



LICS 2026

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

Transformation of the Legal Architecture of the Juvenile Justice System: Integrating Constitutional Rights and the Principle of the Best Interests of the Child for Child Victims of Human Trafficking

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Abstract. Children are both a trust and the future of the nation, whose rights are fully guaranteed by the state constitution. Unfortunately, they remain vulnerable to becoming victims of transnational crimes such as the Crime of Human Trafficking (TPPO). The reality in the field shows that children who become victims of human trafficking often suffer double victimization: they are not only exploited by criminal networks but also frequently face a rigid justice system that is not yet fully child-friendly. The current legal architecture of Indonesia's juvenile justice system, although founded on the Juvenile Criminal Justice System Law (UU SPPA), still tends to focus more on children in conflict with the law as offenders, while the mechanisms for special protection and recovery for child victims of human trafficking remain fragmented and overlap with other legal instruments. This creates legal gaps that hinder the fulfillment of children's constitutional rights to grow, develop, and be free from all forms of violence and discrimination. This study employs normative legal research (doctrinal legal research). The approaches used are the statutory approach to examine the consistency and harmony among legal regulations, and the conceptual approach. This study proposes a transformative legal architecture design that directly integrates constitutional rights into the procedures for handling child victims of human trafficking. This transformation emphasizes a paradigm shift from retributive justice toward restorative and rehabilitative justice centered on the victim. The recommendations include harmonizing legislation, strengthening the role of integrated protection institutions (such as LPSK and KPAI), and creating specialized courtrooms that guarantee confidentiality, security, and the psychological recovery of children. Ultimately, this integration is expected to create a justice system that not only punishes perpetrators with a strong deterrent effect but also restores the dignity, honor, and future of child victims of human trafficking as mandated by the 1945 Constitution.

Transformation of the Legal Architecture...
(Munzaroh)



LICS 2026

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

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1. Introduction

The Unitary State of the Republic of Indonesia has affirmed its commitment to protecting all its people, one manifestation of which is the constitutional guarantee of children's fundamental rights. Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia explicitly states that every child has the right to survival, growth, and development, as well as the right to protection from violence and discrimination.¹ This constitutional guarantee positions children not merely as weak legal objects but as legal subjects whose rights are an integral part of human rights that the state is obligated to protect, respect, and fulfill. Therefore, all legislative policies and judicial practices must regard the Constitution as the primary standard of review.

However, despite these strong constitutional guarantees, threats to children's safety and future continue to evolve, one of which manifests in the form of the Crime of Human Trafficking (TPPO). This crime is an extraordinary offense that degrades human dignity by treating people, especially children, as commodities that can be bought and sold. Based on data from various child protection agencies and law enforcement institutions, the trends of commercial sexual exploitation, child labor, and baby trafficking have reached alarming levels. Children from economically and socially vulnerable families are often deceived by the false promises of trafficking syndicates, resulting in physical and psychological suffering and the loss of their freedom.

When children become trapped in human trafficking networks, they require prompt, appropriate legal assistance that is based on a perspective of special protection. Unfortunately, the reality of Indonesia's law enforcement system often proves inadequate in handling cases involving child victims of human trafficking. The current legal architecture of the juvenile criminal justice system, based on Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (UU SPPA), has indeed introduced restorative justice as a positive development. Nevertheless, the broader framework of the UU SPPA focuses primarily on procedures for resolving cases involving children as perpetrators of criminal offenses (Children in Conflict with the Law/ABH), while specific guidelines for handling children as victims of

¹ Majelis Permusyawaratan Rakyat Republik Indonesia, *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945* (Jakarta: Sekretariat Jenderal MPR RI, 2002), Pasal 28B ayat (2).



LICS 2026

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

organized transnational crimes such as human trafficking have not yet been specifically and comprehensively accommodated.

The shortcomings of this legal architecture become even more apparent when examining Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking. Although this law imposes severe criminal sanctions on perpetrators and recognizes victims' rights to restitution, its approach often remains conventional. Law enforcement officers tend to focus more on proving the elements of the criminal offense in order to punish the perpetrators, thereby treating the testimony of child victims merely as evidence in court.² Children are compelled to recount their traumatic experiences before investigators and in court, often without adequate psychological support or strict protection of their identities.

