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Challenges of Human Rights Enforcement in Mitigating the Exploitation of Children and Women a Comparative Study of Victim Protection Systems for Human Trafficking

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Abstract. Human trafficking, particularly targeting vulnerable groups such as women and children, is one of the oldest yet most modern forms of human rights (HR) violations in the 21st century. Although the international community has declared war on modern slavery through the Palermo Protocol, the reality of law enforcement in many developing countries, including Indonesia, continues to face extraordinary systemic challenges. The fundamental issue lies in the conflict between a criminal justice paradigm focused on punishing offenders (retributive justice) and the state's obligation to mitigate exploitation and provide comprehensive human rights protection. Criminal justice systems often create spaces for secondary victimization, where victims' fundamental rights to trauma recovery, physical protection, and economic compensation are reduced to bureaucratic and transactional administrative matters serving the interests of courtroom evidence. This study is normative legal research that integratively applies the statute approach, human rights approach, and comparative approach. The research focuses on a critical evaluation of Indonesia's legal framework for mitigating human trafficking, particularly Law Number 21 of 2007, which is then diametrically compared with victim protection systems in two European countries, namely Germany and the Netherlands. The findings confirm that the challenges of human rights enforcement in mitigating human trafficking in Indonesia stem from the lack of independence of victims' recovery rights from the criminal adjudication process. In contrast, the comparative study demonstrates that Germany and the Netherlands have moved far beyond this paradigm by implementing a victim-centered approach in which victims are granted temporary residence rights, unconditional financial compensation from the state, and psychosocial care without requiring testimony as a prerequisite. This study recommends amending national regulations to establish a Victim Trust Fund and integrated service institutions independent of the police as a tangible manifestation of Dignified Justice that respects human autonomy and dignity.

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These findings contribute significantly to the discourse on cross-jurisdictional human rights criminal law reform.

Keyword: *Exploitation; Protection; Systems; Trafficking; Victim.*

1. Introduction

Human rights violations in the modern era are no longer monopolized by authoritarian state regimes but have shifted toward transnational underground corporate crimes that exploit human suffering through human trafficking. Sexual exploitation, forced labor, and organ trafficking are manifestations of the collapse of a legal civilization that has failed to protect individuals from the greed of the global economy. Universal human rights instruments have long established that freedom from slavery is a non-derogable right under any circumstances. However, globalization has instead facilitated criminal syndicates in operating across borders, making human trafficking the third most profitable crime in the world after arms trafficking and narcotics.

Within this pyramid of human trafficking crimes, women and children occupy both the lowest and the most vulnerable positions. This absolute vulnerability does not occur in a vacuum; rather, it is the product of social construction, the feminization of poverty, lack of access to education, and layered structural discrimination in developing countries. Women and children are often manipulated with deceptive promises of decent employment or transnational marriage, ultimately resulting in the deprivation of their physical freedom and bodily autonomy. Therefore, mitigating their exploitation cannot rely solely on border patrols but requires a comprehensive reconstruction of the legal protection system.

The intersection between criminal law and human rights constitutes the most crucial test in mitigating human trafficking exploitation. Traditional criminal law generally views human trafficking merely as "a crime against the state" or a violation of public order. This narrow perspective is highly dangerous because it eliminates the humanitarian dimension of the victims themselves. A human rights-based approach requires the state to respond to this crime not only by pursuing perpetrators but also by fulfilling its positive obligations through due diligence to care for, restore, and reintegrate victims into society as free and dignified human beings.

The Indonesian government, de jure, has demonstrated a strong commitment in responding to international demands by enacting Law Number 21 of 2007 on the Eradication of Human Trafficking. This legislation is a domestic elaboration of the Palermo Protocol, promising a

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comprehensive strategy encompassing prevention (mitigation), prosecution, and victim recovery. The law explicitly adopts victims' rights instruments such as restitution, medical rehabilitation, and legal assistance. At the normative level, Indonesia appears to have aligned itself with global human rights protection standards.

