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

Reconstruction of Human Rights-Based Recovery Policy for Victims of Human Trafficking from a Restorative Justice Perspective

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Abstract. *This study aims to analyze and reconstruct the recovery policy for human trafficking victims to be based on human rights and the principles of restorative justice through a victim-centered approach. The applicable legal framework still tends to be oriented towards punishing the perpetrator (offender-oriented), while the fulfillment of victims' rights to restitution, rehabilitation, and social reintegration is not optimal. The approach used is a normative juridical approach supported by a legislative, conceptual, and comparative approach, by examining Law No. 21 of 2007, Law No. 31 of 2014, Government Regulation No. 35 of 2020, Law No. 39 of 1999, and the Palermo Protocol of 2000 (Law No. 14 of 2009). Based on the results of the study, it can be concluded that the recovery policy needs to be reconstructed by placing the victim as the main subject of protection, combining guarantees of restitution payments, holistic rehabilitation, and sustainable social reintegration, in line with the objectives of sharia (maqasid al-syariah) in preserving the soul, honor, and dignity of humans.*

Keywords: *Human Rights; Human Trafficking; Restitution; Restorative Justice; Victim Recovery.*

Human trafficking is one of the most serious forms of crimes against humanity because it places humans as commodities to be bought and sold, thereby robbing them of the dignity and basic rights inherent in every individual.¹ This practice not only violates national positive legal norms but also contradicts universal human rights principles recognized by the international community. Victims of human trafficking are generally from vulnerable groups, such as women and children, who are in a weak bargaining position due to poverty, limited education, and unequal power relations. This reality demands that the state act not merely as a law enforcer punishing perpetrators, but also as a protector and providing comprehensive recovery for victims.

Indonesia has laid the normative foundation for eradicating human trafficking through Law No. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, which threatens perpetrators with severe penalties while recognizing the victim's right to restitution.² However, at the implementation level, policy direction still emphasizes the punishment of perpetrators over the rehabilitation of victims. The imposition of criminal sanctions is often viewed as the pinnacle of successful law enforcement, while the fate of victims after the judicial process is completed is often overlooked.

Ideally, protection for victims of human trafficking includes three interrelated dimensions, namely the fulfillment of the right to restitution, physical and psychological rehabilitation, and social reintegration so that victims can return to living a dignified life.³ However, the actual situation reveals a wide gap between norms and practice. Restitution awards often go unpaid due to the perpetrator's lack of financial means, while state compensation mechanisms have not been specifically designed for trafficking victims. As a result, victims bear a double burden: the suffering of exploitation and the lack of adequate redress.

Restorative justice offers a different paradigm from the conventional retributive approach, as it emphasizes restoring the victim's losses and the social balance disturbed by crime, rather than simply revenge.⁴ In the context of human trafficking, this approach creates opportunities for victims to obtain substantive reparations. Placing the victim as the primary subject (victim-centered approach) is key to shifting policy orientation from solely punishing the perpetrator to holistic victim reparations.

¹Anis Widyawati, *International Human Rights Law*, Sinar Grafika, Jakarta, 2020, p. 88.

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A human rights-based approach requires that every state policy is based on respecting, protecting, and fulfilling the rights of victims as rights holders, while the state is positioned as a duty bearer.⁵ This framework is in line with Law No. 39 of 1999 concerning Human Rights and the 2000 Palermo Protocol ratified through Law No. 14 of 2009, which emphasizes the state's obligation to provide effective redress for victims.

A No. of previous studies have highlighted the weak implementation of restitution and the dominance of a punitive approach in handling human trafficking, but generally stop at identifying the problem without offering a comprehensive policy reconstruction formulation.⁶ This is where the novelty of this study lies, namely reformulating victim-centered victim recovery policies by combining the values of restorative justice, human rights guarantees, and justice values from the perspective of *maqasid al-syariah*.

