

A Study of Victims of Human Trafficking from a Critical Victimology Perspective

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Abstract. *Indonesia applies the principle of non-punishment conditioned upon "coercion," which in legal practice is narrowly interpreted as physical coercion. Consequently, victims who have experienced psychological, economic, or power-based exploitation remain subject to criminal prosecution. This study aims to analyze the limited application of the non-punishment principle for human trafficking victims under Article 18 of Law No. 21 of 2007, examined through positive and critical victimology perspectives and evaluated against international standards. Using a socio-legal research approach with legislative, case-based, and conceptual approaches, this study analyzes how legal norms interact with social realities in judicial practice through qualitative analysis. The findings reveal that Indonesia's application of the non-punishment principle does not yet conform to international standards, as victims continue to be treated as perpetrators and early victim identification mechanisms remain absent. The novelty of this study lies in its victimological critique of the "ideal victim" construction in judicial practice, demonstrating that state labeling of victims frequently becomes the basis for criminalization. This study recommends a reformulation of Article 18 of the TPPO Law to align with the Palermo Protocol and ASEAN guidelines, which affirm non-punishment as an unconditional obligation, within the broader framework of human trafficking victim protection.*

Keywords: *Human Trafficking; Principle of Non-Punishment; Victimology.*

1. Introduction

Human trafficking is a form of crime that severely undermines human dignity. Victims do not merely lose their physical freedom or mobility; they often lose control over their own destinies as criminal networks exploit socio-economic conditions, migration, and other vulnerabilities (Gunadi, 2024). Source, transit, and destination countries such as Indonesia face a dual challenge: how to combat international syndicates and how to protect those in exploitative situations. In this context, victims must be viewed not merely as objects of criminal prosecution, but as subjects of protection (Hendriana et al., 2017).

In various countries, the phenomenon of human trafficking has become increasingly complex with the advent of digital technology, social media apps, and new methods such as "open-BO,"

document forgery, and information migration (Astari, 2025; Krisna & Yudiantara, 2025). Difficult economic conditions, lack of access to education and decent work, and limited support networks push individuals into high-risk situations. When exploitation occurs, victims are often not overtly coerced through physical violence; rather, they are influenced through psychological manipulation, threats against their families, or controlled through debt and personal documents (Hunt et al., 2020).

Within the framework of law enforcement, one crucial aspect is that victims of human trafficking are not prosecuted as perpetrators for criminal acts they commit as a result of their exploitative situation—for example, when a victim of human trafficking creates and distributes their own profile for prostitution activities. In this regard, the state must provide effective protection to ensure victims are not criminally prosecuted as perpetrators of criminal acts—a principle known as *non-punishment* (Puspitosari & Kusumaningrum, 2021). Regarding the principle of *non-punishment*, Indonesia, through the provisions of Article 18 of Law No. 21 of 2007 on the Eradication of Human Trafficking (hereinafter the TPPO Law), stipulates that “*Victims who commit a criminal offense because they were forced by the perpetrator of human trafficking shall not be punished.*” The requirement of “being forced by the perpetrator” has sparked substantial debate because the interpretation of the element of coercion is often interpreted narrowly and literally.

In practice, law enforcement officials often demand proof that the victim experienced direct physical coercion or threats of violence to avoid criminal liability. In reality, human trafficking often exploits the victim’s vulnerabilities, such as debt-based extortion, pressure on the family, or manipulation of the victim’s identity and location. Victims who cannot provide evidence of physical violence or threats of violence are criminally prosecuted as perpetrators of criminal acts, even though they are actually in a situation of exploitation. An example of this is a case involving a married couple in Bangka Belitung who were designated as suspects for engaging in “Open-BO” through the MiChat app, with rates set by a specific party and an economic background that burdened them (Wahyono, 2025).