However, at the empirical and procedural implementation levels, there exists a highly paradoxical operational gap. Indonesia's protection system remains trapped within a judicial framework that treats victims primarily as instruments of evidence. Mitigation and recovery rights are often conditional; victims gain access to shelters and witness protection only if they cooperate and are willing to serve as key witnesses in court. This transactional requirement contradicts human rights principles, which hold that the right to recovery for victims of torture or exploitation is an absolute right that must not be exchanged for any procedural obligation.

Furthermore, the paradigm dominating law enforcement authorities remains deeply rooted in retributive justice. Law enforcement officials often believe that justice has been achieved once trafficking syndicates receive lengthy prison sentences. In reality, punishing offenders does not automatically erase psychological trauma, cure sexually transmitted diseases, or restore victims' economic losses. This lack of victim-oriented recovery demonstrates that Indonesia's legal system has yet to fully internalize the philosophy of "Dignified Justice" a legal concept that places the humanization of individuals as the ultimate purpose of law.¹

To overcome the stagnation of Indonesia's protection system, a comparative study with countries that have progressive records in integrating human rights into their national criminal law is necessary. Such cross-jurisdictional comparison is crucial not merely to replicate foreign regulations but to identify academic precedents demonstrating how other countries have successfully shifted their judicial focus from offender-oriented to victim-centered approaches. Europe, with its highly active European Court of Human Rights, offers mature jurisdictions worthy of examination.

Germany and the Netherlands are two civil law countries historically sharing legal traditions with Indonesia that have made remarkable progress in mitigating human trafficking. Germany reformed its criminal law by guaranteeing independent restitution and compensation rights, clearly separating victims' civil rights from the complexities of substantive criminal proof. Meanwhile, the Netherlands has developed a revolutionary institutional framework through specialized agencies integrating financial intelligence for asset recovery with multidisciplinary

¹ Teguh Prasetyo. 2015. *Keadilan Bermartabat: Perspektif Teori Hukum*. Nusa Media

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social service institutions, allowing victims to avoid direct exposure to the rigid courtroom environment.

The current literature indicates that most legal studies on human trafficking in Indonesia continue to revolve around classical issues such as weaknesses in proving criminal elements, disparities in judicial decisions, or obstacles in disseminating legislation. Research specifically examining the failure of human rights mitigation through comparative analysis of compensation systems and procedural law in Germany and the Netherlands remains a significant research gap that urgently requires attention within contemporary criminal law discourse.

Based on this background, this article aims to uncover the root causes of the challenges in enforcing human rights in human trafficking cases in Indonesia and to reconstruct its mitigation system through a comparative lens with the legal systems of Germany and the Netherlands. It is expected that this comparative synthesis will produce a substantive protection model grounded in Dignified Justice and Restorative Justice, thereby contributing strategic insights for policymakers the legislature in improving legal protection for women and children in the future.

2. Research Methods

This research is designed as normative legal research doctrinal legal research focusing on the examination of legal principles, human rights doctrines, and positive legal norms embodied in statutory instruments. The primary approach employed is the statute approach. At the national level, the study examines Law Number 21 of 2007 on the Eradication of Human Trafficking and its implementing regulations concerning witness and victim protection. At the international level, the analysis refers to standards established by the Palermo Protocol and international human rights instruments. The principal characteristic of this methodology is the application of the comparative approach. The research focuses on comparing victim protection regimes between Indonesia and Germany (particularly reforms to the German Criminal Code/Strafgesetzbuch concerning victim compensation and Erweiterter Verfall as well as the Netherlands especially legislation on Pluk-ze asset confiscation and victim support mechanisms. Complementing these approaches, the study also employs the conceptual approach using human rights analysis, the doctrine of Restorative Justice, and the philosophy of Dignified Justice to formulate an ideal protection framework rooted in universal humanitarian values while remaining contextually relevant to Indonesia.

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3. Results and Discussion

3.1. The Complexity and Challenges of Human Rights Enforcement in Mitigating Exploitation in Indonesia

The mitigation of exploitation within the human rights framework mandates that the state undertake preventive, enforcement, and recovery efforts simultaneously and in a balanced manner. However, the current face of law enforcement against human trafficking (TPPO) in Indonesia is marked by procedural challenges that actually hinder the realization of human rights justice. The first and most crucial obstacle is the reduction of the meaning of "protection" to merely "physical protection" such as placing victims in a safe house, while the dimensions of long-term psychological recovery, social rehabilitation, and economic empowerment are neglected or considered outside the scope of the criminal justice system.

