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

Civil Liability and Contractual Exploitation in Human Trafficking of Women and Children

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Abstract. *This study aims to examine how private-law instruments are abused as mechanisms of exploitation in the trafficking of women and children, and to analyse the civil-liability framework and private-law remedies available for the recovery of victims under Indonesian law. Human trafficking is frequently approached only as a criminal-law problem, while its private-law dimension where exploitation is disguised behind employment contracts, debt-bond arrangements, powers of attorney, and notarial deeds remains underexplored. A normative juridical approach was employed, combining statutory, conceptual, and comparative analysis of the Indonesian Civil Code, Law Number 21 of 2007, Law Number 18 of 2017, the Palermo Protocol, and contemporary scholarship. Based on the findings, it can be concluded that the apparent consent of trafficked women and children is legally defective by reason of coercion, fraud, and abuse of circumstances, so that exploitative contracts are voidable or null for unlawful cause; that the perpetrators and parties who knowingly benefit are jointly liable in tort under Article 1365 of the Civil Code for material and immaterial damages; and that preventive notarial due diligence, combined with nullity, tort liability, and restitution, forms a victim-centred private-law architecture grounded in substantive Pancasila justice.*

Keywords: *Civil Liability; Contractual Exploitation; Human Trafficking; Private Law; Protection of Women and Children.*



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1. Introduction

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Human trafficking is a complex transnational crime that crosses jurisdictional borders and reflects a systemic failure in the enforcement of human rights, with women and children consistently forming the demographic group most frequently victimised.¹ As a form of organised crime, trafficking is not an ordinary offence but a humanitarian crisis that erodes the social, economic, and moral order of a nation; its modern manifestations range from sexual exploitation and forced labour to the trade in human organs, all of which rest upon grave violations of human dignity and individual autonomy.² Structural gender inequality, poverty, armed conflict, and forced migration operate as the principal vectors that criminal networks exploit, so that the protection of women and children must be situated at the very centre of any serious anti-trafficking strategy.

In Indonesia, the legal response to trafficking has been dominated by the criminal-law paradigm, in which the State concentrates on prosecuting and punishing offenders while the restorative and reparative interests of victims receive comparatively marginal attention.³ Although Law Number 21 of 2007 on the Eradication of the Criminal Act of Trafficking in Persons recognises the victim's right to restitution, its implementation has been weak: in practice only a small fraction of trafficking prosecutions result in a restitution order being granted and actually executed, leaving survivors economically destitute even after the perpetrators are convicted.⁴ This persistent gap signals that a purely penal approach is insufficient, and that the private-law dimension of trafficking deserves far more systematic scholarly and doctrinal attention than it has so far received.

The gendered geography of the phenomenon sharpens this concern. Women and girls are not merely incidentally affected; they are the principal targets of recruitment for domestic service, the entertainment and sex industries, and informal cross-border labour, while children are drawn into begging, hazardous work, and sexual exploitation precisely because their dependence and limited legal capacity make them easy to control.⁵ Because the harm is concentrated upon those who are least able to assert their own rights, a legal response that leaves victims without a practicable route to recovery does not merely fall short of an ideal; it reproduces the very inequality that made the exploitation possible in the first place. It is against this background that the private-law dimension of trafficking acquires its urgency.

¹ Sartono, Kebijakan Pemerintah terhadap Perlindungan Hukum bagi Korban Tindak Pidana Perdagangan Orang di Indonesia, *ULIL ALBAB: Jurnal Ilmiah Multidisiplin*, Vol. 3, No. 12 (2024), p. 33, <https://doi.org/10.56799/jim.v3i12.5655>.

² Al Fajri and Deaf Wahyuni Ramadhani, Perlindungan Hukum Bagi Korban Tindak Pidana Perdagangan Orang (*Human Trafficking*) Dalam Perspektif Undang-Undang Nomor 21 Tahun 2007,



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Mandub: Jurnal Politik, Sosial, Hukum dan Humaniora, Vol. 2, No. 3 (2024), p. 286, <https://doi.org/10.59059/mandub.v2i3.1406>.

³ Muliadi and Idul Adnan, Analisis Hukum dan Kebijakan dalam Penanggulangan Perdagangan Orang di Indonesia, *Al-Balad: Jurnal Hukum Tata Negara dan Politik Islam*, Vol. 4, No. 1 (2024), p. 27, <https://doi.org/10.59259/ab.v4i1.163>.

