

Reconstruction of Restitution Regulations for Migrant Workers Who Are Victims of Human Trafficking: A Maqashid Sharia Perspective in South Kalimantan

Rudy Habibie Majid
Antasari State Islamic University Banjarmasin
rudy.habibie.majid@gmail.com

Abstract

The protection of migrant workers, particularly those who are victims of human trafficking, is a critical issue requiring comprehensive attention. As a country with a significant number of migrant workers, Indonesia bears a fundamental responsibility to provide legal protection. Although Law Number 18 of 2017 has been enacted, the implementation of restitution for victims of human trafficking in South Kalimantan remains suboptimal. Restitution is essential for recovering the material and immaterial losses of victims and serves as a deterrent for perpetrators. This study aims to reconstruct restitution regulations for migrant workers who are victims of human trafficking in South Kalimantan using the Maqashid Sharia perspective, with the goal of creating a more comprehensive, just, and humane protection system.

This study employs a socio-legal research method that combines normative and sociological approaches. Normative Approach: Analyzes statutory regulations related to restitution for migrant workers who are victims of human trafficking, including Law No. 21 of 2007 and Law No. 13 of 2006. Sociological Approach examines the implementation of restitution regulations in South Kalimantan and identifies social, economic, and cultural factors that influence their effectiveness. Data collection methods include literature studies, interviews with stakeholders (victims, law enforcement, NGOs), and field observations. The collected data is analyzed qualitatively using descriptive and interpretive methods.

The implementation of restitution regulations in South Kalimantan faces multidimensional challenges, such as weak inter-agency coordination, negative stigma toward victims, and low public awareness of victims' rights. Maqashid Sharia offers a holistic framework for reconstructing restitution regulations through its core principles: Hifdz An-Nafs (Protection of Life): Emphasizes optimal protection and recovery for victims, considering human trafficking a severe violation of human rights, Hifdz Al-Mal (Protection of Property): Acknowledges victims' rights to lost assets and earnings due to trafficking, Implementation of Maqashid Sharia in restitution regulations can be realized through expanding the scope of restitution (covering both material and immaterial damages), Increasing the amount of compensation, Simplifying the application procedures, Establishing a specialized restitution management institution, Enhancing community involvement in victim support. Reconstructing restitution regulations for migrant worker victims of human trafficking in South Kalimantan from the perspective of Maqashid Sharia is a crucial step to strengthen legal protection. Integrating the values of Maqashid Sharia is expected to foster more comprehensive and meaningful justice for the victims, while also contributing to the prevention and eradication of human trafficking in Indonesia.

Keywords: Restitution, Migrant Workers, Human Trafficking, Maqashid Sharia

Abstrak

Perlindungan pekerja migran, khususnya korban Tindak Pidana Perdagangan Orang (TPPO), merupakan isu krusial yang memerlukan penanganan komprehensif. Indonesia, sebagai negara dengan jumlah pekerja migran signifikan, memiliki tanggung jawab fundamental untuk memberikan perlindungan hukum. Meskipun telah ada regulasi seperti Undang-Undang Nomor 18 Tahun 2017, implementasi restitusi bagi korban TPPO di Kalimantan Selatan masih belum optimal. Restitusi penting untuk memulihkan kerugian materiil dan immateriil korban, serta memberikan efek jera bagi pelaku. Penelitian ini bertujuan untuk merekonstruksi regulasi restitusi bagi pekerja migran korban TPPO di Kalimantan Selatan dengan perspektif Maqashid Syariah, guna menciptakan sistem perlindungan yang lebih komprehensif, adil, dan humanis.

