



The Role of Victim Trust Funds in Addressing Unpaid Restitution Human Trafficking: Lessons from US and Europe

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Article Info

Article History:

Received: 18 January 2025

Revised: 25 February 2025

Revised: 03 March 2025

Accepted: 09 March 2025

Available online: 20 March 2025

Keywords:

Victim Trust Fund;
Human Trafficking;
Unpaid Restitution;

Abstract

This article examines unpaid restitution in human trafficking instances and advocates for the enhancement of victim trust funds as a compensation strategy. The research employs the failure to protect theory, contending that states must compensate victims when they inadequately ensure protection. Although victim trust funds are primarily utilized in sexual abuse instances, research indicates their potential for broader application in human trafficking. The study employs normative legal and qualitative descriptive approaches, with comparative legal theory, to analyze the implementation of victim trust funds across several countries. The findings underscore three important attributes of victim trust funds: scope, victim eligibility, and compensable losses. Misconceptions regarding the definition of trafficking victims impede their safeguarding. Furthermore, the victims' dual identity as trafficked individuals and undocumented immigrants deters them from pursuing justice. In certain instances, victims are also identified as perpetrators. Ultimately, non-physical damages are frequently omitted from compensation, complicating the process for victims to obtain reparation. The research highlights the necessity for more explicit legal frameworks to enhance compensation access for trafficking victims.

1. Introduction

One in every 150 individuals globally finds themselves subjected to modern slavery, with a staggering 86% of the offenders being private enterprises. The identification of individuals subjected to human trafficking poses a considerable challenge, as these individuals frequently exhibit reluctance to come forward. At the same time, law enforcement largely relies on reports or disclosures from the victims

themselves.¹ The underreporting of incidents by victims is shaped by a multitude of factors, such as the clandestine character of the offense, the precarious situations faced by the victims, their past engagements with law enforcement, the potential for retaliation from offenders following their release, instances of secondary victimization, and the inadequacy in addressing their urgent needs and concerns. The inadequate level of reporting presents significant challenges for law enforcement in recognizing victims of human trafficking. This is particularly evident in instances involving illegal migrant workers or commercial sex workers, where law enforcement may lack the requisite experience to effectively address the complexities of victimization.²

While individuals who suffer due to criminal acts are the foremost parties affected, they are frequently perceived merely as complainants or witnesses within the context of criminal jurisprudence. Their role assumes an abstract quality, as criminal law predominantly frames the harmed party about the public interest or society as a whole rather than concentrating on the individual victim.³ The deficiency within the legal framework impairs victims' capacity to obtain compensation and undermines their confidence in the justice system. A further issue victims encounter is the perpetrator's inability to fulfill restitution obligations. The underlying factors influencing the perpetrator—their beliefs, attitudes, and financial resources—constitute the primary obstacles to fulfilling restitution obligations.⁴

Nevertheless, an inadequate legal framework further intensifies the issue of unpaid restitution. The current legal framework in Indonesia for ensuring that victims receive restitution is notably inadequate. In the framework of its regulation, restitution is not categorized as a primary criminal penalty; instead, it is designated as an

¹ Rebecca Strating, Sunil Rao, and Sallie Yea, 'Human Rights at Sea: The Limits of Inter-State Cooperation in Addressing Forced Labour on Fishing Vessels', *Marine Policy*, 159 (2024), 105934 <<https://doi.org/https://doi.org/10.1016/j.marpol.2023.105934>>.

² Aniello Iannone, Sri Endah Kinasih, and Irfan Wahyudi, 'Challenges for Anti-Trafficking NGOs in Indonesia: Rights, Social-Economic Context, and Navigating Obstacles', *Journal of Southeast Asian Human Rights*, 8.1 (2024), 1 – 36 <<https://doi.org/10.19184/jseahr.v8i1.41379>>.

³ L. Yes Esty Pratiwi and others, 'In-Depth Review : Legal Review on Human Rights Enforcement in the ASEAN and EU Context', *Journal of Law, Environmental and Justice*, 1.3 (2023), 202–24 <<https://doi.org/10.62264/jlej.v1i3.16>>.