This condition directly triggers what criminology refers to as secondary trauma (secondary victimization) or structural victimization by the legal system itself. Children who should receive protection and recovery are instead forced to confront a rigid, intimidating judicial environment that fails to take their mental condition into account. Rather than experiencing justice, child victims of human trafficking often feel judged, frightened, and alienated. This clearly contradicts the principle of "the best interests of the child," a fundamental principle recognized globally through the Convention on the Rights of the Child, which has been ratified by Indonesia.³

The principle of the best interests of the child requires that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts, administrative authorities, or legislative bodies, the best interests of the child must be a primary consideration. In the context of child victims of human trafficking, this principle should mean that legal proceedings must adapt to the child's recovery needs, rather than forcing the child to adapt to rigid legal procedures. The failure to integrate this principle into procedural law results in children's constitutional rights becoming little more than empty promises with no real binding force in courtrooms.

Considering the overlapping regulations and the weak paradigm of victim protection, an in-depth review is needed to dismantle the current legal architecture of the juvenile justice system. Legal architecture encompasses not only which laws are in force but also how

² Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana: Perkembangan Penyusunan Konsep KUHP Baru* (Jakarta: Kencana Prenada Media Group, 2011), 112.

³ Perserikatan Bangsa-Bangsa, *Convention on the Rights of the Child* (Diadopsi melalui Resolusi Majelis Umum PBB 44/25, 20 November 1989), Pasal 3



LICS 2026

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

institutional structures, legal culture, and legal substance interact with one another.⁴ If this architecture is fundamentally flawed by design, then the justice it produces will inevitably fail to provide maximum protection for child victims of exploitation and trafficking. Therefore, partial reform is no longer sufficient; what is needed is a radical transformation that addresses the philosophical foundations of Indonesia's juvenile justice system.

This transformation of the juvenile justice architecture must be built upon a strong integration between children's constitutional rights and the principle of the best interests of the child. Such integration means that every stage of investigation, prosecution, trial, and post-judgment in human trafficking cases involving children must automatically activate an integrated protection mechanism. The Witness and Victim Protection Agency (LPSK), the Indonesian Child Protection Commission (KPAI), the police, and the judiciary must operate within a unified, non-bureaucratic command system when handling child victims of human trafficking. The rights to restitution, psychosocial recovery, and education must be guaranteed from the moment the child is rescued, rather than waiting until a court judgment has obtained permanent legal force (inkracht).

This article is highly relevant amid the increasing number of digitally based and cross-border human trafficking cases targeting children as victims. Through this paper, the author aims to critically analyze the current state of constitutional rights protection for child victims of human trafficking within the criminal justice system. In addition, this article seeks to identify the ideal model for operationalizing the principle of the best interests of the child within procedural law, so that no child will become a victim for a second time at the hands of the nation's own legal system.

Based on the comprehensive background described above, this study focuses on answering three principal questions. First, how does the current legal architecture accommodate the constitutional rights of child victims of human trafficking? Second, to what extent is the principle of the best interests of the child implemented in criminal proceedings involving human trafficking cases? Third, what is the ideal design for transforming the legal architecture of the juvenile justice system to integrate constitutional rights and recovery-oriented protection for child victims of human trafficking in the future? The answers to these questions are expected to contribute both academically and practically to policymakers and law enforcement officials in Indonesia.

⁴ Romli Atmasasmita, *Sistem Peradilan Pidana Kontemporer* (Jakarta: Kencana, 2010), 45-48.



LICS 2026

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

2. Research Methods

This study employs normative legal research (doctrinal legal research), focusing on the examination and analysis of legal principles, legal norms, and the legal system governing child protection and the crime of human trafficking. The approaches used are the statutory approach to examine the consistency and harmony among legal regulations and the conceptual approach to explore the philosophical meaning of constitutional rights and the principle of the best interests of the child. The primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 39 of 1999 concerning Human Rights, Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, and Law Number 35 of 2014 amending Law Number 23 of 2002 concerning Child Protection. Secondary legal materials consist of legal textbooks, national and international scientific journals, and reports from relevant institutions, all of which are analyzed descriptively and qualitatively to produce prescriptive arguments regarding the ideal design for legal transformation.

