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

Legal Protection for Child and Women Victims of Human Trafficking (TIP) Through A Socio-Legal Analysis of The Fulfillment of The Right to Just Restitution

I Wayan Laba

Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia,
E-mail: iwalgen92@gmail.com

Abstract. *The Crime of Human Trafficking (TIP) is a manifestation of modern slavery that systematically destroys human dignity and individual autonomy, with women and children constituting the most dominant groups of victims. Although Law Number 21 of 2007 on the Eradication of Human Trafficking mandates the provision of restitution (compensation) as a form of legal protection and economic recovery for victims, the reality of law enforcement reveals a tragic anomaly. This abstract highlights the crucial issue that the right to restitution for women and child victims often remains nothing more than an illusion on the pages of court decisions. The failure to enforce restitution stems from the perpetrators' ability to conceal assets derived from criminal activities, as well as a judicial culture that remains trapped in a retributive paradigm by allowing an alternative of substitute imprisonment (subsidiary sentence) whenever offenders claim they are unable to pay. This research employs a socio-legal method that combines juridical-normative analysis with sociological realities in practice. A statutory approach is used to examine normative gaps within the Human Trafficking Law and the Witness and Victim Protection Law, while a sociological approach is applied to analyze obstacles in asset tracing and the execution of court decisions by the Prosecutor's Office and the Witness and Victim Protection Agency (LPSK). The findings conclude that the current restitution mechanism fails to realize substantive justice because the legal system is not equipped with aggressive asset forfeiture instruments from the earliest stages of criminal investigation. Furthermore, the absence of a state compensation fund causes victims to suffer double losses when perpetrators are declared bankrupt or serve substitute imprisonment. This study recommends reconstructing the legal framework by eliminating the option of substitute imprisonment, strengthening the authority to seize assets across jurisdictions, and establishing a Victim Assistance Fund as*



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tangible evidence of the state's commitment to restoring the dignity and humanity of women and child victims of human trafficking.

Keywords: *Children and Women; Human Trafficking; Victims.*

1. Introduction

Human Trafficking (TIP) is a transnational organized crime that exploits human vulnerability for the accumulation of illicit capital. Unlike crimes against property, human trafficking deprives individuals of the most fundamental human rights, namely freedom, bodily autonomy, and dignity. Human trafficking networks operate through increasingly sophisticated methods, crossing national jurisdictions and disguising their operations behind seemingly legitimate business entities. Amid this complex criminal landscape, law enforcement faces the immense challenge of not only dismantling trafficking networks but also restoring the lives of victims whose lives have been devastated.

Women and children are the demographic groups most vulnerable to and consistently overrepresented among victims of human trafficking, both globally and nationally. Their vulnerability stems from structural socio-economic inequalities, poverty, limited education, and patriarchal cultural norms that position them as objects of exploitation and easy targets for manipulation. They are frequently deceived by false promises of employment or fraudulent marriages, ultimately leading to commercial sexual exploitation, forced labor without wages, and domestic servitude. The destructive consequences they suffer extend beyond physical injuries to include profound psychological trauma and the destruction of their economic futures.

In responding to this crime against humanity, modern criminal law has introduced restitution as an absolute right of victims. Restitution is compensation provided by the offender to the victim or the victim's family for material and immaterial losses resulting from the criminal offense.¹ Conceptually, restitution is neither an act of charity nor benevolence from either the offender or the state, but rather a legally binding obligation intended to restore the victim's economic and psychological condition *restitutio in integrum*. Without economic recovery, women and child victims of human trafficking face a high risk of falling back into the same cycle of exploitation.

Normatively, Indonesia has established a relatively progressive legal framework through the enactment of Law Number 21 of 2007 on the Eradication of Human

¹ Waluyo, B. (2014). *Viktimologi: Perlindungan Korban dan Saksi*. Sinar Grafika.



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Trafficking and the Witness and Victim Protection Law. Article 48 of the Human Trafficking Law explicitly obliges every trafficker to pay restitution to victims. This provision is designed to require public prosecutors to calculate victims' losses and include them in criminal indictments, which are then adjudicated by the panel of judges. Theoretically, this legal construction should provide victims with guaranteed financial recovery.

