The Dynamics of Fulfilling Legal Protection for Victims of Human Trafficking Based on Victim Recovery in Indonesia's Border Regions

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Abstract
The rights of victims of human trafficking are often neglected, resulting in these victims frequently being denied restitution for the harm caused by such crimes. This study aims to provide an overview of the dynamics surrounding the application of restitution as a means of fulfilling victims' rights by addressing two key questions: (1) What are the dynamics of restitution implementation for victims of human trafficking in Indonesia's border regions? and (2) What efforts can be made to enhance the fulfillment of victims' rights, particularly in relation to restitution? This research employs a qualitative method with a phenomenological approach. The findings, which represent a novel contribution, indicate that the primary reasons for the lack of restitution imposed on perpetrators of human trafficking crimes are rooted in juridical and sociological factors. The study suggests that legal reforms are necessary to shift the position of restitution from being a victim's right to becoming a state obligation.

I. Introduction

Why does human trafficking remain unresolved to this day? This question is particularly challenging to answer, as various repressive measures and law enforcement efforts have already been undertaken,[1] However, in practice, this approach has had no significant impact and has even tended to lead to additional cases of human trafficking. This situation has perpetuated the stigma that the issue remains unresolved.[2]

In Indonesia, based on data available on the website pusiknas.polri.go.id, it is reported that from January to September 2023, there have been 856 cases of human trafficking crimes. The ratio includes 935 victims and 1,014 reported suspects, all of which were handled by the Indonesian National Police.[3] Thus, this demonstrates that the existing provisions fail to provide a deterrent effect on perpetrators of human trafficking crimes.

Considering the provisions contained in Law Number 21 of 2007 concerning the Eradication of Human Trafficking, it can be concluded that the law is relatively comprehensive. This is due to the inclusion of various measures aimed at combating human trafficking, such as criminal penalties in the form of imprisonment, detention, fines, and restitution.[4]

In general, restitution can be understood as the compensation provided by the perpetrator of a crime to the victim, with the aim of facilitating recovery for the victim of the criminal act. Consequently, the presence of restitution signifies a shift in the objectives of punishment, moving beyond mere retribution to also considering justice for the victim as a form of recovery (rehabilitation). This perspective underscores the evolving focus of criminal justice, emphasizing the importance of restoring victims' rights and addressing their needs within the legal framework.[5]

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[1] Andi Ines Audryana Bachtiar and Yana Indawati, "Penegakan Hukum Tindak Pidana Perdagangan Orang Di Wilayah Kepolisian Daerah Jawa Timur," *JURNAL HUKUM, POLITIK DAN ILMU SOSIAL* 2, no. 2 (May 14, 2023): 160–75, https://doi.org/10.55606/jhpis.v2i2.1626.

[2] Burdin Hambali, "Penanganan Tindak Pidana Perdagangan Orang," *Jurnal Litbang Polri* 22, no. 4 (December 20, 2019): 34–47, https://doi.org/10.46976/litbangpolri.v22i4.36.

[3] Direktorat, "Ratusan Kasus TPPO Ditindak Sejak Awal Tahun," Pusiknas Polri, n.d., https://pusiknas.polri.go.id/detail_artikel/ratusan_kasus_tppo_ditindak_sejak_awal_tahun.

[4] Wira Bakti Mulyawan and Wiend Sakti Myharto, "Perlindungan Hukum Terhadap Korban Tindak Pidana Perdagangan Orang," *Jurnal Kewarganegaraan* 6, no. 1 (April 19, 2022), https://journal.upy.ac.id/index.php/pkn/article/download/2926/pdf/7136.

[5] Nugroho Ahadi, Ali Masyhar Mursyid, and Cahya Wulandari, "Restitusi Dalam Tindak Pidana Kekerasan Seksual Di Indonesia Ditinjau Dari Perspektif Utilitarianisme," *Jurnal Esensi Hukum* 5, no. 2 (2023): 57–69,

