

LICS 2026

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

Implementation of the Restorative Justice Approach in Handling Human Trafficking Cases Involving Children and Women Based on Pancasila Values

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Abstract. *The Crime of Human Trafficking (TPPO) constitutes a form of modern slavery that fundamentally violates human dignity by reducing women and children to mere economic commodities that can be exploited. The handling of this transnational crime in Indonesia, under the framework of Law Number 21 of 2007, is still dominated by the paradigm of retributive justice, which centers on inflicting suffering (imprisonment) upon offenders. A fundamental problem arises when this highly offender-oriented criminal justice system fails to provide space for the recovery of victims' psychological trauma and economic losses. This neglect of the recovery dimension not only perpetuates the suffering of women and children but also contradicts the essence of Restorative Justice, which should serve as the spirit of law enforcement to restore the cosmic balance within society. This study is a normative legal research (doctrinal legal research) that applies the statutory approach, conceptual approach, and philosophical approach. The analysis is conducted by examining Indonesia's positive legal regulations concerning the eradication of human trafficking and the protection of witnesses/victims, then synthesizing them with the global discourse on Restorative Justice. The findings confirm that implementing Restorative Justice in human trafficking cases does not mean disregarding the punishment of perpetrators of serious crimes; rather, it revolutionizes criminal procedure by adopting a victim-centered approach. Based on Pancasila values and the theory of Dignified Justice, restorative justice is realized through the state's absolute obligation to provide restitution, psychosocial rehabilitation, and social reintegration through the spirit of cross-institutional mutual cooperation (gotong royong). This study recommends the need to amend existing regulations to integrate victims' substantive recovery rights into the integrated justice system, thereby contributing theoretically to a paradigm shift in Indonesia's national criminal law that not only imposes firm punishment but also humanizes and comprehensively heals victims.*



LICS 2026

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

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LICS 2026

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

1. Introduction

The Crime of Human Trafficking (TPPO) has become one of the most organized transnational crimes, severely damaging the structure of modern human civilization. This phenomenon operates like an underground industry that reaps enormous financial profits from the suffering, sexual exploitation, and forced labor of vulnerable individuals. Amid this vortex of crime, the essence of humanity is forcibly stripped away, transforming legal subjects into objects that can be bought and sold across national borders. The complexity of the operating methods employed by human trafficking syndicates demands a legal response that is not only firm in enforcement but also comprehensive in minimizing the destructive impacts they leave behind.

Demographically, women and children consistently occupy the central position as the most dominant victim groups in this crime. Their vulnerability is not merely a statistical coincidence but a manifestation of structural social inequality, poverty, unequal access to education, and deeply rooted patriarchal culture in various parts of the world. Women and children are often viewed as subordinate groups that are easily manipulated through promises of artificial prosperity, ultimately trapping them in an endless cycle of exploitation. Protecting these groups means protecting the future and sustainability of a nation.

Indonesia's positive law has responded to this threat through the enactment of Law Number 21 of 2007 concerning the Eradication of Human Trafficking. This law was designed as a *lex specialis* instrument imposing severe criminal sanctions on perpetrators, agents, and corporations involved. However, the criminal justice system supporting this law remains heavily influenced by the colonial legacy of the retributive paradigm. This paradigm views crime solely as a violation of state sovereignty, thereby reducing the primary objective of law enforcement to the physical punishment (imprisonment) of offenders.

The dominance of this retributive paradigm creates a vacuum of justice for victims of human trafficking. When the state focuses all its resources on proving the criminal elements and punishing offenders in court, victims' recovery needs are often neglected. Women and children who suffer profound trauma are repeatedly forced to testify, reopening their psychological wounds re-traumatization for the sake of the state's evidentiary interests. Once the perpetrators are sentenced to prison, the state considers its duty of justice fulfilled, leaving victims with shattered economic conditions and untreated trauma.

LICS 2026

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

Recognizing the failure of this retributive system, the global legal community has begun shifting toward the Restorative Justice approach. Restorative justice offers a new perspective by defining crime as a violation against people and human relationships. Therefore, criminal case resolution should prioritize efforts to restore losses, repair harm, and rebuild the social harmony torn apart by criminal acts.¹ The focus of justice shifts from "what punishment is appropriate for the offender" to "what needs must be fulfilled to restore the victim."

