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Implementation of Restorative Justice in Handling Cases of Human Trafficking Crimes Involving Children and Women Based on The Values of Justice

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Abstract. *The crime of human trafficking targeting highly vulnerable groups, namely children and women, is an extraordinary crime that directly degrades human dignity and robs victims of their future. Thus far, the traditional criminal justice system has tended to focus solely on imposing imprisonment on perpetrators while often neglecting the restoration of the victims' fundamental rights that have been destroyed. The multiple layers of suffering experienced by women and child victims of this crime, in reality, never truly end even if the perpetrators have been sentenced to life imprisonment. Deep psychological trauma, financial losses, and the social stigma attached to survivors require a legal approach that places greater emphasis on humanity and is fully centered on the victims' recovery. This study aims to analyze comprehensively and formulate the implementation of restorative justice based on the values of substantive justice in handling human trafficking cases in Indonesia. This study employs a library-based legal research method, or normative juridical research. The primary legal materials examined include Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, Law Number 35 of 2014 concerning Amendments to the Child Protection Law, Law Number 31 of 2014 concerning the Protection of Witnesses and Victims, Police Regulation Number 8 of 2021, and Prosecutor's Regulation Number 15 of 2020. The findings of this study indicate the urgent need for a comprehensive dismantling and restructuring of the criminal justice legal framework. These reforms include the obligation for law enforcement officers to confiscate the perpetrator's assets from the first day of investigation, the establishment of a special state-owned contingency fund for victim recovery, and the absolute strengthening of the authority of witness protection institutions. In conclusion, restorative justice must be understood as the highest manifestation of the state's*

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presence in ensuring the restoration of the physical well-being, psychological condition, and social reintegration of women and children.

Keywords: *Human Trafficking; Restorative Justice; Value of Justice; Victim Protection; Women and Children.*

1. Introduction

Human trafficking is one of the most organized forms of transnational crime and constitutes a serious violation of human rights. This crime treats human beings merely as commodities whose labor and dignity can be exploited for the economic benefit of certain groups. Unlike ordinary crimes, human trafficking instantly destroys the dignity and future of its victims. Therefore, its legal handling requires special treatment that goes beyond rigidly applying criminal provisions and instead addresses the root causes of the problem and the devastating consequences it creates.

In Indonesia, the number of such crimes continues to be alarming each year. Women and children consistently rank as the largest groups of victims due to the multiple vulnerabilities they face. Economic hardship, limited access to education, and inadequate legal awareness among disadvantaged communities create opportunities that criminal syndicates exploit to ensnare their victims. Promises of high-paying jobs in major cities or abroad often become the initial trap leading victims into abuse and slavery.

To address this serious crime, Indonesia has enacted Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking. This law provides a strong legal foundation for dismantling trafficking syndicates through the imposition of severe criminal penalties. Its purpose is to deter potential offenders while protecting citizens from the threat of modern slavery. Theoretically, this legal instrument is sufficiently robust to serve as the primary tool for law enforcement agencies and the courts.

However, in practice, law enforcement remains heavily dominated by a retributive approach that focuses primarily on punishing offenders.¹ This approach directs judicial proceedings solely toward proving the criminal elements of the offense and imposing prison sentences. Our criminal justice system often considers the state's responsibility fulfilled once the judge's gavel

¹ Dikdik M. Arief Mansur dan Elisatris Gultom, *Urgensi Perlindungan Korban Kejahatan: Antara Norma dan Realita*, (Jakarta: PT RajaGrafindo Persada, 2007), hlm. 45.



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falls and the offender is confined behind bars. In reality, imprisoning perpetrators does nothing to repair the devastation suffered by victims who have been trafficked.²

This excessive emphasis on punishing offenders has had deeply unfortunate consequences for victims, particularly women and children. The justice system frequently treats victims merely as witnesses or evidentiary tools to strengthen the prosecutor's case in court. Once the lengthy and emotionally exhausting trial concludes, victims are often forgotten and left to struggle on their own without adequate support for recovery. Deep psychological wounds cannot simply disappear by seeing the person who harmed them imprisoned.

