

Reformulating Criminal Law Policy on Child Perpetrators of Human Trafficking in Indonesia: A Child Victim-Offender Approach

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Abstract

This study analyzes criminal law policy and the reformulation of regulations concerning children as perpetrators of prostitution in human trafficking in Indonesia. Current laws, notably the Anti-Trafficking in Persons Law and the Juvenile Criminal Justice System Law, create a normative and practical dilemma: the Anti-Trafficking in Persons Law focuses on retributive punishment, while the Juvenile Criminal Justice System Law emphasizes child protection, diversion, and rehabilitation. However, existing studies have not sufficiently addressed the legal ambiguity of children simultaneously acting as perpetrators and victims in trafficking cases. This divergence generates ambiguity in determining the legal status of child offenders, resulting in inconsistent enforcement and potential injustice. Using a normative juridical approach, the study proposes the Child Victim Offender concept, recognizing that children



may act as both perpetrators and victims based on their participation, coercion, and socio-psychological circumstances. Recommendations include harmonizing the Anti-Trafficking in Persons Law and the Juvenile Criminal Justice System Law, clarifying definitions, establishing criteria for child culpability, and applying limited retributive sanctions integrated with rehabilitative guidance and social reintegration. This approach balances law enforcement with child protection, strengthens justice for victims, and supports responsive, child-centered criminal law reform aligned with national and international obligations.

Keywords

Children, Child Victim Offender, Human Trafficking, Prostitution, Criminal Law Reform.

Introduction

Law, in essence, is not merely understood as a set of binding norms, but also as an instrument of social control shapes, direct, and transform societal behavior.¹ From this perspective, law is utilized as a means to promote planned and measurable social change.² Through the operation of law, the state seeks to instill certain values deemed essential for the realization of order, justice, and social welfare. Accordingly, law serves as a mechanism of social reform (law as a tool of social engineering), which is expected to influence patterns of thought, attitudes, and actions within society in accordance with predetermined objectives.³

¹ Benn McGrady et al., 'Law and NCD Prevention and Control', in *Noncommunicable Diseases*, 1st edn, by Nick Banatvala and Pascal Bovet (Routledge, 2023), <https://doi.org/10.4324/9781003306689-51>.

² Martha Safira, 'Law Is a Tool of Social Engineering Dalam Penanganan Tindak Pidana Korupsi Di Indonesia Ditinjau Dari Hukum Islam Dan Perundang-Undangan Di Indonesia', *Kodifikasia* 11, no. 1 (2017): 118, <https://doi.org/10.21154/kodifikasia.v11i1.1140>.

³ Hartati et al., 'Authority for Calculating State Economic Losses in Criminal Acts of Corruption in Indonesia', *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 3 (2024): 530–41, <https://doi.org/10.29303/ius.v12i3.1480>.

As a normative system, law is established to regulate various aspects of social life, encompassing private or civil law, administrative law, constitutional law, and criminal law. Each branch of law possesses distinct characteristics and functions; nevertheless, all converge toward a common objective, namely the creation of social order and the protection of both individual and public interests. Among these branches, criminal law occupies a distinctive position due to its coercive nature and its reliance on sanctions involving deprivation or suffering as consequences for violations of legal norms.⁴

Criminal law, as a branch of legal science, consists of a set of rules governing prohibited acts (*verbod*), mandated acts (*gebod*), and permissible acts (*mogen*) applicable to legal subjects (*rechtspersoon*).⁵ Criminal law not only defines conduct deemed blameworthy or harmful to society, but also prescribes sanctions that may be imposed in the event of a violation.⁶ Thus, the defining characteristic of criminal law lies in its regulation of prohibited conduct accompanied by the threat of punishment. The imposition of criminal sanctions serves multiple purposes, including deterrence, retribution, and offender rehabilitation.

Within the Indonesian legal system, criminal law regulates not only adults as legal subjects but also children. Children occupy a special legal status, as they are in a stage of physical, psychological, and social development that is not yet fully mature.⁷ Consequently, the criminal law regulation concerning children should not be oriented solely toward punishment. Still, it must also prioritize the principles of protection and the best interests of the child (the best interest of the child). These

⁴ Adithiya Diar et al., 'A Comparative Analysis of the Transformation of Corruption Practices in Indonesia and Malaysia', *IJCLS (Indonesian Journal of Criminal Law Studies)* 10, no. 2 (2025): 851–900, <https://doi.org/10.15294/ijcls.v10i2.30206>.

⁵ Kinga Tutak, 'Towarzystwo Każdemu z Członków: „rozkazuje” – Czasowniki Deontyczne w Wewnętrznych Dokumentach Filomatów', *Roczniki Humanistyczne* 72, no. 1 Zeszyt specjalny (2025): 129–40, <https://doi.org/10.18290/rh24721.8s>.

⁶ Gerry Ferguson, 'Criminal Liability and Criminal Defenses', in *International Encyclopedia of the Social & Behavioral Sciences* (Elsevier, 2015), <https://doi.org/10.1016/B978-0-08-097086-8.86147-4>.

⁷ Cees J. Hamelink and Victòria Fumadó, 'Children and the Right to Health', in *Global Health and Human Rights*, 1st edn, by Cees J. Hamelink et al. (Routledge, 2024), <https://doi.org/10.4324/9781003408765-11>.

principles constitute the fundamental basis for the formulation and application of juvenile criminal law.⁸ However, in both legal scholarship and law enforcement practice, children are still predominantly positioned as victims of criminal acts, as they are perceived to be vulnerable to violence, exploitation, and various forms of abuse.⁹ Consequently, the prevailing legal approach tends to emphasize child protection.

On the other hand, studies that specifically examine children as perpetrators of criminal offenses, particularly as active actors in human trafficking crimes, remain relatively limited and have not received proportional attention. This lack of focus creates a potential analytical gap in formulating appropriate criminal law policies for children in conflict with the law as offenders. Therefore, despite the extensive development of research on human trafficking and child protection, limited attention has been given to the legal status of children as active perpetrators in trafficking crimes.

Social, economic, and technological developments have brought about significant changes in children's lives today.¹⁰ The circumstances of contemporary children can no longer be equated with those of previous generations. Access to information has become increasingly open through electronic devices such as smartphones, computers, televisions, and various digital platforms.¹¹ This accessibility enables children to access unlimited information, including content that may not be appropriate for their age or level of psychological maturity. In many instances, children lack sufficient capacity to critically filter and comprehend the consequences of the information they consume.

⁸ Tyler K. Fagan et al., 'Juvenile Self-Control and Legal Responsibility: Building a Scalar Standard', in *Surrounding Self-Control*, 1st edn, ed. Alfred R. Mele (Oxford University Press New York, 2020), <https://doi.org/10.1093/oso/9780197500941.003.0018>.

⁹ Abdul Rahman Prakoso and Putri Ayu Nurmalinda, *Legal Policy on Human Trafficking Crimes*, (Semarang) 3, no. 2 (2018): 133–46, <https://doi.org/10.15294/ijcls.v3i2.36245>.

¹⁰ Virginie Merlin-Proult and Aline Amram, 'From learning reflective awareness to using screens', *Soins Pédiatrie/Puériculture* 42, no. 319 (2021): 42–46, <https://doi.org/10.1016/j.spp.2021.01.009>.

¹¹ Kostadin Kushlev and Jason D. E. Proulx, 'The Social Costs of Ubiquitous Information: Consuming Information on Mobile Phones Is Associated with Lower Trust', *PLOS ONE* 11, no. 9 (2016): e0162130, <https://doi.org/10.1371/journal.pone.0162130>.

These conditions have contributed to an increased likelihood that children will become involved in legal incidents. Children are not only at risk of becoming victims of criminal offenses, but under certain circumstances may also assume the role of perpetrators.¹² The involvement of children as offenders reflects a shift in patterns of criminality that are no longer dominated exclusively by adults.¹³ In practice, children may even act as active perpetrators (main actors) in certain criminal offenses, including both ordinary crimes and special crimes.

One category of crime that illustrates this complexity is human trafficking. Human trafficking constitutes a serious crime that occurs extensively in Indonesia and has far-reaching consequences for victims, society, and the legal system. Conceptually, human trafficking involves the recruitment, transportation, harboring, transfer, or receipt of persons through threats or use of force, abduction, fraud, deception, abuse of power or a position of vulnerability, or the giving or receiving of benefits to obtain the consent of a person having control over another person, whether conducted domestically or across national borders, for exploitation.¹⁴

In its development, human trafficking no longer manifests in a single form, but rather appears in various modes and variations.¹⁵ This complexity makes it difficult to determine whether a particular act qualifies as human trafficking readily. Forms of human trafficking include labor exploitation (*labor trafficking*), trafficking in human organs,

¹² Tamara Patrizia Franco et al., 'The Mental State in Perpetrators of Violent Crime: A Short Case Report Regarding Preliminary Investigation with the Adult Attachment Interview', *RASSEGNA ITALIANA DI CRIMINOLOGIA*, no. 3 (September 2021): 203–12, <https://doi.org/10.7347/RIC-032021-p203>.

