

Reform of Human Trafficking Victim Protection in Indonesia: A Human Rights and Restorative Justice Approach

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Abstract

The purpose of this paper is to examine the legal framework of victim protection in human trafficking cases in Indonesia, which currently faces significant challenges regarding the fulfillment of victims' rights to restitution. Despite the existence of Law No. 21 of 2007, victims often encounter systemic barriers in obtaining recovery, leading to secondary victimization. Methods used in this study follow a normative legal research approach with statutory, conceptual, and case perspectives, specifically analyzing Supreme Court Decision No. 2355 K/Pid.Sus/2022. Research results indicate that the current restitution mechanism is merely decorative and highly dependent on the perpetrator's financial capacity, which is often non-existent or hidden. The study finds a significant legal gap where the state lacks a mandatory safety net for victims when perpetrators fail to pay. Analysis reveals that the protection policy is still heavily "offender-oriented" rather than "victim-centered". The lack of synchronization between human trafficking laws and witness/victim protection regulations creates procedural fragmentation that hinders the restorative justice process. To address these issues, this paper argues for a legal reformulation that positions the state as the ultimate guarantor of victim recovery. This study provides a significant scientific contribution by offering a policy reform model through the Victim Recovery Fund, shifting the restitution burden to ensure state-guaranteed recovery. Recommendations include the urgent revision of the Human Trafficking Law to institutionalize a "Victim Recovery Fund" and the implementation of an Integrated Standard Operating Procedure (SOP) to ensure that legal, psychological, and financial recovery are handled simultaneously through a coordinated inter-agency system.

Keywords: Human Trafficking; Restitution; Victim Recovery Fund; Restorative Justice.

A. Introduction

The phenomenon of human trafficking (TPPO) in Indonesia has reached a critical point of urgency, establishing it as one of the most complex legal challenges in the Global South¹. As a country that serves geographically and socio-politically as a point of origin, transit, and destination for exploitation, Indonesia has faced a significant surge in cases, particularly throughout 2023². Although national legal instruments are in place, reality shows that victim protection remains trapped within a rigid procedural framework and

¹ Wan Rahmat Kurniawan, Alwan Hadiyanto, and Ciptono Ciptono, "Tindak Pidana Perdagangan Orang Dalam Perspektif Tindak Pidana Pencucian Uang Di Indonesia," *JURNAL USM LAW REVIEW* 7, no. 2 (June 8, 2024): 688.

² Ayu Nurasyifa Wirayati, Nola Retno, and Ahmad Ma'mun Fikri, "Strengthening Indonesia's National Police Directorate for Enhanced Protection of Women and Children," *Research Horizon* 5, no. 4 (August 6, 2025): 1489-1500.

has not fully embraced the essence of restorative justice³. In the context of legal reform, this issue is not merely a matter of criminal enforcement against perpetrators, but rather how the state repositions the victim from being a mere "crown witness" to a legal subject whose recovery rights are constitutionally and systemically guaranteed^{4;5}.

The current ineffectiveness of victim protection is rooted in structural weaknesses within Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, specifically regarding the restitution mechanisms regulated in Articles 48 to 51⁶. The emerging legal problem is the nature of restitution, which still depends on the good faith of the perpetrator or the availability of seized assets⁷. When perpetrators are unable to pay, state compensation mechanisms are not automatically available, leading to secondary victimization where victims are exploited by perpetrators and subsequently neglected by a legal system that fails to provide economic and psychological recovery⁸. This disparity creates a significant gap in the human rights protection system for Indonesia's most vulnerable citizens⁹.

Previous research in criminal law and victimology has generally focused on the prosecution of perpetrators or inter-agency coordination in preventing human trafficking Islahuddin and Syahbana¹⁰; Fauziyah and Indawati¹¹; Pambudi and Redi¹². However, there is a clear research gap in the literature concerning the systemic integration of state compensation as a safety net when restitution fails to be executed Endang et al.¹³; Dea et al.¹⁴; Sisera et al¹⁵. Most previous studies have not explored how the concept of a Victim Recovery Fund can be institutionalized within the Indonesian legal system by adopting broader restorative justice principles.¹⁶

³ I Made Agus Astra Wiguna and I Dewa Gede Dana Sugama, "Victim Protection in Indonesian Criminal Justice: Assessing the Implementation of Restorative Justice as a New Paradigm," *West Science Interdisciplinary Studies* 3, no. 07 (July 30, 2025): 1098–1112.