Based on this description, this study aims to formulate a reconstruction of the recovery policy for victims of human trafficking based on human rights and restorative justice through a victim-centered approach.

2. Research Methods

This research employs a normative juridical approach with analytical descriptive specifications. The approaches employed include a legislative approach, a conceptual approach, and a comparative approach. Primary, secondary, and tertiary legal materials were collected through a literature review of laws and regulations, court decisions, literature, and scientific journals, then analyzed qualitatively and normatively to obtain prescriptive conclusions.

²Maidin Gultom, Legal Protection for Victims of Human Trafficking, *Mercatoria Journal*, Vol. 11, No. 2 (2018), p. 145.

³Eva Achjani Zulfa, Shifting the Paradigm of Punishment towards Restorative Justice, *Journal of Law and Development*, Vol. 41, No. 3 (2011), p. 401.

⁴Howard Zehr, Restorative Justice and the Recovery of Trafficking Victims, *Contemporary Justice Review*, Vol. 5, no. 1 (2002), p. 21.

⁵Sri Endah Wahyuningsih, Principles of Individualization of Criminal Procedure in Indonesian Criminal Law, *Journal of Legal Reform*, Vol. 1, No. 1 (2014), p. 8.

⁶Mujibur Rohman, Siti Rodhiyah Dwi Istinah, and Widayati, The Role of Leaders and Community Empowerment in Village Autonomy, *Law Development Journal*, Vol. 3, No. 4 (2021), p. 301.

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3. Results and Discussion

3.1. Construction of Current Human Trafficking Victim Recovery Policies

The construction of policies for handling human trafficking in Indonesia is based on Law No. 21 of 2007 which places criminalization of perpetrators as the main instrument, while also regulating the rights of victims to restitution in Article 48.⁷ Normatively, this regulation has accommodated the interests of victims, but the basic nature of the policy remains oriented towards punishing perpetrators, where the success of law enforcement is measured by the severity of the sanction, not by the extent to which the victim actually recovers.

Law No. 31 of 2014 concerning Protection of Witnesses and Victims strengthens the position of victims by providing the right to restitution as well as medical, psychological and psychosocial assistance through the Witness and Victim Protection Agency.⁸ However, the right to compensation imposed on the state is expressly only granted to victims of gross human rights violations and victims of terrorism, so that victims of human trafficking are still dependent on restitution whose source of payment is attached to the perpetrator.

Government Regulation No. 35 of 2020 concerning Compensation, Restitution, and Assistance to Witnesses and Victims regulates the procedures for fulfilling these rights in a more technical manner.⁹ However, restitution decisions often cannot be enforced because the perpetrator lacks sufficient assets, while alternative punishments such as imprisonment do not immediately recoup the victim's material losses. The victim's right to economic restitution remains a mere formal right.

From the perspective of Lawrence M. Friedman's legal system theory, these weaknesses do not only stem from the substance of the law, but also from the legal structure and legal culture which are not yet fully victim-oriented.¹⁰ Authorities tend to focus their energy on proving the elements of a crime and imposing sentences, while victim support is viewed as a secondary concern. This legal culture reinforces the dominance of the offender-oriented paradigm in criminal justice practice.

⁷Romli Atmasasmita, *Contemporary Criminal Justice System*, Kencana, Jakarta, 2019, p. 91.

⁸See Article 7A of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims.

⁹See Article 2 and Article 4 of Government Regulation Number 35 of 2020.

¹⁰Soerjono Soekanto, *Factors Influencing Law Enforcement*, Rajawali Pers, Jakarta, 2016, p. 8.

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Table 1. Comparison of Victim Recovery Policy Orientation

Aspect	Factual Conditions (Offender-Oriented)
Main focus	Imposition of criminal penalties on the perpetrator
Restitution	Depends on the economic capacity of the perpetrator; often unpaid
Rehabilitation & reintegration	Not yet institutionalized systematically and sustainably

Source: Secondary data, processed, 2026.