These circumstances have sparked academic debate regarding the importance of shifting the orientation of Indonesia's criminal law toward the principle of restorative justice.³ Restorative justice is an approach to resolving criminal matters that focuses on repairing the harm caused by crime. Whereas traditional criminal law primarily addressed disputes between offenders and the state whose laws had been violated, restorative justice returns the focus to those who have suffered the most the victims with the primary goal of achieving comprehensive recovery.

Nevertheless, applying restorative justice to crimes involving human exploitation presents extraordinary complexity. In Indonesia, various restorative justice regulations issued by the police and the prosecution service are generally limited to minor offenses punishable by less than five years' imprisonment.⁴ This creates a legal contradiction because human trafficking is an extraordinary crime carrying severe minimum penalties. Therefore, restorative justice in such cases must be redefined, not as a means of mediation or reconciliation, but as a coercive mechanism compelling perpetrators to provide full compensation.

The meaning of the value of justice itself must be grounded in the nation's guiding philosophy, namely Pancasila, particularly the principles of just and civilized humanity and social justice. According to the doctrine of substantive justice, the purpose of law should not end with procedural certainty and administrative compliance but should achieve tangible benefits that are genuinely experienced by society.⁵ Justice for women and children remains unrealized if their material losses and psychological harm have not been fairly compensated by the

² Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, (Jakarta: Kencana Prenada Media Group, 2018), hlm. 82.

³ Eddy O.S. Hiarij, "Pergeseran Paradigma Hukum Pidana dari Keadilan Retributif Menuju Keadilan Restoratif," *Mimbar Hukum* 27, no. 1 (2015): hlm. 25.

⁴ 5 Peraturan Kejaksaan RI Nomor 15 Tahun 2020 tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif.



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perpetrators or supported by the state. Empirical evidence from court proceedings demonstrates that fulfilling victims' rights to compensation remains extremely difficult in practice. Many leaders of trafficking syndicates deliberately register all their assets under the names of distant relatives and intentionally choose to serve additional short prison sentences rather than pay billions of rupiah in compensation to victims. As a result, victims return to their hometowns empty-handed, burdened by social humiliation from their communities, and face a very high risk of being drawn back into trafficking networks due to debt and economic pressure.

The study of integrating restorative justice into cases involving complex criminal offenses offers significant novelty and importance. Previous scholarly works have generally discussed compensation only within the context of juvenile justice or minor theft cases. Through this scholarly article, the author will comprehensively examine how the legal framework should be restructured and redesigned to provide effective protection and secure the future of women and children without in any way reducing the criminal sanctions imposed on human traffickers.

2. Research Methods

This study is based on a doctrinal or normative legal research method, namely legal research that focuses its analysis on legal principles and the coherence of the legislative framework.⁶ The approaches employed include the statutory approach and the conceptual approach. The primary legal materials examined consist of Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, Law Number 35 of 2014 concerning Amendments to the Child Protection Law, Law Number 31 of 2014 concerning the Protection of Witnesses and Victims, National Police Regulation Number 8 of 2021, and Prosecutor's Regulation Number 15 of 2020. Additional supporting data were derived from criminal law textbooks and national and international scholarly journals. All of these legal sources were systematically analyzed to formulate a legal reform model that prioritizes the recovery of victims.

3. Results and Discussion

3.1. The Basic Concept and the Urgent Need for Recovery

⁵ Bambang Waluyo, *Keadilan Restoratif dalam Sistem Peradilan Pidana Indonesia*, Jakarta: Sinar Grafika, 2014, hlm. 67.

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The core understanding of restorative justice is a framework for resolving criminal cases that requires restoring the harm caused by crime by listening to the voices and needs of victims. This concept places human suffering at the center, which the state must heal through the justice system. Law is no longer viewed merely as a tool for depriving offenders of their liberty but as an instrument of social healing.⁷ Through this approach, the state ensures that those who have been harmed regain their rights in full, whether through the return of property, psychological care, or guarantees for their future livelihood.

