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

Legal Review of the Abolition of Substitute Imprisonment and the Institutionalization of a Victim Trust Fund as an Effort to Ensure the Absolute Fulfillment of Restitution for Human Trafficking Victims

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Abstract. *Restitution is a fundamental right of victims of the crime of human trafficking (TPPO) to obtain recovery for the material and immaterial losses they have suffered. However, in judicial practice in Indonesia, the fulfillment of restitution rights often reaches a dead end when perpetrators are unable to pay, which then results in the imposition of substitute imprisonment as a replacement for fines. This mechanism actually undermines the sense of justice because imprisonment provides no compensation whatsoever to victims and instead burdens the state with maintaining perpetrators in correctional institutions, while victims' recovery rights are systematically neglected. This study examines the urgency of abolishing substitute imprisonment in human trafficking cases and proposes the institutionalization of a Victim Trust Fund as an innovative alternative mechanism. Using a normative legal research method, this article analyzes the disconnect between current criminal policies and the fulfillment of victims' rights. The results show that substitute imprisonment is counterproductive to the principle of victim protection, making legal reform necessary to transfer the burden of restitution payments to a nationally managed compensation fund specifically designated for crime victims. Through the institutionalization of a Victim Trust Fund, the state assumes proactive responsibility for advancing restitution payments to human trafficking victims, with funding sourced from confiscated criminal assets, fines derived from criminal activities, and other contributions. This transformation shifts the legal paradigm from merely inflicting suffering on offenders to achieving substantive justice that prioritizes the restoration of victims' dignity and humanity. This reconstruction is expected to become a precedent for a more humane and victim-oriented legal policy in the future.*



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Keywords: *Abolition; Absolute Fulfillment; A Victim Trust Fund; Human Trafficking; Restitution.*

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1. Introduction

Human trafficking is one of the most serious forms of crime that radically degrades human dignity. Within Indonesia's legal system, Law No. 21 of 2007 concerning the Eradication of the Crime of Human Trafficking (UU TPPO) has established the legal foundation that victims possess an absolute right to receive restitution for the losses they suffer. Restitution is not merely financial compensation but a recovery remedy intended to restore victims to their position prior to the commission of the crime, including compensation for loss of property, medical expenses, psychological treatment, and emotional suffering caused by the offense.

However, in practice, restitution rights for human trafficking victims in Indonesia often become empty promises that are difficult to realize. The inability of perpetrators to pay restitution has become the greatest obstacle in the execution of court judgments. When perpetrators are declared unable to pay, the legal system relies on the mechanism of substitute imprisonment as a replacement for restitution. Philosophically, this policy creates a profound legal irony: the suffering of victims, which should be remedied, instead ends with the imprisonment of perpetrators, providing no positive impact whatsoever on the victims' ability to rebuild their lives.

Substitute imprisonment is a relic of a retributive mindset that places punishment and retaliation at the center of criminal law. By depriving offenders of their liberty, the state appears to have fulfilled its obligations. Yet for human trafficking victims who have suffered financial ruin and psychological trauma, the imprisonment of perpetrators offers no solution to their need for recovery. This paradigm disregards the principles of restorative justice, which should serve as the primary foundation for addressing crimes against humanity. Prison is not a means of repaying a debt owed to victims; it merely creates a new social cost that must be borne by the state.

Furthermore, the use of substitute imprisonment in restitution cases demonstrates the state's failure to manage its responsibility as a protector of its citizens. Restitution is a civil obligation arising from a criminal act. Converting this civil debt into imprisonment is disproportionate and fails to address the root problem. Victims still receive no compensation, while perpetrators remain incarcerated at the expense of taxpayers. This system fails to create a balance between victims' rights to recovery and offenders' obligations to provide accountability.

