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Reconstruction of Legal Protection for Victims of Human Trafficking Crimes Based on Law Number 21 of 2007 Based on Human Rights

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Abstract. *This study aims to analyze and reconstruct a model of legal protection for victims of human trafficking under Law Number 21 of 2007 from a human rights perspective. Although Indonesia has ratified the Palermo Protocol and possesses a relatively complete legal framework, the fulfillment of victims' rights particularly restitution, compensation, and rehabilitation remains minimal and procedurally constrained. A normative juridical method was employed using statutory, conceptual, and comparative approaches, with legal materials analyzed qualitatively. The findings reveal that legal protection is not yet optimal because the restitution mechanism lacks an enforcement guarantee, the victim's position within the criminal justice system remains marginal, and the normative orientation is still retributive rather than victim-centred. A reconstruction grounded in human rights values is therefore required, namely by strengthening the imperative character of restitution, integrating victim recovery into state responsibility, and harmonizing Law Number 21 of 2007 with Law Number 31 of 2014 and the National Criminal Code.*

Keywords: *Legal; Protection; Restitution; Trafficking; Victims.*

1. Introduction

Human trafficking is a crime that degrades human dignity by treating people as commodities to be bought and sold, exploited, and deprived of their basic rights. This practice is no longer limited to local areas but has become a transnational organized crime with ever-changing methods ranging from sexual exploitation and forced labor to organ trafficking. As a country

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with a large influx of migrant workers, Indonesia is vulnerable, both as a country of origin, transit, and destination.¹

The Constitution has laid a solid foundation for protection. Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia guarantees the right of every person to protection of themselves, their family, their honor, and their dignity, while Article 28I paragraph (1) affirms the right not to be enslaved as a right that cannot be reduced under any circumstances. This provision should guide the entire direction of legal policy in eradicating human trafficking and rehabilitating its victims.²

As a manifestation of its international commitment, Indonesia ratified the 2000 Palermo Protocol, which obligates state parties to protect victims' rights, including the right to assistance, reparation, access to justice, and redress. A similar commitment is evident in the 1979 Convention on the Elimination of All Forms of Exploitation of Women (CEDAW), which calls for the elimination of all forms of exploitation of women. At the national level, Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons serves as the primary instrument governing the prevention, prosecution, and protection of victims.³

Normatively, Law Number 21 of 2007 actually contains quite advanced victim protection instruments. Articles 43 to 55 regulate the confidentiality of victims' identities, the right to restitution, medical and social rehabilitation, and reintegration. Article 48 even affirms the victim's right to restitution, which must be included in the court's decision. From a normative perspective, this design aligns with the human rights-based paradigm of victim protection.⁴

The problem is that there is a wide gap between the ideal conditions envisioned by these norms and the reality of their implementation. Data from the Witness and Victim Protection Agency shows that in 2023, the agency received 1,297 applications for protection in human trafficking cases, the second-highest number after sexual violence cases. However, of the estimated losses to victims of approximately Rp11.4 billion, only around Rp2.5 billion was included in the

¹Agus Takariawan and Sherly Ayuna Putri, Legal Protection for Victims of Human Trafficking from a Human Rights Perspective, *Ius Quia Iustum Law Journal*, Vol. 25, No. 2 (2018), p. 239, <https://doi.org/10.20885/iustum.vol25.iss2.art2>.

²Republic of Indonesia, 1945 Constitution of the Republic of Indonesia, Article 28G paragraph (1) and Article 28I paragraph (1).

³Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), 2000, Articles 6–8; cf. Convention on the Elimination of All Forms of Discrimination Against Women, 1979, Article 6.

⁴Republic of Indonesia, Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, Articles 43–55.

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prosecutor's demands, around Rp1.8 billion was awarded by the judge, and only around Rp22.4 million was actually paid to the perpetrators.⁵

These figures demonstrate that the right to restitution guaranteed by law largely remains at the normative level and is not effectively implemented. Several studies have emphasized that suboptimal victim protection is not solely due to weak inter-institutional coordination and limited resources, but also to a law enforcement approach that remains largely legal-formal and focused on punishing perpetrators, often marginalizing victims' interests at all stages of the criminal justice system.⁶