¹³ Emina Priguda et al., 'Accessibility of Evidence-based Parenting Programs in the Community: Parents Who Are Involved in the Criminal Justice System Encounter Barriers to Program Access', *Australian Psychologist* 55, no. 3 (2020): 244–56, <https://doi.org/10.1111/ap.12405>.

¹⁴ Jean-Pierre Gauci, 'Relationship Between Asylum and Trafficking: J. Gauci', in *Selected Topics in Migration Studies*, ed. Frank D. Bean and Susan K. Brown (Springer Nature Switzerland, 2023), https://doi.org/10.1007/978-3-031-19631-7_10.

¹⁵ Charrita Ernewein and Rose Nieves, 'Human Sex Trafficking: Recognition, Treatment, and Referral of Pediatric Victims', *The Journal for Nurse Practitioners* 11, no. 8 (2015): 797–803, <https://doi.org/10.1016/j.nurpra.2015.06.005>.

trafficking of children and women for specific purposes, trafficking in the form of prostitution, and other forms of exploitation.¹⁶ The diversity of these forms demonstrates that human trafficking is a multidimensional crime requiring a comprehensive legal approach.¹⁷

In the context of children, human trafficking is commonly associated with the child's position as a victim of exploitation. However, in social reality and legal practice, there are instances in which children are not only objects of exploitation but also become active perpetrators of human trafficking offenses, particularly in cases involving prostitution.¹⁸ This phenomenon has become increasingly visible alongside advances in information technology that have transformed the operational patterns of prostitution-related crimes.

Previously, prostitution activities were generally conducted through conventional means and required direct physical interaction between the parties involved. However, advances in digital technology have altered this pattern. Today, prostitution transactions can be carried out through applications and digital platforms without the need for initial face-to-face contact. This situation creates opportunities for individuals with basic technological knowledge, including children, to become involved in such activities. In certain cases, children may perceive their involvement as ordinary conduct or as behavior lacking serious legal consequences.

The phenomenon of children acting as perpetrators in human trafficking crimes, particularly prostitution, highlights serious challenges within the current positive legal framework. Existing criminal law regulations tend not to explicitly and comprehensively anticipate the position of children as active perpetrators in human trafficking offenses. As a result, law enforcement practices often face uncertainty in

¹⁶ Denise A. D. Bedford et al., 'Global Human Trafficking Seen through the Lens of Semantics and Text Analytics', *Proceedings of the Association for Information Science and Technology* 54, no. 1 (2017): 535–38, <https://doi.org/10.1002/pra2.2017.14505401065>.

¹⁷ Anja P. Jakobi, 'Human Trafficking', in *The Wiley-Blackwell Encyclopedia of Globalization*, 1st edn, ed. George Ritzer (Wiley, 2012), <https://doi.org/10.1002/9780470670590.wbeog569>.

¹⁸ Joan A. Reid and Julia E. Strauss, 'Child Sexual Exploitation and Human Trafficking', in *The Encyclopedia of Women and Crime*, 1st edn, ed. Frances P. Bernat and Kelly Frailing (Wiley, 2019), <https://doi.org/10.1002/9781118929803.ewac0052>.

determining the appropriate legal approach, namely, whether children should be treated as offenders subject to criminal liability or as victims requiring protection.

This condition is reflected in various empirical facts indicating an increase in children's involvement in prostitution and human trafficking practices. Data from the Indonesian Child Protection Commission (KPAI) reveal hundreds of complaints related to sexual exploitation and human trafficking in the form of prostitution over recent years.¹⁹ Additionally, the Financial Transaction Reports and Analysis Center (PPATK) has reported substantial financial transactions involving children aged 10 to 18 years in online prostitution activities.²⁰ These facts demonstrate that the issue is not merely an individual phenomenon, but rather a structural problem demanding serious attention from legal policymakers.

Furthermore, judicial practice has produced several court decisions evidencing children's involvement as active perpetrators in human trafficking crimes, particularly prostitution. These decisions indicate that the phenomenon is real and necessitates clarity and consistency in criminal law policy concerning children. In the absence of a clear legal policy framework, the handling of cases involving child perpetrators of human trafficking risks generating injustice, both for the children themselves and for the broader objectives of law enforcement.

Based on the foregoing discussion, it can be concluded that there is an urgent need to examine criminal law policy concerning children as perpetrators of human trafficking crimes, particularly prostitution. Such an examination is essential within the context of criminal law reform in

¹⁹ Komisi Perlindungan Anak Indonesia, *Hasil Pengawasan KPAI Tentang Perlindungan Anak Korban Eksploitasi Seksual Dan Pekerja Anak Januari Sampai April 2021*, 6 May 2021, <https://www.kpai.go.id/publikasi/hasil-pengawasan-kpai-tentang-perlindungan-anak-korban-eksploitasi-seksual-dan-pekerja-anak-bulan-januari-s-d-april-dari-35-kasus-yang-dimonitor-kpai-83-kasus-prostitusi-jumlah-korban-mencapai-234?>

²⁰ Pusat Pelaporan dan Analisis Transaksi Keuangan Republik Indonesia, *PPATK Ungkap Pola Transaksi Eksploitasi Seksual Anak Pada ASEAN Conference*, Agustus 2024, https://www.ppatk.go.id/news/read/1380/ppatk-ungkap-pola-transaksi-eksploitasi-seksual-anak-pada-asean-conference.html?utm_source=chatgpt.com.

Indonesia to respond effectively to social dynamics and the evolution of modern crime, while remaining grounded in the principles of child protection and the best interests of the child.

Accordingly, this study is directed toward an in-depth analysis of criminal law policy concerning children as perpetrators of human trafficking crimes, specifically prostitution, within the framework of criminal law reform in Indonesia. The research addresses the following issues:

1. How is criminal law policy reflected in the regulation of sanctions imposed on children as active perpetrators of prostitution in human trafficking offenses in Indonesia?
2. What formulation of criminal offenses and sanctions against children as active perpetrators of prostitution in human trafficking crimes would be ideal and just within the context of criminal law reform in Indonesia?

Method

This study employs a normative juridical research method²¹, also known as doctrinal or dogmatic legal research.²² Normative juridical research examines and analyzes legal norms, principles, and doctrines to address the legal issues under investigation the legal issues under investigation. In line with this objective, the approaches applied in this study include the statutory conceptual, and case approaches.²³

²¹ Achmad Irwan Hamzani et al., 'Implementation Approach in Legal Research', *International Journal of Advances in Applied Sciences* 13, no. 2 (2024): 380, <https://doi.org/10.11591/ijaas.v13.i2.pp380-388>.

²² Stefan Theil, 'Carefully Tailored: Doctrinal Methods and Empirical Contributions', *Oxford Journal of Legal Studies* 45, no. 4 (2025): 1047–75, <https://doi.org/10.1093/ojls/gqaf029>.

²³ Jeff Berryman, 'Doctrinal Methods in Contract Law in Common Law Jurisdictions', in *Research Methods for Contract Law and Scholarship*, ed. Yuliya Chernykh and Joshua Karton (Edward Elgar Publishing, 2025), <https://doi.org/10.4337/9781035316472.00008>.

In its implementation, this research uses various legal materials as data sources.²⁴ Primary legal materials consist of the 1945 Constitution of the Republic of Indonesia; Law Number 39 of 1999 on Human Rights; Law of the Republic of Indonesia Number 21 of 2007 on the Eradication of the Crime of Human Trafficking (UU TPPO); Law Number 14 of 2009 concerning the Ratification of the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime; Law Number 35 of 2014 concerning the Amendment to Law Number 23 of 2002 on Child Protection; and Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code.

In addition to primary legal materials, this study also relies on secondary legal materials, which function to support and elucidate authoritative primary sources.²⁵ These secondary materials include various non-official legal publications, such as legal textbooks, research findings, scholarly journal articles, research reports, and other relevant academic sources. Furthermore, this research employs tertiary legal materials, including legal dictionaries, the Great Dictionary of the Indonesian Language (KBBI), encyclopedias, and other supporting reference sources, to strengthen conceptual and terminological understanding.

