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**Topic:** *Strengthening Legal Frameworks for Combating Human Trafficking and Enhancing Protection of Women and Children*

## **Shifting The Paradigm of Punishment for the Crime of Human Trafficking from Retributive Justice Toward Restorative Justice for Victims**

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**Abstract.** *The Crime of Human Trafficking (TPPO) is a crime against humanity that degrades the dignity of victims through various forms of exploitation and modern slavery. To date, law enforcement in human trafficking cases in Indonesia has remained dominated by a retributive punishment paradigm centered on the imprisonment of offenders (offender-oriented) and often neglects aspects of victim recovery. The failure to fulfill victims' restitution rights, exacerbated by legal loopholes whereby compensation obligations can be substituted with subsidiary imprisonment, has rendered justice for victims merely a victory on paper. This Research a normative legal research method using both a statutory approach and a conceptual approach to analyze the urgency of shifting this punishment paradigm. The findings indicate that the enactment of the New Criminal Code (KUHP) provides strong legitimacy for the implementation of restorative justice and the theory of Dignified Justice, which places victims at the center of the justice system (victim-oriented justice). Optimizing the fulfillment of restitution rights is absolutely necessary through progressive asset tracing and asset forfeiture authority from the investigation stage onward. Furthermore, the state needs to establish a Trust Fund (Victim Assistance Fund) mechanism to advance restitution payments when offenders are unable to pay, followed by the state's subrogation rights against the offender's assets. This transformation from retributive to restorative justice is crucial so that criminal law does not merely function as a punitive tool but serves as a genuine healing instrument that restores victims' dignity.*

**Keywords:** *Crime; Justice; Restitution; Restorative; Retributive.*

### **1. Introduction**

Human Trafficking Crime (TPPO) is a form of modern-day slavery that is exceptionally cruel and clearly degrades human dignity and worth to its lowest point. Within the vortex of this organized

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crime, human beings are no longer viewed as creatures of God endowed with reason and inalienable rights; instead, they are reduced to mere commodities or economic goods that can be endlessly exploited for financial gain. Victims of human trafficking, the majority of whom are women and children from economically vulnerable groups, are often lured by trafficking syndicates through promises of high-paying jobs and more prosperous lives in cities or abroad. In reality, however, once they are removed from their original environment, they are forcibly trapped in a vicious cycle of forced labor, sexual exploitation, confinement, and debt bondage without end. The suffering experienced by these victims is highly complex and multidimensional; they not only lose property and physical freedom but also endure bodily harm, deep psychological trauma, and the burden of social stigma when they are eventually rescued and return to their communities.

he humanitarian tragedy suffered by victims of human trafficking fundamentally contradicts the noble ideals upon which the state was founded. Our Constitution explicitly mandates absolute protection for every citizen, as beautifully and comprehensively stated in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia. This paragraph affirms that the purpose of establishing the Government of Indonesia is “to protect all the people of Indonesia and the entire homeland of Indonesia, to promote the general welfare, to educate the life of the nation, and to participate in establishing a world order based on freedom, lasting peace, and social justice.” This sacred mandate implies that the state bears a non-negotiable constitutional obligation to protect its people from all forms of oppression, including modern slavery. Whenever even a single citizen is stripped of freedom and turned into an object of trade, the very purpose of the state is undermined. Therefore, strong legal intervention that prioritizes victim protection becomes an absolute necessity.

Although Indonesia has responded to this threat by establishing a set of firm legal regulations to combat human trafficking, the reality of law enforcement practices remains heavily dominated by the classical paradigm of punishment, namely the retributive paradigm. This paradigm is rooted in the philosophy of “an eye for an eye,” where the primary and ultimate goal of the criminal justice system is to repay wrongdoing by inflicting proportional suffering upon the offender, generally in the form of imprisonment. From this formalistic retributive perspective, the state often considers its duty fulfilled and justice served once the judge’s gavel falls and traffickers or syndicate leaders are sentenced to lengthy prison terms. Such an approach turns the judicial process into a purely punitive mechanism focused on offenders (offender-oriented), with success measured solely by the severity of the deprivation of liberty imposed upon criminals.