In the positive victimology approach, victims of human trafficking are understood as individuals in vulnerable positions due to unequal social, economic, and power dynamics. This vulnerability limits the victim’s capacity to act freely and independently, so that the actions taken by the victim are often a response to the exploitative situation they face. This approach emphasizes that the primary focus should be on the victim’s suffering and the need for protection and recovery, rather than assigning blame to the victim. Thus, the victim’s actions that objectively meet the elements of a criminal offense must be understood within the contextual circumstances underlying them, rather than being separated from the exploitative relationships the victim experiences (Astari, 2025; Kojongian & Yasir, 2026).

Cases such as this demonstrate that individuals in economically driven vulnerable positions can become part of an exploitation chain, yet the legal system still positions them as accomplices rather than victims in need of protection. Additionally, a transnational dimension is present in some human trafficking cases. An example is two foreign nationals from Uzbekistan who were arrested in West Jakarta by immigration authorities in connection with alleged online

prostitution. This case highlights the transnational dimension and exploitation of migrants due to their vulnerable circumstances, such as the legality of their residence permits (visas) and employment (Munir, 2025) These conditions render migrants vulnerable, a vulnerability exploited by human trafficking syndicates.

Unlike the positive victimology approach, critical victimology highlights how the legal system and law enforcement practices can contribute to the continued victimization of individuals already in vulnerable positions. This approach critiques the tendency of criminal law to define victims narrowly and formally, resulting in individuals who do not meet specific criteria losing recognition as victims. In the context of human trafficking crimes, critical victimology views the criminalization of victims as reflecting the state's failure to recognize the power dynamics and structural inequalities that shape the victim's position, and demonstrates that the law does not always operate neutrally but is influenced by the logic of order and punishment (Christie, 2018; Farrell & Pfeffer, 2014; Mawby & Walklate, 1994).

Furthermore, a widely known case in Indonesia—the verdict against the defendant in Pina Aprilianti video case, or more commonly known as “Vina Garut” has sparked debate regarding the vulnerability of victims to being held criminally liable. In this case, the young female defendant was sentenced to three years in prison and a fine of Rp1 billion after being proven beyond a reasonable doubt to have been the subject of pornographic content (Putusan Pengadilan Tinggi Bandung Nomor 150/Pid.Sus/2020/PT BDG, 2020). Her legal counsel, Asri Vidya Dewi et al., stated that their client had reported being a victim, but this was not sufficiently considered as a primary factor by the judge (Mustain, 2020). This case illustrates that despite the presence of vulnerability, the judicial system has not adequately recognized the position of victims in situations of exploitation that are not always accompanied by physical coercion. Such gaps serve as a reminder that national laws have not yet fully aligned with international standards regarding victim protection.

The requirement of “coercion” in Law No. 21 of 2007 poses a significant obstacle when law enforcement officials and courts limit their interpretation to direct physical coercion. This results in survivors of human trafficking or other forms of exploitation facing the risk of criminalization. Law enforcement thus becomes biased: victims become secondary defendants, exacerbating trauma and undermining efforts to access recovery and justice.

Based on the practices observed in various cases, law enforcement regarding victims of human trafficking crimes demonstrates a tendency that is not yet fully victim-centered. Law enforcement officials still largely employ a normative approach, focusing on the fulfillment of criminal elements, while the context of exploitation and the victim's vulnerability are not always prioritized as primary considerations in determining criminal liability. Consequently, victims are often prosecuted as perpetrators or accomplices, even though there are strong indications that the acts were committed under circumstances of limited choice. This situation highlights a gap between the normative goal of victim protection and the reality of law enforcement on the ground.

At the international level, the principle of *non-punishment* for victims of human trafficking has

emerged as part of a state's obligation to ensure the protection of victims' human rights. This principle stems from the recognition that a victim's involvement in unlawful acts is often a direct consequence of the trafficking or exploitation they have experienced, so that victims cannot be treated as perpetrators of criminal acts in the same sense as general offenders. The primary international instrument, namely the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol)*, does not explicitly formulate the principle of *non-punishment*. However, the definition of human trafficking in Article 3(a) of the Protocol includes the element of *abuse of power or a position of vulnerability*, indicating that exploitation is not always manifested through physical coercion or direct threats of violence (OHCHR, 2000).

