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Gaps in the Implementation of Restitution for Victims of Human Trafficking in Indonesia: Normative-Empirical and Comparative Analysis

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Abstract: The crime of human trafficking in Indonesia shows an alarming escalation with 1,061 cases and 3,363 victims in 2023, while restitution paid by perpetrators only reached 13 percent of the total calculation by the LPSK in 2024. This study analyzes the legal, institutional, and procedural obstacles causing low restitution; compares restitution regulations and mechanisms in Thailand, Germany, and the United States; and formulates comprehensive recommendations for improvement. The method used is descriptive-analytical qualitative legal research with doctrinal-normative, empirical-sociological, and comparative approaches, using the theoretical framework of legal certainty, legal effectiveness, legal protection, and restorative justice. The results show that the failure of restitution implementation is systemic in all dimensions, and the three comparison countries have structural advantages in the form of mandatory restitution, the active role of prosecutors, state compensation funds, and standardized calculation formulas. The study recommends comprehensive reforms based on five pillars that integrate international best practices with the characteristics of the Indonesian legal system.

Keywords: Barriers to Restitution Implementation; Restorative Justice; Victims of Human Trafficking; Comparative Law; Trafficking in Persons.

INTRODUCTION

Indonesia, as a country governed by law, has a fundamental constitutional obligation to provide protection to all its citizens, including against crimes that threaten human rights. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia affirms that Indonesia is a country governed by law, which includes recognition of the principle of the supremacy of law and the protection of the fundamental rights of citizens. Human trafficking *is* one of the most serious forms of organized crime in the contemporary world, and Indonesia occupies a very complex position as a source, transit, and destination country for this criminal practice. (UNO on D. and Crime, 2024)

Data from the Criminal Investigation Agency of the Indonesian National Police Headquarters recorded that throughout 2023, the Indonesian National Police handled 1,061

cases of human trafficking with the number of victims reaching 3,363 people, a very significant increase from only 133 cases in 2022. (Culture, 2024) The diversification of crime modes is also very concerning: there were 370 cases of sex trafficking, 603 cases of labor trafficking, and 88 cases in other forms. (Culture, 2024) The Witness and Victim Protection Agency (LPSK) recorded that throughout 2024 there were 576 applicants for protection in human trafficking, with the majority of victims being women reaching around 90 percent with the 18–35 age group as the main target of the perpetrators. As of March 2025, the Indonesian National Police recorded 1,503 Indonesian citizens as victims of human trafficking in the first three months alone, a figure that exceeded 50 percent of victims throughout 2024. According to *the Global Organized Crime Index*, Indonesia received a crime score of 6.85 out of 10 in 2023, placing Indonesia 20th in the world and 2nd in Southeast Asia. (GIATO Crime, 2023)

Indonesia has established a fairly comprehensive legal framework to regulate restitution mechanisms for *trafficking victims*. The primary foundation lies in Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking (UU PTPPO), which, through Articles 48 to 50, explicitly regulates victims' rights to restitution. This framework is reinforced by Supreme Court Regulation Number 1 of 2022 (Perma 1/2022), Government Regulation Number 7 of 2018 *in conjunction with* Government Regulation Number 35 of 2020, and Law Number 31 of 2014 concerning Witness and Victim Protection. However, there is a significant gap between *the law on the books* and *the law in action*: LPSK data from 2024 shows that the calculated amount of restitution for human trafficking victims reached Rp7,377,845,925, but the perpetrators only paid Rp968,055,000, or approximately 13 percent of the total. LPSK Chairman Achmadi acknowledged that even when restitution requests are approved, the amounts often do not match the estimated amounts, and many perpetrators are unwilling to fulfill their obligations. (LPSK, 2025)

Several previous studies have addressed various aspects of human trafficking victim protection, but each has a partial focus. Nurfitri and Sari (2025) examined the lack of restitution requests in human trafficking judges' decisions, but limited their analysis to decisions without delving into institutional and socio-cultural barriers. Nafis, Syarifuddin, and Alfian (2025) found that no human trafficking victims in Samarinda filed for restitution, but their study was localized. Anam and Eddyono (2023) revealed that only one in three human trafficking cases at the Semarang District Attorney's Office accommodated the right to restitution, but focused on only one institution. Sulistiantini and Savitri (2025) identified the ineffectiveness of the restitution mechanism in Batam without international comparative analysis. Kriswiansyah (2023) found significant disparities in restitution determinations between courts but did not offer a model for improvement based on comparative law.

