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

Juridical Analysis of The Human Rights Framework in Fulfilling The Right to Restitution for Women and Child Victims of Human Trafficking in Indonesia

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Abstract. *The Crime of Human Trafficking (TPPO) constitutes a grave violation of Human Rights (HR) that strips individuals of their essential freedom and dignity, with women and children consistently being the groups most vulnerable to exploitation. In Indonesia, although the positive legal framework through Law Number 21 of 2007 mandates the fulfillment of the right to restitution, the reality of law enforcement remains trapped in a formalistic retributive justice paradigm. The current criminal justice system focuses more on imposing imprisonment on perpetrators while often neglecting the victims' economic and civil recovery, resulting in restitution frequently failing to be enforced due to the existence of substitute imprisonment provisions (subsidiary punishment). This failure demonstrates that legal instruments have not yet fully succeeded in humanizing people in accordance with the values of Dignified Justice. This study aims to analyze the juridical problems in fulfilling the right to restitution and to formulate a reconstruction of the legal norms governing the eradication of human trafficking based on Dignified Justice and restorative justice. This normative legal research (doctrinal research) employs a statutory approach, a conceptual approach, and a comparative approach. The findings emphasize the necessity of a fundamental shift from a retributive system to a restorative justice system centered on restoring the dignity of women and children. The reconstruction of legal norms is imperative through the elimination of subsidiary imprisonment loopholes in restitution, as well as the strengthening of asset tracing mechanisms and the application of vicarious liability to criminal corporations. By adopting progressive asset confiscation mechanisms from comparative jurisdictions, the right to restitution will no longer merely constitute an empty civil debt but rather an absolute obligation of both the state and perpetrators, enforceable in practice to ensure the protection of the human rights of trafficking victims.*

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1. Introduction

The Crime of Human Trafficking (TPPO) in the 21st century has evolved into one of the most degrading forms of transnational organized crime against modern human civilization. This crime no longer relies solely on traditional kidnapping methods but has evolved through the use of technological manipulation, debt bondage, and the exploitation of economic and social vulnerabilities. Within this chain of modern slavery, human beings are reduced to mere commercial commodities traded for the purpose of generating enormous financial profits for global syndicates. These exploitative practices transcend national jurisdictions and create an underground criminal ecosystem that is extremely difficult to penetrate using conventional criminal law instruments.¹

Within this transnational criminal network, women and children occupy the highest position as the most vulnerable and most extensively exploited victims. This condition is driven by unequal social structures, structural poverty, and inadequate access to education in many developing countries, including Indonesia. The methods used to ensnare women and children vary widely, ranging from promises of decent employment abroad, commercial sexual exploitation, to fraudulent arranged marriages lacking legal registration. Upon arrival in the destination country or region, they are deprived of their freedom, subjected to physical and psychological abuse, and forced to work without humane wages.²

Fundamentally, human trafficking is not merely a violation of national criminal law but also a crime against humanity and a grave violation of Human Rights (HR) that is non-derogable (cannot be restricted under any circumstances). Under international human rights instruments and the 1945 Constitution of the Republic of Indonesia, the state bears an absolute constitutional obligation to protect the dignity of every citizen. The right to be free from slavery and torture is an inherent human right. Therefore, when the state fails to prevent its citizens from becoming victims of human trafficking, it assumes a continuing obligation to restore all of the victims' rights through a fair criminal justice system.

¹ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana: Perkembangan Penyusunan Konsep KUHP Baru* (Jakarta: Kencana Prenada Media Group, 2011), hlm. 89

² Diana Yusyanti, "Pelindungan Hukum Terhadap WNI Korban Tindak Pidana Perdagangan Orang di Era Digital," *Jurnal Penelitian Hukum De Jure* 21, no. 3 (2021): 392.