This provision forms the conceptual basis that victims of human trafficking are often in circumstances that restrict their free will, so their actions are not entirely voluntary. A more explicit recognition of the principle of *non-punishment* is reflected in the *Council of Europe Convention on Action against Trafficking in Human Beings* of 2005. Article 26 of that convention explicitly mandates states not to impose criminal sanctions on victims for their involvement in unlawful acts to the extent that such acts were committed as a result of the trafficking situation (Council of Europe, 2005). This provision does not limit the form of coercion to physical violence alone, but emphasizes the causal link between the trafficking situation and the victim's actions (Gallagher, 2010). Thus, the primary focus of protection is directed at the conditions of exploitation experienced by the victim, not on narrowly defined forms of coercion.

A similar approach is also reflected in various international human rights instruments, including guidelines issued by the *United Nations Office on Drugs and Crime (UNODC)* and the *Office of the United Nations High Commissioner for Human Rights (OHCHR)*. These instruments affirm that victims of human trafficking shall not be subject to detention, prosecution, or punishment for unlawful acts committed as a direct consequence of the exploitative situation, without requiring the presence of physical coercion or threats of violence. This principle places victim protection and the prevention of revictimization as the primary objectives of law enforcement (UNODC, 2013).

When compared to Indonesia's national legal framework, these developments in international standards reveal significant differences in approach. The provision in Article 18 of the TPPO Law requiring the element of coercion risks limiting the application of the *non-punishment* principle when coercion is interpreted narrowly. This discrepancy raises questions regarding the extent to which national law aligns with international legal developments in providing effective protection for victims of human trafficking.

This study aims to identify how the principle of exemption from criminal punishment (*non-punishment*) for victims of human trafficking is applied in national law, analyze it through the perspectives of positive and critical victimology, and provide recommendations to improve protection mechanisms for victims in Indonesia. Without adequate reform, the state could instead become part of the very chain of exploitation it is meant to combat.

2. Research Methods

This study employs a socio-legal research approach, which examines not only the positive legal norms governing the non-punishment principle for victims of human trafficking particularly Article 18 of Law No. 21 of 2007 but also how these norms operate within actual judicial and social practice. This approach enables analysis of the interaction between law and social realities, including how institutional actors such as judges and law enforcement officials apply legal norms in ways shaped by prevailing social constructions of victimhood (Ibrahim, 2013).

The scope of this study is descriptive-analytical. It systematically describes the applicable legal substance while critically analyzing gaps in victim protection mechanisms, particularly the narrow interpretation of the "coercion" requirement under Article 18. The analytical dimension focuses on identifying inconsistencies between the law as written and the law as applied, through the lens of positive and critical victimology (Soekanto & Mamudji, 2019).

The data used consists of secondary data, comprising: primary legal materials such as legislation and court rulings, particularly *Putusan Pengadilan Tinggi Bandung Nomor 150/Pid.Sus/2020/PT BDG*; secondary legal materials such as textbooks, scholarly articles, and expert opinions; and tertiary legal materials such as legal dictionaries and encyclopedias (Marzuki, 2016). Data collection was conducted through a systematic literature review of materials relevant to victim protection and victimological approaches in criminal law. Media coverage of cases involving victims in vulnerable situations is used as supporting data to assess the social context and law enforcement responses in practice (Marzuki, 2016).

Data analysis employs qualitative legal analysis, interpreting legal materials based on legal logic, principles of positive and critical victimology, and comparison with international standards including the Palermo Protocol and the ASEAN Convention Against Trafficking in Persons. This analysis systematically identifies normative inconsistencies between Indonesian law and international obligations, and formulates recommendations for legal reform (Sunggono, 2015).

