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

Reconstruction of Regulations on the Fulfillment of State Obligations in the Payment of Restitution to Child Trafficking Victims

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Abstract. *Child trafficking is an extraordinary crime that destroys the future of the nation's next generation and violates the most fundamental human rights. Although Law No. 21 of 2007 on the Eradication of the Criminal Act of Human Trafficking (Anti-Human Trafficking Law) mandates the right to restitution for victims, its implementation in practice remains deeply concerning due to its dependence on the offender's financial capacity. In practice, when offenders have no assets or abscond, victims' right to restitution is often neglected, creating concealed impunity and reflecting the failure of the justice system to provide meaningful recovery for victims. This study aims to analyze the normative gap in the restitution enforcement mechanism and propose a regulatory reconstruction that positions the state as a subsidiarily responsible party in fulfilling restitution for child trafficking victims. Using a normative legal research method, this article examines various legal obstacles in the enforcement of restitution and reviews the theory of state responsibility in child protection. The analysis focuses on the need for a paradigm shift from offender-based restitution toward the concept of state-guaranteed restitution. The findings indicate the need for legislative policy reform requiring the state to advance restitution payments when offenders are unable to pay or cannot be located, with such payments administered through a victim trust fund. This regulatory reconstruction is intended not only to fulfill victims' civil rights but also to serve as a manifestation of the state's constitutional responsibility to protect children from exploitation. The implementation of this policy is expected to become a progressive step toward creating a more comprehensive, humane child protection system that guarantees recovery for every child trafficking victim in Indonesia.*

Keywords: *Child; The Payment of Restitution; Trafficking Victims.*

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1. Introduction

Child trafficking is one of the most heinous human rights violations of the modern era, in which children are treated as commodities to be bought and sold for the economic benefit of a small No. of individuals. This phenomenon not only deprives children of their freedom but also permanently destroys their physical integrity, psychological well-being, and future. Indonesia, as a state that has ratified the Convention on the Rights of the Child, has a moral and constitutional obligation to ensure that every child receives maximum protection from all forms of exploitation, violence, and human trafficking, both in physical and digital spaces.

Within the framework of national law, Law No. 21 of 2007 on the Eradication of the Criminal Act of Human Trafficking (Anti-Human Trafficking Law) serves as a progressive legal instrument by introducing the right to restitution for victims. Under the law, restitution is compensation paid by the offender or a third party to the victim for the material and immaterial losses suffered as a result of the crime. Theoretically, this right should be the key to the recovery of child trafficking victims, providing them with access to restore their health, education, and livelihood lost as a consequence of the offense.

However, the reality in practice reveals a significant gap between the text of the law and the effectiveness of its enforcement. The primary issue lies in the fact that the fulfillment of restitution is entirely dependent on the offender. In many cases, child traffickers are part of sophisticated criminal syndicates capable of concealing their assets, or they are merely low-level intermediaries with no financial capacity whatsoever. As a result, court decisions ordering restitution often amount to nothing more than paper victories for child victims, never materializing into actual recovery.

This situation is exacerbated by the weak asset enforcement mechanism within Indonesia's criminal justice system. Asset tracing conducted by law enforcement authorities frequently fails to operate effectively, allowing criminal proceeds to be transferred or dissipated before judgment is rendered. When restitution enforcement fails, the legal system offers only substitute imprisonment as an alternative. For child victims, substitute imprisonment has no practical value; it does not provide food, finance education, or heal trauma. This represents a form of systemic injustice repeatedly suffered by child victims throughout the criminal justice process.

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Dependence on the offender's financial capacity essentially disregards the state's obligation to protect children. From the perspective of international law and human rights, the state bears the primary responsibility for ensuring the protection and recovery of children. If the criminal justice system fails to hold offenders accountable, the state cannot simply withdraw from its responsibilities. The offender's failure is a failure of law enforcement, and the burden of that failure should not be transferred to child victims who have already endured immense suffering.