However, socio-legal studies reveal a significant gap between law in books and law in action. In practice, only a very small percentage of restitution orders are successfully executed and paid to victims. Many victims possess court decisions awarding them restitution worth hundreds of millions of rupiah, yet they never receive a single rupiah. This failure of enforcement represents an anomaly of justice, exposing the criminal justice system's inability to protect its most vulnerable participants.

The primary obstacle to enforcing restitution lies in the sluggish mechanisms for asset tracing and asset forfeiture. Human trafficking syndicates generally launder the proceeds of their crimes or transfer ownership of their assets to third parties long before the case reaches trial. By the time the judgment becomes final and binding (*inkracht*) and the Prosecutor's Office seeks to execute restitution, the offender's assets have seemingly disappeared or are declared insufficient. Law enforcement authorities frequently run out of both time and legal instruments to uncover the beneficial ownership of assets concealed by criminal networks.

The situation is further complicated by the "shortcut" clause contained in Article 50 paragraph (4) of the Human Trafficking Law, which stipulates that if an offender is unable to pay restitution, the obligation may be replaced with substitute imprisonment for a maximum of one year. In judicial practice, offenders are often allowed to choose this substitute imprisonment in order to avoid their financial obligations to victims. Consequently, offenders merely serve an additional custodial sentence while preserving their illicit wealth, whereas victims are left empty-handed, with their suffering left unaddressed.

This judicial approach, still heavily influenced by the paradigm of retributive justice, stands in sharp contrast to the principles of Restorative Justice and the values of Dignified Justice.² Dignified Justice views law as an instrument to humanize people; it should not merely focus on state retribution through imprisonment but should instead prioritize restoring victims' dignity and well-being. When the legal system allows restitution to be replaced by imprisonment, the state has, in essence, failed to uphold the humanity of victims of human trafficking.

² Prasetyo, T. (2015). *Keadilan Bermartabat: Perspektif Teori Hukum*. Nusa Media.



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A review of existing legal literature indicates that most studies on human trafficking focus primarily on analyzing the elements of the offense and weaknesses in criminal investigations. Very little scholarship specifically examines the failure of restitution from a socio-legal perspective, particularly by connecting the stagnation of restitution enforcement with weaknesses in the asset forfeiture regime and the clash of retributive paradigms within the judiciary. This research gap must be addressed to identify the structural obstacles preventing the full realization of victims' rights.

Accordingly, this article aims to analyze the socio-legal barriers to implementing restitution for women and child victims of human trafficking. It examines the phenomenon of failed restitution enforcement in practice, critiques the retributive paradigm that disadvantages victims, and formulates legal reconstruction based on the principles of Dignified Justice. Systematically, the discussion is divided into three sections: the reality of failed restitution enforcement, the conflict with the retributive paradigm, and proposals for reconstructing legal norms through asset forfeiture mechanisms and a state compensation fund.

2. Research Methods

This study employs a socio-legal research methodology, combining juridical-normative analysis with empirical/sociological examination of how law operates within society. A statutory approach is conducted by examining Law Number 21 of 2007 on the Eradication of Human Trafficking, Law Number 31 of 2014 on the Protection of Witnesses and Victims, and the Indonesian Criminal Procedure Code (KUHP) concerning the execution of court judgments. This normative approach aims to map the original legal framework governing victims' right to restitution.

To understand why the written law has failed in implementation, a sociological approach is employed by analyzing the phenomenon of unsuccessful enforcement of restitution judgments by the Prosecutor's Office and the Witness and Victim Protection Agency (LPSK). This analysis is based on empirical literature, annual reports from relevant institutions, and studies on the behavior of judicial actors (judges, prosecutors, and offenders), who tend to reduce the economic value of restitution to merely a substitute custodial sentence.

From a philosophical perspective, this research adopts a conceptual approach grounded in the theory of Dignified Justice and the concept of Restorative Justice. Dignified Justice serves as the principal analytical framework for evaluating whether legal norms permitting substitute imprisonment in lieu of restitution uphold humanitarian values or instead undermine the dignity of



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victims.³ Through this socio-legal synthesis, the study seeks to produce recommendations for legal reform that are not only theoretically sound but also practical and capable of delivering substantive justice in real-world implementation.