3. Results and Discussion

3.1. The Constitutional Rights of Child Victims of Human Trafficking within the Architecture of Indonesia's Legal System

The Indonesian Constitution explicitly grants a special position to children through the formulation of Article 28B paragraph (2) of the 1945 Constitution. This fundamental norm mandates that freedom from violence and discrimination, as well as the right to grow and develop, are absolute rights (both derogable and non-derogable rights in the context of fundamental protection) that must be realized by the state.⁵ In cases of human trafficking, these fundamental rights are forcibly, systematically, and brutally taken away. Therefore, the legal handling of child victims of human trafficking must not merely be viewed as ordinary criminal law enforcement aimed at punishing perpetrators (punitive), but rather as an effort to restore the constitutional rights (constitutional recovery) that have been taken from these children.

Conceptually, the current legal architecture for child protection in Indonesia stands upon three main pillars: the Child Protection Law, the Law on the Eradication of Human Trafficking, and the Juvenile Criminal Justice System Law (SPPA). Unfortunately, these three pillars operate like isolated silos, functioning independently without solid connecting bridges. The Child

⁵ Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia* (Jakarta: Sinar Grafika, 2005), 89.



LICS 2026

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

Protection Law provides general definitions and rights, the Human Trafficking Law imposes severe criminal sanctions and introduces the concept of restitution, while the SPPA Law primarily regulates procedures for trying children who are offenders. This fragmented legal architecture creates ambiguity regarding the status of child victims of human trafficking; law enforcement officers often face uncertainty regarding which procedural legal regime should be applied to protect victims throughout judicial proceedings.

The consequences of this fragmented legal architecture are highly detrimental to children. When a human trafficking case involving a child is uncovered by the police, the child is automatically placed within the rigid general criminal justice system. Indonesia's Criminal Procedure Code (KUHP) does not yet contain a specific chapter comprehensively regulating procedures for examining child victims of extraordinary crimes. Consequently, children are frequently subjected to repeated examinations (multiple police reports), requiring them to repeatedly recall and recount the sexual or physical exploitation they experienced—a process that is medically recognized as severely damaging to the victim's psychological recovery.

Furthermore, the fulfillment of the right to compensation or restitution guaranteed under the Human Trafficking Law (Article 48) for child victims often reaches a dead end.⁶ The current restitution application mechanism is highly bureaucratic and heavily dependent upon a court judgment convicting the perpetrator. If the perpetrator escapes, dies, or is declared unable to pay restitution by the court, the child victim once again bears the consequences without receiving any compensation whatsoever. The state has yet to establish a victim trust fund that can directly provide recovery funds to child victims of human trafficking to compensate for perpetrators' failure to pay restitution.

From a human rights perspective, the state's failure to provide a prompt and certain recovery mechanism for child victims of human trafficking constitutes a violation of constitutional rights by omission. The state is deemed to have failed in fulfilling its obligations to “fulfill” and “protect” its most vulnerable citizens. The Constitutional Court, through various decisions, has emphasized that fair legal protection must encompass tangible benefits rather than merely procedural formal justice that ultimately sidelines the suffering of victims.

At the international level, the Palermo Protocol, supplementing the United Nations Convention against Transnational Organized Crime, specifically requires member states to provide physical, psychological, and social assistance to victims of human trafficking.⁶ Although

⁶ Pemerintah Republik Indonesia, *Undang-Undang Nomor 21 Tahun 2007 tentang Pemberantasan Tindak Pidana Perdagangan Orang*



LICS 2026

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

Indonesia has ratified this protocol, the transplantation of these international norms into the national legal architecture remains only partially implemented. Law enforcement officers in the field (the police and prosecutors) remain primarily focused on successfully prosecuting perpetrators and dismantling trafficking syndicates, while responsibility for the recovery of child victims is often simply shifted to the Social Affairs Office or non-governmental organizations with limited budgets and authority.

