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

Reconstruction of Criminal Sanction Norms Against Illegal Agents in Cases of Women and Child Exploitation based on the New Criminal Code

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Abstract. *Exploitation of women and children in the Trafficking in Persons (TPPO) scheme is a human rights violation that often begins with the manipulative role of illegal agents at the village level. Law enforcement practices so far have shown structural weaknesses, where illegal agents often escape severe criminal sanctions by hiding behind the excuse of ignorance and legal loopholes that allow fines to be replaced with short subsidiary imprisonment. This study aims to examine the idea of reconstructing criminal sanction norms against illegal agents based on the paradigm shift in criminal sentencing in the New Criminal Code (KUHP) (Law No. 1 of 2023). This Research using a normative legal research method with a statutory approach and a conceptual approach, this study analyzes the synchronization between TPPO regulations, child protection, and restorative justice. The results show that the New Criminal Code provides a legal basis to reform punishment through three reconstruction steps: (1) the application of strict liability for agents who recruit children by removing excuses; (2) increasing fines to Category VII or VIII while eliminating the loophole of substitution with ordinary imprisonment; and (3) mandating asset tracing and confiscation instruments. This reconstruction is essential so that law enforcement does not merely imprison perpetrators retributively, but is also able to impoverish illegal agents in order to ensure the availability of restitution funds to restore the physical, psychological, and dignity of women and children who are victims of exploitation.*

Keywords: *Illegal Agents; New Criminal Code; Restorative Justice; Strict Liability; Trafficking in Persons (TPPO); Women and Children.*

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1. Introduction

The Unitary State of the Republic of Indonesia is fundamentally built on philosophical and constitutional foundations that highly uphold human values. The Second Principle of Pancasila, namely “Just and Civilized Humanity,” provides an unquestionable moral mandate that every human being in this country must be treated with full respect for their dignity as God’s creation. This philosophical mandate is further explicitly embodied in the Fourth Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia (UUD 1945), which obliges the state to “protect all the people of Indonesia and the entire homeland of Indonesia.” Furthermore, Article 28G of the 1945 Constitution specifically guarantees every person the right to protection of personal self, family, honor, dignity, and property, as well as the right to be free from torture or degrading treatment. The Constitution positions the state as the primary shield to ensure that no citizen is exploited by others.

However, behind these noble constitutional ideals, exploitation of women and children continues to loom and has become one of the most degrading forms of human rights violations in the modern era. In this human trafficking scheme, women and children are no longer seen as complete human beings with souls, will, and the right to live freely. Instead, they are cruelly reduced in value to mere commodities, goods, or production tools that can be exploited and “manufactured” into money to satisfy the greed of others. This practice blatantly tramples the values of Pancasila, turning humans into objects of suffering that are traded across regional and national borders.

The occurrence of this humanitarian tragedy cannot be separated from structural vulnerability conditions that entangle the lives of women and children in various rural and suburban areas. Factors such as extreme poverty, lack of employment opportunities, low levels of education, and the strong grip of patriarchal culture that often marginalizes women’s social roles, make this group the most vulnerable target for organized crime syndicates. Limited access to information and economic pressure within families weaken their critical awareness, making them easily tempted by illusions of prosperity offered by outsiders. Criminal syndicates are fully aware of these vulnerabilities and systematically exploit them as the main entry point for trapping victims.

Ironically, this chain of brutal exploitation almost always begins in the victims’ immediate environment in villages or suburban areas. At this upstream point, the role of illegal agents or what are commonly referred to in the field as “brokers” and “sponsors” becomes crucial and dangerous. These agents are not strangers;

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they are often neighbors, distant relatives, or known figures in the community, giving them initial trust from victims. They act as the spearhead or recruiters who move covertly by spreading false promises of high-paying jobs in big cities or abroad, luxurious facilities, and easy departure processes without complicated procedures.