Recent developments demonstrate increasing academic attention to the issue of human trafficking restitution. Hartanto and Fatmawati (2025) examine the provision of restitution to Indonesian migrant workers who are victims of human trafficking. Maryam and Prasetyo (2025) examine the implementation of restitution from a multidisciplinary perspective. Sinaga (2024) examines restitution within the framework of victims' social reintegration. Mahendra (2025) analyzes the role of *victim trust funds* in addressing the issue of unpaid restitution. However, no study has comprehensively integrated the evaluation of restitution implementation from a multidimensional legal, institutional, procedural, and socio-cultural perspective, with a comparative analysis of restitution systems in developed countries and the formulation of comprehensive recommendations for improvement.

The novelty of this research lies in the use of a layered theoretical framework to comprehensively evaluate the entire chain of restitution processes, accompanied by a comparative analysis of three countries: Thailand, Germany, and the United States, which have more progressive restitution systems, in order to formulate a *feasible* and evidence-based improvement model for the Indonesian context. (Dulhadi, 2025) This research aims to analyze

the legal, institutional, and procedural obstacles that cause low restitution, compare them with mechanisms in comparison countries, and formulate comprehensive improvement recommendations.

METHOD

This research is a qualitative, descriptive-analytical legal study with empirical elements, combining normative analysis of legal regulations with empirical investigation of their implementation in the field. (Marzuki, n.d.) Three main approaches are used in a complementary manner: a doctrinal-normative approach for an in-depth analysis of positive legal regulations related to human trafficking restitution; an empirical-sociological approach through analysis of court decisions, in-depth interviews, and a review of policy documents; and a comparative approach to compare the Indonesian restitution system with those of Thailand, Germany, and the United States. (Soekanto, 2014)

Sources of legal materials include primary legal materials in the form of laws and regulations, Supreme Court Regulations, court decisions, and comparative country legislation, while secondary legal materials include academic literature, state institution reports, especially the 2024 LPSK Annual Report and the TIP *Report*, and policy documents. (LPSK, 2025) Data collection techniques were conducted through literature studies, document studies and analysis of court decisions, as well as semi-structured in-depth interviews with key stakeholders.

The analysis technique is carried out through three integrated layers: normative-doctrinal analysis based on Mochtar Kusumaatmadja's theory of legal certainty; socio-legal analysis based on Soerjono Soekanto's five factors of legal effectiveness; and comparative analysis to extract key principles from the comparative country systems. (Soekanto, 2008) Conclusions are drawn inductively-qualitatively, where the findings are crystallized into analytical propositions that answer each problem formulation.

RESULTS AND DISCUSSION

Normative Framework of Restitution and Dimensions of Legal Certainty

The normative framework for restitution for victims of human trafficking in Indonesia is structured through a number of hierarchical regulations. Article 48 paragraph (1) of the Anti-Trafficking Law emphasizes that every victim has the right to receive restitution covering four components: loss of wealth or income, suffering, medical and/or psychological treatment costs, and other losses. (Law of the Republic of Indonesia Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, 2007) However, this provision does not provide operational guidance on how the "suffering" component is proven and quantified. (Utami & Mulyana, 2025) Article 48 paragraph (2) contains a crucial ambiguity: the phrase "granted" does not explicitly stipulate whether restitution is imperative-mandatory or facultative-discretionary, in contrast to the formulation of *the shall order* in 18 USC § 1593 of the United States TVPA. (18 USC § 1593 - Mandatory Restitution, 2000)