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One of the most essential forms of human rights restoration for trafficking victims is the fulfillment of the right to restitution or compensation. Restitution is not merely ordinary civil compensation but a public law instrument representing the perpetrator's absolute responsibility for the suffering inflicted. For women and child survivors of exploitation, restitution is a lifeline for their future. Restitution funds are required for medical recovery, long-term psychological rehabilitation, fulfillment of civil rights, and economic capital to prevent them from becoming trapped once again in the vicious cycle of poverty that leads to re-enslavement.³

Unfortunately, the reality of law enforcement in Indonesia reveals a sharp dissonance between the ideals of human rights protection and judicial practice. Law Number 21 of 2007 concerning the Eradication of Human Trafficking has, in principle, mandated the provision of restitution. However, law enforcement officials remain deeply constrained by a rigid and formalistic retributive justice paradigm. Indonesia's criminal justice system continues to regard crime solely as an offense against the state, so that the success of law enforcement is measured only by the length of imprisonment imposed on defendants, while the recovery of victims is frequently overlooked.⁴

The dominance of this offender-oriented retributive paradigm ultimately creates secondary victimization for victims in court proceedings. Women and children are often compelled to relive their trauma without adequate guarantees of psychological protection, while prosecutors and judges fail to comprehensively assess the material and immaterial losses they have suffered. More ironically, the fulfillment of restitution frequently reaches a dead end due to formal legal loopholes allowing perpetrators to substitute restitution payments with additional imprisonment (subsidiary punishment). Consequently, offenders can easily evade economic responsibility by claiming poverty.⁵

The failure of law enforcement to execute restitution stems from the unwillingness or inability of state institutions to trace financial flows and the assets of criminal syndicates. The law often proves harsh toward low-level recruiters while remaining ineffective in pursuing the intellectual masterminds and corporate entities behind the exploitation. The absence of an understanding of the doctrine of vicarious liability enables criminal corporations to continue

³ Eddy O.S. Hiarij, *Prinsip-Prinsip Hukum Pidana* (Yogyakarta: Cahya Atma Pustaka, 2016), hlm. 205

⁴ Eva Achjani Zulfa, "Keadilan Restoratif di Indonesia: Studi tentang Kemungkinan Penerapannya," *Jurnal Kriminologi Indonesia* 7, no. 1 (2010): 47.

⁵ *Ibid.*, hlm. 50

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concealing assets derived from human slavery, leaving no property available for state seizure to satisfy victims' restitution claims.

To overcome the deadlock of the retributive system, addressing human trafficking crimes requires a paradigm shift toward the theory of Dignified Justice. Dignified Justice posits that the law should fundamentally serve to humanize people rather than reduce them to slaves of the silent text of legislation.⁶ Based on this philosophy, the legal system must adopt a restorative justice approach that places the restoration of victims' human dignity as the highest objective of punishment. Punishing perpetrators without restoring the lives of women and children whose futures have been destroyed represents a flawed judicial logic that contradicts the noble values of civilization.

To formulate this paradigm shift, legal discourse in Indonesia must be enriched through comparative legal studies across jurisdictions. Examining law enforcement mechanisms in countries with similar or different legal traditions, such as the Netherlands, Germany, and South Korea, is particularly essential. These countries have made greater progress in reconstructing their legal norms, particularly by integrating criminal asset confiscation policies, targeting beneficial ownership, and establishing state compensation funds for victims of sexual crimes and slavery. Adopting the best practices from these comparative jurisdictions can accelerate the modernization of Indonesia's criminal procedural law.

Based on the theoretical rationale and practical urgency outlined above, this scholarly research is intended to examine the anatomy of the failure of Indonesia's positive legal system to protect victims of modern slavery. This article aims to conduct an in-depth analysis of the Human Rights framework governing the fulfillment of the right to restitution, identify the formal legal obstacles hindering its enforcement, and formulate a reconstruction of human trafficking legal norms grounded in a shift from retributive to restorative justice. Through this work, it is hoped that a proposal for legal reform will emerge to make Indonesia's criminal justice system more humane and more authoritative in restoring the rights of women and children.