⁴ Satryo Sasono, Isharyanto Isharyanto, and Delasari Krisda, 'Child and Women Domestic Abuse Victims' Social Health Insurance Protection : An Affirmative Justice Perspective', *Journal of Law, Environmental and Justice*, 1.2 (2023), 105–21 <<https://doi.org/10.62264/jlej.v1i2.8>>.

ancillary criminal penalty.⁵ This leads to the offender merely needing to extend his incarceration period, which varies from one month to one year. Consequently, legal reform must be pursued to facilitate the effective implementation of restitution. Various nations have implemented diverse approaches for offenders to provide restitution. For example, numerous European nations employ a progressive restitution framework in which penalties are calibrated according to the offender's financial means.⁶

This methodology aligns with the income tax (PPh) principle, wherein increased earnings are associated with a proportionately greater tax obligation. In contrast to European nations, Virginia, a state within the United States, tackles the matter of unpaid restitution via a judicial framework wherein the presiding judge evaluates the most suitable approach for assessing the defendant's financial ability to meet restitution requirements. The court mandates that the offender present a feasible and clear payment plan.⁷ When the individual does not fulfill payment obligations, the court initially assesses whether the noncompliance is considered "reasonable" before determining the potential revocation of the individual's probation. By implementing this measure, Virginia stands to enhance its restitution revenues by approximately \$30,000 to \$90,000 annually. Nevertheless, the two instances presented above demonstrate a forward-thinking approach to addressing the issue of unpaid restitution.⁸

Nevertheless, this cannot be generalized to other nations. Restitution embodies a duality, presenting both a punitive financial approach that exacerbates the judicial debt imposed on the offender and a reparative, restorative avenue to address the victim's needs. Consequently, it is essential to comprehend the mechanics of the issue

⁵ Marc Salat, 'Human Trafficking in Spain: A Quantitative Case-Law Analysis', *International Journal of Law, Crime and Justice*, 71 (2022), 100561 <<https://doi.org/https://doi.org/10.1016/j.ijlcj.2022.100561>>.

⁶ Elena Cano, Anna Mateu, Antonia Bertomeu, and Alexandre Xifró, 'Human Trafficking Victims: An Emerging Reality in Forensic Medicine', *Spanish Journal of Legal Medicine*, 49.4 (2023), 123–24 <<https://doi.org/https://doi.org/10.1016/j.remle.2023.10.005>>.

⁷ Konstantinos Kosmas Gaitis, 'Representations of Traffickers in Official UK Discourse: Examining the Least Known Component of the Human Trafficking Equation', *International Journal of Law, Crime and Justice*, 74 (2023), 100592 <<https://doi.org/https://doi.org/10.1016/j.ijlcj.2023.100592>>.

⁸ Barış Tezcan and Kayse Lee Maass, 'Human Trafficking Interdiction with Decision Dependent Success', *Socio-Economic Planning Sciences*, 87 (2023), 101521 <<https://doi.org/https://doi.org/10.1016/j.seps.2023.101521>>.

in order to facilitate the effective implementation of policies.⁹ An intricately designed and thorough restitution payment framework is crucial for guaranteeing justice and substantial redress for victims of human trafficking. In contrast to individuals affected by various criminal acts, those ensnared in trafficking experience enduring and compounded financial, psychological, and social detriments that persist well beyond the initial occurrence of the offense.¹⁰ The losses manifest from the initial phases of victimization, encompassing recruitment and transportation, and persistently accumulate through forced labor, exploitation, or coercion. Upon their release from trafficking circumstances, individuals frequently endure enduring repercussions, which often present as economic instability, psychological distress, societal stigma, and challenges in re-establishing their place within the community.

In light of the distinctive and enduring nature of their affliction, a restitution framework must encompass not merely immediate financial compensation but also offer ongoing assistance that recognizes the comprehensive extent of the trauma endured by survivors of trafficking. The cumulative losses experienced by victims of human trafficking significantly hinder their reintegration into society; the ambiguity surrounding their legal status and the vagueness of their rights further complicate their situation.¹¹ Law enforcement and government officials addressing this issue often focus solely on quantitative aspects, neglecting qualitative ones. This oversight places victims, particularly women from impoverished families, in precarious situations, as they may be returned to environments where trafficking is a risk. Nevertheless, the quantitative aspect of acceleration exerts only a minimal influence on those who engage in human trafficking.¹² Despite the collaborative efforts of numerous nations and global organizations to address the issue of human trafficking, the rates of arrests and prosecutions remain significantly lower compared to those associated with the illicit drug and arms trade.

⁹ Wendy M Cavey, Stephanie Lewis, and Holly Carter, 'Health Care Professionals' Self-Efficacy in Identifying and Treating Human Trafficking Victims', *Nurse Education Today*, 129 (2023), 105900 <<https://doi.org/https://doi.org/10.1016/j.nedt.2023.105900>>.

¹⁰ Loubna Belaid and others, 'Factors Influencing Domestic Human Trafficking in Africa: Protocol for a Scoping Review', *JMIR Research Protocols*, 13 (2024) <<https://doi.org/https://doi.org/10.2196/56392>>.

¹¹ Samuel J A Scaggs and others, 'A State-Wide Analysis of Characteristics and Predictors of Dual System Involvement among Child Victims of Human Trafficking', *Child Abuse & Neglect*, 147 (2024), 106530 <<https://doi.org/https://doi.org/10.1016/j.chiabu.2023.106530>>.