Supreme Court Regulation 1/2022 regulates restitution application procedures in more detail and gives an active role to the LPSK, but still contains substantive weaknesses: it does not provide a standard calculation formula, does not regulate proportional standards of proof, and does not integrate the restitution mechanism with *forfeiture assets*. (Nafis et al., 2025) Government Regulation 7/2018 *in conjunction with* Government Regulation 35/2020 regulates state compensation, but its implementation is hampered by unclear transition procedures, budget constraints, and minimal outreach. (Maryam & Prasetyo, 2025) There are also terminological inconsistencies between regulations, the definition of "loss" differs between the PTPPO Law, the PSK Law, and Government Regulation 7/2018. (Kriswiansyah, 2023)

Based on Mochtar Kusumaatmadja's theory of legal certainty, this normative framework fails to cumulatively meet three dimensions. In the *clarity dimension*, the absence

of a calculation formula results in a very significant disparity in restitution determinations: in one *labor trafficking case*, it was set at IDR 50 million, while in a similar case in another court, it was set at IDR 500 million. (Sudiarsana, 2023) In the *consistency dimension*, the fragmentation of regulations across four legal instruments creates structural inconsistencies that result in unlimited judicial discretion on the one hand and bureaucratic confusion on the other. (Nurfitria, 2025) In the *accessibility dimension*, empirical findings in Samarinda, where no victims filed for restitution, and Batam, demonstrate a fundamental failure of accessibility. (Nafis et al., 2025).

Implementation Barriers: Effectiveness and Legal Protection Perspectives

Soerjono Soekanto's theory of legal effectiveness identifies five determinants that, in the context of human trafficking restitution, demonstrate cumulative failure. (Soekanto, 2008) In law enforcement, the most critical weakness is that investigators have not consistently informed victims of the right to restitution since the beginning of the investigation and have not internalized *asset tracing* as a standard operating procedure. (Dulhadi, 2025) At the prosecutor's office level, only one of three human trafficking cases in Semarang accommodated restitution. (Anam & Eddyono, 2023) At the court level, judges apply overly rigid documentary evidence standards, while MariNews, the Supreme Court, acknowledged that the demands create an "evidence gap" that is almost impossible for victims to overcome. (Nurfitria, 2025)

Four patterns of judge rejection were systematically identified: (a) declaring the loss unproven with an excessively high standard of proof; (b) assessing the amount of restitution as unreasonable; (c) stating there is no clear causal relationship; and (d) rejecting on the grounds that the perpetrator cannot afford it without referring to state compensation. (Mahendra, 2025) *An offender-centered* legal culture still dominates all levels of the apparatus. (Hia et al., 2026) The LPSK's capacity is also limited: applications increased 34 percent in 2024 without a proportional increase in resources. (LPSK, 2025)

Procedural barriers span all stages. At the submission stage, research in Samarinda showed that none of the victims filed for restitution because information was not conveyed effectively. At the proof stage, victims face a "paradox of proof" where the required standards are impossible to meet because the perpetrator has denied them access to formal documents. (Hartanto & Fatmawati O, 2025) At the execution stage, the mechanism of subsidiary imprisonment provides an *escape route* for perpetrators who prefer to serve additional imprisonment rather than pay restitution. (Pramesti, 2025)

Based on Philipus M. Hadjon's theory of legal protection, repressive protection mechanisms experience multiple failures: first line (the authorities fail to inform), second line (the prosecutor fails to include restitution), third line (the judge minimizes restitution), and fourth line (the verdict is not executed). These multiple failures create a *cascading protection failure*, where each failure reinforces the next. (Utami & Mulyana, 2025)

Socio-Cultural Factors, Restorative Justice, and Court Decision Patterns

Social stigma is the most destructive socio-cultural barrier: victims of human trafficking, especially victims of sexual exploitation, face stigmatization from society, family, and even law enforcement, creating a profound *silencing effect*. (Hartanto & Fatmawati O, 2025) Economic factors play a dual role: poverty makes someone vulnerable to *trafficking*, while post-exploitation conditions hinder access to legal services. (Maryam & Prasetyo, 2025) The transnational dimension adds to the complexity: in the period 2020–March 2024, at least 3,703 Indonesian citizens became victims of *online scams*, with around 40 percent identified as human trafficking victims. (Kebudayaan, 2024)