2. Research Methods

This study is classified as normative legal research, focusing on an in-depth analysis of legal norms, doctrines, and principles embodied in legislation and academic literature.⁷ The first approach employed is the statutory approach, examining the 1945 Constitution of the

⁶ Teguh Prasetyo, *Keadilan Bermartabat: Perspektif Teori Hukum* (Bandung: Nusa Media, 2015), hlm. 45-48

⁷ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2011), hlm. 95.

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Republic of Indonesia, Law Number 39 of 1999 concerning Human Rights, Law Number 21 of 2007 concerning the Eradication of Human Trafficking, Law Number 35 of 2014 concerning Child Protection, as well as the Criminal Procedure Code (KUHP). The second approach is the conceptual approach, framing the analysis through the theories of Dignified Justice, Human Rights, and the transition toward the restorative justice paradigm. Finally, this research applies a comparative approach by examining asset confiscation and victim restitution policies in the jurisdictions of the Netherlands, Germany, and South Korea in order to provide a perspective for legal reform (*ius constituendum*) in reconstructing Indonesia's legal norms on human trafficking.

3. Results and Discussion

3.1. Human Rights Framework and Dignified Justice in Fulfilling the Right to Restitution

The Human Rights (HR) framework in examining the Crime of Human Trafficking positions this crime not merely as a formal offense but as a form of contemporary slavery that absolutely deprives individuals of the fundamental rights universally guaranteed. Women and children who become victims of Human Trafficking lose their right to bodily autonomy, their right to liberty, and their right to be free from degrading treatment. Within the framework of constitutional law, the state acts as the duty-bearer entrusted with the sacred mandate to respect, protect, and fulfill these rights.⁸ When this deprivation of autonomy occurs, the state must not stop at imposing administrative punishment on the perpetrators but must go further to restore the existential harm suffered by its citizens.

The right to restitution serves as a concrete manifestation of the state's obligation to fulfill human rights. Doctrinally, restitution refers to the restoration of property rights, financial compensation, and the restoration of victims to the condition they were in before the crime occurred. For women and children, restitution is not merely an ordinary civil compensation instrument that can be negotiated, but an imperative human right. Restitution constitutes the absolute responsibility of the perpetrator, enforced by the power of the state, symbolizing that the law does not tolerate the accumulation of wealth built upon the suffering, blood, and tears of other human beings who have been exploited.

To fully understand the essence of restitution, the legal system must adopt the perspective of the theory of Dignified Justice. This legal philosophy teaches that the ultimate purpose of all lawmaking and law enforcement is to humanize human beings. Rigid and positivistic positive law often forgets the soul of justice. From the perspective of Dignified Justice, imprisoning

⁸ Eddy O.S. Hiarij, *Op.Cit.*, hlm. 210

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perpetrators of exploitation while allowing victims to return to their villages physically disabled, psychologically traumatized, and burdened with debts owed to recruiters constitutes a form of injustice that offends common sense.⁹ Justice can only be called dignified if it is capable of weaving together the fragments of victims' lives by providing tangible resources for recovery.

The fulfillment of dignified restitution requires a radical shift from the paradigm of retributive justice to restorative justice. The retributive paradigm that has long been embraced focuses on the state's retaliation against offenders, reducing victims to mere instruments of proof. In contrast, restorative justice places the victim's suffering at the center of case resolution. The application of restorative justice in human trafficking cases does not mean forgiving perpetrators through peaceful mediation but instead focuses the weight of punishment on asset tracing obligations and compensation payments. In this context, restorative justice is the state's coercive action to restore the social and economic balance of victims destroyed by criminal enterprises.

