

LICS 2026

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

Reconstruction of Restitution Rights for Victims of Human Trafficking Criminal Acts Based on Legal Independence in Victim-Oriented Criminal Procedure Law

Raindra Ramadhan Syah

Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: Ramadhansyach69@gmail.com

Abstract. *The construction of Indonesian criminal procedural law, as enshrined in the Criminal Procedure Code (KUHP), has historically emphasized an offender-oriented paradigm, reducing victims to mere living evidence for the benefit of state prosecution. This situation has negative implications in cases of Human Trafficking (TPPO), where the right to economic recovery through restitution, as regulated in Law No. 21 of 2007 and PERMA No. 1 of 2022, is doctrinally accessory. As a result, the fulfillment of victims' rights is held hostage procedurally and creates a systemic "evidentiary gap," where failure to prove the perpetrator's crime automatically revokes the victim's right to recovery. This normative legal research, using a statutory and conceptual approach, examines this gap through layered theories: Gustav Radbruch's Theory of Legal Purpose (grand theory), Arif Gosita's Theory of Victimology (middle theory), John Braithwaite's Theory of Restorative Justice and Satjipto Rahardjo's Theory of Progressive Law (applied theory). The analysis reveals an acute dissonance resulting from the dominance of procedural legal certainty over substantive justice, which triggers secondary victimization for victims. As a novel contribution, this study proposes the concept of Juridical Independence of Restitution, which transforms the relationship between criminal proceedings and restitution into a facultative alternative based on the Established Fact Doctrine. Through this model, judges are authorized to independently decide on restitution using a reasonableness test based on trial facts, supported by the expansion of the LPSK's authority and the establishment of a Victim Compensation Fund as a social justice safety net.*

Keywords: *Crime of Human Trafficking; Criminal Procedure Law; Juridical Independence; Progressive Law; Right to Restitution.*

Reconstruction of Restitution Rights for...
(Raindra Ramadhan Syah)

LICS 2026

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

1. Introduction

The Criminal Procedure Code regulated in Law Number 8 of 1981 was historically built on the paradigm of protecting the rights of suspects and defendants (offender oriented), so that victims of criminal acts are structurally positioned as witnesses whose statements are used to prove the charges, not as legal subjects who have the right to recovery.¹ This condition becomes increasingly problematic in cases of human trafficking (TPPO), which Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking defines as a series of acts of human exploitation through violence, fraud, abuse of power or debt bondage.²

Law Number 21 of 2007 explicitly regulates the right to restitution for victims in Articles 48 to 50, which is further strengthened by Supreme Court Regulation Number 1 of 2022 concerning Procedures for Settling Applications and Granting Restitution and Compensation to Victims of Criminal Acts.³ However, doctrinally, the request for restitution is an accessor to the main criminal case, so that the victim's success in obtaining restitution depends entirely on the success of the public prosecutor in proving the elements of the crime charged against the perpetrator. This kind of legal construction creates what in recent studies is called an "evidentiary gap," namely the gap between the formal standards of proof demanded by the court and the victim's actual ability to fulfill them, considering that the perpetrators of human trafficking systematically eliminate the victim's access to documents and formal evidence as part of the exploitation method itself.⁴

Studies of human trafficking criminal justice practices in various regions also confirm this pattern. For example, research on the handling of child trafficking cases in various cities showed that from 2020 to 2024, none of the twenty cases handled resulted in restitution for the victims. This indicates that the evidentiary gap is not merely a case-by-case issue but a systemic pattern in Indonesian criminal justice practices.⁵ A similar phenomenon has been

¹Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Law (State Gazette of the Republic of Indonesia 1981 Number 76, Supplement to the State Gazette of the Republic of Indonesia Number 3209).

²Law of the Republic of Indonesia Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, Article 1 number 1.

³Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2022 concerning Procedures for Settling Applications and Granting Restitution and Compensation to Victims of Criminal Acts.

⁴ Mari News Supreme Court, "Efforts to Fulfill the Rights of Restitution for Victims of Human Trafficking," published June 26, 2025, accessed July 8, 2026.

⁵Orin Gusta Andini, Aqilza Alyafiah, and Grizelda Grizelda, "Restitution for Children as Victims of Human Trafficking in Samarinda City," article: *Rewang Rencang: Jurnal Hukum Lex Generalis* 6, no. 7 (2025), accessed on July 8, 2026.