¹² Elena Cano, Anna Mateu, Antonia Bertomeu, Alexandre Xifró, and others, 'Medicolegal Assessment of Human Trafficking Victims. Descriptive Study of a Series of Forensic Cases in Catalonia (Spain)', *Medicina Clínica (English Edition)*, 163.1 (2024), e8-14 <<https://doi.org/https://doi.org/10.1016/j.medcle.2024.04.007>>.

This article seeks to identify an appropriate resolution for Indonesia to address the issue of unpaid restitution. This section will succinctly elucidate the issues at hand, the pressing nature of the research, and the objectives it aims to achieve. The forthcoming chapter will initially delineate the existing framework of restitution, assess its execution, and propose potential remedies to address the issue of unpaid restitution.¹³ It is indisputable that the issues examined in this article are far from novel. Several additional articles have examined analogous issues, including the one authored by Nugroho. In his article, he examines the financial motivations behind child trafficking in the Aru Regency. He explores the protective measures that can be implemented through legal assistance, enabling victims to seek restitution.

Vitasari authored another article that elucidates the challenges surrounding the implementation of restitution for victims of human trafficking. The article highlights several impediments, including the lack of comprehensive regulations that create confusion for judges in their decision-making, the protracted nature of the process, which discourages victims from seeking restitution, and the absence of legal frameworks concerning the confiscation of the perpetrator's assets as a guarantee for restitution payments. Agus Takariawan authored another article, wherein it is elucidated that the lack of a mechanism for calculating restitution, coupled with the challenges faced by law enforcers in substantiating and articulating the losses endured by victims, contributes to the complexities surrounding restitution issues.

This study, while aligning with earlier research on the safeguarding of human trafficking victims, presents an innovative viewpoint by exploring the interplay between Law Number 21 of 2007 concerning the Eradication of Human Trafficking Crimes (TPPO Law) and Law Number 12 of 2022 addressing the Crime of Sexual Violence (TPKS Law). The necessity for this harmonization stems from the inclusion of the Victim Trust Fund (VTF) within the TPKS Law, which functions as a financial support system for individuals affected by sexual violence. The VTF derives its resources from many financial avenues, encompassing non-tax state revenues, fines, contributions from third parties, philanthropic donations, public funds, and allocations from Corporate Social Responsibility (CSR) initiatives. This article posits that the incorporation of the VTF concept into the TPPO Law may augment the

¹³ Claire Helpingstine, Maureen C Kenny, and Ricardo Rubiales, 'A Pilot Study of the Outcomes of Human Trafficking Survivors Assessment with Girls Who Have Experienced Commercial Sexual Exploitation', *Evaluation and Program Planning*, 106 (2024), 102462
<<https://doi.org/https://doi.org/10.1016/j.evalprogplan.2024.102462>>.

financial resources accessible to victims of human trafficking, consequently fortifying their pathways to restitution and recovery.

The Victim's Trust Fund serves as a governmental initiative designed to provide financial assistance to individuals who have suffered due to criminal acts, particularly when the offender is unable or unwilling to meet their compensatory obligations to the victim.¹⁴ The Rome Statute initially governed the VTF in Article 79, which was subsequently ratified by the countries involved. New Zealand was among the pioneering nations that established a fund dedicated to assisting victims, facilitating compensation for financial loss and the pain and suffering endured. This is explicitly governed by the Criminal Injuries Compensation Act of 1963 (1963 No 134).¹⁵ The United Kingdom and the United States subsequently established victim assistance funds akin to New Zealand's initiative in 1964. However, in the United States, this was confined to California. The United States established a victim assistance fund via federal legislation in 1984, following the enactment of the Victim of Crime Act of that same year.¹⁶ Establishing this VTF is anticipated to catalyze transformative changes focused on the needs of victims and their advantages in facilitating reconciliation and reintegration processes.

2. Research Method

This article uses a normative legal research method to analyze the problem of unpaid restitution. This article uses two theories: the failure to protect theory and the comparative law theory.¹⁷ Comparative law theory is used to compare the application of law in one country with another by identifying the characteristics of the law in force in each country, which will then be evaluated.¹⁸ This is necessary because Indonesia, which implements

¹⁴ Cynthia Fraga Rizo and others, 'Human Trafficking Services for Youth with Minoritized Identities: Application of an Access to Care Framework', *Children and Youth Services Review*, 172 (2025), 108263 <<https://doi.org/https://doi.org/10.1016/j.chldyouth.2025.108263>>.

