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

Analysis of the Study of Civil Liability of Human Trafficking Perpetrators Towards the Restoration of Victims' Rights in the Indonesian Legal System

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Abstract. *This study examines the civil liability of human trafficking perpetrators in relation to the restoration of victims' rights within the Indonesian legal system. The main focus of this research is to analyze how civil law mechanisms can serve as legal instruments for compensation, restitution, and the recovery of victims' rights in human trafficking cases, which have traditionally been addressed predominantly through criminal law approaches. This research employs a normative juridical method using statutory, conceptual, and case approaches. The data were collected through library research involving legislation, legal doctrines, court decisions, and relevant academic literature. The data were analyzed qualitatively using a descriptive-analytical method to assess the effectiveness of civil liability in providing victim remedies. The findings indicate that the civil liability of human trafficking perpetrators in Indonesia has not been optimally implemented in a comprehensive manner. Victim recovery still largely depends on criminal law mechanisms such as court-ordered restitution, while independent civil lawsuits by victims remain rarely utilized. The main obstacles include limited access to justice for victims, the complexity of burden of evidence, and the lack of understanding among legal practitioners regarding civil liability mechanisms in human trafficking cases. The study concludes that strengthening civil liability mechanisms for human trafficking perpetrators is essential to broaden and enhance victim reparation in a more effective, fair, and sustainable manner within the Indonesian legal system.*

Keywords: Civil Liability; Human Trafficking; Indonesian Legal System; Restitution; Victim Reparation.

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1. Introduction

Human trafficking is a serious problem involving human rights violations and transnational crime. In Indonesia, human trafficking has become a major government concern, given that the country is a source, destination, and transit point for human trafficking. According to data from the Ministry of Women's Empowerment and Child Protection (KPPA), thousands of human trafficking victims are found each year in various regions of Indonesia.¹ One of the biggest challenges in addressing this problem is limited resources and coordination between institutions.

To address this challenge, Indonesia has ratified various international conventions and enacted a No. of laws. One significant legal instrument is Law No. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking.² This law comprehensively regulates the definition, prevention, law enforcement, and protection of victims. Furthermore, the government has established a Task Force for the Prevention and Handling of Human Trafficking (TPPO), which functions to coordinate efforts to combat human trafficking at the national and regional levels.³

However, the implementation of these laws and policies still faces various obstacles. One of the main obstacles is a lack of legal awareness among the public and weak enforcement by authorized officials. A study by the Indonesian Institute for Legal and Policy Studies (LKHKI) shows that many law enforcement officials still lack a thorough understanding of applicable laws, resulting in frequent negligence in handling human trafficking cases.⁴ On the other hand, victims of human trafficking are often reluctant to report their cases because they fear threats from the perpetrator or social stigma.

Efforts to combat human trafficking also require a holistic approach, involving various stakeholders, including government, civil society, and the private sector. One effective approach is through increased regional and international cooperation. Indonesia has been active in various regional forums, such as ASEAN, to strengthen cooperation in combating human trafficking.⁵ This collaboration includes information exchange, law enforcement capacity building, and victim protection program development.

¹Ministry of Women's Empowerment and Child Protection, "Annual Report on Handling Human Trafficking in Indonesia," 2022.

²Republic of Indonesia, Law No. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, State Gazette of the Republic of Indonesia 2007 No. 58

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Ultimately, combating human trafficking in Indonesia requires sustained commitment and cooperation from all parties. Strict legal enforcement, public awareness, and strong international cooperation are key to addressing this problem. By continuously enhancing these efforts, it is hoped that Indonesia can significantly reduce human trafficking cases and protect the human rights of all its citizens.

2. Research Methods

1. Types of research

Normative legal research is used because the object of study focuses on positive legal norms governing civil liability for human trafficking perpetrators and the mechanisms for redressing victims' rights within the Indonesian legal system. Law is understood as a set of rules, principles, and doctrines that are systematically analyzed to assess the effectiveness of their regulations.

