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

Challenges in The Enforcement of Human Rights in Mitigating the Exploitation of Children and Women: A Comparative Study of Victim Protection Systems in Human Trafficking Cases

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Abstract. *The Crime of Human Trafficking (TPPO) constitutes one of the gravest violations of Human Rights (HR), with women and children being the most vulnerable groups. Although Indonesia already has an adequate legal framework through Law Number 21 of 2007, the enforcement of human rights in mitigating this exploitation continues to clash with realities on the ground. The gap between legal regulations (das sollen) and law enforcement practices (das sein) often triggers secondary victimization for survivors. This study aims to uncover the systemic and cultural obstacles to human rights enforcement in human trafficking cases and to examine the effectiveness of victim protection through a comparative study with countries in Southeast Asia. This research employs a normative legal (juridical-normative) method using the statute approach, conceptual approach, and comparative approach. The analysis is based on primary legal materials consisting of national legislation and international instruments, as well as secondary legal materials from relevant literature. The comparative study focuses on victim protection legal systems in the Philippines and Thailand to identify regulatory strengths that can be adapted. The findings indicate that the primary challenges to human rights enforcement in Indonesia include the weak implementation of restitution rights, which are often substituted with imprisonment, the tendency of law enforcement officers to continue using a retributive paradigm, and weak early victim identification that may lead to the criminalization of victims. By comparison, Thailand excels through its cross-agency victim identification approach (multidisciplinary teams), while the Philippines has a state-funded Victims Compensation Fund that ensures victims receive financial compensation even when perpetrators fail to pay restitution. This study recommends a shift toward victim-centered restorative justice, cross-institutional synchronization, and the establishment*

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of a Victim Assistance Fund so that the mitigation of exploitation can be carried out in a holistic and dignified manner.

Keywords: *Comparative Study; Exploitation of Children and Women; Human Rights; Human Trafficking (TPPO); Restorative Justice.*

1. Introduction

Human Rights (HR) are fundamental rights inherently attached to every human being from birth as a gift from Almighty God, which must be respected, upheld, and protected by the state, the law, and the government. This concept serves as the primary foundation of every democratic rule-of-law state, including Indonesia. However, the fulfillment of human rights often collides with the reality of crimes that degrade human dignity. Freedom, security, and the right to a decent life, which should be enjoyed by every individual, are in reality still frequently taken away by individuals or syndicates that prioritize material gain over humanitarian values.

One form of transnational crime that constitutes one of the gravest human rights violations in today's era of globalization is the Crime of Human Trafficking (TPPO). Human trafficking is a form of modern slavery that degrades human dignity and reduces people to mere commodities that can be bought and sold. This practice not only deprives victims of their freedom but is also frequently accompanied by physical, psychological, and sexual violence that leaves lifelong trauma. Although civilization has advanced, this chain of slavery has instead found revolutionary ways to survive within modern society.

Within this criminal landscape, women and children consistently occupy the position of the groups most vulnerable to exploitation. This vulnerability does not arise by chance but stems from unequal social structures, deeply rooted patriarchal culture, and pressing economic hardship. Women are often lured with promises of decent jobs abroad, while children frequently become victims of commercial sexual exploitation or forced labor. Their weak bargaining position makes them particularly susceptible to falling into the web of deception spun by recruiters who manipulate their desperation.

The modus operandi of human trafficking has become increasingly complex, concealed, and transnational. Whereas recruitment in the past was conducted conventionally from village to village, syndicates now exploit advances in information technology and social media to find victims. Debt bondage, falsification of identity documents, and threats of violence against

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victims' families are among the deceptive methods used to prevent victims from escaping or reporting to the authorities. This crime operates like a shadow corporation with strong networks extending from the country of origin, through transit countries, to destination countries.

From a juridical perspective, Indonesia has demonstrated a strong commitment by ratifying various international instruments and enacting national legislation. The Indonesian government enacted Law Number 21 of 2007 on the Eradication of the Crime of Human Trafficking as a *lex specialis* expected to eradicate this crime down to its roots. However, the existence of written laws alone is insufficient if not accompanied by responsive legal structures and legal culture. The gap between the expectations embodied in the law (*das sollen*) and the reality of law enforcement in practice (*das sein*) remains very wide.

The greatest challenge in enforcing human rights in human trafficking cases lies in the weak implementation of a victim-oriented legal protection system. Criminal justice proceedings often focus solely on imprisoning perpetrators while neglecting the rights of victims whose lives have been devastated. Victims frequently experience secondary victimization when interacting with the justice system; they are repeatedly interrogated, confronted with perpetrators who retraumatize them, and are not infrequently viewed as immigration offenders or commercial sex workers rather than as victims of exploitation.

