RINGKASAN

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Pertimbangan Hakim Dalam Memberikan Hak Restitusi Terhadap Korban Tindak Pidana Perdagangan Orang
(Suatu Kajian Komparatif Terhadap Putusan Pengadilan)
(Dr. Zul Akli, S.H., M.H dan Arif Rahman, S.H., M.H)

Tindak pidana perdagangan orang merupakan kejahatan yang menimbulkan kerugian materill maupun immateriil bagi korban, sehingga pemenuhan hak restitusi menjadi salah satu instrumen penting dalam mewujudkan keadilan, perlindungan hukum, dan pemulihan hak korban. Meskipun restitusi telah memiliki landasan dalam peraturan perundangan-undangan namun dalam praktiknya permohonan restitusi tidak selalu dikabulkan oleh hakim sehingga menimbulkan ketidakpastian hukum bagi korban. Rumusan masalah dalam penelitian ini ialah bagaimana penerapan hak restitusi korban tindak pidana perdagangan orang, apa pertimbangan hakim dalam menolak hak restitusi terhadap korban tindak pidana perdagangan orang dan bagaimana penerapan prinsip keadilan dan perlindungan hukum bagi para korban dalam beberapa putusan. Metode penelitian yang digunakan adalah yuridis normatif dengan pendekatan perundang-undangan dan pendekatan kasus, serta analisis kualitatif terhadap bahan hukum primer, sekunder, dan tersier. Pengumpulan data dilakukan melalui studi kepustakaan dengan menelaah peraturan perundang-undangan, doktrin hukum, dan putusan pengadilan yang relevan dengan permasalahan yang diteliti.

Hasil penelitian menunjukkan bahwa pelaksanaan restitusi bagi korban tindak pidana perdagangan orang telah memiliki dasar hukum, namun implementasinya masih menghadapi kendala berupa belum adanya standar yang pasti dalam perhitungan kerugian khususnya kerugian immateriil, keterbatasan pembuktian dan kurangnya koordinasi antara penegak hukum dan lembaga terkait. Pertimbangan hakim dalam menolak permohonan restitusi umumnya berkaitan dengan tidak jelasnya hubungan kausal antara perbuatan terdakwa dengan kerugian korban, serta pertimbangan mengenai kemampuan pelaku dalam membayar restitusi.

Berdasarkan hasil penelitian tersebut, disarankan agar pemerintah memperkuat regulasi mengenai perhitungan restitusi khususnya terhadap kerugian immateriil, serta memberikan pedoman yang lebih jelas mengenai permohonan dan penolakan restitusi guna mewujudkan konsistensi putusan dan kepastian hukum terhadap korban, selain itu hakim juga disarankan agar tidak hanya melakukan pertimbangan terhadap alat bukti, melainkan juga melihat aspek viktimologi dan keadilan restoratif agar korban mendapatkan pemulihan atas kerugian yang dialami.

Kata Kunci: Tindak Pidana, Perdagangan Orang, Restitusi, Pekerja Migrasi Indonesia.

SUMMARY

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Judicial Considerations in Granting Restitution to Victims of Human Trafficking (A Comparative Study of Court Decisions)
(Dr. Zul Akli, S.H., M.H *and* Arif Rahman, S.H., M.H)

Human trafficking is a crime that causes both material and immaterial harm to victims; therefore, the fulfillment of the right to restitution is a crucial instrument in ensuring justice, legal protection, and the restoration of victims' rights. Although restitution is already enshrined in law, in practice, requests for restitution are not always granted by judges, thereby creating legal uncertainty for victims.

The research questions in this study are: How is the right to restitution for victims of human trafficking enforced? What are the judges' considerations in denying the right to restitution to victims of human trafficking? And how are the principles of justice and legal protection for victims applied in several court decisions. The research method used is a normative legal approach, employing both a statutory and a case-based approach, as well as qualitative analysis of primary, secondary, and tertiary legal sources. Data collection was conducted through a literature review by examining laws and regulations, legal doctrines, and court decisions relevant to the research problem.

The research findings indicate that the provision of restitution to victims of human trafficking has a legal basis; however, its implementation still faces challenges, including the lack of clear standards for calculating damages—particularly non-pecuniary damages—limitations in the presentation of evidence, and a lack of coordination between law enforcement agencies and relevant institutions. The judge's reasoning for denying a restitution request generally relates to the lack of a clear causal link between the defendant's actions and the victim's losses, as well as considerations regarding the defendant's ability to pay restitution.

Based on the findings of this study, it is recommended that the government strengthen regulations regarding the calculation of restitution—particularly for non-pecuniary damages—and provide clearer guidelines on restitution claims and denials in order to ensure consistency in rulings and legal certainty for victims, In addition, judges are advised not only to consider the evidence but also to take into account victimology and restorative justice so that victims can receive redress for the harm they have suffered.

Keywords: Criminal Offenses, Human Trafficking, Restitution, Indonesian Migrant Workers.