⁴ Wahyu Trihartanto and Nynda Fatmawati O., Pemberian Restitusi Terhadap Korban Tindak Pidana Perdagangan Orang Terhadap Pekerja Migran Indonesia, *Jurnal Ilmu Hukum, Humaniora dan Politik*, Vol. 5, No. 4 (2025), p. 3485, <https://doi.org/10.38035/jihhp.v5i4.4271>.

⁵ Sartono, *Op.cit*, p. 34.

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What is too often overlooked is that human trafficking operates through, and hides behind, instruments of private law. Recruitment agreements, employment contracts, loan and debt-bond arrangements, sham marriage agreements, and powers of attorney are routinely deployed to give the appearance of lawful consent to relationships that are in substance coercive.⁶ Migrant women recruited for domestic or factory work, and children offered fictitious educational or employment opportunities, are commonly bound by debts engineered through inflated placement fees and then controlled through the confiscation of identity documents mechanisms that convert an ostensibly contractual relationship into an instrument of servitude. The legal form of the contract therefore becomes the very mask of exploitation, which is precisely why the discipline of private law cannot remain a bystander in the fight against trafficking.

This phenomenon generates a profound doctrinal tension. Indonesian contract law is built upon the principle of freedom of contract enshrined in Article 1338 of the Civil Code and upon the requirement that a valid agreement rest on the free consent of the parties under Article 1320; yet trafficking exposes how that freedom can be weaponised against the weaker party.⁷ The consent extracted from a trafficking victim is rarely free in any meaningful sense it is procured through coercion (*dwang*), fraud (*bedrog*), mistake (*dwaling*), or the abuse of circumstances (*misbruik van omstandigheden*) so that the resulting agreement is defective in will. Modern legal scholarship accordingly insists that freedom of contract is no longer absolute, but is bounded by good faith, propriety, public order, and the protection of the structurally weaker party.⁸

The notarial dimension adds a further layer of significance for the present study. Many of the private-law instruments through which trafficking proceeds powers of attorney, binding sale agreements, company-formation deeds, and acknowledgements of debt are drawn up as authentic deeds before a notary, whose office carries both the authority to confer authenticity and the duty to identify and verify the parties before him.⁹ The notary's obligation to apply the principle of recognising the service user thus places the private-law gatekeeping function at a strategic point in the prevention of exploitation, because a deed produced through inadequate verification may lend a veneer of legality to an instrument of trafficking.

⁶ Abdillah, Comparative Labor Law Studies in Indonesia and Malaysia: Social–Economic Inequality and Governance of Migrant Workers, *Laws*, Vol. 14, No. 6 (2025), p. 79, <https://doi.org/10.3390/laws14060079>.

⁷ Raysah Afdila Fachriah and Nuzul Rahmayani, Analisis Hukum Penyalahgunaan Keadaan (*Misbruik van Omstandigheden*) sebagai Suatu Bentuk Cacat Kehendak Ditinjau dari Hukum Perjanjian

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Previous research on trafficking in Indonesia has overwhelmingly examined the problem through the lens of substantive and procedural criminal law, victim-and-witness protection, or international human-rights instruments, while comparatively little attention has been paid to the civil-liability axis the nullity of exploitative contracts, the tortious responsibility of perpetrators and beneficiaries, and the private-law recovery of victims. This study seeks to fill that gap by reframing trafficking as a problem that also belongs to the law of obligations, and by connecting the doctrines of defective consent, unlawful cause, and unlawful act to the protection of trafficked women and children.

Accordingly, this study pursues two objectives. First, it aims to analyse how private-law instruments exploitative recruitment and employment contracts, debt-bond arrangements, powers of attorney, and notarial deeds are abused as mechanisms of exploitation in the trafficking of women and children. Second, it aims to examine the civil-liability framework and the private-law remedies available for the recovery and protection of those victims within the Indonesian legal system.

2. Research Methods

This study employs a normative juridical research method, which examines law as a system of norms, principles, and doctrines contained in legislation and legal scholarship.¹⁰ Three approaches are combined. The statutory approach analyses the relevant legal instruments, in particular the Indonesian Civil Code (*Burgerlijk Wetboek*), Law Number 21 of 2007 on the Eradication of the Criminal Act of Trafficking in Persons, Law Number 18 of 2017 on the Protection of Indonesian Migrant Workers, Law Number 2 of 2014 on the Office of Notary, and the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol). The conceptual approach develops the analysis from doctrines of the law of obligations freedom of contract, defective consent, unlawful cause, and unlawful act (*onrechtmatige daad*). The comparative

Indonesia, *Jurnal Riset Rumpun Ilmu Sosial, Politik dan Humaniora*, Vol. 5, No. 2 (2026), p. 866, <https://doi.org/10.55606/jurish.v5i2.8521>.