¹⁵ Stacey Cutbush Starseed and others, 'Assessing the Predictive Utility of Florida's Human Trafficking Screening Tool among Dual System-Involved Youth', *Children and Youth Services Review*, 171 (2025), 108160 <<https://doi.org/https://doi.org/10.1016/j.chldyouth.2025.108160>>.

¹⁶ Rahib K Islam and Shari R Lipner, 'Balancing Mandated Reporting and Trauma-Informed Care in Suspected Human Trafficking', *Journal of the American Academy of Dermatology*, 2025 <<https://doi.org/https://doi.org/10.1016/j.jaad.2025.05.005>>.

¹⁷ Willy Naresta Hanum and Muhamad Nafi Uz Zaman, 'Existence of Human Rights Protection in Land and Mining Conflicts: Evidence from Indonesia', *Journal of Law, Environmental and Justice*, 2.3 (2024), 285–306 <<https://doi.org/10.62264/jlej.v2i3.107>>.

¹⁸ Rian Saputra and others, 'Ecological Justice in Indonesia and China Post- Mining Land Use?', *Journal of Law, Environmental and Justice*, 2.3 (2024), 254–84 <<https://doi.org/10.62264/jlej.v2i3.108>>.

VTF, needs to understand the characteristics, patterns, and problems of implementing VTF in other countries such as the US, Canada, England, and the Netherlands. Qualitative descriptive methods are used to analyze problems, which will then be concluded from general statements to specific statements.

3. Results and Discussion

Regulation and Practice of Victim Trust Funds in Indonesia

Before delving into resolving the issue surrounding unpaid restitution, it is essential to first comprehend the existing framework of restitution implementation. According to information from the Witness and Victim Protection Agency (LPSK), in 2022, LPSK received 209 applications for restitution rights; this figure rose significantly to 433 applications in 2023. This augmentation is a tangible manifestation of LPSK's dedication to executing its responsibilities and roles. Nonetheless, in practice, the commitment of LPSK is not commensurate with the execution of judicial rulings.

Table 1. Number of Restitutuion Request 2020-2023

Years	Number of Restitution Request
2023	433
2022	209
2021	177
2020	194

Table 2. Implementation of Restitution from 2020-2023

Year	Calculated by LPSK	Enter the Prosecutor's Demands	Decided by the Judge	Paid by the Offenders
2023	Rp 11.404.105.701	Rp 2.560.477.682	Rp 1.817.237.894	Rp 22.463.000
2022	Rp 5.700.000.000	Rp 1.600.000.000	Rp 1.100.000.000	Rp 131.000.000
2021	Rp 8.312.889.010	Rp 4.831.051.362	Rp 3.262.457.339	Rp 230.000.000
2020	Rp 4.964.506.369	-	Rp 598.263.089	Rp 0

Source: LPSK Annual Report

The disparity in the execution of restitution by the Court arises from the defendant's assertion of financial incapacity, leading him to favor incarceration over fulfilling the restitution obligation. The absence of initiative and awareness from the perpetrator regarding the payment of restitution to the victim, evidenced by the fact that the annual restitution falls short of 5% of the Court's decision, underscores the necessity for the development of a restitution model aimed at facilitating the support and rehabilitation of the victim. Furthermore, as illustrated in Table 2, a notable disparity exists in the computation of the restitution amount sought by LPSK in contrast to the restitution amount awarded by the judge. This situation is quite regrettable, as restitution allows the victim to recuperate a portion of the losses incurred.

As illustrated in Table 2, the absence of paid restitution arises from the lack of a compromise between viewing restitution solely as a form of monetary penalty and a means of reparation. Consequently, the state's involvement in compensating victims serves as a method to address the issue of unpaid restitution. Consequently, one must consider the rationale behind allocating state resources to offer restitution to those suffering harm. This is intricately connected to the theory of failure to protect. This theory arose from the inadequacies of the state, as law enforcement was unable to prevent and eliminate crime, resulting in society becoming victims of criminal acts. The inability of the state to safeguard society carries significant consequences, necessitating that the state offer compensation to the community affected by crime.¹⁹ By doing so, the state aims to alleviate the distress experienced by victims and promote a more effective functioning of law enforcement agencies.²⁰

This theory arose alongside the growing centralization of the state's function and the framing of criminal law as a tool for upholding public order. It suggests that when an offender is mandated to pay a fine, the funds are allocated to the state instead of the victim, strengthening the state's dominance in criminal justice rather than emphasizing the importance of victim restitution.²¹ Moreover, the manifestation of victimization denotes a shortcoming of the state in maintaining social justice and security, as it illustrates the state's incapacity to execute its responsibility in averting criminal activities and

¹⁹ Santa Agreste and others, 'Network Structure and Resilience of Mafia Syndicates', *Information Sciences*, 351 (2016), 30–47 <<https://doi.org/https://doi.org/10.1016/j.ins.2016.02.027>>.