The analysis of legal materials in this study is conducted by collecting and inventorying relevant legal provisions derived from both national and international law, as well as other legal materials related to the object of the research.²⁶ Subsequently, the author undertakes a systematic legal analysis and interpretation of the relevant statutory provisions on an article-by-article basis through statutory interpretation, conceptual

²⁴ Sumurung P. Simaremare and Muhammad Dzikirullah H. Noho, 'Disharmonized the Regulation of Biological Resources and Its Ecosystem in Indonesia', *International Journal of Criminology and Sociology* 10 (February 2021): 332–40, <https://doi.org/10.6000/1929-4409.2021.10.41>.

²⁵ Hasanul Mulkan, 'Study of Legal Phenomena in Society from the Perspective of Legal Relations and Power', *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 21, no. 1 (2021): 125–34, <https://doi.org/10.19109/nurani.v21i1.8454>.

²⁶ Marko Milosavljević and Melita Poler, 'Legal Analysis in Media Policy Research', in *The Palgrave Handbook of Methods for Media Policy Research*, ed. Hilde Van Den Bulck et al. (Springer International Publishing, 2019), https://doi.org/10.1007/978-3-030-16065-4_30.

analysis, and legal comparison between UU TPPO and the Juvenile Criminal Justice System (UU SPPA) to identify normative inconsistencies, using legal theories, principles, and concepts derived from the examined legal materials.

Result and Discussion

A. Criminal Law Policy in the Regulation of Sanctions against Children as Active Perpetrators of Prostitution in Human Trafficking Offenses in Indonesia

The regulation of children as perpetrators in human trafficking offenses exists within a fundamentally problematic legal framework, as it is governed by two principal legal instruments with differing orientations, namely the Law on the Eradication of Human Trafficking Crimes, Law Number 21 of 2007, and the Juvenile Criminal Justice System Law, Law Number 11 of 2012. Both laws serve as the primary legal foundations for addressing this issue; however, they are normatively grounded in approaches that are not fully aligned. The Human Trafficking Law emphasizes retributive punishment and is oriented toward crime control. In contrast, the Juvenile Criminal Justice System Law prioritizes diversion and a restorative approach that upholds the best interests of the child. This divergence creates a dilemma in criminal law policy, as the state is required to respond firmly to human trafficking offenses while simultaneously bearing an obligation to provide special protection to children.²⁷

This tension becomes more visible in practice when children are processed as offenders in cases related to prostitution or trafficking. One example of a more retributive-oriented approach can be seen in a case involving a sixteen-year-old girl in Batam, decided by the District Court of Batam in November 2023. In that case, the child was found guilty of offering another underage girl for prostitution through social media and

²⁷ Resty Shelya Pujiani et al., 'Seeking Justice for Indonesian Children: The Juvenile Criminal Justice System in Indonesia in the Context of Criminal Justice Reform', *Indonesian Journal of Advocacy and Legal Services* 4, no. 2 (2022): 259–74, <https://doi.org/10.15294/ijals.v4i2.29823>.

was sentenced to ten months of imprisonment.²⁸ Although the offender herself was still a minor, the judicial response ultimately resulted in incarceration. This outcome demonstrates the continuing dominance of a punitive orientation rather than an approach centered on the protection, rehabilitation, and reintegration of the child.

To understand why this divergence persists, it is important to consider the historical background of each law's enactment. The Human Trafficking Law emerged in the post-Reform era as a response to the increasing number of trafficking cases, particularly those involving women and children. For that reason, it was designed with an emphasis on firm and swift law enforcement. By contrast, the Juvenile Criminal Justice System Law developed within a legal framework that places greater weight on child welfare, legal protection, and the recognition of children's rights. Accordingly, even though both laws were enacted within a broader reform-oriented legal context and pursue significant public objectives, in practice, they produce normative friction when children are positioned as perpetrators in human trafficking offenses.²⁹

This normative friction is most clearly reflected in the different objectives pursued by the respective regulatory frameworks. The Human Trafficking Law treats trafficking as a serious crime that must be addressed through effective enforcement and strict punishment. As a result, there is a tendency to classify any person who fulfills the elements of the offense as a perpetrator who should be held criminally liable. In contrast, the Juvenile Criminal Justice System Law is based on the understanding that children cannot be equated with adults, because they possess psychological, social, and moral vulnerabilities that require special treatment. Therefore, when a child is involved in human trafficking, law enforcement authorities are effectively confronted with two competing paradigms, namely punishment and protection. It is precisely this clash of paradigms that

²⁸ Ahmad S, 'Remaja Di Batam Nekat Jadi Mucikari', *Batam Pos*, 3 November 2023, <https://metropolis.batampos.co.id/remaja-di-batam-nekat-jadi-mucikari/>.

²⁹ Angkasa Angkasa et al., 'Development of a Restitution Model in Optimizing Legal Protection for Victims of Human Trafficking in Indonesia', *Journal of Indonesian Legal Studies* 8, no. 1 (2023): 93–128, <https://doi.org/10.15294/jils.v8i1.67866>.

creates a fundamental normative tension in the regulation and handling of children as perpetrators of human trafficking offenses.

The problem is further exacerbated by the lack of clear legal distinction within the Human Trafficking Law between children as perpetrators and children as victims. Such clarity is essential for accurately determining criminal responsibility. In practice, children involved in trafficking or prostitution often do not act under conditions of full autonomy, but rather within circumstances of exploitation, coercion, threats, manipulation, or economic dependency. However, because the law does not explicitly regulate situations in which a child is initially a victim and subsequently becomes involved in criminal conduct, children are frequently classified as perpetrators based solely on their outward actions. This formalistic approach risks producing unjust outcomes by disregarding the broader context of exploitation.

In this context, the concept of the child victim offender becomes particularly relevant. This concept acknowledges that a child may occupy a dual position as both a victim and a participant in criminal activity due to coercive circumstances. Its incorporation into the legal framework would provide clearer guidance for law enforcement in determining whether a child should be subjected to punishment or prioritized for protection. Such determination must extend beyond the child's role in the offense to include an assessment of socio-psychological conditions, level of awareness, and the presence of coercion or threats. Through this approach, legal enforcement can achieve not only greater certainty but also substantive justice.³⁰

Beyond substantive issues, the normative conflict also manifests at the level of implementation. In practice, law enforcement authorities tend to rely on the repressive and efficiency-oriented framework of the Human Trafficking Law, particularly in proving criminal elements. Meanwhile, diversion mechanisms and restorative justice principles mandated by the

³⁰ Anang Riyan Ramadianto et al., 'Victim Impact Statement as a Model of Victim-Centered Justice in Child Sexual Abuse Cases', *Jurnal Hukum IUS QUIA IUSTUM* 32, no. 2 (2025): 337–60, <https://doi.org/10.20885/iustum.vol32.iss2.art4>.

Juvenile Criminal Justice System Law are rarely optimized. As a result, the handling of juvenile cases is often driven more by enforcement efficiency than by the protection of children's rights. This reflects a gap between law in the books and law in action, where child protection is formally recognized but frequently sidelined in practice.³¹

Further analysis reveals three structural weaknesses in criminal law policy concerning children as perpetrators of human trafficking. First, there is a legislative or normative failure due to the lack of harmonization between the two laws' objectives and approaches, resulting in ambiguity and legal uncertainty. Second, there is an implementation gap, as law enforcement tends to prioritize repressive approaches and formal legal certainty over restorative mechanisms. Third, there is systemic neglect of underlying socioeconomic factors, such as poverty and structural exploitation, which often compel children to become involved in trafficking. Consequently, enforcement efforts focus primarily on children as visible actors while overlooking the broader structural networks that sustain the crime.

Accordingly, the core issue in regulating children as perpetrators of human trafficking lies not only in the divergence between the two legal regimes but also in the absence of a coherent legal formulation capable of reconciling them. Addressing this issue requires comprehensive legal reform rather than case-by-case interpretation. The first step is to harmonize the Human Trafficking Law and the Juvenile Criminal Justice System Law, ensuring that child protection becomes the primary framework. At the same time, criminal punishment remains a measure of last resort.

Second, clearer legal definitions must be established regarding children as perpetrators, children as victims, and children who are victims but subsequently involved in criminal activity. These definitions should include objective criteria such as the child's role, level of awareness,

³¹ Nur Rochaeti et al., 'Implementing of Restorative Justice to Build the Criminal Justice System in Indonesia: A Study of the Batak Toba Justice System', *LAW REFORM* 19, no. 2 (2023): 221–47, <https://doi.org/10.14710/lr.v19i2.53184>.

presence of coercion, economic dependency, and socio-psychological condition, thereby reducing the risk of misclassification.

Third, the concept of the child victim offender should be formally incorporated into positive law. This would enable a more nuanced understanding of the child's position and prevent unjust criminalization by requiring consideration of the child's prior victimization.

