

LICS 2026

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

Legal Protection for Child Victims of Human Trafficking: Harmonization of National Laws and International Instruments

Jimmi Marliston P. Aritonang

Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail:
jimmiaritonang7796@gmail.com

Abstract. *Children are the most vulnerable group to become victims of human trafficking, yet the legal protection framework in Indonesia is still scattered and not fully victim-oriented. This study aims to analyze the provisions for the protection of child victims of human trafficking in Indonesian positive law, assess its harmonization with international legal instruments, and formulate a model for strengthening victim-centered protection. The study uses a normative juridical method with a legislative, conceptual, and comparative legal approach, as well as a qualitative analysis of primary and secondary legal materials. The results show that although Indonesia has ratified the Convention on the Rights of the Child and the Palermo Protocol and has a Law on Trafficking in Persons and Child Protection, there are implementation gaps in the form of weak restitution, revictimization in the judicial process, the lack of clarity on the principle of non-criminalization of child victims, and weak inter-institutional coordination. Reconstruction of legal policy is needed that emphasizes the principle of the best interests of children, strengthens state restitution and compensation, and builds an integrated child-friendly justice system.*

Keywords: *Child Protection; Children's Rights; Human Trafficking; Legal Harmonization; Victims.*

1. Introduction

Children are legal subjects who have a special position due to their limited ability to protect themselves. Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection defines a child as a person who is under 18 (eighteen) years of age, including children who are still in the womb. This vulnerability is what makes children the

Legal Protection for Child Victims of...
(Jimmi Marliston P. Aritonang)

LICS 2026

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

main targets of human trafficking crimes, whether for the purposes of sexual exploitation, forced labor, begging, illegal adoption, or organ trafficking.

Human trafficking is a crime against humanity which many people call a form of modern slavery. Global data shows that children account for a growing proportion of victims, and women and girls remain the group most frequently identified as victims of exploitation. In Indonesia, the archipelagic geographical conditions, economic disparities, labor migration flows, and rapid digitalization have expanded the perpetrators' modus operandi, including recruiting victims through social media and online platforms.

Normatively, Indonesia already has a relatively comprehensive legal framework. Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking (UU PTPPO) adopts a definition of human trafficking that aligns with the Palermo Protocol. Meanwhile, Indonesia's international commitment is reflected in the ratification of the Convention on the Rights of the Child through Presidential Decree Number 36 of 1990. However, possession of legal instruments does not in itself guarantee effective protection for child victims.

The problem is that the protection of child victims of human trafficking in Indonesia still faces problems of harmonization and implementation. Provisions are scattered across various laws with varying orientations, most of which emphasize criminalizing perpetrators rather than rehabilitating victims. Sectoral regulations have the potential to lead to overlapping authorities, a lack of norms, and weak guarantees of the rights of child victims.

A review of previous research shows that studies on human trafficking in Indonesia generally focus on the criminal policy aspects of perpetrators, while analyses specifically linking the protection of child victims to international standards and focusing on reconstructing a victim-centered protection model are still limited. The novelty of this research lies in its attempt to link the analysis of harmonization of national and international law with the construction of a child victim-centered protection model.

The urgency of this study lies in the urgent need to ensure that child victims are not revictimized by the legal system that is supposed to protect them. Based on this background, the research questions are formulated as follows: first, how is the legal protection of child victims of human trafficking regulated in Indonesian positive law and its harmonization with international instruments; second, what implementation gaps hinder the protection of child victims; and third, how can a victim-centered model for strengthening legal protection be constructed. The research aims to analyze these three issues in order to provide theoretical and practical contributions to reforming child protection policies.

Legal Protection for Child Victims of...
(Jimmi Marliston P. Aritonang)

LICS 2026

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

2. Research Methods

This research is a normative juridical legal research, namely research that examines law as norms, principles, and doctrines in order to answer the legal issues faced.¹This type of research was chosen because the focus of the study lies in the synchronization and harmonization of legal norms, not on the empirical behavior of society.

The approaches used include a statutory approach to examine laws and regulations related to child protection and the eradication of human trafficking; a conceptual approach to build arguments based on legal doctrine and principles, particularly the principle of the best interests of the child; and a comparative legal approach to compare national regulations with international instruments and the practices of other countries.

Legal materials consist of primary legal materials in the form of laws and international conventions; secondary legal materials in the form of books, journals, and institutional reports; and tertiary legal materials in the form of legal dictionaries and encyclopedias. The material collection technique is carried out through library research.

The analysis was conducted qualitatively using prescriptive methods. Legal materials were inventoried, classified, and interpreted using grammatical, systematic, and teleological interpretations. They were then analyzed to identify gaps in norms and formulate recommendations for improving legal policy.