3. Results And Discussion

3.1 A Critical Victimological Analysis of Victims of Human Trafficking

Victimology has developed as a discipline through two schools of thought that shape how the state views and treats victims within the criminal justice system. The first school is known as positive victimology, which focuses on the victim's characteristics, the relationship between the victim and the perpetrator, and the possibility of the victim's involvement in the commission of the crime. This approach stems from the concept of *victim precipitation*, which posits that under certain conditions, victims may provoke, encourage, or perpetuate situations that lead to the commission of a crime. The focus of positive victimology lies in efforts to link the victim's behavior to the crime they experienced, including assessments of negligence, choices, or attitudes deemed to increase the risk of victimization. This approach then leads to a tendency to assign some responsibility to the victim when their behavior does not align with the ideal standards imposed by society (Friday & Kirchhoff, 2000).

Critical victimology emerged as a reaction to the limitations of positive victimology, which pays insufficient attention to power relations and structural conditions that shape victims' vulnerability. This approach positions the state, the legal system, and social structures as the parties that determine a victim's status through a process of labeling.

Within this framework, a victim is not merely an individual who has suffered harm, but a subject whose status is shaped by social constructions and institutional decisions that determine whether someone is deemed worthy of being treated as a victim. This approach questions which parties hold the authority to define victim status and examines how this process often overlooks realities such as class inequality, patriarchal structures, economic exploitation, and various forms of dehumanization. This perspective further highlights the existence of an "ideal victim" category—those deemed worthy of protection—while individuals who do not meet these criteria are more easily treated as parties contributing to the problem. The distinction between these two schools of thought is evident in discussions regarding the crime of human trafficking (Newburn et al., 2012).

Positive victimology allows for the assessment that victims play a role in the circumstances that led them to become entangled in criminal acts, thereby opening the door to attributing criminal responsibility to the victim. Critical victimology asserts that the victim's actions while in a situation of exploitation cannot be deemed a fault, but rather a consequence of structural conditions that eliminate the victim's choices. In human trafficking, mechanisms of power relations, economic dependence, threats, psychological manipulation, and social vulnerability constitute exploitative characteristics that negate the victim's autonomy. The critical victimology perspective views all of the victim's actions during the period of exploitation as an inseparable part of the human trafficking crime itself.

This theoretical foundation is crucial in explaining the principle of non-punishment for victims of human trafficking. This principle stipulates that victims cannot be held criminally liable for actions that are a direct or indirect result of the exploitation they have endured. The implementation of this principle in Indonesia remains heavily influenced by the positive victimology approach, which requires proof of actual coercion as the basis for exemption from criminal liability. This situation contrasts with the critical victimology perspective and international standards, which consider the victim's vulnerability, subjugation, and lack of control as evidence that the victim's actions occurred within a context of exploitation. This paradigm shift explains the inconsistencies in the application of Article 18 of the Law on Human Trafficking, which in some cases has led to the criminalization of victims even though, substantively, they were in an exploited position.

Positive victimology examines victims through the relationship between perpetrators, victims, and the state's response. Within this framework, victims are often deemed to have contributed to the crime they experienced. This paradigm remains prominent in the application of Article 18 of Law No. 21 of 2007 on the Eradication of Human Trafficking. This provision grants protection from criminal prosecution only if the victim can prove that they were forced to commit a criminal act. Consequently, the state, through law enforcement agencies, still demands the literal presence of coercion, resulting in victims in situations of sexual exploitation and power

dynamics often being treated as perpetrators of criminal acts. The case of Pina Aprilianti (known as Vina Garut) illustrates this issue. In her appeal, the Bandung High Court stated that Pina had “intentionally or with her consent” become the subject of pornography and was therefore deemed to have fulfilled the elements of a criminal offense under Article 8 in conjunction with Article 34 of the Pornography Law. The judge emphasized that no “irresistible coercion” was found, so the act was considered to have been committed against her own will (Putusan Pengadilan Tinggi Bandung Nomor 150/Pid.Sus/2020/PT BDG, 2020).

Here it is evident that the concept of coercion is narrowly interpreted as actual physical force and does not account for psychological vulnerability, economic entrapment, or a history of exploitation dating back to childhood—factors that were actually revealed during the trial proceedings (Putusan Pengadilan Tinggi Bandung Nomor 150/Pid.Sus/2020/PT BDG, 2020). Such an attitude reflects the application of positive victimology, which judges the victim’s behavior and positions them as a party sharing responsibility for the crime committed against them. In line with this, an ASEAN study on the implementation of the principle of non-punishment in the region notes that the application of Article 18 in Indonesia still exhibits a bias toward *victim blaming*. Law enforcement officials tend to overlook the fact that victims of human trafficking often commit legal violations under circumstances of indirect coercion resulting from exploitation.