⁸ Raja Agung Kesuma Arcaropeboka, Asas Kebebasan Berkontrak dalam Perspektif Perkembangan Hukum Perjanjian Modern di Indonesia, *MUARA HUKUM: Jurnal Ilmiah Ilmu Hukum dan Administrasi Publik*, Vol. 2, No. 1 (2026), p. 90, <https://doi.org/10.64365/muarakum.v2i1.231>.

⁹ Annisa S. Puspareni and Fifiana Wisnaeni, Relevansi Penerapan Prinsip Mengenali Pengguna Jasa Terhadap Kewenangan Notaris, *Notarius*, Vol. 16, No. 2 (2023), p. 757, <https://doi.org/10.14710/nts.v16i2.41360>.

¹⁰ Peter Mahmud Marzuki, 2017, *Penelitian Hukum*, Edisi Revisi, Kencana Prenada Media, Jakarta, p. 133.

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approach draws, where relevant, on the civil-law tradition shared with the Netherlands from which the Indonesian Civil Code is derived.

The legal materials used consist of primary legal materials in the form of the legislation and treaty noted above; secondary legal materials comprising peer-reviewed journal articles, scholarly books, and legal doctrine; and tertiary legal materials such as legal dictionaries. The materials were gathered through documentary study and analysed qualitatively and prescriptively, in order to construct a coherent argument concerning the private-law treatment of trafficking and to formulate normative recommendations oriented toward the protection of women and children.

3. Results and Discussion

3.1. Private-Law Instruments as Mechanisms of Exploitation in the Trafficking of Women and Children

The first finding of this study is that the trafficking of women and children in Indonesia is frequently effected through, and concealed by, ordinary instruments of private law. Far from being executed in a legal vacuum, exploitation is given a contractual skin: a recruitment form, an employment agreement, a loan acknowledgement, or a power of attorney supplies the documentary appearance of consent while masking a relationship that is, in substance, one of control and servitude. Understanding the mechanics of this abuse is the necessary foundation for any private-law response.

1. Debt Bondage and Exploitative Recruitment and Employment Contracts

The most pervasive contractual mechanism of exploitation is debt bondage arising from manipulated recruitment and employment arrangements. Comparative study of labour migration from Indonesia shows that migrant workers, who are disproportionately women employed in domestic and informal sectors, routinely incur heavy debts during the departure process through inflated placement, training, and transport fees, and are then trapped by prolonged wage deductions that make repayment practically impossible.¹¹ The recruitment relationship is documented as a contract, but its economic structure is designed to immobilise the worker: the debt functions less as a genuine financial obligation than as a leash. Where the worker is a woman isolated in a foreign household, or a child whose vulnerability is amplified by age, the contractual debt becomes the

¹¹ Abdillah, *Op.cit*, p. 79.

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principal instrument through which freedom of movement and bargaining power are extinguished.

This contractual control is typically reinforced by deception at the point of recruitment. Perpetrators entice prospective victims especially women and young people with limited education and economic security with promises of high salaries, bonuses, and attractive working conditions abroad, only for the reality on arrival to be forced labour, confiscation of documents, and confinement.¹² The gap between the promised and the actual terms is not incidental; it is the deceptive core of the arrangement. From the standpoint of the law of obligations, a recruitment or employment contract concluded on the basis of such deception is already vitiated, because the worker's assent was procured by a deliberate misrepresentation of the very object and conditions of the work.

It is important to see that the debt at the heart of these arrangements is not an ordinary commercial liability but a manufactured one. The placement, accommodation, and "processing" charges are inflated far beyond their true cost, accrue interest on terms the worker never meaningfully negotiated, and are recovered through deductions calibrated so that the principal is never extinguished; governance failures in the regulation of migrant labour allow these practices to flourish in the gap between formal recruitment rules and their enforcement.¹³ The economic effect is a permanent state of indebtedness that the trafficker can invoke to justify the retention of documents, the prohibition of departure, and the imposition of additional unpaid labour. Analytically, then, the engineered debt is better understood as the instrument of coercion than as a subject of legitimate contractual enforcement, and this characterisation is decisive for the private-law remedies considered below.

The consequence is that the contractual form must not be mistaken for genuine contractual substance. Trafficking law itself recognises that the consent of a victim of exploitation is irrelevant where the means of coercion, fraud, or abuse of a position of vulnerability have been used, a principle that aligns with the protective spirit of Law Number 21 of 2007.¹⁴ The exploitative recruitment contract and the engineered debt are therefore best understood not as valid private-law relationships to be enforced, but as instruments whose validity is open to direct attack under the doctrines examined below.