The most fundamental weakness lies in the restitution mechanism. Article 48 of Law Number 21 of 2007 is considered difficult to implement due to the lack of a clear payment mechanism, making it difficult to realize victims' rights in court without implementing regulations or changes to norms. This lack of guarantees of execution makes restitution merely a legal promise that lacks enforceability. Based on this description, this study aims to analyze and reconstruct a model of legal protection for victims of human trafficking under Law Number 21 of 2007, which is grounded in human rights values.⁷

2. Research Methods

This research uses a normative juridical method, which positions law as a norm or rule that guides behavior. The research specifications are descriptive-analytical. The approaches used include a statute approach, a conceptual approach, and a comparative approach with reference to international legal instruments. Primary legal materials consist of laws and regulations and international instruments, while secondary legal materials consist of books, scientific journals, and previous research results. All legal materials were collected through literature review and analyzed qualitatively to draw prescriptive conclusions.

3. Results and Discussion

3.1. The Reality of Legal Protection for Victims of Human Trafficking in Law Number 21 of 2007

Law Number 21 of 2007 recognizes victims of human trafficking as rights holders who must be protected by the state. The forms of protection offered can be grouped into three categories:

⁵Witness and Victim Protection Agency, LPSK Receives 1,297 Human Trafficking Applications, Synergy Required, July 30, 2024, <https://www.lpsk.go.id/berita/clz9jvzpo000xhj5qfyxgzvd9>.

⁶Lies Sulistiani, Problems of Victims' Rights to Restitution in Crimes Regulated by the Criminal Code and Outside the Criminal Code, *Jurnal Bina Mulia Hukum*, Vol. 7, No. 1 (2022), pp. 82–84.

⁷Republic of Indonesia, Law Number 39 of 1999 concerning Human Rights, Article 8 and Article 71.

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restitution, compensation, and rehabilitation, which aim to restore victims from physical, psychological, and social suffering. Restitution is compensation imposed on the perpetrator through a verdict, while medical and social rehabilitation and reintegration are the responsibility of the state.⁸

Theoretically, the protection plan aligns with the legal protection theory, which divides protection into preventive and repressive dimensions. Preventive protection is realized through prevention and confidentiality of victim identities, while repressive protection is realized through restitution and post-judicial recovery. Within the framework of human rights, this protection is derived from the state's obligation to respect, protect, and fulfill the rights of every citizen.⁹

However, the reality shows that victims have not yet been able to properly enjoy these normative rights. The Witness and Victim Protection Agency's restitution assessment throughout 2023 reached approximately IDR 11.4 billion, but actual payments to the perpetrators were far less. In the case of kidney sales to Cambodia, for example, restitution was only around IDR 799.5 million for 24 victims, or approximately IDR 33.3 million each, according to the court ruling.¹⁰

This fact confirms the disparity between the recognized losses, the amounts demanded, and the amounts actually paid. This disparity stems from several factors: the lack of restitution claims by prosecutors in indictments and demands; the lack of assets that can be seized to pay restitution; and the weak enforcement of enforcement when perpetrators choose to serve substitute sentences rather than pay compensation.¹¹

Furthermore, the position of victims in the criminal justice system remains marginalized. Victims are often positioned merely as witnesses or sources of evidence, rather than subjects whose recovery is the goal of the judicial process. The focus on punishing the perpetrator marginalizes

⁸Nani Nuraeni and Dewi Kania, Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking in the Perspective of Islamic Law, *Al-'Adalah*, Vol. 14, No. 1 (2017), pp. 138–140.

⁹Satjipto Rahardjo, *Legal Science* (Bandung: Citra Aditya Bakti, 2014), pp. 53–55.

¹⁰The Witness and Victim Protection Agency, LPSK, Hands Over Restitution to 24 Victims of Human Trafficking in the Kidney Sales Case, May 29, 2024, <https://www.lpsk.go.id/detail/clwuikw880003jpuv09ss9wdt>.

¹¹Diana Sasmita, Hadi Iskandar, and Hidayat, Fulfillment of Restitution Rights for Victims of Human Trafficking Crimes, *Scientific Journal of Law Students, Malikussaleh University*, Vol. 7, No. 3 (2024), pp. 9–11, <https://doi.org/10.29103/jimfh.v7i3.16987>.