⁴ Anak Agung Ngurah Adhi Wibisana et al., "LEGAL REFORM on the CONCEPT of RESTORATIVE JUSTICE in the CRIMINAL JUSTICE SYSTEM," *Jurnal Pembaharuan Hukum* 11, no. 2 (May 28, 2024): 264–264.

⁵ Eka Putra Zakran, Budi Sastra Panjaitan, and Arifuddin Muda Harahap, "Pembaruan Hukum Pidana Dalam Perspektif Perlindungan Korban," *JURNAL RISET RUMPUN ILMU SOSIAL POLITIK DAN HUMANIORA* 4, no. 3 (July 2, 2025): 713–725.

⁶ Shendy Ramadhan and Bambang Widiarto, "Fulfillment of Restitution Rights for Victims of Human Trafficking Crimes," *FOCUS* 6, no. 2 (August 15, 2025): 68–75.

⁷ Arief Patramijaya, "Criminal Legal Protection for Bona Fide Third Parties over Assets in Corruption and Money Laundering Cases," *Deleted Journal* 8, no. 1 (January 31, 2024): 171–171.

⁸ Khoirudin Khoirudin, Hono Sejati, and Mohamad Tohari, "The Urgency of Imprisonment as a Substitute for Restitution in Upholding Justice for Rape Victims," *Ranah Research : Journal of Multidisciplinary Research and Development* 7, no. 1 (November 18, 2024): 36–44.

⁹ Udin Syarifudin, "Hak Asasi Manusia Dalam Hukum Tata Negara: Antara Teori Dan Praktik," *Indragiri Law Review* 2, no. 2 (August 31, 2024): 53–58.

¹⁰ Muhammad Islahuddin and Ahmad Nabel Syahbana, "Kebijakan Formulasi Penegakan Hukum Terhadap Tindak Pidana Perdagangan Orang Berdasarkan Undang-Undang Nomor 21 Tahun 2007," *AHKAM* 4, no. 3 (July 18, 2025): 838–851.

¹¹ Okta Rifo Fauziyah and Yana Indawati, "Perlindungan Hukum Terhadap Korban Tindak Pidana Perdagangan Orang," *Referendum : Jurnal Hukum Perdata dan Pidana* 2, no. 3 (August 19, 2025): 49–60.

¹² Pambudi and Ahmad Redi, "Legal Efforts to Enhance the Effectiveness of Legal Protection for Victims of Human Trafficking Crimes," *Jurnal Hukum dan Sosial Politik* 3, no. 3 (August 8, 2025): 116–123.

¹³ Celine Endang et al., "Restitutio in Integrum in Criminal Regulation of Restitution for the Victims of Criminal Acts," *Journal of Law, Politic and Humanities* 5, no. 1 (2024): 179–191, accessed November 18, 2024, <https://dinastires.org/JLPH/article/view/829>.

¹⁴ Dea, Rini Apriyani, and Agustina Wati, "Tanggung Jawab LPSK Dalam Pelaksanaan Restitusi Korban Kekerasan Seksual Oleh Pelaku Yang Tidak Mampu Atau Terpidana Mati," *Referendum* 2, no. 3 (September 3, 2025): 61–69.

¹⁵ Perida Apriani Sisera et al., "Penyelesaian Ganti Rugi Terhadap Perkara Anak Yang Berhadapan Dengan Hukum Secara Diversi," *Locus Journal of Academic Literature Review* 3, no. 2 (February 2, 2024): 198–218.

