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

Procedural Law Breakthroughs in Facilitating Access to Justice and Evidence for Women Victims of Exploitation

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Abstract. *The exploitation of women within the framework of the Crime of Human Trafficking (TPPO) often leaves restitution rights unfulfilled through criminal justice mechanisms, thereby encouraging advocacy efforts to shift toward civil lawsuits (Tort/Unlawful Acts). However, these efforts are hindered by the rigidity of classical Civil Procedural Law (HIR/RBg), which prioritizes documentary evidence and the principle of actori incumbit probatio, greatly disadvantaging victims who lack administrative documents. This study aims to examine the urgency and implementation of modern civil procedural law innovations to ensure access to justice and compensation recovery for women victims of exploitation. This Research Using a normative legal research method with a statutory approach and a conceptual approach, the findings indicate that litigation deadlock can be overcome through three major breakthroughs. First, expanding the recognition of electronic evidence under the Electronic Information and Transactions Law (ITE Law) to legitimize digital records as valid evidence equivalent to paper documents. Second, implementing a shifting burden of proof by progressive judges to balance the unequal power relations between victims and labor recruitment corporations. Third, optimizing online court systems (e-litigation) and remote hearings (teleconferencing) to reduce litigation costs and protect victims from the threat of revictimization. This study concludes that comprehensive modernization of civil justice instruments is essential to dismantle the immunity of exploitation syndicates, restore victims' financial rights, and realize dignified justice.*

Keywords: *Civil Lawsuits; Exploitation of Women; Electronic Evidence; E-Litigation; Shifting Burden of Proof.*

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1. Introduction

The Unitary State of the Republic of Indonesia was founded upon philosophical principles that highly uphold the values of humanity and justice, as embodied in Pancasila and the 1945 Constitution of the Republic of Indonesia. The constitutional mandate imperatively requires the state to provide absolute protection for the dignity, worth, and human rights of every citizen without discrimination. However, in a paradoxical reality, crimes of exploitation against women whether in the form of labor exploitation, modern slavery, or sexual exploitation continue to occur and have become one of the gravest crimes against humanity, leaving profound precedents and wounds. The act of treating human beings, especially women, as commodities to be traded for the economic greed of others constitutes the clearest violation of the concept of Dignified Justice, which should animate the national legal system.

The occurrence of this humanitarian tragedy cannot be separated from the structural vulnerabilities that constrain women's lives across various layers of society. In Indonesia's social and economic reality, women are often burdened by systemic poverty, lack of adequate access to education, and severely limited employment opportunities in their regions of origin. This condition of desperation makes them highly vulnerable and easily tempted by the persuasion and promises of labor recruitment agents. Promises of high income, better living facilities in metropolitan cities or abroad, and hopes of improving their families' welfare often weaken victims' critical judgment. In reality, these promises serve merely as manipulative disguises to trap these unfortunate women within the deadly networks of human trafficking syndicates.

At the end of a journey that was promised as a path out of poverty, these women instead encounter the horrifying reality of slavery. In illegal shelters or distant foreign lands, their freedom and bodily autonomy are forcibly taken away. They are compelled to work far beyond the limits of human tolerance, under inhumane conditions, without wages, and trapped in fictitious debt bondage. Even more tragically, many experience physical torture, sexual abuse, and death threats. This highly organized crime not only damages victims physically and mentally, leaving long-lasting trauma, but also completely destroys the economic stability and hopes of the families who initially depended on the promised income.

In seeking a glimmer of justice, most women survivors of exploitation have thus far relied solely on the conventional criminal justice system. Their initial expectation is that state intervention through criminal law will both imprison perpetrators to the fullest extent and compel trafficking syndicates to provide full compensation (restitution). Unfortunately, this offender-oriented and retributive paradigm often reaches a dead end and leaves victims

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deeply disappointed. The execution of restitution orders in criminal courts frequently fails because legal loopholes allow substitute imprisonment (subsidiary punishment), enabling perpetrators or rogue labor recruitment corporations to refuse compensation payments by claiming bankruptcy and instead serve a few additional months in prison.

The failure of the criminal justice system to restore victims' financial rights ultimately leaves them empty-handed, while their suffering and accumulated debts remain unresolved. Recognizing the fatal weakness of this retributive paradigm, legal advocates and humanitarian activists have strategically shifted their pursuit of justice toward civil law. This new strategy takes the form of filing Tort Unlawful Act claims under Article 1365 of the Indonesian Civil Code. This civil approach is considered more aligned with restorative justice principles and victim-oriented recovery because its primary objective is no longer merely to punish offenders but to directly target, freeze, and seize the assets of exploitation syndicates and convert them into appropriate compensation for victims.