A regulatory reconstruction is therefore imperative to address this challenge. The state must adopt a new paradigm in which the right of child victims to restitution is guaranteed by the state as a subsidiary obligation. In other words, the state must establish a funding mechanism capable of advancing restitution payments whenever offenders are unable to pay or cannot be found. This concept places child protection above budgetary efficiency, in line with the best interest of the child principle, which requires concrete action to promote children's welfare.

Several jurisdictions around the world have successfully implemented state-guaranteed restitution models through victim trust funds. These funds are managed transparently and financed through confiscated criminal assets, fines, and dedicated state budget allocations for victim recovery. Indonesia should be able to adopt a similar model in order to provide stronger legal certainty. Without fundamental regulatory reform, restitution will continue to be an unattainable hope for child trafficking victims in Indonesia.

This study examines how such regulatory reconstruction can be integrated into Indonesia's national legal system. Its primary focus is to establish a legal basis for the state to assume responsibility for advancing restitution payments as a mandatory obligation. This does not absolve offenders of their liability; rather, the state fulfills the payment first (pay first, claim later) and subsequently pursues the offender's assets through available legal mechanisms to reimburse the public treasury.

Furthermore, this reconstruction should be viewed as an investment in the nation's future. Restoring the lives of child trafficking victims is a means of safeguarding the quality of future generations. Every moment lost while waiting for uncertain restitution enforcement constitutes a loss to the child's psychological and social development. Therefore, the law must not remain static; it must evolve to respond to real societal needs, particularly in protecting children, who occupy the most vulnerable position within our social structure.

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Based on this background, this article analyzes three principal issues: first, the legal obstacles to the fulfillment of restitution arising from dependence on offenders' assets; second, the urgency of state responsibility as the guarantor of restitution for child trafficking victims; and third, the formulation of a regulatory reconstruction that integrates a state-guaranteed restitution fund into Indonesia's criminal justice system. Through this study, it is expected that a new legal framework will emerge that is more just, responsive, and protective of the rights of child victims of human trafficking.

2. Research Methods

This study employs a normative legal research method with a doctrinal approach, which views law as a coherent system of norms. The analysis focuses on the harmonization of legislation, legal principles, and doctrines relating to the fulfillment of restitution for victims of human trafficking.

Statutory Approach: Analyzes the hierarchy and substance of regulations concerning human trafficking, child protection, and the criminal justice system.

Conceptual Approach: Explores the theory of state responsibility, the best interest of the child principle, and the concept of restitution within the framework of restorative justice.

Legal Materials:

- a) **Primary Legal Materials:** Law No. 21 of 2007 (Anti-Human Trafficking Law), Law No. 35 of 2014 (Child Protection Law), Law No. 1 of 2023 (National Criminal Code), and Government Regulation No. 7 of 2021.
- b) **Secondary Legal Materials:** Textbooks, national and international scholarly journals, and research reports concerning child protection policies.

3. Results and Discussion

3.1. Analysis of Legal Obstacles in the Execution of Asset-Based Restitution

The current restitution system in Indonesia is based on the assumption that perpetrators of child trafficking possess assets that can be seized to compensate victims. However, in empirical practice, this assumption is rarely realized. Child trafficking syndicates generally operate in an organized and sophisticated manner, using nominees or money laundering techniques to conceal their wealth. As a

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result, when a court verdict is issued, sufficient assets are often unavailable to satisfy the restitution claims submitted. Our legal system remains trapped in dependence on the existence of the perpetrator's physical assets, a variable that is extremely difficult to control throughout the judicial process.

This dependence creates a significant gap in justice because the victim's fate depends heavily on the success of law enforcement in tracing assets rather than on the victim's rights themselves. If no assets are found, restitution is not paid. This places child trafficking victims in an extremely vulnerable position. They not only suffer trauma from the crime committed against them but also experience secondary victimization due to the legal system's failure to provide economic recovery. The law's inability to guarantee this right demonstrates that restitution currently functions merely as a civil right "attached" to criminal proceedings, but loses its effectiveness when confronted with the disappearance of the perpetrator's assets.