Furthermore, the human rights framework in cases of trafficking involving women and children often intersects directly with the complexities of family law and civil rights that have long been neglected. Many trafficking schemes use the guise of unregistered marriages to smuggle women abroad. Such exploitation frequently results in pregnancies and the birth of children whose biological and civil status is unrecognized by either the destination country or the country of origin. Dignified Justice requires that the fulfillment of restitution and criminal judgments also accommodate the protection of the civil status of wives and the children of victims, ensuring that they are free from social stigma and administrative discrimination upon returning home.

Therefore, the components of restitution calculations must not be interpreted narrowly as merely material losses in the form of unpaid wages. Human rights-based compensation calculations must comprehensively include non-material losses, including medical rehabilitation costs, long-term psychological trauma recovery, losses resulting from children's missed educational opportunities, and child support guarantees for children born to victims as a result of sexual exploitation. The absence of standardized operational guidelines for calculating these future losses constitutes an urgent task for law enforcement authorities to formulate so that restitution amounts truly reflect fair recovery.

⁹ Teguh Prasetyo, *Hukum Pidana: Keadilan Bermartabat* (Jakarta: Rajawali Pers, 2018), hlm. 67

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In addition to economic fulfillment, the human rights framework also demands the protection of victims' psychological integrity throughout judicial proceedings. Efforts to claim restitution often force victims to confront perpetrators in adversarial trials, triggering retraumatization. The right to be heard without being judged is part of restorative justice. Therefore, court proceedings must provide layered protections, such as the use of teleconferencing facilities, closed hearings, and clinical psychological assistance, to ensure that legal efforts to pursue restitution do not become a double-edged sword that further wounds the mental health of trafficking survivors.

In conclusion, restitution for women and children who are victims of human trafficking represents the highest manifestation of Human Rights and Dignified Justice within the justice system. Restitution is the bridge that transforms the rhetoric of legal protection into concrete restorative action. Without guaranteed restitution that is fully executed, the state has failed to fulfill its function, and criminal law becomes merely a powerless ornament of authority incapable of safeguarding the dignity of its citizens from the grip of modern slavery.

3.2. Juridical Problems and the Failure of Formal Law in Executing Restitution

Although the philosophical and normative framework of Human Rights has placed restitution in a highly crucial position, the empirical reality of law enforcement in Indonesia reveals a picture of systemic failure. Law Number 21 of 2007 explicitly grants victims the right to restitution under Articles 48 through 50. However, the implementation of these substantive legal norms is hindered by the rigidity of the formal legal infrastructure (the Criminal Procedure Code) and the law enforcement paradigm, which is inconsistent with the spirit of victim protection. There exists a vast gap between the law in books and the law in action, where restitution often ends up as nothing more than a fictional figure written on court judgments.

The most fundamental juridical issue undermining the right to restitution is the existence of substitute imprisonment provisions. Under the statutory formulation, if a trafficking offender is unable to pay restitution, the obligation may be replaced with imprisonment for up to one year. This norm constitutes a highly fatal legal loophole and violates the sense of Dignified Justice. The majority of offenders deliberately conceal or transfer their assets during investigations, then declare bankruptcy in court and willingly choose several additional months of imprisonment rather than paying billions of rupiah in restitution to victims. This substitute provision nullifies the essence of restitution and transforms victims' human rights into an option that offenders can negotiate.

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This failure of execution is exacerbated by systemic weaknesses in formal legal instruments concerning asset tracing. The Criminal Procedure Code, which governs criminal proceedings, was designed in the 1980s with a highly individualistic orientation, focusing on proving personal criminal acts rather than transnational financial crimes. Investigators often lack sufficient authority or adequate incentives to follow the money from the early stages of investigations. Consequently, when public prosecutors submit case files to court, no high-value economic assets from criminal networks have been frozen or confiscated, leaving restitution claims without an enforceable basis.

Furthermore, the problem extends to the weak construction of corporate criminal liability in prosecutions. Modern human trafficking syndicates rarely consist of lone individuals; they operate under the cover of fictitious labor recruitment companies, travel agencies, and even major technology companies providing facilities for cyber slavery. However, Indonesian law enforcement authorities rarely apply the doctrine of vicarious liability to prosecute these business entities. A prosecutorial focus that targets only lower-level field agents allows corporations reaping the greatest profits from slavery to remain untouched by law, leaving both the state treasury and victims without compensation.