3.2. Reconstruction of Victim Recovery Policies Based on Human Rights and Restorative Justice

Policy reconstruction needs to start from a paradigm shift, from a perpetrator-centered approach to a victim-centered one. Within the framework of John Rawls's theory of justice, justice demands special attention to the most disadvantaged and most vulnerable parties.¹¹ Victims of human trafficking, as the parties who suffer the greatest losses, have the right to receive priority positions in the design of recovery policies, so that victim recovery becomes the goal, not a side effect of punishing the perpetrator.

Gustav Radbruch's thoughts on the three basic legal values of justice, utility, and legal certainty provide the basis that victim recovery policies should not merely pursue formal certainty, but should be oriented towards substantive justice and utility.¹² If there is tension between these three values, protecting the dignity and restoration of victims as substantive justice should take priority.

Concretely, restorative justice in this context is not defined as simple mediation that brings victims and perpetrators together, but rather as a mechanism that places the restoration of victims' losses and dignity at the heart of the resolution. This can be realized through the establishment of a victim trust fund funded by the confiscation of perpetrators' assets, state funds, and legitimate

¹¹John Rawls, *A Theory of Justice*, Harvard University Press, Cambridge, 1971, p. 60.

¹²Bernard L. Tanya, *Legal Theory*, Genta Publishing, Yogyakarta, 2013, p. 130.

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donations.¹³Such a scheme guarantees restitution payments when the perpetrator is unable to pay, so that the victim's rights are not solely dependent on the perpetrator's economic situation, in line with the state's obligation to provide physical, psychological, and social recovery. Given the unequal power relations, its implementation must ensure the safety and consent of victims and prevent re-victimization.

The dimensions of rehabilitation and social reintegration need to be institutionalized in a sustainable manner, including long-term mentoring, skills training, and support so that victims can return to society without stigma.¹⁴The state, through cross-agency synergy, is obligated to ensure that victims do not fall back into exploitation. Successful reintegration is a concrete indicator of victims' human rights-based recovery.

In the maqasid al-syariah perspective, recovery of human trafficking victims is a manifestation of the objectives of the sharia to preserve the soul (hifz al-nafs), honor and descendants (hifz al-nasl wa al-'ird), as well as the victim's mind and property.¹⁵Human exploitation fundamentally contradicts human dignity (karamah insaniyah). Thus, victim-centered policy reconstruction gains legitimacy from positive law, international human rights instruments, and the value of justice in Islamic teachings.

Ultimately, this reconstruction demands a simultaneous renewal of all three components of the legal system: the substance of the law through the affirmation of guarantees of restitution and compensation; the legal structure through institutional strengthening and coordination; and the legal culture through the awareness that victim recovery is a measure of the success of law enforcement.¹⁶With a progressive legal framework that places humans at the center, the law is no longer merely about punishment, but rather truly restores victims fully and with dignity.

4. Conclusion

The current recovery policy for victims of human trafficking is still oriented towards punishing the perpetrator, so that the fulfillment of victims' rights to

¹³See the provisions of Article 6 of the 2000 Palermo Protocol which was ratified through Law Number 14 of 2009.

¹⁴Muladi, *Human Rights: Essence, Concept, and Implications*, Refika Aditama, Bandung, 2017, p. 112.

¹⁵Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law*, IIIT, London, 2008, p. 21.

¹⁶Satjipto Rahardjo, *Progressive Law*, Genta Publishing, Yogyakarta, 2009, p. 5.

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restitution, rehabilitation, and social reintegration is not optimal because it depends on the perpetrator's economic capacity and is not supported by adequate state compensation mechanisms; therefore, this policy needs to be reconstructed into a victim-centered policy by integrating guarantees of restitution payments through victim assistance funds, holistic rehabilitation, and sustainable social reintegration, based on the principles of human rights, restorative justice, and the values of maqasid al-syariah in preserving the soul, honor, and dignity of humans.

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Law No. 39 of 1999 concerning Human Rights;