¹⁶ Trisnaulan Arisanti et al., "The Concept of Restoring the Rights of Victims of Mass Fraud with

Therefore, to clearly establish the position of this research compared to previous literature, this study contributes by offering a policy reform model for the protection of human trafficking victims through the establishment of a Victim Recovery Fund, which positions the state as the primary guarantor of victim recovery in the criminal justice system. This policy reformulation shifts the burden of recovery from the sole responsibility of the individual perpetrator to the collective responsibility of the state through integrated funding mechanisms, thereby providing comprehensive implications for future criminal law reform.

Methodologically, this legal reform requires a cross-jurisdictional approach to examine how other countries in the Global South and developed nations handle similar issues¹⁷. The use of normative legal research methods with a comparative approach is crucial to dissect the effectiveness of victim compensation systems, for example, by comparing the Victim Trust Fund mechanism in the Netherlands or similar regulations in Malaysia (ATIPSOM)^{18;19}. The justification for this approach is based on the need to find the most relevant policy model for Indonesia, given that the legal structures and social challenges faced by countries in the Global South share similar characteristics in confronting organized transnational crime.

The primary objective of this research is to reformulate victim protection policies for human trafficking through the synchronization of human rights values and restorative justice principles. The proposed solution is not merely a section-by-section revision, but a paradigm shift from a retributive approach that focus solely on punishment toward a restorative approach that prioritizes the restoration of the victim's dignity. By proposing the establishment of a Victim Recovery Fund and the simplification of restitution bureaucracy, this research is expected to provide a tangible contribution to national legal renewal that is more responsive to victims' needs, while simultaneously strengthening Indonesia's position in the arena of international legal reform within the Global South.

B. Research Method

This study employs normative legal research, which examines law as a system of norms, rules, and principles of justice inscribed within statutory regulations (*law in books*). The primary focus of this research is to conduct a prescriptive analysis of victim protection policies in human trafficking (TPPO) cases to formulate a more equitable direction for legal reform.

The approach used in this research encompasses three main instruments: First, the statutory approach, to examine the consistency between Law Number 21 of 2007 and international instruments such as the *Palermo Protocol*; Second, the conceptual approach, to explore the principles of victim protection based on human rights and restorative

Justice," *International Journal of Environmental Sciences* (July 2, 2025): 840–853.

¹⁷ Muh ibnu sholeh and Siti Fatinnah Binti Ab Rahman, "Bridging Legal Reform and Climate Action: Strengthening Rule of Law to Advance SDG 13 in the Global South," *Journal of Law, Policy and Global Development* 1, no. 1 (June 29, 2025): 1–18, accessed November 20, 2025, <https://journal.as-salafiyah.id/index.php/jlpgd/article/view/332>.

¹⁸ Zhadra Ziyatovna Ziyatova and Elena Nikolaevnaovna Kaliakperova, "LEGISLATION of FOREIGN COUNTRIES on COMPENSATION of DAMAGE in CRIMINAL PROCEEDINGS (LEGAL ANALYSIS)," *Bulletin of Institute of Legislation and Legal Information of the Republic of Kazakhstan* 1, no. 68 (March 30, 2022): 84–93.

¹⁹ Izzah Audina and Ifahda Pratama Hapsari, "Two Systems, One Concept of Comparative Analysis of Dutch Noodwer and Indonesian Forced Defense," *JURNAL AKTA* 11, no. 4 (November 28, 2024): 1092.

justice; and Third, the case approach, by analyzing Supreme Court Decision Number 2355 K/Pid.Sus/2022 to evaluate the effectiveness of restitution execution in judicial practice.

The legal materials utilized consist of primary, secondary, and tertiary sources. Primary legal materials include the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), the Law on the Eradication of Human Trafficking (UU TPPPO), the Law on Witness and Victim Protection, as well as comparative regulations from Malaysia, the Netherlands, and the United States. Secondary legal materials are obtained from academic literature, international scientific journals, and reports from international organizations related to victimology and criminal law reform. All legal materials were collected through systematic library research techniques involving the identification, classification, and systematization of documents.