Reconstruction of Restitution Rights for...
(Raindra Ramadhan Syah)

LICS 2026

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

observed in a number of other human trafficking cases handled by non-governmental organizations. The fulfillment of victims' restitution rights is often only achieved through intensive support from external parties such as legal aid organizations, rather than being structurally guaranteed by criminal procedure law itself.⁶

This structural gap is the basis for the need for this research to be conducted not only to describe the problems that have been identified in previous studies, but also to formulate a new conceptual proposal in the form of a reconstruction of criminal procedural law norms that allow the restitution rights of victims of human trafficking to be considered more independently of the success of proving the main crime against the perpetrator, without sacrificing the principle of presumption of innocence and the constitutional rights of the accused.

2. Research Methods

This research uses a normative juridical method (legal research) with a statute approach and a conceptual approach, without referring to specific court decisions as case studies, considering that the focus of this research is the reconstruction of norms at the general-structural level, not an evaluation of the application of law in specific concrete cases. The primary legal materials used include relevant legislation, secondary legal materials in the form of books, scientific journals, and previous research results, and tertiary legal materials in the form of legal dictionaries and encyclopedias. The analysis was conducted descriptively and prescriptively using a deductive approach, namely deriving general propositions from a layered theoretical framework and then elaborating them into applicable conceptual proposals.

3. Results and Discussion

3.1. Normative Construction of the Right to Restitution for Victims of Human Trafficking in the Current Indonesian Criminal Procedure System

In general, the Indonesian criminal procedure law structure codified through the Criminal Procedure Code (KUHP) has historically emphasized the protection of the rights of child suspects and defendants,⁷This focus stems from the spirit of protecting civil human rights to prevent arbitrary action by law enforcement officials at the time. However, this overly

⁶ Institute for Criminal Justice Reform, "Amicus Curiae in Migrant Worker Human Trafficking Cases," 2024.

⁷Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Law (State Gazette of the Republic of Indonesia 1981 Number 76, Supplement to the State Gazette of the Republic of Indonesia Number 3209).

LICS 2026

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

offender-oriented focus has resulted in the diminished position of victims within the justice system. Victims are not viewed as independent legal subjects with the right to comprehensive reparations, but rather are positioned as "living evidence" (victim witnesses) whose testimony is exploited solely to fulfill the state's interest in punishing the perpetrator.⁸

Based on the general framework of the Criminal Procedure Code (KUHP), the state implemented a special normative intervention (*lex specialis*) through the enactment of Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking (TPPO). This law explicitly introduces the right to restitution for victims under Articles 48 to 50, providing for financial compensation for suffering, loss of property, medical expenses, and immaterial losses.⁹

To expedite the effectiveness of fulfilling these rights, the Supreme Court then issued technical regulations in the form of Supreme Court Regulation (PERMA) Number 1 of 2022. This combination of instruments appears very progressive because it opens up space for restitution applications from the investigation stage until after the court decision has become legally binding. Although specific regulations have been established, the core answer and root of the problem of this problem formulation lies in the nature of the assessor (*accessoir*) which is doctrinally attached to the position of the right to restitution. Based on the provisions of Article 48 paragraph (3) of the Human Trafficking Law, the examination of restitution applications is positioned as complementary or absolutely attached to the fate of the main criminal case faced by the perpetrator.¹⁰ Such normative construction gives rise to structural problems in the form of:

- a. **Procedural Hostage:** The victim's right to compensation depends entirely on the success of the Public Prosecutor in proving the elements of the crime charged against the perpetrator.
- b. **Failure of the Right to Restitution:** If the public prosecutor fails to prove the defendant's criminal guilt due to formal-technical obstacles, or if the judge decides that the defendant is acquitted (*vrijspraak*), then the victim's restitution demands are automatically forfeited by law.¹¹

⁸Ruly Ardiansyah, Aryadi Almau Dudy, Suheflihusnaini Ashady, "The Position of Victims in Recovery-Oriented Criminal Justice", article: *Locus Journal of Legal Science Concepts* Volume 6, Number 1 (March 2026), p. 228, accessed on July 8, 2026.

⁹*Ibid*, Articles 48-50.