In the context of large-scale organized crimes such as human trafficking, the application of this understanding must be adjusted carefully and with great precision. Restorative justice in this sphere must never be allowed to eliminate prison sentences for criminal networks, because abolishing imprisonment would provoke public outrage and create new opportunities for perpetrators.⁸ Instead, its primary purpose is to rebalance the scales of justice, which for decades have favored the rights of suspects during investigations, into a justice system that bows before the effort to restore the future of victims. Imprisonment must still be imposed to the fullest extent, but it must be accompanied by an absolute obligation to compensate all losses.

The need to implement this recovery-based foundation can no longer be delayed, considering that most of those devastated are women and children. These groups bear a dual vulnerability under both the law and society, often lacking the ability to defend themselves or voice the injustice they have experienced.⁹ Their weak economic and educational positions frequently become entry points for criminal syndicates to commit fraud and coercion. Therefore, the state has a much greater obligation to protect these groups than victims of other criminal offenses.

When a young child or adolescent girl is exploited for labor, they immediately lose their physical freedom while also suffering damage to their neurological development due to years of mental pressure. Even a life sentence for the perpetrator can never restore the victim's stolen youth¹⁰ This layered suffering creates prolonged trauma that destroys the future potential of the nation's next generation. Therefore, the role of the courts must evolve from

⁷ Eddy O.S. Hiarij, "Pergeseran Paradigma Hukum Pidana dari Keadilan Retributif Menuju Keadilan Restoratif," *Mimbar Hukum* 27, no. 1, 2015, hlm. 25.

⁸ Eva Achjani Zulfa, "Keadilan Restoratif di Indonesia: Studi tentang Kemungkinan Penerapannya dalam Sistem Pidana," *Jurnal Kriminologi Indonesia* 6, no. 1, 2011, hlm. 18.

⁹ Dikdik M. Arief Mansur dan Elisatris Gultom, *Urgensi Perlindungan Korban Kejahatan: Antara Norma dan Realita*, Jakarta: PT RajaGrafindo Persada, 2007, hlm. 45.

¹⁰ Romli Atmasasmita, *Sistem Peradilan Pidana Kontemporer*, Jakarta: Kencana, 2010, hlm. 112.

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merely serving as a venue for retributive punishment into a genuine means of healing financed directly by the perpetrator's wealth.

The implementation of this restorative justice foundation also demonstrates the nation's fidelity to the noble values embodied in Pancasila. The Constitution demands humane treatment of every individual and mandates equitable welfare that does not allow crime victims to fall into poverty while perpetrators continue to enjoy abundant wealth.¹¹ Justice becomes nothing more than an empty slogan if the state allows its citizens to be psychologically and economically destroyed without compelling law enforcement authorities to restore their condition. This places restorative justice as an institutional obligation rather than merely an optional method of resolving disputes.

It gravely offends the sense of justice when human traffickers can still control their assets from prison while the women they deceived must live in poverty and suffering for the rest of their lives. This imbalance exists because our legal system has long separated crimes against personal liberty from economic crimes.¹² Yet human trafficking is fundamentally a crime driven by enormous financial profit. Impoverishing perpetrators by confiscating all proceeds of their crimes and transferring them to victims is the only way to sever this criminal syndicate at its roots. Furthermore, this recovery is urgently needed because many women become targets of the same crime again due to the absence of economic protection after the incident. Without adequate compensation, women returning to their villages lack the capital needed to rebuild their lives with dignity. This absence of viable opportunities forces them to accept dubious job offers that ultimately lead them back into the same suffering. Economic recovery through restorative justice is the key to breaking this vicious cycle of poverty and crime.

From a human rights perspective, the need for recovery is mandated by various international agreements that our country has recognized.¹³ States parties are required to provide psychological rehabilitation and medical treatment without charging victims any cost whatsoever. This demonstrates that victim recovery is not an act of charity but an absolute human right that the state must fulfill. Failure by the justice system to provide this right constitutes a human rights violation by the state because it amounts to abandoning oppressed citizens.

¹¹ Muladi dan Barda Nawawi Arief, *Teori-Teori dan Kebijakan Pidana*, Bandung: PT Alumni, 2010, hlm. 94.

¹² 1 angka 1 Undang-Undang Nomor 21 Tahun 2007 tentang Pemberantasan Tindak Pidana Perdagangan Orang.