However, the implementation of restorative justice in extraordinary crimes such as human trafficking often encounters conceptual resistance. A common misconception narrowly equates restorative justice with "penal mediation" or out-of-court settlements. In the context of human trafficking, mediation between trafficking syndicates and child or female victims is both irrelevant and dangerous because of the extreme imbalance of power. If imposed, it would instead grant impunity to perpetrators and normalize slavery. Therefore, the concept of Restorative Justice in human trafficking cases must be redefined.

For Indonesia, redefining the concept of Restorative Justice should not merely adopt Western literature uncritically but must be incubated within the nation's philosophical foundation, namely Pancasila. As the nation's Volksgeist spirit of the people and staatsfundamentalnorm fundamental norm of the state, Pancasila provides a strong epistemological foundation for constructing a humane criminal law. Justice cannot be separated from the values of divinity, humanity, unity, deliberation, and social justice. A legal system that ignores the suffering of human trafficking victims is, in essence, ahistorical and contrary to Pancasila.

This is where the theory of "Dignified Justice" becomes highly relevant.² Dignified Justice postulates that the legal system must function to honor and humanize people. When the crime of human trafficking degrades the dignity of women and children, justice can only be achieved if the justice system actively restores that dignity. The synthesis between Restorative Justice and Pancasila values through the lens of Dignified Justice will produce a legal protection model that places victim recovery at the epicenter of law enforcement without sacrificing the deterrent effect against perpetrators.

¹ Barda Nawawi Arief. (2018). *Kapita Selekta Hukum Pidana: Pembaruan Kebijakan Hukum Pidana (Kebijakan Kriminalisasi dan Dekriminalisasi)*. Kencana

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

LICS 2026

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

A review of previous literature reveals a significant research gap. Most studies on human trafficking focus solely on analyzing criminal elements or the effectiveness of prosecution. Meanwhile, research on restorative justice generally applies only to minor offenses or the juvenile criminal justice system (diversion). Very few academic works have boldly constructed the application of Restorative Justice to serious crimes such as human trafficking, directly inspired by the philosophical foundation of Pancasila as the primary analytical framework.

This article is intended to fill that gap in the literature. The main objectives of this study are to deconstruct the retributive paradigm in handling human trafficking cases, explore the philosophical roots of victim recovery based on Pancasila values, and formulate the construction of an integrated justice system that applies restorative justice in practice. Systematically, this article is divided into three discussion sections to offer a framework for reconstructing legal norms that is responsive, comprehensive, and upholds human dignity in Indonesia.

2. Research Methods

This study is a normative legal research doctrinal legal research focusing on the examination of legal norms, rules, and principles contained in legislation and legal philosophy literature. The statutory approach is carried out by critically analyzing Law Number 21 of 2007 concerning the Eradication of Human Trafficking, the Indonesian Criminal Code (both the new and old versions), and the Law on the Protection of Witnesses and Victims. The objective is to identify the legal vacuum regarding victims' recovery rights within the existing procedural law.

In addition, this study extensively employs the philosophical approach and conceptual approach. The philosophical approach is used to explore the ontological and axiological values of Pancasila as the philosophical basis for legal formation (*rechtsidee*). Meanwhile, the conceptual approach is used to synthesize the contemporary criminal law doctrine of Restorative Justice with the theory of Dignified Justice developed within Indonesian jurisprudence.³ The combination of these approaches enables the analysis not only to criticize the textual weaknesses of existing legislation but also to propose reconstruction solutions rooted in the identity of Indonesia's national legal system.

³ Romli Atmasasmita. (2012). *Teori Hukum Integratif: Rekonstruksi terhadap Teori Hukum Pembangunan dan Teori Hukum Progresif*. Genta Publishing

LICS 2026

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

3. Results and Discussion

3.1. Deconstructing the Retributive Paradigm in Handling Human Trafficking Cases

Indonesia's criminal law paradigm continues to position punishment as an instrument of retribution. When the police and public prosecutors handle human trafficking cases, the institutional key performance indicator of successful law enforcement is almost always measured by the successful submission of case files to the court (P-21) and the severity of the prison sentences imposed by judges. This highly offender-oriented mindset constructs crime narrowly, overlooking the fact that human trafficking not only disrupts public order but also directly tears apart the personal lives of its victims.

