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

## **Sentencing Disparity in Human Trafficking Cases: An Analysis of Judicial Decisions Toward Proportional Law Enforcement**

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**Abstract.** *Trafficking in Persons (TIP) is an extraordinary crime that strips away the very foundations of human freedom and dignity. In efforts to enforce the law against this crime, the judiciary plays a central role as the final bastion for those seeking justice. However, the reality of judicial practice in Indonesia demonstrates a striking phenomenon of sentencing disparity among judges in TIP cases with similar characteristics. Such disparities not only undermine the principles of legal certainty and equality before the law but also weaken the deterrent function of punishment against trafficking syndicates and neglect victims' rights to recovery. The broad range between minimum and maximum penalties provided under Law Number 21 of 2007 on the Eradication of Trafficking in Persons, coupled with the absence of standardized sentencing guidelines, grants judges excessively broad discretion, causing decisions to depend heavily on individual subjectivity, background, and judicial philosophy. This study aims to identify the root causes of sentencing disparities in TIP cases, analyze their impact on public perceptions of justice and victims' rights, and formulate a framework for proportional law enforcement. Using normative legal research through statutory, conceptual, and case approaches, this study argues that the current sentencing paradigm remains overly focused on formalistic retributive justice. As a solution, this research proposes a proportional law enforcement model integrating the principles of Dignified Justice and restorative justice. This formulation requires the Supreme Court to establish specialized Sentencing Guidelines for TIP cases adopting a weighted sentencing matrix. The guidelines should regulate not only imprisonment but also mandatory asset recovery and maximum restitution for victims to ensure meaningful recovery. Drawing upon comparative practices in jurisdictions such as Germany and the Netherlands, where sentencing guidelines have been standardized, this*



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*reconstruction seeks to create a judicial system that is consistent, authoritative, and respectful of human dignity.*

**Keywords:** *Dignified Justice; Judicial Decisions; Proportionality; Sentencing Disparity; Trafficking in Persons.*

## **1. Introduction**

A democratic state governed by the rule of law consistently places the protection of human rights at the center of its constitutional framework. Indonesia's Constitution, namely the 1945 Constitution of the Republic of Indonesia, explicitly guarantees every person's right to liberty, freedom from torture, and freedom from all forms of degrading treatment.<sup>1</sup> This constitutional guarantee serves as the philosophical foundation obligating the state to provide maximum legal protection, particularly when confronting crimes that violate these fundamental rights. One of the oldest crimes against humanity, which has evolved into a highly profitable modern industry while devastating human dignity, is Trafficking in Persons (TIP).

Trafficking in Persons is globally recognized as a transnational organized crime operating across national jurisdictions. This crime exploits victims' economic, social, and psychological vulnerabilities to generate enormous financial profits for organized criminal networks. In Indonesia, the principal legal instrument combating this crime is Law Number 21 of 2007 on the Eradication of Trafficking in Persons.<sup>2</sup> Although this law imposes severe criminal penalties to reflect the state's commitment, harsh statutory provisions alone are insufficient without consistent implementation in the courtroom.

Within the criminal justice system, judges occupy the position of "God's representatives," entrusted with full independence and judicial discretion in deciding cases. As judges of fact (*judex facti*), they are responsible for discovering the material truth and imposing punishments proportionate to defendants' conduct. Judicial independence is guaranteed under the Judicial Power Law to enable objective, case-specific decision-making free from external influence. Nevertheless, judicial independence is not absolute; it must be exercised within the boundaries of legal rationality, proportionality, and society's sense of justice.

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<sup>1</sup> Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 28G Ayat (2).

<sup>2</sup> Undang-Undang Nomor 21 Tahun 2007 tentang Pemberantasan Tindak Pidana Perdagangan Orang



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The enforcement of TIP law in Indonesia currently faces the serious problem of sentencing disparity. Sentencing disparity occurs when significant differences exist in prison terms or fines imposed by judges for cases involving comparable levels of criminality, offender profiles, and victim harm.<sup>3</sup> For example, an illegal labor recruiter in one region may receive a seven-year prison sentence, while an offender employing an identical modus operandi in another region receives only three years' imprisonment.