Furthermore, victim recovery has not yet become a well-integrated priority across state institutions. Case handling often ends once a court decision has been issued, while social and psychological rehabilitation, as well as the fulfillment of victims' restitution rights, are frequently neglected. In fact, exploitation mitigation can never succeed if survivors return to their hometowns without skills or capital, ultimately making them vulnerable to being recruited once again by the same trafficking networks.

At the international level, the Palermo Protocol Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children has established standard guidelines requiring States Parties to harmonize their national laws. However, due to differences in legal systems, cultures, and economic capacities, implementation of the Protocol varies from country to country. Therefore, a comparative approach is necessary to examine how countries with similar demographic characteristics address this issue within their respective jurisdictions.

Given this complexity, a comparative legal study becomes highly crucial and relevant. By comparing Indonesia's victim protection system for human trafficking with those of other countries, it is possible to identify the strengths and weaknesses of each system. This

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comparative approach is not intended to blindly imitate the laws of other countries but rather to explore universal principles and best practices that can be incorporated into the national legal system to strengthen the mitigation of exploitation.

Based on the background described above, this article specifically aims to analyze and critically examine the challenges of enforcing human rights in mitigating the exploitation of women and children. Through the analytical framework of a comparative study of victim protection systems in human trafficking cases, this research is expected to contribute academic insights as well as practical recommendations for policymakers, law enforcement officers, and human rights advocates in formulating strategies to combat human trafficking that truly guarantee dignified justice.

2. Research Methods

This research employs a Normative Legal Research (Juridical-Normative) method, namely a method that examines legal rules, norms, principles, and doctrines found in literature and legislation. The approaches used include the Statute Approach, the Conceptual Approach, and the Comparative Approach. The data are based on primary, secondary, and tertiary legal materials. The primary legal materials consist of relevant legal instruments, including: the 1945 Constitution of the Republic of Indonesia, Law Number 39 of 1999 on Human Rights, Law Number 21 of 2007 on the Eradication of the Crime of Human Trafficking, Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 on Child Protection, as well as international instruments such as the Palermo Protocol. Data analysis was conducted using a qualitative deductive approach to produce comprehensive conclusions.

3. Results and Discussion

3.1. Dynamics and Challenges of Human Rights Enforcement in Human Trafficking Cases

The enforcement of Human Rights in the context of the Crime of Human Trafficking (TPPO) faces a steep path filled with structural and cultural dynamics. The first and most apparent obstacle is the difficulty faced by law enforcement officers in proving the element of "exploitation," which is a primary requirement of human trafficking under the law. Often, the initial recruitment occurs with the victim's consent due to promises of prosperity. However, under human rights law and the Human Trafficking Law, the victim's consent becomes invalid or null and void if it was obtained through deception, threats, or abuse of power.

The second challenge stems from cross-border jurisdictional constraints. Because human trafficking is a transnational crime, domestic law enforcement agencies often struggle to

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pursue the intellectual masterminds who operate abroad. The Mutual Legal Assistance process between countries takes an exceptionally long time and is overly bureaucratic. As a result, authorities usually succeed only in arresting field recruiters (brokers) or drivers transporting victims, while the leaders of the trafficking syndicates remain free and continue seeking new victims.

Third, low legal literacy and the strong culture of patronage at the grassroots level make communities, especially in rural areas, easily trust individuals offering employment opportunities. These brokers are often familiar figures within the community and, in many cases, are even related to the victims by family ties. This sociological condition creates reluctance among family members to report such cases to the police because they believe the matter can be resolved amicably within the family, thereby closing the victim's access to justice.

Fourth, law enforcement officers at the district or local police level often lack an adequate victim-protection perspective. The absence of specialized training frequently leads them to confuse human trafficking cases with ordinary labor violations, general fraud, or merely immigration document offenses. Errors in applying the appropriate legal provisions from the very beginning of the investigation (entry point) can fatally undermine the trafficking charges in court, resulting in lenient sentences for perpetrators and preventing victims' rights from being fully accommodated.

Fifth, Indonesia's criminal justice process remains heavily influenced by a paradigm that treats victims merely as instruments of proof (witness evidence). Throughout court proceedings, women and child victims are often required to provide testimony in open court, forcing them to relive their psychological trauma. The absence of teleconference facilities or protective screens in several regional courts means that victims must face their perpetrators directly, who often intimidate them through threatening stares or body language during the proceedings.

Sixth, the endemic problems of corruption, collusion, and nepotism (KKN) remain major obstacles to human rights enforcement in these cases. The falsification of documents such as identity cards, passports, and family cards—used to manipulate a child's age to appear as an adult—could not occur without the involvement or negligence of certain government officials. The participation of such individuals in facilitating forged or fraudulent documents demonstrates that human rights protection is undermined by illegal levies and abuses of authority.