The issue lies in the gap between the state's guarantee of victims' rights to restitution and the reality of its implementation, where the imposition of restitution is exceedingly rare. In some cases, court decisions do not include restitution at all, further exacerbating this disparity.[6] as evidenced in the verdict of Decision Number 155/Pid.Sus/2023/District Court of Wates, which declared that the defendants were legally and convincingly proven guilty of committing the crime of "aiding and abetting human trafficking" and sentenced each defendant to three (3) years of imprisonment and a fine of IDR 120,000,000 (One Hundred and Twenty Million Rupiah). It was further stipulated that failure to pay the fine would result in an additional six (6) months of imprisonment for each defendant. However, the ruling did not include an order for the defendants to provide restitution to the victims.[7] Decision Number 27/Pid.Sus/2019/District Court of Kupang, in its ruling, declared that the defendant was legally and convincingly proven guilty of participating in the crime of human trafficking. The court sentenced the defendant to five (5) years of imprisonment and imposed a fine of IDR 120,000,000 (One Hundred and Twenty Million Rupiah), with the stipulation that failure to pay the fine would result in a substitute penalty of three (3) months of imprisonment. However, the decision did not include an order for the defendant to provide restitution to the victims.[8] Decision Number 32/Pid.Sus/2022/PN Lmj, in its ruling, declared that the defendant was legally and convincingly proven guilty of committing the crime of "Recruiting, harboring, deceiving, and indebting individuals for the purpose of exploiting people and children within the territory of the Republic of Indonesia." The court sentenced the defendant to eight (8) years of imprisonment and a fine of IDR 120,000,000 (One Hundred and Twenty Million Rupiah), which, if unpaid, would be substituted with six (6) months of imprisonment. Furthermore, the court ordered the defendant to pay restitution to the victims totaling IDR 1,032,709,666. In the event the restitution was not paid, it would be substituted with three (3) months of imprisonment.

From this case sample, it can be observed that out of the three case samples reviewed, only one included a ruling that mandated restitution to be paid by the defendant to the victims. This is notwithstanding the prevalence of human trafficking crimes in Indonesia's border regions, particularly in West Kalimantan, a province that directly borders Malaysia. West Kalimantan has become an attractive target for human trafficking perpetrators, making it one of the top three

https://journal.upnvj.ac.id/index.php/esensihukum/article/view/254/111.
[6] Grace Angrelina and Ikama Dewi Setia Triana, "Pelaksanaan Pemenuhan Hak Restitusi Bagi Korban Tindak Pidana Perdagangan Orang," *Cakrawala Hukum* 22, no. 2 (2020).
[7] Decision Number 155/Pid.Sus/2023/District Court of Wates," 2023 (n.d.).
[8] Decision Number 27/Pid.Sus/2019/District Court of Kupang," 2019 (n.d.).

provinces contributing to human trafficking cases and the third highest in terms of victim numbers nationally.

Data also shows that Sambas Regency is among the most significant contributors to human trafficking cases in West Kalimantan. However, interviews conducted with judges at the Sambas District Court reveal that there have been no rulings ordering restitution against perpetrators in that jurisdiction. This indicates that the application of restitution for victims of human trafficking in Indonesia remains exceptionally low, despite restitution being a tangible form of victim protection.[9] This approach also embodies a concept of victim-centered restorative justice. The issues explored in this study are as follows:

1. Why is restitution not imposed on defendants who have been legally and convincingly proven guilty of committing human trafficking crimes?
2. What measures can be taken to ensure that restitution is implemented as a means of fulfilling the rights of victims in cases of human trafficking in Indonesia?

2. Research Method

This research is a qualitative study that seeks to uncover the meaning behind phenomena. Given the study's objective of revealing the understanding of law enforcement officials regarding the provision of restitution for victims of human trafficking in border areas, it adopts a phenomenological method.

Phenomenology views the subjective understanding of actors as temporal, influenced by the dimension of time. This means that an actor's interpretation of their current lived experiences is inseparable from the horizons of time, including both the past (horizon of the past) and the future (horizon of the future). Subjective understanding also encompasses a future horizon, reflected in desires, aspirations, hopes, anticipations, and more.

The primary data for this study were collected using interviews with informants, specifically law enforcement officials involved in addressing human trafficking crimes. These interviews were conducted in a descriptive-reflective manner, focusing on their understanding of restitution based on their personal experiences.

The collected data were then analyzed using hermeneutics or an interpretive method to decipher the subject of the study. This approach enables a deeper interpretation of the meanings and insights derived from the participants' perspectives.