To smooth their operations and secure victims, these illegal agents carry out highly manipulative modus operandi. They quickly assist in forging victims' identity documents, such as manipulating the age of minors so they appear as adults in identity cards (KTP) or passports. Not only that, they also trap victims by providing advance loans or initial debt (debt bondage) claimed as administrative and travel costs. This debt trap is designed in such a way that it is impossible to repay, so that victims have in effect lost their freedom even before leaving their hometown, forced to obey all the agent's commands.

Although Indonesia's positive legal instruments already regulate protection through Law No. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons (TPPO), the reality of law enforcement against illegal agents in practice is often far from expectations and does not meet a sense of justice. Law enforcement officials often face evidentiary constraints, while enforcement generally only targets these low-level operational actors without being able to reach the intellectual actors or major syndicate bosses behind them. More concerning, existing legal instruments are often exploited by agents to find loopholes to escape severe criminal sanctions.

In many court trials of human trafficking cases, these low-level illegal agents often succeed in deceiving law enforcement by constructing false alibis. They claim before judges that they are merely couriers tasked with picking up and delivering, or argue that they did not know that the jobs offered at the destination were intended for prostitution, sexual exploitation, or forced labor. As a result of their skill in constructing lies, and compounded by weaknesses in proving mens rea (criminal intent), courts often only charge them with participation offenses, resulting in relatively light prison sentences.

Light custodial sentences for these illegal agents have proven to have no deterrent effect, either on the perpetrators themselves or on society at large that might follow in their footsteps. When one village-level illegal agent or broker is only sentenced to one or two years in prison, the large syndicate machinery is not affected; they can easily recruit new agents in other villages to continue the human supply chain. On the other hand, this injustice is deeply painful when considering the fate of women and children who have been exploited, who must

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bear deep psychological trauma, illness, physical disability, and lifelong social stigma that is not proportional to the light punishment given to the agents who destroyed their future.

Amid the deadlock in law enforcement, which has so far been too rigid, purely retributive, and has failed to restore victims' conditions, Indonesia's criminal legal system has just undergone a historic reform phase. The enactment of Law No. 1 of 2023 concerning the Criminal Code (New KUHP) marks a revolution in our national legal system. This codification is not merely an administrative effort to replace outdated colonial-era provisions, but brings a fundamental and essential paradigm shift in criminal law. Indonesian criminal law is now moving toward a more modern, humane era oriented toward restorative justice.

The New Criminal Code explicitly and philosophically states that the purpose of punishment is no longer solely to retaliate against the offender's actions, but has a much broader spectrum of objectives. Punishment is now directed toward resolving conflicts arising from criminal acts, restoring balance and bringing peace to society, improving the behavior of offenders, and most crucially, restoring losses suffered by victims. This restorative and rehabilitative justice philosophy provides a very strong legal and moral foundation for the state to reorganize or reconstruct how criminal law should treat, punish, and impoverish illegal agents who mercilessly facilitate the exploitation of women and children in Indonesia.

2. Research Methods

This study uses a normative legal research method, also known among academics as doctrinal legal research. This method focuses on an in-depth study of legal principles, legal theories, and the synchronization of positive written norms in Indonesia. There are two main approaches applied in this study to comprehensively answer the research questions. First, the statutory approach, used to analyze the harmonization and synchronization of norms between Law No. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons (TPPO) and the modern sentencing paradigm adopted in Law No. 1 of 2023 concerning the Criminal Code (New KUHP). Second, the conceptual approach, applied to examine theoretical frameworks regarding ideal criminal sanction formulations, the doctrine of participation (*deelneming*), and the implementation of restorative justice for victims of exploitation.



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The data sources in this study rely entirely on secondary data collected carefully through library research. The classification of legal materials analyzed is divided into two, namely:

1. Primary Legal Materials Primary legal materials are authoritative and legally binding regulatory instruments. These include:

- a) The 1945 Constitution of the Republic of Indonesia (UUD 1945), especially Article 28G concerning the right to protection and human dignity;
- b) Law No. 1 of 2023 concerning the Criminal Code (New KUHP);
- c) Law No. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons;
- d) Law No. 23 of 2002 concerning Child Protection, as amended several times, most recently by Law No. 17 of 2016; and
- e) Law No. 13 of 2006 concerning Witness and Victim Protection, as amended by Law No. 31 of 2014.