Fourth, restorative approaches must be reaffirmed as the primary mechanism in handling cases involving children, with diversion, rehabilitation, and social reintegration prioritized over punitive measures.

Fifth, criminal law policy must be reoriented toward addressing the structural roots of human trafficking. Law enforcement should focus on organized networks and primary perpetrators rather than disproportionately targeting children, who are often only a small part of a larger system of exploitation.

Ultimately, the regulation of sanctions against children as perpetrators of human trafficking must be situated within a balanced framework that integrates legal certainty, justice, and child protection. While the law must remain firm in addressing trafficking as a serious crime, it must also recognize that children are inherently vulnerable and often embedded within cycles of exploitation. Through harmonization of legal frameworks, clearer definitions, the incorporation of the child victim-offender concept, prioritization of restorative justice, and structural enforcement strategies, Indonesia's criminal law policy can better ensure outcomes that are not only legally certain but also just and protective of children.

B. An ideal and equitable formulation of offenses and sanctions for children as active perpetrators of prostitution in human trafficking crimes under Indonesia's criminal law reform.

Criminal law reformulation constitutes an effort to renew legal norms that are no longer aligned with social, cultural, and societal demands for justice. In the context of criminal law, reformulation is particularly significant because it represents the most coercive instrument for imposing sanctions

for violations of legal norms.³² Consequently, criminal law cannot be understood as a static system; rather, it must be dynamic and adaptive to societal change.

Criminal law reformulation encompasses the restructuring of both substantive and procedural criminal provisions, including the formulation of offenses and the types of sanctions imposed. The primary objective of such reformulation is to establish a criminal justice system that is fair, effective, and humane. Concerning children as active perpetrators of prostitution within the crime of trafficking in persons (TIP), reformulation becomes especially crucial, given that children are special legal subjects who are still in the process of physical, psychological, and social development.

One of the key grounds for the urgency of reformulation lies in shifts in social and cultural values. Advances in information technology and globalization have transformed patterns of TIP, including prostitution, which is now frequently facilitated through digital platforms. These changes have also influenced societal perceptions of prostitution, which is no longer viewed merely as a moral offense but increasingly as a form of exploitation and human trafficking. In this context, children's involvement in prostitution is often inseparable from factors such as vulnerability, manipulation, and abuse of circumstances, rendering a purely repressive criminal law approach inadequate.

Furthermore, reformulating criminal law is necessary to ensure harmonization between national and international law. Indonesia has ratified various international instruments emphasizing child protection and the eradication of TIP, including the Convention on the Rights of the Child and the Palermo Protocol.³³ Accordingly, the formulation of offenses and sanctions within national criminal law must be consistent

³² Rendy Laputigar et al., 'Integrating Due Process Into The Enforcement Framework of Criminal Law Politics', *IJCLS (Indonesian Journal of Criminal Law Studies)* 9, no. 1 (2024): 133–56, <https://doi.org/10.15294/ijcls.v9i1.50293>.

³³ Ridwan Ridwan et al., 'The Implementation of General Principles of Convention on The Rights of The Child During Covid-19 Pandemic in The City of Serang', *LAW REFORM* 18, no. 1 (2022): 16–27, <https://doi.org/10.14710/lr.v18i1.44643>.

with these principles, particularly the principle of the best interests of the child.

Substantive justice also constitutes an important foundation for criminal law reformulation. Substantive justice requires that the law not be oriented solely toward formal legal certainty, but also take into account the social context and the offender's concrete circumstances.³⁴ In practice, children involved as active perpetrators of prostitution often occupy an ambiguous position, functioning simultaneously as offenders and victims. Therefore, the formulation of offenses and sanctions should avoid rigid retributive approaches and instead prioritize corrective, educational, and rehabilitative measures.

Moreover, criminal law reformulation aims to enhance the effectiveness of law enforcement. Vague or overlapping legal provisions risk generating legal uncertainty and inconsistent application of the law. The reformulation of offenses and sanctions concerning children as active perpetrators of prostitution must provide clarity regarding the child's legal status, the limits of criminal responsibility, and forms of sanctions that are proportional and oriented toward child protection.

Accordingly, the reformulation of offenses and sanctions for children as active perpetrators of prostitution in TIP constitutes an urgent necessity in the renewal of Indonesia's criminal law. Such reformulation should be directed toward realizing a criminal justice system that is fair, humane, and effective, while simultaneously protecting children and responding comprehensively to the evolving dynamics of TIP.

1. Philosophical Perspectives on the Reformulation of Sanctioning Regulations for Children as Active Perpetrators Engaged in Prostitution in Indonesia

The implementation of the reformulation of criminal law regulations concerning children as perpetrators of prostitution within TIP cannot be separated from the philosophical foundations of law.

³⁴ Nino Antadze, 'Examining the Role of Substantive Justice in Planning Controversial Facilities', *Environmental Justice* 8, no. 5 (2015): 192–96, <https://doi.org/10.1089/env.2015.0020>.

Philosophical foundations constitute the underlying rationale that guides the formation of legal products, reflecting a nation's worldview, ideals, and the values that live and develop within society. These foundations provide direction and purpose for the legal system, keeping it aligned with the fundamental objectives of law: justice, utility, and legal certainty.³⁵

Philosophically, the paradigm of modern criminal law has shifted from a purely repressive approach toward one that is more humanistic, progressive, and justice-oriented.³⁶ Criminal law is no longer understood solely as an instrument of regulation and punishment, but also as a means of protection, correction, and improvement for those who come into conflict with the law. This paradigm positions criminal law as a mechanism that protects individuals from arbitrariness while simultaneously maintaining social order.

In the Indonesian context, Pancasila, as the philosophical foundation of the nation, serves as the primary source of values in the formation of national law, including criminal law. The values embodied in Pancasila reflect the spirit of humanity, social justice, and respect for human dignity.³⁷ Accordingly, every enactment and renewal of legislation, including criminal law reformulation, must be grounded in the values of Pancasila as they live and develop within society.

Concerning children as perpetrators of prostitution in TIP, a philosophical approach to criminal law becomes particularly important. TIP is a crime that continues to evolve alongside advances in information technology and modernization, requiring legal development to keep pace with such dynamics. In criminal law,

³⁵ Olga N. Gorodnova et al., 'Justice as a Basis for Evaluating and Improving Law as an Element of Legal Awareness', in *Sustainable Cooperation for the Creation of Green Supply Chains Based on Environmental Technologies and Responsible Innovations*, ed. Elena G. Popkova et al., Sustainable Civil Infrastructures (Springer Nature Switzerland, 2024), https://doi.org/10.1007/978-3-031-70962-3_35.

³⁶ R. A. Duff, 'Criminal Law', in *The Cambridge Companion to the Philosophy of Law*, 1st edn, ed. John Tasioulas (Cambridge University Press, 2020), <https://doi.org/10.1017/9781316104439.017>.

³⁷ Yudi Latif, 'The Religiosity, Nationality, and Sociality of Pancasila: Toward Pancasila through Soekarno's Way', *Studia Islamika* 25, no. 2 (2018): 207–45, <https://doi.org/10.15408/sdi.v25i2.7502>.

children are treated as special legal subjects because of their limited age, psychological maturity, and capacity for full responsibility. Consequently, the regulation and application of criminal law to children cannot be equated with that applied to adults.

Normatively, a child who commits a criminal act remains classified as a perpetrator of a criminal offense. In the context of prostitution related offenses, an active perpetrator may be understood as an individual who consciously and directly participates in carrying out, organizing, or facilitating the practice, whether through recruitment, control, the provision of a place, or the obtaining of material benefit. This role is therefore not merely passive or incidental, but reflects a concrete initiative and a substantial contribution to the occurrence of the offense. However, in its enforcement, a different orientation applies, as juvenile criminal law prioritizes protection, guidance, and rehabilitation. The prevailing paradigm has tended to position children solely as victims. According to the author, this view is not entirely appropriate when applied generally to all types of criminal offenses, since the classification of a child as a victim does not automatically eliminate culpability for a criminal act, particularly where the conduct has fulfilled the juridical elements of the offense.

From the philosophical perspective of criminal law, the essence of punishment lies primarily in the act committed, rather than merely in the identity of the perpetrator. In other words, the principal basis of criminal responsibility is conduct that fulfills the constituent elements of a criminal offense, not the age of the offender alone. In the context of TIP-related prostitution, the Anti Trafficking in Persons Act places exploitation as the core element of the offense. Accordingly, from a philosophical standpoint, the perpetrators of TIP may include both adults and children, provided that the legal elements of the offense have been fulfilled.

