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

State Responsibility for Protecting Women and Children from Human Trafficking: An International Law Perspective

Elen Anedya Frahma¹⁾ & Eva Arief²⁾

¹⁾Faculty of Law, Universitas 17 Agustus 1945 (UNTAG), Semarang, Indonesia, E-mail: elen-anedyafrahma@untagsmg.ac.id (Correspondent Author)

²⁾Faculty of Law, Universitas 17 Agustus 1945 (UNTAG), Semarang, Indonesia, E-mail:

Abstract. *Human trafficking is a transnational crime and a serious human-rights violation that disproportionately affects women and children. This article examines the scope of state responsibility under international law and evaluates Indonesia's implementation of duties to prevent trafficking, identify and protect victims, investigate offenders, and provide effective remedies. The study uses normative legal research through statutory, conceptual, international-instrument, and human-rights approaches. The collected legal materials were analysed qualitatively through legal interpretation and systematic analysis to assess Indonesia's compliance with international obligations concerning the protection of women and children who are victims of trafficking. It analyses the Palermo Protocol, CEDAW, the Convention on the Rights of the Child, ACTIP, the Articles on State Responsibility, Indonesian legislation, and recent Indonesian scholarship. The study finds that responsibility is not limited to criminalisation. States must exercise due diligence against foreseeable risks, apply gender-sensitive and child-sensitive identification, prevent punishment for compelled conduct, address official complicity, secure restitution, support long-term recovery, and coordinate cross-border protection. Indonesia has established a broad legal framework, but fragmented coordination, inconsistent screening, weak execution of restitution, uneven regional capacity, and digital recruitment reduce its effectiveness. The study proposes a novel integrated state-responsibility model that combines due diligence obligations, victim-centred protection, effective remedies, cross-border cooperation, and measurable indicators to strengthen anti-trafficking governance in Indonesia.*

Keywords: *Children; Human; Law; Responsibility; Trafficking.*

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1. Introduction

Human trafficking combines organised criminality with the denial of liberty, security, equality, and dignity. Under the Palermo Protocol, trafficking consists of an act, prohibited means, and an exploitative purpose. For a child, the prohibited means need not be proved. Trafficking may occur without an international border and may involve sexual exploitation, forced labour, domestic servitude, forced marriage, forced criminality, illegal adoption, or organ removal. Indonesian scholarship therefore treats it as both a *transnational crime* and a human-rights violation.¹

Women and children face heightened risk because trafficking exploits gender inequality, poverty, family dependence, unsafe migration, limited education, and discriminatory labour markets. Technology has widened this risk through false advertisements, private messaging, online grooming, remote surveillance, and forced online activity.² A legal response must address these conditions rather than focus only on the final act of exploitation.

The international framework is cumulative. The Palermo Protocol establishes criminalisation, prevention, protection, and cooperation duties. CEDAW requires suppression of trafficking in women. The Convention on the Rights of the Child, or CRC, protects children against sale, trafficking, sexual exploitation, and economic exploitation. ACTIP adds regional standards on identification, non-punishment, care, repatriation, and cooperation.³

Indonesia has enacted Law Number 21 of 2007, ratified the Palermo Protocol and ACTIP, restructured its anti-trafficking task force through Presidential Regulation Number 49 of 2023, and adopted integrated victim-service procedures. Nevertheless, research identifies fragmented coordination, inconsistent identification, weak restitution, and uneven local capacity.⁴ These gaps raise the central question of when deficient implementation becomes a breach of the state's international duty to protect.

Among these gaps, the enforcement of restitution is particularly instructive: Indonesian law already recognises restitution as a victim's right, yet judicial orders are frequently issued without

¹ Kadek Novi Darmayanti et al., "Tindak Pidana Perdagangan Orang (Human Trafficking) sebagai Transnational Crime," *Ganesha Law Review* 4, no. 2 (2022): 33–42, <https://doi.org/10.23887/glr.v4i2.1425>.

² Heni Susanti et al., "The Effect of Technology on Trafficking in Persons after the COVID-19 Pandemic," *Proceedings of the International Conference on Malay Identity*, 2022, <https://repository.uir.ac.id/22750/1/6>. The Effect of Technology on Trafficking.pdf.

³ European Court of Human Rights, *Rantsev v. Cyprus and Russia* (2010).