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This condition is exacerbated by the weakness of asset tracing systems carried out by law enforcement after judgments are issued. Frequently, perpetrators' assets are not immediately seized or have already been concealed or transferred before execution takes place. As a result, by the time restitution payments are due, the perpetrators no longer possess any assets. This situation forces courts to resort once again to substitute imprisonment as an administrative shortcut. The state's lack of preparedness in overseeing restitution enforcement causes victims' rights to be neglected and prevents the justice process from achieving its ultimate goal: justice itself.

On the other hand, comparative international legal studies show that developed countries have long abandoned substitute imprisonment as a solution for restitution matters. Instead, they have adopted national compensation fund mechanisms or Victim Trust Funds. This mechanism places the state in the position of guarantor for the fulfillment of victims' rights. If perpetrators are unable to pay, the state, through a specially managed fund, advances restitution payments to victims. The state then assumes the risk and responsibility of pursuing the perpetrators' assets at a later stage, rather than placing the burden of failed enforcement on victims.

The implementation of a Victim Trust Fund in Indonesia has become an urgency that can no longer be postponed. Given that human trafficking is often an organized crime involving perpetrators with dispersed asset networks, a centrally managed and transparent fund would greatly assist in accelerating victims' recovery. Such a fund could be financed through confiscated criminal assets, fines resulting from criminal activities, grants, and sovereign endowment contributions. This approach would shift the focus of the justice system from mere punishment toward tangible victim recovery.

From a legal perspective, this step requires a reconstruction of both the National Criminal Code (KUHP) and amendments to the Human Trafficking Law. There must be a clear affirmation that restitution is a non-derogable obligation that cannot be replaced by custodial punishment. The abolition of substitute imprisonment would compel the state to develop more effective enforcement mechanisms instead of merely using prisons as "dumping grounds" for offenders who lack financial resources. This would also enhance the accountability of law enforcement agencies by requiring them to pursue offenders' assets more seriously from the investigation stage onward.

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This study seeks to examine the legal framework necessary to facilitate this paradigm shift. It explores why substitute imprisonment in the context of restitution should be abolished, how a Victim Trust Fund model could be implemented in Indonesia, and what challenges may arise during its implementation process. The objective is to create a criminal justice system that is more attentive to victims and to restore public confidence that justice for human trafficking victims is not merely rhetoric but a reality guaranteed by the state.

Ultimately, the urgency of institutionalizing a victim assistance fund represents a manifestation of the state's obligation to provide protection for its citizens who become victims of extraordinary crimes. By eliminating dependence on substitute imprisonment, Indonesia would be building a justice system that is more civilized and equitable. This paper is expected to contribute constructive ideas toward criminal law policy reform aimed at ensuring maximum protection for victims of human trafficking, in line with the spirit of restorative justice that has become a central trend in the reform of Indonesian criminal law.

2. Research Methods

This study employs normative legal research with a doctrinal approach, focusing on the analysis of legislation, legal theories, and legal principles related to restitution and substitute imprisonment.

Research approaches include:

- a) Statutory Approach: Analyzing regulations related to human trafficking and criminal sentencing in Indonesia.
- b) Conceptual Approach: Examining theories of restorative justice and state responsibility toward victims of crime.

Legal Materials:

- a) Primary Sources: Law No. 21 of 2007 (Human Trafficking Law), Law No. 1 of 2023 (National Criminal Code), and Supreme Court Regulations (PERMA) concerning Restitution.
- b) Secondary Sources: Scholarly literature on sentencing systems and legal journals concerning victims' rights.

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3. Results and Discussion

3.1. The Failure of Subsidiary Imprisonment as an Instrument for Fulfilling Victims' Rights

Subsidiary imprisonment in restitution cases involving human trafficking is a manifestation of the legal system's failure to distinguish between "criminal responsibility" and "civil obligation." Under the Human Trafficking Law, restitution is categorized as a victim's right that must be fulfilled by the perpetrator. However, when the law provides perpetrators with the option to either pay or be imprisoned, restitution as a victim's right is degraded into merely an economic choice. For perpetrators who have impoverished their victims, choosing imprisonment is often considered a relatively inexpensive "sacrifice" compared to surrendering their assets. This clearly diminishes the position of victims as parties whose rights should be restored.