[9] Ni'matus Sholikah, "Pemenuhan Hak Restitusi Terhadap Korban Tindak Pidana Pencabulan Berdasarkan Undang-Undang Nomor 35 Tahun 2014," *Verstek* 10, no. 3 (February 7, 2023): 550, https://doi.org/10.20961/jv.v10i3.70605.

3. Results and Discussion

Mapping of Human Trafficking Crimes and the Dynamics of Restitution Implementation for Victims of Human Trafficking in Border Areas

Kalimantan Island is one of the regions of Indonesia that shares a direct border with other countries, particularly Malaysia. West Kalimantan (Kalbar) is one of three provinces on Kalimantan Island that has a land border with Sarawak, Malaysia. The Indonesia-Malaysia land border spans approximately 2,019 kilometers, encompassing three provinces in Kalimantan: West Kalimantan, East Kalimantan, and North Kalimantan.[10]

The land border between West Kalimantan and Malaysia spans 966 kilometers, crossing 98 villages and 15 subdistricts across five regencies: Sambas, Bengkayang, Sanggau, Sintang, and Kapuas Hulu. Along this border, there are 50 footpaths connecting 55 villages in West Kalimantan with 32 settlements in Sarawak. This geographic condition significantly facilitates the occurrence of transnational human trafficking crimes.

One notable example is the case of Sambas Regency, followed by Sanggau Regency. According to the Case Tracking Information System of the Sambas District Court, between 2013 and 2024, a total of 51 cases were brought to trial in which the defendants were charged under the provisions of Law Number 21 of 2007 on the Eradication of Human Trafficking Crimes.[11]

Based on interviews conducted with a judge from the Sambas District Court, it was revealed that from 2013 to 2024, there were 50 cases of human trafficking crimes. An analysis of these cases shows that at least 10 occurred between 2019 and 2024. In these cases, it was proven in court, based on legal and convincing evidence, that the defendants committed human trafficking crimes as stipulated in Law No. 21 of 2007 on the Eradication of Human Trafficking Crimes. A breakdown of these cases is as follows:

- A total of three (3) cases related to prostitution were found to be legally and convincingly proven guilty, violating the provisions outlined in Article 2 of Law Number 21 of 2007 concerning the Eradication of Human Trafficking Crimes.;

[10] Kementerian Perhubungan Republik Indonesia, "Negara Hadir Hingga Tapal Batas Negeri: Rajut Konektivitas Di Perbatasan Kalbar – Malaysia," *Transmedia Majalah Kementerian Perhubungan No.STT.No.349 SK/Ditjen PPG/STT 1976*, 2023.

[11] "Sistem Informasi Penelusuran Perkara Pada Pengadilan Negeri Sambas," n.d., http://sipp.pn-sambas.go.id/list_perkara/page/1/UHlRZlZyQmJNZmhZaFhGL2I2dzlBOGZBVGthczV3L0pEYjRiVzBnS2d4ck1WTk1XUlhTT25DLzI3dGJYYXIyZ0dHZzJtSEI1V0xBclBZTTI4YkQvWlE9PQ==/M2R2K2N5NEhpZys5a0Fzb1FMb2NIb3ZMSGhNUnZmeGFGNko5dE1QMS9aeEt1bDVjTXQ5U1VHWGcxdUFnOW1iRX.

- A total of seven (7) cases involving efforts to transport Indonesian citizens out of the country's territory for the purpose of exploitation were found to be legally and convincingly proven guilty, violating the provisions outlined in Article 4 in conjunction with Article 10, Article 4 in conjunction with Article 11, and Article 11 of Law Number 21 of 2007 concerning the Eradication of Human Trafficking Crimes.

From the aforementioned cases, it can be concluded that between 2019 and 2024, a total of 10 cases were legally proven to involve human trafficking offenses, with the perpetrators sentenced to imprisonment for a specific period ranging from three (3) to six (6) years. However, an analysis of the court decisions in these cases reveals that no restitution was applied in any of them. This finding aligns with an interview conducted with a judge from the Sambas District Court on Wednesday, October 16, 2024, in the mediation room of the Sambas District Court, where the judge confirmed that, despite the cases being legally and convincingly proven, restitution has not been applied in any human trafficking cases examined and decided by the court.