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Unfortunately, the dominance of this offender-centered approach often results in the systematic neglect of those who suffer the most—the victims themselves. While the state is occupied with punishing offenders within correctional institutions, the fate of victims whose bodies and minds have been shattered by brutal exploitation tends to be forgotten and marginalized. They are left to struggle alone to cover medical expenses, bear the costs of psychological therapy to heal trauma, and find ways to rebuild their lives after losing their future and livelihoods. A purely retributive justice system fails to recognize that victims' suffering does not automatically end when offenders are imprisoned; poverty, shame, and psychological damage continue to haunt victims like a life sentence that is profoundly unjust.

As civilization advances, legal scholarship develops, and global human rights discourse strengthens, legal thinkers and humanitarian advocates have increasingly recognized that the retributive paradigm possesses fatal flaws when addressing crimes with profound human dimensions such as human trafficking. Imprisoning offenders may provide moral satisfaction to society and is expected to generate a deterrent effect. However, such punishment has no magical power to restore victims' futures, heal their physical injuries, or compensate for the economic losses they suffered during exploitation and confinement. This critical awareness has given rise to a sharp challenge: the criminal justice system must no longer merely satisfy the state's desire for retribution but must begin to focus on tangible ways to restore those whose lives have been devastated by crime.

In response to these challenges, criticisms, and the wide gap between the ideal norms of human rights protection and the realities of law enforcement, Indonesia's criminal justice system is currently undergoing a fundamental and revolutionary reconstruction. The enactment of Law Number 1 of 2023 concerning the Criminal Code (the New KUHP) marks a crucial milestone in the shift of the national punishment paradigm. The New KUHP explicitly and boldly abandons the purely retributive nature of the colonial criminal law legacy, which functioned primarily as a mechanism of revenge. Instead, this new codification of national criminal law officially adopts restorative justice and rehabilitative justice as its principal foundations and philosophies of sentencing. This transformation reflects the maturity of national law, which now views punishment as a means of improvement rather than merely a tool for destroying offenders.

This shift toward a restorative justice paradigm represents a much-needed and highly anticipated development for handling complex cases such as human trafficking. Restorative justice offers a revolutionary perspective by no longer viewing crime merely as an abstract violation of state authority or legal provisions. Instead, it regards crime as a tragic event that

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damages human relationships, violates personal rights, and causes real and measurable harm to victims. Consequently, the primary focus of criminal proceedings is no longer solely the punishment of offenders in the name of the state, but rather constructive efforts to restore the balance of victims' lives that has been shattered by crime.

The most concrete and essential manifestation of restorative justice in addressing human trafficking cases is the fulfillment of restitution rights, namely financial compensation paid directly by offenders to victims. The fulfillment of restitution rights is not merely ordinary material compensation; it symbolizes recognition by the state and the legal system of the suffering endured by victims. Restitution serves as a logical healing mechanism. The funds can be used by victims to cover urgent medical treatment, attend counseling sessions to recover from psychological trauma, compensate for lost income during exploitation, and provide initial capital for rebuilding independent lives within society. Thus, restitution restores the autonomy and dignity that trafficking syndicates forcibly stripped from victims.

Although the concept of restorative justice and restitution appears ideal in theory, its implementation in practice faces a range of significant structural challenges. One of the greatest obstacles lies in the capacity of law enforcement authorities to conduct asset tracing and confiscate the assets of trafficking syndicates, which are often concealed through sophisticated money laundering schemes. Frequently, offenders or recruitment agents claim bankruptcy or hide their wealth, so even when judges order restitution amounting to billions of rupiah, such decisions become empty promises due to the absence of executable assets. Therefore, realizing restorative justice requires extraordinary synergy and progressiveness among investigators, prosecutors, and judges to continuously pursue the assets of corporations and intellectual masterminds behind trafficking syndicates, ensuring that victims' compensation rights are genuinely fulfilled.