However, transferring the battle to civil courts is far from simple. The greatest structural barrier confronting women victims of exploitation is Indonesia's civil procedural law system, which remains rigid, formalistic, and outdated because it is rooted in the colonial-era *Herziene Inlandsche Reglement (HIR)* and *Rechtsreglement voor de Buitengewesten (RBg)*. Within this classical procedural tradition lies a rule of evidence applied excessively strictly and textually, namely the principle of *actori incumbit probatio* (he who asserts must prove). This principle places the entire burden of proof on the plaintiff without considering the extreme imbalance of power between disputing parties.

Consequently, if a woman victim of exploitation dares to sue a labor recruitment corporation for confinement, abuse, and deprivation of wages, she is legally required to present valid and convincing evidence before the court. A fundamental problem arises because classical civil evidentiary law places documentary evidence especially authentic deeds or written contracts at the highest level of proof. This creates a severe conflict with the sociological reality of exploitation crimes; in practice, human trafficking syndicates never provide victims with valid copies of employment contracts. Their *modus operandi* is deliberately designed to confiscate identity documents, destroy physical evidence, and avoid written records to eliminate traces from law enforcement scrutiny.

Forcing rigid evidentiary rules upon women who have just been rescued from confinement by requiring them to produce stamped written employment contracts in court is an impossibility that deeply offends the sense of justice. Such formalism essentially transforms procedural law from an instrument for discovering material truth into a shield of legality that indirectly

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protects white-collar criminals and wealthy exploiters. If the judicial system continues to operate blindly toward victims' suffering, civil courts will become merely a stage where victory consistently favors those with financial power and administrative manipulation skills.

Faced with this evidentiary deadlock that obstructs the realization of Dignified Justice, the state and judicial institutions are required to develop progressive jurisprudential breakthroughs. Judges should not merely act as passive mouthpieces of legislation but must engage in legal discovery (*rechtsvinding*) by expanding evidentiary instruments, including the full recognition of electronic evidence. Under the provisions of the Electronic Information and Transactions Law (ITE Law), digital communications such as WhatsApp screenshots, voice messages from recruiters, GPS location records, and photographs of shelters secretly taken by victims should be elevated to the status of primary evidence possessing evidentiary value equal to written contracts.

Beyond expanding evidentiary tools, a paradigm shift is also necessary through the implementation of a shifting burden of proof, whereby judges courageously require recruitment corporations to prove that they operated lawfully and did not exploit victims. Furthermore, the use of online judicial technology e-litigation should be fully optimized to facilitate remote testimony. Through electronic proceedings, women can provide testimony without physically appearing in court or facing their abusers directly, thereby protecting them from revictimization. These procedural innovations ultimately constitute an absolute necessity for facilitating genuine access to justice, ensuring that women victims of exploitation receive their rightful compensation, and restoring the human dignity that was taken from them.

2. Research Methods

This study constitutes normative legal research, often referred to in academic circles as doctrinal research. This method focuses on an in-depth analysis of legal principles, theories, and written norms that exist within Indonesia's positive legal system. Two primary approaches are employed in this study.

First, the statutory approach is applied to analyze and harmonize colonial-era Civil Procedural Law instruments *Herziene Inlandsche Reglement (HIR)* and *Rechtsreglement voor de Buitengewesten (RBg)* with modern regulations, particularly the Electronic Information and Transactions Law (ITE Law) and Supreme Court Regulations concerning electronic court administration.

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Second, the conceptual approach is utilized to examine the doctrines of civil evidence, shifting burden of proof, and access to justice for vulnerable groups.

The data used in this study relies entirely on secondary data collected comprehensively through library research. The legal materials analyzed are classified into two categories:

1. Primary Legal Materials

These consist of authoritative and binding legal regulations and instruments. The primary legal materials in this study include:

- a) The 1945 Constitution of the Republic of Indonesia (UUD 1945);
- b) The Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata/ Burgerlijk Wetboek), particularly provisions regarding Tort/Unlawful Acts (Article 1365) and the law of evidence (Article 1865);
- c) The Herziene Inlandsche Reglement (HIR) for Java and Madura, and the Rechtsreglement voor de Buitengewesten (RBg) for regions outside Java and Madura;
- d) Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking (TPPO);
- e) Law Number 11 of 2008 concerning Electronic Information and Transactions, as amended by Law Number 19 of 2016 and further amended by Law Number 1 of 2024 (ITE Law); and
- f) Supreme Court Regulation (PERMA) Number 1 of 2019 concerning Electronic Case Administration and Court Proceedings, as amended by PERMA Number 7 of 2022.

