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

State Responsibility for Gross Human Rights Violations in Human Trafficking Syndicates based on The Principle of Dignified Justice

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Abstract. *The crime of trafficking in persons (TIP), controlled by transnational syndicates, is no longer merely an ordinary cross-border crime but has evolved into a crime against humanity that fulfills the elements of gross human rights violations. This abstract highlights the state's failure to provide both preventive and repressive protection for victims, which is often characterized by omission or even the involvement of rogue state officials. This condition demonstrates that the existing positive legal framework is inadequate to hold the state substantively accountable, leaving victims trapped in a cycle of exploitation that degrades human dignity. The research method employed in this article is a normative juridical approach supported by socio-legal analysis. This study examines primary legal materials in the form of national legislation, including the 1945 Constitution of the Republic of Indonesia, Law No. 39 of 1999 concerning Human Rights, and Law No. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, as well as international legal instruments. This approach is used to analyze legal gaps in the state responsibility system and confront them with the reality of victims' suffering in the field, which has failed to be remedied by overly bureaucratic and positivistic legal procedures. The findings of this study affirm the need to reconstruct the paradigm of state responsibility based on the principle of "Dignified Justice." Justice must not merely be understood as the imposition of criminal sanctions on direct perpetrators but must also encompass the state's absolute obligation to restore victims. The state must bear responsibility for restitution if the syndicate fails to pay, eradicate the structural involvement of state officials, and transform the legal approach from one centered on the certainty of statutory texts toward a human-centered legal system that restores the dignity and worth of victims in their entirety.*

Keywords: *Dignified Justice; Gross Human Rights Violations; Human Trafficking; State Responsibility.*



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1. Introduction

Human rights are a set of rights inherent in the nature and existence of every human being as creatures of Almighty God and are His gifts that must be respected, upheld, and protected by the state, the law, the government, and every individual. The Indonesian Constitution, through the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), explicitly mandates the protection of human rights in Chapter XA. Article 28I paragraph (4) of the Constitution specifically places the responsibility for the protection, promotion, enforcement, and fulfillment of human rights upon the state, particularly the government. This means that the state is not merely a passive entity that enacts legislation but an active protector with an absolute obligation (state obligation) to ensure that none of its citizens are deprived of their freedom and dignity by any party.

However, amid a modern civilization that upholds the values of freedom, the shadow of modern slavery has become increasingly widespread in the form of the crime of trafficking in persons (TIP), or human trafficking. Human trafficking syndicates now operate with alarming sophistication, exploiting structural economic weaknesses, social inequality, and advances in information technology to ensnare victims. Human trafficking is no longer a conventional stand-alone crime but a transnational organized crime that deprives individuals of their liberty, exploits their labor and bodies, and permanently destroys their futures. The scale of its brutality places this crime alongside crimes against humanity.

Although both national and international legal instruments have explicitly criminalized human trafficking, empirical reality shows that these syndicates continue to flourish. The complexity of these syndicates stems from well-organized networks involving recruiters in remote villages, identity document forgers, providers of illegal transportation, and receiving networks in destination countries. Victims experience exploitation ranging from forced labor without pay, commercial sexual exploitation, slavery in the fisheries sector (slavery at sea), to organ harvesting. The suffering endured by victims represents one of the most fundamental forms of degradation of human dignity, reducing human beings to mere economic commodities that can be bought and sold.

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In confronting this existential threat, state institutions often display structural paralysis. The state frequently fails to exercise due diligence in preventing human trafficking, protecting victims, and punishing perpetrators, particularly the intellectual masterminds behind trafficking syndicates. This paralysis becomes even more ironic when it is revealed that the operation of these syndicates is often facilitated by state omission or even the active involvement (state commission) of rogue state officials themselves from immigration officers and police personnel to regional bureaucrats who sell their authority for personal financial gain.

This condition brings legal discourse to the concept of State Responsibility. Within the framework of international law, a state may be held accountable not only for direct unlawful acts but also for its failure to prevent human rights violations committed by non-state actors. When the state fails to detect the departure of thousands of undocumented migrant workers or fails to provide diplomatic protection when they are tortured abroad, the state has effectively committed a human rights violation through structural negligence. However, Indonesia's positive legal system has not yet fully adopted this progressive mechanism of state responsibility within its national judicial framework.