2. Secondary Legal Materials

Secondary legal materials consist of literature that provides explanations, interpretations, and analyses of primary legal materials. These include criminal law reference books, criminology and victimology literature, scientific legal journals, previous research results, and other academic studies relevant to the discourse on protecting women and children from illegal TPPO agents. All collected data and legal materials are then inventoried, systematically organized, and analyzed using a descriptive-qualitative method. This analysis process aims to formulate and present a sharp, logical, structured, and solution-oriented legal argument regarding the reconstruction of criminal sanctions for illegal agents in order to restore the dignity of victims.

3. Results and Discussion

3.1. Legal Loopholes and the Weakness of Criminal Sanctions for Illegal Agents Today

The root of the recurring humanitarian tragedy in the form of exploitation of women and children actually lies in structural weaknesses within our law

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enforcement system. One of these weakest points is the absence of a deterrent effect from the criminal sanctions that have so far been imposed on recruiters or illegal agents at the grassroots level. These agents operating in villages are often considered petty offenders, even though their role is highly essential as the gateway that leads victims into the chain of enslavement by international syndicates. Current law enforcement has not been able to formulate a punishment threat that is proportionate to the level of damage caused by these agents to the victims' futures.

In current law enforcement practice and judicial processes, illegal agents are very skilled at exploiting legal loopholes by hiding behind the shield of "ignorance." When they are arrested by the police, the most common and often convincing defense narrative is that they are merely poor couriers instructed to find workers by recruitment companies in the city. They will argue confidently that they had absolutely no knowledge of the final destination of the departure, and deny allegations that they were aware the victims would be forced to work, abused, or even prostituted at the destination.

This ignorance alibi becomes very effective due to the complexity of proving mens rea (criminal intent) in our conventional criminal justice system. Classical criminal law requires public prosecutors to prove in a lawful and convincing manner that the agent had the same intent as the syndicate boss to exploit victims. Considering that Human Trafficking (TPPO) syndicates use a compartmentalized cell system where recruiters, transport providers, and receiving parties do not know each other in detail proving unified criminal intent in the recruiter becomes an extremely difficult task and often reaches an impasse in court.

As a result of this deadlock in proving criminal intent, judges often take a middle path that is highly detrimental to the sense of justice for victims, namely by imposing minimal sentences on these illegal agents. They are generally only charged under participation provisions (*medepleger* or *medeplichtige*) or ordinary labor administration violations, with very light prison sentences ranging from one to three years. Such lenient punishment clearly does not reflect the gravity of the human rights violations they have facilitated, causing the law to lose its authority in the eyes of perpetrators.

This weakness is further worsened by the fine-based sentencing system regulated in current laws. Although statutes formally stipulate relatively large fines, in practice these fines are often easily replaced with very short substitute imprisonment (subsidiary punishment). Judges often impose fines of hundreds of millions of rupiah, but with a clause stating that if the fine is not paid, it will be

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replaced with only two or three months of additional imprisonment. This substitute loophole is a fatal legal flaw that undermines the purpose of asset deprivation for corruptors and economic criminals.

For illegal agents operating with economic rationality, this substitute punishment loophole is carefully calculated. An agent who has received commissions of tens to hundreds of millions of rupiah from syndicate bosses for recruiting dozens of women and children is faced with a simple mathematical choice. Spending a few additional months in prison is considered a “very fair price” compared to having to surrender illicit wealth and return criminal proceeds to the state or victims. They choose to endure longer imprisonment so that after release, they can still enjoy the proceeds of exploitation.

