octarina, 2024).

Attributing corporate responsibility as perpetrators of criminal acts is not a straightforward matter, considering that this case is rooted in the principle of "no crime without error." Mens rea, or guilt, is a natural inner attitude experienced by individuals, making criminal liability generally tied to human behavior. The principle of "societas delinquere non potest" addresses why corporations were not initially recognized as legal subjects in the Civil Code (KUHP). Legal subjects are defined as entities capable of having rights and obligations, with rights being authority or power granted by law to legal subjects. Although, in the Criminal Code, the subject of criminal law is recognized as an individual, corporations are now acknowledged as subjects of criminal law in their development (Mubarok, 2023).

Regulations pertaining to criminal acts of human trafficking by corporations are outlined in the Human Trafficking Law. This law distinguishes between two types of legal subjects: individuals (persons) and legal entities (corporate or recht person). Article 1 point 4 of the Human Trafficking Law explicitly states that "every person refers to an individual or legal entity involved in the criminal act of trafficking in persons." These regulations must encompass criminal sanctions for corporations. Considering that corporations lack physical existence, the criminal sanctions imposed tend to be indirect, except when related to fines or penalties.

In general, fines can be imposed on corporations optimally and relatively easily, especially if goods are confiscated which are deemed to be related to previous criminal acts. Apart from fines as the main punishment, companies can also be subject to additional sanctions such as revocation of temporary permits, prohibition from carrying out certain types of business for a certain period, or even termination of company operations (Paramudhitha et al., 2020). Regarding regulations regarding corporate

responsibility in criminal acts of human trafficking, the provisions have been explained in Article 13 of the Human Trafficking Law. Paragraph (1) states that human trafficking is considered to be committed by a corporation if the criminal act is committed by an individual acting on behalf of the company or for the interests of the company, either through a work relationship or other type of relationship, which takes place within the company, either individually or collectively. . Meanwhile, paragraph (2) regulates that if there are allegations of human trafficking involving a corporation as described in paragraph (1), an investigation, prosecution and criminalization will be carried out against the corporation and/or its management.

One of the efforts to recover the losses experienced by victims is by providing protection for victims. One form of legal protection that can be provided is through providing restitution to victims. Restitution in human trafficking can be interpreted as compensation or compensation for losses received by the victim. This form of restitution can cover various aspects, such as compensation for economic, physical and psychological losses experienced by victims during or after becoming victims of human trafficking (Tahulending, 2021).

Article 48 paragraph (1) of the Human Trafficking Law stipulates the rights of human trafficking victims and their heirs to receive restitution. This regulation is also explained in Article 48 paragraph (2) of the Human Trafficking Law, which details that the restitution given includes compensation for loss of property or income, suffering, medical treatment costs, and/or psychological losses, as well as other losses experienced by the victim as a result. from human trafficking. These other damages include loss of property, basic transportation costs, legal fees, or loss of income promised by the perpetrator. Furthermore, Article 43 of the TIP Law explains that protection for victims and witnesses of human trafficking will be carried out in accordance with the provisions of the Witness and Victim Protection Law, this includes providing restitution to victims of human trafficking or their heirs, in line with Article 7 paragraph (1) of the Law Witness and Victim Protection. This article allows victims to apply for rights or restitution, as well as compensation which is the responsibility of the perpetrator of the crime, through the witness and victim protection agency, which can then be submitted to the court.

In human trafficking and corporate liability theories, corporations are considered as one of the legal entities that can be held responsible for criminal acts of human trafficking. The responsibility of corporations involved in criminal acts of human trafficking can be measured by fulfilling general criminal liability aspects (subjective terms). These aspects include the existence of accountability obligations, the occurrence of errors whether intentional or negligent, as well as the absence of reasons that can eliminate criminal law liability. In other words, corporations have legal responsibility regarding criminal acts of human trafficking through fulfilling the basic principles of general criminal responsibility. These aspects are benchmarks for assessing the extent of corporate involvement and responsibility in efforts to prevent and handle criminal acts of human trafficking.

Corporate criminal liability related to criminal acts of human trafficking can apply the concept of vicarious liability to regulate the style of liability more precisely. The concept of vicarious liability or joint responsibility refers to the principle that a corporation can be held accountable for actions carried out by individuals within it. So that corporations can be considered indirectly responsible for the actions of individuals or their agents

who are involved in criminal acts of human trafficking. Therefore, corporations may be required to take responsibility for these actions and be responsible for efforts to prevent and handle human trafficking cases involving these legal entities. Thus, the application of the concept of vicarious liability becomes an effective tool in establishing a style of corporate criminal responsibility related to criminal acts of human trafficking.

On vicarious liability, mens rea is the main requirement that must be met to impose legal responsibility on certain subjects. In other words, an individual must be proven guilty first before he can be punished for his crime. Furthermore, there is a necessity for a working relationship between the perpetrator and other individuals who will be responsible for the criminal act committed. If this theory is applied to corporations, then corporations must be responsible for all actions carried out by their members, including workers, power holders, mandaters, or anyone who has responsibility for the company's activities. There are two crucial elements that must be fulfilled in order to apply criminal responsibility based on this theory:

- (1) The existence of a relationship, such as a work relationship between superiors and subordinates; and
- (2) Criminal acts committed by members of the organization must be related or still related to the scope of their work (Handono & Setiyono, 2023).

The relationship between this theory and corporate crime includes part of the punishment strategy against corporations related to criminal acts committed by their members. Directors are criminally responsible for criminal acts committed by their subordinates, because this is considered an integral part of the company's interests. Therefore, legal responsibility is imposed on directors who act on behalf of and in the interests of the company (Fuady, 2023). Based on these two theories and in line with the provisions of Article 13 of the Human Trafficking Law, the Vicarious Liability theory is more suitable to be applied in implementing criminal liability against corporations in cases of criminal acts of human trafficking. In conducting criminal liability analysis, the general theory of criminal liability is also applied, which involves:

- (1) The existence of responsibility;
- (2) Errors occur, whether intentional or negligent; and
- (3) The absence of reasons that can eliminate criminal law liability.

## CONCLUSION

Human trafficking and theories of corporate responsibility, a corporation is considered a legal entity that can be held responsible for criminal acts of human trafficking. The liability of corporations involved in criminal acts of trafficking in persons can be measured through the fulfillment of general criminal liability aspects (subjective terms), which include the existence of liability obligations, the occurrence of errors whether intentional or negligent, and the absence of reasons that can eliminate criminal law liability.

The style of corporate criminal liability related to criminal acts of human trafficking can be regulated appropriately by applying the concept of vicarious liability. This shows that in this case, the corporation can be considered indirectly responsible for criminal acts of human trafficking that occurred under its auspices.

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