Meanwhile, critical victimology views victims not only as individuals experiencing suffering, but also as subjects whose position is shaped by the legal, economic, and state power structures. This approach critiques how criminal law and law enforcement agencies often reproduce structural injustice by criminalizing socially and economically marginalized individuals. In the TPPO, critical victimology highlights that the definition of “victim” is often narrowly defined by the state through rigid legal norms, thereby ignoring the reality of non-physical exploitation experienced by victims.

When the element of coercion in Article 18 of the TPPO Law is interpreted literally as physical coercion or the threat of direct violence, victims who experience economic pressure, psychological manipulation, or structural dependency lose recognition as victims. Critical victimology views this situation as a form of structural criminalization, where the law is not neutral but aligns with the logic of formal order while disregarding substantive justice. Consequently, the state plays a dual role: on one hand, it claims to combat human trafficking, yet on the other, it expands the scope of criminalization against victims who should be protected.

From a positive victimology perspective, court practices in the Pina case reveal a state response pattern that treats victims as complicit parties. The lack of recognition regarding power imbalances in online-based prostitution, economic pressures, emotional dependency, and the sexual trauma experienced by victims indicates that the state still interprets coercion rigidly. In reality, the mechanisms of exploitation in human trafficking are often psychological, economic, and social in nature—difficult to identify yet just as potent as physical coercion. Consequently, Article 18 fails to function as a tool for victim protection; instead, it becomes a space for once again blaming the victim.

Critical victimology asserts that victim status is not inherent to the individual but is constructed through power mechanisms exercised by law enforcement agencies and the criminal justice system. The focus of analysis is no longer on the presence or absence of harm suffered by an individual, but on the actors who hold the authority to determine who qualifies as a victim and how that determination is influenced by social norms regarding groups deemed worthy of protection. Recognition of a party as a victim only arises if the individual meets the ideal victim construct, which is associated with passivity, a lack of resistance, and no material benefit derived from the criminal situation.

Individuals who experience exploitation but appear active, have a relationship with the perpetrator, or receive certain compensation tend not to be recognized as victims and are instead positioned as parties deserving of criminal punishment. In human trafficking offenses, critical victimology rejects the view that links freedom of choice to the absence of physical violence. Exploitation in human trafficking occurs through psychological control, economic dependence, and social surveillance mechanisms that strip the victim of autonomy to the same extent as the use of physical violence. Criminalizing individuals in such situations is viewed as a form of revictimization because the state prolongs their suffering through legal actions that are supposed to provide protection. This framework reveals the shortcomings in the handling of the Pina Aprilianti case. The appellate ruling concluded that the defendant acted independently and derived economic benefit, thus deemed inconsistent with the characteristics of a victim who lacks choice. This conclusion was reached without considering medical findings indicating repeated trauma resulting from prior sexual exploitation—findings that should have served as an indicator that all her actions were under the perpetrator's influence.

This crucial fact was disregarded because it did not align with the assumed passive image of the "ideal victim." In this context, the state failed to maintain an objective stance. The refusal to grant victim status is a manifestation of the power of labeling, which positions the exploited individual as the perpetrator, thereby deeming them unworthy of protection. Such a paradigm is not only theoretically flawed but also contradicts human rights principles because the burden of blame is shifted onto the victimized party. A similar pattern is evident in two comparative cases that further illustrate the structural failure of Indonesia's non-punishment application. In the first case, two Uzbek nationals were detained by immigration authorities and immediately classified as perpetrators of online prostitution without any prior assessment of potential human trafficking indicators. Both individuals were foreign nationals in an unfamiliar legal and social environment, financially dependent on a network that facilitated their entry and accommodation, and operating under conditions of significant informational and linguistic disadvantage. From a critical victimology perspective, these structural vulnerabilities migration dependency, language barriers, and economic entrapment constitute precisely the conditions of exploitation that the Palermo Protocol identifies as rendering consent irrelevant. Nevertheless, authorities applied a perpetrator-first framework, treating immigration violations and prostitution-related conduct as independent criminal acts rather than as potential manifestations of trafficking. The absence of an early victim identification mechanism meant

that the possibility of exploitation was never formally assessed, and the women's vulnerability was effectively rendered legally invisible (Munir, 2025).