¹² Sartono, *Op.cit*, p. 38.

¹³ Abdillah, *Op.cit*, p. 80.

¹⁴ Al Fajri and Deaf Wahyuni Ramadhani, *Op.cit*, p. 288.

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The position of children warrants separate emphasis, because their participation in any such arrangement is doubly defective. A child lacks the legal capacity to contract that Article 1330 of the Civil Code requires, so that an agreement purporting to bind a child to labour or service is for that reason alone incapable of producing valid obligations; and the child's developmental vulnerability makes the reality of free consent even more illusory than in the case of an adult victim.¹⁵ Where recruiters obtain a parent's or guardian's signature instead, the same defects of coercion, deception, and abuse of circumstances apply to that consent, and no representative may validly bargain away a child into exploitation. The contractual veneer placed over the trafficking of a child is thus the most fragile of all, and the private-law response correspondingly the most secure.

2. Defects of Consent and the Limits of Freedom of Contract

Indonesian contract law supplies precise doctrinal tools for unmasking exploitative agreements. Article 1320 of the Civil Code requires four conditions for a valid agreement: consent of the parties, capacity to contract, a definite object, and a lawful cause; and Article 1321 provides that consent is invalid where it is given by mistake (*dwaling*), obtained through coercion (*dwang*), or procured by fraud (*bedrog*).¹⁶ Beyond these classical defects, doctrine and jurisprudence have come to recognise the abuse of circumstances (*misbruik van omstandigheden*) as a further ground on which an agreement may be annulled, occurring where one party exploits the other's weakness whether arising from economic pressure, dependence, or limited knowledge so that the latter cannot give consent freely and on equal terms.

These categories map almost perfectly onto the situation of trafficked women and children. The victim who signs a recruitment form under threat, or after being deceived as to the nature of the work, or because acute economic distress leaves no real alternative, gives consent that is defective in will. The first two defects render the agreement voidable at the instance of the victim; where consent is so fundamentally absent that there is no meeting of minds at all, the agreement may be regarded as never validly formed.¹⁷ The doctrine of abuse of circumstances is particularly apt, because trafficking is, at bottom, the systematic exploitation of vulnerability exactly the conduct that this ground of annulment is designed to police.

¹⁵ Sartono, *Op.cit*, p. 40.

¹⁶ Raysah Afdila Fachriah and Nuzul Rahmayani, *Op.cit*, p. 867.

¹⁷ R. Subekti, 1987, *Hukum Perjanjian*, Cetakan XI, Intermasa, Jakarta, p. 17.

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The distinctiveness of abuse of circumstances deserves emphasis, because it captures what the older categories of coercion and fraud may miss. A trafficker need not always threaten or lie outright; it is often enough to present a desperate person with terms that no one bargaining on equal footing would accept, and to rely on poverty, isolation, or ignorance of the destination country to secure a signature.¹⁸ The defect lies not in any single false statement but in the gross inequality of position that the stronger party knowingly exploits. Recognising this ground allows the law to reach precisely those arrangements in which every formality of offer and acceptance is observed and yet the agreement is, in substance, an instrument of subordination which is the characteristic legal shape of trafficking by contract.

The deeper doctrinal point is that freedom of contract cannot legitimate exploitation. The principle expressed in Article 1338 of the Civil Code, that lawfully concluded agreements bind the parties as law, is today understood as a qualified rather than an absolute liberty: it is constrained by good faith, the requirements of public order and decency (*kesusilaan*), and the protection of the weaker party.¹⁹ A contract whose object or cause is the exploitation of a human being offends both the requirement of a lawful cause under Articles 1335 and 1337 of the Civil Code and the boundaries of public order, and therefore falls outside the protection that freedom of contract would otherwise afford.²⁰ In this way the very principles that traffickers invoke to dress their conduct in legal form become, properly applied, the instruments of its undoing.

3. Abuse of Powers of Attorney, Notarial Deeds, and the Preventive Function of Due Diligence

A third mechanism concerns the abuse of powers of attorney and authentic deeds. Powers of attorney are powerful private-law devices that authorise one person to act in the name of another; in the hands of a trafficker they can be used to take control of a victim's assets, to dispose of property, or to execute transactions in the victim's name while the victim remains under coercion. Because such instruments are frequently formalised before a notary, the notarial office occupies a strategic position in the prevention of exploitation. The notary not only has the authority to make authentic deeds but is also charged with the duty to identify

¹⁸ Raysah Afdila Fachriah and Nuzul Rahmayani, *Op.cit*, p. 868.