The most evident consequence of this retributive dominance is the objectification of victims within the criminal justice process. Women and child victims of human trafficking are often treated not as suffering legal subjects but merely as "living evidence" required by prosecutors to substantiate charges. Bureaucratically, the justice system compels them to appear in court and face the very syndicate members who exploited them in order to satisfy formal evidentiary requirements. This situation places victims in an extremely inferior and stressful position.

This situation gives rise to the phenomenon of secondary victimization. Instead of receiving appropriate emotional protection, women and children are often forced to relive their past psychological trauma when they are confronted with adversarial questioning by defense counsel during trial. Victim-blaming questions such as asking why victims did not escape or why they allowed themselves to be exploited are frequently posed within the retributive framework to reduce the offender's punishment. Indonesia's criminal procedural law fails to protect victims' psychological space from such attacks.

The weaknesses of the retributive system become even more evident in the economic recovery of victims. Although the Human Trafficking Law contains provisions regarding the right to restitution, its framework remains highly dependent on the successful criminal conviction of the offender. Human trafficking perpetrators are given an opportunity to avoid paying restitution by opting for substitute imprisonment. Philosophically, this approach demonstrates that the state still considers "time spent in prison" equivalent to the financial losses and destroyed future suffered by victims. Consequently, restitution is rarely enforced, and victims are left empty-handed.

LICS 2026

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

The failure of economic recovery through the retributive system directly contributes to the cycle of human trafficking itself. Women and children who return to their hometowns without business capital, without long-term psychological assistance, and still living below the poverty line become highly vulnerable to being recruited again by human trafficking syndicates (re-trafficking). A criminal justice system that merely imprisons low-level agents without restoring victims' economic conditions has proven incapable of breaking the supply chain of this transnational crime at its structural roots.

There exists an extreme imbalance of power among the state, offenders, and victims. The state exercises its full coercive authority to punish, offenders defend themselves by hiring expensive lawyers financed through the proceeds of their crimes, while victims are left standing at the margins of the system, dependent upon the goodwill of social institutions. This structural imbalance demonstrates that classical criminal law, which carries the banner of retributive justice, suffers from moral disorientation by forgetting the party most harmed by the crime.

The reluctance to shift from a retributive to a restorative approach is often driven by concerns among law enforcement officials that implementing Restorative Justice in human trafficking cases would ultimately lead to the termination of investigations through mediation. This concern is understandable if restorative justice is understood superficially. Indonesia's legal system must firmly declare that human trafficking is a serious crime that cannot be diverted or resolved through informal family-based settlements outside the court. However, a strict penal process against offenders must not become a justification for ignoring victims' restorative rights throughout the judicial process.

Therefore, deconstructing the paradigm requires a proportional separation between the functions of punishment and recovery. Criminal procedural law must be reformed so that while the state continues to impose the harshest possible punishment upon human trafficking syndicates, it simultaneously and proactively guarantees the restoration of victims' dignity, health, and economic well-being. This deconstruction is an essential first step before the seeds of genuine Restorative Justice can be planted within Indonesia's criminal justice system.

3.2. Pancasila Values and Dignified Justice as the Epistemology of Victim Recovery

In building an ideal legal framework in Indonesia, any legal theory including Restorative Justice cannot simply be transplanted from Western legal systems but must instead be calibrated to the nation's foundational philosophy, namely

LICS 2026

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

Pancasila. Pancasila is not merely a political ornament but rather a Grand Theory of law that must animate every aspect of lawmaking and law enforcement. In addressing victims of Human Trafficking (TPPO), the ontological values of Pancasila provide an epistemology of victim recovery that is far more noble, holistic, and rooted in the communal character of Indonesian society.

The Second Principle of Pancasila, "Just and Civilized Humanity," constitutes the absolute foundation for responding to the crime of modern slavery. This principle mandates that every human being possesses equal dignity and worth before God and the law of the state. Human trafficking is the clearest antithesis of civilized humanity because it transforms human beings into material objects commodification of human beings. Therefore, the state's legal response must not stop merely at punishment but must be realized through concrete actions to restore the dignity and humanity of the women and children who have been degraded.