This has led to the phenomenon of institutionalized secondary victimization within the criminal procedure system. When women and child victims of human trafficking are rescued, the legal system automatically constructs them as key witnesses. The interrogation process during the preparation of the Official Examination Report often lacks a trauma-informed perspective. Victims are forced to reconstruct traumatic memories of their exploitation within a highly rational formal evidentiary framework, a process that frequently triggers further Post-Traumatic Stress Disorder (PTSD) and undermines their dignity as human beings.

The second human rights challenge lies in the trap of conditional recovery. Under the current mechanism, the continuity of psychosocial assistance, legal aid, and the right to compensation depends heavily on the status of the criminal case. If investigators lack sufficient material evidence and issue an Order to Terminate Investigation (SP3), the individual administratively loses their legal status as a "victim." Consequently, all state support services immediately cease. The operational failure of law enforcement institutions to prove the case ultimately becomes the victim's burden, sacrificing their fundamental right to recovery.

This failure of human rights enforcement becomes even more absolute when discussing restitution compensation paid by the perpetrator. Normatively, restitution is the lifeblood of restorative justice for victims. However, in Indonesia, courts often award compensation without ensuring that the judgment can actually be enforced. Weak asset-tracing capacity during the pre-adjudication stage allows trafficking syndicates to conceal their wealth behind layered business structures or transfer it to beneficial owners. By the time the judge delivers the verdict, there are no remaining assets that can be confiscated and transferred to the victims.

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Tragically, this weakness is legitimized by the Human Trafficking Law itself through a provision that offers the option of a "substitute imprisonment sentence" if restitution is not paid. From a human rights perspective, this provision represents a regression of civilization because it reduces the value of suffering, reproductive destruction (in victims of sexual exploitation), and the loss of a child's future to the equivalent of only a few additional months in prison. This option creates a loophole of economic immunity for perpetrators while leaving victims to return to their hometowns impoverished and devastated.

The absence of direct state compensation further worsens this bleak reality. Although positive law recognizes restitution as the perpetrator's obligation, the state often withdraws responsibility when the perpetrator is declared bankrupt. In contrast, international human rights doctrine holds that the state bears strict liability to compensate victims of crimes whom it failed to protect through its security apparatus. Without a governmental financial safety net, exploitation mitigation remains nothing more than rhetoric.

Another structural obstacle is the lack of interagency integration. Human trafficking cases are often handled sporadically: the police focus on arrests, hospitals focus on treating physical injuries, and social institutions handle repatriation administration. This sectoral ego creates a bureaucratic chain that is exhausting for victims. They must visit multiple institutions and repeatedly recount their traumatic experiences merely to obtain each fragment of their legal rights and social services, all of which should ideally be provided through a one-stop system.

Philosophically, these procedural and structural barriers demonstrate that Indonesia's criminal justice system is not yet aligned with the theory of Dignified Justice.² The state continues to employ a rigid and mechanistic retributive perspective without reaching the essence of humane justice. As long as victims remain positioned as minor cogs within the vast machinery of criminal justice, the enforcement of human rights in the protection and mitigation of human trafficking will continue to clash with bureaucratic formalities that are blind to human suffering.

3.2. Comparative Study of Victim Protection Systems Best Practices from Germany and the Netherlands

To overcome Indonesia's systemic stagnation, comparative insights from Germany and the Netherlands present a highly progressive landscape of human rights enforcement. The Federal Republic of Germany, with its strict civil law foundation, has demonstrated that legal certainty does not have to come at the expense of victims' rights. Germany's substantive criminal law

² Barda Nawawi Arief. (2018). *Kapita Selekta Hukum Pidana: Pembaruan Kebijakan Hukum Pidana (Kebijakan Kriminalisasi dan Dekriminalisasi)*. Kencana.