¹⁰Ruly Ardiansyah, *Op.Cit*, p. 230.

¹¹Aqilza Alyaflah, Orin Gusta Andinidan Grizelda, "Restitution for Children as Victims of Human Trafficking in Samarinda City," article: *Rawang Rencang: Jurnal Hukum Lex Generalis* 6, no. 7 (2025): p. 12.

LICS 2026

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

In addition to structural barriers due to the nature of assessors, the current normative construction also leaves behind problems in the form of epistemological inconsistencies in the practice of providing evidence in court. A double standard is maintained by the current procedural law system: on the one hand, a single statement or testimony from the victim is deemed sufficient and valid to convince the judge to impose the main penalty (depriving the defendant of his liberty). However, on the other hand, when the same statement is used to calculate the financial losses resulting from the crime, the court suddenly rejects its existence and considers it insufficient if it is not accompanied by solid documentary evidence. This inconsistency shows that positive criminal procedural law does not yet have a solid epistemological basis that supports justice and restoration of victims.

Materially, Law No. 21 of 2007 actually contains several procedural legal norms that are relatively advanced compared to the conventional Criminal Procedure Code. This instrument guarantees protective rights, such as the obligation to hold closed trials for child victims and the right to complete anonymity for victims. However, the progressiveness of this law enforcement has proven incomplete because it has not yet reached the aspect of the independence of the victim's recovery mechanism itself. The existing normative progressiveness is only protective during the judicial process, but still leaves the victim's economic recovery at the end of the trial subject to the fate of the perpetrator's punishment, which is an absolute assessor.

This structural and normative inequality can be sharply dissected using Gustav Radbruch's theory of the purpose of law, which states that ideal law must integrate three basic values in a balanced manner: Legal Certainty (*rechtssicherheit*), Justice (*gerechtigkeit*), and Benefit (*zweckmässigkeit*).¹² In the current legal framework for restitution, an acute dissonance has emerged, with the justice system overly emphasizing the value of procedural legal certainty. The system firmly stipulates that restitution from perpetrators can only be granted if the perpetrator's criminal guilt has been legally and convincingly proven. This prioritization of formal certainty significantly sacrifices the values of substantive justice and benefit to victims. When criminal evidence against perpetrators fails in court due to formal-technical prosecution problems, the legal system turns a blind eye to the reality that victims have been devastated and suffered material losses due to human trafficking exploitation. Radbruch believes the law must adapt to its social purpose. When restitution mechanisms are rigidly tied to the underlying case, criminal law loses its practical utility for society, particularly for vulnerable groups. The time-consuming, costly, and psychologically demanding judicial process ultimately

¹²Lili Rasjidi and B. Arief Sidharta, *Philosophy of Law: Schools and Reflections*, (Bandung: Remadja Karya, 1989), p. 72.

LICS 2026

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

becomes useless for victims' futures if their demands for economic restitution are thwarted simply because the perpetrator's criminal record is not proven. The law ultimately relies more on procedural formalism than on real redress for the suffering of human trafficking victims.

The legal system's inability to accommodate the specific realities of these victims ultimately leads to a fundamental conclusion regarding the fragility of current legal protection. Based on this emphasis, the normative construction of the right to restitution for victims of human trafficking in the current Indonesian criminal procedure system can be understood as a formal recognition of a right that lacks adequate procedural autonomy. This right does not yet exist independently, but rather follows the fate of the underlying criminal case. Consequently, the protection provided by the state remains limited and not fully victim-oriented.

In human trafficking cases, the situation becomes even more problematic because the exploitation experienced by victims generally results in very real material and immaterial losses. The state has responded through Law Number 21 of 2007, which expressly recognizes victims' right to restitution, which was then reinforced by Supreme Court Regulation Number 1 of 2022, which regulates the procedures for applying for and granting restitution. Thus, normatively, the right to restitution has a clear legal basis in the Indonesian legal system. However, these existing regulations have not fully changed the basic character of restitution, which remains accessory to the main criminal case. This means that restitution remains highly dependent on the evidentiary process against the perpetrator, leaving the victim's rights hostage to the outcome of the criminal case investigation. In practice, this model places victims in a weak position, as the right to restitution, which should focus on the victim's losses, instead relies on the public prosecutor's success in proving the defendant's guilt.