2. Research Approach

This research uses a normative juridical approach with several comprehensive legal approaches to analyze norms, principles, and implementation of law related to civil liability in human trafficking cases.

3. Data source

a. Primary Legal Materials

- 1) The 1945 Constitution of the Republic of Indonesia, especially provisions regarding human rights and protection of citizens.
- 2) The Civil Code (KUHPerdata), especially provisions regarding unlawful acts (Articles 1365–1380 BW).

³Task Force for the Prevention and Handling of Human Trafficking Crimes, "National Strategy for the Prevention and Handling of Human Trafficking Crimes," 2021

⁴Indonesian Institute for Law and Policy Studies, "Evaluation of the Implementation of the Law on the Eradication of Human Trafficking," *Journal of Law and Policy*, Vol. 15, No. 3 (2023): 45-67

⁵ASEAN Secretariat, "ASEAN Convention Against Trafficking in Persons, Especially Women and Children," 2015

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- 3) Law No. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking (TPPO).
- 4) Law No. 31 of 2014 concerning Protection of Witnesses and Victims.
- 5) Law No. 39 of 1999 concerning Human Rights.
- 6) Supreme Court Regulation (PERMA) regarding restitution and protection of victims of criminal acts.

b. Secondary Legal Materials

- 1) Scientific books
- 2) Relevant reputable National and International Journal Articles

4. Analysis Method

The qualitative analysis was conducted using a normative-juridical approach that is descriptive-analytical and prescriptive (reconstructive). This method aims to examine in-depth legal norms, legal principles, doctrines, and judicial practices related to civil liability in human trafficking cases.

3. Results and Discussion

Human trafficking, or human trafficking as it is more commonly known, is a highly complex crime that the international community considers a form of modern slavery and a violation of human rights. The development of human civilization and advances in technology, information, communication, and transportation have all influenced the development of human trafficking methods. The issue of human trafficking has also attracted the attention of the United Nations, which has sought to prevent and eradicate it by issuing a UN protocol to prevent, eradicate, and punish human trafficking, particularly for women and children.⁶

In the UN General Assembly in 1994, the UN defined trafficking in persons as the illicit and unlawful movement of persons across national and international borders, primarily from developing countries and from countries with economies in transition, with the aim of forcing women and girls into situations of sexual and

⁶Marlina and Azmiati Zuliah, *The Right to Restitution for Victims of Human Trafficking*, (Medan: PT Refika Aditama, 2015), p. 2.

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economic oppression and exploitation, as well as other illegal acts related to trafficking such as forced domestic labor, false marriages, clandestine employment and false adoption for the purposes of recruitment, trafficking and criminal syndicates.⁷

Meanwhile, the definition of human trafficking according to Law No. 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking in Indonesia itself is stated in Article 1 point 1, which is defined as the act of recruiting, transporting, sheltering, sending, transferring, or receiving a person with the threat of violence, use of violence, kidnapping, confinement, forgery, fraud, abuse of power or vulnerable position, debt bondage or giving payment or benefits, so as to obtain the consent of the person who holds control over the other person, whether carried out within the country or between countries, for the purpose of exploitation or resulting in people being exploited.⁸

The exploitation referred to in Law No. 21 of 2007 concerning the Crime of Human Trafficking is contained in Article 1 No. 7 which reads:⁹Exploitation is an act with or without the victim's consent which includes but is not limited to prostitution, forced labor or service, slavery or practices similar to slavery, oppression, blackmail, physical, sexual exploitation, reproductive organs, or illegally removing or transplanting organs and/or body tissue or exploiting a person's energy or abilities by another party to gain material or immaterial benefits.