Furthermore, the execution of restitution in Indonesia still relies on slow civil law mechanisms. A restitution order must be enforced through an execution application to the district court, a process that often requires considerable time and imposes significant costs on victims. For child trafficking victims living in remote areas or coming from economically disadvantaged families, this process is nearly impossible to undertake independently without intensive assistance. The absence of active state involvement in ensuring the complete execution of restitution shifts the burden of responsibility onto victims, who lack both the psychological and physical capacity to carry it out.

The use of subsidiary imprisonment as a substitute for restitution represents one of the clearest failures of the law in child trafficking cases. When the law allows perpetrators to choose imprisonment rather than paying compensation, it indirectly legitimizes the neglect of victims' rights. The imprisonment served by child traffickers provides no benefit to victims. It is a form of suffering that is futile for all parties: victims receive no compensation, perpetrators lose their physical freedom while retaining the proceeds of their crimes, and the state bears the cost of incarcerating them. This policy is entirely inconsistent with the principle of justice for children.

Another weakness evident in practice is the lack of coordination among institutions responsible for asset tracing, such as the police, the prosecutor's office, and the Financial Transaction Reports and Analysis Center (PPATK). Assets identified by PPATK are often not promptly linked to ongoing investigations into human trafficking offenses. Consequently, opportunities to seize assets before

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perpetrators transfer them are frequently missed. The absence of an integrated asset database among these institutions weakens law enforcement against child traffickers, ultimately undermining the fulfillment of restitution.

From a philosophical perspective, the current approach remains retributive rather than restorative. The law continues to focus primarily on imposing prison sentences on offenders, while victim recovery remains a secondary concern. Yet for children, what they need most after escaping exploitation is security, access to education, and healthcare recovery. The absence of a proactive state guarantee fund means that these rights remain nothing more than words written into legislation without actual implementation. This situation demands a fundamental transformation of our criminal justice system toward a stronger future-oriented approach centered on children's welfare.

This condition is further exacerbated by victims' limited access to information regarding their restitution rights. Many victims' families do not understand the procedures for requesting restitution from the initial stages of investigation. In child trafficking cases, vulnerable families are often subjected to intimidation or bribery by perpetrators to withdraw reports or relinquish restitution claims. The lack of strong protection and extensive legal assistance makes restitution rights highly susceptible to manipulation by perpetrators seeking to avoid their payment obligations.

In conclusion, these obstacles in executing restitution demonstrate that the current system is not designed to effectively protect child victims. Dependence on perpetrators' assets remains a fundamental weakness that child trafficking syndicates continue to exploit. Without regulatory reforms that shift responsibility from perpetrators to the state, restitution rights for child victims of human trafficking will remain legal entitlements lacking meaningful enforceability. A transformation toward state responsibility is the only viable solution to ensure justice for children in the future.

3.2. The Urgency of State Responsibility as Guarantor of Restitution for Child Victims of Trafficking

State responsibility for ensuring restitution for child victims of human trafficking is not merely an option but a constitutional obligation rooted in the protection of children's human rights. Our Constitution affirms that every child has the right to survival, growth, and development, as well as protection from violence and discrimination. In the context of trafficking in persons, child trafficking constitutes one of the most extreme forms of violence carried out by organized criminal

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syndicates. When the state fails to prevent such crimes, or fails to apprehend perpetrators and confiscate their assets, it has an obligation to intervene as a manifestation of responsibility for the failure of its security system.