3. Results and Discussion

3.1. The Socio-Legal Reality of the Failure to Execute Restitution for Victims of Human Trafficking

Although the Human Trafficking Law (UU TPPO) normatively guarantees the right to restitution, the reality of how the law operates (*law in action*) reveals a troubling phenomenon. Reports from various women's protection non-governmental organizations (NGOs) and the Witness and Victim Protection Agency (LPSK) consistently demonstrate a significant disparity between the number of court decisions granting restitution and the number of restitution payments actually made by perpetrators into victims' accounts. Court judgments, which should serve as instruments of justice, often end up as paper tigers lacking any financial coercive force against human trafficking syndicates.

This failure of execution begins with the perpetrators' ability to manipulate their financial status before the law. As soon as investigations commence, perpetrators particularly masterminds or owners of illegal labor recruitment corporations quickly transfer their property, vehicles, and liquid assets to third parties or relatives. During trial, perpetrators frequently portray themselves as having no assets (fraudulent bankruptcy), thereby convincing judges and prosecutors that imposing substantial restitution obligations would never be enforceable.

This situation is exacerbated by systemic weaknesses in the asset tracing process from the earliest stages of investigation. The police and prosecutors generally focus excessively on collecting evidence to prove the *mens rea* and *actus reus* elements of the human trafficking offense itself, while financial investigations to trace the perpetrators' assets are often neglected or initiated too late. The absence of aggressive conservatory seizure (*conservatoir beslag*) of perpetrators' assets during the pre-adjudication stage allows those assets to disappear before a final and binding judgment (*inkracht*) is issued.

Another obstacle lies in the weak enforcement infrastructure. Once the panel of judges renders its decision, execution of restitution becomes the responsibility of

³ Arief, B. N. (2018). *Kapita Selekta Hukum Pidana: Pembaruan Kebijakan Hukum Pidana (Kebijakan Kriminalisasi dan Dekriminalisasi)*. Kencana



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the executing prosecutor. However, the current criminal procedural framework does not equip prosecutors with extraordinary authority to pierce the corporate veil or uncover the beneficial ownership structure of human trafficking syndicates when assets have been commingled. Executing prosecutors often accept the formal reality that no assets remain registered under the perpetrator's name without conducting deeper forensic audits.

Although LPSK is mandated to facilitate restitution, it also faces limitations in authority. LPSK actively calculates victims' losses including lost income, medical expenses, and psychological suffering for submission to the prosecution. However, LPSK lacks coercive powers to seize assets or freeze perpetrators' bank accounts. It depends heavily on the performance of the police and prosecutors, so when law enforcement agencies are passive in tracing assets, LPSK's restitution calculations become futile.

From the victims' sociological perspective, this failure to execute restitution causes secondary victimization. Women and child victims who have courageously confronted perpetrators in court, hoping to receive compensation to rebuild their lives (for example, as business capital or educational expenses for their children), are confronted with the bitter reality that the state is unable to compel perpetrators to pay. This frustration deepens their distrust of the justice system, leading them to conclude that the law is harsh toward the weak but powerless when confronted with the financial strength of criminal syndicates.

A justice system that fails to enforce restitution essentially perpetuates the poverty structure that constitutes the root cause of human trafficking. Victims are returned to their communities without assets, often burdened by social stigma or illnesses contracted during sexual exploitation. Without economic recovery through restitution, they are highly vulnerable to falling into new debt or being recruited again by other trafficking agents. This reality confirms that human trafficking law enforcement has yet to address the dimension of socio-economic recovery.

In conclusion, the socio-legal reality of implementing restitution for victims of human trafficking in Indonesia continues to be dominated by the state's inability to trace and confiscate criminal assets. As long as legal instruments do not require parallel asset tracing from the very first day of investigation, the right to restitution will remain a normative illusion. White-collar criminals behind human trafficking have exploited this enforcement loophole to protect their wealth while sacrificing the futures of the women and children whose dignity they have destroyed.



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3.2. The Clash Between the Retributive Paradigm and the Failure of Victims' Economic Recovery

The philosophical root of restitution failure lies not merely in technical obstacles to asset tracing but in the clash of legal paradigms embraced by Indonesia's justice system. Historically, Indonesian criminal law has been built upon the foundation of retributive justice, where the essence of law enforcement is the imposition of physical punishment (retribution) upon offenders who have disturbed public order. From the retributive perspective, once an offender has been sentenced to a certain number of years in prison, the offender's debt to the "state" is considered settled, while the losses suffered by the "victim" are regarded as a secondary issue.