The absence of synergy between the application of the Human Trafficking Law and the Anti-Money Laundering (AML) regime also creates a separate juridical deadlock. Ideally, every trafficking case should be handled concurrently with AML charges because human trafficking invariably generates illicit proceeds laundered through international banking instruments. By failing to utilize AML mechanisms from the outset, prosecutors lose the aggressive authority to trace the beneficial ownership of shell accounts used by trafficking syndicates. Yet only by piercing the corporate veil can the sources of funds for restitution to women and children be secured.

At the institutional level, prosecutors as *dominus litis* are often hindered by the absence of internal technical regulations requiring human rights-based asset recovery as a priority. A conservative prosecutorial culture causes prosecutors to hesitate in formulating demands that go beyond routine administrative practice. This reluctance to interpret the law progressively prevents prosecutors from transforming themselves from mere "punishers of offenders" into "protectors of victim recovery." Judges likewise often impose minimal sentences, considering their duty complete once offenders are imprisoned without ensuring that the state possesses coercive mechanisms to confiscate convicts' assets after the judgment becomes final and binding.

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Moreover, the burden of formulating, calculating, and pursuing restitution amounts is often disproportionately placed upon victims facilitated by the Witness and Victim Protection Agency (LPSK). Many women and child victims in remote regions lack access to competent legal assistance. The asymmetry between syndicates represented by expensive legal counsel and victims struggling to articulate their suffering further highlights the weaknesses of Indonesia's procedural law. The state is absent in providing comprehensive advocacy to calculate economic losses, resulting in judges rejecting restitution requests due to allegedly insufficient mathematical evidence.

Considering this series of juridical and cultural problems, it is evident that Indonesia's formal legal instruments are dysfunctional in guaranteeing victims' human rights. The empty retributive framework, devoid of a restorative spirit, combined with paralyzed asset tracing regulations and reluctance to target criminal corporations, has created a justice system blind to human suffering. Therefore, sporadic amendments to legal provisions are insufficient. The state faces an urgent obligation to conduct a comprehensive legal overhaul and reconstruct legal norms so that the right to restitution no longer remains a false promise within Indonesia's justice system.

3.3. Reconstructing Regulations on the Fulfillment of the Right to Restitution Through a Comparative Law Approach

The crisis of justice experienced by women and child victims of human trafficking demands comprehensive legal disruption. Piecemeal efforts to patch existing regulatory weaknesses have proven ineffective. The state must undertake a structural reconstruction of legal norms aimed at shifting from retributive justice toward restorative justice that humanizes individuals. To formulate a robust **ius constituendum** framework, Indonesia's legal system must synthesize best practices from international judicial systems. Comparative studies of countries with civil law traditions or adaptive legal reform histories, such as the Netherlands, Germany, and South Korea, provide highly rational argumentative foundations.¹⁰

Examining the jurisdiction of the Netherlands, the country grants prosecutors broad discretionary authority through the principle of active duty of care. In handling organized crime and human exploitation, Dutch authorities are required to activate financial asset tracing mechanisms from the first day of investigation without waiting for the completion of the principal criminal proceedings. The Netherlands also maintains a State Compensation Fund, whereby if perpetrators fail to pay, the state advances restitution payments to victims

¹⁰ Barda Nawawi Arief, *Op.Cit.*, hlm. 95

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and subsequently pursues and confiscates the offenders' assets. This system guarantees that victims never return home empty-handed.