This humanitarian mandate is intrinsically intertwined with the Fifth Principle, "Social Justice for All the People of Indonesia." Social justice in the context of criminal justice means that the state cannot abandon its citizens' economic suffering. When women and child victims of human trafficking experience financial devastation due to exploitation, Social Justice obliges the state to provide socioeconomic protection. Economic recovery through restitution and social rehabilitation is not an act of charity but a constitutional human right of citizens that the state is obligated to fulfill.

This Pancasila-based construction finds its crystallization in the theory of "Dignified Justice." This theory asserts that the ultimate objective of the legal system is not merely procedural certainty (formal legal certainty) or deterrence alone but rather the protection of human dignity itself.⁴ A dignified criminal justice system embraces victims with empathy, recognizes their vulnerability, and uses the authority of the state to heal the profound wounds inflicted by crime.

Through the lens of Pancasila-based Dignified Justice, Restorative Justice is understood not as an individualistic mediation process (as is often practiced in common law countries), but as a manifestation of the culture of "Mutual Cooperation". The restorative-Pancasila resolution of human trafficking cases requires integral cooperation among state institutions the Police, the Prosecutor's Office, and the Witness and Victim Protection Agency/LPSK, civil society, and the

⁴ Bismar Siregar. (1989). *Keadilan Hukum dalam Berbagai Aspek Hukum Nasional*. Rajawali Pers.

LICS 2026

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

victims' families. All elements of the nation work together systematically to reintegrate victims into their normal, productive lives.

Protecting women and children from exploitation is a manifestation of the commitment to safeguarding the very foundations of the nation's civilization. Women whose dignity is respected become the pillars of strong families and communities, while children whose futures are protected become the next generation that will preserve the existence of the state. Therefore, allowing them to be destroyed by a mechanical and retributive law enforcement process is equivalent to allowing the nation's own future to be gradually destroyed.

The absolute rejection of all forms of slavery (Second Principle) underscores that there can be no moral compromise with perpetrators of human trafficking. Pancasila-based Restorative Justice means that criminal law adopts civil recovery instruments into its penal mechanisms. Perpetrators are punished for their barbaric acts, while simultaneously all assets derived from their crimes are forcibly confiscated by the state and transferred as capital for victim recovery. Justice can only be considered complete when the cosmic balance victims restored, perpetrators punished, society protected has been restored.

Philosophically, the values of Pancasila and Dignified Justice remedy the weaknesses of the classical criminal law approach. They breathe life into rigid statutory texts, transforming criminal procedure into a holistic healing mechanism physical, mental, and economic. By positioning victim recovery as a mandate of the Second and Fifth Principles of Pancasila, Indonesia's justice system will possess a strong legal identity firm against organized crimes against humanity while remaining deeply humane and protective toward the nation's children who become victims.

3.3. Constructing the Implementation of Restorative Justice within the Criminal Justice System for Human Trafficking Cases

To transform the philosophical foundation of Pancasila into practical application, a systematic reconstruction of the operationalization of Restorative Justice in human trafficking cases is required. The first redefinition that must be incorporated into legislation is the clear distinction between a "restorative approach for victims" and "diversion for offenders." In human trafficking cases, restorative justice is not realized through the termination of prosecution or penal mediation but is implemented through victim-centered recovery mechanisms in the form of protection interventions and recovery services throughout every stage of the formal criminal justice process.

LICS 2026

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

The most essential component of this implementation is the integration of the asset recovery regime as the backbone of restitution enforcement. In accordance with the spirit of the Fifth Principle, law enforcement officers must employ a parallel financial investigation approach from the very first day of investigation. Prosecutors and investigators must be granted full authority to freeze bank accounts, seize property assets, and penetrate the beneficial ownership structures of criminal syndicates through compulsory asset seizure. These assets will subsequently serve as an absolute guarantee for the payment of restitution once the court judgment becomes final and binding, ensuring that the right to restitution is no longer an empty promise.

Beyond optimizing the confiscation of offenders' assets, restorative justice that truly humanizes also requires the presence of the state when offenders' assets are genuinely insufficient or cannot be located. Legislative reconstruction must mandate the establishment of a National Victim Trust Fund administered by the Witness and Victim Protection Agency (LPSK). This fund should be financed through the State Budget (APBN), fines imposed on corporate criminal offenders, and confiscated state assets. If an offender is legally declared insolvent, the state must pay the restitution owed to victims from this Trust Fund as a form of the state's strict responsibility.