This retributive paradigm manifests itself destructively through Article 50 paragraph (4) of the Human Trafficking Law, which permits restitution to be substituted with imprisonment for a maximum of one year. The existence of this provision provides an "escape hatch" for human trafficking perpetrators. From the perspective of the economic analysis of law, perpetrators will rationally choose to serve several additional months of imprisonment rather than surrender assets worth billions of rupiah to victims. This provision legalizes a practice whereby victims' suffering is effectively "purchased" by perpetrators through a relatively short prison sentence.

This exchange between financial obligations (restitution) and imprisonment (substitute sentence) constitutes one of the clearest forms of structural injustice. Substitute imprisonment benefits the state entirely and satisfies the retributive aspirations of law enforcement authorities, yet it provides no economic value for victims' recovery. The state gains satisfaction from punishing its citizens, perpetrators successfully preserve their wealth for their families after release, while women and child victims are left to bear the costs of recovering from their trauma alone.

This condition stands in direct contradiction to the philosophy of Restorative Justice. Restorative Justice places the restoration of harm caused by crime particularly the recovery of victims and society as the primary objective of criminal case resolution.⁴ In the context of human trafficking, restorative justice requires restoring the balance destroyed by exploitation. Perpetrators must take concrete actions to repair victims' lives, which in modern society can only be realized through economic compensation (restitution). Imprisoning perpetrators without compelling them to surrender the proceeds of their crimes constitutes a denial of restorative justice.

⁴ Zehr, H. (2002). *The Little Book of Restorative Justice*. Good Books



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Furthermore, this undermines the principle of Dignified Justice, which holds that law enforcement must align with humanitarian values that uphold human dignity. Human beings, especially vulnerable women and children, are not instruments to be exploited. When their dignity is degraded through human trafficking, the justice system must intervene to restore it. Converting the suffering and destruction of a child trafficking victim's future into a few months of substitute imprisonment for the perpetrator is a judicial act that degrades human dignity because it treats the victim's suffering as equivalent to a brief prison term.

Legal culture among judges also contributes to the persistence of this paradigm. Many judicial decisions passively adopt prosecutors' demands by immediately including the option of substitute imprisonment without first ordering compulsory asset seizure. Judges are often reluctant to apply progressive legal principles due to perceived limitations in procedural law, hiding behind a narrow interpretation of the principle of legality. In fact, judges, as both the mouthpiece of legislation and guardians of justice, should possess the jurisprudential courage to order the forced confiscation of perpetrators' assets to satisfy restitution obligations.

This disconnect between criminal procedure and civil compensation must be brought to an end. In countries with more advanced legal systems, restitution debts arising from criminal offenses cannot be extinguished by imprisonment or declarations of bankruptcy. Restitution constitutes a lifelong debt that continues to follow the perpetrator's assets wherever and whenever those assets are discovered by state authorities. Such an approach reinforces the principle that crime must not provide economic benefits.

A renewed understanding of Dignified Justice requires Indonesian law to prioritize victims' recovery over the physical punishment of perpetrators. A court cannot be considered just merely because it sentences a human trafficking syndicate to 15 years' imprisonment if that sentence is not accompanied by the transfer of the perpetrators' assets to the victims. It is time for Indonesia's justice system to stop viewing imprisonment as the cure for every crime and instead embrace an orientation toward substantive justice that humanizes and financially empowers victims.

3.3. Reconstructing the Restitution Mechanism and Establishing a State Victim Assistance Fund (Trust Fund)

To untangle the socio-legal complexities of victim protection, a radical and systematic reconstruction of legal norms is required, based on a paradigm shift toward asset recovery mechanisms. The first necessary step is to amend the



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Criminal Procedure Code (KUHP) and the Human Trafficking Law by requiring the application of conservatory seizure (*conservatoir beslag*) from the first day a suspect is formally designated. Police investigators and prosecutors must be granted authority to freeze bank accounts and seize property assets affiliated with suspects to ensure that restitution obligations can be satisfied once a judgment becomes final and binding.