To improve this situation, integrating constitutional rights into the legal architecture requires a fundamental shift in perspective. Child victims of human trafficking must be placed at the epicenter of the entire legal process. This means that the success of law enforcement in handling trafficking cases should no longer be measured solely by the severity of prison sentences imposed on traffickers or pimps. Instead, new success indicators must include parameters such as how quickly the child recovers mentally, how completely the child's education is restored, and how fully restitution is paid to rebuild the child's future.

Therefore, the architecture of Indonesia's criminal justice system requires substantial refinement. Positive law must explicitly stipulate that the recovery rights of child victims of human trafficking become the absolute responsibility of the state (strict liability of the state) whenever perpetrators are unable to fulfill them. In this way, the constitutional guarantee embodied in Article 28B of the 1945 Constitution will not remain merely elegant language in the nation's supreme law, but will genuinely manifest as progressive, tangible legal protection directly experienced by child victims of human trafficking throughout the country.

3.2. The Implementation of the Best Interests of the Child Principle in Human Trafficking Judicial Practice

The principle of the best interests of the child constitutes the very spirit of the Convention on the Rights of the Child, which has been widely adopted throughout the world, including within Indonesia's legal system through Article 2 of the Child Protection Law. This principle embodies the fundamental notion that every decision made by competent authorities affecting the life of a child must prioritize whatever most benefits the child's physical, mental, and social well-being.⁷ In juvenile criminal law theory, this principle should serve as the primary analytical framework for law enforcement officers, beginning from the stages of preliminary inquiry, investigation, prosecution, and continuing through court proceedings.

⁷ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UNTOC (Palermo Protocol, 2000), Pasal 6.



LICS 2026

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

However, upon examining its implementation in practice, the application of this principle in human trafficking cases remains far from satisfactory and often amounts to little more than procedural “cosmetics.” The prevailing practice within Indonesia’s judicial system remains heavily legalistic and formalistic. Police officers and prosecutors, constrained by the rigid evidentiary rules of the Criminal Procedure Code, frequently feel compelled to disregard the psychological condition of child victims. For example, in human trafficking trials, children who have been victims of sexual exploitation are often required to appear in intimidating courtrooms, facing or at least remaining in the same building as the perpetrators who previously abused and exploited them.⁸

This physical presence in court becomes an extraordinarily traumatic moment (retraumatization). Although legislation provides for closed hearings in cases involving children or sexual offenses, the courtroom atmosphere with its arrangement of judges, prosecutors, and defense attorneys frequently posing intimidating and confrontational questions places tremendous psychological pressure upon the child. The principle of the best interests of the child should categorically reject such practices. Courts should automatically employ alternative methods of testimony, such as teleconferencing from child-friendly rooms or the use of recorded examinations conducted in the presence of child psychologists.

Beyond testimony issues, implementation of the best interests principle also remains weak regarding confidentiality of identity. Although both the Juvenile Criminal Justice System Law and the Human Trafficking Law prohibit the publication of child victims’ identities, information leaks to the mass media (whether print, electronic, or digital) still frequently occur in practice. Digital records identifying a child as a victim of human trafficking exploitation may become lifelong stigma capable of destroying the child’s future. The law enforcement system has yet to establish effective and immediate deterrent sanctions against officials or third parties who disclose victims’ identities to the public.

Another obstacle lies in the limited capacity and gender- and child-sensitive perspectives among law enforcement officers themselves. Not all police officers, prosecutors, and judges possess certification or specialized training concerning the Juvenile Criminal Justice System, much less the specific handling of child victims of human trafficking. This lack of empathy or psychological understanding often gives rise to victim-blaming questions during legal proceedings, such as asking why the child allowed themselves to be persuaded or why they did

⁸ Maidin Gultom, *Perlindungan Hukum Terhadap Anak dalam Sistem Peradilan Pidana Anak di Indonesia* (Bandung: Refika Aditama, 2014), 67.