¹⁹ J. Satrio, 1995, *Hukum Perikatan: Perikatan yang Lahir dari Perjanjian*, Buku I, Citra Aditya Bakti, Bandung, p. 268.

²⁰ Raja Agung Kesuma Arcaropeboka, *Op.cit*, p. 91.

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and verify the persons appearing before him, a duty embodied in the principle of recognising the service user.²¹

That preventive duty has acquired sharper contours through Indonesia's anti-money-laundering framework, under which the notary is designated a reporting party obliged to apply customer-identification measures, to scrutinise the identity, profile, and source of funds of the parties, and to report suspicious transactions.²² The same diligence that is intended to detect the laundering of criminal proceeds is directly relevant to trafficking, because the deed prepared through careful verification is far less likely to become a vehicle for disguising exploitation. Where, by contrast, a notary mechanically formalises a transaction without genuine inquiry, the resulting deed can lend the appearance of legality to an instrument of abuse as the literature on deeds produced from fraudulent investment schemes illustrates.²³ The lesson is transferable: rigorous identification of the parties, alertness to indicators of coercion, and refusal to lend the notarial seal to suspect arrangements constitute a private-law line of prevention that operates upstream of the criminal process.

The preventive logic can be stated more precisely. The principle of recognising the service user is not a bureaucratic formality but a substantive screening duty: it requires the notary to look behind the documents presented, to test whether the party truly understands and freely intends the transaction, and to be alert to the indicators surrendered identity papers, a third party who answers on the appearer's behalf, transactions that make no economic sense for the person ostensibly entering them that commonly accompany coerced arrangements.²⁴ Where the duty is discharged with rigour, the trafficker is denied the authentic instrument that would otherwise legitimise the disposal of a victim's assets or the perfection of a sham transaction; where it is neglected, the authority of the notarial seal is, in effect, conscripted into the scheme. The quality of notarial diligence thus directly determines whether the private-law system functions as a barrier to exploitation or as one of its instruments.

²¹ Annisa S. Puspareni and Fifiana Wisnaeni, *Op.cit*, p. 758.

²² Andika Moktikanana and Sukirno, Analisis Yuridis terhadap Prinsip Mengenali Pengguna Jasa Notaris dalam Pencegahan Tindak Pidana Pencucian Uang, *Jurnal Ilmu Multidisiplin*, Vol. 4, No. 6 (2026), p. 4219, <https://doi.org/10.38035/jim.v4i6.1676>.

²³ Sri Wulandari, Chairul Yusuf, and Faisal Hardian, Penerapan Prinsip Mengenali Pengguna Jasa bagi Notaris dalam Pembuatan Akta dari Transaksi yang Didasarkan Kepada Skema Ponzi, *Pamulang Law Review*, Vol. 6, No. 1 (2023), p. 74, <https://doi.org/10.32493/palrev.v6i1.33381>.

²⁴ Andika Moktikanana and Sukirno, *Op.cit*, p. 4220.

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The contemporary digital *modus operandi* makes this preventive function more urgent. Recruitment increasingly takes place through social media and online platforms offering fictitious high-paying employment, with victims lured across borders before being forced into online-scam compounds and other forms of servitude.²⁵ Although the initial contact is digital, the exploitation that follows continues to rely on documentary and quasi-contractual control signed undertakings, debt acknowledgements, and surrendered identity papers. A private-law strategy that strengthens verification at every documentary chokepoint, including the notarial one, therefore remains essential even as the recruitment surface migrates online.

A particularly instructive example is the abuse of the binding sale agreement (*perjanjian pengikatan jual beli*) coupled with an irrevocable power of attorney to sell (*kuasa menjual*). In legitimate practice these instruments smooth the conveyance of property; in the hands of a trafficker who has gained control over a victim, they can be deployed to strip the victim of assets, to launder the proceeds of exploitation through ostensibly ordinary transactions, or to bind the victim's family into a chain of obligations that deepens dependency.²⁶ Because such instruments derive their force from the authentic deed, the notary's screening duty is again decisive: a power of attorney to sell granted by a person who appears under evident duress, or whose circumstances make the transaction commercially inexplicable, is precisely the kind of arrangement that rigorous application of the principle of recognising the service user is designed to intercept. The same private-law devices that ordinarily protect the security of transactions can thus, without vigilant gatekeeping, become conduits of exploitation which is why the preventive and remedial wings of the architecture proposed here must operate together.