In the second comparative case, a married couple offered sexual services through the MiChat application, and both were prosecuted on equivalent criminal grounds. However, the domestic power dynamics between the spouses were never examined as a potential site of exploitation. Within intimate partner relationships, coercion can operate through emotional dependency, financial control, and social isolation mechanisms that are no less effective than physical force but are systematically excluded from the narrow coercion standard under Article 18. The wife's criminal liability was assessed on the same basis as her husbands without any inquiry into whether her participation was truly voluntary or the product of domestic exploitation. Critical victimology identifies this failure as a reproduction of structural injustice: by treating both parties as legally equivalent actors, the state ignores the gendered and relational dimensions of exploitation that human trafficking frequently operates through (Wahyono, 2025).

The victimological analysis presented above reveals a fundamental tension between how Indonesian law constructs victim status and how international standards define the obligations of states toward trafficking victims. The consistent criminalization of individuals in exploitative situations as demonstrated across the three cases examined is not merely a product of judicial discretion but reflects a deeper normative gap between Article 18 of the TPPO Law and the international legal framework to which Indonesia has committed. The following section examines this normative gap directly, comparing the provisions of the Palermo Protocol and the ASEAN Convention Against Trafficking in Persons with the current formulation of Article 18, in order to identify where Indonesian law falls short and what reforms are necessary to bring it into alignment with its international obligations.

3.2 Alignment of Regulations and the Application of the Non-Punishment Principle for Victims of Human Trafficking in Indonesia with International Provisions

The non-punishment principle affirms that victims of human trafficking or sexual exploitation cannot be held criminally liable for acts arising as a consequence of the exploitation they have experienced. International instruments such as the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* mandate that states provide effective protective measures, including the exemption of victims from criminal liability for acts directly related to the crime. Indonesia has enshrined this concept in Article 18 of Law No. 21 of 2007; however, the requirement of coercion as a primary element has created significant obstacles to the consistent implementation of the principle of *non-punishment*.

Human trafficking, as a transnational and organized crime, has long been viewed as a serious threat to humanity and international order. This awareness prompted the United Nations to establish the *United Nations Convention Against Transnational Organized Crime*, or the 2000 Palermo Convention, as a normative response to the rise of transnational organized crime. This Convention serves as the primary international legal framework for efforts to prevent and eradicate such crimes, further reinforced by the Protocol to Prevent, Suppress, and Punish

Trafficking in Persons, Especially Women and Children, as a specialized instrument regulating the criminal offense of human trafficking.

In line with the development of this international legal framework, commitments to combat human trafficking have also been established at the regional level. The *Association of Southeast Asian Nations*, as the regional organization for Southeast Asia, adopted the *ASEAN Convention Against Trafficking in Persons* as a form of joint agreement among member states to address this crime. This instrument emphasizes a comprehensive approach encompassing prevention, victim protection, and the strengthening of cooperation and coordination among ASEAN member states as well as with the international community. The ACTIP explicitly places victims, particularly women and children, at the center of policy and promotes the harmonization of legal and institutional measures at the regional level. As a member of both the international and regional communities, Indonesia has committed itself to these various legal instruments.

Ratification of the Palermo Protocol was carried out through Law No. 14 of 2009, while ratification of the *ASEAN Convention Against Trafficking in Persons, Especially Women and Children* was implemented through Law No. 12 of 2017. At the national level, this commitment is reinforced by the existence of Law No. 21 of 2007 on the Eradication of the Crime of Trafficking in Persons, which serves as the foundation for domestic law enforcement. These instruments collectively not only reflect Indonesia's seriousness in combating human trafficking but also provide a legal foundation for more effective cross-border cooperation, particularly within the ASEAN framework.