¹³ Desy Setyowati, "Pemenuhan Hak Restitusi bagi Korban Tindak Pidana Perdagangan Orang di Indonesia," *Jurnal HAM* 11, no. 2, 2020, hlm. 208.

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This restorative understanding must also extend to the social reintegration of victims into their communities. The harm they experience is not only personal but also damages the social relationships within their communities. Victims often feel isolated and deprived of healthy social interactions because of what they have endured. The urgent need today is for the state, through relevant institutions, to educate society to embrace victims once again, provide them with safe spaces, and ensure that they are not excluded from community life.

Ultimately, the central pillar of restorative justice in addressing this crime is the full restoration of human dignity. Criminal law must not stop at signing investigation reports and reading guilty verdicts in courtrooms. The law must reach victims' homes, ensure that children return to school, empower women once again, and ensure that no citizen bears the burden of devastation caused by the state's failure to provide protection from the very beginning.

3.2. Barriers Within the Current Legal Framework

Although the idea of recovery appears noble and ideal, efforts to implement it in Indonesian courts continue to encounter rigid legal barriers. The first fundamental obstacle lies in the restrictions regarding the types of crimes eligible for restorative justice. According to case settlement regulations issued by the police and prosecution authorities, this mechanism is intended only for criminal offenses punishable by imprisonment of less than five years.¹⁴ This limitation automatically closes the door to justice for victims of human trafficking, since this extraordinary crime carries much heavier minimum penalties.

The rigidity of this bureaucratic legal framework leaves investigators in the field hesitant and afraid to pursue legal innovations.¹⁵ Consequently, they avoid applying restorative principles in human trafficking cases to escape reprimands for violating procedural rules imposed by their superiors or police oversight bodies. This culture of fear surrounding administrative procedures sacrifices the true justice that victims deserve. Law enforcement officials choose the safer course of forwarding cases to court through ordinary procedures without considering compensation and recovery for victims.

The second difficulty becomes evident during the disbursement of compensation funds and the confiscation of criminals' assets. Although the legal framework governing this crime clearly

¹⁴ Pasal 2 Peraturan Kepolisian Negara Republik Indonesia Nomor 8 Tahun 2021 tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif;

¹⁵ Undang-Undang Nomor 31 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 13 Tahun 2006 tentang Perlindungan Saksi dan Korban secara umum menjamin hak korban, namun prosedurnya sering terkendala batasan wewenang antarlembaga.



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guarantees victims substantial compensation, its implementation in practice progresses very slowly and often ends in failure.¹⁶ Court decisions in favor of victims frequently become meaningless pieces of paper because when prosecutors attempt to enforce them, they cannot locate any assets belonging to the perpetrator that can be seized to satisfy the required compensation.

Authorities responsible for handling these cases rarely freeze bank accounts or seize valuable assets during the initial weeks after an arrest. This failure to trace financial flows at an early stage gives criminal syndicates ample time to transfer houses, vehicles, and cash into the hands of third parties. As a result, the justice system loses its primary means of providing genuine recovery to victims, reducing criminal proceedings to imprisonment alone.

Moreover, our criminal law strangely still allows perpetrators to choose a few additional months of imprisonment instead of paying billions of rupiah in compensation owed to victims.¹⁷ The provision permitting substitute imprisonment in place of compensation is an inherent flaw in the law that has been continuously preserved. This loophole is especially favored by white-collar criminals, who prefer enduring several months in prison rather than surrendering the wealth they acquired through crime. Another obstacle stems from poor coordination among judicial institutions within the integrated criminal justice system.¹⁸ The police, prosecutors, courts, and victim protection agencies often work independently in pursuit of completing their own administrative responsibilities. The absence of strong institutional coordination frequently causes victims' rights to be passed from one office to another. Victims, already emotionally exhausted, eventually give up because the bureaucracy involved in claiming their rights is too complicated.

On the societal side, the harsh tendency to blame victims within local communities also forms a formidable barrier to justice. Village residents often adopt narrow-minded views by blaming female trafficking victims, believing that the tragedy resulted from the women's own greed or susceptibility to promises of luxury.¹⁹ Such degrading attitudes are deeply toxic and create overwhelming social pressure. Society often fails to understand that these victims were targeted through sophisticated deception and coercion beyond the ability of ordinary people to resist.

