

LICS 2026

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

Reconstruction of the State's Constitutional Responsibility (Parens Patriae) in Fulfilling the Recovery Rights of Women and Child Victims of Human Trafficking

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Abstract. *The Crime of Human Trafficking (TPPO) is an extraordinary form of crime that deprives individuals of their freedom and destroys the future of the most vulnerable groups, namely women and children. Although Indonesian positive law has accommodated victims' rights to restitution, its implementation in practice often reaches a dead end due to the absence of offenders' assets and the existence of substitute imprisonment provisions (subsidiary penalties). This study aims to critically examine the systemic failure in fulfilling victims' recovery rights and to formulate a legal reconstruction based on the Parens Patriae doctrine the state as protector/parent. This research Use normative legal research methods with statutory and conceptual approaches, The sources of legal materials in this research were collected through an extensive library research method, tracing academic literature, reputable journals, and regulatory documents. This study finds that the state has failed to translate its constitutional responsibility when victims are unable to receive restitution from perpetrators. The study recommends three reconstruction measures the absolute abolition of subsidiary imprisonment for restitution, strengthening integrated asset-tracing authority, and institutionalizing the doctrine of state subrogation through the establishment of a Victim Trust Fund. Through this form of state financial intervention, substantive justice can be realized, and the dignity of women and child victims of human trafficking can be fully restored.*

Keywords: *Human Trafficking; Legal Reconstruction; Parens Patriae; Restitution; Women and Children.*

LICS 2026

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

1. Introduction

The Unitary State of the Republic of Indonesia was founded upon a noble constitutional foundation that obligates the state to protect the entire Indonesian nation and all of Indonesia's territory. This mandate, as stated in the Fourth Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, carries both legal and moral consequences that place the protection of human rights as the highest supremacy. The state must not merely function as a passive night-watchman state (*nachtwachterstaat*), but must proactively guarantee welfare, security, and recovery for every citizen who suffers as a result of crime. In this context, protection of vulnerable groups serves as the primary benchmark of a civilized rule-of-law state.

However, amid the advancement of civilization and modern legal instruments, the phenomenon of Human Trafficking Crimes (TPPO) has grown into a highly organized and destructive transnational threat. TPPO is not merely an ordinary legal violation but a manifestation of modern slavery that negates the very essence of humanity. This crime commodifies human bodies, labor, and futures for the purpose of generating massive financial profits for criminal syndicates. The methods employed are increasingly sophisticated, ranging from debt bondage and fraudulent job recruitment schemes to digital manipulation that reaches victims even within the privacy of their homes in remote villages.

Within the anatomy of human trafficking crimes, women and children consistently occupy the most vulnerable sociological and demographic positions for exploitation. Social structural inequalities, systemic poverty, low educational attainment, and deeply rooted patriarchal cultures make women and children easily deceived by the false promises of trafficking syndicates. They are recruited, forcibly transported across national or provincial borders, and ultimately employed under extremely inhumane conditions in industrial, domestic, and plantation sectors, or sexually exploited within global prostitution networks.

The impact of such exploitation is multidimensional and often results in permanent damage. Physically, victims suffer from malnutrition, violence, disabilities, and sexually transmitted diseases that threaten their lives. Psychologically, women and children who become victims of TPPO experience profound trauma, clinical depression, and the loss of self-confidence and autonomy over their own bodies. This suffering is further exacerbated by severe economic losses, as years of their labor are never compensated but instead entirely confiscated by perpetrators under the pretext of fictitious recruitment costs.

LICS 2026

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

In responding to this extraordinary crime, Indonesia's criminal justice system has been equipped with Law No. 21 of 2007 concerning the Eradication of Human Trafficking Crimes. This regulation explicitly recognizes victims' rights to restitution, namely compensation that must be paid by perpetrators to victims for the material and immaterial suffering they have endured. Restitution is expected to serve as an instrument of restorative justice capable of financing medical operations, trauma therapy, and replacing confiscated wages, thereby enabling victims to rebuild their lives within society.

Unfortunately, this seemingly ideal normative design often collapses when confronted with empirical realities in court proceedings and the execution stage. The most fundamental failure in Indonesia's restitution fulfillment system is the continued accommodation of substitute imprisonment subsidiary penalties when perpetrators are unable or unwilling to pay restitution. This legal loophole has become a perfect shield for human trafficking mafias. They deliberately launder and conceal their assets, declare bankruptcy, and choose to serve several additional months in prison rather than pay billions of rupiah to victims whose futures they have destroyed.