This disparity stems from the TIP Law's sentencing framework, which establishes both special minimum and special maximum penalties ranging from three to fifteen years' imprisonment. This twelve-year sentencing gap grants judges broad discretion, yet is not accompanied by comprehensive Sentencing Guidelines. The absence of a crime-weighting matrix forces judges to determine justice independently, making decisions highly dependent on each judge's educational background, professional experience, social culture, and individual subjectivity.

Beyond the absence of sentencing guidelines, disparities are further aggravated by differing judicial philosophies regarding TIP. Some judges continue to view these cases merely as immigration or labor law violations, resulting in extremely lenient sentences. Others fully appreciate the devastating impact on victims' dignity and impose maximum penalties. These divergent philosophical perspectives demonstrate that the criminal law doctrine currently applied remains conventional and fails to comprehend the anatomy of human trafficking as a whole.

The consequences of sentencing disparity are profoundly destructive. For society, inconsistent judicial decisions undermine public confidence in the authority of the legal system and violate the principle of equality before the law. For criminal syndicates and corporations, inconsistent and lenient sentences fail to produce any meaningful deterrent effect; instead, they are viewed merely as operational costs of illegal business. This is reflected in the high rates of recidivism in trafficking cases.

For victims, sentencing disparity constitutes a form of secondary victimization by the justice system. After victims summon the courage to testify and relive their trauma in court, observing perpetrators receive lenient sentences or avoid paying full restitution signifies the state's failure to restore their dignity. A legal paradigm focused excessively on retributive justice has obscured the reality that victims require restorative and rehabilitative justice, in which economic and psychological recovery should become central considerations in sentencing.

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<sup>3</sup> Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana* (Jakarta: Kencana Prenada Media Group, 2011), hlm. 89-91



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To unravel this problem, a reconstruction through the lens of Dignified Justice is required. Dignified Justice maintains that law must humanize humanity; sentencing should not merely concern the number of years imposed but should reflect respect for the dignity of victims while imposing measured and proportionate punishment that enables offenders to recognize their wrongdoing.<sup>4</sup> Proportional law is law capable of consistently balancing the gravity of offenses with the severity of sanctions.

Based on this background, this article analyzes the phenomenon of judicial sentencing disparity in trafficking cases. It pursues three primary objectives: first, identifying the doctrinal and practical causes of disparity; second, measuring its impact on victims' rights to recovery; and third, formulating a proportional law enforcement system grounded in Dignified Justice. The findings are expected to provide guidance for the Supreme Court and legislators in restructuring Indonesia's sentencing architecture.

## 2. Research Methods

This study employs normative legal research (doctrinal legal research), using legal literature and positive legal norms as its primary sources.<sup>5</sup> The research adopts statutory, conceptual, and case approaches. The statutory approach examines Law Number 21 of 2007 on the Eradication of Trafficking in Persons, Law Number 8 of 1981 concerning the Criminal Procedure Code, and Law Number 1 of 2023 concerning the New Criminal Code. The conceptual approach analyzes sentencing doctrines, the principle of proportionality, Dignified Justice theory, and restorative justice values. The case approach descriptively analyzes patterns of sentencing disparity across decisions of the Supreme Court and subordinate courts. Legal materials are analyzed deductively to formulate prescriptive recommendations concerning ideal sentencing guidelines.

## 3. Results and Discussion

### 3.1. Root Causes of Sentencing Disparity in TIP Cases

The root cause of sentencing disparity in trafficking cases originates from the legal construction embodied in Law Number 21 of 2007. The sentencing provisions adopt a minimum-maximum penalty system. For example, Article 2 prescribes imprisonment ranging from a minimum of three years to a maximum of fifteen years. The twelve-year gap is theoretically intended to provide judges with discretion to tailor punishment according to the offender's culpability.

<sup>4</sup> Teguh Prasetyo, *Keadilan Bermartabat: Perspektif Teori Hukum* (Bandung: Nusa Media, 2015), hlm. 45-48.