The state must position itself as the ultimate guarantor for every child who becomes a victim of human trafficking. This concept means that the state should advance restitution for child victims without waiting for the completion of asset seizure proceedings against perpetrators. Recovery for children is urgent; a child requiring surgery or education cannot wait years for asset confiscation processes to conclude. By advancing restitution, the state guarantees that children's rights to recovery and a continued future remain protected regardless of whether the perpetrators are apprehended or their assets are located.

From a legal standpoint, this principle may be grounded in the doctrine of state responsibility, which emphasizes that the state must ensure the fulfillment of its citizens' rights. In crimes against children, the state cannot hide behind the excuse that "the perpetrator cannot pay." The perpetrator's inability to pay is an internal matter between the state and the offender through legal mechanisms. By contrast, the relationship between the state and child victims is one of protection. It is the state that possesses the authority, power, and resources to compel perpetrators to provide compensation not powerless children.

The institutionalization of a state-guaranteed Victim Trust Fund represents a pragmatic step toward realizing this responsibility. Such a fund should receive a dedicated allocation within the national budget. Through this mechanism, the state could immediately pay restitution to child victims of trafficking in persons once a judicial decision is issued. This measure would have an extraordinary psychological impact on child victims: they would feel that the state is genuinely present to protect them rather than merely offering promises through lengthy judicial proceedings.

Moreover, state responsibility in this regard would strengthen the accountability of law enforcement authorities. If the state advances restitution using public funds, it acquires a powerful incentive to pursue perpetrators wherever they may be until all their assets have been confiscated. Law enforcement agencies would be compelled to take asset recovery more seriously because they would need to replenish the state treasury. This "pay first, claim later" mechanism would actually enhance the effectiveness of law enforcement in future child trafficking cases.

From a sociological perspective, state-funded restitution would reduce both the stigma and the financial burden borne by victims' families. Many families of

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trafficking victims fall into poverty or debt after financing the search for missing children or covering medical expenses during the recovery process. State guarantees would alleviate these economic burdens. At the same time, such guarantees could help prevent recurring human trafficking, since poverty often constitutes the primary factor making children vulnerable to trafficking in the future.

Implementing state guarantees is also consistent with international commitments under the Sustainable Development Goals (SDGs), which call for protecting children from all forms of exploitation. The international community increasingly evaluates how states treat victims of extraordinary crimes. By taking the progressive step of guaranteeing restitution, Indonesia could become a pioneer among developing countries in promoting progressive and humane child protection. This would strengthen the nation's legal sovereignty by placing universal humanitarian values at its core.

In conclusion, state responsibility as guarantor does not mean favoring perpetrators but rather strengthening the legal position of children as rights-holders deserving protection. A strong state is one capable of guaranteeing justice for its most vulnerable citizens. In child trafficking cases, the absence of restitution reflects a systemic failure. By positioning the state as the guarantor of restitution, we are undertaking a social reconstruction that places children above the administrative interests of the justice system. This is the essence of a rule-of-law state committed to justice for the future of its children.

3.3. Regulatory Reconstruction Through an Integrated Restitution Guarantee System

The reconstruction of restitution regulations should begin with amendments to the Human Trafficking Law explicitly requiring the state to advance restitution for child victims of trafficking in persons whenever perpetrators are unable to pay. Restitution provisions should no longer be optional or dependent upon perpetrators' assets. A new provision should explicitly state: *"Where the perpetrator is unable to fulfill restitution payments, the state shall be obligated to guarantee restitution through a Victim Assistance Fund."* This amendment would serve as the foundation for the entire guarantee system to be developed.

Subsequently, the government should issue a dedicated Government Regulation governing the management of the Victim Assistance Fund (Victim Trust Fund). This regulation should establish permanent and transparent funding sources, including a percentage of proceeds from auctions of confiscated criminal assets, criminal

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finances, and special grants. The fund should remain separate from ordinary ministerial operating budgets and should instead be managed independently according to principles of good corporate governance so that every expenditure can be audited and publicly accounted for.