This situation creates a structural problem that can be described as a procedural hostage situation. If the defendant is found not guilty or acquitted, the victim's chances of obtaining restitution are slim and may even be lost. In fact, in many human trafficking cases, victims struggle to access formal evidence because documents, identities, and communication devices are often controlled by the perpetrators as part of the exploitation mechanism. As a result, rigid criminal standards of proof do not always align with the reality of the losses suffered by victims. From the perspective of Gustav Radbruch's theory of the purpose of law, this construction demonstrates an imbalance between legal certainty, justice, and expediency. The legal system does attempt to maintain procedural certainty by linking restitution to the evidence in a criminal case, but this certainty is at the expense of neglecting substantive justice for victims. The law ultimately relies more on procedural formalism than on real redress for the suffering of human trafficking victims.

Reconstruction of Restitution Rights for...
(Raindra Ramadhan Syah)

LICS 2026

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

The normative construction of restitution rights for victims of human trafficking in Indonesia's current criminal procedure system can be understood as a formal recognition of rights that already exist, but lack adequate procedural autonomy. These rights do not yet exist independently, but rather follow the fate of the underlying criminal case, resulting in limited state protection and not fully victim-oriented. Therefore, for the right to restitution to truly have adequate procedural autonomy, reforms to criminal procedure law need to be directed at a clearer separation between proving the underlying crime and proving the victim's losses, strengthening the active role of judges in independently assessing restitution, simplifying the submission mechanism, and strengthening coordination between law enforcement and the LPSK (Lembaga Penitentiary and Witness Protection Agency). These reforms are crucial for shifting restitution from its previously merely accessory role to a more independent, expeditious, and effective instrument of recovery, without compromising protection of the defendant's rights.

The Gap Between the Norms for the Protection of Human Trafficking Victims and General Criminal Justice Practices Analyzed Through the Theoretical Framework of Legal Objectives, Victimology, and Restorative Justice

The gap between ideal legal protection norms (law on the books) and the reality of law enforcement in the courtroom (law in action) in human trafficking cases is a manifest structural problem. The assessor nature of restitution requests for the main criminal case, as regulated in Article 48 paragraph (3) of Law Number 21 of 2007, gives rise to problematic structural consequences at the level of criminal law enforcement. Judging from the general pattern of judicial practice in Indonesia, the handling of restitution is still trapped in a legalistic-formal and rigid pattern of law enforcement. Judges tend to demand very strict and rigid standards of proof of losses, which are equated with the standards for civil compensation claims in general.

Studies of human trafficking criminal justice practices in various regions also confirm this pattern. Empirical research on the handling of child trafficking cases in Kota, for example, shows that from 20 cases handled between 2020 and 2024, not a single one implemented or succeeded in enforcing restitution for the victim. A similar phenomenon is also evident in a number of other human trafficking cases handled by non-governmental organizations, where the fulfillment of victims' rights to restitution can often only be fully achieved with intensive support from external parties such as legal aid institutions, rather than being guaranteed automatically and structurally by the criminal procedural law system itself.

The facts above consistently demonstrate that the "evidential gap" in human trafficking restitution cases is systemic, not simply a case-by-case failure. This evidentiary gap arises

Reconstruction of Restitution Rights for...
(Raindra Ramadhan Syah)

LICS 2026

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

because procedural law imposes formal documentary standards (such as medical records, logistics receipts, or official income records) that the courts require victims to meet. This standard is highly contradictory to victims' actual ability to meet it, given that the modus operandi of human trafficking perpetrators systematically involves isolation, confiscation of mobile phones, and denial of victims' access to formal documents and evidence as part of the chain of exploitation itself.