Metodologi Penelitian ini menggunakan metode yuridis sosiologis, memadukan pendekatan normatif dan sosiologis. Pendekatan Normatif: Menganalisis peraturan perundang-undangan terkait restitusi bagi pekerja migran korban TPPO, termasuk Undang-Undang Nomor 21 Tahun 2007 dan Undang-Undang Nomor 13 Tahun 2006. Pendekatan Sosiologis: Memahami implementasi regulasi restitusi di Kalimantan Selatan serta mengidentifikasi faktor sosial, ekonomi, dan budaya yang memengaruhi efektivitasnya. Pengumpulan Data dilakukan melalui studi kepustakaan, wawancara dengan berbagai pihak terkait (korban, aparat penegak hukum, LSM), dan observasi. Analisis Data kualitatif dengan metode deskriptif dan interpretatif.

Hasil dan Pembahasan Implementasi regulasi restitusi di Kalimantan Selatan menghadapi tantangan multidimensional, termasuk koordinasi antarlembaga yang belum optimal, stigma negatif terhadap korban, dan rendahnya kesadaran masyarakat akan hak-hak korban TPPO. Maqashid Syariah menawarkan kerangka holistik untuk merekonstruksi regulasi restitusi melalui prinsip-prinsipnya: *Hifdz An-Nafs* (Memelihara Jiwa): Menekankan perlindungan dan pemulihan optimal bagi korban TPPO sebagai pelanggaran berat hak asasi manusia. *Hifdz Al-Mal* (Memelihara Harta): Mengakui hak korban atas harta benda dan penghasilan yang hilang akibat TPPO. Implementasi Maqashid Syariah dalam regulasi restitusi dapat diwujudkan melalui: Perluasan cakupan restitusi (materiil dan immateriil), Peningkatan jumlah restitusi, Penyederhanaan prosedur pengajuan, Pembentukan lembaga khusus pengelola restitusi, Peningkatan peran serta masyarakat dalam dukungan korban. Rekonstruksi regulasi restitusi bagi pekerja migran korban TPPO di Kalimantan Selatan dengan perspektif Maqashid Syariah adalah langkah penting untuk meningkatkan perlindungan hukum. Integrasi nilai-nilai Maqashid Syariah diharapkan dapat mewujudkan keadilan yang lebih komprehensif dan bermakna bagi korban TPPO, serta berkontribusi positif dalam upaya pencegahan dan pemberantasan TPPO di Indonesia.

Kata Kunci : Restitusi, Pekerja Migran, TPPO (Tindak Pidana Perdagangan Orang), Maqashid Syariah

Introduction

The protection of migrant workers, especially those who fall victim to human trafficking, is a critical issue that demands serious attention and comprehensive handling (Aryastuti & Markeling, 2019). The state holds a fundamental responsibility to provide legal protection for Indonesian migrant workers, both domestically and abroad, regardless of their documentation status (Rahayu, 2019). Indonesia, as one of the countries with the highest number of migrant workers in Asia—second only to the Philippines—faces an urgent need to continuously improve efforts to safeguard their rights (Lahaling, 2020). Law Number 18 of 2017 concerning the Protection of Indonesian Migrant Workers represents a comprehensive correction to Law Number 39 of 2004. It mandates protection throughout all stages: pre-placement, placement, and post-placement. This protection involves various levels of government, from village and regional authorities to national bodies and Indonesian representatives abroad, reflecting the complexity of the issues faced (Farisi et al., 2022; Lahaling, 2020). Human trafficking has become a pressing issue on the international security agenda (Yunardi, 2022). The vulnerability of migrant workers to exploitation and human rights violations continues to rise, especially for those working in undocumented or informal sectors.

South Kalimantan, as one of the regions that sends many migrant workers abroad, also faces challenges in effectively protecting its citizens who become victims of human trafficking. Regulatory limitations are one of the main obstacles to comprehensive case handling.