The second reconstruction concerns eliminating the option of substitute imprisonment for restitution. Article 50 paragraph (4) of the Human Trafficking Law should be amended to provide that "the obligation to pay restitution cannot be substituted with imprisonment and cannot be extinguished by the perpetrator's bankruptcy status." If the perpetrator fails to pay, the state, through the Prosecutor's Office, must compulsorily seize and auction all assets belonging to the convicted person, including assets registered in the names of third parties (family members or corporations) that are demonstrably derived from the beneficial owner of the criminal enterprise.

To address situations in which perpetrators' assets genuinely cannot be found or are insufficient despite maximum tracing efforts, the state must fulfill its constitutional responsibility. Normative reconstruction should require the establishment of a Victim Assistance Fund (Victim Trust Fund or State Compensation Fund). This fund could be independently managed by LPSK and financed through the State Budget (APBN), fines collected from general criminal cases, and a designated portion of proceeds from the auction of confiscated state assets originating from corruption cases or other criminal offenses.⁵

This State Compensation Fund mechanism represents the true manifestation of the state's presence within the framework of Dignified Justice. When the state fails to protect its citizens from human trafficking syndicates, and law enforcement agencies fail to trace perpetrators' assets to satisfy restitution, the state must not evade responsibility. Instead, it must assume responsibility for compensating victims. In this way, legal certainty and certainty of socio-economic recovery for women and child victims of human trafficking can genuinely be guaranteed without making their rights dependent upon the technical success of prosecutorial enforcement.

In terms of institutional strengthening, LPSK should be granted the status of a "Preferred Creditor" with priority rights during the execution of assets belonging to human trafficking perpetrators. Furthermore, collaboration between LPSK and the Financial Transaction Reports and Analysis Center (PPATK) should be made

⁵ Lembaga Perlindungan Saksi dan Korban (LPSK). (2020). *Laporan Tahunan LPSK Tahun 2020: Tantangan Pemenuhan Hak Restitusi Korban Tindak Pidana*. LPSK RI



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mandatory by law, enabling LPSK to access financial transaction profiles of trafficking syndicates in order to verify perpetrators' claims of poverty before the courts. This financial intelligence authority would expose the hidden flow of criminal proceeds and demonstrate to judges that perpetrators possess the capacity to pay.

Moreover, socio-legal empowerment of victims should be integrated into local government rehabilitation programs. Restitution payments from the Trust Fund should not necessarily be distributed solely in cash but could also be administered through trust-based programs covering children's continuing education, long-term mental health insurance, and micro-enterprise capital for female victims. This approach would help prevent the misuse of restitution funds resulting from pressure exerted by victims' family members in their home communities.

To ensure effective implementation of this reconstruction, the Supreme Court should issue a Supreme Court Regulation (PERMA) on Guidelines for the Execution of Restitution that explicitly prohibits judges from imposing substitute imprisonment without first exhausting all comprehensive asset confiscation measures (execution seizure). Judges should also be instructed to apply a reversed burden of proof, requiring perpetrators to prove that their assets do not originate from criminal activities and that they are genuinely and absolutely indigent.

This entire framework for regulatory reconstruction aims not merely to improve procedural law but to establish Dignified Justice as the guiding spirit of Indonesia's criminal justice system. By integrating the power of asset recovery, eliminating immunity through substitute imprisonment, and establishing a Victim Trust Fund, Indonesia's legal system can transform from a merely punitive (retributive) instrument into a restorative mechanism that genuinely heals victims' wounds and restores their human dignity.

4. Conclusion

The socio-legal analysis of the restitution protection mechanism for women and child victims of human trafficking in Indonesia reveals a structural failure resulting from a weak asset-tracing regime and the continued dominance of retributive justice in the courts. Perpetrators freely exploit the weakness of Article 50 of the Human Trafficking Law by opting for substitute imprisonment to protect the proceeds of their crimes, ultimately reducing victims' right to restitution to a mere legal illusion. A judicial approach that prioritizes the physical punishment of perpetrators while neglecting victims' economic recovery fundamentally contradicts the philosophy of Restorative Justice and Dignified



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Justice, under which genuine justice should restore victims' dignity and material and immaterial conditions, rather than merely punish offenders' bodies.

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