Law No. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons (TIP Law), although intended to provide a comprehensive legal framework, in practice remains trapped in an individualistic and retributive criminal law approach. This law focuses more on punishing direct perpetrators (such as brokers or recruiters) and often fails to reach corporations, intellectual masterminds, or state officials who facilitate these crimes. Furthermore, victims' right to restitution (compensation), as mandated by the law, frequently becomes merely symbolic; when perpetrators are declared unable to pay restitution and instead choose to serve a substitute prison sentence, the state relinquishes responsibility, leaving victims to bear the devastation of their lives alone.

This systemic failure demands a philosophical shift in the paradigm of law enforcement concerning human trafficking. A rigid and formalistic positivist approach has proven incapable of restoring the authority of the law or healing victims' suffering. Therefore, a new analytical framework is required to deconstruct the rigidity of positive law, namely through the Theory of Dignified Justice. Dignified Justice is a legal philosophy developed by an Indonesian legal scholar that places humanity, moral nobility, and human dignity as the highest objectives of the legal system, transcending the mere certainty of statutory texts.

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From the perspective of Dignified Justice, law is created not merely to punish but to protect and restore the human dignity damaged by crime. The practice of law must be viewed as a spiritual and cultural endeavor to humanize human beings. When the law fails to protect victims of human trafficking, it has lost the very essence of justice. This principle argues that the state, as the manifestation of the people's will, has an unavoidable moral and juridical obligation to assume responsibility for the recovery of victims when perpetrators are unable to fulfill that responsibility. Genuine justice cannot be realized as long as victims continue to live in trauma and poverty due to the absence of restorative intervention by the state.

The urgency of this research arises from academic concern over the increasing prevalence of human trafficking syndicates, including cases of international online employment scams and the exploitation of migrant workers, which continue to recur without a substantial mechanism of state accountability. The current legal framework fails to deliver dignified justice because it still leaves victims struggling on their own to seek justice through a judicial system that is complex, expensive, and bureaucratic. A reconstruction of both legal regulation and legal thought is necessary to place victim recovery as the state's absolute responsibility strict liability of the state.

Based on this background, this article examines in depth how the construction of gross human rights violations is concealed behind the crime of human trafficking, why the current mechanism of state responsibility fails to protect victims, and how the reconstruction of state responsibility should be formulated based on the principle of Dignified Justice. Its objective is to offer a new conceptual framework for policymakers and law enforcement officials so that the justice system no longer functions merely as a punitive machine but as an institution that restores human dignity.

2. Research Methods

The method used in this research is a normative juridical (doctrinal) approach enriched with socio-legal analysis. The normative juridical approach is employed to analyze the synchronization, gaps, and weaknesses of existing positive legal norms, while the socio-legal perspective is used to examine how those norms operate (or fail to operate) in the reality of law enforcement within society. The primary legal materials include fundamental legislation, namely the 1945 Constitution of the Republic of Indonesia, Law No. 39 of 1999 concerning Human Rights, Law No. 26 of 2000 concerning Human Rights Courts, Law No. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons, and Law No. 12

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of 2022 concerning the Crime of Sexual Violence (TPKS Law). Secondary legal materials are drawn from legal literature, recent scholarly journals, and international convention documents such as the Palermo Protocol and the Rome Statute. Data analysis is conducted using a prescriptive-analytical approach to identify an ideal model for reconstructing state responsibility.

3. Results and Discussion

3.1. The Construction of Gross Human Rights Violations in the Crime of Human Trafficking

From the perspective of legal dogmatics, the crime of human trafficking is often classified as an ordinary transnational crime. However, when examined through the lens of international human rights law, the anatomy of this crime committed by trafficking syndicates actually meets the threshold of a crime against humanity, which constitutes one form of gross human rights violation. Based on Article 7 of the Rome Statute, later adopted into Article 9 of Law No. 26 of 2000 concerning Human Rights Courts, crimes against humanity are defined as acts committed as part of a widespread or systematic attack directed against a civilian population, with knowledge of such attack, explicitly including slavery.

The characteristics of being "widespread" and "systematic" are undeniably fulfilled in the modus operandi of human trafficking syndicates. The systematic nature is evident in the highly organized planning, clear division of roles ranging from recruiters, providers of forged documents, transporters, to shelter operators and exploiters, as well as the use of financial power to bribe state officials. Meanwhile, the widespread nature is demonstrated by the massive No. of victims recruited from poverty-stricken regions across Indonesia and repeatedly sent in large No.s to various destination countries, crossing the jurisdictional boundaries of sovereign states.