Ultimately, this study aims to thoroughly and systematically examine the urgency of this legal paradigm shift within the context of human trafficking cases in Indonesia. Through this paper, it is demonstrated how restorative justice can be implemented concretely and comprehensively, particularly through the fulfillment of restitution rights in a fair and uncompromising manner. It is hoped that criminal law reform through the New KUHP will permanently transform the face of our justice system. Law must no longer function solely as a sharp sword for punishing offenders; it must also become an effective healing instrument for suffering victims. Only in this way can human dignity truly be restored, and the noble aspiration of "protecting all the people of Indonesia," proclaimed since independence, become a reality in everyday life.

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## **2. Research Methods**

This study employs a normative legal research method, often referred to as doctrinal legal research. This method focuses on legal principles, theories, and written statutory regulations applicable in Indonesia. Two primary approaches are utilized:

a) Statutory Approach: Used to analyze the synchronization and harmonization between Law Number 21 of 2007 concerning the Eradication of Human Trafficking Crimes (TPPO) and the spirit of criminal law reform embodied in Law Number 1 of 2023 concerning the Criminal Code (the New KUHP).

b) Conceptual Approach: Applied to philosophically and theoretically examine the concept of restorative justice vis-à-vis the retributive punishment paradigm.

All data used in this article are secondary data collected through library research methods. The legal materials utilized in this study are classified as follows:

### **1. Primary Legal Materials**

Primary legal materials consist of authoritative and legally binding regulatory instruments, including:

- a. The 1945 Constitution of the Republic of Indonesia (UUD 1945);
- b. Law Number 1 of 2023 concerning the Criminal Code (KUHP);
- c. Law Number 21 of 2007 concerning the Eradication of Human Trafficking Crimes;
- d. Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, as amended by Law Number 31 of 2014; and
- e. Relevant implementing regulations, such as Supreme Court Regulation (PERMA) Number 1 of 2022 concerning Procedures for the Settlement of Applications and the Granting of Restitution and Compensation to Victims of Criminal Offenses.

### **2. Secondary Legal Materials**

Secondary legal materials consist of literature that provides explanations and analyses of primary legal materials. These materials include criminal law and victimology textbooks, relevant scientific journals, and legal doctrines from scholars concerning human trafficking and the restoration of victims' rights.

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The legal data collected through library research were subsequently processed, classified, and analyzed using a descriptive-qualitative approach. This analytical process aims to produce legal arguments that are sharp, logical, and accessible in addressing the urgency of shifting the punishment paradigm for offenders and enhancing protection for victims of human trafficking in Indonesia.

### **3. Results and Discussion**

#### **3.1. Weaknesses of the Retributive Paradigm in Handling Victims of Human Trafficking Crimes (TPPO)**

Over the past several decades, the direction and pattern of law enforcement in cases of Human Trafficking Crimes (TPPO) in Indonesia have been almost entirely based on a rigid retributive logic. This classical punishment paradigm views criminal law solely as a means of state retaliation against lawbreakers. Such retaliation is manifested through sanctions that emphasize the deprivation of physical liberty, namely imprisonment. This highly legalistic and formalistic perspective has become deeply rooted in the criminal justice system, to the extent that the success of law enforcement is measured only by how severe a sentence a judge imposes on the defendant in court.

Within this punishment-oriented system, all elements of law enforcement from the police during the investigation stage, prosecutors during prosecution, to judges during trial direct all their energy, time, and resources toward a single primary objective: proving the offender's guilt and ensuring the maximum possible prison sentence. The mindset of state officials becomes confined to fulfilling the elements of criminal offenses as written in statutory provisions. This excessive focus on the offender (offender-oriented) automatically consumes the justice system's attention, causing it to overlook other humanitarian aspects affected by the crime.