This deadlock in restitution execution demonstrates that our justice system remains trapped within a retributive justice paradigm centered on offenders. Law enforcement authorities often assume that the state's duty is fully completed once the judge's gavel falls and the perpetrator is sent behind bars. Meanwhile, the fate of women and children crying out for their recovery rights is ignored under the pretext that restitution is a private matter between victims and impoverished perpetrators. This neglect constitutes a form of secondary victimization carried out structurally by the state against its own citizens.

In confronting this legal paralysis, state discourse must return to the *Parens Patriae* doctrine, a fundamental principle affirming that the state acts as the highest parent or guardian for citizens who are unable to protect themselves. In the context of TPPO, when state security apparatuses fail to prevent human trafficking affecting their citizens, the state bears a constitutional debt of responsibility to restore victims. This doctrine rejects the notion that the state may abdicate responsibility when perpetrators are proven to have no assets to satisfy victims' restitution claims.

LICS 2026

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

If we examine legal developments in advanced countries, the *Parens Patriae* doctrine has been concretely implemented through direct financial protection mechanisms. The state does not leave victims to pursue their rights from criminals independently; rather, it assumes responsibility through the provision of a Victim Trust Fund. Through this system, the recovery rights of women and children are paid immediately by the state, after which the state itself pursues, seizes, and confiscates perpetrators' assets to reimburse the advanced funds. This model ensures that victims' suffering is not held hostage by lengthy and often fruitless collection processes.

Based on this series of systemic failures and philosophical urgency, this scholarly article is prepared to critically examine the anatomy of the deadlock in fulfilling restitution rights for women and child victims of TPPO in Indonesia. Furthermore, this research aims to formulate a legal reconstruction model based on the *Parens Patriae* doctrine that binds the constitutional responsibility of the state. Through this study, it is hoped that the national legal system can transform toward realizing Dignified Justice, in which the state provides absolute certainty of financial recovery, thereby restoring the dignity and worth of victims from the depths of exploitative destruction.

2. Research Methods

This study employs normative legal research, also known as doctrinal research, which focuses on analyzing legal texts, norms, legal principles, and theories of justice that exist within the positive legal system. The primary approaches used in this research include:

- a. **Statutory Approach:** Used to examine, analyze, and synchronize various related legal instruments. The primary legal materials analyzed include the 1945 Constitution of the Republic of Indonesia, Law No. 21 of 2007 concerning the Eradication of Human Trafficking Crimes, Law No. 35 of 2014 concerning Child Protection, and Law No. 31 of 2014 concerning the Protection of Witnesses and Victims.
- b. **Conceptual Approach:** Used to explore, develop, and synthesize the doctrines of *Parens Patriae* (State Constitutional Responsibility), Restorative Justice, and the concept of a Victim Trust Fund as adopted in contemporary international legal practice.

The sources of legal materials in this research were collected through an extensive library research method, tracing academic literature, reputable journals, and regulatory documents. All collected legal materials were then systematically

LICS 2026

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

organized and analyzed using a qualitative-deductive method. This analytical process aims to produce prescriptive arguments and sharp legal reconstruction recommendations to address the deadlock in executing recovery rights for women and child victims of human trafficking.

3. Results and Discussion

3.1. The Anatomy of Exploitation and the Failure to Fulfill Restitution for Victims of Human Trafficking

The Crime of Human Trafficking (TPPO) targeting women and children represents the most brutal manifestation of the failure of social and economic systems to protect vulnerable groups. This crime operates like a multinational industrial machine that treats human beings as primary commodities that can be bought, sold, and discarded when they are no longer profitable. These criminal syndicates possess highly organized structures involving village-level recruiters (brokers), forgers of fake documents, corrupt border officials, and receiving companies in destination countries. This lengthy criminal chain is deliberately designed to sever legal accountability, so that when cases are uncovered, only low-level field actors can be reached by law enforcement authorities, while the masterminds remain secure.