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reform (StGB) successfully integrated victims' rights to compensation directly into criminal proceedings. Through the Adhäsionsverfahren (adhesion procedure), victims of human trafficking do not need to file separate civil lawsuits to seek damages because criminal judges are automatically authorized to award financial compensation alongside the perpetrator's criminal conviction.

Germany's strength in protecting the human rights of trafficking victims stems from its aggressive asset forfeiture framework. Through the Erweiterter Verfall (extended asset forfeiture) mechanism, German courts are authorized to confiscate all assets belonging to convicted offenders whose lawful origins cannot be proven, without limiting confiscation only to assets directly connected to the offense being tried.³ These aggressively confiscated assets are prioritized entirely for full victim compensation. If the perpetrator genuinely has no assets, German law requires the state to provide compensation through the Victim Compensation Act.

Meanwhile, the Netherlands offers innovation centered on institutional architecture and a victim-centered mitigation approach. Responding to widespread human trafficking in Western Europe, the Dutch legal system fundamentally separates the recovery process care from criminal prosecution. The Netherlands operates a multidisciplinary coordination network, such as CoMensha Coordination Centre against Human Trafficking, which functions as an independent entity outside the police. Once a trafficking victim is identified, social workers immediately assume responsibility for medical and psychological stabilization.

The Netherlands internalizes international human rights standards by granting a reflection period of three to four months. During this period, victims receive full protection, temporary residence permits, comprehensive healthcare, and financial assistance without pressure or obligation to decide whether they will testify against the perpetrators. Even if they refuse to testify for fear of their safety, these rehabilitation rights are not revoked. The Dutch philosophy emphasizes that humanitarian protection must never become a bargaining tool in law enforcement.

Regarding asset tracing for restitution, the Netherlands utilizes asset confiscation legislation (Pluk-ze), implemented through the Bureau Ontnemingswetgeving Openbaar Ministerie (BOOM). BOOM is a specialized financial intelligence bureau under the Dutch National Public Prosecution Service dedicated solely to tracing, freezing, and confiscating the illegal assets of criminal syndicates in real time. With this specialized bureau, criminal prosecution and asset

³ *Strafgesetzbuch* (German Criminal Code), Section 73a (Extended Confiscation/Erweiterter Verfall) and related Victim Compensation legislation

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preservation for restitution proceed in parallel, preventing the disappearance of assets before compensation judgments are issued.

Germany and the Netherlands share the same paradigm: neither country sees retributive justice for perpetrators and restorative justice for victims as conflicting objectives. Both impose severe punishment on offenders while simultaneously mobilizing state institutions through financial intelligence agencies and social welfare bodies to secure victims' futures. This approach embodies the contemporary human rights doctrine that justice is never complete if victims' socio-economic dignity is left in ruins.

When compared to Indonesia's criminal procedure system, the paradigm gap becomes clear. Indonesia remains trapped in evidentiary bureaucracy and weak interagency coordination. The Indonesian Attorney General's Office does not yet possess an autonomous institution comparable to BOOM dedicated to asset recovery. Indonesia's Witness and Victim Protection Agency (LPSK) carries an important mandate but lacks the financial coercive power and unrestricted compensation authority found under German federal law.

This comparative study concludes that the weakness of Indonesia's human trafficking protection system is not caused by a lack of goodwill but by the absence of revolutionary legal instruments. The Netherlands demonstrates the importance of separating victims' human rights from criminal prosecution bureaucracy through an unconditional reflection period. Germany proves that criminal law can function as a powerful civil instrument against criminal enterprises to restore victims' losses. The legislative courage displayed by these two countries provides an ideal empirical precedent for reconstructing human rights enforcement in Indonesia.

3.3. Reconstructing Mitigation Based on Dignified Justice and Human Rights

Drawing upon the complexity of challenges in practice and best practices from European jurisdictions, it is time to radically reconstruct Indonesia's regulations protecting women and child victims of human trafficking. The philosophical foundation of this reconstruction must rest upon the principle of Dignified Justice, which harmonizes humanitarian values, social justice, and the protection of fundamental rights that cannot be compromised.⁴ The law must regard victim recovery not as a subsystem of criminal law but as the grand design of human rights enforcement itself.