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victims' interests, leaving their rights dependent on the initiative of authorities, rather than on imperative procedural guarantees.¹²

This problem is compounded by the technical difficulties in determining the extent of damages. Losses resulting from human trafficking encompass not only material losses in the form of unpaid wages or expenses, but also immaterial losses in the form of psychological trauma, lost opportunities, and damage to dignity. Without standard calculation guidelines, the amount of restitution awarded is often far lower than the actual losses, thereby losing its restorative function.¹³

The social stigma attached to victims also weakens their position. Human trafficking victims, particularly sexually exploited women and children, are often reluctant to report or pursue their rights due to fears of secondary victimization, which is the compounded suffering caused by the insensitive response of the justice system. A victim-centered approach demands that the entire process, from investigation to execution of the verdict, be designed to minimize additional trauma and respect the victim's autonomy.¹⁴

From a human rights perspective, this situation indicates that the state has not fully fulfilled its positive obligations. Law Number 39 of 1999 affirms that protecting human rights is the responsibility of the state, particularly the government. If the right to restitution that has been terminated cannot be exercised and the state does not provide a replacement mechanism, then the state has failed to guarantee restitution for victims as mandated by the constitution and international human rights instruments.¹⁵

A comparative review of existing legal instruments shows that the normative framework for victim protection in Indonesia is quite adequate, but scattered and not yet integrated. To map

¹²Christian Goklas and Beniharmoni Harefa, Optimizing the Role of the Witness and Victim Protection Agency (LPSK) in Assisting in Providing Restitution for Child Trafficking Crimes in Indonesia, *Justitia: Journal of Law and Humanities*, Vol. 8, No. 5 (2021), pp. 898–900, <https://doi.org/10.31604/justitia.v8i5.892-905>.

¹³Rina Anastasia, Hotma Sinaga, and Erni Amaliah, Provision of Restitution to Victims of Human Trafficking Crimes against Indonesian Migrant Workers, *Journal of Law, Humanities and Politics*, Vol. 4, No. 3 (2024), pp. 64–67, <https://doi.org/10.38035/jihhp.v4i3.4271>.

¹⁴Henny Nuraeny, The Psychological Impact of Human Trafficking on Women, *Karimah Tauhid*, Vol. 3, No. 3 (2024), pp. 3662–3665.

¹⁵Pratiwi Nurhabni Utami, Handling of Human Trafficking Cases by the East Nusa Tenggara Provincial Government, *Jurnal HAM*, Vol. 10, No. 1 (2019), pp. 25–27, <https://doi.org/10.30641/ham.2019.10.21-38>.

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the gap between norms and their implementation, a comparison of the substance of the regulations can be summarized in the following table.¹⁶

Mapping Table of Instruments for the Protection of Human Trafficking Victims and Gaps in Their Implementation

Instrument	Substance of Victim Protection	Implementation Gap
Law No. 21 of 2007	Restitution, medical/social rehabilitation, reintegration, confidentiality of identity (Articles 43–55)	There is no guarantee of restitution execution; the perpetrator can choose a substitute sentence.
Law No. 31 of 2014	Strengthening the authority of LPSK; assistance, compensation, and restitution	Overlapping authority with public prosecutors; compensation does not cover general human trafficking
Law No. 1 of 2023 (Criminal Code)	Additional criminal penalties for payment of compensation; victim recovery orientation	Not yet technically harmonized with the TPPO Law
Palermo Protocol & CEDAW	The state's obligation to rehabilitate victims and protect women	Not yet fully implemented into operational implementation mechanisms

Source: Processed from laws and regulations and literature, 2026.

The table shows that the main weakness lies not in the absence of norms, but rather in the lack of integration and guaranteed implementation. Each instrument promises protection, but none guarantees that victims' rights will be fully met when perpetrators are unable or unwilling to pay. This is where the urgency of human rights-based reconstruction lies.¹⁷

3.2. Reconstruction of Legal Protection for Victims of Human Trafficking Based on Human Rights

Based on these weaknesses, legal protection for victims of human trafficking needs to be reconstructed to be based on a victim-centered and human rights-based paradigm. This reconstruction is not intended to erase the existing framework, but rather to improve the substance, structure, and culture of the law so that victims' rights are truly realized, as emphasized by legal system theory, which views legal effectiveness as the result of these three components.¹⁸

¹⁶Ribka R. Adudu, Legal Protection for Victims of Human Trafficking in Indonesia, *Lex Crimen*, Vol. 11, No. 3 (2022), pp. 142–145.