LICS 2026

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

not escape. Such questions directly violate the best interests principle because they shift responsibility away from the criminal perpetrator onto the powerless child.⁹

It must be understood that child victims of human trafficking often experience what is known as Stockholm Syndrome or psychological attachment resulting from manipulation by perpetrators, fear of threats to murder family members, or entrapment through debt bondage. Expecting children in such psychologically devastated conditions to think rationally like adults before the law is a serious mistake. Therefore, the best interests principle requires that the voice of the child be heard through restorative rather than intimidating methods. Clinical psychologists and social workers should occupy positions equally as important as legal experts in determining the direction of these cases.

Going forward, judges, as the final gatekeepers of justice, must demonstrate greater courage in developing the law based upon the best interests of the child principle. Judges should not hesitate to reject evidentiary methods proposed by prosecutors or defense attorneys that place psychological pressure upon child victims. Judges should also proactively include orders concerning restitution, medical recovery, and social rehabilitation within their judgments without requiring separate civil litigation. Court decisions must become comprehensive recovery documents rather than merely documents ordering the imprisonment of criminal offenders.

Overall, implementing the best interests of child victims of human trafficking requires a mental and cultural revolution within judicial institutions. Law must function as an instrument of healing (therapeutic jurisprudence), whereby the legal process itself is designed not to inflict additional wounds but instead to become the first step in restoring child victims' dignity, sense of security, and trust in both the state and society.

3.3. Designing the Transformation of an Integrated Juvenile Justice Legal Architecture

In response to the various legal and practical deadlocks described above, a visionary, integrated, and victim-centered design for transforming the juvenile justice legal architecture is required. This new legal architecture must unite the spirit of constitutional rights embodied in the 1945 Constitution, child protection under the Juvenile Criminal Justice System Law and the Child Protection Law, and the anti-trafficking mechanisms contained within the Human Trafficking Law into a single coherent procedural legal framework. This transformation requires simultaneous changes in institutional structures, legal substance, and legal culture to

⁹ Harkristuti Harkrisnowo, "Rekonstruksi Konsep Pemidanaan: Suatu Gugatan Terhadap Proses Legislasi dan Pemidanaan di Indonesia," *Majalah Hukum Nasional* 1, no. 1 (2003): 21.

Transformation of the Legal Architecture...
(Munzaroh)



LICS 2026

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

ensure that the handling of child victims of human trafficking becomes effective, humane, and solution-oriented.

The first step in this transformation design is the creation of a *lex specialis* (special law) or integrated umbrella regulation concerning the “Procedural Law for the Special Protection of Child Victims of Extraordinary Crimes.” Until now, the Juvenile Criminal Justice System Law has monopolized the term “juvenile justice,” while substantively focusing primarily on child offenders. The new architecture must broaden the scope of juvenile justice to include a specialized system for child victims. This regulation should strictly stipulate that examinations of child victims of human trafficking may only occur a maximum of twice once during the investigation stage and once during trial using audiovisual recording technology legally recognized as primary evidence equivalent to physical courtroom attendance.¹⁰

The second step involves restructuring the role of protection institutions. Under the new architecture, the Witness and Victim Protection Agency (LPSK) must no longer remain passive or wait for applications from victims. In human trafficking cases involving children, the involvement of LPSK, the Ministry of Women’s Empowerment and Child Protection (KemenPPPA), and the Social Affairs Office must become automatic and mandatory (automatic triggering mechanism) from the very moment the police issue an Investigation Commencement Order (SPDP). The state must ensure the existence of a dedicated budget allocation (an emergency recovery fund) that can be immediately disbursed without complicated bureaucratic procedures to transfer child victims to safe houses, provide medical treatment, and ensure continuity of their education.

The third step concerns courtroom transformation. The judicial architecture must require the establishment of Child-Friendly Courts physically separated from ordinary courts for cases in which children serve as witnesses or victims. Judges assigned to these cases must possess specialized certification in handling traumatized child victims. Furthermore, the state should appoint a child legal advocate funded by the government whose sole responsibility is to ensure that throughout court proceedings, no question or action by prosecutors or defense attorneys violates the principle of the best interests of the child.