<sup>5</sup> Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi* (Jakarta: Kencana, 2017), hlm. 135

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However, without technical guidance limiting such discretion, the broad range instead becomes the source of inconsistent and unpredictable decisions.

The absence of comprehensive Sentencing Guidelines constitutes a fundamental institutional weakness. Judges are merely required to consider aggravating and mitigating factors qualitatively, without any binding quantitative matrix. This contrasts with jurisdictions employing strict guidelines where variables such as victim age, duration of exploitation, financial gain, and offender role (mastermind or subordinate) are assigned weighted scores determining the sentencing range.<sup>6</sup> Without such an instrument, judicial deliberation remains opaque and known only to the judicial panel.

Judicial subjectivity and personal conviction (conviction intime) play an overwhelmingly dominant role. Educational background, professional experience, and sociological understanding of trafficking significantly influence sentencing severity. Judges serving in border regions or migrant-worker source areas may exhibit different levels of tolerance or frustration than judges in metropolitan areas. Narrow personal interpretations of "exploitation" often reduce TIP cases to ordinary labor law violations, resulting in extremely lenient sentences.

Moreover, disparity is strongly influenced by prosecutorial sentencing demands (requisitoir). Psychologically and sociologically, judges frequently use prosecutorial recommendations as an anchoring point.<sup>7</sup> When prosecutors seek only four years' imprisonment in a serious case due to weaknesses in the indictment, judges rarely impose ten-year sentences despite trial evidence supporting such punishment. Variations in prosecutorial demands across different regional prosecution offices automatically transmit sentencing disparity to trial courts.

Evidentiary challenges also contribute significantly. Trafficking is a clandestine crime with few eyewitnesses and often depends on victims' testimony alone. Defense counsel frequently exploit judicial doubts by presenting seemingly legitimate but fraudulent documentation or by portraying victims' initial consent (vitiated consent) as genuine willingness. Judicial uncertainty regarding the completeness of the actus reus often results in compromise: defendants are convicted but sentenced close to the statutory minimum.

Differences in legal culture across Indonesia's judicial districts cannot be ignored. Permissive attitudes toward labor brokerage in certain rural areas sometimes

<sup>6</sup> Muladi, *Lembaga Pidana Bersyarat* (Bandung: Alumni, 2008), hlm. 102

<sup>7</sup> Romli Atmasasmita, *Sistem Peradilan Pidana Kontemporer* (Jakarta: Kencana, 2010), hlm. 77



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encourage informal settlements before prosecution. When such cases eventually reach court, judges influenced by these permissive cultures may regard reconciliation between perpetrators' and victims' families as a significant mitigating factor, drastically reducing punishment. This overlooks the reality that trafficking is an extraordinary crime against human dignity that cannot simply be resolved through private agreements.

Public opinion and media attention also influence sentencing disparity. Highly publicized trafficking cases involving ministries or public figures tend to receive substantially harsher sentences because judges perceive social pressure to demonstrate state resolve. Conversely, obscure cases affecting rural communities often receive inadequate judgments. This clearly illustrates inconsistency within Indonesia's law enforcement system.

Finally, the absence of continuous, standardized judicial education regarding transnational crime creates competency gaps among judges. Adjudicating trafficking cases requires judges familiar with evolving *modus operandi*, including cyber-trafficking, app-based recruitment, and cyber slavery. Uneven judicial understanding leads to inconsistent legal interpretation, causing criminal sentences to swing unpredictably and generating systemic legal uncertainty.

### 3.2. The Impact of Sentencing Disparity on Justice and Victims' Rights to Recovery

Sentencing disparity in trafficking cases is not merely a statistical anomaly but a pathology undermining the authority of justice itself. Its foremost consequence is the collapse of public trust in the criminal justice system. When society observes two offenders committing comparable crimes receiving vastly different punishments, the perception emerges that justice can be purchased, negotiated, or determined by chance.<sup>8</sup> Such perceptions delegitimize the judiciary and encourage public apathy toward law enforcement.