This guarantee system should be integrated with a subrogation mechanism. Once the state has paid restitution to child victims, it automatically assumes the victims' civil rights to pursue claims against the perpetrators. This grants full authority to the State Attorney to pursue perpetrators' assets through both civil and criminal proceedings wherever such assets are located, including through international cooperation mechanisms such as Mutual Legal Assistance Treaties (MLATs) if assets have been transferred abroad. Consequently, the state would not suffer financial losses because every effort would be made to recover public funds from the perpetrators.

Regulatory reconstruction should also establish technical procedures for a Rapid Assessment of Restitution. Judges should no longer determine restitution amounts based merely on rough estimates but rather on professionally prepared damage assessment reports compiled by teams from the Witness and Victim Protection Agency (LPSK) and clinical psychologists beginning at the investigation stage. These assessments should form the basis for state restitution payments through the Victim Assistance Fund. A rapid, science-based process is essential to ensuring that victims' recovery rights are not sacrificed to bureaucratic delays.

In addition, the new regulatory framework should provide incentives for technology platforms and the private sector to contribute to the Victim Assistance Fund as part of their Corporate Social Responsibility (CSR) programs. Given that child trafficking increasingly occurs through cyberspace, the participation of digital private-sector actors in financing the recovery of child trafficking victims through such a fund would constitute a concrete manifestation of corporate social responsibility. This would create a collaborative ecosystem dedicated to protecting children from human trafficking in the digital age.

It is equally important to ensure that every restitution payment through the Victim Assistance Fund is accompanied by sustained social support. The regulations should provide that restitution is delivered not only in monetary form but also through access to education, healthcare, and vocational training until child victims reach adulthood (18 years of age). Such assistance would ensure that restitution funds are not misused but instead invested in the children's future. In this manner, the state would guarantee that child victims can develop optimally despite having endured the trauma of human trafficking.

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The reconstruction should also include safeguards for victims' personal data throughout the restitution claims process. Child trafficking victims are highly vulnerable to revictimization if their identities are widely disclosed. The regulations must ensure that the Victim Assistance Fund management system operates under strict privacy protections. Only authorized parties should have access to claim data. Such confidentiality forms an essential component of children's rights and must not be compromised, allowing them to recover without stigma or threats from perpetrators or outside parties.

In conclusion, regulatory reconstruction integrating state guarantees into the criminal justice system represents a revolutionary step toward achieving justice for victims. By shifting the paradigm from "dependence on perpetrators" to "state-guaranteed protection," we are building a strong safeguard for the future of Indonesia's children. A civilized state is one that ensures every child victim of crime receives full enjoyment of their rights without exception. May this reconstruction soon be realized as an expression of the state's dedication to future generations.

4. Conclusion

Reconstructing regulations governing the state's obligation to pay restitution for child trafficking victims constitutes a crucial step in remedying the systemic flaws within Indonesia's legal system. Dependence on perpetrators' assets which are frequently nonexistent has proven incapable of guaranteeing the rights of child victims. By positioning the state as the subsidiary guarantor of restitution, we not only provide legal certainty for children but also reaffirm the state's commitment to fulfilling its most fundamental responsibility of protecting human rights. The establishment of a guarantee mechanism through a Victim Assistance Fund (Victim Trust Fund), supported by subrogation and rapid damage assessment systems, would constitute a strategic breakthrough. This system would not only ensure that victims receive meaningful recovery but also impose stronger legal pressure on perpetrators through the state's obligation to pursue their assets until fully recovered. This policy transformation demonstrates Indonesia's capacity to address the challenges of combating human trafficking through an approach more firmly oriented toward victim recovery and child protection. The next step is to encourage legislative and executive cooperation to promptly realize amendments to the Human Trafficking Law and enact its implementing regulations. Child protection is an agenda that cannot wait; every moment of delay in providing recovery represents a loss to children's future. May this reconstruction become a historic milestone for a more just, humane Indonesian legal system that consistently places the best interests of children above all else.



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