For women and children trapped in human trafficking networks, suffering begins from the very moment they sign fraudulent agreements. The most dominant modus operandi is debt bondage, in which victims are given advances or travel costs whose values are manipulated with unreasonable interest rates. Upon arrival at the site of exploitation, their identity documents and passports are confiscated, completely isolating them from legal or diplomatic assistance. They are forced to work up to dozens of hours per day without rest under threats of physical violence, confinement, and intimidation that their families back home will be harmed if they attempt to escape or report the crime to the police.

For women in particular, exploitation often culminates in forced prostitution, mail-order marriages, or domestic labor exploitation accompanied by severe physical abuse. Meanwhile, children who become victims are deprived of their fundamental rights to play, learn, and grow in a healthy environment. They are forced to work in deep-sea fishing industries, illegal mining operations, or as organized street beggars controlled by criminal networks. Such exploitation not only halts their cognitive development but also instills chronic psychological trauma that continues to haunt them throughout their lives, damaging their capacity to function normally in society in the future.

LICS 2026

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

The contemporary criminal justice system has attempted to respond to this devastation through the adoption of restitution mechanisms explicitly regulated under Law No. 21 of 2007. Restitution is designed as a restorative justice instrument ensuring that perpetrators are not merely imprisoned to satisfy public outrage but are also compelled to compensate victims for their financial losses. Restitution calculations conducted by the Witness and Victim Protection Agency (LPSK) include compensation for loss of property, lost income, medical and psychological treatment costs, and suffering endured by the victims. Dogmatically, this instrument constitutes a remarkable advancement in humanizing victims within courtroom proceedings.

However, the reality of law enforcement in Indonesia demonstrates that the fulfillment of restitution rights is little more than a mirage appearing beautiful on paper in court judgments but impossible to attain in reality. This systemic failure stems from a fatal loophole in the law that allows substitute imprisonment (subsidiary punishment). Due to the absence of assets seized from perpetrators during the initial investigation stage, judges often issue rulings stating that if restitution amounting to billions of rupiah is not paid, it may be replaced by six months to one year of imprisonment. This flawed normative framework provides a highly advantageous escape route for human trafficking syndicates to avoid financial liability.

This condition is exacerbated by the inability of law enforcement agencies to conduct asset tracing from the very first day of investigation. Investigators often focus solely on proving criminal elements (*mens rea* and *actus reus*) to secure imprisonment, while neglecting the principle of “follow the money.” Consequently, throughout the legal process from police investigation to prosecution—perpetrators have ample time to transfer assets to third-party accounts (family members or associates), launder them through cryptocurrencies, or move them outside Indonesia’s jurisdiction. By the time a final judgment is rendered, prosecutors discover that the perpetrator appears legally insolvent and possesses no assets available for seizure.

The impact of this failure of execution on women and child victims is devastating. After being rescued from exploitation sites, they return to their hometowns empty-handed, physically ill, and burdened by severe social stigma. Without restitution funds, they cannot afford trauma treatment, repay the debts that initially trapped them, or allow children to return to school. This economic desperation ultimately fuels cycles of re-trafficking, in which the same victims are forced back into criminal networks because the state has failed to provide a financial safety net for their survival.

LICS 2026

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

This systemic failure proves that our criminal justice paradigm remains highly retributive and elitist. The law is preoccupied with serving procedural certainty for the state in punishing criminals while remaining negligent and powerless in facilitating victim recovery. Placing the entire burden of recovery execution on a criminal's ability to pay, without any secondary responsibility from state institutions, constitutes a form of injustice that defies common sense. Therefore, a radical paradigm shift is required to dismantle the dogmas of classical procedural law and ensure that the cries of trafficking victims in court are no longer met with empty promises of enforcement.

3.2. The Parents Patriae Doctrine as the Basis of the State's Constitutional Responsibility

To resolve the legal deadlock that victimizes women and children, discussions of state responsibility must return to the philosophical essence of the state's formation through the doctrine of Parens Patriae. Etymologically and historically, Parens Patriae means "the state as parent" or the supreme protector of all citizens, particularly those who are vulnerable, legally weak, or incapable of protecting their own civil rights. Rooted in the common law tradition, this doctrine asserts that state power is not merely coercive (compelling and punishing) but also charitable and protective. The state represents a form of public guardianship obligated to intervene when its citizens are exploited and harmed by others.