⁴ Okky Chahyo Nugroho, "Tanggung Jawab Negara dalam Penanganan Tindak Pidana Perdagangan Orang," *Jurnal Penelitian Hukum De Jure* 18, no. 4 (2018): 543–60, <https://doi.org/10.30641/dejure.2018.V18.543-560>.

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any corresponding capacity to enforce them, since financial investigation into an offender's assets typically begins only after prosecution has commenced.

This article asks to what extent Indonesia's weak enforcement of restitution for trafficking victims constitutes a breach of the state's due diligence obligation under international law, and what mechanism would close that gap.

2. Research Method

This article uses normative legal research with statutory, conceptual, international-instrument, and human-rights approaches. Primary materials include international conventions, the Articles on State Responsibility, Indonesian laws, and regulations. Secondary materials consist of Indonesian journal articles and institutional reports published mainly within the last ten years. The analysis identifies applicable duties, distinguishes primary obligations from the legal consequences of breach, compares international standards with Indonesian arrangements, and formulates prescriptive reforms. The method is qualitative and does not determine criminal liability in an individual case.

3. Results and Discussion

3.1. Trafficking as a Transnational Crime and Human-Rights Violation

Trafficking must be distinguished from migrant smuggling. Smuggling primarily concerns facilitated unlawful border crossing, while trafficking concerns exploitation and may occur within one state. Initial consent to travel or work does not excuse later deception, coercion, or abuse of vulnerability. For children, recruitment, transport, transfer, harbouring, or receipt for exploitation is trafficking without proof of force or fraud.⁵ This rule prevents an adult-centred concept of consent from weakening child protection.

The harm is continuing and multidimensional. Recruitment, confinement, exploitative work, and threats may violate liberty, bodily integrity, labour rights, privacy, and family life. Authorities can aggravate the injury by treating victims as offenders, disclosing identities, or providing unsafe return. A conviction alone is therefore insufficient. Effective protection requires

⁵ Association of Southeast Asian Nations, "ASEAN Convention Against Trafficking in Persons, Especially Women and Children" (2015), <https://asean.org/wp-content/uploads/2015/12/ACTIP.pdf>.

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information, legal assistance, health care, psychosocial support, education, safe accommodation, reintegration, and an enforceable remedy.⁶

3.2. State Responsibility and Due Diligence

State responsibility operates through primary and secondary rules. Primary rules define duties under treaties and human-rights law. Secondary rules determine attribution, breach, and consequences. Under the Articles on State Responsibility, an internationally wrongful act exists when conduct attributable to the state breaches an international obligation. Conduct includes action and omission, and acts of state organs remain attributable even when an official exceeds authority.⁷

Private trafficking is not automatically attributable to the state. However, states must exercise due diligence to protect individuals against serious abuse by private actors. Due diligence is an obligation of reasonable conduct, not strict liability. A breach may arise when authorities knew or should have known of a real trafficking risk and failed to use available preventive, investigative, protective, or remedial measures. This approach appears in *Rantsev v. Cyprus and Russia* and CEDAW General Recommendation No. 38.⁸

The standard requires practical effectiveness. Adequate laws are insufficient when screening is inaccessible, interpreters are unavailable, shelters are unsafe, investigations are delayed, or restitution cannot be enforced. Official complicity creates a more direct basis for attribution. States must investigate officers who facilitate documents, disclose operations, return victims to exploiters, or suppress complaints. Consequences may include cessation, non-repetition, compensation, rehabilitation, satisfaction, and institutional reform.

⁶ Andi Jefri Ardin and Beniharmoni Harefa, "Pemenuhan Hak Anak Korban Tindak Pidana Perdagangan Orang," *Jurnal Suara Hukum* 3, no. 1 (2021): 174–96, <https://doi.org/10.26740/jsh.v3n1.p174-196>.

⁷ International Law Commission, "Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries" (United Nations, 2001), https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf.

⁸ Lourensy Varina Sitania and Eko Suponyono, "Akomodasi Pemberantasan Tindak Pidana Perdagangan Orang dalam Aspek Hukum Internasional dan Nasional," *Jurnal Pembangunan Hukum Indonesia* 2, no. 1 (2020): 38–54, <https://doi.org/10.14710/jphi.v2i1.38-54>.