3.2. Civil Liability and Private-Law Remedies for the Recovery of Victims

The second finding is that Indonesian private law, properly mobilised, offers a coherent set of remedies through which trafficked women and children may be released from exploitative obligations and compensated for the harm they have suffered. These remedies operate independently of, and in addition to, the criminal process, and together they form a victim-centred architecture composed of nullity, tortious liability, and restitution.

1. Nullity and Voidability of Exploitative Contracts

²⁵ Sartono, *Op.cit.*, p. 39.

²⁶ Sri Wulandari, Chairul Yusuf, and Faisal Hardian, *Op.cit.*, p. 75.

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The first remedy is the annulment or nullity of the exploitative contract itself. Where consent has been procured by coercion or fraud, the victim may seek annulment of the agreement under Articles 1321 and following of the Civil Code; where the cause of the agreement is unlawful or contrary to public order and decency, the agreement is null and void under Articles 1335 and 1337, and is treated as never having produced binding obligations.²⁷ For a trafficked person this remedy has immediate practical force: it severs the supposed legal foundation of the engineered debt, dissolves the sham employment or marriage agreement, and removes the documentary pretext on which the trafficker relies. Nullity thus translates the doctrinal recognition of defective consent into the victim's concrete liberation from the obligation that bound her.

Recognising nullity also has a systemic effect, because it denies the perpetrator the use of the courts and the registry to enforce or perfect an exploitative arrangement. A contract that the legal order refuses to recognise cannot be invoked to recover the fictitious debt, to justify the retention of documents, or to validate the transfer of a victim's assets. In this sense, the doctrine of unlawful cause is not merely a defensive shield but an active instrument of protection, reaffirming that the apparatus of private law will not be placed at the service of human exploitation.²⁸

A practical distinction between voidability and nullity matters for the victim's position. An agreement vitiated by coercion or fraud is voidable, meaning it produces effects until it is annulled at the instance of the injured party, who must take the initiative to have it set aside; an agreement with an unlawful cause is null of its own force, so that no obligation ever arose and no party may demand performance.²⁹ For trafficked women and children the second category is the more powerful, because it does not depend on the victim often still under the trafficker's influence and unaware of her rights initiating proceedings within a limitation period. Characterising the exploitative arrangement as one with an unlawful cause therefore offers the more secure protection, since it withdraws legal recognition from the scheme automatically rather than conditionally.

2. Tort Liability under Article 1365 of the Civil Code

²⁷ R. Subekti, *Op.cit*, p. 20.

²⁸ Raja Agung Kesuma Arcaropeboka, *Op.cit*, p. 92.

²⁹ Muliadi and Idul Adnan, *Op.cit*, p. 28.

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The second and most far-reaching remedy is liability for unlawful act (*onrechtmatige daad*) under Article 1365 of the Civil Code, which obliges a person whose unlawful act causes loss to another to compensate that loss. The established elements are an act that is unlawful, fault on the part of the actor, loss suffered by the victim, and a causal connection between the act and the loss; where these are present, the victim is entitled to compensation for both material and immaterial harm.³⁰ Trafficking satisfies each element with ease: the conduct is manifestly unlawful, it is committed intentionally, it inflicts grievous physical, psychological, and economic loss, and the loss flows directly from the perpetrator's acts. The doctrine of unlawful act has, moreover, expanded beyond the breach of a written norm to encompass conduct contrary to good morals and to the duty of care owed in society, which comfortably captures the dignity-destroying nature of trafficking.³¹

Two features of tort liability make it especially valuable for the protection of women and children. First, it can reach not only the direct perpetrator but also those who knowingly participate in or benefit from the trafficking venture, and where several actors cooperate the court may impose joint and several liability, so that the victim is not left to pursue a single insolvent recruiter.³² Second, a civil claim for compensation does not depend upon a prior criminal conviction; the victim may bring the action on its own evidentiary footing, which is significant given how rarely trafficking prosecutions reach a conclusion that benefits the victim. Tort liability thereby converts the perpetrator's gain and the victim's suffering into an enforceable obligation of reparation, restoring to the centre of the law the interest that the criminal process so often neglects.

The recoverability of immaterial loss is of particular importance in trafficking cases. The gravest injuries a trafficked woman or child suffers the loss of liberty, the violation of bodily and sexual integrity, the lasting psychological trauma are not readily reducible to a market figure, yet the law of unlawful act permits compensation for such immaterial harm and not merely for quantifiable economic loss.³³ This is what allows the civil claim to express, in monetary terms, the full gravity of the wrong rather than only the victim's out-of-pocket losses. Coupled

³⁰ Mira Apriani and Zainal Arifin Hoesein, Akibat Hukum bagi Pelaku Perbuatan Melawan Hukum yang Tidak Melaksanakan Ganti Rugi dalam Kasus *Tort* dan Kecelakaan Berdasarkan Pasal 1365 KUHPerdata dan Undang-Undang Nomor 22 Tahun 2009, *Journal of Innovative and Creativity*, Vol. 6, No. 1 (2026), p. 3799, <https://doi.org/10.31004/joecy.v6i1.7053>.