In Indonesia, the spirit of the Parens Patriae doctrine has been fully absorbed into the core of the 1945 Constitution of the Republic of Indonesia. The Fourth Paragraph of the Preamble obligates the Government to "protect the whole Indonesian nation." This noble mandate is elaborated in Article 28B paragraph (2), which guarantees children's rights to survival, growth, development, and protection from violence, as well as Article 28G paragraph (1), which guarantees personal protection, dignity, and property rights. Furthermore, Article 34 paragraph (1) affirms that impoverished and neglected children shall be cared for by the state. Together, these constitutional provisions establish an unwavering obligation for the state not to abandon its citizens in conditions of helplessness.

In the context of combating human trafficking, the state's role as Parens Patriae possesses indisputable doctrinal legitimacy. The state monopolizes lawful force, lawmaking authority, management of trillions of rupiah in public funds, border security, and the administration of justice. When women and children are kidnapped, deceived, and smuggled through immigration and police checkpoints under state control, this implicitly reflects a systemic failure of state security

LICS 2026

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

apparatuses in carrying out preventive functions. Therefore, the suffering endured by victims constitutes a residue of the state's failure to provide security.

The legal logic that treats restitution as merely a private civil debt between offender and victim is misguided and contrary to constitutional principles. Human trafficking is not an ordinary business debt dispute; it is a grave violation of human rights that destroys the foundations of humanity. Entrusting the future recovery of a traumatized child to the "goodwill" or "financial capacity" of a criminal syndicate member constitutes structural injustice. Within the framework of *Parens Patriae*, when perpetrators are unable or unwilling to fulfill restitution obligations, the state is not permitted simply to shrug its shoulders and leave victims to suffer.

Having assumed the victim's right to personal retaliation through the criminal justice system, the state must consistently bear responsibility for the victim's recovery. This doctrine requires the state to position itself as the guarantor of last resort. If the state can allocate trillions of rupiah to finance police operations, prosecution services, courts, and even the maintenance of trafficking offenders in correctional institutions for years, then it is a profound irony and moral failure for the state to claim there is "no budget" available to finance the medical treatment and education of child victims of those crimes.

The integration of this constitutional responsibility also embodies the theory of Dignified Justice (*Keadilan Bermartabat*) developed within Indonesian legal discourse. Dignified Justice places human beings as the ultimate objective of every legal process rather than mere objects of rigid legal provisions. Restoring the dignity of women subjected to sexual exploitation or children subjected to slavery requires more than a sheet of paper declaring the offender guilty. It demands real affirmative action in the form of financial intervention and sustainable logistical support. Justice can only be considered dignified when it transforms victims' tears of despair into certainty of recovery and hope for the future.

Furthermore, implementing *Parens Patriae* in victim recovery would directly enhance public trust in the justice system. When society witnesses the state wiping away victims' tears and assuming the financial burden of their suffering, public participation in reporting and dismantling trafficking syndicates will increase significantly. To date, many victims remain silent because they realize that reporting offenders to the police may waste time and endanger their lives without providing any meaningful compensation from the state.

LICS 2026

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

In conclusion, the Parens Patriae doctrine provides an absolute philosophical, moral, and legal foundation for reforming outdated victim protection systems. Constitutional responsibility requires the state to cease hiding behind procedural formalities that excuse compensation obligations through substitute imprisonment. Reinterpreting the mandate of the 1945 Constitution forms the crucial foundation for legitimizing a direct state financial intervention mechanism to execute the recovery rights of women and children a reconstruction explored in the following discussion.

3.3. Reconstructing the Fulfillment of Recovery Rights Through a Victim Trust Fund

Recognizing the paralysis of positive law and the urgency of implementing the Parens Patriae doctrine, Indonesia's criminal justice system urgently requires radical normative and structural reconstruction to ensure the full execution of trafficking victims' recovery rights. The first non-negotiable legal reform is the complete abolition of substitute imprisonment provisions for restitution obligations. The Human Trafficking Law and the Criminal Procedure Code must be revised to eliminate provisions legitimizing the exchange of victims' suffering for additional imprisonment of offenders. Restitution must be affirmed as a lifelong debt attached to perpetrators, one that can never be extinguished merely by serving time in prison.

Accompanying the elimination of substitute imprisonment, the upstream phase of law enforcement must be reconstructed through mandatory early asset tracing and freezing mechanisms. Legislation should require police investigators, working together with the Financial Transaction Reports and Analysis Center (PPATK), to immediately block and seize all assets, bank accounts, and investment instruments belonging to suspects at the moment they are designated as trafficking suspects. This rapid intervention aims to prevent money laundering or asset flight abroad, ensuring that when judges later impose restitution orders, assets are already secured under state control.