Human trafficking is, in essence, modern slavery. Victims are deprived of their freedom of movement, have their passports or identity documents confiscated, are trapped in unreasonable debt bondage, and are subjected to physical, psychological, and sexual violence if they attempt to escape or refuse orders. This destruction of personal autonomy violates both derogable and non-derogable rights guaranteed by the Constitution. The suffering endured by victims exceeds the ordinary boundaries of conventional criminal offenses; it represents a systematic effort to reduce human beings into mere instruments of production devoid of free will.

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The relationship between human trafficking and gross human rights violations also lies in the intensity of its structural exploitation of the socio-economic vulnerabilities of civilians. Syndicates do not target individuals randomly; rather, they specifically target vulnerable groups such as impoverished women, children, and rural communities lacking access to education and information. Their economic desperation is exploited through false promises of prosperity. Because this targeting is carried out systematically against specific demographic groups within a country, it fulfills the element of a structural attack against the civilian population.

Furthermore, the status of a gross human rights violation requires some degree of state involvement, either through active conduct by commission or omission by omission. In the context of human trafficking, state involvement often manifests in the form of omission. This omission occurs when state authorities ignore reports of illegal shelters, fail to supervise labor recruitment agencies (P3MI) engaging in malpractice, or neglect to provide adequate preventive mechanisms at border crossings. Such repeated omissions can no longer be regarded as mere administrative negligence but instead constitute a de facto policy allowing human rights violations to persist.

Once a crime has escalated into a gross human rights violation, the applicable law enforcement principles can no longer rely solely on ordinary criminal law. There must be absolute state responsibility. Victim recovery cannot be left solely to lengthy criminal proceedings but instead requires a framework of transitional justice or direct state compensation. Unfortunately, Indonesia's legal system has not explicitly included transnational organized human trafficking within the jurisdiction of Human Rights Courts, causing this extraordinary crime to continue being treated through an overly ordinary legal approach.

Moreover, categorizing human trafficking as slavery a gross human rights violation entails the application of the principle of universal jurisdiction. Every state has a legal obligation to arrest and prosecute perpetrators of slavery and human trafficking regardless of their nationality or where the crime occurred (the principle of *hostis humani generis* enemies of all humankind). Indonesia's failure to fully utilize these international legal instruments demonstrates shortcomings in legal diplomacy to compel destination countries of exploitation to assume comprehensive responsibility.

Therefore, Indonesian criminal law doctrine should be reconstructed to recognize that when human trafficking is perpetrated by organized syndicates supported by weaknesses in state border systems and results in widespread destruction of

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humanity, it must be equated with gross human rights violations. Such juridical recognition is an essential first step toward shifting the burden of proof and responsibility from victims and lower-level law enforcement officers to the institutional responsibility of the state as a whole.

3.2. The Failure of Current Regulations and State Responsibility Practices

Textually, Indonesia possesses a relatively comprehensive legal framework centered on Law No. 21 of 2007 concerning the Eradication of Human Trafficking. Conceptually, this law regulates prevention, prosecution, and victim protection, including victims' rights to seek restitution. However, a socio-legal perspective reveals a vast gap between the ideals embodied in the written law (law in books) and the realities of law enforcement (law in action). Existing regulations have proven incapable of responding to evolving criminal methods and of compelling the state to assume genuine responsibility toward victims.

The most fundamental weakness of the Human Trafficking Law lies in its heavy emphasis on punishing individual perpetrators (a retributive approach), while placing victim recovery in a subordinate position. Regarding restitution, Article 48 grants victims the right to obtain restitution from offenders. However, Article 50 paragraph (4) weakens this provision by stipulating that if perpetrators are unable to pay restitution, the obligation may be substituted with imprisonment for a maximum of one year. Consequently, this provision creates merely an illusion of justice; financiers and field operators tend to choose the relatively light additional imprisonment rather than surrender their assets to victims. As a result, victims return home empty-handed, burdened by trauma and worsening poverty. This regulatory framework imposes no responsibility upon the state to provide compensation when restitution cannot be enforced.