Meanwhile, in Sanggau Regency, an investigation into the Decision Directory revealed that only one case was brought to trial, namely Case Register Number 27/Pid.Sus/2020/District Court of Sanggau, which was adjudicated by a panel of judges at the Sanggau District Court. The court found the defendant legally and convincingly guilty of committing a human trafficking offense, sentencing the defendant to eight (8) years of imprisonment and imposing a fine of IDR 120,000,000 (one hundred and twenty million rupiah). Should the fine remain unpaid, it would be substituted with three (3) months of imprisonment.[12]

In this case, the Panel of Judges examining and deciding the matter also imposed restitution/compensation to the victims, as outlined in point 3 of the judgment, which states:

"Orders the Defendant to pay restitution to the victim, Witness Yustina Mira, in the amount of IDR 89,000,000 (eighty-nine million rupiah) and to the child victim, Ima Puriyanti, in the amount of IDR 36,000,000 (thirty-six million rupiah). Should the Defendant fail to fulfill the obligation to pay restitution within 14 (fourteen) days from the notification of a judgment that has acquired legal force, the Defendant's assets shall be seized and auctioned to cover the restitution. If the Defendant does not possess assets or is unable to pay the restitution, it shall be substituted with imprisonment for a period of 8 (eight) months."[13]

[12] "Direktori Putusan Mahkamah Agung Republik Indonesia," n.d., https://putusan3.mahkamahagung.go.id/direktori/putusan/79c9a2777a611d99721ae20c5ab6ca32.html.
[13] "Direktori Putusan Mahkamah Agung Republik Indonesia."

Juridical Reasons for the Non-Imposition of Restitution on Defendants Who Are Legally and Convincingly Proven Guilty of Human Trafficking

The provisions regarding the application of restitution or compensation payments imposed on perpetrators, based on a final and binding court decision, for material and/or immaterial damages suffered by victims or their heirs are regulated under Law No. 21 of 2007 on the Eradication of Human Trafficking Crimes, specifically in Article 48, paragraph (1), which juridically states the following:[14]

"Every victim of human trafficking or their heirs has the right to receive restitution."

Furthermore, the forms of restitution that can be imposed on perpetrators of human trafficking are explicitly defined under Law Number 21 of 2007 on the Eradication of Human Trafficking Crimes. These include compensation to victims for:

a. Loss of wealth or income;
b. Suffering;
c. Costs for medical and/or psychological treatment; and/or;
d. Other damages suffered by the victim as a result of human trafficking, including:
    - Loss of property;
    - Basic transportation costs;
    - Attorney fees or other expenses related to legal proceedings; or
    - Loss of income promised by the perpetrator.

Technically, restitution is filed by the victim or notified by the Public Prosecutor from the moment the victim reports the occurrence of a human trafficking crime affecting them. This is then followed up by the Public Prosecutor during the trial process to present the losses suffered by the victim as a result of the human trafficking crime, alongside the submission of charges.[15]

The regulation of restitution as a victim's right is one of the juridical reasons that creates barriers in imposing restitution on perpetrators of human trafficking. This regulation gives victims the choice of whether to request restitution, and victims' knowledge ultimately influences their decision to pursue or forego such restitution.

This issue was highlighted during interviews with several victims of human

[14] Article 48 Paragraph (1) of Law Number 21 of 2007 on the Eradication of the Crime of Human Trafficking (n.d.).
[15] Explanation of the Article 48 Paragraph (1) of Law Number 21 of 2007 on the Eradication of the Crime of Human Trafficking (n.d.).

trafficking conducted on October 16, 2024, at the Sambas District Police Office. The interviews revealed that none of the victims were aware of their right to seek compensation from the perpetrators of human trafficking. The interviews involved victims of trafficking related to both prostitution and exploitation for labor outside the Republic of Indonesia. The findings from these interviews confirmed that none of the victims were informed about their right to request restitution, either at the police or prosecutor's level.

Based on an interview with a judge at the Sambas District Court, several challenges in the implementation of restitution were identified, which can be classified into two main categories: juridical and sociological aspects.

The juridical challenges include the regulation of restitution as a victim's right, which prevents the court from encouraging victims to file restitution claims. Additionally, procedural juridical issues arise, as the submission of restitution claims must begin during the investigation phase. However, when the case is brought to trial, there is often no follow-up or initiation of restitution claims at the police investigation stage, leaving the judge with no basis to impose restitution on the perpetrators, even when the panel of judges has informed the victims of their rights.