Nevertheless, the Anti Trafficking in Persons Act does not explicitly regulate the position of children as special perpetrators. At the same time, TIP is philosophically regarded as a serious crime because it

degrades human dignity and violates fundamental humanitarian values. This perspective affirms that TIP cannot be tolerated, even where a child commits the act. However, although the legal response toward children must continue to take their need for protection into account.

In contrast, the Juvenile Criminal Justice System Act expressly positions children as special legal subjects and tends to conceptualize them primarily as victims. This divergence in philosophical orientation between the Anti Trafficking in Persons Act and the Juvenile Criminal Justice System Act creates a legal gap in addressing children as perpetrators in TIP-related prostitution. On the one hand, children may be regarded as criminal offenders because they have committed acts that fulfill the legal elements of the offense. On the other hand, they are also positioned as victims who require protection.

According to the author, a paradigm that consistently places children only as victims cannot be applied uniformly to all forms of criminal conduct. Criminal acts arise from the interaction between conduct and opportunity, and this reality applies to all legal subjects, including children. Where victims suffer harm as a result of criminal acts committed by children, the complete disregard of criminal responsibility on the part of child perpetrators risks creating injustice for victims and weakening the application of the principle of legality.

Philosophically, the state bears a dual obligation in criminal law: to enforce the law and to protect its citizens, including children. In cases involving children as perpetrators of TIP-related prostitution, the state is therefore required to enforce the Anti Trafficking in Persons Act while simultaneously applying the Juvenile Criminal Justice System Act as an instrument of child protection. Any conduct that satisfies the legal elements of TIP remains a criminal offense, even when committed by a child. Terminological distinctions such as children in conflict with the law, do not negate the juridical fulfillment of the elements of the offense.

The author argues that the existing philosophical foundations of criminal law are, in principle, sufficient and remain relevant to

contemporary social conditions. However, a significant weakness persists in the tendency to generalize children as victims in all categories of criminal offenses. For this reason, a new concept is needed to reconcile the demands of law enforcement and child protection, namely the concept of Child Victim Offenders.

The concept of Child Victim Offenders views children as legal subjects who may simultaneously occupy the position of both perpetrator and victim in certain crimes, including TIP-related prostitution. Under this approach, children are not automatically designated as criminal offenders unless specific criteria are satisfied, demonstrating their degree of culpability, awareness, and role in the commission of the offense. This concept provides law enforcement authorities with greater flexibility to enforce the Anti Trafficking in Persons Act while ensuring the protection of children through the mechanisms provided under the Juvenile Criminal Justice System Act.

In a broader international context, this concept is closely related to the theories of dual status offenders and victim offender overlap, both of which have been widely discussed in criminological and victimological scholarship.³⁸ The concept of dual status offenders refers to children who simultaneously occupy the position of victim and offender within the juvenile justice system, thereby requiring a legal approach that does not rely on a rigid dichotomy between protection and punishment.³⁹ Meanwhile, victim-offender overlap explains that experiences of victimization often increase the likelihood of subsequent involvement in criminal conduct, particularly where children are exposed to exploitation, coercion, abuse, and structural vulnerability.⁴⁰

³⁸ Mark T. Berg and Carrie F. Mulford, 'Reappraising and Redirecting Research on the Victim-Offender Overlap', *Trauma, Violence, & Abuse* 21, no. 1 (2020): 16-30, <https://doi.org/10.1177/1524838017735925>.

³⁹ Denise C. Herz et al., 'Dual System Youth and Their Pathways in Los Angeles County: A Replication of the OJJDP Dual System Youth Study', *Child Abuse & Neglect* 118 (August 2021): 105160, <https://doi.org/10.1016/j.chiabu.2021.105160>.

⁴⁰ Amber L. Beckley et al., 'The Developmental Nature of the Victim-Offender Overlap', *Journal of Developmental and Life-Course Criminology* 4, no. 1 (2018): 24-49, <https://doi.org/10.1007/s40865-017-0068-3>.

These perspectives reinforce the argument that children involved in TIP (prostitution) cannot always be understood solely as offenders or solely as victims, but rather as legal subjects whose position may overlap depending on the social, psychological, and criminogenic circumstances surrounding the offense. Accordingly, the concept of “Child Victim Offenders” not only strengthens the philosophical foundation for balancing law enforcement and child protection, but also provides a more globally grounded theoretical basis for the reformulation of criminal law concerning children involved in trafficking related prostitution.⁴¹

Accordingly, from a philosophical standpoint, there exists a compelling urgency to reformulate regulations governing children as perpetrators of TIP (prostitution). Such reformulation aims to prevent the misuse of the law by irresponsible parties who exploit children as instruments in organized crime. Without philosophical and normative clarity, criminal law risks losing its protective function and, instead, reinforcing the exploitation of children. Therefore, reformulation grounded in the values of justice, humanity, and the best interests of the child constitutes an imperative and cannot be deferred.

2. Sociological Perspectives on the Urgency of Reformulating Sanctioning Regulations for Children as Perpetrators of Prostitution

From a sociological perspective, law is understood not merely as a body of written norms, but also as a product and instrument of social structures.⁴² Roscoe Pound conceptualized law as a tool of social engineering, meaning that law functions not only to resolve conflicts, but also to shape and direct social behavior in accordance with specific

⁴¹ Crosby A. Modrowski et al., ‘Youth Dually-Involved in the Child Welfare and Juvenile Justice Systems: Varying Definitions and Their Associations with Trauma Exposure, Posttraumatic Stress, & Offending’, *Children and Youth Services Review* 150 (July 2023): 106998, <https://doi.org/10.1016/j.chilyouth.2023.106998>.

⁴² Lauren Edelman and Marc Galanter, ‘Law: The Socio-Legal Perspective’, in *International Encyclopedia of the Social & Behavioral Sciences* (Elsevier, 2015), <https://doi.org/10.1016/B978-0-08-097086-8.86148-6>.

social objectives.⁴³ Accordingly, the regulation of sanctions for children as perpetrators of TIP in the form of prostitution must be analyzed by taking into account the surrounding social realities, particularly the vulnerability of children within systems of sexual exploitation.

Sociologically, children involved in prostitution generally emerge from complex socio-economic conditions, such as poverty, family dysfunction, limited access to education, and environments that are permissive toward criminal behavior. These conditions affirm that children are vulnerable subjects who require special protection. Nevertheless, such vulnerability does not automatically eliminate a child's legal responsibility for criminal acts committed. Children remain legal subjects who may be held accountable, although through mechanisms and approaches that differ from those applied to adults.

As the nation's future generation, children require a legal approach that emphasizes not only law enforcement, but also protection, guidance, and rehabilitation. In the context of TIP (prostitution), there is currently no specific regulation that explicitly governs children as perpetrators. This normative vacuum creates ambiguity in law enforcement and sentencing practices, and at the same time, risks generating injustice and arbitrary actions by law enforcement authorities.

According to the author, there is a strong sociological urgency to reformulate the regulation of TIP (prostitution) by positioning children as perpetrators in a proportional manner. Criminal law must be responsive and contextual. Philippe Nonet and Philip Selznick explain that responsive law is law that evolves from social needs and is oriented toward substantive justice rather than purely repressive measures. In this context, criminal law should not merely aim to create deterrence, but also to rehabilitate offenders so that they may reintegrate and function socially.

⁴³ Aleksander Olaf Szpojankowski, 'Law as a Social Engineering Tool in the Legal Philosophy of Roscoe Pound', *Archiwum Filozofii Prawa i Filozofii Społecznej*, 15 March 2019, 94–107, <https://doi.org/10.36280/AFPiFS.2019.1.94>.

The absence of specific regulations concerning children as perpetrators of TIP (prostitution) indicates that Indonesian criminal law has not yet fully embodied a responsive legal character. The lack of clear criteria or categories for determining when a child is to be regarded as a perpetrator-results in law enforcement practices that operate without clear guidance, and thus risk the neglect of children's rights. Responsive law should provide legal certainty while also ensuring legal protection for children within the criminal justice system.

Another sociological urgency lies in preventing social dysfunction experienced by children after the imposition of criminal sanctions.⁴⁴ Inappropriate punishment may exacerbate a child's condition and hinder social reintegration into the family and broader community. Therefore, a specialized sentencing system is required, one that prioritizes the best interests of the child without eliminating the element of criminal accountability.

Purely retributive punishment is widely regarded as inappropriate for children due to its potential to generate long-term negative effects.⁴⁵ However, the author argues that punishment for children need not entirely exclude retributive elements. What is required is a model of limited retributive punishment, meaning punishment that retains a restrained element of retribution to ensure deterrence and justice for victims, while being balanced with guidance, education, discipline, and skills training. This approach is expected to deliver substantive justice while safeguarding the child's future after the sentence is completed.