²⁰ Kei Hannah Brodersen, Nadja Capus, and Damian Rosset, 'The Politics of Informality in Criminal Procedures', *International Journal of Law, Crime and Justice*, 74 (2023), 100612 <<https://doi.org/https://doi.org/10.1016/j.ijlcj.2023.100612>>.

²¹ Bill Hancock, 'Wiretaps in Europe — EU Debates a Resolution', *Computers & Security*, 18.5 (1999), 388–89 <[https://doi.org/https://doi.org/10.1016/S0167-4048\(99\)90599-0](https://doi.org/https://doi.org/10.1016/S0167-4048(99)90599-0)>.

safeguarding its populace.²² Consequently, offering restitution to victims serves as a mechanism to re-establish public confidence, as such trust is pivotal to the integrity of the law enforcement system.

Nevertheless, the state contests the idea that it has neglected its obligation to safeguard its citizens, asserting instead that the allocation of compensation to victims represents a manifestation of public empathy for their plight.²³ In this context, sympathy denotes a profound awareness and sensitivity to the afflictions experienced by others, coupled with a moral obligation to mitigate that suffering through suitable intervention strategies. Within this framework of empathy, the state assumes the role of a proactive entity in delivering compensation to victims, simultaneously nurturing a sense of communal solidarity, where the wider society participates in alleviating the burdens faced by those affected through collective assistance.²⁴ This ultimately evolved into the precursor for establishing the victim trust fund scheme. The nation's perspective regarding restitution matters indicates the attributes inherent in its law enforcement system.

Despite the differences within the restitution framework, three defining characteristics illuminate a nation's perspective on the scheme. The attributes encompass the extent, qualifications, and detriments experienced by victims that are subject to compensation. The primary attribute is scope.²⁵ The focus of this discussion is the degree to which the characterization of a victim can encompass those who receive VTF support. This matter holds considerable significance, as variations in the interpretation of a victim could marginalize specific individuals, consequently depriving them of essential legal protection and assistance. The notion of human trafficking is often confined to the mechanisms of recruitment, transportation, transfer, or harboring of individuals via threats, violence, or various forms of coercion aimed at exploitation.²⁶ This limited

²² Jeff A Bouffard, M Lyn Exum, and Nicole Niebuhr, 'Examining the Stability and Predictors of Deterrability across Multiple Offense Types within a Sample of Convicted Felons', *Journal of Criminal Justice*, 57 (2018), 76–88 <<https://doi.org/https://doi.org/10.1016/j.jcrimjus.2018.04.005>>.

²³ Aliu Oladimeji Shodunke and others, 'Establishing the Nexus among Mob Justice, Human Rights Violations and the State: Evidence from Nigeria', *International Journal of Law, Crime and Justice*, 72 (2023), 100573 <<https://doi.org/https://doi.org/10.1016/j.ijlcj.2022.100573>>.

²⁴ Leena Kurki, 'Restorative and Community Justice in the United States', *Crime and Justice*, 27 (2000), 235–303 <<https://doi.org/10.1086/652201>>.

²⁵ Nanang Nurcahyo and others, 'Reform of the Criminal Law System in Indonesia Which Prioritizes Substantive Justice', *Journal of Law, Environmental and Justice*, 2.1 (2024), 89–108 <<https://doi.org/10.62264/jlej.v2i1.91>>.

²⁶ Nanang Nurcahyo, Ramalina Ranaivo, and Mikea Manitra, 'Why Have Indonesian Murderers Not Paid Victims' Heirs? Murder Victims By Gender 2019-', *Journal of Law, Environmental and Justice*, 1.2 (2023), 155–69 <<https://doi.org/10.62264/jlej.v1i2.13>>.

interpretation may neglect victims not aligning with these criteria, potentially denying them essential legal acknowledgment and support.

Nevertheless, inquiries emerge concerning the characterization of individuals who fall victim to human trafficking. Is it possible for individuals who remain in a single location to still be classified as victims? Is it possible for individuals who consent to being trafficked to still be regarded as victims? This represents a prevalent misconception regarding individuals who fall victim to human trafficking. Misunderstandings surrounding the definition of individuals affected by human trafficking can profoundly shape public perception and pose challenges for law enforcement in recognizing, rescuing, and offering sufficient assistance to those in need. A common misconception is the belief that returning victims to their place of origin constitutes the most effective resolution. Nevertheless, as previously articulated, this methodology frequently proves inadequate, especially in instances where victims, particularly women, originate from families entrenched in poverty. Under these conditions, reintegrating victims into their former surroundings may heighten their susceptibility to further exploitation and trafficking, ultimately neglecting the fundamental issues that contributed to their victimization.