Unfortunately, this overly glorified retributive paradigm leaves a glaring gap in victim protection. While the machinery of justice operates and focuses entirely on punishing offenders, victims gradually become marginalized from the very essence of justice itself. The system fails to recognize that in extraordinary crimes such as human trafficking, the most extensive and devastating suffering is borne by the victims, not by the state. This systemic failure makes criminal law appear as a stage occupied solely by a battle between prosecutors representing the state and defendants, while the actual victims are neglected.

The vulnerable position of victims is further worsened by the criminal justice system's treatment, which often reduces their humanity. Victims of trafficking exploitation are frequently

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treated merely as “living evidence” or supplementary witnesses used to strengthen the prosecutor’s case and aggravate the offender’s punishment in court. They are summoned to courtrooms and compelled to relive and recount traumatic experiences of confinement or exploitation solely to ensure the perpetrator cannot escape legal consequences, without receiving equivalent protection or support for their psychological recovery.

The most ironic and heartbreaking tragedy occurs after the criminal justice process officially concludes. Once the trial ends, the gavel falls, and the offender is imprisoned, victims are often left without any further assistance. They are effectively sent home carrying nothing but painful memories and deep trauma. The legal system considers its task complete after imposing imprisonment, without regard for how victims are expected to rebuild lives that have been physically, mentally, and financially devastated.

The most fatal and structural weakness of the retributive paradigm is evident in the failure to enforce restitution rights, namely the obligation of offenders to provide financial compensation to victims. In practice, current criminal procedural law still implicitly allows restitution obligations amounting to hundreds of millions of rupiah to be substituted with additional imprisonment (subsidiary punishment) if offenders claim in court that they are “unable” to pay. This provision, which offers an alternative to compensation, constitutes a substantive defect that directly and harshly sacrifices victims’ futures for the sake of formal procedures.

In practice, this regulatory weakness is skillfully exploited by human trafficking syndicates. These offenders are economically rational actors; they often prefer serving a few additional months in prison rather than surrendering their assets to victims. By concealing criminal proceeds and accepting slightly longer imprisonment, offenders manage to preserve their wealth, while victims are left crying out for rights that effectively disappear.

As a result of such manipulation and legal defects, judicial decisions granting restitution to victims frequently become nothing more than “paper victories.” The absence of a strong, agile, and independent enforcement mechanism for confiscating offenders’ assets means that victims’ rights to recovery are never realized. Yet the most basic logic of justice demands otherwise: additional prison time for offenders cannot be used by victims to pay hospital bills, fund long-term psychological therapy, or repay debts incurred as a result of the cruel deception perpetrated by trafficking agents.

### **3.2. Restorative Justice as a Philosophy of Modern Sentencing**

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Recognizing the flaws, dead ends, and injustices produced by the retributive paradigm, the landscape of Indonesian criminal law has begun moving toward a more humane direction. This shift is marked by the adoption of Restorative Justice into the fabric of national law enforcement. This reform is not an instant response but rather the product of long reflection by legal scholars, academics, and human rights advocates who observed that a criminal justice system relying solely on imprisonment has failed to heal the social wounds caused by crime, especially crimes involving human dignity.

However, amid this transition, it is important to correct the misconception that often oversimplifies Restorative Justice. Contrary to the narrow understanding that equates restorative justice merely with “reconciliation” at a police station that results in offenders avoiding punishment, the concept carries a far different weight. In handling extraordinary, serious, and organized crimes such as human trafficking, restorative justice is not intended to eliminate criminal sanctions against syndicates. Instead, it possesses a much deeper, more comprehensive, and legally binding philosophical meaning.

The core essence of restorative justice lies in its commitment to placing victims at the center of the justice process (victim-oriented justice). Under this approach, victims are no longer marginalized as passive objects or mere evidentiary tools serving state interests. Instead, their voices, needs, and suffering become the primary foundation upon which law enforcement officials determine how cases should be resolved. Restorative justice demands that the justice system listen to victims’ cries and respond with tangible instruments of recovery.