If, after compulsory seizure, the perpetrator's assets remain insufficient to satisfy restitution obligations, the Parens Patriae doctrine must be operationalized through the doctrine of state subrogation. The state must not transfer the burden of the offender's poverty onto the victim. Instead, the state should immediately pay the victim's restitution in full. Once victims receive these funds for treatment and survival needs, the restitution claim automatically transfers through subrogation from the victim to the state. Thereafter, debt recovery becomes a

LICS 2026

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

matter solely between state institutions and the perpetrator, while women and child victims can focus on rebuilding their futures.

To support the financial sustainability of this subrogation or state-advance mechanism, institutional reconstruction requires the establishment of a Victim Trust Fund. Drawing from best practices in advanced justice systems, this Trust Fund should be managed independently while remaining under state authority, for example by the Witness and Victim Protection Agency (LPSK). The fund would function as a permanent reserve, always ready to distribute cash assistance for immediate victim recovery without dependence on rigid and politically constrained state budget procedures.

Where would the funding for this Victim Trust Fund originate so as not to overburden taxpayers, Legal reconstruction should mandate that all criminal fines paid by corporations or trafficking offenders, proceeds from auctions of confiscated criminal assets such as illegal fishing vessels, brothels, luxury vehicles, and shell companies, and assets seized from money laundering offenses be redirected away from the State Treasury as Non-Tax State Revenue. Instead, all such “blood money” should be specifically and exclusively channeled into the Victim Trust Fund. This reflects genuine restorative justice: using the wealth generated by criminal syndicates to heal the wounds of their victims.

Furthermore, the Victim Trust Fund must be administered according to highly responsive and victim-oriented principles. In practice, women and children should not be subjected to burdensome evidentiary requirements to access assistance. Once LPSK or relevant social institutions validate their status as victims of exploitation, emergency funds for hospital care, psychological assistance, safe houses, and repatriation should be disbursed within hours. A state positioning itself as a “parent” should not force its “children” who are suffering to complete endless bureaucratic paperwork merely to receive emergency aid.

Beyond financial compensation, the Trust Fund should also guarantee long-term holistic sociological recovery. For child victims of trafficking, the fund should provide educational scholarships until they achieve independence and avoid falling back into poverty-related vulnerabilities. For women subjected to sexual exploitation, the fund should cover years of psychiatric therapy, vocational training programs, and startup capital for independent economic enterprises, enabling them to resist social stigma and escape structural poverty.

Ultimately, the series of reforms encompassing the abolition of substitute imprisonment, aggressive asset tracing, state subrogation, and the establishment

LICS 2026

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

of a Victim Trust Fund is not a utopian fantasy. It is a juridical necessity if Indonesia wishes to claim its status as a dignified state governed by the rule of law. These transformations would reshape criminal justice from a formal mechanism focused solely on bodily punishment into a healing institution that humanizes its citizens. Through these prescriptive measures, constitutional sovereignty would not merely exist on paper but would be genuinely felt by coastal women and children who have long been left to mourn justice denied.

4. Conclusion

Human Trafficking (TPPO) is an extraordinary crime that deprives the most vulnerable groups women and children of their autonomy, future, and human dignity. Current positive law has proven incapable of delivering substantive justice because the restitution enforcement system still provides escape routes through substitute imprisonment and is weakened by the inability of law enforcement agencies to seize offenders' assets effectively. This failure forces victims to bear multidimensional suffering alone while the state appears to withdraw responsibility once perpetrators are imprisoned. Grounded in the mandate of the 1945 Constitution, the state bears constitutional responsibility through the doctrine of *Parens Patrias* (the state as protector/parent) to guarantee the recovery of its citizens who become victims. The consequences of this doctrine demand fundamental legal reconstruction. The state must abolish substitute imprisonment for restitution obligations, implement mandatory asset tracing from the beginning of investigations, and most importantly, establish state subrogation through the institutionalization of a Victim Trust Fund financed by confiscated criminal assets. Through direct state financial intervention and advance compensation mechanisms, restorative justice and Dignified Justice can be realized, ensuring that no woman or child victim of exploitation is left in darkness without guarantees for the restoration of their rights and future.

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LICS 2026

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

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