2. Secondary Legal Materials

These materials provide explanations, interpretations, and analyses of primary legal materials. They consist of civil procedural law textbooks, literature on electronic evidence, legal academic journals, previous research findings, and other scholarly publications focusing on the protection of women victims of exploitation and litigation.

All collected data and legal materials were subsequently inventoried, systematized, and analyzed using a qualitative method with deductive reasoning. This analytical process aims to present a coherent, critical, rigorous, and comprehensible legal argument regarding the urgency of modernizing civil procedural law to facilitate compensation claims for women victims of exploitation.

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3. Results and Discussion

3.1. Expansion of Electronic Evidence in Uncovering Exploitative Practices

The first and most significant procedural challenge faced by women victims of exploitation in filing a civil lawsuit for an Unlawful Act (Perbuatan Melawan Hukum/PMH) is meeting the evidentiary requirements. In the anatomy of human trafficking crimes, the absence of written documents is a condition deliberately created by perpetrators. Victims almost never possess standard administrative documents required under labor law, such as valid employment contracts, monthly payslips, official assignment letters, or protection insurance policies. These crucial documents are manipulated, forcibly withheld, or even destroyed from the outset by recruitment agencies and trafficking syndicates to erase traces of their exploitation.

This modus operandi of eliminating physical evidence serves as the primary defense strategy of organized crime syndicates to evade legal accountability. From the moment victims are recruited in their villages, their original identity documents, such as Identity Cards (KTP) and Family Cards (KK), are often confiscated and replaced with falsified documents to facilitate passport issuance. Upon arrival at shelters or departure to destination countries, all employment agreements are typically conveyed verbally under threats, without ever being formalized in written documents or provided to victims. This absence of documentation places victims in an extremely vulnerable legal position when they later attempt to claim their civil rights.

Within the framework of classical Indonesian Civil Procedure Law as regulated by the *Herziene Inlandsche Reglement (HIR)* and the *Rechtsreglement voor de Buitengewesten (RBg)*, this evidentiary deadlock becomes particularly detrimental. Conventional procedural law still inherits a colonial paradigm that highly prioritizes documentary evidence, especially authentic deeds or written agreements, as the supreme form of proof in court. Traditional civil courts tend to adopt a formalistic approach; if plaintiffs cannot present a written, stamped contract proving the existence of an employment relationship and a breach thereof, their claims are almost certainly rejected for lacking sufficient legal grounds (*onvoldoende gemotiveerd*).

To overcome this impasse, which undermines the sense of justice, modern procedural innovations are essential, particularly through reliance on Law Number 11 of 2008, as last amended by Law Number 1 of 2024 concerning Electronic Information and Transactions (ITE Law). This legislation introduced a fundamental paradigm shift in Indonesia's civil evidentiary system. Article 5 of the ITE Law expressly and revolutionarily stipulates that electronic

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information, electronic documents, and/or their printouts constitute valid, binding, and fully admissible legal evidence at all levels of Indonesian courts.

Through the legal legitimacy provided by the ITE Law, civil courts no longer have grounds to reject or diminish the value of digital evidence submitted by women victims of exploitation. The status of electronic evidence has been reconstructed to possess evidentiary strength equivalent to conventional paper documents or written instruments. This legal recognition of digital data directly dismantles the rigid requirements of classical civil law, providing new opportunities for victims who have been deprived of conventional administrative documents by human trafficking syndicates.

As a result, evidentiary proceedings in civil litigation become significantly more flexible, strategic, and responsive to social realities. Victims' legal representatives can now formulate evidentiary strategies based on digital data systematically stored on victims' or their families' devices. Digital evidence such as screenshots of WhatsApp conversations containing false promises of high-paying jobs from recruiters can serve as compelling proof of fraud and deception. Likewise, voice notes containing threats of violence from corporate representatives can be converted into indisputable evidence of coercion and unlawful deprivation of liberty.