The sociological aspects present their own set of obstacles. In most human trafficking cases, victims are often aware of the legal consequences but may ironically perceive the legal process as causing additional harm, such as job loss. Another sociological challenge arises during the implementation of restitution, particularly concerning the perpetrator's financial capacity and the lack of confidence in the evidentiary process. According to Lawrence M. Friedman's perspective, culture plays a significant role in legal effectiveness. Thus, the sociological phenomena mentioned above can be categorized as cultural barriers to the implementation of restitution.[16]

The sociological obstacles described by the judges align with the results of interviews conducted with victims of human trafficking, particularly in the context of illegal migrant workers. Essentially, the victims stated that the arrest of perpetrators attempting to transport them for work in Malaysia resulted in the loss of employment opportunities they had already secured in Malaysia.

The regulation positioning restitution as a right for victims of human trafficking is undoubtedly a significant barrier. This issue is exacerbated by the lack of notification or public awareness efforts directed at victims of human trafficking. Consequently, this regulatory framework logically creates impediments for law

[16] Achmad Arifulloh, "Effectiveness of Protection and Recovery Implementation for Child Victims of Sexual Violence" 20, no. 1 (2021): 195–209.

enforcement officers, particularly judges, in applying restitution. As a manifestation of the rule of law, this framework "compels" law enforcement officers to base their actions on requests from victims, as expressed in the prosecutor's demands, thereby indirectly limiting the judiciary's ability—especially judges—to perform their function of legal discovery (rechtvinding) in efforts to provide remedies to victims of human trafficking. Ultimately, judges are often left with no option but to offer restitution to victims during court hearings or examinations.

This situation is further aggravated by the reality on the ground, where perpetrators of human trafficking are often unable to provide compensation or restitution to their victims. This inability poses significant challenges to the execution of restitution as a means of remedying the harm suffered by victims of human trafficking.

Efforts to Implement Restitution as a Manifestation of Restorative Justice for Victims of Human Trafficking

The 1945 Constitution of the Republic of Indonesia, as the foundation of the nation's constitution, guarantees the rights of every individual as part of efforts to uphold justice and ensure that everyone receives their rights. This is evident, for example, in the provisions of Article 28H paragraph (1), which states:[17]

"Everyone has the right to live in physical and spiritual well-being, to have a place to live, to enjoy a good and healthy environment, and to receive healthcare services."

However, in its implementation, the realization of the right to life must be carried out in accordance with the provisions of applicable laws and regulations as a manifestation of the rule of law, as stipulated in the constitution. This principle also applies to the enforcement of restitution, which must be based on legal provisions.

Accordingly, under these regulations, restitution serves as an extension of criminal liability for perpetrators of crimes, making it obligatory for them to provide compensation to victims for the harm they have suffered as a result of the criminal act committed.

The main obstacle to implementing criminal liability in the form of restitution lies in the juridical aspects of enforcing compensation for victims by perpetrators. Specifically, the application of restitution depends on the willingness of the victim to claim it, thereby granting victims broad discretion to request or not request restitution from the perpetrators.

[17] "Article 28 H Paragraph (1) Constitution of the Republic Indonesia 1945" (n.d.).

Therefore, as a solution to enhance the protection and recovery of victims of human trafficking, a shift in the legal framework is proposed, whereby restitution is redefined from being a victim's right to becoming a mandatory obligation for the perpetrator.

In principle, restitution has been regulated under the Supreme Court Regulation Number 1 of 2022 concerning the Procedures for Submitting and Granting Restitution and Compensation to Victims of Criminal Acts. According to this regulation, restitution is defined as compensation provided to the victim or their family by the perpetrator of the crime or a third party.[18]

In its implementation, restitution is filed by the applicant or the victim of a criminal act by fulfilling the following requirements:[19]

- A photocopy of the Applicant's and/or Victim's identification documents;
- Evidence of material losses suffered by the Applicant and/or Victim, prepared or certified by an authorized official, or based on other valid evidence;
- Evidence of costs incurred by the Victim for treatment and/or medical care, certified by the institution or party providing the treatment or care, or based on other valid evidence;
- A description of the immaterial losses suffered by the Applicant and/or Victim;
- A photocopy of the death certificate, in the event of the Victim's death;
- A certificate of family relationship, heirs, or guardianship if the application is submitted by the family, heirs, or guardian;
- A special power of attorney, if the restitution application is submitted through a representative; and
- A copy or excerpt of the court decision, if the case has been adjudicated and the verdict has obtained legal certainty.