From a sociological perspective, subsidiary imprisonment has no correlation whatsoever with the recovery of victims' trauma. Victims of human trafficking require resources to sustain their lives, access medical treatment, and rebuild their futures. Imprisoning perpetrators for several months or years as a substitute for restitution fines does not add a single rupiah to victims' pockets. On the contrary, it prolongs their suffering because they see perpetrators "settling" their obligations simply by serving time behind bars, while the victims remain abandoned in hardship without financial support.

Furthermore, the application of subsidiary imprisonment in restitution cases contradicts the restorative justice principles embraced by modern legal systems. Restorative justice prioritizes the restoration of victims' conditions and the repair of social relationships. Making subsidiary imprisonment an alternative is a form of "escape" from restitution responsibility. The state should ensure that the losses suffered by victims become an absolute priority to be paid through perpetrators' assets, not ignored in favor of bodily punishment. The current system places imprisonment above the economic recovery of victims.

Judicial practice often becomes trapped in administrative formalities. Judges frequently provide a subsidiary option because no alternative mechanism exists when perpetrators are unable to pay. However, this practice has perpetuated a hidden culture of impunity. Organized criminals usually conceal their wealth, meaning they will never voluntarily pay restitution. By allowing a subsidiary option, judges indirectly give perpetrators a "green light" to disregard restitution.

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This weakness must be ended by eliminating such options in human trafficking cases.

The absolute abolition of subsidiary imprisonment would force law enforcement officers to be more proactive in tracing assets from the beginning of a case. Without subsidiary imprisonment as an escape route, the only way for perpetrators to fulfill their civil obligations is by surrendering their assets. This would increase incentives for investigators and prosecutors to maximize asset recovery efforts. Such a policy would change the legal landscape, shifting the focus from how long perpetrators are imprisoned to how much wealth can be recovered for victim restitution.

In addition, subsidiary imprisonment creates a fiscal burden on the state. Maintaining inmates in correctional facilities requires significant public funding. If one compares the state's cost of incarcerating perpetrators who fail to pay restitution with the value of restitution lost by victims, the state effectively suffers a double loss. Resources that could be used to assist victims through aid programs are instead spent sustaining perpetrators who contribute nothing to victim recovery.

The argument that subsidiary imprisonment is necessary as a form of "pressure" on perpetrators is also weak. In human trafficking cases, perpetrators are often members of ruthless syndicates. Prison is not necessarily frightening to them if their criminal assets remain secure. The real pressure for perpetrators is the loss of their wealth, not the loss of physical freedom. Therefore, eliminating the subsidiary option and replacing it with stricter asset execution is the most effective way to create deterrence while simultaneously fulfilling victims' rights.

Ultimately, subsidiary imprisonment in the context of restitution should be viewed as an outdated instrument that undermines justice for victims. It is not merely an ineffective policy but also an unethical one because it ignores victims' human rights to recovery. Legal reform through the abolition of subsidiary imprisonment is a progressive step that must be taken to move Indonesia toward a criminal justice system that is truly victim-centered and respectful of human rights in every stage of human trafficking case enforcement.

3.2. Institutionalizing a Victim Trust Fund as a State Guarantee

The idea of establishing a Victim Trust Fund is based on the premise that victim recovery is a state responsibility that should not depend on the personal financial condition of perpetrators. In many human trafficking cases, perpetrators are

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merely pawns or intermediaries, while the principal masterminds remain hidden. If law enforcement targets only field-level perpetrators who possess no assets, restitution for victims becomes impossible. Therefore, the state must assume the role of primary guarantor through a specially managed fund designed to advance restitution payments.