Restitution, as a mechanism for restoring the rights of human trafficking victims, plays a significant role in delivering justice and reparations for their losses. However, the implementation of restitution for migrant workers who are victims of trafficking in South Kalimantan remains inadequate. Therefore, a more comprehensive and victim-oriented regulatory reconstruction is needed—one that aligns with the principles of Maqashid Sharia (Djarmiko & Pudyastiwi, 2019). Maqashid Sharia, as the ultimate objective of Islamic law, provides a philosophical and ethical framework for formulating regulations that are not only formally valid but also substantially beneficial for all people, including migrant workers who are victims of human trafficking.

Legal protection for migrant workers in Indonesia is governed by various statutory regulations, including Article 27 of the 1945 Constitution, Law Number 39 of 1999 on Human Rights (Article 38), and Law Number 13 of 2003 on Employment (--, 2011). However, in practice, these regulations are often poorly implemented, leaving many migrant workers facing issues such as unpaid wages, poor working conditions, physical and psychological abuse, and even human trafficking. One key aspect of protection for trafficked migrant workers is the right to restitution—compensation provided to victims for the suffering they have endured. Restitution is essential for recovering both material and immaterial losses while also serving as a deterrent to human trafficking perpetrators.

1. The Urgency of Restitution for Migrant Workers Who Are Victims of Human Trafficking

In Indonesian positive law, provisions for restitution for victims of criminal acts in general are found in Law Number 13 of 2006 on the Protection of Witnesses and Victims, as well as Government Regulation Number 44 of 2008 concerning Compensation, Restitution, and Assistance for Witnesses and Victims. However, specific and comprehensive regulations regarding restitution for migrant workers who are victims of human trafficking remain lacking, leading to various practical issues.

The importance of restitution for trafficked migrant workers goes beyond material compensation; it also represents acknowledgment of their dignity and human rights. Restitution helps victims restart their lives, gain access to health and psychological services, and reintegrate

socially. Moreover, restitution can serve as a preventive tool, sending a clear message that human trafficking offenders will be held accountable and that victims will receive justice. Restitution is a right that must be protected and fulfilled by the state (Auria et al., 2024). It also demonstrates the state's responsibility in providing protection and recovery for its citizens who fall victim to transnational crimes.

In South Kalimantan, the implementation of restitution for migrant workers who are victims of trafficking faces several challenges, including law enforcement officers' lack of understanding of victims' rights, difficulties in identifying and calculating losses, and limited resources to provide restitution. Furthermore, lengthy and complicated legal processes hinder the fulfillment of victims' rights. Thus, reconstructing a more effective and comprehensive restitution regulation is essential to addressing these challenges and offering optimal protection for victims.

One approach to this reconstruction is the Maqashid Sharia perspective, which emphasizes the attainment of benefit (*maslahah*) and the prevention of harm (*mafsadah*) for all people. Maqashid Sharia offers universal principles that can serve as a philosophical and ethical foundation for developing just and humane regulations that prioritize the interests of victims.

2. Maqashid Sharia as the Foundation for Restitution Regulatory Reconstruction

Maqashid Sharia, as the core objective of Islamic law, can serve as a philosophical and ethical foundation for reconstructing restitution regulations for migrant workers who are victims of human trafficking in South Kalimantan. It consists of five key principles: *Hifdz ad-Din* (protection of religion), *Hifdz an-Nafs* (protection of life), *Hifdz al-'Aql* (protection of intellect), *Hifdz an-Nasl* (protection of lineage), and *Hifdz al-Mal* (protection of property). All of these are highly relevant in the context of protecting trafficked migrant workers, as human trafficking threatens each of these five aspects.

Implementing Maqashid Sharia into restitution regulations can be realized in several ways: Expanding the scope of restitution to include not only material losses but also immaterial ones, such as psychological trauma, loss of job opportunities, and reputational damage. Increasing the amount of restitution provided to meet victims' basic needs and help them restart their lives. Simplifying the process for applying and granting restitution to eliminate bureaucratic hurdles. Establishing a specialized institution to manage and distribute restitution effectively and efficiently. Enhancing community involvement in supporting victims, both financially and non-financially.