¹⁶ Desy Setyowati, *Op. Cit.*, hlm. 210.

¹⁷ Romli Atmasasmita, "Teori Keadilan Substantif dan Penerapannya dalam Hukum Pidana," *Jurnal Hukum dan Pembangunan* 42, no. 2, 2012, hlm. 158.

¹⁸ Pasal 50 ayat (4) Undang-Undang Nomor 21 Tahun 2007 mengatur ketentuan kelam bahwa jika harta kekayaan terpidana tidak mencukupi, kewajiban ganti rugi diganti dengan pidana kurungan paling lama 1 (satu) tahun.

¹⁹ Mansur dan Gultom, *Op. Cit.*, hlm. 55.

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This culture of victim-blaming and institutional rigidity places immense psychological pressure on survivors, causing many to refuse to appear in court or pursue their legal rights because they fear bringing shame upon their families.²⁰ They remain silent and bury their trauma, allowing perpetrators to escape their obligation to pay compensation. Fear that their identities will become public during court proceedings leads many survivors to abandon their pursuit of justice guaranteed by the state.

Another equally serious obstacle is the limited institutional budget available to support long-term recovery programs for women and children. Protection agencies often have sufficient funds only to provide temporary shelter but lack the financial capacity to support vocational training or business capital until victims become truly independent.²¹ The gap between the broad promises of protection contained in legislation and the limited public funds allocated for implementation creates deep disappointment among survivors who expect meaningful assistance.

All of these obstacles demonstrate that the country's current law enforcement framework remains inconsistent with its humanitarian mandate.²² Loopholes in criminal procedure, weaknesses in asset-tracing systems, and poor perspectives among officials and society combine to produce a complete failure of protection. Without the courage to dismantle these procedural barriers, restorative justice for women and child victims will remain nothing more than an academic ideal that never materializes in Indonesian courtrooms.

3.3. Reforming the Legal Framework for Substantive Justice

Given the magnitude of these deadlocks, sweeping legal reforms are necessary to ensure that genuine justice can be achieved. The first legal reform must come from the Supreme Court through the issuance of special procedural regulations requiring judges to prioritize victim recovery. These highest judicial regulations must strictly prohibit judges from allowing financial compensation to be substituted with short additional prison terms. This shift in judicial philosophy would compel courts to work much harder to locate perpetrators' assets and ensure that victims' rights are fulfilled without compromise.

At the same time, the state, through its highest law enforcement authorities, must instruct police investigators to cooperate with the national financial intelligence agency from the very

²⁰ Zulfa, *Op. Cit.*, hlm. 20.

²¹ Pasal 34 Undang-Undang Nomor 21 Tahun 2007

²² Pasal 2 ayat (1) huruf r Undang-Undang Nomor 8 Tahun 2010 tentang Pencegahan dan Pemberantasan Tindak Pidana Pencucian Uang,



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first day a complaint is received.²³ Every human trafficking investigation should be treated on equal footing with money laundering investigations. This integrated approach aims to immediately freeze all hidden financial assets belonging to perpetrators before they can be transferred to secret accounts or moved abroad. Early asset preservation is the lifeblood of successful restorative justice.

This legal restructuring also requires the state to establish a dedicated victim recovery fund throughout the country.²⁴ This reserve fund should function as emergency assistance that can be immediately disbursed to women and children as soon as they are rescued. Victims should not be left abandoned for years while waiting for criminal proceedings to become final. The state must compensate victims first and then recover those funds directly from the wealth of the criminal network.

Direct payment from public funds ensures that victims can promptly establish small businesses in their hometowns or resume interrupted education. Rapid restoration of economic independence is essential to prevent them from falling once again into the same cycle of deception. This tangible assistance reassures women and children that when they reach their lowest point, the state truly stands beside them without forcing them to endure burdensome and prolonged compensation procedures.