The technique for analyzing legal materials is carried out qualitatively through prescriptive and comparative legal analysis. The analysis is performed systematically in several stages: first, assessing the vertical and horizontal synchronization between national regulations; second, conducting a comparative evaluation of victim compensation mechanisms in several other countries; and third, applying systematic and teleological interpretation methods to discover the underlying legal gaps and philosophical intent behind victim protection. Ultimately, these interpretative methods are combined to formulate an applicable policy model specifically the Victim Recovery Fund for the renewal of the Indonesian criminal justice system.

C. Results and Discussion

1. Legal Framework for the Protection of Human Trafficking Victims in Indonesia

Human Trafficking (TPPO) in Indonesia represents a severe violation of constitutional rights, as it directly assaults human dignity and the right to be free from slavery, as guaranteed by Article 28I paragraph (1) of the 1945 Constitution Siregar et al²⁰. From a human rights perspective, victim protection and recovery are not merely discretionary state policies but binding legal obligations for the state to respect, protect, and fulfill throughout the criminal justice process. The exploitative practices within human trafficking, whether in the form of forced labor or sexual exploitation, are substantively manifestations of modern slavery that demand the state to act as an effective and sustainable guarantor of victim recovery. However, the current reality of the legal system shows that the right to legal certainty for victims often ceases at the conviction of the perpetrator, without tangible guarantees for the restoration of their economic and psychological rights. Consequently, the constitutional mandate of Article 28D paragraph (1) remains unfulfilled in field practice²¹.

2. Weaknesses of the Restitution Mechanism in the Human Trafficking Law

The weakness in victim protection is rooted in the normative design of Articles 48 to 51 of Law Number 21 of 2007²², which tend to be declarative and non-operational. These provisions leave a significant gap between the recognition of rights and the guarantee of their fulfillment, as they lack technical procedures regarding application methods,

²⁰ Dahrir Siregar et al., "Dasar Pertimbangan Hakim Menjatuhkan Pidanaan Kepada Pelaku Yang Melakukan Penampungan Untuk Eksploitasi Orang Di Wilayah Negara Republik Indonesia," *Jurnal Smart Hukum (JSH)* 1, no. 2 (January 30, 2023): 268–275.

²¹ Wahyuddin Ardianto Machpudj, Aidir Aimin Daud, and Andi Muhammad Sofyan, "Legal Protection of Seized Items in the State Seized Property Storage House in Criminal Cases," *Science of Law* 2025, no. 3 (July 16, 2025): 137–143.

²² Shendy Ramadhan and Bambang Widiarto, "Fulfillment of Restitution Rights for Victims of Human Trafficking Crimes," *FOCUS* 6, no. 2 (August 15, 2025): 68–75.

standardized loss calculation, and victim-oriented evidentiary mechanisms. The problem is further complicated because the restitution mechanism in the TIP Law is entirely dependent on the perpetrator's financial capacity without any state-provided safety net. In many cases, traffickers often do not have assets in their own names or have successfully hidden the proceeds of their crimes, rendering court orders for restitution payments unenforceable.

The failure to execute victim rights is vividly reflected in the empirical analysis of Supreme Court Decision Number 2355 K/Pid.Sus/2022. Although the judge recognized the right to restitution in the verdict, its practical realization remained hindered because the decision was not accompanied by strong technical provisions, such as mandatory asset seizure at the start of the investigation. Without a state-guaranteed substitutive compensation mechanism, the victim's right to recovery loses its legal significance; an execution failure means the victim continues to bear the burden of suffering alone.

3. Regulatory Fragmentation of Victim Protection in the Indonesian Legal System

Beyond the weaknesses within the TIP Law itself, there is a regulatory disharmony between the TIP Law and the Witness and Victim Protection Law, which creates fragmentation in the recovery process. The TIP Law places restitution as part of the criminal verdict, while the Witness and Victim Protection Law opens an administrative path for compensation through the LPSK (Witness and Victim Protection Agency), yet these two paths are not systemically integrated. This procedural dualism forces victims to navigate layered and convoluted bureaucratic mechanisms, which increases the risk of procedural fatigue and re-victimization. Such lack of integration contradicts the principles of victim-centered justice, which demand that recovery services run simultaneously with the criminal process to ensure rights are met optimally without additional burdens.