Maqashid Sharia also emphasizes justice and balance in all aspects of life. In the context of restitution, this means ensuring that all victims receive fair treatment regardless of religion, ethnicity, race, or social status. Restitution must also be proportional to the harm suffered so that victims can feel that justice has been served. The principle of tolerance in Maqashid Sharia is also relevant to the protection of migrant workers who are victims of trafficking (Ibrahim, 2019). Islam, as a universal and flexible religion, can respond to the dynamics of contemporary society (Azizah et al., 2021).

By integrating Maqashid Sharia values into restitution regulations, it is hoped that a more comprehensive, just, and humane protection system can be established for trafficked migrant workers in South Kalimantan. Such regulations will not only support optimal recovery for victims but also help prevent future occurrences of trafficking and promote social justice for all.

Literature Review

In the effort to uphold justice and provide protection for victims of criminal acts, particularly human trafficking, the concept of restorative justice has become increasingly relevant (Setiawan, 2022). Restorative justice emphasizes the recovery of victims' losses and the reintegration of perpetrators into society. Community involvement in the criminal justice process, including in narcotics cases, is also regulated through guidelines that allow judges to consider testimony from family members or related parties as mitigating witnesses, in accordance with restorative justice approaches (Miftahuddin, 2023). This aligns with the principles of restorative justice, which stress case resolution through the involvement of all relevant stakeholders to achieve fair settlements and a return to the original state.

Restorative justice has also emerged as an innovative approach for resolving minor criminal cases (Adiesta, 2021). It is increasingly regarded as a response to the public's demand for justice in society (Wibowo, 2021).

Methodology

This research employs a socio-legal (juridical-sociological) method, combining normative and sociological approaches (Wahyuni, 2010). The normative approach is used to analyze statutory regulations related to restitution for migrant workers who are victims of human trafficking, including Law Number 21 of 2007 on the Eradication of Human Trafficking Crimes, Law Number 13 of 2006 on the Protection of Witnesses and Victims, as well as other relevant regulations. The sociological approach is applied to understand how restitution regulations are implemented in practice in South Kalimantan and to identify the social, economic, and cultural factors that influence the effectiveness of these regulations (Ilmi et al., 2022). Data collection is conducted through literature studies, interviews, and observation. The literature study is used to gather secondary data from legislation, books, academic journals, articles, and other documents relevant to this research (Susetya et al., 2018). Interviews are carried out with various stakeholders, including migrant workers who are victims of trafficking, their families, law enforcement officers, legal advocates, NGO activists, and community leaders. The collected data is analyzed qualitatively using descriptive and interpretive analysis methods.

Findings

The implementation of restitution regulations for migrant workers who are victims of human trafficking in South Kalimantan still faces various complex and multidimensional challenges. Coordination among relevant institutions remains suboptimal, resulting in delays and overlaps in the processes of victim identification, restitution application, and distribution. Additionally, there is still a negative stigma toward victims of human trafficking in society, which discourages them from reporting their cases and applying for restitution. The low level of public awareness regarding the rights of trafficking victims and the mechanisms for obtaining restitution also hinders the effective implementation of these regulations (Yunarman, 2021).

Discussion

In the context of protecting migrant workers who are victims of human trafficking, Maqashid Sharia offers a comprehensive and holistic framework for reconstructing restitution regulations. First, the principle of Hifdz An-Nafs (protection of life) emphasizes that every human being has the right to life and to be free from all forms of violence, exploitation, and oppression.

Human trafficking is a severe violation of human rights as it deprives victims of their freedom, dignity, and humanity. Therefore, restitution regulations must be designed to provide optimal protection and recovery for victims, as well as to prevent future occurrences of trafficking. Second, the principle of *Hifdz Al-Mal* (protection of property) affirms that every individual has the right to possess and manage their wealth in a lawful and productive manner. Human trafficking often results in victims losing their property, income, and employment opportunities. The state has an obligation to protect stateless persons, including their right to life and employment (Ariestu, 2018). The concept of a rule of law also mandates the protection of human rights, including the rights of migrant workers who fall victim to human trafficking. Although the Supreme Court has annulled a Ministerial Regulation for being in conflict with the law, the urgency of paralegal assistance remains—given the high number of domestic violence cases and the ongoing need to protect women and children (Simarmata, 2018).