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Seventh, the phenomenon of revictimization or secondary victimization poses a terrifying threat to victims of commercial sexual exploitation. When prostitution sites are raided by authorities, women and children who are being prostituted are often detained and have their identities exposed by the media without adequate protection. The social stigma labeling them as "prostitutes" obscures the essential fact that they are victims of human trafficking who were deceived, sold, and forced to serve male clients in order to repay debts imposed by trafficking syndicates.

Eighth, these challenges demonstrate that human rights enforcement cannot be entrusted solely to the police and the judiciary. Addressing the dynamics of human trafficking requires a radical reform of the criminal justice system that prioritizes a victim-centered approach. Without gender sensitivity, awareness of children's rights, and integrity among law enforcement officers, even the best legislation will ultimately become a dead document that fails to provide security and justice for society.

3.2. Mitigating the Exploitation of Women and Children Across Different Countries

Mitigating the exploitation of women and children unquestionably requires comprehensive preventive intervention from upstream to downstream. The first and most essential mitigation measure is poverty eradication and strengthening family economic resilience. Empirical data show that areas sending illegal migrant workers consistently overlap with regions experiencing high poverty rates. Economic empowerment, the creation of labor-intensive employment opportunities in rural areas, and conditional cash assistance programs constitute the first line of defense to prevent women from being pressured into accepting suspicious overseas job offers.

The second mitigation measure concerns the education system and public awareness. Education on the dangers of human trafficking, the modus operandi of brokers, and safe migration pathways should be integrated into local curriculum content in schools and village community centers. Children and adult women must be equipped with a critical understanding of their fundamental rights so that they develop resilience when confronted with the psychological manipulation commonly employed by illegal labor recruiters.

Third, surveillance of border areas, illegal ports, and international entry and exit routes must be strengthened with advanced technology. Mitigation along transit routes is crucial. Immigration and border security authorities in various countries have begun integrating biometric systems and risk profiling. Officers are trained to recognize suspicious body



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language, carefully verify travel documents, and conduct in-depth interviews whenever they encounter women or children traveling with individuals whose profiles appear unusual.

Fourth, the digital era has introduced new threats, requiring mitigation efforts to extend into cyberspace through cybersecurity measures. Cyber patrols have become essential because victim recruitment has shifted from the physical world to social media groups, dating applications, and fraudulent job portals. Cooperation with global technology platforms to remove (take down) content and accounts linked to trafficking networks has become a modern mitigation strategy adopted by developed countries to disrupt exploitation at its earliest stage through digital devices.

Fifth, the active participation of civil society, religious leaders, and traditional community leaders cannot be overlooked. At the village level, community-based mitigation initiatives have proven highly effective. Village administrations that require residents to report before leaving to work outside the region or abroad have successfully reduced non-procedural departures. Rural communities become the eyes and ears of the state, forming an early warning system that prevents crimes before victims even cross provincial borders.

Sixth, synergy among government ministries and agencies is the key to institutional mitigation. In Indonesia, the establishment of the National and Regional Task Forces for the Prevention and Handling of Human Trafficking was designed to ensure integrated responses. Effective mitigation occurs when the Ministry of Foreign Affairs, the Ministry of Social Affairs, the National Police, and the Ministry of Manpower set aside sectoral interests and collaborate in integrated data collection, monitoring labor recruitment agencies, and repatriating rescued victims.

Seventh, providing standardized and easily accessible safe houses (shelters) is a mitigation measure to prevent rescued victims from being exploited again. These shelters are not merely places to sleep but integrated crisis centers that provide emergency medical assistance, trauma counseling, and legal support. Non-governmental organizations (NGOs) often serve as the backbone in establishing these shelters, making it essential for governments to provide funding and security support for these independent institutions.

Eighth, from an aggregate perspective, mitigating exploitation is not a short-term project but a long-term national commitment. All preventive measures require human rights-oriented budget allocations. Prevention policies in many developing countries often fail not because of a lack of concepts, but because of the absence of dedicated funding. Therefore, the political



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will of policymakers to finance anti-human trafficking programs is the fundamental driving force behind successful global exploitation mitigation.

3.3. Comparative Study of Human Trafficking Victim Protection Systems (Indonesia vs. Other Countries)

Conducting a comparative study between Indonesia's legal system and those of Southeast Asian countries provides valuable insights into the effectiveness of human rights protection for trafficking victims. In Indonesia, the framework for victim protection has been comprehensively regulated under Law No. 21 of 2007. One of its strongest instruments is the guarantee of restitution (compensation from perpetrators to victims) and compensation rights. In addition, Indonesia has the Witness and Victim Protection Agency (LPSK), an independent institution responsible for providing physical and psychological protection to victims of serious crimes, including human trafficking.