From these provisions, it is implied that the initiation of a restitution claim must be actively pursued by the victim of the crime. This represents an ironic reality, as the spirit of criminal punishment, intended as a form of protection for victims, instead places a burden on them. This situation creates a juridical issue that intersects with sociological aspects, as many victims are unaware of and do not understand their right to restitution, let alone the technical process required to

[18] Article 1 Paragraph (1) of the Supreme Court Regulation Number 1 of 2022 on Procedures for Resolving Applications and Granting Restitution and Compensation to Victims of Criminal Acts (n.d.).
[19] Article 5 Paragraph (2) of the Supreme Court Regulation Number 1 of 2022 on Procedures for Resolving Applications and Granting Restitution and Compensation to Victims of Criminal Acts (n.d.)..

submit a restitution claim.

This situation is deeply regrettable, as victims should receive comprehensive protection from the state to ensure their recovery. This is especially critical since human trafficking is classified as an extraordinary crime.

Normatively, there are no definitive standards for classifying a crime as an extraordinary crime, aside from corruption, which has been explicitly designated as such under Law No. 30 of 2002 concerning the Corruption Eradication Commission. Regarding the classification of extraordinary crimes, Muhammad Hatta explains that while interpretations of this classification may vary, most experts agree that crimes with extensive and systematic impacts and causing massive harm can be categorized as extraordinary crimes.[20]

When compared to human trafficking cases occurring in the Sambas Regency, it is evident that a single case of human trafficking typically involves one or more victims. Particularly in cases involving human trafficking with the modus operandi of sending workers abroad, a single case may involve between one to five victims. In certain instances, the number of victims rescued and officially recorded reaches double digits. This suggests that the number of unrecorded victims is significantly higher, indicating that human trafficking is a widespread crime causing extensive harm to victims on a massive scale.

Additionally, interviews with victims from prior research reveal that perpetrators of human trafficking generally coordinate with employers in Malaysia, including planning the routes to be used. Before committing the crime, perpetrators meticulously prepare steps to ensure their actions proceed smoothly. This highlights the systematic nature of human trafficking. Given its extensive, massive, and systematic impact, human trafficking should be classified as an extraordinary crime.

One of the challenges identified in the field is the lack of understanding among human trafficking victims regarding restitution and its mechanisms. This limitation contributes to the minimal restitution and recovery provided to victims. Therefore, to ensure the protection of victims, the state should be obligated to represent victims in processing and securing restitution, in alignment with the principles of human rights protection enshrined in the 1945 Constitution of the Republic of Indonesia. This responsibility is also supported by the preamble of Supreme Court Regulation No. 1 of 2022, which states:[21]

"Furthermore, the development of the criminal justice system is not solely

[20] Muhammad Hatta, *Kejahatan Luar Biasa (Extra Ordinary Crime)* (Aceh: Unimal Press, 2019).
[21] The preamble, letter (a), of Supreme Court Regulation Number 1 of 2022 concerning Procedures for the Resolution of Applications and the Provision of Restitution and Compensation to Victims of Criminal Acts (n.d.)..

oriented toward the interests of the perpetrator but also emphasizes victim protection. As a result, victims of certain crimes are entitled not only to protection but also to restitution and compensation."

4. Conclusion

The conclusions of this study highlight several obstacles in the field regarding the implementation of restitution for victims of human trafficking in border areas. Upon closer examination, the root causes of the challenges in ensuring restitution for victims of human trafficking lie in juridical and sociological aspects.

The juridical aspect limits the flexibility of law enforcement officers to impose restitution on perpetrators of human trafficking, as it is stipulated that restitution can only be processed based on a request from the victims. Meanwhile, the sociological aspect—particularly victims' understanding of restitution and its intricacies, as well as the financial capability of human trafficking perpetrators—plays a significant and decisive role in determining the success of restitution implementation. Ironically, the lack of understanding among victims about restitution is the primary reason for the absence of restitution enforcement in border areas, particularly in Sambas Regency.

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