Beyond digital communications, this expansion also encompasses financial and multimedia data as material evidence of victims' losses. Bank account transaction histories, mobile banking transfer records, or evidence of unlawful wage deductions shared by victims with their families can now be submitted as valid proof of economic exploitation. Furthermore, amateur videos secretly recorded by victims, photographs of uninhabitable shelters, and digital location traces (GPS tracking) all possess substantial evidentiary value in demonstrating unlawful acts involving human rights violations committed by recruitment corporations.

Ultimately, the expansion and full acceptance of electronic evidence represent a strategic victory for substantive justice. Civil procedural law no longer functions as an ivory tower blind to the sophistication of criminal syndicates. Victims of trafficking who have been impoverished and stripped of physical documents now possess powerful and valid evidentiary tools in court. This innovation compels rogue corporations to recognize that in the digital age, their crimes even when concealed without a single piece of paper will inevitably leave enduring digital footprints that can be used by the law to hold them accountable and seize their assets.

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3.2. Shifting the Burden of Proof to Uphold the Principle of Equality

Apart from evidentiary completeness, Indonesia's civil dispute resolution system remains constrained by the classical doctrine of burden of proof, as regulated in Article 163 HIR, Article 283 RBg, and Article 1865 of the Civil Code. These colonial-era provisions uniformly affirm the principle of *actori incumbit probatio*, meaning that the burden of proof rests entirely upon the party asserting a right or bringing a claim. Under this legal construction, if a woman victim of exploitation acts as the plaintiff, she bears the full responsibility of proving the alleged unlawful acts, the extent of damages suffered, and the causal relationship between the syndicate's conduct and those damages.

Theoretically and historically, this principle was developed based on the philosophical assumption that disputing parties in civil cases occupy equal positions and possess comparable access to legal resources and evidence. Such an assumption may be appropriate in commercial disputes between two corporations. However, applying this principle rigidly and mechanically to cases of human exploitation is profoundly unjust and undermines legal rationality itself. Civil law cannot ignore the reality that such equality is merely an illusion in human trafficking cases.

The sociological and legal reality of exploitation cases is characterized by an extreme and structural imbalance of power. On one side stands the female victim, occupying a subordinate position: lacking power, adequate education, financial resources, and access to corporate documentation, often while suffering trauma. On the opposite side stands the defendant corporation or transnational trafficking syndicate, occupying a superior position: controlling financial flows, managing data, maintaining bureaucratic networks, and possessing all information concerning the deployment and exploitation of victims.

Faced with such extreme disparities, civil judges must move beyond being mere "mouthpieces of the law who mechanically apply legal provisions. Judges should embrace the perspective of Progressive Law. Within this paradigm, law exists for human beings, not vice versa; therefore, when formal legal procedures produce substantive injustice, judges have an obligation to engage in legal discovery. One of the most urgent jurisprudential innovations in civil lawsuits involving trafficking victims is the application of the doctrine of "Shifting the Burden of Proof".

Under this doctrine, a progressive judge no longer remains passive like a referee observing an unequal contest. Judicial intervention becomes necessary to balance the parties' positions and achieve substantive justice. The doctrine is applied when the victim, as plaintiff, is able to present a series of reasonable and sufficient preliminary proofs. Such evidence need not be perfect; it merely needs to establish a reasonable presumption that exploitation likely

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occurred. Examples include proof of recruitment-related payments, confiscated passports, digital screenshots, or testimony from fellow victims.

Once these preliminary proofs are deemed logical and consistent, the court may issue an interlocutory ruling shifting the burden of proof from the victim to the defendant corporation. At this critical stage, the dynamics of the proceedings change dramatically. The recruitment company or trafficking agent is then legally required to prove the contrary. They must demonstrate that they operated lawfully, complied with labor regulations, and did not engage in unlawful confinement or economic exploitation of the plaintiff.

To satisfy this burden, corporations cannot rely on mere denials. They must disclose their administrative records before the court. This includes presenting official attendance records, proof of wage payments meeting Regional Minimum Wage (UMR) standards, valid and transparent employment contracts registered with labor authorities, and evidence that accommodation facilities met acceptable standards and respected human rights.

If the defendant corporation fails, refuses, or is unable to provide such fundamental administrative evidence, the victim's PMH claim should, doctrinally, be granted in full. The legal consequences of failing to meet this reversed burden of proof are severe. This jurisprudential innovation effectively ensures that criminal corporations can no longer evade substantial compensation claims simply by exploiting victims' limited access to information. The principle of equality is thereby upheld, enabling the seizure of perpetrators' assets to restore victims' losses.