Victim Trust Fund and Human Trafficking: Lessons from the US and Europe

This misunderstanding additionally plays a role in the stigmatization and categorization of individuals affected by human trafficking, thereby intensifying their marginalization. The societal stigma surrounding trafficking victims frequently results in their devaluation, marginalization within their communities, and a lack of empathy from law enforcement when they pursue protection and assistance. Such detrimental perceptions impede the reintegration of victims into society and further establish obstacles to obtaining justice and essential support.²⁷ The ramifications of this pervasive stigma are both physiological and psychological, influencing the behavior of victims in their pursuit of assistance and undermining their ability to integrate with others. The second characteristic pertains to the criteria determining an individual's victim qualification. This matter is of significant importance, as individuals affected by human trafficking may possess dual legal status. On one side, they are acknowledged as individuals subjected to exploitation and coercion; conversely, they may also be categorized as undocumented migrants who have entered a nation without the requisite authorization or valid documentation. This dual status engenders intricate legal complexities that may influence

²⁷ Jessica Peck and others, 'Prevention, Recognition, and Response to Human Trafficking: Practical Application for Pediatric Clinical Environments', *Journal of Pediatric Health Care*, 2025 <<https://doi.org/https://doi.org/10.1016/j.pedhc.2025.03.004>>.

their ability to obtain protection, rights, and justice within the legal framework.²⁸

Individuals without documentation may encounter legal repercussions and possible detention by authorities for breaching immigration laws, even when they are victims of human trafficking. In specific instances, individuals who have been trafficked may find themselves facing criminal charges as a result of their forced participation in illegal activities, thereby exacerbating their legal predicaments and constraining their opportunities for justice and protection. An illustrative instance can be found in England, specifically the case of *R v L and Others*, with interventions from The Children's Commissioner for England and the Equality and Human Rights Commission. The situation involves minors who have fallen prey to human trafficking, coerced into labor on a marijuana plantation, and subsequently adjudicated in a court of law.²⁹ The illegal activities engaged in by victims of human trafficking ought to be acknowledged as a direct result of their exploitation and coercion, thereby constituting an intrinsic element of the trafficking phenomenon. As a result, individuals who have been victimized ought not to face detention, criminal charges, or prosecution for actions taken under coercion. Legal frameworks ought to emphasize the protection and rehabilitation of individuals rather than imposing penalties for actions in which they lacked voluntary agency.³⁰

The aforementioned dual status encompasses not only the designation of a victim of human trafficking but also that of an illegal immigrant. In certain instances, a discernible bias exists between the individual perpetrating human trafficking and the individual victimized by it. For example, in instances of human trafficking within the fisheries sector, individuals who encounter difficulties in reintegrating into society after exploitation—mainly due to financial limitations—might choose to re-enter the same industry. In some instances, these individuals find themselves coerced into enlisting others in analogous exploitative circumstances, frequently under the duress imposed by their employers. Employers might rationalize this coercion by claiming that the company's financial circumstances are precarious, thereby requiring the hiring of more personnel to maintain operational continuity. The ongoing cycle of exploitation sustains human trafficking

²⁸ Rizo and others.

²⁹ Mary K Brannock and others, 'Familial Sex Trafficking in the United States: A Scoping Review Guided by the Three Ps Framework to End Human Trafficking', *Child Abuse & Neglect*, 158 (2024), 107143 <<https://doi.org/https://doi.org/10.1016/j.chiabu.2024.107143>>.

³⁰ Abishek Bala and others, 'Advancing Equity for Immigrant Children Who Have Experienced Human Trafficking', *Academic Pediatrics*, 24.5, Supplement (2024), 63–64 <<https://doi.org/https://doi.org/10.1016/j.acap.2023.05.020>>.

within the industry, thereby deepening the vulnerabilities experienced by workers.³¹

In certain instances, women find themselves trafficked into sex work due to entrapment in debt slavery practices. Even when they have the means to settle their debts, many of these women persist in the industry, often taking on the role of recruiters to sustain their income and enhance their living conditions. Are individuals who transition from being victims to perpetrators subsequently eligible for VTF? Let us examine VTF as an expression of social cohesion. Only those individuals who are genuinely innocent and have not engaged in human trafficking can fulfill the second criterion and are thus eligible for VTF.³² Nevertheless, specific constraints may permit individuals who transition from victimhood to perpetration to obtain VTF, particularly in instances where such actions are compelled by coercive power (*overmacht*). *Overmatch* is a lenient justification outlined in Article 48 of the Criminal Code, wherein an individual is compelled to engage in criminal activity due to the coercive influence exerted by another party. The concept of *overmatch* extends beyond specific criminal offenses.