In addition to socio-economic factors⁴⁶, developments in technology and information have significantly contributed to the

⁴⁴ Stefano Porcelli et al., 'Social Dysfunction in Mood Disorders and Schizophrenia: Clinical Modulators in Four Independent Samples', *Progress in Neuro-Psychopharmacology and Biological Psychiatry* 99 (April 2020): 109835, <https://doi.org/10.1016/j.pnpbp.2019.109835>.

⁴⁵ Sitthana Theerathitiwong, 'Retribution', in *The Encyclopedia of Corrections*, 1st edn, ed. Kent R. Kerley (Wiley, 2017), <https://doi.org/10.1002/9781118845387.wbeoc236>.

⁴⁶ Ritis K. Shyanti et al., 'Socio-Economic Status Driven Social, Behavioral, and Financial Burden on Patients: A Critical Assessment of Health Equity', in *Public Health Issues: Theory and Practices*, ed. Shalie Malik et al. (Springer Nature Singapore, 2025), https://doi.org/10.1007/978-981-96-6650-8_8.

increasing involvement of children in TIP (prostitution). While technology facilitates communication and transactions, it simultaneously creates opportunities for more complex and less detectable modes of criminal activity. Children, who enjoy broad access to social media and digital platforms are increasingly vulnerable both as victims and as perpetrators of online-based crimes.

The use of technology by TIP perpetrators further complicates law enforcement efforts to combat this crime. TIP (prostitution) has become more organized, efficient, and concealed. Under such conditions, the absence of specific regulations addressing children as perpetrators of TIP further weakens the child's position, because they become more susceptible to arbitrary treatment by law enforcement authorities. Consequently, technological and informational developments further underscore the urgency of reformulating sanctioning regulations for children as perpetrators of TIP (prostitution).

The author also highlights changes in crime patterns involving children as perpetrators. TIP (prostitution) may be committed by anyone, at any time, and in any place, including by children. Easy access to information and technology enables children to become directly involved in online prostitution practices, either independently or as part of organized networks. This reality demands that the state respond with criminal law policies that are adaptive to social and technological change.

Thus, from a sociological standpoint, it can be concluded that the reformulation of sanctioning regulations for children as perpetrators of TIP (prostitution) constitutes an urgent necessity. Such reformulation must be grounded in responsive law, oriented toward substantive justice, and focused on child protection and rehabilitation. Without clear and comprehensive legal reform, children will continue to remain in a vulnerable position, both as perpetrators who lack legal certainty and as subjects susceptible to misuse within the law enforcement system.

3. Juridical Perspectives on the Urgency of Regulating Sanctions for Children as Active Perpetrators of Prostitution

From a juridical perspective,⁴⁷ the analysis of sanctioning regulations for children involved in TIP, particularly in the form of prostitution, must be grounded in the applicable positive law. This approach is employed to assess the urgency and relevance of reformulating sanctioning frameworks by taking into account the principles of legality, justice, child protection, and non-discrimination as recognized in national law and international legal instruments. Juridical considerations constitute the primary foundation for the formation of legislation, as affirmed in Law No. 12 of 2011 on the Formation of Laws and Regulations; accordingly, any legal reform must be supported by a strong and systematic juridical basis.

Constitutionally, child protection is expressly mandated under Article 28B (2) of the 1945 Constitution of the Republic of Indonesia, which provides that every child has the right to survival, growth, and development, as well as the right to protection from violence and discrimination. This provision serves as the principal foundation for affording legal protection to children, including when a child holds the status of an offender in TIP (prostitution) cases. As the supreme law, the 1945 Constitution provides normative direction and limitations for the formulation and implementation of all legislation in Indonesia. Therefore, any legal regulation concerning children must be aligned with the constitutional principle of child protection.

Nevertheless, from a juridical standpoint,⁴⁸ there remain fundamental problems in regulating children as perpetrators of TIP (prostitution), namely the existence of a legal vacuum. Law No. 21 of 2007 on the Eradication of the Criminal Act of Trafficking in Persons (UU PTPPO) does not explicitly regulate the legal position of children as offenders, particularly in the context of prostitution. This normative

⁴⁷ Simon Deakin, 'Juridical Ontology: The Evolution of Legal Form', *Historical Social Research* 40 (2015): 170184, <https://doi.org/10.12759/HSR.40.2015.1.170-184>.

⁴⁸ Joaquim Ramalho, 'Juridical Personality of Legal Persons: Dogmatic Evolution', *Revista Direito GV* 15, no. 3 (2019): e1926, <https://doi.org/10.1590/2317-6172201926>.

gap has serious implications, as it opens the door to divergent interpretations and may lead in violations of children's rights as guaranteed by the 1945 Constitution.

The absence of specific regulation also affects law enforcement practices. On the one hand, the legal vacuum may enable child offenders to evade legal accountability due to the lack of a clear legal basis. On the other hand, this condition also creates opportunities for arbitrary actions by law enforcement officials, given the absence of clear normative guidance in determining the criminal liability of children involved in TIP (prostitution).

In addition to the legal vacuum, there is a normative conflict between the UU PTPPO and Law No. 11 of 2012 on the Juvenile Criminal Justice System (UU SPPA). The UU PTPPO is oriented toward law enforcement and the eradication of TIP as a serious crime, whereas the UU SPPA positions children as special legal subjects whose protection must be prioritized. This divergence in orientation gives rise to a conflict of interests between the state's obligation to enforce criminal law and its constitutional obligation to protect children's rights.⁴⁹

Such normative conflict necessitates the harmonization of legislation through the reformulation of sanctioning regulations for children as perpetrators of TIP (prostitution). Harmonization is required to clarify the legal status of children, the limits of their criminal responsibility, and the authority of law enforcement agencies in handling such cases. Without harmonization, both children and law enforcement authorities are placed in a position of legal uncertainty, which risks producing legal injustice.

Juridically, the state bears a dual obligation: to enforce criminal law against any conduct that fulfills the elements of TIP (prostitution), and simultaneously to provide legal protection to children as special legal subjects. Accordingly, the reformulation of sanctioning regulations

⁴⁹ 'Theoretical and Practical Issues of Sexual Crimes Against Children', *IJCLS (Indonesian Journal of Criminal Law Studies)* 10, no. 2 (2025), <https://doi.org/10.15294/ijcls.v10i2.22725>.

must be capable of bridging these two interests, ensuring that children are neither excessively criminalized nor entirely absolved of criminal responsibility for acts that harm others.

Thus, juridical considerations clearly demonstrate the urgency of promptly reformulating sanctioning regulations for children as perpetrators of TIP (prostitution). Such reformulation is necessary to address legal vacuums, harmonize conflicts among legislative instruments, and ensure legal certainty, justice, and the protection of children's rights within Indonesia's criminal justice system.

4. Legal Implications Arising from the Failure to Implement the Reformulation of Sanctions for Children as Perpetrators of Prostitution

In the context of juvenile criminal law and transnational crimes such as TIP in the form of prostitution, the legal status of a child as an active offender gives rise to a complex juridical dilemma.⁵⁰ On the one hand, a child may be legally qualified as a perpetrator of a criminal offense; on the other hand, the child simultaneously occupies the position of a victim of exploitation. Regulatory ambiguity and the absence of a reformulation of sanctioning frameworks for children in such circumstances may have serious legal implications at the normative, practical, constitutional, and international levels.

Normatively, it does not necessarily follow that every criminal statute must independently regulate children as perpetrators, children as victims, and the distinction between juvenile and adult offenders in a comprehensive manner. In principle, such matters have generally been accommodated within the Juvenile Criminal Justice System Act and the Child Protection Act, both of which provide the general framework for the protection and treatment of children in conflict with the law. However, in the specific context of TIP related prostitution, the absence

⁵⁰ Yernar N. Begaliyev et al., 'Features of Criminal Liability of Juvenile Criminals: International Legal and Comparative Analysis', *International Journal of Criminology and Sociology* 9 (April 2022): 1579–86, <https://doi.org/10.6000/1929-4409.2020.09.180>.

of explicit harmonization in the Anti Trafficking in Persons Act may create uncertainty in law enforcement practice, particularly where children involved in the offense are treated in the same manner as adult offenders without sufficient consideration of their psychological condition, social background, and particular vulnerability. Therefore, the issue is not the absolute necessity of re-stating child-specific provisions in every criminal law, but rather the need for normative coherence between special criminal legislation and the general principles of child protection and juvenile justice.