This fund can function as a liquidity reserve for the immediate fulfillment of victims' rights. Once a court determines the amount of restitution, victims should not have to wait through asset liquidation processes that may take years. The Victim Trust Fund would pay the restitution amount to victims immediately after the judgment becomes legally binding. In this way, the state provides direct protection by enabling victims to obtain living capital or recovery costs for health and psychological treatment without being hindered by slow civil enforcement processes.

Funding sources for the Victim Trust Fund should be systematically regulated through legislation. Primary revenue may come from the sale of confiscated criminal assets, fines paid by perpetrators, and taxes or additional fees imposed on crimes with financial impacts. Furthermore, the government may allocate a special budget as part of its responsibility to protect citizens. Through diversification of funding sources, the Victim Trust Fund can achieve strong fiscal sustainability without continuously burdening the national budget.

Transparency and accountability are essential in managing this fund. The fund should be administered by an independent institution or a unit under the Ministry of Social Affairs or the Witness and Victim Protection Agency (LPSK), supervised by external auditors. Every expenditure must be clearly designated for restitution to human trafficking victims. Such a mechanism would minimize corruption and ensure that every rupiah reaches eligible victims. With proper management, the Victim Trust Fund would serve as tangible evidence of the state's commitment to justice for vulnerable citizens who become victims of human trafficking.

This concept would also facilitate subrogation by the state. After the state pays restitution to victims, the right to pursue perpetrators' assets would transfer entirely to the state. With its bureaucratic capacity and legal authority, the state is far more effective at pursuing perpetrators' wealth than individual victims. The state can conduct cross-border asset tracing, freeze bank accounts, and seize property actions that are difficult for private individuals to undertake. This creates a fair system in which victims receive their rights while the state relentlessly pursues perpetrators and their assets.

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Beyond serving as a restitution mechanism, the Victim Trust Fund could also finance long-term rehabilitation programs. Many human trafficking victims suffer severe psychological damage requiring lifelong therapy. The fund could support specialized rehabilitation centers that provide trauma-informed care free of charge. This represents a more comprehensive fulfillment of state obligations than merely providing monetary compensation. Investing in victim recovery is an investment in humanity itself.

Several countries have already demonstrated the success of such funding mechanisms in reducing the harmful effects of crime on victims. Internationally, Victim Trust Funds are commonly used in cases involving war crimes and serious human rights violations. As a country actively combating human trafficking, Indonesia should adopt these international standards. Institutionalizing such a fund would enhance Indonesia's reputation regarding human rights protection and its seriousness in enforcing laws against human traffickers.

Strategically, the creation of a Victim Trust Fund would exert psychological pressure on human trafficking syndicates. They would realize that even if they conceal their assets, the state will continue pursuing them to recover funds already advanced to victims. This shifts perpetrators from a position of relative security—believing they have no assets—to one in which they are continuously pursued by the state until their civil obligations are fully satisfied. This is true justice for victims whose rights have been forcibly taken away through criminal acts.

3.3. Criminal Law Policy Reform: Toward a Victim-Based Justice System

Criminal law reform through the abolition of subsidiary imprisonment and the institutionalization of victim assistance funds requires strong regulatory synchronization. The first step should be an amendment to the Human Trafficking Law explicitly prohibiting the use of subsidiary imprisonment in restitution cases. The law should establish restitution as an absolute obligation that remains attached to perpetrators even after they have served prison sentences. Perpetrators' assets must remain subject to civil execution and should not be extinguished by imprisonment. This concept would restore the sovereignty of victims' rights above procedural convenience in criminal justice.

Judges should be provided with clear guidelines through a new Supreme Court Regulation (PERMA) requiring accurate restitution assessments and non-negotiable asset execution. In criminal judgments, judges should include asset seizure orders from the beginning of judicial proceedings to ensure the availability

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of funds for restitution. Consequently, before a verdict is handed down, guarantees for restitution payment would already be secured by the state. This represents a form of proactive protection that minimizes the risk of victims being denied compensation because perpetrators' assets have disappeared.