At the procedural level of criminal justice formal procedural law, the implementation of the Second Principle of Pancasila requires stringent psychological protections to prevent re-victimization. The Supreme Court must mandate the use of teleconferencing technology and special courtroom facilities (safe rooms) for women and child victims of human trafficking when providing testimony. They should have the legal right not to confront physically the members of the criminal syndicate that exploited them. Furthermore, accompaniment by a clinical psychologist or social worker during court proceedings must be recognized as an inalienable legal right.

Pancasila-based restorative justice rooted in mutual cooperation also requires cross-sector collaboration through an integrated one-stop service system integrated criminal justice system. Case handling must not be monopolized by the police institution but should involve the Ministry of Social Affairs, the Ministry of Women's Empowerment and Child Protection, and LPSK from the very moment victims are rescued. This multidisciplinary team simultaneously conducts criminal investigations by the police and medical/psychosocial assessments by social workers, ensuring that legal and medical approaches proceed side by side without delaying one another.

LICS 2026

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

Furthermore, substantive recovery must not end when the judge's gavel falls. Restorative justice mandates long-term social reintegration programs. Restitution funds received by victims, particularly children, should be managed through a special guardianship mechanism to ensure the availability of educational funding until completion. Meanwhile, for women who are victims of human trafficking, local governments must facilitate vocational training programs and provide access to small business capital so that they can achieve financial independence and avoid falling back into the cycle of exploitation in the future.

With respect to sentencing offenders, restorative justice does not diminish the element of deterrence. Perpetrators of human trafficking crimes must still receive severe criminal punishment as a form of society's moral condemnation. However, the proposed innovation is that the criminal justice system should make the fulfillment of restitution a cumulative prerequisite before offenders can receive correctional benefits such as sentence remission or parole. In this way, the punishment of offenders and the recovery of victims proceed harmoniously without negating one another.

The entirety of this normative and procedural construction demonstrates that Restorative Justice in human trafficking cases is entirely feasible. A rigid procedural law can be softened by the spirit of Pancasila and Dignified Justice. Through asset confiscation for restitution recovery, trauma prevention during court proceedings, and sustainable social reintegration, Indonesia's criminal justice system can transform from a merely punitive (retributive) institution into a civilizational institution that genuinely heals victims' wounds and restores the dignity of the nation.

4. Conclusion

The application of the retributive paradigm in handling the Crime of Human Trafficking (TPPO) has proven incapable of restoring the condition of women and children who become victims and has frequently triggered secondary victimization due to the absence of guaranteed economic and psychosocial protection within the criminal justice system. Pancasila-based Restorative Justice is not intended as a mediation instrument that grants impunity to perpetrators of crimes against humanity but rather as a holistic approach that places victim recovery at the center of law enforcement. Grounded in the values of Just and Civilized Humanity and Social Justice (Dignified Justice), the legal system is required to reconstruct itself by combining firm imprisonment for offenders with substantive recovery mechanisms for victims through asset confiscation and state compensation.



LICS 2026

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

- 1) The House of Representatives (DPR), together with the Government, should immediately revise the Human Trafficking Law and the Criminal Procedure Code KUHAP to integrate asset recovery mechanisms from the investigation stage as a compulsory instrument to guarantee restitution payments to victims.
- 2) Mandate the establishment of a National Victim Trust Fund under the management of the Witness and Victim Protection Agency (LPSK), financed through the State Budget (APBN) and fines imposed for general criminal offenses, to guarantee victims' rights to economic recovery when restitution from offenders cannot be enforced by law enforcement authorities.
- 3) The Supreme Court and relevant law enforcement institutions should be required to formulate technical regulations (Supreme Court Regulations/Perma and National Police Regulations/Perkapolri) that guarantee an absolute victim-centered approach in formal criminal procedure, including prohibiting subsidiary imprisonment as a substitute for restitution and mandating virtual courtroom facilities to prevent further psychological trauma for women and child victim-witnesses.

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LICS 2026

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

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