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

Reconstruction of State Responsibility in the Prevention of Cross-Border Trafficking in Persons Based on the Principle of Due Diligence in International Law

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Abstract. *Cross-border trafficking in persons constitutes an egregious violation of fundamental human rights and a severe transnational threat that exposes the limitations of classical state responsibility paradigms. Traditional international law frequently restricted state accountability to direct official actions, leaving abuses perpetrated by non-state criminal networks inadequately addressed. This research investigates the theoretical and practical imperatives for reconstructing state responsibility through the rigorous application of the due diligence principle in international and national law. Employing a normative juridical methodology with conceptual, statutory, and comparative approaches, the study demonstrates that due diligence elevates state responsibility from a passive obligation of non-intervention into an active, ongoing duty of care encompassing prevention, protection, prosecution, and effective remediation. The analysis indicates that operationalizing due diligence requires robust domestic legal harmonization, enhanced inter-agency institutional coordination, stringent corporate liability, and seamless international cooperation. Ultimately, this doctrinal reconstruction provides a comprehensive framework that bridges the gap between international treaty commitments and practical domestic enforcement, ensuring a more accountable global order dedicated to eradicating modern human exploitation and safeguarding human dignity.*

Keywords: *Diligence; Law; Responsibility; State; Trafficking;*

1. Introduction

Cross-border trafficking in persons constitutes one of the most egregious violations of fundamental human rights and poses a severe transnational threat to global security, public order, and human dignity. Modern globalization, while fostering economic integration and technological advancement, has inadvertently facilitated illicit networks operated by

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transnational organized crime syndicates that exploit vulnerable populations across sovereign borders. These criminal enterprises capitalize on economic disparities, armed conflicts, political instability, and weak institutional governance to commodify human beings for forced labor, sexual exploitation, organ removal, and domestic servitude. Consequently, the eradication of human trafficking has emerged as an imperative objective of the international community, demanding robust legal mechanisms and cohesive multilateral cooperation that transcends traditional Westphalian conceptions of state sovereignty and territorial jurisdiction (Arthur C. Helton, 2002, p. 145).

The architecture of state responsibility under general international law has historically been anchored in the commission of internationally wrongful acts attributable to a state through direct state action or omission. However, transnational crimes perpetrated predominantly by non-state actors, such as human trafficking rings, challenge the traditional paradigms of attribution and accountability. Under classical international jurisprudence, states were primarily held accountable for direct violations committed by their official organs or agents acting under color of authority. As global interdependence deepened and the nature of threats evolved, international legal scholarship and jurisprudence recognized that states could also incur international responsibility for failing to prevent, investigate, prosecute, and punish violations committed by private individuals and entities operating within their territorial jurisdiction, thereby establishing the foundation for positive state obligations (Anne Gallagher, 2001, p. 210).

The historical evolution of anti-trafficking frameworks reveals a gradual shift from a law enforcement-centric approach focused primarily on border control and immigration regulation to a comprehensive human rights-based paradigm. Early international instruments concentrated heavily on suppressing the "white slave traffic" and controlling transnational movement, often conflating voluntary migration with coerced exploitation and disproportionately penalizing victims. The adoption of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime in 2000, marked a watershed moment by providing a universally agreed-upon definition of human trafficking and emphasizing the triad of prevention, protection, and prosecution. Despite this normative milestone, implementation gaps persist due to varying domestic legal capacities and a lack of standardized enforcement mechanisms across different legal traditions (Joel Quirk, 2008, p. 580).