This situation underscores the urgent need for the reformulation and harmonization of legal regulations governing children as perpetrators of TIP (prostitution). In the absence of such harmonization, several serious implications may arise. First, there is legal uncertainty regarding the child's status. Although, in principle, children have been recognized as special legal subjects under the UU SPPA and various international instruments, such as the Palermo Convention and the United Nations Convention on the Rights of the Child (UNCRC), their position becomes blurred within the framework of the UU PTPPO. The equalization of juvenile and adult perpetrators may cause traumatic effects, impede rehabilitative processes, and disregard the educational and rehabilitative objectives of punishment in juvenile justice.

Second, inconsistencies emerge in the legal protection afforded to children. The differing orientations of the UU SPPA, which emphasizes child protection, and the UU PTPPO, which focuses on law enforcement against serious crimes, generate normative conflicts. Consequently, legal protection for children as perpetrators of TIP (prostitution) becomes suboptimal and risks neglecting children's rights throughout the legal process.

Third, there is a potential violation of children's constitutional rights as guaranteed under Article 28B (2) of the 1945 Constitution of the Republic of Indonesia. Regulatory ambiguity and conflicts among legal norms may result in discriminatory law enforcement practices that

are inconsistent with the principle of the rule of law as affirmed in Article 1(3) of the Constitution.

Fourth, these conditions may also place Indonesia in breach of its international commitments as a State Party to the Palermo Convention and the UNCRC. The lack of synchronization between normative commitments and law enforcement practices may undermine Indonesia's international credibility and reflect weak implementation of its child protection obligations.

Fifth, regulatory uncertainty creates opportunities for law enforcement officials to abuse their authority. In situations where legal norms are unclear, authorities tend to adopt the most expedient and efficient legal mechanisms, even when such approaches potentially compromise the best interests of the child. This increases the risk of criminalization and discrimination against children.

Sixth, normative gaps and conflicts also create potential legal loopholes in determining the status of children involved in TIP (prostitution). Such loopholes not only weaken the effectiveness of law enforcement but may also be misused by irresponsible parties, highlighting the need for clearer regulatory criteria. This situation underscores the importance of establishing more precise legal standards to distinguish when a child should be treated as a victim and when a child may be held accountable as a perpetrator.

This situation complicates law enforcement authorities' efforts to pursue, prosecute, and adjudicate offenders. According to the author, the following illustration demonstrates the positions and conditions under which a child perpetrator in TIP (prostitution) may evade the reach of criminal law:



Based on the illustration above, we can observe a simplified scheme demonstrating how child perpetrators can easily carry out TIP in the form of prostitution through the use of technology and information. According to the scheme, Child A “requests” Child B to find someone who can utilize Child A’s prostitution services. The term “requests” indicates the presence of intent, or mens rea, on the part of Child A to exploit themselves through Child B.

However, within the context of TIP (prostitution) as regulated under the Anti-Trafficking in Persons Act (UU PTPPO), the actions carried out by Child B can be categorized as TIP (prostitution) because

several elements of the offense are met, such as “finding a person to use Child A’s prostitution services.” This indicates that Child B can be seen as engaging in the sexual exploitation of Child A. Furthermore, there is the element of “receiving a commission” from the transaction between Child A and Party C, which can be categorized as deriving profit from the sexual exploitation of Child A.

From the perspective of *mens rea* or intent, it is evident that Child A has the intention to engage in sexual exploitation of themselves. Additionally, the term “requests” implies that Child A is instructing Child B to find users of their prostitution services. Applying the concept of Doen Pleger, or the mastermind behind the act, Child A could also be considered a perpetrator. However, in practice, Child A may claim to be a victim of TIP (prostitution), thereby potentially avoiding criminal liability and continuing the same activities with others.

Moreover, the divergent objectives between the UU PTPPO and the Juvenile Criminal Justice System Act (UU SPPA) create a legal gap that disproportionately benefits Child A. While Child A could be categorized as a perpetrator for issuing instructions, in practice, cases following similar schemes consistently position Child A as a victim rather than as a child offender. From a victimological perspective, Child B is also considered a victim within the broader TIP (prostitution) network.

In conclusion, this illustrates the existence of a legal loophole that allows child perpetrators to carry out TIP (prostitution) with relative ease using technology and information, while simultaneously enabling them to evade criminal liability under current TIP regulations, potentially.

5. Reformulation of Articles Concerning Children as Perpetrators of Prostitution

Human Trafficking (HT) in the form of prostitution involving children as perpetrators presents a complex legal challenge. In practice, children are not only victims but can also act as perpetrators of sexual

exploitation through human trafficking networks. However, Indonesia's positive law, particularly the Human Trafficking Law (UU PTPPO), still shows philosophical and technical inconsistencies with other regulations concerning children. This lack of harmony creates legal gaps that may allow child perpetrators to evade accountability.

Currently, UU PTPPO technically allows for the criminalization of children as perpetrators. Still, it does not specifically regulate the mechanisms and legal treatment for child offenders of human trafficking (prostitution), given the urgent need to both protect children and enforce the law, reformulating regulations concerning children as perpetrators has become imperative. The state carries a dual obligation: to enforce UU PTPPO against human trafficking crimes while simultaneously providing legal protection for children, including those involved as perpetrators. Therefore, harmonization through regulatory reform represents a long-term solution.

In response, the author proposes a reformulation of UU PTPPO that specifically addresses children as perpetrators of human trafficking (prostitution). This reformulation aims to balance the concept of children as both victims and perpetrators, establish mechanisms for child accountability, and develop an ideal model of sentencing for child offenders. The author further provides detailed formulations of the articles, along with explanations and practical guidance.

5.1. The Concept of Children as Perpetrators and Children as Victims of Human Trafficking (Prostitution)

Based on the analysis, there is a normative gap in UU PTPPO regarding the concept of children as both perpetrators and victims. The author argues that establishing this concept is crucial to clarify the position and status of children in legal proceedings. The existence of articles explicitly regulating child perpetrators and child victims can provide legal certainty and reduce disputes in law enforcement practice.

The concept of child perpetrators and child victims may be clarified by providing more precise boundaries in Article 1 of the Anti-Trafficking in Persons Act. At present, Article 1 point 5 of the Act defines a child as a person under 18 years of age, including a child still in the womb. However, this formulation constitutes a general definition of a child and is more closely associated with the protective dimension of the law, particularly in relation to victims. By contrast, the Juvenile Criminal Justice System Act does not rely solely on a general definition of a child. Still, it distinguishes among children according to their legal status, including a child in conflict with the law, a child victim, and a child witness. Accordingly, in relation to child perpetrators, harmonization between the Anti Trafficking in Persons Act and the Juvenile Criminal Justice System Act is necessary to ensure consistency in the legal classification and treatment of children involved in TIP cases.

Reformulation can be achieved by adding Article 1(6) on child perpetrators and Article 1(7) on child victims. The proposed definitions are as follows:

- Article 1(6) – Child Perpetrator: “A child perpetrator, or a Child in Conflict with the Law, is a child aged 12 to under 18 years who meets the criteria as a perpetrator of human trafficking as stipulated in this law.”
- Article 1(7) – Child Victim: “A child victim is a child under 18 years of age, including a child still in the womb, who suffers physical, mental, psychological, and/or economic harm as a result of exploitation in human trafficking. This includes children suspected of being perpetrators but who do not meet the criteria for designation as a perpetrator under this law.”

With this formulation, a clear distinction is established between children as perpetrators and children as victims. This clarification strengthens the legal status of children, prevents improper criminalization, and provides legal certainty in the application of UU

PTPPO. Moreover, clear definitions create a balance between law enforcement against human trafficking and child protection as mandated by UU SPPA.

5.2. Specific Criteria for Determining a Child as a Perpetrator (Prostitution)

The involvement of children as perpetrators in human trafficking in the form of prostitution constitutes a complex legal reality that cannot be addressed solely through a conventional offender-based approach. Contemporary criminological and victimological studies recognize the phenomenon of victim-offender overlap, which explains that individuals who experience victimization are often at heightened risk of becoming offenders.⁵¹ In juvenile justice discourse, this condition is also referred to as dual status offenders, namely children who simultaneously occupy the position of victim and perpetrator within the criminal justice system.⁵²

These theoretical frameworks are highly relevant in the context of TIP involving children, where exploitation, coercion, and structural vulnerability frequently shape the child's involvement. Accordingly, the determination of a child as a perpetrator must not rely exclusively on the fulfillment of formal elements of the offense. Still, it must also consider the broader socio-psychological and victimological context underlying the child's conduct.

To operationalize the concept of child victim offenders within a normative framework, clear and measurable criteria are required. These criteria function as a legal safeguard to prevent arbitrary designation of children as perpetrators while ensuring accountability in appropriate cases. The author proposes that such criteria be

⁵¹ Jasmine Randone and Stuart D. M. Thomas, 'The Victim-Offender Overlaps among Australian Youth Missing Persons', *Policing: A Journal of Policy and Practice* 16, no. 4 (2022): 707-18, <https://doi.org/10.1093/police/paac007>.