¹⁷Hardianto Susanti, Syafrinaldi, and Wira A. Hajri, Comparison of Legal Regulations on the Crime of Human Trafficking in Indonesia and Malaysia, *Jurnal Kodifikasi*, Vol. 4, No. 1 (2022), pp. 93–96.

¹⁸Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1975), p. 14–16.

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First, in terms of legal substance, the imperative nature of restitution needs to be clarified. Article 48 of Law Number 21 of 2007 should be reformulated so that restitution is not merely mandatory in the verdict but also includes a guarantee of execution. If the perpetrator is unable or unwilling to pay, the state is obligated to provide compensation funds that can be first funded and then repaid to the perpetrator, so that the victim's rights are not dependent on the perpetrator's solvency.¹⁹

This idea aligns with the theory of justice, which prioritizes reparation for the most disadvantaged. Within the framework of justice, inequality can only be justified if it provides the greatest benefit to the most vulnerable party, in this case, victims of human trafficking. Therefore, the state bears an affirmative obligation to ensure victims receive reparation, not simply to provide declarative norms.²⁰

Second, in terms of legal structure, it is necessary to clarify the institutions authorized to calculate, demand, and execute restitution. Harmonization between Law No. 21 of 2007, Law No. 31 of 2014, and the National Criminal Code is necessary to avoid overlapping authority. The Witness and Victim Protection Agency can be strengthened as a central institution for calculating losses, while public prosecutors are required to include restitution demands in every human trafficking case.²¹

The introduction of Supreme Court Regulation No. 1 of 2022 concerning Procedures for Submitting and Granting Restitution and Compensation to Victims of Crime has provided a clearer procedural basis. However, its effectiveness requires integration with the parent law and a commitment from law enforcement officials to consistently implement it. Without such integration, sound procedures remain at risk of stalling at the administrative level.²²

Third, in terms of legal culture, a paradigm shift is needed for law enforcement officials, from focusing on punishing perpetrators to focusing on victim recovery. Human trafficking must be understood as a serious human rights violation, and its handling requires sensitivity to the plight

¹⁹Rizmanda Nurfitri and Diana Lukita Sari, The Lack of Restitution Requests in Judges' Decisions on Human Trafficking Crimes, *Indonesian Journal of Social Sciences and Humanities*, Vol. 5, No. 1 (2025), pp. 45–47.

²⁰John Rawls, *A Theory of Justice*, ed. rev. (Cambridge: Harvard University Press, 1999), p. 65–73.

²¹Indah Permatasari et al., Restitution and Protection of the Rights of Victims of Crime: Policies, Challenges and Practices at the Kuala Kapuas District Court, *Syntax Literate: Indonesian Scientific Journal*, Vol. 10, No. 2 (2025), pp. 1120–1123.

²²Youfan Alyafedri and Ismail Koto, Legal Policy on the Problems of Fulfilling the Rights of Restitution for Victims of Criminal Acts Regulated by the Criminal Procedure Code and Outside the Criminal Procedure Code, *UNES Law Review*, Vol. 6, No. 4 (2024), pp. 11646–11648, <https://doi.org/10.31933/unesrev.v6i4.2006>.

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of victims, who often experience multiple traumas. Strengthening the capacity of law enforcement, cross-sector collaboration, and the involvement of civil society organizations are prerequisites for ensuring that victim protection does not stop at the text of the law.²³

This reconstruction must also be interpreted within the framework of international instruments. The Palermo Protocol and CEDAW place victim restitution and the protection of women as obligations of state parties. Therefore, strengthening the rights of restitution and rehabilitation to victims of human trafficking is not merely an improvement to national law, but rather an implementation of international commitments ratified by Indonesia. This aligns with the principle of reforming national criminal law based on the values of justice.²⁴

3.3. Normative Reconstruction Model and Its Implications for the Renewal of Law Number 21 of 2007

Reconstruction at the conceptual level needs to be translated into concrete normative formulations to be effective. The first model proposed is the affirmation of restitution as a mandatory additional penalty in all human trafficking cases. Thus, the public prosecutor is required to include a demand for restitution in the indictment, and the judge is required to consider it in his or her decision. This obligation closes the discretionary gap that has made restitution optional and often ignored.²⁵

The second model is the establishment of a state-managed victim trust fund, funded by, among other things, proceeds from the confiscation of the perpetrator's assets and the proceeds of money laundering. This fund serves to cover restitution payments when the perpetrator is unable to pay, allowing victims to receive restitution without having to wait for the perpetrator's solvency, while the state retains the right to collect (subrogation) from the perpetrator. This mechanism addresses the primary issue: victims' rights have historically been entirely dependent on the perpetrator's financial capacity.²⁶

²³Dudung Abdullah, Legal Protection for Victims of Child and Female Trafficking, *Al-Adl: Jurnal Hukum*, Vol. 9, No. 2 (2017), pp. 238–241, <https://doi.org/10.31602/al-adl.v9i2.945>.