Based on the theory of restorative justice, analysis of court decisions shows a failure to simultaneously fulfill four fundamental principles. (Zehr, 2002) The principle of *reparation* is

not achieved because the majority of decisions do not include restitution; the principle of *accountability* is not upheld because subsidiary imprisonment allows perpetrators to avoid financial responsibility; the principle of *participation* is not facilitated; and the principle of *healing* is not accommodated because the judicial process is actually *retraumatizing*. (Sinaga, 2024)

The most striking illustration is the human trafficking case at the Malang District Court in 2025, where the trial evidence demonstrated the withholding of documents, illegal shelter, physical and psychological violence, and exploitation of unpaid work, yet the right to restitution was completely ignored. (Indonesia, 2025) The phenomenon of secondary victimization emerged clearly: traumatized victims had to face a lengthy and *retraumatizing legal process*. The pattern of disparity in restitution determinations occurred not only between courts in different regions, but also between panels of judges in the same court, due to the lack of consistent jurisprudence or *sentencing guidelines*. (Kriswiansyah, 2023)

Comparative Evaluation: Thailand, Germany, and the United States

A comparative analysis reveals four key patterns that distinguish more effective restitution systems from Indonesia's system. (Al-Hammad, 2025)

Thailand. *The Anti-Trafficking in Persons Act* BE 2551 (2008) requires investigating officers to inform victims of their right to compensation at the earliest opportunity (*Section 34*) and requires prosecutors to file claims on behalf of victims (*Section 35*). *The Anti-Trafficking in Persons Fund* is funded by the national budget, international contributions, private donations, and seized assets. (Molasy, 2025) Judges have the authority to award compensation *ex officio*. (Government, 2023)

Germany. Since January 1, 2024, the 14th *Social Security Act* (SGB XIV) has placed victim compensation under the responsibility of the state within the social security system. Every victim is entitled to compensation, regardless of nationality. (Menschenhandel, 2024) The adhesive procedure (*Adhäsionsverfahren*) allows victims to file claims within criminal proceedings without a separate civil lawsuit. (NRW, 2024) Benefits include healthcare, rehabilitation, therapy, and disability benefits. (Frauenhauskoordinierung, 2024)

United States. 18 USC § 1593 states that " *the court shall order restitution* " is mandatory without discretion. (18 USC § 1593 - Mandatory Restitution, 2000) The two-component formula in § 1593(b)(3) defines *the full amount of the victim's losses* in measurable terms. (Center, 2017) Enforcement mechanisms include asset seizure and ongoing collection post-release. *The Crime Victims Fund* provides an additional *safety net*. However, in practice, restitution was ordered in only 46 percent of sex trafficking cases in 2023. (Institute, 2023)

Table 1. Comparative Evaluation

Dimensions	Indonesia	Thailand	German	United States of America
The nature of restitution	Victim's rights (optional)	Victim's rights + prosecutor's obligations	State compensation (social rights)	Mandatory (shall order)
The role of the prosecutor	Can, not required	Must submit on behalf of the victim	Supports adhesive procedures	Obligated to demand full restitution
Calculation formula	There is no standard formula	Based on material-immateral losses	Based on injury severity	Two-component formula
Compensation fund	PP 35/2020, limited implementation	Anti-Trafficking Fund	SGB XIV (social security)	Crime Victims Fund
Execution mechanism	Subsidiary confinement (counterproductive)	Victim = creditor	Adhesive judgment executable	Asset seizure + ongoing collection

Reform Recommendations: The Five Pillars of the Federal Law

The reform recommendations are structured around five interrelated pillars. (Dulhadi, 2025)