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3.3. International Duties toward Women and Children

3.3.1. Palermo Protocol

The Palermo Protocol requires criminalisation and cooperation, but it also addresses victim privacy, information, safety, recovery, prevention, research, border measures, and factors that create vulnerability. These duties are interdependent. Prosecution fails when victims are not identified. Protection fails when criminal assets remain available. Prevention fails when migration and recruitment systems remain unsafe.

3.3.2. CEDAW and the CRC

CEDAW Article 6 and General Recommendation No. 38 require gender-sensitive prevention, early identification, safe reporting, legal aid, non-discriminatory assistance, and effective remedies. The CRC requires the best interests of the child, participation, protection from exploitation, and recovery in conditions that foster dignity. Child-sensitive procedures require trained interviewers, appropriate guardianship, education continuity, family assessment, and non-punishment for conduct compelled by traffickers.

3.3.3. ACTIP

ACTIP strengthens regional criminalisation, victim protection, mutual legal assistance, safe repatriation, and law-enforcement cooperation. It supports non-punishment for unlawful acts directly related to trafficking. Its practical value depends on cross-border referral, risk assessment, continuity of care, preservation of digital evidence, and financial intelligence among origin, transit, and destination states.

3.4. Indonesia's Legal and Institutional Framework

Law Number 21 of 2007 criminalises individual and corporate trafficking and recognises protection, restitution, rehabilitation, repatriation, and social reintegration. Ratification of the Palermo Protocol and ACTIP supports interpretation consistent with international standards. Domestic practice should expressly recognise that movement is not essential and that prohibited means need not be proved in child cases. Indonesian studies have identified a continuing need for harmonisation in definition and application.⁹

⁹ Ananda Chrisna D Panjaitan, "Harmonisasi Undang-Undang Nomor 21 Tahun 2007 tentang Pemberantasan Tindak Pidana Perdagangan Orang dengan Protokol Palermo dalam Perlindungan Perdagangan Orang di Indonesia," *Jurnal Yustitia* 16, no. 1 (2022): 1–13, <https://doi.org/10.62279/yustitia.v16i1.895>.

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Indonesia uses a multi-agency task-force model. Presidential Regulation Number 49 of 2023 adjusts the national task force, while Ministerial Regulation Number 8 of 2021 provides integrated service procedures. The architecture connects police, prosecutors, immigration, labour, health, social services, and local government. Yet a broad membership list does not ensure performance. Every institution needs a clear role, response time, referral route, budget, trained staff, and outcome reporting.¹⁰

Restitution is a recognised right, but execution is difficult when assets are hidden, financial investigation begins late, or losses are poorly documented. A victim-centred system must connect early asset tracing, prosecutorial requests, judicial orders, enforcement, and state compensation when offender-funded payment is unavailable. This gap meets the threshold of a due diligence breach, rather than an ordinary administrative shortcoming, for three reasons.

First, the risk is foreseeable: Indonesian scholarship has documented the same enforcement weakness repeatedly over several years. Second, an available remedy exists but is not systematically used: early asset tracing at the point of victim identification, rather than after prosecution begins. Third, the consequence falls on victims who have already secured a conviction, meaning the state's omission nullifies a right it has itself granted. Read together with the due diligence standard in *Rantsev v. Cyprus and Russia* and CEDAW General Recommendation No. 38, this pattern of known, foreseeable, and remediable non-enforcement is capable of constituting an internationally wrongful omission.¹¹

3.5. Implementation Gaps

While restitution enforcement is this article's central concern, it does not operate in isolation. Several related implementation weaknesses shape the conditions under which restitution failures occur, and are outlined briefly below.

The first gap is identification. Victims may appear as undocumented migrants, persons in prostitution, workers in online-fraud compounds, or children using false documents. A narrow focus on immigration status or an isolated offence can lead to detention, deportation, or

¹⁰ Meysasi Kirana Resa and Nyoman Serikat Putra Jaya, "Problematika Gugus Tugas dalam Upaya Pencegahan dan Penanganan Tindak Pidana Perdagangan Orang (Human Trafficking)," *Masalah-Masalah Hukum* 50, no. 2 (2021): 161–71, <https://doi.org/10.14710/mmh.50.2.2021.161-171>.

¹¹ International Organization for Migration Indonesia, "Panduan Asesmen Situasi Tindak Pidana Perdagangan Orang" (Jakarta: IOM Indonesia, 2025), <https://indonesia.iom.int/sites/g/files/tmzbd1491/files/documents/2025-11/panduan-asesmen-situasi-tppo.pdf>.