Regulatory failure is also evident in the legal system's reluctance to firmly prosecute corporations. Many trafficking syndicates hide behind legitimate legal entities, such as Indonesian Migrant Worker Placement Companies (P3MI) or manning agencies. Although the Human Trafficking Law provides for corporate criminal liability, Indonesian judicial practice rarely prosecutes beneficial owners or revokes corporate licenses and dissolves offending companies. Instead, law enforcement officers often prefer the easier route of prosecuting field recruiters (brokers), who themselves are frequently members of lower-income communities exploited by the syndicates.

Even more concerning is the state's failure to take firm action against civil servants, police officers, or military personnel involved in trafficking syndicates.

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Transnational syndicates would not be able to smuggle thousands of citizens illegally through official ports and airports without "turning a blind eye" by immigration officials or border security personnel. Such involvement constitutes systemic corruption facilitating crimes against humanity. Nevertheless, current regulations do not prescribe aggravated sanctions capable of impoverishing state officials proven to have facilitated trafficking, thereby preventing any meaningful deterrent effect.

In terms of extraterritorial protection, the state frequently demonstrates bureaucratic sluggishness in rescuing its citizens trapped abroad, such as victims of online scam operations in Southeast Asia. Claims of jurisdictional limitations are often used to conceal failures in state diplomacy. Victims are left imprisoned, tortured, and forced to work without pay overseas simply because they departed through irregular channels. Yet such irregular departures themselves reflect the state's failure to prevent human smuggling in the first place. The state's reactive response, only mobilizing after cases become viral in the media, indicates a troubling erosion of humanitarian sensitivity.

This failure of protection is compounded by a law enforcement culture frequently characterized by victim-blaming. Law enforcement officials often regard trafficking victims particularly women subjected to sexual exploitation or undocumented migrant workers—as partially responsible because they allegedly consented to their departure, ignoring the fact that such consent is legally invalid when obtained through fraud, debt bondage, or abuse of vulnerability. The lack of understanding among law enforcement personnel regarding gender justice and human rights perspectives causes victims to suffer secondary victimization throughout judicial proceedings.

Moreover, state-provided social and medical rehabilitation programs for rescued victims remain highly partial and charitable in nature. Rehabilitation is often interpreted merely as temporary shelter and a few weeks of basic vocational training before victims are returned to their villages without sustainable economic empowerment. Because the root causes particularly structural poverty remain unresolved, many victims eventually fall prey to the same trafficking syndicates again (re-trafficking).

This series of structural, bureaucratic, and normative failures demonstrates that the state itself has committed human rights violations through continuous omission. The state's failure to dismantle syndicate asset protection networks, its shortcomings in extraterritorial diplomacy, and its abdication of responsibility regarding victim compensation together constitute a constitutional failing. The

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current legal system functions merely as a formalistic mechanism devoid of the spirit of restoring justice. Accordingly, criticism of the existing positive law calls for a radical legal framework that transcends statutory texts by placing state responsibility at the center of justice restoration for trafficking victims.

3.3. Reconstructing State Responsibility Based on the Principle of Dignified Justice

The urgent need to overhaul Indonesia's anti-human trafficking legal architecture must be grounded in the Theory of Dignified Justice. Dignified Justice rejects the positivistic view that reduces justice to mere compliance with statutory formalities. Instead, it asserts that the highest purpose of both the state and the law is to protect human dignity as inherent in every human being. When human dignity is trampled by trafficking syndicates, the legal system and the state must mobilize all available authority to restore that dignity, regardless of procedural or bureaucratic obstacles.

The first reconstruction involves transforming the philosophy of restitution into Absolute State Compensation. Within the paradigm of Dignified Justice, victims' suffering is a direct consequence of the state's failure to fulfill its preventive obligations (due diligence). Therefore, if perpetrators' assets are insufficient to pay restitution or if perpetrators flee the state must assume responsibility by providing compensation through a Trust Fund or Victim Assistance Fund. It is neither just nor dignified for the state to allow its citizens to remain impoverished and devastated while hiding behind the excuse that perpetrators opted for substitute imprisonment. The state must compensate victims first and subsequently pursue and confiscate perpetrators' assets through subrogation mechanisms.