First Pillar: Regulatory Reform. Revision of Articles 48–50 of the Anti-Trafficking Law is needed to transform restitution into a mandatory court obligation, by emphasizing that "the court *is obliged* to determine restitution in every proven human trafficking case" and "a decision without determining restitution is considered incomplete." (Mahendra, 2025) The burden of proving financial inability is placed on the perpetrator. Strengthening of Supreme Court Regulation 1/2022 through a four-component formula: (a) direct material losses, (b) labor value based on the minimum wage, (c) immaterial losses based on a standard table, and (d) long-term recovery costs. (Utami & Mulyana, 2025)

Second Pillar: Institutional Capacity Building. Mandatory certified training for investigators, prosecutors, and judges is integrated into the curricula of the Police Academy, the Prosecutor's Training Agency, and the Supreme Court's Training Center. (Anam & Eddyono, 2023) Standardized SOPs: The National Police include *asset tracing* from the start of investigations, the Prosecutor's Office requires the inclusion of restitution in every human trafficking prosecution, and the Court provides guidelines for evaluating evidence based on a standard formula. (Dulhadi, 2025) The establishment of an *Inter-Agency Task Force on Trafficking Restitution* is also an urgent need.

Third Pillar: Procedural Improvement. The principle of *one-stop service* allows victims to file for restitution through a single, integrated access point. (Sulistiantini & Savitri, 2025) Progressive evidentiary standards: victim testimony supported by available data is sufficient for material losses; victim testimony supported by expert testimony is sufficient for immaterial losses. (Nurfitria, 2025) Elimination of subsidiary imprisonment replaced by asset confiscation, revocation of remissions, and ongoing collection. (Pramesti, 2025)

Fourth Pillar: Increasing Legal Awareness and Empowering Victims. Structured socialization of restitution rights reaching migrant workers, domestic workers, coastal communities, and border communities. (Hartanto & Fatmawati O, 2025) Provision of free legal aid from the time a victim is identified until restitution is received. Integration of restitution with a comprehensive recovery program. (Sinaga, 2024)

Fifth Pillar: Establishment of a Compensation Fund and Monitoring System. An independent Compensation Fund for Victims of Human Trafficking (TPPO) with sources from the state budget, confiscated assets, fines, international contributions, and CSR from high-risk industrial sectors. (Mahendra, 2025) An evidence-based monitoring system with measurable indicators: the percentage of cases involving restitution, the average amount, the level of disparity, the percentage of successful executions, and the level of victim satisfaction. (LPSK, 2025)

CONCLUSION

Regarding the first problem, the study identified that the obstacles are systemic and cumulative across all dimensions: in the legal dimension there are seven interrelated substantive weaknesses; in the institutional dimension, investigators do not consistently inform the right to restitution, the Public Prosecutor only accommodates restitution in one of the three cases studied, and judges apply disproportionate standards of proof; in the procedural dimension, obstacles reach the entire process chain with LPSK 2024 data showing that only 13 percent of restitution is paid; in the socio-cultural dimension, stigma and low legal literacy cause victims not to fight for their rights.

Regarding the second issue, Thailand, Germany, and the United States have four consistent structural advantages: informative and facilitative obligations on officials, a functional state compensation fund, a clear calculation formula, and a robust execution

mechanism. Regarding the third issue, the study formulated a five-pillar reform framework: regulatory reform, institutional capacity building, procedural improvements, increased legal awareness, and the establishment of a compensation fund and monitoring system.

The government and the House of Representatives (DPR) need to immediately revise the Anti-Trafficking Law (UU TPPPO) to transform restitution into a mandatory obligation by eliminating subsidiary imprisonment. The Supreme Court needs to issue a supplementary regulation containing a four-component formula and a progressive standard of proof. The Attorney General's Office needs to require the inclusion of restitution in every human trafficking prosecution, and the police need to incorporate *asset tracing* into their investigative standard operating procedures (SOP). The development of Indonesian criminal law needs to more deeply integrate the restorative justice paradigm, placing victim recovery as a central goal of criminal punishment, equal to punishment of the perpetrator.

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