Human trafficking (TPPO) is a serious global problem, with significant impacts on victims, families and communities.¹⁰TPPO covers various forms of exploitation, including sexual exploitation, forced labor, slavery, and organ removal.¹¹

In general, there are many factors that contribute to the occurrence of TPPO itself.¹²The factors behind human trafficking, particularly women and children, are inseparable from issues of underdevelopment or poverty. In Book IV on Trafficking in Women and Girls, published by the International Labour Organization (ILO) in

⁷Musfidah, *Why They Are Traded*, (Malang: UIN Maliki Press, 2011), p. 9

⁸Article 1 number 1 of Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking

⁹Article 1 number 7 of Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking

¹⁰Iskandar, Tatang. "STENGING BORDER CONTROL AS A MEANS OF PREVENTING THE CRIMINAL ACT OF TRAFFICKING IN HUMANS: STRATEGIES AND CHALLENGES IN THE ERA OF GLOBALIZATION." *Journal of Law and Border Protection* 6.1 (2024): 65-80.

¹¹Kirmila, Limtila. "Analysis of the Function of International Criminal Law in Relation to Transnational Crimes, Especially Human Trafficking." *Milthree Law Journal* 1.2 (2024): 266-294.

¹²Rahmah Daniah and Fajar Apriani, *Op., Cit.*, pp. 144-145

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2004, it was found that the feminization of poverty, chronic unemployment, and lack of economic opportunities are some of the factors influencing the trafficking of women and children. Poverty is the primary reason why the risk and vulnerability to human trafficking occurs.

The Indonesian government has taken various steps to address human trafficking through comprehensive policies and regulations. One important step was the enactment of Law No. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking (UU TPPO). This law provides a strong legal basis for prosecution against perpetrators of human trafficking and protection for victims. Furthermore, this law regulates prevention efforts and international cooperation to combat human trafficking.

In addition to legislation, the Indonesian government has also established a Task Force for the Prevention and Handling of Human Trafficking (GTPPTPO). This task force coordinates efforts from various government agencies, including the National Police, the Ministry of Social Affairs, the Ministry of Women's Empowerment and Child Protection, and the Ministry of Foreign Affairs, in addressing human trafficking cases. The GTPPTPO is responsible for formulating policies, conducting training, and providing assistance and rehabilitation services for victims of human trafficking.¹³

4. Conclusion

Driving Factors that Underlie the Occurrence of Human Trafficking Crimes. The crime of human trafficking is complex and driven by various driving factors that span social, economic, and political dimensions. Socially, economic and educational inequality are key drivers, trapping vulnerable individuals in exploitative situations due to pressing economic needs. This factor is exacerbated by political instability and conflict, which result in forced migration, making marginalized individuals prime targets for human trafficking. Furthermore, the role of technology and global connectivity also facilitates perpetrators in recruiting and exploiting victims through digital platforms that are difficult for law enforcement to track. Analysis of the Implementation of Anti-Human Trafficking Policies in Indonesia. The implementation of anti-trafficking policies in Indonesia presents significant challenges despite efforts by the government and relevant institutions. Positively, there has been progress in raising public awareness and training law enforcement to identify and handle trafficking cases. However, there

¹³Angela, Melisa, Dewi Shinta Permatasari, and Dave David Tedjokusumo. "MODUS OPERANDI OF THE CRIMINAL ACTS OF TRAFFICKING IN HUMAN ACTIONS IN ASEAN MEMBER COUNTRIES." *PALAR (Pakuan Law Review)* 10.3 (2024): 1-14.

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is still a need for better coordination between agencies, including in cross-border monitoring and enforcement. Lack of adequate human resources and budgets also pose serious obstacles hindering the effectiveness of these policies. Furthermore, corruption within the law enforcement system often hinders sustainable and comprehensive countermeasures efforts. To address the challenges faced in combating human trafficking, a holistic approach involving collaboration between the government, civil society, and the private sector is needed. Emphasis on local economic empowerment, increased access to education, and strict oversight of the use of technology for exploitative purposes are key. Furthermore, reforms in the criminal justice system and law enforcement need to be continuously enhanced, including capacity building and protection for victims of human trafficking. These efforts can help build safer communities and protect against potential future trafficking incidents.

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Republic of Indonesia, Law No. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, State Gazette of the Republic of Indonesia 2007 No. 58