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prosecution. Screening should precede coercive action, use a reasonable-grounds threshold, and be confidential, multilingual, gender-sensitive, and child-sensitive.

The second gap is coordination and local capacity. Task-force fragmentation can diffuse accountability. Regional differences in budget, personnel, shelters, legal aid, and data systems produce unequal protection. Binding referral procedures should specify who decides victim status, who provides immediate safety, and how services continue across provinces and national borders.

The third gap is remedy. Short-term shelter does not equal recovery. Survivors may need long-term health care, counselling, education, documentation, safe housing, and livelihood support. Assistance should not depend on testimony because trauma, fear, or family pressure may prevent participation in proceedings. Child-victim research shows that formal rights do not always result in effective restitution and recovery.¹²

The fourth gap concerns digital evidence and measurement. Authorities need rapid preservation of platform data, financial tracing, and cross-border access to electronic evidence. At the same time, anti-trafficking policy should be measured through protective outcomes, including timely screening, referral, legal aid, restitution execution, education continuity, safe return, investigation of official complicity, and prevention of repeated exploitation.

The non-punishment principle also requires clearer operational rules. Trafficked persons may be compelled to use false documents, breach immigration rules, transport illegal goods, participate in online fraud, or perform sexual services. Criminal or administrative punishment can reinforce control by traffickers and deter future reporting. Authorities should assess whether the unlawful act was a direct consequence of exploitation before arrest, charge, detention, or removal. For children, uncertainty should be resolved in favour of protection and the best-interests principle. A temporary recovery period and access to counsel should precede any decision that could expose the person to punishment or return.

Finally, effective remedy must address both offender responsibility and state failure. Restitution against the trafficker remains essential, but it may be unavailable when assets are transferred, concealed, or located abroad. The state should therefore provide an accessible compensation mechanism and pursue recovery from offenders afterward. Remedies should also correct harms caused by public authorities, including wrongful detention, unsafe disclosure, failure to investigate, or return without risk assessment.

¹² Ardin and Harefa, "Pemenuhan Hak Anak Korban Tindak Pidana Perdagangan Orang."

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Independent complaint procedures and review of institutional failures can provide satisfaction and guarantees of non-repetition. Without these measures, the legal framework remains prosecution-centred and does not fully restore the rights of women and children.¹³

3.6. An Integrated Model of Responsibility

Closing this gap requires a mechanism more specific than a general call for better coordination. This article proposes a restitution-accountability framework built on three enforceable components: early asset tracing, which requires financial investigation to begin at the point of victim identification rather than after prosecution; mandatory judicial timelines, which require courts to rule on restitution requests within a fixed period following conviction; and a state-funded compensation fallback, which ensures victims receive compensation even where an offender's assets are unavailable, with the state pursuing recovery afterward. Table 1 sets out how each component can be measured.

Component	Legal Basis	Measurable Indicator
Early Asset Tracing	Palermo Protocol; ARSIWA due diligence standard	Financial investigation opened within a fixed period of victim identification, prior to prosecution.
Mandatory Judicial Timeline	Law No. 21 of 2007; CEDAW GR No. 38	Court ruling on restitution issued within a defined period after conviction.
State-Funded Compensation Fallback	CEDAW GR No. 38; CRC recovery standard	Proportion of convicted cases in which victims receive compensation despite unrecovered offender assets.

Table Restitution-Accountability Framework

4. Conclusion

Indonesia's legal framework formally satisfies the international standard for restitution as a victim's right, yet documented and repeated failures in its enforcement, particularly the late onset of financial investigation and the absence of binding judicial timelines, mean that the right rarely translates into actual compensation. Because this weakness is foreseeable, well-documented in Indonesian scholarship, and remediable through available tools that authorities do not systematically use, it meets the threshold of a breach of the state's due diligence obligation under international law, rather than an ordinary administrative shortcoming. The restitution-accountability framework proposed in this article, comprising early asset tracing,

¹³ Nugroho, "Tanggung Jawab Negara dalam Penanganan Tindak Pidana Perdagangan Orang."

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mandatory judicial timelines, and a state-funded compensation fallback, offers a concrete and measurable standard against which Indonesia's future compliance can be assessed.

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