A direct consequence of placing victims at the center of justice is that the entire system must be oriented toward restoring the losses they have suffered to the greatest extent possible. Physical injuries resulting from abuse, psychological harm caused by trauma and confinement, and economic losses in the form of unpaid wages and debt burdens must all be carefully calculated and restored. Justice is no longer measured by how long offenders suffer in prison, but by how effectively the legal system can restore the dignity of victims whose humanity has been violated.

This fundamental shift toward Restorative Justice is actually highly consistent with Indonesia’s legal ideals of humanizing humanity. The concept aligns with the theory of Dignified Justice (Keadilan Bermartabat), a legal philosophy that holds that law exists to uphold human dignity. Within the framework of Dignified Justice, every legal product and law enforcement action must be devoted to elevating human dignity, protecting vulnerable individuals, and preventing exploitation by the powerful. Therefore, neglecting victim recovery clearly contradicts the essence of dignified law.

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Through this socially oriented conception of justice, the resolution of criminal cases focuses on restoring the balance disrupted within society. Human trafficking does not merely injure individuals; it tears apart social cohesion and damages communal humanitarian values. Consequently, the law is required to work diligently to repair these fractured relationships by ensuring that offenders bear direct responsibility for the harm they have caused. Merely imposing imprisonment without providing real recovery for victims is viewed as an incomplete and morally defective form of justice.

This transformative momentum ultimately received strong normative legitimacy through the enactment of Law Number 1 of 2023 concerning the New Criminal Code (KUHP Baru). The New Criminal Code breaks away from colonial traditions by explicitly emphasizing that the purpose of punishment is no longer to degrade human dignity or merely inflict retaliatory suffering. Instead, the new sentencing philosophy prioritizes conflict resolution, restoration of balance, creation of a sense of security, and rehabilitation as guiding principles for future criminal law enforcement.

Under this new face of criminal law, the state assumes a more noble and comprehensive role. The state is present not only as the holder of the sharp sword of justice used to punish offenders, but also as a protective shield that actively heals the wounds of its citizens. Restorative justice ensures that the state's presence in the courtroom is felt not only by convicted offenders, but more importantly by victims who finally obtain justice through the restoration of their rights and renewed hope for a dignified life.

### **3.3. Optimizing Restitution Rights as a Concrete Manifestation of Restorative Justice**

To prevent restorative justice in human trafficking cases from deteriorating into mere rhetoric and courtroom slogans, the concept must be translated into concrete, firm, and measurable action. The only way to bring this philosophy into real judicial practice is through the fulfillment of victims' restitution rights. Without the actual realization of restitution payments, restorative justice remains an attractive academic theory but becomes ineffective when confronted with the real suffering experienced by victims.

In the context of modern criminal law, restitution is not merely a supplementary element of a judgment but an essential instrument reflecting the presence of substantive justice. Restitution grants victims the right to comprehensive and dignified recovery, covering both material losses such as lost income and medical expenses, and psychological harm resulting from the deprivation of their liberty. Payment of restitution directly from offenders to victims constitutes

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the clearest legal acknowledgment that offenders have damaged victims' lives and are obligated to repair that damage using their own resources.

To ensure that restitution can truly be realized, the state and its law enforcement institutions must no longer display weakness or provide any leniency whatsoever to trafficking syndicates. Legal loopholes allowing restitution obligations to be replaced by additional imprisonment must be completely closed. A compromising attitude toward crimes against humanity only strengthens trafficking mafias. The state must exercise its full authority and use all available investigative tools to uncover offenders' financial networks so that not a single rupiah derived from criminal activity remains in the hands of trafficking syndicates.