²⁴Sri Endah Wahyuningsih, Principles of National Criminal Law Reform Based on Justice Values, *Journal of Legal Reform*, Vol. 1, No. 1 (2014), pp. 9–11.

²⁵Lutfil PO Beremanda, Hafrida, and Elizabeth Siregar, The Principle of Restorative Justice in Termination of Prosecution through Compensation and Restitution, *Pampas: Journal of Criminal Law*, Vol. 4, No. 2 (2023), pp. 281–284, <https://doi.org/10.22437/pampas.v4i2.26483>.

²⁶Fauzy Marasabessy, Restitution for Crime Victims: A New Mechanism Offered, *Journal of Law & Development*, Vol. 45, No. 1 (2015), pp. 56–59, <https://doi.org/10.21143/jhp.vol45.no1.13>.

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The third model is institutional strengthening by affirming the role of the Witness and Victim Protection Agency as the central institution for assessing losses, along with standardized loss calculation guidelines that accommodate immaterial losses. These guidelines are crucial to ensure that the amount of restitution awarded truly reflects the victim's suffering, not simply a minimum figure that can be easily met. Supreme Court Regulation No. 1 of 2022 can serve as a procedural basis, reinforced by provisions in the parent law.²⁷

These three models align with the direction of national criminal law reform, which positions restorative justice as a paradigm that balances the interests of perpetrators, victims, and society. The shift from retributive justice, which focuses on retribution, to restorative justice, which focuses on restoration, demands that the fulfillment of victims' rights be treated not as an accessory but as the primary objective of the judicial process. The National Criminal Code, which accommodates compensation payments as part of the penal system, provides momentum to align Law Number 21 of 2007 with this paradigm.²⁸

The implications of this reconstruction model are twofold. Legally, the change in norms makes victims' rights enforceable and no longer dependent on the perpetrator's compassion or competence. Sociologically, the certainty of restitution increases victims' trust in the justice system, thus encouraging more victims to come forward. Philosophically, this model reaffirms the state's commitment to upholding human dignity, as mandated by Pancasila and the constitution. Therefore, reconstruction does not stop at refining articles; it must also be accompanied by institutional strengthening, providing funding sources, and transforming the legal culture of law enforcement.²⁹

4. Conclusion

Legal protection for victims of human trafficking based on Law Number 21 of 2007 has not been running optimally because the restitution mechanism is not accompanied by a guarantee of execution, the position of victims in the criminal justice system is still marginal, and the orientation of norms still relies on punishing the perpetrator rather than the recovery of the victim, so that the rights of victims often stop at formal recognition; therefore, this protection needs to be reconstructed based on human rights values, namely by emphasizing the imperative

²⁷Oki Chandra Nugroho, State Responsibility in Handling the Crime of Human Trafficking, *De Jure Legal Research Journal*, Vol. 18, No. 4 (2018), pp. 548–551.

²⁸Cahya Wulandari, The Dynamics of Restorative Justice in the Criminal Justice System in Indonesia, *Jurisprudence*, Vol. 10, No. 2 (2020), pp. 148–151, <https://doi.org/10.23917/jurisprudence.v10i2.12233>.

²⁹Mochammad IW Pratama, Criminal Law Policy in Handling the Crime of Human Trafficking Based on Law Number 21 of 2007, *Jurnal Fakta Hukum*, Vol. 2, No. 1 (2023), pp. 18–21.

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nature of restitution accompanied by a guarantee of execution and state bailout funds, strengthening institutions and harmonizing Law Number 21 of 2007 with Law Number 31 of 2014 and the National Criminal Code, and shifting the legal culture of officials towards a paradigm that is centered on victims as subjects of rights whose recovery is guaranteed by the state.

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