3. Results and Discussion

3.1. Normative Framework for the Protection of Child Victims of Human Trafficking in Indonesian Positive Law

Protection of child victims of human trafficking in the Indonesian legal system rests on several complementary laws. The Child Protection Law places the state, government, community, family, and parents as parties obligated to provide special protection to child victims, including children who are victims of kidnapping, sale, and/or trafficking.²This special protection includes social rehabilitation efforts, reintegration, psychosocial assistance, and the provision of legal aid.

¹Peter Mahmud Marzuki, *Legal Research*, Kencana Prenada Media, Jakarta, 2017, p. 133.

²Law Number 23 of 2002 concerning Child Protection as last amended by Law Number 17 of 2016, Article 59 and Article 66.

LICS 2026

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

The Anti-Trafficking Law (UU PTPPO) is the primary instrument specifically regulating the crime of human trafficking. This law not only imposes harsher penalties for children but also guarantees a number of victims' rights, including the right to anonymity, restitution, and rehabilitation.³The PTPPO Law also adopts the principle that the victim's consent does not eliminate the perpetrator's criminal liability, a key principle because children are legally considered incapable of giving valid consent to their exploitation.

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System complements this framework by guaranteeing the rights of child victims and child witnesses, including the right to assistance, rehabilitation, and protection from identity disclosure.⁴This provision is important because child victims of human trafficking often encounter the justice system in a dual capacity as both victims and key witnesses.

Recent legislative developments further strengthen protection. Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence contains comprehensive provisions regarding the fulfillment of victims' rights, from treatment and protection to recovery.⁵In addition, Law Number 1 of 2023 concerning the Criminal Code emphasizes the protection of victims' rights as one of the objectives of criminal punishment.⁶All of these instruments should ideally be read in light of the principle of the best interests of the child, which is the umbrella principle for all actions concerning children.

3.2. Harmonization with International Legal Instruments

Indonesia's international commitment to protecting child victims of human trafficking is based on the Convention on the Rights of the Child, which places the principle of the best interests of the child as the primary consideration in every action concerning children.⁷This principle demands that the legal response to child trafficking does not stop at punishing the perpetrator, but rather prioritizes the recovery and reintegration of the victim.

The Convention on the Rights of the Child is strengthened by the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography which has been ratified through Law Number 10 of 2012.⁸At the level of eradicating human trafficking, Indonesia is bound by the

³Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking, Article 17.

⁴Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Articles 89-90.

⁵Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence, Articles 66-70.

⁶Law Number 1 of 2023 concerning the Criminal Code, Article 4 letter f and Article 66.

⁷Convention on the Rights of the Child 1989, Article 3 paragraph (1) regarding the best interests of the child.

⁸Law Number 10 of 2012 concerning Ratification of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

LICS 2026

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

Palermo Protocol through Law Number 14 of 2009, which serves as a reference for the definition and minimum standards for victim protection.⁹At the regional level, the ratification of the ASEAN Convention Against Trafficking in Persons (ACTIP) through Law Number 12 of 2017 strengthens cross-border cooperation.¹⁰The employment dimension is complemented by the ratification of ILO Convention Number 182 on the elimination of the worst forms of child labor through Law Number 1 of 2000.¹¹

Substantially, Indonesian national law has aligned with most international standards, particularly regarding the definition of human trafficking and the recognition of victims' rights to restitution. However, this harmonization is not yet complete. The principle of non-punishment, which asserts that victims of human trafficking should not be punished for unlawful acts committed as a direct result of their status as victims, has not been explicitly and operationally established in Indonesian law.

Protection for female victims is further strengthened by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which was ratified through Law Number 7 of 1984, which requires states to eliminate all forms of trafficking and exploitation of women.¹²Because Indonesia adheres to a tradition of dualism, ratified conventions require implementing regulations to ensure their immediate application in national courts. Thus, the effectiveness of international standards depends on the quality of their transformation into national norms and the readiness of law enforcement agencies to implement them, not solely on the act of ratification.

Comparisons with other jurisdictions are instructive. The Philippines, through Republic Act No. 9208, as reinforced by Republic Act No. 10364, explicitly stipulates a non-criminalization clause for victims and a comprehensive witness protection mechanism. Malaysia, through its Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act, has developed a centralized victim-responsibility system. This comparison demonstrates that emphasizing the principle of non-criminalization and providing integrated services are worthy practices to adopt to strengthen the protection of child victims in Indonesia.

⁹Palermo Protocol 2000, Articles 6-8 concerning assistance and protection of victims and repatriation.

¹⁰Law Number 12 of 2017 concerning Ratification of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP).

¹¹Law Number 1 of 2000 concerning Ratification of ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor.