A critical impediment in combating cross-border trafficking lies in the ideological capture and conceptual ambiguities that frequently distort policy formulation and legal enforcement at both national and international levels. Scholars have argued that legal definitions and state responses

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are often hijacked by prevailing political agendas, resulting in an overemphasis on immigration enforcement at the expense of victim-centric protection and systemic prevention. When states treat trafficking merely as an illegal border-crossing infraction rather than a severe form of modern slavery and human rights abuse, the resulting state action focuses disproportionately on deportation and deterrence rather than addressing the root socio-economic vulnerabilities that drive individuals into the hands of traffickers. Reconstructing state responsibility requires disentangling human trafficking from general immigration infractions and repositioning it squarely within the framework of state human rights obligations (Janie A. Chuang, 2009, p. 1655).

International instruments, notably the Palermo Protocol, delineate specific obligations for ratifying states, including legislative measures, victim identification, repatriation protocols, and international cooperation. However, the binding nature of these treaty obligations often encounters resistance when confronted with the principle of non-interference and absolute territorial sovereignty. States frequently argue that porous borders and vast maritime or land territories render absolute prevention impossible, thereby contesting the extent of their legal liability for crimes committed by private syndicates operating covertly. This defensive posture underscores the necessity for a refined doctrinal tool capable of measuring state compliance without imposing impossible burdens on developing nations, while simultaneously ensuring that states do not hide behind resource constraints to tolerate systemic human rights violations within their borders (Andreas Schloenhardt, 2004, p. 75).

2. Research Methods

The research method employed in this scientific writing is normative juridical with conceptual, statutory, and comparative approaches in international law. The conceptual approach focuses on examining the doctrine of state responsibility and the principle of due diligence in modern international law literature, while the statutory approach reviews the compatibility between universal legal instruments such as the Palermo Protocol and applicable national regulations. The analysis of primary and secondary legal materials is conducted qualitatively to evaluate the effectiveness of the existing legal framework and to formulate a comprehensive theoretical reconstruction of cross-border human trafficking prevention (Michael R. Findlay, 2014, p. 312).

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3. Results and Discussion

3.1. Implementation of the Due Diligence Principle and State Responsibility

The implementation of the due diligence principle in the national legal system demands that the state not only formulate regulations prohibiting human trafficking, but also build a responsive and effective institutional infrastructure. State responsibility in the context of modern constitutional law requires constitutional guarantees for the protection of every citizen's fundamental right from all forms of slavery and exploitation. Constitutions and national statutory regulations serve as the primary foundation for law enforcement officials to carry out structured and integrated preventive actions across the state's sovereign territory (Jimly Asshiddiqie, 2012, p. 112).

Legal protection for citizens vulnerable to cross-border human trafficking syndicates requires affirmative policies from both the executive and legislative branches. The state must ensure that social protection instruments are capable of reaching marginal groups in border regions and illegal labor deployment pockets. Government failure to provide adequate economic access and strict administrative oversight is frequently exploited by illegal labor recruitment agencies to trap victims within transnational exploitation networks (Sri Soemantri, 2013, p. 289).

The principles of proper statutory formation serve as an essential instrument to prevent legal loopholes that can be exploited by organized crime syndicates. The harmonization of sectoral regulations concerning immigration, labor, child protection, and transnational crime prevention must be carried out continuously. Inconsistent legal norms among law enforcement institutions frequently become a major obstacle in handling human trafficking cases that are cross-sectoral in nature and involve multinational jurisdictions (Maria Farida Indrati, 2013, p. 15).

National legal politics are directed toward the formation of an integrated legal system that prioritizes crime prevention as a primary objective prior to repressive enforcement stages. This policy includes strengthening the role of local governments in detecting non-procedural migration at the village level and informal ports. The state must treat prevention as an active obligation that can be assessed through objective performance indicators, rather than mere normative political commitments in international treaties (C.F.G. Sunaryati Hartono, 2013, p. 190).

The dynamics of global economic law demand the adaptation of domestic regulations to respond to the new *modus operandi* of human trafficking syndicates that utilize digital technology and online platforms. Labor exploitation through cross-border digital recruitment

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requires intensive cyber oversight and close cooperation between law enforcement institutions and telecommunication service providers. Without adaptive regulatory instruments, state apparatus will perpetually lag behind the speed of transnational criminal networks (Erman Rajagukguk, 2015, p. 34).