The failure of this fine substitution system unintentionally creates a mechanism that protects the criminals’ wealth. The law, which should force perpetrators to surrender the proceeds of crime, instead allows them to “purchase” fines with short incarceration. These illegal agents are well aware that law enforcement rarely conducts asset tracing to the roots of their wealth, so illicit funds hidden under relatives’ names or in tangible assets remain safe until they complete their prison term.

This series of legal loopholes from weak proof of mens rea, light sentences, to easy fine substitution leads to one ironic conclusion: the profession of illegal brokers or agents will continue to thrive in Indonesia. The legal risks they face from this rigid justice system are far smaller than the financial temptations offered by syndicate bosses. As long as criminal law has not been able to provide instruments that balance severe physical punishment with absolute asset confiscation, women and children from vulnerable groups will continue to be victims of an ever-turning exploitation machine.

3.2. Paradigm Reform in Criminal Sentencing under the New Criminal Code

Amid stagnation and despair in firmly prosecuting illegal human trafficking agents, the enactment of Law No. 1 of 2023 concerning the New Criminal Code (KUHP Baru) brings a fresh breath of air that is highly anticipated in Indonesian law enforcement. The ratification of this national criminal codification is not merely a replacement of colonial legal texts, but a leap in civilization that brings a fundamental and revolutionary shift in sentencing paradigms. The New Criminal Code boldly abandons the old retributive nature of criminal law and moves forward by embracing restorative justice and rehabilitative philosophy as its core spirit.

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The foundation of this paradigm shift is firmly established in Article 51 of the New Criminal Code, which explicitly reformulates the true objectives of punishment. The article emphasizes that punishment is not intended to degrade human dignity, but rather to prevent crime, resolve social conflicts, restore social balance disrupted by crime, and create genuine peace. This philosophical formulation automatically changes the perspective of law enforcement officials from focusing solely on the suffering of offenders to focusing on social recovery and victim protection.

In the context of exploitation of women and children, this paradigm shift requires the criminal justice system to no longer view legal proceedings as complete once illegal agents are imprisoned. The concept of restoring balance and creating peace requires the law to actively restore the dignity, as well as the physical and psychological condition of victims, as far as possible. Restorative justice under the New Criminal Code places victims' interests and voices at the center of the process (victim-oriented), meaning that sentencing must directly contribute to victim recovery efforts.

One of the most progressive, systematic, and innovative breakthroughs in the New Criminal Code is the categorization of fines. The New Criminal Code no longer uses outdated nominal fines, but introduces a category system ranging from Category I to Category VIII. This system is revolutionary because it allows judges to impose fines reaching billions to tens of billions of rupiah at the highest category. This flexibility ensures that financial sanctions remain relevant, impactful, and proportional to the economic value of the crime committed.

In addition to the reform of fines, the New Criminal Code also restructures the hierarchy of punishments by no longer positioning imprisonment as the sole and absolute main instrument. The drafters of the New Criminal Code recognize that in many modern crimes especially profit-driven crimes such as human trafficking offenders are not afraid of imprisonment but are deeply afraid of becoming financially ruined. Therefore, the new criminal law gives much greater emphasis to fines and additional penalties to create true deterrence.

The strengthening of additional penalties is implemented through more aggressive asset confiscation mechanisms. The New Criminal Code clearly mandates the state to confiscate assets used for preparation or execution of crimes, as well as all assets or wealth derived from criminal acts. This approach ensures that legal instruments do not only target physical freedom, but also the financial and logistical backbone that sustains criminal operations, effectively paralyzing criminal networks permanently.

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This paradigm shift integrating restorative justice, large categorical fines, and asset confiscation directly demands a transformation in the working culture of law enforcement officers. Police, prosecutors, and judges must no longer be trapped in conventional methods focused solely on imprisonment. They are now required to work more comprehensively: tracing assets, freezing suspected proceeds of crime, and ensuring prosecutions focus on dismantling financial resources so that the state can recover victims.