The principle of equality before the law is openly violated through sentencing disparity. Criminal law is fundamentally based on proportionality, whereby equal wrongdoing deserves equal treatment. Inconsistent judgments demonstrate that the legal system has failed to remain objective and has discriminated against both offenders and victims. From the perspective of legal theory, this contradicts distributive and corrective justice, foundational principles of civilized legal systems.

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<sup>8</sup> Barda Nawawi Arief, *Kebijakan Legislatif dalam Penanggulangan Kejahatan dengan Pidana Penjara* (Semarang: Badan Penerbit Universitas Diponegoro, 2007), hlm. 112



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For trafficking syndicates, lenient and inconsistent sentencing encourages continued criminal activity. Inconsistent sanctions fail to produce the deterrent effect envisioned by legislation. Criminal organizations identify jurisdictions where lighter sentences are common and establish operational bases there. Courts' inability to deter offenders through severe penalties allows trafficking to flourish as a large-scale underground industry.

Even more alarming, sentencing disparity frequently manifests in inconsistent application of asset confiscation and corporate liability. In trafficking cases involving corporations, judges often prioritize imprisonment of individual offenders while neglecting corporate fines or business license revocation. Failure to order asset tracing and confiscation allows criminal corporations to retain illicit wealth. Such inconsistency defies common sense because trafficking is fundamentally profit-driven; allowing offenders to enjoy criminal proceeds represents a systemic failure of criminal law.

For victims, sentencing disparity results in structured secondary victimization. Conventional criminal law's excessive focus on retributive justice often overlooks victims' genuine need for recovery. When judges impose lenient sentences and reject or disregard restitution claims on rigid procedural grounds, victims are forced to bear physical, financial, and psychological losses alone. Judges who fail to confiscate offenders' assets to satisfy restitution effectively prolong victims' suffering.<sup>9</sup>

Psychologically, seeing traffickers who deprived victims of freedom and subjected them to abuse receive only three-year prison sentences inflicts profound emotional trauma. Victims develop learned helplessness and fear that offenders will soon be released and retaliate against their families. This insecurity demonstrates that the state, through judicial decisions, has failed to protect the fundamental rights of its most vulnerable citizens. The anticipated justice ultimately proves incapable of healing survivors' emotional wounds.

This imbalance between retributive and restorative justice represents a blind spot within Indonesian judicial practice. Sentencing disparity demonstrates that law continues to be applied mechanically. Restorative and rehabilitative justice require criminal proceedings to prioritize restoring social equilibrium and repairing victims' circumstances. Judicial decisions lacking provisions for victims' social recovery are deficient in humanitarian values, even if they formally satisfy procedural legal requirements.

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<sup>9</sup> Eddy O.S. Hiarij, *Prinsip-Prinsip Hukum Pidana* (Yogyakarta: Cahaya Atma Pustaka, 2016), hlm. 205



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Constitutionally, tolerating irrational sentencing disparities constitutes a violation of victims' rights to substantive justice. Substantive justice exists only when the law is genuinely beneficial and proportionate. Disproportionate judicial decisions become harmful precedents replicated by future judges. Accordingly, sentencing disparity is not merely a technical flaw but a philosophical failure of the state to realize Dignified Justice, which places human dignity above procedural formalities.

### 3.3. Formulating Proportional Law Enforcement Based on Dignified Justice

To end the disorder caused by sentencing disparity in trafficking cases, Indonesia requires a proportional, measurable, and progressive law enforcement framework. The most urgent strategic step is for the Supreme Court to establish specialized Sentencing Guidelines for trafficking offenses. These guidelines would not undermine judicial independence but would instead function as guiding rails ensuring judicial discretion remains within reasonable boundaries. The guidelines should take the form of internally binding regulations applicable to all judges within the general court system.

These Sentencing Guidelines should be inspired by the paradigm of Dignified Justice. According to this theory, law must return to its true purpose: humanizing humanity.<sup>10</sup> In sentencing, Dignified Justice requires proportionate punishment corresponding to offenders' culpability while fully restoring victims' dignity through judicial decisions. Judges should no longer function merely as calculators of statutory provisions but as wise arbiters of human values.