This reform would also positively impact the quality of police investigations. Investigators would be encouraged to treat financial crimes as entry points for uncovering human trafficking cases. Every trafficking case should be accompanied by a money laundering investigation. By confiscating all perpetrators' assets, resources needed to support the Victim Trust Fund would remain available. This creates an effective legal cycle: crimes are uncovered, assets are seized, funds are collected, and victims are restored. This is the ideal law enforcement model for transnational crimes.

Moreover, this reform requires synergy among institutions, including the Police, the Prosecutor's Office, LPSK, and the Ministry of Finance. The Ministry of Finance plays a crucial role in managing the Victim Trust Fund transparently and accountably according to national accounting standards. Such collaboration would create an integrated protection system in which each institution has a clear role in guaranteeing victims' rights. Justice would no longer be fragmented among separate institutions but would become a collective state responsibility organized in a coherent manner.

This paradigm shift also requires education for society and legal practitioners. Many people still assume that the primary purpose of criminal justice is to imprison offenders. This perspective must change to recognize that the true objective of justice is restoring what has been lost. Society needs to understand that the success of criminal justice should be measured by how effectively the state restores victims' dignity, not by how long offenders remain behind bars. Such education is essential to ensure strong and sustainable public support for these policies.

The greatest challenge will undoubtedly come from the fiscal costs to the state if the fund is insufficient. However, the government must view this as an essential cost of citizen protection. If the government can allocate trillions of rupiah to infrastructure projects, then allocating funds to protect citizens from crimes against humanity should also be a priority. Protecting citizens from modern slavery is one of the state's fundamental obligations and should no longer be negotiable in a civilized democratic system.

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From a legal standpoint, this step would also strengthen Indonesia's position under international conventions related to human trafficking. Indonesia would be recognized as a country capable of implementing genuine victim protection rather than merely engaging in legal rhetoric. This would increase international confidence in cooperation efforts to combat human trafficking. With a strong system, Indonesia could become a model for other developing countries in protecting victims of extraordinary crimes while simultaneously strengthening national legal sovereignty.

this legal reform represents a major step for Indonesia toward becoming a nation more attentive to humanity. Abolishing subsidiary imprisonment and establishing a Victim Trust Fund are not merely legal changes but transformations in the nation's mindset regarding justice. We must stop treating victims as parties who should simply "accept their fate" and instead recognize them as rights holders who deserve comprehensive state protection. This is the true manifestation of the state's presence in delivering victim-oriented justice.

4. Conclusion

The abolition of subsidiary imprisonment in human trafficking cases is a highly urgent and progressive step to end systemic injustice against victims. Imprisonment as a substitute for restitution has proven incapable of providing recovery for victims and instead perpetuates impunity for perpetrators who conceal their assets. By removing the subsidiary option, the state is compelled to take asset tracing more seriously and ensure that victims' rights are not merely formalities on paper but become top priorities that every actor within the criminal justice system must fulfill. As a systemic solution, the institutionalization of a Victim Trust Fund becomes a crucial instrument for guaranteeing the absolute and immediate fulfillment of victims' restitution rights. This state-managed fund functions as a social safety net, ensuring that every victim of human trafficking receives compensation without being hindered by slow asset execution processes. The state's presence through such a fund demonstrates a genuine commitment to protecting citizens who become victims of extraordinary crimes while simultaneously creating a deterrent effect against human trafficking syndicates through more aggressive asset recovery efforts. This legal reform is not merely a technical adjustment but a transformation of the justice paradigm toward victim-centered restorative justice. Indonesia must be willing to overhaul its criminal justice system so that it prioritizes the restoration of victims' dignity and humanity. By integrating victim assistance funds, asset tracing mechanisms, and the abolition of subsidiary imprisonment, Indonesia can build a more humane and civilized legal



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system that provides real protection for the future of human trafficking victims who have lost everything.

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