Another issue regarding the traits that determine an individual's status as a victim is the presence of an "ideal stereotype." The "ideal victim" concept refers to an individual who, upon encountering a crime, readily embodies the characteristics that facilitate their recognition as a "victim." The police serve as the initial point of contact for crime victims, playing a crucial role that significantly impacts the law enforcement process. In this capacity, they gather information from the victim to guide subsequent actions. Nonetheless, law enforcement, serving as the initial point of contact within the criminal justice system, frequently ascribes a certain status to victims.³³ If a victim is deemed "ideal," it is more likely that the police will pursue the report made by that individual. The portrayal of victims in media illustrates that public sympathy is often directed towards those who embody the characteristics of the ideal victim; conversely, if a victim lacks these traits, skepticism may arise among the audience.³⁴

Media portrayals of human trafficking extend beyond the mere representation of victims; they encompass narratives that highlight the dynamics of male perpetrators

³¹ Kezban Yagci Sokat, Melissa Chi, and Jonathan Hudlow, 'Transit Monitoring Capacity Expansion: Analytics for Combating Human Trafficking', *Transportation Research Interdisciplinary Perspectives*, 24 (2024), 101032 <<https://doi.org/https://doi.org/10.1016/j.trip.2024.101032>>.

³² Scaggs and others.

³³ J. Hudson, *Restitution in Criminal Justice*, ed. by B. Galaway (Toronto: Minnesota Department of Corrections, Lexington Books).

³⁴ Leandro Mancano and Deborah Russo, 'Punishment of Criminals', in *Encyclopedia of Violence, Peace, & Conflict (Third Edition)*, ed. by Lester R Kurtz, Third Edit (Oxford: Academic Press, 2022), pp. 539–51 <<https://doi.org/https://doi.org/10.1016/B978-0-12-820195-4.00160-6>>.

targeting women and girls, thereby establishing a gender-based bias in the depiction of offenders. While it is true that women and children constitute a significant portion of human trafficking victims, it is noteworthy that 23% of those affected are men. The prevailing stereotypes surrounding “ideal perpetrators” of human trafficking often depict them as exclusively male, lacking any prior acquaintance with their victims, consistently employing physical violence, and invariably being foreign nationals. The formation of this stereotype significantly constrains the legal understanding of the various forms, perpetrators, and victims associated with human trafficking, thereby impeding practical law enforcement efforts. The third characteristic pertains to loss, which is subject to restitution. The third characteristic pertains to the loss that is capable of being restored. The concept of loss plays a crucial role in the overall mechanism; thus, one must consider the degree to which the victim’s loss can be compensated. In a broader framework, losses are frequently understood as the medical costs borne by an individual as a direct consequence of the criminal actions undertaken by the offender.³⁵

Restitution serves not only to reinstate victims to their pre-trafficking state but also to safeguard their enduring well-being. This method of compensation aims to mirror the quality of life that the victim would have enjoyed had the trafficking not occurred, thus attending to both present and prospective needs. Moreover, when we consider the losses that may be subject to restitution, it follows that there exists a mechanism for calculating such restitution. Numerous nations, including England, Canada, and the Netherlands, maintain that restitution applies exclusively to material losses incurred by the victim. Should the victim seek compensation for immaterial losses, they must pursue a civil mechanism, which will be elaborated upon subsequently. Factors such as insufficient evidence, limited access to information, and challenges obtaining free legal assistance significantly impede victims’ efforts to pursue restitution. The police, often regarded as the embodiment of criminal law and a crucial entry point into its application, frequently lack sufficient training to effectively address these issues, as their education primarily focuses on apprehending offenders.³⁶

As previously elucidated, human trafficking does not invariably employ physical violence. This incident occurred in Australia, specifically in the case of *R v Netthip* [2010] NSW DC 159, wherein the trafficker employed the method of debt slavery to exert control over the victim and inhibit any escape attempts. An additional illustration can be found in Court Decision Number 2027/Pid.Sus/2023/PN Sby, wherein the trafficker employed persuasion coupled with financial incentives to entice the underage victim into servicing

³⁵ Tezcan and Maass.

³⁶ Salat.

clients. In light of the prevailing perspective on restitution for losses, is it feasible for victims of human trafficking who may not present with physical injuries to seek restitution? Certain authorities contend that restitution may encompass the emotional anguish, duration, and effort invested during the experience of victimhood, which, within the framework of civil law, can be referred to as non-material losses.