A direct comparison between international provisions and Article 18 of the TPPO Law reveals a significant normative gap. Under Article 3(b) of the Palermo Protocol, the consent of a victim of trafficking is irrelevant where any of the means of trafficking have been used including abuse of power or a position of vulnerability. This provision implicitly renders criminal liability for acts committed under exploitative conditions incompatible with the Protocol's protective framework, as it recognizes that genuine autonomy cannot exist where such means are present. At the regional level, Article 14(7) of the *ASEAN Convention Against Trafficking in Persons* explicitly addresses the non-punishment principle, providing that each party shall, subject to its domestic laws and in appropriate cases, consider not holding victims of trafficking criminally or administratively liable for unlawful acts committed by them if such acts are directly related to their trafficking situation. Furthermore, the *ASEAN Multi-Sectoral Work Plan Against Trafficking in Persons 2023–2028 (Bohol TIP Work Plan 2.0)* strengthens this commitment by affirming that trafficked persons should not be held criminally or administratively liable for unlawful acts committed as a direct result of being trafficked.

By contrast, Article 18 of Law No. 21 of 2007 conditions non-punishment on proof of coercion, placing the burden on the victim and restricting protection to a single, narrowly defined criterion. The gap between these frameworks is threefold: first, international standards recognize vulnerability and abuse of power as sufficient to negate consent and, by extension, criminal liability, while Article 18 demands demonstrable physical coercion; second, Article 14(7) ACTIP focuses on the direct relationship between the trafficking situation and the unlawful act, while Indonesian judicial practice applies a stricter threshold; and third, the Bohol TIP Work Plan

2.0 moves toward treating non-punishment as a baseline obligation, while Indonesia's legal framework still treats it as an exception conditioned on victim proof. This normative gap explains why, despite Indonesia's formal ratification of both the Palermo Protocol through Law No. 14 of 2009 and ACTIP through Law No. 12 of 2017, the principle of non-punishment remains largely declaratory in practice.

Indonesia's adherence to these international and regional instruments carries normative implications for the state's treatment of victims of human trafficking. The provisions of the Palermo Protocol, reinforced by human rights principles, as well as the regulations in Law No. 21 of 2007, underscore the urgency of protecting victims through the application of the principle of non-punishment. This principle implies that victims cannot be held criminally liable for acts committed as a direct result of the exploitative conditions they have experienced, including involvement as drug couriers, prostitution, or immigration violations.

Within this framework, recognition of the *non-punishment* principle is an inseparable legal consequence of the victim protection approach in both international and national law. This principle affirms that law enforcement regarding human trafficking offenses is not solely directed at punishing perpetrators but must also ensure the restoration of victims' rights and prevent the re-criminalization of individuals in vulnerable and coerced positions (Chandrawaty, 2020; Prihanta & Dewi, 2025).

The handling of the Pina Aprilianti case clearly illustrates this issue. Despite significant evidence of sexual exploitation such as recordings of content distribution, financial transaction flows, and indications of psychological trauma the court refused to recognize her status as a victim. The appellate ruling concluded that there was no irresistible coercion, and thus the defendant's actions were deemed to have been committed intentionally. This conclusion has implications for the criminalization of individuals who should be entitled to protection and simultaneously confirms victimological critiques regarding the literal application of the requirement for physical coercion to reject the application of *non-punishment*.

An analysis of two comparable cases reinforces these findings. In the case of two Uzbek nationals detained by immigration authorities, officials were quicker to frame their actions as the criminal offense of online prostitution without an initial assessment of potential involvement in human trafficking networks or patterns of exploitation against them. The migration context and inherent dependency of both individuals indicate potential exploitation that went unrecognized (Munir, 2025). In the case of a married couple offering services via the MiChat app, economic dynamics and the use of digital platforms could potentially constitute patterns of exploitation, though authorities still classified both as providers of sexual services without assessing the vulnerability or pressure experienced by either party (Wahyono, 2025). This situation indicates that the implementation of *non-punishment* in Indonesia remains influenced by a positive victimology paradigm that emphasizes the assessment of the victim's behavior—such as their level of agency or potential for profit—rather than the conditions of exploitation and control that limit the victim's autonomy. Consequently, victims who should be receiving protection instead face the risk of criminal prosecution, while structural perpetrators are not always the focus of law enforcement. The non-punishment norm ultimately remains

merely declaratory because legal interpretation and enforcement practices remain highly limited.