⁴ Sholehuddin, M. 2019. *Sistem Sanksi dalam Hukum Pidana: Ide Dasar Double Track System dan Implementasinya*. RajaGrafindo Persada.

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The first urgent reconstruction is the complete separation between victims' recovery rights and their obligation to testify. Adopting the Dutch reflection period model, the Human Trafficking Law should be amended to mandate protection rights, accommodation, and independent psychosocial services from the very first moment victims are rescued, without requiring them to provide an Official Examination Report (BAP) or agree to become witnesses. This reform would break the cycle of secondary victimization and restore victims' psychological autonomy by giving them a safe space to recover before facing the harshness of the adjudication process.

The second reconstruction concerns financial recovery certainty. The substitute imprisonment provision for unpaid restitution in the Human Trafficking Law must be permanently abolished. Instead, Indonesia should replicate the firm approach of Germany and the Netherlands by expanding asset seizure mechanisms and reversing the burden of proof regarding the lawful origin of assets in exploitation-related crimes asset recovery. Once law enforcement designates an individual as a suspect, the Attorney General's Office should simultaneously be granted special authority to freeze and confiscate all of the suspect's assets as an absolute guarantee for fulfilling victims' restitution rights.

Furthermore, the absence of state compensation should be addressed through the establishment of a National Victim Trust Fund. The creation of this instrument would represent an empirical realization of the Fifth Principle of Pancasila and universal human rights. Drawing inspiration from Germany's, the fund should be managed independently by the LPSK and financed proportionally through the State Budget (APBN) as well as confiscated assets from other criminal offenses. With such a Trust Fund, the state would guarantee direct financial compensation for women and child victims even when perpetrators are bankrupt or fugitives.

Within criminal procedure, a restorative justice approach should also be integrated into courtroom proceedings. However, restorative justice here does not refer to penal mediation between perpetrators and victims but rather to restructuring court procedures around the protection of victims' mental well-being through a victim-centered approach. The Supreme Court should issue special guidelines for human trafficking trials prohibiting direct physical confrontation between women or child victims and trafficking syndicates. Closed teleconference testimony and forensic psychological assessments should be expanded as primary, valid, and binding forms of evidence.

Institutionally, cross-agency bureaucratic restructuring is also required. The government should institutionalize independent one-stop crisis centers under the coordination of the Ministry of Women's Empowerment and Child Protection (PPPA) and the LPSK, integrating healthcare professionals, psychologists, and social workers while remaining separate from police offices.

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This organic and multidisciplinary rehabilitation model would eliminate bureaucratic barriers that have long discouraged victims from seeking justice due to procedural and psychological exhaustion.

Protection mitigation must also incorporate a long-term vision intergenerational justice. Victims' rights, particularly those of children, must not end with monetary compensation and short-term medical treatment. Dignified Justice requires legally protected follow-up social integration programs, including guaranteed educational support and economic empowerment rights such as special business capital for victims of human rights violations, so they do not fall back into poverty and prostitution, which are among the root causes of human trafficking.

The entire reconstruction framework requires a fundamental paradigm shift among law enforcement officers from beginning to end. Judges, prosecutors, and police officers must recognize that human trafficking is not an ordinary crime but a crime against humanity. By combining strong asset confiscation measures retributive justice with state compensation funds and unconditional social rehabilitation restorative justice, Indonesia's criminal justice system will not only effectively dismantle trafficking syndicates but, more importantly, restore the dignity and future of people whose humanity has been violated.

4. Conclusion

The challenges of human rights enforcement in mitigating human trafficking in Indonesia stem from the dominance of a procedural and retributive criminal procedure paradigm. Women and child victims of exploitation frequently experience secondary victimization because their recovery rights are effectively held hostage by testimonial requirements, while the failure to enforce economic restitution is replaced with substitute imprisonment for perpetrators. Comparative studies of Germany and the Netherlands demonstrate that dignified protection can only be achieved when the state institutionally separates the fulfillment of victims' human rights from criminal prosecution. Through aggressive asset confiscation and long-term social security mechanisms, Germany and the Netherlands have successfully created judicial ecosystems that are genuinely victim-centered.

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