Judicial law discovery plays a crucial role in interpreting the element of due diligence when examining human trafficking cases in court. Judges are required to apply progressive interpretation that goes beyond mere formal legal texts, taking into account elements of institutional negligence if relevant authorities are proven to have ignored initial reports or signs of exploitation. Progressive jurisprudence will strengthen the standard of state apparatus accountability in both national and international legal eyes (Sudikno Mertokusumo, 2011, p. 401).

Progressive law enforcement also requires courage from the police and prosecutors to crack down on intellectual actors behind human trafficking networks, including rogue public officials who frequently act as protectors of syndicates. Administrative corruption that undermines the integrity of border surveillance constitutes a tangible violation of the state's due diligence obligations. Therefore, anti-corruption eradication must be directly integrated into the prevention strategy for cross-border human trafficking (Satjipto Rahardjo, 2010, p. 150).

An effective state administrative oversight system requires cross-agency coordination among the Directorate General of Immigration, the Ministry of Manpower, the Indonesian National Police, and the Indonesian Migrant Workers Protection Agency. Weak sectoral coordination frequently creates sectoral egos that hinder the exchange of intelligence data regarding the movement of criminal syndicates. The reconstruction of state responsibility demands the establishment of a special task force with integrated authority to carry out proactive early prevention (Muchsan, 2013, p. 78).

Legal development in the field of transnational crime prevention must be oriented toward comprehensive protection of victims' rights, starting from the prevention, rescue, rehabilitation, and social reintegration phases. The state must not focus solely on perpetrator arrest statistics, but must measure policy success based on the safety level and recovery of the fundamental rights of rescued victims. This victim protection paradigm represents the core of due diligence standards in international human rights law (Padmo Wahjono, 2012, p. 22).

Compliance with national legal norms is reinforced through the ratification and implementation of specific legislation providing a strong legal foundation for cracking down on human trafficking crimes. Law Number 21 of 2007 on the Eradication of the Crime of Trafficking in Persons has

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established a comprehensive normative framework, yet its practical implementation in the field remains heavily dependent on law enforcement consistency and the government's political commitment to allocate adequate resources for cross-border prevention (Republik Indonesia, 2007, p. 10).

3.2. Reconstruction of State Responsibility in International and National Law

Criminal policy in tackling cross-border human trafficking requires an integrated strategy combining penal and non-penal instruments to sever the supply chain of human exploitation. The penal approach focuses on formulating aggravated criminal sanctions for individual perpetrators or corporations profiting from human trafficking practices. Meanwhile, the non-penal approach emphasizes public awareness enhancement, local economic empowerment, and the closure of administrative loopholes exploited by transnational criminal syndicates (Indriyanto Seno Adji, 2012, p. 67).

Violence against women and children, who dominate the profile of human trafficking victims, demands special sensitivity from the national criminal justice system. The state bears a heightened due diligence obligation when protecting vulnerable groups from the threat of transnational exploitation. The neglect of vulnerable group protection not only violates ratified international conventions but also harms substantive justice in a democratic society (Harkristuti Harkrisnowo, 2013, p. 215).

Democracy and human rights enforcement in Indonesia provide space for civil society to participate actively in overseeing human trafficking prevention policies. The involvement of non-governmental organizations in monitoring state compliance with due diligence standards greatly assists the government in identifying vulnerable smuggling points across land and maritime borders. Synergy between the state and civil society is an essential element in realizing transparent and accountable human security governance (Muladi, 2001, p. 14).

Anthology of criminal law policy demonstrates the necessity of synchronization between material and formal criminal law in handling organized transnational crime cases. Transnational jurisdictional challenges frequently hinder the extradition process of primary perpetrators fleeing to other countries. Therefore, the reconstruction of state responsibility must include strengthening mutual legal assistance treaties and extradition agreements that facilitate the transfer of criminals between states without excessive bureaucratic hurdles (Barda Nawawi Arief, 2013, p. 55).