4. Comparative Analysis of Victim Compensation Mechanisms in Several Countries

To strengthen the urgency of policy reform in Indonesia, a comparative analysis with other jurisdictions demonstrates how the state can take a more proactive role. In Malaysia, through the ATIPSOM Act 2007, cross-institutional coordination via MAPO has been implemented to guarantee shelter services and economic recovery for victims. Meanwhile, the Netherlands possesses a highly effective Victim Compensation Fund (*Schadefonds Geweldsmisdrijven*) that allows the state to provide direct financial compensation to victims of serious crimes, including trafficking, when the perpetrator cannot pay. In the United States, the Trafficking Victims Protection Act (TVPA) provides a highly comprehensive three-pillar framework, covering protection through special visas and health services via the OVC. These international practices strongly demonstrate that the state must position itself as the ultimate guarantor of victim recovery through state funding and integrated service coordination, rather than leaving victims at the mercy of the perpetrator's financial status.

5. Reformulation of Victim Protection Policy Based on Restorative Justice

Based on these systemic failures and comparative insights, the policy reformulation model in Indonesia must explicitly shift from an offender-oriented paradigm to a victim-centered, restorative justice approach. The criminal law policy implications of this reform rest on two primary pillars. First, the establishment of a Victim Recovery Fund as a state substitutive compensation mechanism. Its funding could be sourced systematically from the state budget (APBN), confiscated criminal assets, and additional criminal fines. This mechanism ensures that victim recovery is automatically carried out by the state without having to wait for the perpetrator's financial capacity.

Second, the implementation of an Integrated SOP consisting of coordinative steps, ranging from victim identification to post-verdict recovery fund activation. This SOP is designed to prevent service fragmentation by ensuring that legal, medical, and psychological assistance run parallel to the criminal enforcement process. Thus, this reformulation not only rectifies the weaknesses of the articles in the TIP Law but systematically realizes the state's responsibility in protecting the human rights of its citizens in a tangible and measurable manner.

D. Conclusion and Recommendations

The protection of victims of Human Trafficking (TPPO) in Indonesia has not yet achieved the expected level of effectiveness due to normative design weaknesses within Articles 48 to 51 of Law Number 21 of 2007. Restitution regulations remain merely declarative and are heavily reliant on the perpetrator's financial capacity, lacking an operational and binding execution mechanism. This situation is further exacerbated by the disharmony between the TIP Law and the Witness and Victim Protection Law, which causes fragmentation in recovery services; consequently, a victim's right to compensation is often unrealized despite being established in a court verdict. From a human rights perspective, this condition reflects a state failure to provide legal certainty and protection from treatment that degrades human dignity.

As a solution to these problematic issues, this study formulates a policy reformulation model that shifts the paradigm from offender-oriented justice toward victim-centered justice. This model positions the state as the primary party responsible for recovery through three strategic pillars: the affirmation of restitution as a systemic obligation within the criminal justice system, the establishment of a Victim Recovery Fund as a state substitutive compensation mechanism, and the implementation of an integrated SOP ensuring that recovery services run parallel to the criminal process from the investigation stage. Theoretically, the proposed Victim Recovery Fund model contributes to the literature of victimology and criminal law by institutionalizing a restorative justice paradigm that formally shifts the ultimate responsibility for victim restoration from the individual offender to the state. Practically, this model provides policymakers and law enforcement with a concrete, integrated framework to eliminate recovery fragmentation and ensure that the restoration of victims' dignity and welfare is no longer symbolic, but becomes a tangible, constitutionally guaranteed right.

Furthermore, to advance the academic discourse on human trafficking, several areas for future research are highly recommended. First, future studies should empirically examine the implementation of victim protection policies within actual law enforcement practices to assess their operational realities. Second, conducting broader comparative studies with other legal systems will significantly enrich the analysis of diverse victim compensation mechanisms. Finally, further comprehensive research is necessary to explore the seamless integration of victim protection policies within a criminal justice system genuinely based on restorative justice principles.

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