⁵² Linden Atelsek and Alex M. Roberts, 'Youth with Connections to the Juvenile Justice System: A Priority Population for School Behavioral Health', in *School Behavioral Health*, ed. Mark D. Weist et al. (Springer International Publishing, 2020), https://doi.org/10.1007/978-3-030-56112-3_7.

incorporated into Article 38 of the Anti-Trafficking in Persons Law, particularly in the chapter governing investigation, prosecution, and adjudication.

Article 38(1): The determination of a child as a suspect shall be based on the following criteria:

- Article 38(1): Determination of a child suspect must consider written criteria, including:
 - a) The child's level of participation (initiator, accomplice, or coerced);
 - b) The child's socio-psychological background;
 - c) The child's status as a victim who later becomes a perpetrator (Child Victim Offender).
- Article 38(2): If the above criteria are met, investigators may designate the child as a perpetrator of HT.

These criteria are necessary to ensure that the designation of a child as a perpetrator is done cautiously, protects the child's rights, and allows officials to identify the child's role before making a formal determination. Assessment includes the child's level of participation, socio-psychological condition, and whether the child was compelled to commit the offense due to environmental influence or threats. Furthermore, the concept of child victim offenders applies to children who were initially victims but were forced or coerced into becoming perpetrators. Implementation of this concept is set out in Article 38(3), which includes:

- a) A causal relationship between the child's victim status and role as a recruiter;
- b) Evidence of coercion to avoid threats or abuse;
- c) The child's level of culpability as a perpetrator.

Article 38(4): If elements of child victim offenders are found, the child may not be designated as a suspect. Articles 39 and 40: If the prosecutor or the panel of judges identifies that a child is a victim

who became a perpetrator, they have the authority to discontinue legal proceedings against the child.

This formulation provides a legal barrier to prevent arbitrary action by authorities while clarifying the child's legal status. Law enforcement must consider causality and coercion, including threats or abuse that influence the child. The child's degree of fault differs from that of the coercing party, so this distinction must be clear in determining criminal liability.

Thus, the formulation of Article 38, along with the child victim offender concept, serves as a mechanism to balance law enforcement with child protection, while providing certainty and guidance for law enforcement officials handling cases involving children as perpetrators of HT (prostitution).

5.3. Ideal Sanctions for Child Perpetrators of Human Trafficking (Prostitution)

In addition to reformulating the criteria for determining a child as a perpetrator, there is a fundamental difference between the sanctioning systems in the UU PTPPO and the UU SPPA. The UU PTPPO tends to adopt a retributive approach in imposing penalties, whereas the UU SPPA emphasizes restorative and rehabilitative sentencing, prioritizing the best interests of the child. The UU PTPPO regulates human trafficking offenses in various forms, including prostitution. At the same time, the UU SPPA specifically governs the sentencing mechanism for children in a manner consistent with child protection principles and their best interests.

The absence of explicit provisions regarding child perpetrators in the Anti Trafficking in Persons Act does not necessarily mean that children will be placed in adult correctional facilities, as the Juvenile Criminal Justice System Act already mandates that children serve sentences in Special Child Correctional Institutions and receive treatment oriented toward protection and rehabilitation. Nor does it imply that every criminal statute must independently regulate

detailed provisions concerning child offenders, since the general framework for the treatment of children in conflict with the law has been comprehensively established under the Juvenile Criminal Justice System Act and related child protection legislation. However, the inclusion of specific provisions within the Anti Trafficking in Persons Act remains important from the perspective of normative coherence and legal certainty, particularly in complex offenses such as TIP where children may occupy overlapping roles as perpetrators and victims. Without such harmonization, there is a risk that law enforcement authorities may apply the general punitive provisions of the trafficking statute without adequately integrating the protective principles mandated by juvenile justice law. Therefore, the proposed integration does not aim to duplicate existing regulations, but rather to ensure that sectoral criminal legislation operates consistently with the broader legal framework governing the treatment of children

To address this divergence, the author proposes integrating both sentencing models. In this approach, the retributive element of the UU PTPPO is maintained but combined with rehabilitation, guidance, mentoring, and training, as advocated by the UU SPPA. The placement of additional provisions regarding child sentencing is more appropriate in Chapter II of the UU PTPPO, which discusses human trafficking offenses and their corresponding penalties. The proposed article formulations are as follows:

- Article 19 – Sanctions for Children: If a child is proven to have committed an offense as stipulated in Articles 2, 6, 9, and 12, the imposed penalty shall be half of the penalty applied to adult offenders.
- Article 20, Paragraph (1): If found guilty by court decision, the child shall serve the custodial sentence in a Special Child Correctional Institution.
- Article 20, Paragraph (2): During the execution of the sentence, the child has the right to receive guidance, mentoring, training,

and social and psychological rehabilitation from qualified professionals at the Special Child Correctional Institution.

With this formulation, the sentencing of children in UU PTPPO (prostitution) is limited retributive, meaning it still provides a deterrent effect without disregarding the rights and protection of the child. This concept integrates retributive punishment with rehabilitation, guidance, mentoring, and training, enabling children serving sentences to be reintegrated into society. Limited retributive sentencing is considered the most appropriate approach because the crime of human trafficking, including prostitution, constitutes a serious crime that undermines human dignity and may create social stigma. The addition of rehabilitative and mentoring elements demonstrates the state's commitment to protecting children while simultaneously ensuring legal protection for society and substantive justice for victims. This concept also affirms Indonesia's compliance with international law and the state's obligation to uphold children's rights as enshrined in the Constitution.

Conclusion

The analysis of criminal law policy and the proposed reformulation of regulations regarding children as perpetrators of prostitution in human trafficking reveals a complex legal and normative dilemma in Indonesia. Current legislation reflects a tension between the UU PTPPO, which emphasizes retributive punishment and crime control, and the UU SPPA, which prioritizes the protection, rehabilitation, and best interests of the child. This divergence creates legal ambiguity in determining whether a child involved in TIP should be treated primarily as a perpetrator or as a victim, often resulting in inconsistent enforcement and potential injustice.

The study underscores the urgent need for legal reform that integrates the Child Victim Offender concept, recognizing that children may simultaneously occupy the roles of perpetrator and victim depending

on their degree of participation, coercion, and socio-psychological circumstances. Philosophically, such reform must be grounded in justice, humanity, and the principle of the best interests of the child, reflecting the values of Pancasila and the humanistic paradigm of modern criminal law. Sociologically, the reformulation must address contemporary social realities, including poverty, family dysfunction, limited educational opportunities, and technological developments that shape children's involvement in TIP. Juridically, harmonizing UU PTPPO with UU SPPA is essential to close normative gaps, resolve legislative conflicts, and ensure legal certainty and child protection consistent with national and international obligations.

An ideal regulatory framework would provide clear definitions distinguishing child perpetrators from child victims, establish specific criteria for determining culpability, and implement sanctions that combine limited retributive punishment with rehabilitative measures, mentoring, and social reintegration. This approach balances the need for law enforcement with the protection and development of children, ensures justice for victims, and strengthens the effectiveness of the criminal justice system in addressing human trafficking.

This study contributes to the development of criminal law theory by integrating child protection principles with accountability mechanisms in complex crimes such as human trafficking. Ultimately, harmonized and responsive criminal law is essential to address the evolving challenges of TIP, prevent the criminalization of vulnerable children, and uphold both the rights of the child and the broader interests of society.

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DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no conflict of interest in the publication of this article.

FUNDING INFORMATION

None

ACKNOWLEDGMENT

We express our sincere appreciation to all contributors involved in the development of this article, particularly the authors of books, journal articles, and other references that have enriched its content. We acknowledge that this work may still have limitations; therefore, we welcome constructive feedback and suggestions for improvement. This article is intended to serve as a valuable resource for scholars, legal practitioners, and the broader public in understanding various legal phenomena. Despite the rigor applied in this research, we remain open to critical evaluation and continued academic dialogue, recognizing that improvement is an ongoing process. Ultimately, this work aims to promote knowledge dissemination and stimulate scholarly discussion, with the expectation of contributing to more inclusive and advanced legal thinking in the future.

GENERATIVE AI STATEMENT

During the preparation of this manuscript, the author used ChatGPT to assist in paraphrasing sentences and translating several sections of the text in order to improve language clarity and overall readability. Following this process, the author critically reviewed, edited, and verified all generated outputs to ensure accuracy of meaning, academic consistency, and scientific integrity. The author retains full responsibility for the final content of the manuscript.

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