Conclusion

The reconstruction of restitution regulations for migrant workers who are victims of human trafficking in South Kalimantan from the perspective of Maqashid Sharia is a crucial step in enhancing legal protection for this vulnerable group. By integrating the values of Maqashid Sharia into restitution regulations, it is expected that a more comprehensive and meaningful form of justice can be realized for victims of human trafficking.

References

- , S. (2011). Peran Negara Dalam Hubungan Tenaga Kerja di Indonesia. *Jurnal Pendidikan Dan Kebudayaan*, 17(6), 705. <https://doi.org/10.24832/jpnk.v17i6.61>
- Adiesta, I. D. I. (2021). Penerapan Restorative Justice sebagai Inovasi Penyelesaian Kasus Tindak Pidana Ringan. *INTERDISCIPLINARY JOURNAL ON LAW SOCIAL SCIENCES AND HUMANITIES*, 2(2), 143. <https://doi.org/10.19184/idj.v2i2.25842>
- Ariestu, I. P. D. (2018). The State Responsibilities Relating to Human Rights Violations to The People with Stateless Persons Status in Rohingnya Crisis. *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 7(2), 154. <https://doi.org/10.24843/jmhu.2018.v07.i02.p02>
- Aryastuti, G. A. K., & Markeling, I. K. (2019). IMPLEMENTASI PROGRAM BADAN PENYELENGGARA JAMINAN SOSIAL KETENAGAKERJAAN BAGI PEKERJA DI TPA DESA TEMESI KABUPATEN GIANYAR. *Kertha Semaya Journal Ilmu Hukum*, 7(5), 1. <https://doi.org/10.24843/km.2019.v07.i05.p09>
- Auria, P., Putra, R. A., & Misleni. (2024). PENTINGNYA PENEGAKAN HAK ASASI MANUSIA DALAM ARUS SIKLUS NEGARA HUKUM. *Juris Humanity.*, 3(1), 1. <https://doi.org/10.37631/jrkhm.v3i1.35>
- Azizah, R. I., Fikriawan, S., Nafiah, N., & Puspitarini, T. (2021). Muamalah Fiqih Review on Return of Rest of Purchase with Goods and Return of Residual Purchase as Infak at Surya Ponorogo Supermarket. *NUsantara Islamic Economic Journal*, 1(1), 64. <https://doi.org/10.34001/nuiej.v1i1.58>
- Djatmiko, A., & Pudyastivi, E. (2019). THE ROLE OF INDONESIAN LABOR PLACEMENT AND PROTECTION BOARD (BNP2TKI) ON INDONESIAN LABOR (TKI). *Ganesha Law Review*, 1(2), 1. <https://doi.org/10.23887/blr.v1i2.51>