This systemic gap between formal norms and the reality of judicial practice is comprehensively dissected through three layers of legal theoretical framework:

- Analysis of the Theory of the Purpose of Law (Gustav Radbruch): In human trafficking criminal justice practices, the tension (*spannungsverhältnis*) between legal values is overwhelmingly overcome by the value of formal legal certainty. Judges often refuse to grant restitution requests from victims or the Witness and Victim Protection Agency (LPSK) simply because they lack valid documentary evidence or receipts. By rigidly placing the law on formal evidence, the courts have effectively eliminated the value of substantive justice and the legal benefits for exploited victims.
- Middle Range Theory Analysis: Victimology Theory (Arif Gosita): From a victimological perspective, victims must be positioned as legal subjects with specific rights that must be protected throughout the entire criminal justice process, from the pre-trial to the post-trial stages. Current judicial practices demonstrate that the prevailing criminal procedural law structure has not fully accommodated the unique characteristics of human trafficking victims. Demanding that human trafficking victims meet rigid documentary evidence standards is tantamount to ignoring the victimological realities inherent in the nature of the crime. As a result of this unaccommodating legal structure, victims experience secondary victimization. Victims experience additional suffering stemming from the criminal justice system itself, through the rejection of their requests for economic recovery, not just from the crime they experienced directly at the hands of the perpetrator.
- Applied Theory Analysis: Restorative Justice Theory (John Braithwaite): Restorative justice theory emphasizes that the response to crime should ideally focus on redressing the victim's real losses and repairing damaged social relationships, rather than solely on retributive punishment. Current patterns in criminal justice practice confirm the dominance of the conventional (offender-oriented) retributive paradigm, in which all law enforcement energy is devoted to proving the perpetrator's guilt in the interest of the state's right to sue, while the restorative aspect of victim recovery is marginalized.

Reconstruction of Restitution Rights for...
(Raindra Ramadhan Syah)

LICS 2026

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

The synthesis of analysis through this layered theoretical framework confirms that the structural problem of TIP restitution stems from the dominance of procedural legal certainty over substantive justice, which is manifested in a pattern of secondary victimization due to the procedural legal structure that has not accommodated the unique characteristics of TIP victims, and therefore requires new operational interventions that are able to reconcile these value tensions.

3.2. The Concept of Juridical Independence of Restitution Can Be Formulated as an Idea for Reforming Victim-Oriented Criminal Procedure Law in the Future

Ideas for future reform of criminal procedure law must no longer be trapped in a patchwork of technical-procedural improvements. A radical and transformative paradigm reorientation is needed to shift the judicial orientation from being offender-oriented to a justice system that is truly oriented toward victim recovery (victim-oriented justice system). The systemic failures resulting from the accessory nature of restitution and the wide evidentiary gap discussed in the previous chapter confirm that substantive justice for victims of human trafficking will never be achieved as long as their right to economic recovery is strictly tied to the fate of the perpetrator's punishment. Therefore, national criminal law policy must have the courage to break the shackles of this procedural dependence by creating a new legal doctrine capable of placing the right to restitution on its own legal footing.

Based on this paradigmatic need, as a major novelty to overcome the normative deadlock and gaps in criminal justice practices, a new idea is proposed: Juridical Independence of Restitution. This concept structurally and procedurally separates the mechanism for determining victims' restitution rights from the mechanism for punishing perpetrators, without eliminating the substantive connection between the two.

As a major novelty in breaking the normative deadlock and gaps in criminal justice practice, a new concept is proposed in the form of Juridical Independence of Restitution. This concept structurally and procedurally separates the mechanism for determining the victim's right to restitution from the mechanism for punishing the perpetrator, without eliminating the substantive link between the two. Through this concept, the relationship between the restitution process and the criminal process is transformed from its original cumulative-absolute nature (restitution only exists if the conviction is proven) to an alternative-facultative nature. The determination of the existence or absence of the victim's losses and their extent is examined through a separate forum that can operate in parallel or semi-independently, based on facts that have been sufficiently revealed during the trial process, regardless of the final outcome of the main criminal verdict against a particular defendant. To operationalize the

Reconstruction of Restitution Rights for...
(Raindra Ramadhan Syah)

LICS 2026

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

concept of the juridical independence of restitution into future criminal procedural law, this study combines Satjipto Rahardjo's Progressive Legal Theory and John Braithwaite's Restorative Justice Theory as an operational application basis:

1. Established Fact Doctrine

Progressive law emphasizes that law is for humans, not humans for law, so that law enforcement should not be held hostage by rigid formal-procedural logic that ignores injustice. As an operational manifestation, this concept of independence is implemented through the Established Fact Doctrine, a Progressive Model of Evidence Based on Trial Facts, which allows judges to decide the amount of restitution using facts that have been sufficiently revealed in court (including credible victim testimony) through 3 (three) logical stages:

a. *Fact Identification Stage:* The judge actively identifies facts regarding material and immaterial losses that have been confirmed in the Examination Report (BAP) and witness/victim statements in court.

b. *Fairness Assessment Stage (Reasonableness Test):* The judge makes a rational assessment and estimate of the fairness of the amount of losses experienced by the victim, without having to require formal written receipt evidence to which the perpetrator of TPPO has actually lost access.

c. *Proportional Value Determination Stage:* The judge determines the nominal value of the restitution execution proportionally based on the assessment of fairness, while still leaving room for legitimate correction through legal efforts.