Furthermore, reform of the justice system must be accompanied by strengthening the authority of institutions responsible for protecting witnesses and victims.²⁵ The law should be amended to grant these institutions direct enforcement powers enabling them to seize valuable assets belonging to criminal syndicates independently. These agencies should no longer function merely as passive assessors of damages but instead become powerful institutions capable of confiscating the wealth of perpetrators to safeguard victims' futures.

Legal reform must also address criminal sanctions against labor recruitment companies proven to have concealed trafficking activities.²⁶ The law should ensure that corporate entities involved are required to surrender all corporate capital into victim recovery funds. Their business licenses should not only be revoked, but company directors should also be compelled to contribute their personal assets to finance specialized psychological rehabilitation centers for women and children in regions particularly vulnerable to trafficking.

²³ Hiariej, *Op. Cit.*, hlm. 35.

²⁴ Pasal 15 Undang-Undang Nomor 21 Tahun 2007 yang mengatur tentang pertanggungjawaban pidana korporasi secara menyeluruh.

²⁵ Barda Nawawi Arief, *Op. Cit.*, hlm. 105

²⁶ Zulfa, *Op. Cit.*, hlm. 23.



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Beyond revising written sanctions, reform must integrate continuous therapeutic support into every stage of criminal proceedings.²⁷ Criminal procedure law should require the presence of qualified mental health professionals during every stage of victim examination, from police interviews to courtroom testimony. All costs associated with psychological care must be fully borne by the government. This protection ensures that the search for truth in court does not become another source of emotional harm for survivors.

Within society, revised legal rules should also create opportunities for the involvement of customary leaders and religious figures.²⁸ Restorative justice can only be fully realized when formal state law is supported by compassionate community traditions. Community leaders have a civic responsibility to restore victims' reputations before local residents and eliminate all forms of unilateral judgment. Such restoration of dignity is as valuable as financial compensation itself.

This comprehensive legal reform reflects the nation's determination to leave behind an outdated legal system focused solely on how harshly the state can punish offenders in prison. True justice is measured by how effectively our written laws guarantee recovery funding, freeze blood-stained assets obtained through the exploitation of human beings, and provide victims with complete psychological protection. This path of recovery is difficult, but it remains the only route capable of fulfilling the ideals of a just and civilized humanity.

Ultimately, combining uncompromising sanctions against human trafficking networks with comprehensive and compassionate welfare guarantees for survivors is the only path toward creating a civilized and honorable Indonesian criminal justice system. Reforming the legislative framework in pursuit of substantive justice will become a lasting legacy for national law. Its success will no longer be measured by the number of prisoners behind bars but by the return of smiles, the restoration of bodily autonomy, and the renewal of hope for a bright future for every woman and child who has suffered throughout the Indonesian archipelago.

4. Conclusion

The crime of trafficking human beings is a criminal offense that directly tears apart the fabric of our human dignity, with women and young children consistently placed in the position of those who suffer the greatest devastation. Efforts to introduce the concept of restorative justice in handling such cases must never have their meaning distorted into merely a family-

²⁷ Romli Atmasasmita, *Op. Cit.*, hlm. 165.

²⁸ Muladi, *Kapita Selekta Sistem Peradilan Pidana*, Semarang: Badan Penerbit Universitas Diponegoro, 1995, hlm. 76.

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based settlement that erases criminal liability. Instead, this principle should be understood as a cutting-edge tool to exert financial pressure on perpetrators in order to fund the victims' physical and psychological recovery and well-being. In reality, the current law enforcement framework in our country still contains significant gaps, ranging from the extremely limited scope of restorative justice, the ineffective implementation of criminal asset forfeiture, to the poor level of coordination among institutions responsible for protection. As a way forward, the government and the country's lawmakers have no choice but to promptly restructure the legal framework by making the preservation of victims' lives the highest priority above all else. This effort can only achieve meaningful success if it is supported by the swift seizure of suspects' bank accounts, the establishment of a state-funded advance compensation scheme, and the expansion of the legal authority of witness protection agencies. By infusing the legal system with the values of justice that embody the nation's foundational principles, our legal system will no longer merely serve to intimidate criminals, but will instead stand as a strong shield capable of healing wounds and restoring the sovereignty and inherent dignity of oppressed women and children.

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