- Farisi, S., Darwin, M., Mas'ood, M., & Sukamdi, S. (2022). Protection of Indonesian Migrant Workers: Strategies for Sustainable Policies and Best Practices. *Politik Indonesia Indonesian Political Science Review*, 7(1), 118. <https://doi.org/10.15294/ipsr.v7i1.35917>
- Ibrahim, M. Y. (2019). THE RELIGIOUS TOLERANCE PRACTICE BY MAQASID SYARIAH. *International Research Journal of Shariah Muamalat and Islam*, 1(2), 1. <https://doi.org/10.35631/irjsmi.12001>
- Ilmi, M., Muchtar, S., & Ilyas, A. (2022). Penyitaan Berbasis Properti Sebagai Upaya Pengembalian Kerugian Keuangan Negara Dalam Tindak Pidana Korupsi. *JURNAL USM LAW REVIEW*, 5(2), 493. <https://doi.org/10.26623/julr.v5i2.5197>
- Lahaling, H. (2020). Fulfill the Basic Rights of Indonesian Migrant Workers' Children in the Human Rights Perspective. *Musamus Law Review*, 2(2), 76. <https://doi.org/10.35724/mularev.v2i2.3014>
- Miftahuddin, M. (2023). PERAN MASYARAKAT DALAM PENEGAKAN KEADILAN RESTORATIF DI INDONESIA: PERSPEKTIF SOSIOLOGI HUKUM (The Role of Society in Upholding Restorative Justice in Indonesia: Perspectives of Legal Sociology). *Wacana Umat*, 8(1). <https://doi.org/10.56783/jwu.v8i1.7>
- Oktafia, R. (2021). WASTE BANK AND COMMUNITY WELFARE IN SIDOARJO (MAQASHID SHARIA PERSPECTIVE). *An-Nisbah Jurnal Ekonomi Syariah*, 8(2), 454. <https://doi.org/10.21274/an.v8i2.4864>
- Rahayu, D. (2019, January 1). Undocumented Indonesian Migrant Workers; Solution or Omission. *Proceedings of the International Conference on Social Science 2019 (ICSS 2019)*. <https://doi.org/10.2991/icss-19.2019.128>
- Setiawan, A. (2022). RESTORATIVE JUSTICE TERHADAP PELAKU TINDAK PIDANA RINGAN BERUPA PENCURIAN DITINGKAT PENUNTUTAN. *Jurnal JURISTIC*, 3(3), 332. <https://doi.org/10.56444/jrs.v3i03.3369>
- Simarmata, J. (2018). URGENSI BANTUAN HUKUM RELAWAN PENDAMPING, PEKERJA SOSIAL DAN SERIKAT BURUH SETELAH PUTUSAN MA NO 22 P/HUM/ 2018. *Jurnal Hukum & Pembangunan*, 48(4), 670. <https://doi.org/10.21143/jhp.vol48.no4.1798>
- Susetya, I. G. P. H., Diantha, I. M. P., & Landra, P. T. C. (2018). ADAPTASI DOKTRIN PROMISSORY ESTOPPEL DALAM PENYELESAIAN GANTI RUGI PADA TAHAP PRA KONTRAK PADA HUKUM KONTRAK DI INDONESIA. *Acta Comitas*, 3(1), 105. <https://doi.org/10.24843/ac.2018.v03.i01.p08>
- Wahyuni, S. (2010). KEBIJAKAN HUKUM PIDANA DALAM MEMBERIKAN PERLINDUNGAN HUKUM TERHADAP KORBAN TINDAK PIDANA KEJAHATAN DALAM SISTEM PERADILAN PIDANA DI INDONESIA. *LAW REFORM*, 3(2), 82. <https://doi.org/10.14710/lr.v3i2.729>
- Wibowo, R. H. (2021). PENDEKATAN KEADILAN RESTORATIVE DALAM PENGHENTIAN PENUNTUTAN BERDASARKAN KEADILAN RESTORATIF. *Jurnal Hukum Progresif*, 9(2), 146. <https://doi.org/10.14710/jhp.9.2.146-157>
- Yunardi, A. N. (2022). Peran International Organisation for Migration (IOM) dalam Penanganan Human Trafficking Warga Negara Indonesia di Uni Emirat Arab. *Jurnal Politikom Indonesiana*, 6(2), 1. <https://doi.org/10.35706/jpi.v6i2.5600>

Yunarman, S. (2021). PROBLEMATIKA PELAKSANAAN PERATURAN DAERAH KAWASAN TANPA ROKOK DI PROVINSI BENGKULU. *Jurnal Sosiologi Nusantara*, 7(1), 131. <https://doi.org/10.33369/jsn.7.1.131-148>