However, in practice, Indonesia's system has a critical weakness regarding the enforcement of restitution. Most middle- and lower-level human trafficking offenders lack sufficient assets to pay court-ordered restitution or deliberately conceal their assets. Indonesian human trafficking law allows restitution to be replaced with an additional term of imprisonment (subsidiary sentence) if the perpetrator cannot pay. Ironically, this means the state effectively "surrenders" in fulfilling victims' rights, as perpetrators often choose to serve a few additional months in prison rather than pay billions of rupiah in compensation.

By comparison, the legal system in the Philippines, through the Expanded Anti-Trafficking in Persons Act (Republic Act No. 10364), adopts a far more progressive approach. The Philippines prioritizes the seizure of perpetrators' assets (asset recovery/forfeiture) immediately after investigations begin. Unlike Indonesia, which substitutes restitution with imprisonment, if a perpetrator's assets are insufficient, the government, through the state-managed Victims Compensation Fund, assumes responsibility for paying the victim's restitution. This approach ensures that victims actually receive financial compensation to rebuild their lives, representing a genuine implementation of human rights-based justice.

Another comparison can be seen in Thailand's Anti-Trafficking in Persons Act B.E. 2551. Thailand has developed a strong multidisciplinary approach during the victim identification stage. During raids on illegal labor sites or commercial sex establishments, the police do not independently determine whether someone is an undocumented migrant or a trafficking victim. Instead, Thailand deploys multidisciplinary teams consisting of police officers, social

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workers from the Ministry of Social Development, psychologists, and NGO representatives to conduct interviews and determine victim status.

This multidisciplinary identification approach in Thailand contrasts sharply with Indonesia's standard police procedures, which tend to be legalistic and centralized. In Indonesia, the authority to determine victim status during the initial stage lies almost entirely with police investigators. If investigators lack a human rights perspective, victims are highly vulnerable to immediate deportation or prosecution for immigration violations. Adopting Thailand's multidisciplinary team system could minimize identification errors and prevent the criminalization of women and children who are victims of exploitation.

Furthermore, the Philippines possesses a comparative advantage through specialized courts that exclusively handle human trafficking and violence against women cases. Judges, prosecutors, and defense attorneys assigned to these courts are certified as gender-responsive. Hearings are conducted behind closed doors, utilize video-link technology, and proceed efficiently. Indonesia has gradually introduced child-friendly court proceedings, but establishing comprehensive specialized human trafficking courts similar to those in the Philippines remains a legal reform agenda worthy of accelerated implementation.

A fundamental difference also appears in the recovery and social reintegration process. In Indonesia, after court proceedings conclude, monitoring and assistance for victims returning to their villages are often discontinued due to limited budgets within regional Social Services offices. In contrast, the rehabilitation model in the Philippines obligates local governments and the private sector (through Corporate Social Responsibility programs) to provide vocational training quotas and sustainable business capital for survivors, ensuring that they enter the formal labor market under safe conditions monitored by the state.

Based on this comparative study, it is evident that Indonesia can strengthen its victim protection system through partial amendments to its regulations. Eliminating the subsidiary imprisonment mechanism for unpaid restitution, establishing a Victim Trust Fund financed through confiscated assets from corrupt officials and drug traffickers, and adopting multidisciplinary victim identification teams are concrete measures that should be implemented. Protection for trafficking victims must not end with a court verdict but must continue until survivors are fully empowered, independent, and able to live with dignity.



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4. Conclusion

The enforcement of Human Rights in mitigating the exploitation of women and children through human trafficking cases represents a genuine test of the credibility and commitment of a state governed by the rule of law. The dynamics of law enforcement demonstrate that severe criminal penalties prescribed by legislation alone are insufficient to stop this highly organized crime. Institutional barriers, limited capacity among law enforcement officers, and the social stigmatization of victims remain major obstacles to achieving holistic justice. Based on the comparative study with the Philippines and Thailand, it is evident that the legal protection paradigm must shift from a purely retributive approach toward restorative, victim-centered justice. The state must be fully present not only as the punisher of perpetrators but also as the restorer of victims' lives. Adopting policies to establish a Victim Trust Fund and implementing multidisciplinary victim identification teams are essential recommendations that should be promptly incorporated into Indonesia's national legal framework. Only through seamless synergy among ministries, active participation from civil society, and the political courage to reform the criminal justice system can the mitigation of this form of human exploitation be truly effective. Protecting and safeguarding vulnerable groups is not merely a constitutional obligation but the highest moral responsibility to ensure that human dignity can never be bought, sold, or traded by anyone, anywhere, for any reason.

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