2. Strengthening Institutional Design and Victim Compensation Fund

To concretize the principle of restoration in restorative justice, reform of criminal procedural law must be followed by structural institutional reconstruction:

a. *Expansion of LPSK's Authority:* Granting full authority to the Witness and Victim Protection Agency (LPSK) to independently assess victims' losses from the initial investigation stage, so that the estimated restitution value is ready early and does not depend on the final stages of the trial.

b. *Establishment of Victim Compensation Fund:* Proposing the creation of a state bailout fund scheme specifically collected from a percentage of criminal fines, proceeds from the seizure of assets from human trafficking networks, and state budget allocations. This fund will serve as a

Reconstruction of Restitution Rights for...
(Raindra Ramadhan Syah)

LICS 2026

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

primary safety net in the event that perpetrators are proven financially unable to pay restitution imposed by the court.

3. Reconstruction of Norms in the Reform of National Criminal Procedure Law

As a concrete step for future legislation, a new written norm formulation is proposed in the renewal of the national criminal procedure law (RUU KUHP) which explicitly contains three main elements:

- a. Confirmation that the restitution application is examined and decided based on the facts of the loss confirmed in the trial, which are independent of the defendant's sentencing decision.
- b. Granting exclusive authority to judges to determine the value of restitution based on a reasonableness test without requiring formal civil documentary evidence.
- c. The legitimacy of the restitution payment mechanism through state bailout funds if the perpetrator is unable to fulfill his obligations, followed by the birth of the state's subrogation rights to confiscate the perpetrator's assets at a later date.

Through a progressive legal perspective, the challenges of implementing this idea can be strategically mitigated. Constitutional challenges related to the presumption of innocence are resolved by designing a semi-independent restitution hearing forum that does not declare a person's criminal guilt, but rather solely determines the obligation of civil responsibility/restitution imposed on parties factually involved in the chain of criminal exploitation. Meanwhile, Institutional and Fiscal Challenges related to budgetary readiness and operational in the field are resolved through a policy of integrating criminal asset data and strengthening the capacity of procedural law apparatus that is sensitive to victims (victim-oriented justice system), so that the right to restitution truly shifts from an accessory position to an independent, fast, and effective recovery instrument without compromising the constitutional rights of the accused.

4. Conclusion

The current normative construction of restitution rights for victims of human trafficking remains accessory-based and offender-biased, thus tying victims' economic recovery rights to the fate of the perpetrator's primary punishment. This dependence creates a systemic "evidential gap" because the courts demand rigid documentary evidence, resulting in secondary victimization for victims when their claims are dismissed due to technical failures in the criminal prosecution. As a progressive solution, the concept of Juridical Independence of

Reconstruction of Restitution Rights for...
(Raindra Ramadhan Syah)

LICS 2026

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

Restitution exists to procedurally separate criminal evidence from victim losses, allowing the right to recovery to be determined independently for the sake of substantive justice. The government and the House of Representatives (DPR) need to reform the Criminal Procedure Code (KUHP) Bill by legitimizing a semi-independent restitution review forum based on the Established Fact Doctrine and a reasonableness test, without the rigid requirements of formal civil evidence. Institutionally, the LPSK's authority should be expanded to independently assess losses from the early stages of the investigation. Finally, the state is obliged to establish a Victim Compensation Fund mechanism, collected from the proceeds of confiscated criminal assets and the state budget, as a primary safety net in the event of a perpetrator's inability to pay.

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Reconstruction of Restitution Rights for...
(Raindra Ramadhan Syah)



LICS 2026

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

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Reconstruction of Restitution Rights for...
(Raindra Ramadhan Syah)