The fourth step involves redesigning the restitution mechanism. Placing full responsibility for restitution solely upon human trafficking perpetrators has repeatedly proven harmful to children because perpetrators frequently launder money or conceal assets. Therefore, the state should establish by law a Victim Compensation Fund financed through confiscated assets

¹⁰ Undang-Undang Nomor 11 Tahun 2012 tentang Sistem Peradilan Pidana Anak



LICS 2026

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

derived from money laundering and human trafficking offenses. If perpetrators are unable to pay restitution as ordered by the court, the state must first advance payment to the child victim, after which the state itself will enforce the remaining penalties or seize the perpetrator's assets. This guarantees that the child's right to recovery is neither delayed nor lost.

The fifth step shifts the paradigm from purely retributive justice toward victim-centered restorative justice. Whereas restorative justice has often been associated with reconciliation between perpetrators and victims (which is wholly inappropriate and prohibited in serious crimes such as human trafficking), the concept of restoration here should return to its original meaning: restoring the balance disrupted by crime. The focus is not on forgiving perpetrators but on mobilizing all legal and social resources to heal victims' wounds and safely and respectfully reintegrate child victims into society.

The sixth step is the establishment of a confidential and closely monitored Integrated Data System across ministries and institutions. Information concerning child victims of human trafficking is currently scattered across the Police, the Ministry of Social Affairs, LPSK, and the Indonesian Child Protection Commission (KPAI). Under an integrated architecture, a single anonymous digital identity would be used across all institutions to monitor each child's recovery process over the years. This system would prevent children from falling once again into the same cycle of exploitation due to neglect following court decisions.

The seventh step requires political and legal commitment (political and legal will) from the Supreme Court and the Attorney General's Office to issue Supreme Court Regulations (PERMA) and Attorney General Regulations (PERJA) technically governing this specialized handling while awaiting legislative amendments. These internal regulations are crucial to quickly filling procedural legal gaps and providing mandatory guidance for prosecutors and judges in formulating indictments, prosecutions, and judgments that demonstrate a high degree of sensitivity toward the constitutional protection of children.

Ultimately, this legal architecture transformation seeks to repair a protection system that has long been fragmented by institutional sectoral interests. Integrating constitutional rights and the best interests of the child principle into a single integrated justice system is not a utopian aspiration but a legal necessity. The state can truly be said to be present and effective only when it provides a legal system capable of serving as the final safeguard protecting children's futures from human trafficking syndicates while simultaneously ensuring that perpetrators of these crimes against humanity are decisively punished without compromise.

Transformation of the Legal Architecture...
(Munzaroh)



LICS 2026

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

4. Conclusion

Efforts to provide maximum protection for child victims of Human Trafficking (TPPO) cannot rely solely upon rigid and fragmented criminal provisions but require a comprehensive transformation of the juvenile justice legal architecture. At present, Indonesia's legal system still reveals a significant gap between the noble constitutional guarantees contained in the 1945 Constitution and the reality of procedural law, which often positions children merely as objects of proof. The failure to implement the principle of the best interests of the child from the investigative stage through trial frequently results in secondary suffering and trauma for child victims of exploitation, thereby directly violating fundamental human rights principles. As a solution, the proposed legal reform requires strong convergence and integration among anti-human trafficking regulations, child protection legislation, and the criminal justice system. This integration should be realized through the creation of specialized procedural law for child victims, automatic institutional involvement from the outset of cases (including LPSK and KemenPPPA), the implementation of child-friendly remote court technologies, and the establishment of a state-managed Victim Compensation Fund. The justice system must unequivocally ensure that children's psychological, medical, and social recovery becomes the primary indicator of justice, surpassing mere success in imprisoning perpetrators. Going forward, policymakers—from legislators in the House of Representatives (DPR), the Government, to law enforcement authorities such as the National Police, the Prosecutor's Office, and the Judiciary—must act in harmony to realize this victim-centered legal blueprint. A genuine commitment by the state to transforming the juvenile justice architecture constitutes a concrete manifestation of its constitutional duty. Only through a justice system that is empathetic, responsive, and fully integrated in fulfilling fundamental rights can Indonesia ensure that child victims of human trafficking are given a second chance to rebuild their futures and grow into the nation's next generation, free from all forms of fear and exploitation.

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Transformation of the Legal Architecture...
(Munzaroh)



LICS 2026

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

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