This matter also invites discourse regarding the criteria by which an individual, particularly a judge or law enforcer, assesses the concept of suffering. In Canada, restitution is not a remedy for the emotional or psychological damages inflicted by a crime. In England, restitution may only be sought for losses directly attributable to the crime when it occurred, extending up to the date of the trial verdict. Consequently, victims are precluded from claiming restitution for any prospective losses. Nonetheless, individuals affected may pursue emotional or psychological restitution claims via the civil court system. Several state jurisdictions have instituted regulations regarding this matter, including Indonesia, Canada, and the Netherlands. While civil procedures can address emotional or psychological losses, they necessitate a protracted process and can incur significant costs.³⁷

Consequently, a viable approach involves a general categorization according to the severity level, subsequently informing the restitution awarded to the victim, adhering to established minimum and maximum limits corresponding to the categorization. This seeks to offer financial acknowledgment from the state to the victim, reflecting its failure to ensure protection rather than compensating for the losses endured by the victim. Moreover, it is essential to comprehend the funding mechanisms that underpin the operation of the VTF scheme. Nonetheless, one can observe parallels, particularly in that VTF is derived from a blend of governmental and communal financial resources, while each nation possesses its distinct attributes. In Alabama, crime victims are compensated \$2 for each traffic violation. Furthermore, the funding mechanism for the Victims' Trust Fund in Alabama is also derived from court fees and fines.³⁸

In Ohio, a notable portion of VTF funds, specifically 20%, is derived from fees associated with the reinstatement of driver's licenses. Conversely, in Oklahoma, one of the sources of VTF funding is confiscating funds belonging to inmates. While the US federal government allocates grants annually to support VTFs, states must play a crucial role in broadening funding avenues to ensure the sustainability of these funds. It is indisputable that the United States has progressed significantly in safeguarding victims' rights

³⁷ Cano, Mateu, Bertomeu, and Xifró.

³⁸ Gaitis.

compared to Indonesia. A further illustration of America's advancement is the presence of a distinct methodology employed by the courts to determine restitution calculations. In California, one can observe that for every instance of human trafficking, a mathematical formula facilitates the calculation of restitution corresponding to each specific form of this crime. This mechanism has the potential to optimize financial recovery for individuals affected by human trafficking.³⁹

Indonesia, now embarking on adopting VTF, should consider the United States as a model for diversifying its funding sources for VTF. Let us examine the Attorney General's annual report for the year 2023. The penalties resulting from court rulings with enduring legal authority amounted to 791 billion Rupiah; however, merely 36 billion Rupiah is subject to enforcement. Another rationale for the necessity of diversifying VTF funding lies in preventing an imbalance between the restitution amount and the available VTF budget, as there is the potential for a judge to determine a significantly large restitution amount in a particular case. For instance, in Court Decision Number 297/Pid.B/2023/PN Jkt.Sel, the court-mandated the defendant to pay restitution amounting to 25 billion Rupiah, while in Supreme Court Decision Number 5642 K/Pid.Sus/2022, the restitution ordered was 331 million Rupiah. Given that VTF funds are partially derived from fines, this necessitates additional contemplation. The rationale is that the volume of state absorption via fines is minimal. The hindrance of one aspect of the VTF funding via fines may also impede restitution payments under the VTF scheme. Consequently, it is imperative to prioritize the optimization of fine absorption initially, and the state ought not to depend solely on individual or corporate financing despite the legal feasibility of such an approach.⁴⁰

While implementing VTF may provide a solution to the issue of unpaid debts, it is important to note that the connectivity inherent in the restorative restitution process will be lost. This occurs because individuals affected by specific offenses will obtain compensation from overarching criminal penalties and the community. The dynamics and engagement between victims and perpetrators in restorative justice are crucial, as this framework fosters recovery through the active involvement of both parties. Upon closer examination, the VTF scheme reveals its potential to enhance victim recovery, ensuring that victims can obtain restitution irrespective of the perpetrator's financial capacity. Van Ness articulated a pertinent perspective that, within criminal law, the injured parties

³⁹ Cavey, Lewis, and Carter.

⁴⁰ Gede Khrisna Kharismawan and I Made Budi Arsika, 'Collateral Damage: Perlindungan Lingkungan Pada Saat Konflik Bersenjata Dalam Perspektif Deep Ecology', *VeJ*, 8.2 (2022), 362–85 <<https://doi.org/10.25123/vej.v8i2.5171>>.

encompass the broader community. Consequently, restitution gathers compensation from those who commit criminal acts, thereby providing advantages to the broader community.

4. Conclusion

Although the victim trust fund is a new thing in the legal system in Indonesia and is only used in sexual violence crimes, the victim trust fund can also be applied in human trafficking crimes because other countries such as the Netherlands, England, Canada, and America have implemented similar things. Implementing the victim trust fund in human trafficking crimes not only functions as a guarantor of restitution for victims who are often not paid by the perpetrators but also functions as the presence of the state in assisting people who are victims of human trafficking.

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