³¹ Rosa Agustina, 2003, *Perbuatan Melawan Hukum*, Program Pascasarjana Fakultas Hukum Universitas Indonesia, Jakarta, p. 117.

³² Mira Apriani and Zainal Arifin Hoesein, *Op.cit*, p. 3800.

³³ Rosa Agustina, *Op.cit*, p. 120.

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with the possibility of joint and several liability across the network of recruiters, transporters, and ultimate exploiters, the action under Article 1365 offers a route to meaningful reparation that the narrow restitution practice of the criminal courts has so far failed to deliver.

A further procedural advantage compounds these substantive ones. A civil action proceeds on the balance of probabilities rather than the demanding standard of proof beyond reasonable doubt that governs the criminal trial, so that a victim who cannot secure a conviction because a key witness is unavailable, or because the controlling actor is beyond the reach of the prosecutor may nonetheless establish liability and obtain compensation in the civil forum.³⁴ The independence of the civil claim from the fate of the prosecution is, for trafficked women and children, not a technicality but the difference between a remedy that exists on paper and one that can actually be realised. It allows the victim to take the initiative, to choose the forum in which her interests are best served, and to pursue those who profited from her exploitation even where the criminal process has stalled.

3. Restitution, Compensation, and the Integration of Remedies

The third remedy is the statutory regime of restitution and compensation for victims. Law Number 21 of 2007 entitles trafficking victims to restitution for the losses they have sustained, and the regime is reinforced by the rules on compensation, restitution, and assistance for witnesses and victims. In practice, however, the regime has substantially underperformed: studies of migrant-worker victims show that restitution is frequently neither ordered nor executed, owing to difficulties in quantifying loss, the social stigma borne by victims, and the tendency of enforcement to target low-level recruiters while the controlling actors escape.³⁵ The result is a protective promise that too often remains unfulfilled, which is precisely why the private-law remedies of nullity and tort liability must be read as complementary rather than alternative routes to recovery.

Integrating these remedies also responds to the structural causes of the implementation gap. Where policy and enforcement remain fixated on punishment, the reparative interest of the victim is displaced; a deliberate turn toward civil liability rebalances the system toward recovery.³⁶ The notion of unjust enrichment supplies an additional anchor, since a trafficker who profits from coerced labour or from a fraudulently engineered debt holds a benefit that the

³⁴ Mira Apriani and Zainal Arifin Hoesein, *Op.cit*, p. 3801.

³⁵ Wahyu Trihartanto and Nynda Fatmawati O., *Op.cit*, p. 3486.

³⁶ Muliadi and Idul Adnan, *Op.cit*, p. 30.

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law has no reason to allow him to retain. Read together with the statutory restitution regime, the private-law claim for the disgorgement of such gains strengthens the victim's position and reduces her dependence on the uncertain outcome of a criminal restitution order.³⁷

The complementarity is best illustrated by the way the three remedies cover one another's weaknesses. Where the criminal court declines to order restitution, or orders a sum that is never executed, the civil action under Article 1365 remains available on its own footing; where the perpetrator is insolvent, the nullity of the engineered debt at least frees the victim from a continuing obligation and bars the recovery of the fictitious sum; and where assets can be traced, the disgorgement of unjust enrichment reaches the profit of the venture even when individual losses are hard to prove.³⁸ Treated as a single, integrated toolkit rather than as isolated and competing claims, these instruments allow the victim and her advisers to select whichever combination best fits the facts, and thereby convert the law's scattered protective provisions into a usable strategy for recovery.

4. Toward a Victim-Centred Private-Law Architecture Grounded in Substantive Justice

The synthesis of these findings is a victim-centred private-law architecture with two mutually reinforcing wings. The preventive wing operates upstream, through rigorous notarial and contractual due diligence that denies traffickers the documentary instruments deeds, powers of attorney, and acknowledgements of debt on which their schemes depend, and that treats verification of the parties as a frontline safeguard rather than a formality.³⁹ The remedial wing operates downstream, through the nullity of exploitative contracts, the tortious liability of perpetrators and beneficiaries, and the disgorgement and restitution of unlawful gains, ensuring that those who have been exploited are both freed from coerced obligations and compensated for their losses.