Future criminal procedural reforms should systematically strengthen the authority of law enforcement agencies to conduct aggressive asset tracing. The ability to track financial flows and hidden wealth must be integrated and implemented from the very first moment an investigation begins, rather than waiting until a final court judgment is issued. Early confiscation of offenders' assets is crucial to prevent money laundering, concealment of assets through third parties, or transfers of funds abroad tactics commonly employed by trafficking kingpins.

Through such progressive and courageous legal reconstruction, all assets belonging to offenders including luxury properties, land, fleets of operational vehicles, investments, and balances in various bank accounts—should automatically be frozen and immediately seized once a suspect designation is issued. Rapid and comprehensive seizure serves not only as evidence of criminal conduct but specifically as a guarantee of available funds for restitution payments. In this way, when judges order restitution, the state already possesses the offender's assets and can directly execute the payment to victims.

Furthermore, to perfect the architecture of victim protection, the state should establish a structural safety-net mechanism known as a Trust Fund or Victim Assistance Fund. Such a fund is urgently needed because, in many organized crime cases, offenders' assets may be difficult to trace, or the operational perpetrators who are arrested may genuinely lack sufficient wealth. This Trust Fund could be financed through state budgets, criminal fines, confiscated criminal assets, and grants, and managed specifically to advance compensation for victims of serious crimes.

When an offender is genuinely proven to be impoverished or has successfully concealed assets to the point that enforcement efforts reach a dead end, the state must not wash its hands of responsibility and leave victims empty-handed. This is the true test of restorative justice. Through the institution managing the Trust Fund, the state must assume this humanitarian

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responsibility by paying the full amount of restitution owed to victims in advance. Such upfront compensation ensures that victims gain immediate access to economic recovery without having to endure the uncertainty of prolonged asset-recovery processes.

After victims' rights have been fully satisfied through the Trust Fund, the legal process does not simply end. The state then applies the principle of subrogation, assuming the restitution claim previously held by victims. Equipped with the full force of its law enforcement mechanisms, the state pursues, tracks, and recovers offenders' assets wherever and whenever they are found in order to replenish the Trust Fund. This represents the most complete and concrete realization of restorative justice that truly humanizes humanity—a system in which victims' economic recovery is guaranteed through the coercive power of the state, transforming law from mere written text into a living force that restores the lives and hopes of its people.

#### **4. Conclusion**

The handling of Human Trafficking Crimes (TPPO), which has long been dominated by a retributive punishment paradigm, has proven to possess structural deficiencies in protecting human rights. A justice system that is overly centered on punishment and imprisonment of offenders (\*offender-oriented\*) has marginalized the position of victims. This weakness is most evident in the failure to enforce restitution rights, where legal loopholes allowing offenders to substitute financial compensation obligations with additional imprisonment (subsidiary punishment) have reduced justice for victims to nothing more than a paper victory that provides no meaningful contribution to the restoration of their lives. With the enactment of the New Criminal Code (KUHP), Indonesia's criminal justice system is required to undergo a fundamental transformation toward a restorative justice paradigm grounded in the values of the Dignified Justice Theory (\*Keadilan Bermartabat\*). This paradigm demands a shift in judicial orientation toward \*victim-oriented justice\*. Within this framework, the primary objective of law enforcement is no longer merely state retribution but rather concrete efforts to restore social balance, return autonomy to victims, and heal the physical, psychological, and economic harms caused by this form of modern slavery. To ensure that restorative justice does not remain merely a theoretical slogan, its implementation requires robust and proactive procedural legal instruments. The state must strengthen the authority of law enforcement agencies to conduct asset tracing and asset confiscation of human trafficking syndicates from the earliest stages of investigation. Furthermore, the state must institutionalize a \*Trust Fund\* (Victim Assistance Fund) as a structural safety net. Through this mechanism, the state advances restitution payments to victims when offenders conceal their assets, and subsequently exercises its right of subrogation to pursue and recover the offenders' assets until full repayment is achieved. Only

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through such direct state intervention can the law truly humanize individuals and fully restore the dignity of victims.

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