¹²Law Number 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

LICS 2026

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

3.3. Gaps in the Implementation of Protection for Child Victims

The first gap lies in the implementation of restitution. Although the PTPPO Law guarantees victims' rights to restitution, and Government Regulation No. 7 of 2018 regulates the procedures for providing compensation, restitution, and assistance,¹³¹⁴ In practice, restitution is often not paid because the perpetrator cannot afford it, assets cannot be traced, or the verdict cannot be executed. The absence of subsidiary state compensation funds means that child victims often do not receive the material compensation they are entitled to.

The second gap is revictimization in the judicial process. Child victims are often required to repeat their statements repeatedly, face the perpetrator directly, or undergo trauma-insensitive examinations. This situation contradicts the principles of child-friendly justice and has the potential to exacerbate the psychological impact on victims.

The third gap concerns weak inter-agency coordination. Handling child victims involves the police, the prosecutor's office, the Ministry of Social Affairs, the Ministry of Women's Empowerment and Child Protection, the Witness and Victim Protection Agency, and local governments through integrated service units. Without a clear referral mechanism and integrated database, handling becomes fragmented and unsustainable.¹⁵

The fourth gap is the issue of data and underreporting. Many cases go unreported because victims don't recognize themselves as victims, because of pressure from perpetrators, or because they fear stigma. As a result, formulated policies don't always reflect the full picture of the problem.¹⁶ The fifth gap is the lack of clarity regarding the principle of non-criminalization, so that child victims who are forced to commit legal violations as a result of exploitation risk being treated as perpetrators.

The sixth gap stems from digitalization. The shift of recruitment and exploitation to social media, messaging apps, and online platforms is outpacing law enforcement's capacity to track perpetrators, secure digital evidence, and collaborate across borders with service providers. Child victims exploited online face multiple disadvantages because exploitative content can

¹³Law Number 21 of 2007, Articles 48-50 concerning restitution for victims.

¹⁴Government Regulation Number 7 of 2018 concerning the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims.

¹⁵Henny Nuraeny, *The Crime of Human Trafficking: Criminal Law Policy and Prevention*, Sinar Grafika, Jakarta, 2011, p. 214.

¹⁶United States Department of State, *Trafficking in Persons Report 2023*, Washington DC, 2023, Pg. 312.

LICS 2026

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

circulate indefinitely, while the anonymity of perpetrators and the cross-border location of servers complicate prosecution and the fulfillment of victims' rights.

3.4. Reconstruction of a Victim-Centered Protection Model

Based on the above analysis, a reconstruction of the victim-centered protection model is needed, with the principle of the best interests of the child as its core. This model rests on four pillars. The first pillar is the explicit affirmation of the principle of non-criminalization of child victims in the law, so that law enforcement officers have a clear legal basis for not prosecuting child victims for acts arising from exploitation.

The second pillar is strengthening the restitution mechanism and establishing a subsidiary state compensation fund. When restitution from the perpetrator cannot be fulfilled, the state takes over fulfilling the victim's rights first, then demands restitution from the perpetrator. This scheme breaks the dependence of victim restitution on the perpetrator's financial capacity.

The third pillar is the development of an integrated child-friendly justice system, including one-stop service, recording initial statements to prevent repetition, ongoing psychosocial support, and the use of technology such as remote examinations to prevent direct confrontation with the perpetrator.

The fourth pillar is regulatory harmonization and synchronization through updating the Anti-Terrorism Law, which integrates international standards, clarifies the division of authority between institutions, and establishes an integrated victim database. These four pillars must be supported by increased capacity of officials, adequate budget allocation, and civil society participation.

4. Conclusion

First, Indonesian positive law provides a framework for protecting child victims of human trafficking, encompassing the Child Protection Law, the Anti-Trafficking Law, the Juvenile Criminal Justice System Law, the Sexual Violence Law, and the new Criminal Code. It aligns with most standards of the Convention on the Rights of the Child and the Palermo Protocol. However, this harmonization is incomplete, primarily because the principle of non-criminalization of victims has not been operationally affirmed. Second, there are significant implementation gaps, including weak restitution enforcement, revictimization in the judicial process, weak inter-agency coordination, low reporting rates, and the lack of firm treatment of child victims forced to break the law. Third, strengthening protection requires reconstructing a

Legal Protection for Child Victims of...
(Jimmi Marliston P. Aritonang)

LICS 2026

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

victim-centered model with four pillars: affirming non-criminalization, strengthening restitution and state compensation funds, an integrated child-friendly justice system, and harmonization and synchronization of regulations.

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Legal Protection for Child Victims of...
(Jimmi Marliston P. Aritonang)



LICS 2026

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

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Legal Protection for Child Victims of...
(Jimmi Marliston P. Aritonang)