Ultimately, this sentencing paradigm reform provides strong moral and legal legitimacy for the state to act decisively without compromise. The concept of justice offered is no longer symbolic justice on paper, but substantive justice that humanizes humanity. Through this reform spirit, the state has a legitimate foundation to financially incapacitate illegal TPPO agents, ensuring that no blood money from exploiting women and children can be enjoyed by perpetrators, and redirecting that wealth to heal victims' wounds.

3.3. Reconstruction of Criminal Sanctions for Illegal Agents

Responding to the weaknesses of the current legal system and deeply referring to the revolutionary spirit brought by the New Criminal Code, the norms of criminal sanctions against illegal human trafficking agents must be radically and comprehensively reconstructed. A patchwork approach to regulation will never be sufficient to stop this organized crime. The state needs a redesigned sentencing architecture specifically aimed at cutting recruitment chains at the village level, eliminating loopholes for perpetrators, and ensuring punishments permanently destroy their criminal careers. This reconstruction is not an option, but a necessity to protect human dignity.

The first reconstruction idea must focus on increasing imprisonment penalties accompanied by the elimination of exculpatory excuses when illegal agents target vulnerable women and children. The law must explicitly state that recruiting, transporting, or harboring women and children through deception or economic inducement is a serious crime. In this reconstruction, when authorities prove that the victim is a minor or a deceived woman, the agent must no longer be allowed to claim "not knowing where the victim would be employed." The ignorance defense must be declared legally invalid in cases involving exploitation of vulnerable groups.

Furthermore, to ensure no child recruiter escapes justice, recruiting minors for employment (whether forced or not) must be constructed as strict liability. With strict liability, law enforcement does not need to prove mens rea. The fact that the

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agent knowingly recruited and transported individuals legally classified as children is sufficient absolute evidence for maximum punishment, regardless of any defense presented in court.

The second reconstruction idea targets the reform of financially devastating fines. Utilizing the momentum of the categorical fine system in the New Criminal Code, fines for illegal agents facilitating TPPO must be raised to Category VII or VIII. This means agents face fines ranging from hundreds of millions to tens of billions of rupiah. These fines are designed not for negotiation, but to confiscate every cent of illicit commission, making the crime no longer a profitable business.

To ensure effectiveness, the reconstruction must strictly close the loophole of substitute imprisonment for fines. If previously agents could avoid fines through short imprisonment, the reformed law must prohibit such substitution for exploitation crimes. If offenders refuse or claim inability to pay, the state through the prosecutor's office must be granted authority to forcibly liquidate all assets until the fine is fully paid in cash.

The third reconstruction idea is strengthening mandatory progressive asset confiscation. Currently, asset seizure is often merely optional. In an ideal reconstruction, investigators and prosecutors must be required from the earliest stage to conduct comprehensive asset tracing. All assets—houses, vehicles, land, jewelry, and bank accounts suspected of being linked to criminal proceeds—must be immediately frozen and seized by the state.

This aggressive confiscation is directly aligned with restorative justice principles in the New Criminal Code. Illicit assets that are seized and auctioned must not simply become state revenue. Instead, they must be allocated primarily for victim restitution to restore the lives of exploited women and children. This restitution becomes a symbol of the law's obligation to heal those who have been harmed.

These funds can be used for medical treatment, long-term psychological therapy, and economic reintegration support to prevent victims from falling back into poverty. Thus, this reconstruction successfully achieves its highest goal: transforming illegal agents from protected predators into parties forcibly funding the restoration of dignity for Indonesian women and children.

4. Conclusion

Illegal agents or brokers are a highly dangerous frontline in the chain of human exploitation syndicates targeting women and children. So far, the sanctions

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imposed on them have been too light and overly focused on imprisonment, failing to restore victims' suffering. Through the enactment of the New Criminal Code (Law No. 1 of 2023), the state now has a strong philosophical foundation to reconstruct criminal sanction norms. This reconstruction must be realized through a combination of strict imprisonment, high-category fines, and mandatory asset confiscation. By forcibly depriving illegal agents of their wealth and using it to fund victim restitution, the law will not only create extraordinary deterrence but also deliver humane and dignified justice for the future of women and children.

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