This architecture is consonant with the protective governance of migrant workers and vulnerable groups that contemporary scholarship calls for, and it advances the protection of women and children by treating them not as passive objects of criminal proceedings but as rights-bearing parties entitled to private-law recovery.⁴⁰ Ultimately it gives concrete expression to substantive justice in the spirit of the fifth principle of Pancasila social justice for all by insisting that the

³⁷ Wahyu Trihartanto and Nynda Fatmawati O., *Op.cit*, p. 3487.

³⁸ Wahyu Trihartanto and Nynda Fatmawati O., *Op.cit*, p. 3488.

³⁹ Andika Moktikanana and Sukirno, *Op.cit*, p. 4221.

⁴⁰ Abdillah, *Op.cit*, p. 80.

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formal apparatus of private law be oriented toward the dignity of the most vulnerable rather than toward the convenience of those who would exploit them. In this orientation lies the distinctive contribution that the law of obligations can make to the national and international effort to combat human trafficking.

Reframing trafficking as a matter of private law as well as criminal law carries a further, normative dividend that reaches beyond the individual case. It signals that the protection of human dignity is not the exclusive province of the penal State but a responsibility distributed across the whole legal order, including the law of contract and the office of the notary; it equips victims with claims they can pursue on their own initiative rather than leaving them to await the outcome of a prosecution they do not control; and it harmonises the domestic law of obligations with the protective object and purpose of the Palermo Protocol, which obliges States to ensure that victims of trafficking can obtain compensation for the harm suffered.⁴¹ A private-law architecture of this kind does not displace the criminal law; it completes it, supplying the reparative and preventive dimensions that a punishment-centred system structurally undervalues, and thereby moving the protection of trafficked women and children from aspiration toward practical reality.

The comparative dimension reinforces this argument. Because the Indonesian Civil Code descends from the Dutch *Burgerlijk Wetboek*, the doctrine of abuse of circumstances (*misbruik van omstandigheden*) developed in Netherlands jurisprudence offers a directly transferable model for Indonesian courts confronting bargains in which one party has knowingly exploited the desperation of another.⁴² The same civil-law lineage underpins the open-textured conception of the unlawful act, which has long been understood to extend beyond the breach of a written rule to conduct that offends good morals or the duty of care owed in society, and which therefore comfortably reaches the dignity-destroying conduct that constitutes trafficking.⁴³ Drawing deliberately on this shared heritage equips Indonesian private law to respond to exploitation with doctrines that are at once domestically grounded and comparatively validated, rather than improvising remedies from first principles.

This victim-centred orientation also resonates with the Islamic legal tradition that informs the scholarship of the host institution, in which the preservation of life, lineage, and human dignity (*hifz al-nafs*) ranks among the higher objectives of the law (*maqasid al-shari'ah*), and in which the exploitation of the weak and the

⁴¹ Muliadi and Idul Adnan, *Op.cit*, p. 31.

⁴² Raysah Afdila Fachriah and Nuzul Rahmayani, *Op.cit*, p. 869.

⁴³ J. Satrio, *Op.cit*, p. 270.

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appropriation of another's person or labour are categorically condemned.⁴⁴ Read through this lens, the nullification of exploitative bargains and the imposition of reparative liability are not merely technical devices of the civil code but expressions of a deeper moral commitment to the protection of the vulnerable. The convergence is striking: the national law of obligations, the universal human-rights standard embodied in the Palermo Protocol, and the dignity-centred ethics of Islamic law all point toward the same conclusion, namely that the legal order must refuse to lend its instruments to the trafficking of women and children and must place its full reparative weight behind their recovery.

4. Conclusion

The trafficking of women and children is not only a criminal phenomenon but also a private-law one, because it is effected through and concealed behind contracts, debt-bond arrangements, powers of attorney, and notarial deeds whose form simulates a consent that is in truth defeated by coercion, fraud, and the abuse of circumstances; consequently, such instruments are voidable or null for unlawful cause and cannot be enforced, while the perpetrators and those who knowingly benefit are jointly liable in tort under Article 1365 of the Civil Code for the material and immaterial harm suffered, so that when preventive notarial due diligence is combined with the remedies of nullity, tortious liability, the disgorgement of unlawful gains, and statutory restitution Indonesian private law furnishes a coherent, victim-centred architecture that, grounded in the substantive justice of Pancasila, meaningfully strengthens the protection of trafficked women and children alongside the criminal process.

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⁴⁴ Muliadi and Idul Adnan, *Op.cit*, p. 32.



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