The second reconstruction concerns action against state officials involved in trafficking. Dignified Justice requires institutional purification. Officials proven to facilitate, protect, or tolerate trafficking syndicates must be regarded as betrayers of the constitutional commitment to humanity. Consequently, regulations should impose significantly enhanced penalties, automatic dishonorable dismissal, and asset confiscation through asset recovery mechanisms. Without cleansing corrupt state actors, efforts to eradicate trafficking will remain superficial.

Third, diplomatic and cross-border approaches require reconstruction. Dignified Justice recognizes no rigid sovereignty barriers when human lives and dignity are at stake. Indonesia must develop an aggressive extraterritorial protection policy. Legal diplomacy should compel neighboring countries that have become safe havens for online scam and online gambling syndicates to assume responsibility.

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If a country tolerates the enslavement of Indonesian citizens within its territory, Indonesia should be prepared to pursue international legal remedies, including proceedings before the International Court of Justice, as an expression of its absolute obligation to protect the dignity of its citizens wherever they may be.

Fourth, law enforcement institutions require reconstruction. The current Task Force for the Prevention and Handling of Human Trafficking often proves ineffective because it merely coordinates among agencies without possessing strong executive authority and is hindered by interministerial sectoral ego. Guided by the principle of Dignified Justice, the state should establish an Independent Anti-Human Trafficking Agency operating under a unified command structure, equipped with powers of wiretapping, asset seizure, financial intelligence monitoring (in cooperation with PPATK), and a mandate to pursue corporate syndicates up to the level of their beneficial owners.

Fifth, the restoration of victims' dignity must be holistic. Within the framework of Dignified Justice, victim recovery cannot be reduced merely to providing transportation home. Through the Ministry of Social Affairs, the Ministry of Manpower, and regional governments, the state must guarantee comprehensive reparations, including long-term physical and psychological rehabilitation, educational guarantees for victims' children, and meaningful economic empowerment programs capable of eliminating structural vulnerability. Recovery should be measured by victims' regained autonomy and empowerment rather than merely by their repatriation.

Sixth, criminal law should be integrated with a progressive restorative justice approach in cases involving corporate actors. Where trafficking is perpetrated by corporations, the state should confiscate all corporate profits derived from victims' suffering and redistribute them to victims as a means of restoring their economic dignity. Criminal fines imposed on corporations should not become Non-Tax State Revenue but instead be allocated entirely to a Human Rights Victims Trust Fund. This reflects the ethical principle that the state must never enrich itself from fines arising from crimes that have caused profound human suffering.

Seventh, the role of civil society must be strengthened while eliminating victim-blaming. The justice system must regard victims as individuals deserving complete protection. Law enforcement officers should be educated in the philosophy of Dignified Justice to cultivate compassion. Legislation must provide absolute protection for victims and reporting witnesses through a non-punishment provision, ensuring they cannot be prosecuted criminally or civilly for immigration

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violations or other acts they were compelled to commit while under the control of trafficking syndicates. Such protection would encourage more victims to expose criminal networks without fear of being criminalized by insensitive authorities.

Ultimately, reconstruction based on Dignified Justice requires a fundamental shift from state-centered security toward human-centered security. State responsibility for gross human rights violations arising from organized human trafficking is not merely an administrative obligation but a humanitarian debt. The success of this reconstruction will determine Indonesia's standing as a truly civilized state governed by the rule of law a state that does not hide behind the rigidity of legal texts while its citizens are enslaved, but one that courageously restores the dignity of human beings torn apart by the brutality of the modern age.

4. Conclusion

Human trafficking perpetrated by transnational syndicates has surpassed the boundaries of ordinary crime and constitutes a manifestation of crimes against humanity meeting the criteria for gross human rights violations. The failure of the current legal framework lies in its excessively formalistic and bureaucratic nature, as well as its inability to effectively prosecute corporations, corrupt state officials, or guarantee victims' restitution rights. The state frequently hides behind rigid legal procedures, allowing victims to bear the burdens of suffering and poverty alone, thereby evidencing structural state omission. Accordingly, a reconstruction of state responsibility based on the principle of Dignified Justice is necessary. Through this paradigm, the legal system is restored to its fundamental purpose: to humanize human beings. The state must assume absolute responsibility by directly compensating victims when syndicates fail to pay, rigorously prosecuting complicit state officials, and fully restoring victims' dignity through holistic rehabilitation and socio-economic empowerment, thereby establishing a system of law enforcement that is genuinely just, civilized, and dignified.

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