Legal handling of cases where human trafficking is reasonably suspected in Indonesia should not only examine the individual relationship between perpetrators and victims but also consider how social, political, and economic structures contribute to the vulnerability of human trafficking victims—who, in this context, may also act as perpetrators in other criminal offenses related to human trafficking. Critical victimology, which asserts that victim status is not inherent to the individual, must be an integral part of the approach taken by law enforcement. The legal process should no longer hinge on whether or not an individual has suffered harm, but rather on the actors with the authority to determine who qualifies as a victim and how that determination is influenced by social and economic norms regarding which groups are deemed worthy of protection.

In light of the foregoing analysis, a reformulation of Article 18 of the TPPO Law is both necessary and urgent. Such reformulation should incorporate at minimum three structural changes aligned with international standards. First, the physical coercion requirement must be replaced with a broader exploitation standard that recognizes psychological control, economic dependency, power imbalance, and structural vulnerability as equally valid bases for non-punishment. Second, an early victim identification mechanism must be institutionalized as a mandatory procedural step prior to any criminal prosecution in cases where trafficking indicators are present, guided by vulnerability indicators consistent with Article 3 of the Palermo Protocol, and shifting the burden of proof to the state to demonstrate that the individual acted with genuine autonomy free from exploitation. Third, the reformulated provision should explicitly state that any act committed by a victim within the context of exploitation regardless of apparent agency, economic benefit derived, or the absence of visible physical force falls within the scope of non-punishable conduct, consistent with Article 14(7) of the ACTIP and the Bohol TIP Work Plan 2.0. Together, these reforms would bring Article 18 into substantive alignment with Indonesia's international obligations and would ensure that the non-punishment principle functions as a genuine protective mechanism rather than a declaratory norm that is systematically denied in practice.

4. Conclusion

A study of the implementation of Article 18 of the Law on Trafficking in Persons indicates that victim protection is still hindered by a perspective that places the burden of proof on the victim to demonstrate their powerlessness. The interpretation of the element “forced to commit a criminal act” remains limited to physical violence, so that power dynamics, economic dependence, psychological manipulation, and various forms of control in exploitative situations are not yet accepted as evidence of the victim’s loss of autonomy. This situation demonstrates that the positive victimology paradigm still dominates case handling, even though human trafficking crimes inherently place victims in a position of complete lack of freedom. This situation is exacerbated by the failure to identify victims from the early stages of the legal process. Acts that should be examined as suspected human trafficking are more often

criminalized, particularly when they do not align with the ideal victim profile understood by law enforcement. This situation aligns with victimological critiques of the victim-labeling process, which is heavily shaped by social values and structures. Victims of online exploitation, sexual exploitation, or economic exploitation are often positioned as perpetrators because their actions are interpreted as forms of consent, even though the exploitative situation renders such consent irrelevant. This analysis also reveals a discrepancy between the provisions of Article 18 and international protection standards, which affirm that a victim's consent in an exploitative situation does not negate their status as a victim. The principle of non-punishment in international standards does not require literal proof of coercion and views every action by the victim as part of the criminal chain. This inconsistency results in legal protection for victims not being fully implemented and creates an opening for revictimization. Thus, reforming Article 18 and establishing victim identification mechanisms from the very earliest stage is an urgent necessity to ensure that every victim of human trafficking receives unconditional protection. These efforts will strengthen the application of the non-punitive principle, reduce the tendency to blame victims, and ensure that law enforcement no longer prolongs the suffering of victims who deserve comprehensive recovery.

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