In formulating such guidelines, the Supreme Court should establish a matrix categorizing trafficking offenses based on weighted variables such as victim age, physical abuse, international or domestic scope, financial gain, and offender profile (mastermind, repeat offender, or courier). Combining crime severity and offender profile scores would produce an ideal sentencing recommendation (for example, nine to eleven years). If judges depart from this matrix, they should be required to provide exceptionally rigorous legal reasoning in their judgments.

Proportional law enforcement should also imperatively require judges to integrate asset recovery and maximum restitution into every judgment. Following the money and conducting asset tracing should become the new spirit of trafficking sentencing.<sup>11</sup> Where offenders are corporations, judges should confidently freeze corporate assets for auction to benefit victims. Judicial

<sup>10</sup> Teguh Prasetyo, *Hukum Pidana: Keadilan Bermartabat* (Jakarta: Rajawali Pers, 2018), hlm. 67

<sup>11</sup> Romli Atmasasmita, *Kejahatan Korporasi dan Kebijakan Pelacakan Aset* (Jakarta: Prenada Media, 2015), hlm. 94

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decisions should address not only imprisonment but also the economic dismantling of trafficking syndicates. This represents justice directed at the root causes of trafficking.

Shifting from purely retributive sentencing toward integrated restorative justice is unavoidable. Punishment should no longer be measured solely by the length of imprisonment but by the completeness of justice experienced by victims. Consequently, the Supreme Court could formulate a policy whereby offenders who voluntarily pay full restitution before sentencing receive significant sentence mitigation. Such incentives encourage offenders to prioritize compensating victims while ensuring meaningful victim recovery.

Comparatively, Indonesia can learn from jurisdictions such as Germany and the Netherlands, where sentencing has become standardized. In the Netherlands, the Council for the Judiciary (Raad voor de Rechtspraak) issues sentencing orientation guidelines (LOVS-richtlijnen) for various offenses, including human trafficking, to ensure nationwide consistency. Given Indonesia's legal pluralism, a comparable system adapted to its civil law tradition is essential for maintaining vertical and horizontal consistency among judicial decisions.

To realize this formulation, the Supreme Court should immediately issue a Supreme Court Regulation (PERMA) on Sentencing Guidelines for Trafficking in Persons Cases. This regulation would provide a rapid solution while broader legislative reforms remain pending. It would compel trial and appellate judges to reason systematically and proportionately while enabling cassation judges to correct irrational sentencing disparities more effectively.

Ultimately, proportional law enforcement grounded in Dignified Justice aims to restore balance to Indonesia's justice system. Through standardized proportional sentencing, legal certainty will be strengthened, public confidence restored, trafficking syndicates deterred by predictable sanctions and asset confiscation, and victims enabled to reclaim their human dignity. Criminal law will cease functioning as a blind punitive mechanism and instead become an instrument of civilization dedicated to restoration and humanization.

## 4. Conclusion

Sentencing disparity in Indonesian trafficking cases arises from structural weaknesses in the excessively broad minimum-maximum sentencing framework under Law Number 21 of 2007, compounded by the absence of Sentencing Guidelines. This vacuum permits judicial subjectivity, prosecutorial inconsistency, and divergent sociological interpretations to generate highly unequal judgments. Such disparities undermine public confidence, weaken deterrence against



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offenders and corporations, and produce secondary victimization by frequently neglecting victims' restitution rights. Current law enforcement remains rooted in empty retributive formalism while overlooking substantive restorative justice. To address sentencing disparity, it is recommended that the Supreme Court of the Republic of Indonesia promptly formulate and issue a Supreme Court Regulation (PERMA) establishing Sentencing Guidelines for trafficking cases. These guidelines should adopt a weighted sentencing matrix inspired by the philosophy of Dignified Justice. Additionally, the House of Representatives (DPR RI) should amend legislation to explicitly require judges to incorporate asset tracing, corporate asset confiscation, and maximum victim restitution into judicial decisions to ensure proportional, restorative, and genuinely just law enforcement.

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**Regulation:**

Law Number 1 of 2023 concerning the Criminal Code (New KUHP).

Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons.

Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP).

The 1945 Constitution of the Republic of Indonesia.