3.3. Utilization of Online Hearings (E-Litigation) and Protection of Victims' Identities

In addition to evidentiary and procedural barriers, women victims of exploitation face equally destructive non-legal obstacles. These include psychological terror, paralyzing fear, profound shame, and the risk of retraumatization arising from direct engagement with conventional judicial proceedings. In traditional civil trials requiring physical attendance, victims must appear in court, sit in open courtrooms, and confront recruitment agents or expensive legal teams hired by trafficking syndicates. Such circumstances impose immense psychological pressure on victims whose emotional recovery remains incomplete.

The psychological intimidation associated with face-to-face hearings poses a serious threat to survivors' fundamental rights. Encountering perpetrators who previously confined, extorted, or sexually abused them can trigger traumatic memories and flashbacks. Under fear and intimidation, victims frequently experience emotional breakdowns while testifying, resulting in

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fragmented or seemingly unreliable testimony in the eyes of judges. This unfavorable situation often culminates in revictimization, where victims become “victims” once again due to the rigidity of judicial procedures.

Beyond psychological harm, traditional in-person litigation also imposes significant financial burdens. Civil lawsuits against labor recruitment corporations generally must be filed in courts located where the corporations are legally domiciled, often in major cities or provincial capitals. For women who have returned home burdened by debt and lacking any income, transportation, accommodation, and daily expenses required to attend hearings over several months are often impossible to bear. Economic hardship and geographic distance frequently force victims to withdraw their lawsuits before completion.

In response to these procedural and psychological barriers, the Supreme Court of the Republic of Indonesia introduced a revolutionary administrative innovation through the Electronic Court (E-Court) system and its subsequent E-Litigation framework. This modernization initiative was comprehensively regulated through Supreme Court Regulation (PERMA) Number 1 of 2019 and later refined through PERMA Number 7 of 2022. These regulations marked a historic shift from paper-based procedures to a digital justice system that is faster, more affordable, and more secure.

Through e-litigation, civil justice becomes significantly more accessible for vulnerable groups. Administrative processes that were once cumbersome can now be completed remotely. Case registration (e-Filing), court fee payments (e-Payment), and summons procedures (e-Summons) are conducted entirely online. Furthermore, the exchange of crucial litigation documents such as replies, rejoinders, electronic evidence, and final conclusions no longer requires lawyers or victim representatives to appear physically before judges, thereby reducing bureaucratic obstacles.

The most significant innovation for protecting the psychological well-being of women victims is the possibility of virtual witness and plaintiff examinations. Through electronic hearings, evidentiary proceedings, cross-examinations, and witness testimonies can be conducted via video conferencing. This mechanism removes the absolute requirement for victims to physically attend court proceedings. It represents a concrete realization of the principle of simple, swift, and low-cost justice, which has long been more aspirational than practical.

The impact of teleconference hearings on survivors is profound. Victims may testify from locations that guarantee their safety, such as safe houses managed by the Witness and Victim Protection Agency (LPSK), offices of assisting NGOs, or designated rooms at local police

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stations. By testifying through a screen, victims are spared the need to physically confront perpetrators, share the same space, or endure direct intimidation. The screen itself functions as a protective barrier that safeguards both physical security and psychological stability throughout the evidentiary process.

Overall, the integration of electronic justice systems not only democratizes access to justice by substantially reducing litigation costs but also creates a victim-centered civil justice ecosystem. By preventing revictimization through technological means, this system restores courage and dignity to women survivors of exploitation. Those who once felt powerless, humiliated, and marginalized are now provided with a secure and effective platform to speak the truth, expose trafficking syndicates, and pursue the compensation to which they are legally entitled until justice is ultimately achieved.

4. Conclusion

The rigid walls of classical civil procedural law must no longer obstruct women victims of exploitation from obtaining justice and full economic recovery. Through various modern innovations-such as the recognition of electronic evidence including digital communications and banking records, the shifting of the burden of proof by progressive judges to address power imbalances, and the utilization of efficient and trauma-sensitive electronic litigation systems e-litigation access to justice has become significantly more attainable. The greatest challenge now rests upon civil judges. Judges must no longer act merely as rigid interpreters of colonial-era laws but should instead engage in legal discovery and exercise their conscience. By fully utilizing these procedural innovations, civil courts can transform into genuine arenas of justice where women victims of exploitation can obtain appropriate compensation and hold human trafficking corporations financially accountable.

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