Meanwhile, within Germany's judicial tradition, reforms to criminal procedure and criminal law have institutionalized highly aggressive asset confiscation mechanisms. Germany applies evidentiary obligations based on *Belehrungs- und Aufklärungspflicht*, requiring law enforcement authorities to trace the economic benefits of criminal activity. More advanced still, Germany has implemented a limited form of non-conviction-based asset forfeiture specifically for corporate funding entities concealing their assets. If assets are believed to originate from human trafficking crimes, the state may confiscate them for victim compensation without proving individual guilt in court, effectively destroying the economic foundations of criminal corporations.¹¹

In Asia, South Korea offers valuable inspiration in addressing the modern dimensions of human trafficking involving cyber-trafficking and digital slavery. South Korean victim protection law integrates high-level financial intelligence collaboration focused on tracing cryptocurrency transactions frequently used by syndicates to transfer funds across borders. In addition, South Korea strongly emphasizes the civil rehabilitation of female victims, ensuring protection of the civil status of women and children born from slavery without stigma, which is closely aligned with the concept of Dignified Justice.¹²

Based on this comparative review of cross-jurisdictional legal systems, the first reconstruction that Indonesian lawmakers must undertake is to revise Article 50 of the Human Trafficking Law by completely abolishing substitute imprisonment provisions for restitution. Compensation obligations should constitute perpetual debts that cannot be extinguished by the passage of time or additional imprisonment. If perpetrators refuse to pay, legal instruments should be granted coercive authority to confiscate all assets registered under their names, their immediate family members, or third parties suspected of acting as nominees, while applying the principle of reversed burden of proof concerning restitution assets.

The second reconstruction concerns strengthening integrated *lex specialis* asset recovery instruments. The state must accelerate the enactment of the Asset Confiscation Bill or formulate a comprehensive omnibus law specifically addressing the tracing of assets derived from human rights crimes. In line with practices in the Netherlands and Germany, Indonesian public prosecutors should be required to include Anti-Money Laundering charges in every

¹¹ Diana Yusyanti, *Loc.Cit.*, hlm. 395.

¹² Teguh Prasetyo, *Op.Cit.*, hlm. 80.

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human trafficking indictment involving transnational corporations. The freezing of accounts at both domestic and international levels should become a standard operating procedure and a prerequisite for cases to proceed to trial.

The third reconstruction concerns strengthening the doctrine of vicarious liability for corporations. Indonesian law must be reformulated to target the beneficial owners of legal entities exploiting women and children. Legal actions should no longer focus merely on administrative fines but should seek the dissolution of corporate entities, the liquidation of all capital assets, and the confiscation of holding companies that shield them. Funds generated from the confiscation of these large corporate assets should be developed into a Victim Trust Fund, administered by the state to ensure the availability of financial resources for direct restitution, medical rehabilitation, and the sustained protection of victims' civil rights.

Ultimately, this series of legal reconstructions demands political courage from every pillar of the state. Transforming the criminal justice system from one obsessed with custodial punishment into a regime centered on asset tracing and victim recovery represents an essential law enforcement reform. Only by adopting asset confiscation mechanisms capable of cutting off the economic lifeblood of trafficking syndicates and converting those assets into rights and benefits for women and children can Indonesia's criminal justice system truly stand firm. A formulation that combines restorative justice with the values of Dignified Justice will ensure that the state genuinely protects, respects, and fulfills Human Rights.

4. Conclusion

The fulfillment of the right to restitution for women and child victims of the Crime of Human Trafficking represents the highest expression of Human Rights protection and the realization of Dignified Justice. Indonesia's current positive legal framework suffers from structural failure due to the entrenched paradigm of outdated retributive justice, the absence of progressive asset tracing authority, and the minimal application of corporate liability. The legal loophole allowing substitute imprisonment has reduced the value of human rights to a commodity negotiable by offenders. Comparative analysis with the legal systems of the Netherlands, Germany, and South Korea clearly demonstrates that the state must reconstruct its criminal law by abolishing substitute imprisonment options, implementing reversed burden of proof regarding syndicate assets, and pursuing corporate beneficial owners to ensure the availability of victim-centered recovery funds.

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