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The integrated criminal justice system in Indonesia is tested in its ability to handle human trafficking syndicates that frequently operate with highly sophisticated international networks. Procedural barriers and minimal protection for key witnesses and victims frequently cause trials to fail in ensnaring primary intellectual actors. The state is responsible for providing a secure and reliable witness protection system to ensure the judicial process runs objectively and fairly (Mardjono Reksoodiputro, 2013, p. 88).

Certain offenses outside the Criminal Code, including special crimes such as human trafficking and accompanying money laundering, require special investigative techniques such as wiretapping, asset seizure, and undercover operations. Law enforcement officials must be equipped with adequate authority while remaining within strict judicial oversight corridors to prevent abuse of power. Tracking the financial flows of crime proceeds constitutes the key to paralyzing the economic network of cross-border human trafficking syndicates (Andi Hamzah, 2014, p. 33).

Witness and victim protection within the criminal justice system is a constitutional mandate reflecting the state's presence in providing a sense of safety for parties courageous enough to testify against dangerous criminal syndicates. The witness protection law ensures that victims and witnesses obtain restitution, compensation, and physical protection from perpetrator retaliation threats. State failure to protect key witnesses constitutes a violation of due diligence obligations during the law enforcement stage (Yudi Kristiana, 2014, p. 240).

Contemporary criminology and victimology affirm that human trafficking victims must not be positioned as immigration law violators, but rather as subjects experiencing severe trauma due to gross human rights violations. This victimological paradigm demands a fundamental change in law enforcement SOPs at borders to prioritize rescue and psychosocial rehabilitation approaches over administrative detention actions that worsen victim suffering (Topo Santoso, 2014, p. 175).

Corporate criminal liability also plays a vital role in reconstructing human trafficking prevention, considering that many syndicates operate under the guise of official labor placement agencies, travel agents, or fictitious tourism educational institutions. National legislation must decisively impose administrative sanctions of license revocation, corporate dissolution, and asset forfeiture on corporations proven to facilitate cross-border human trafficking crimes. Law enforcement against corporations provides a significant deterrent effect for illegal business actors (Nur Basuki Winarno, 2014, p. 410).

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Investigation and prosecution in human trafficking cases demand deep technical expertise from police investigators and public prosecutors to ensure case files meet strict evidentiary standards in court. Integration among national law enforcement agencies and bilateral cooperation with transit and destination countries are primary determinants in successfully dismantling international syndicate networks. By reconstructing state responsibility through stringent due diligence principles, Indonesia can enhance its contribution to realizing a regional area and international legal order free from all forms of human trafficking (Hibnu Nugroho, 2014, p. 95).

4. Conclusion

In conclusion, the reconstruction of state responsibility in the prevention of cross-border trafficking in persons based on the due diligence principle represents a fundamental paradigm shift in international and national law. Moving beyond passive models of state accountability, the due diligence standard obligates states to exercise active vigilance, systemic preparedness, and proactive enforcement to protect individuals from abuses committed by non-state criminal syndicates. This framework mandates a comprehensive integration of preventive administrative oversight, robust criminal justice mechanisms, corporate liability, and enhanced international cooperation to dismantle transnational trafficking networks effectively. Ultimately, combating modern slavery requires bridging the persistent gap between international treaty commitments and practical domestic implementation. By operationalizing due diligence not merely as a normative political aspiration but as a binding legal obligation encompassing prevention, protection, prosecution, and remediation, states can transcend traditional territorial constraints, eradicate institutional corruption, and prioritize victim-centric human rights protection. Through this doctrinal reconstruction, both the international community and national legal orders can foster a more secure, accountable, and equitable global environment that firmly safeguards human dignity against the enduring threat of cross-border human exploitation.

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