

# Legal Analysis of Child Protection Against Illegal Child Trafficking Practices

Lidya Rahmadani Hasibuan<sup>1,\*</sup>, Chairuni Nasution<sup>2</sup>, Laura Engelina Br. Sianturi<sup>3</sup>

<sup>1,2,3</sup>Faculty of Social Sciences, Law Study Program, Universitas Pembangunan Panca Budi, Medan, Indonesia

E-mail: <sup>1</sup>\*[lidya.hsb@gmail.com](mailto:lidya.hsb@gmail.com), <sup>2</sup>[chairuninst@gmail.com](mailto:chairuninst@gmail.com), <sup>3</sup>[lauraangelina043@gmail.com](mailto:lauraangelina043@gmail.com)

\*E-mail Corresponding Author: [lidya.hsb@gmail.com](mailto:lidya.hsb@gmail.com)

## Abstract

*The illegal practice of child trafficking is a serious crime that violates human rights and threatens the physical, psychological, and social development of children. Children, as a vulnerable group, often become victims of sexual exploitation, economic exploitation, illegal adoption, and other forms of organized crime. This study aims to analyze legal protection for children in the illegal practice of child trafficking and to assess the effectiveness of applicable legal regulations in preventing and addressing it. The research method used is normative legal research with a legislative, conceptual, and case-based approach, through a review of national laws and regulations, international legal instruments, and relevant legal doctrines and literature. The results of the study indicate that Indonesia has adequate legal instruments, such as the Child Protection Law and the Law on the Eradication of the Crime of Trafficking in Persons, which emphasize the state's obligation to protect children from all forms of exploitation. However, in practice, various obstacles remain, including weak law enforcement, lack of coordination between relevant institutions, and the suboptimal fulfillment of the rights of child victims, particularly in the aspects of recovery and rehabilitation. Therefore, strengthening legal implementation, increasing the role of law enforcement officials, and synergy between the government, the community, and child protection agencies are necessary to ensure effective legal protection for children from the illegal practice of child trafficking.*

*Keywords: child protection, child trafficking, legal protection, human trafficking crime, children's rights.*

## I. INTRODUCTION

Children are legal subjects with a strategic position in both national and international legal systems. Children are understood not only as individuals in a developmental phase but also as holders of human rights who must be specifically protected by the state. From a legal perspective and the philosophy of justice, children occupy a unique position because they naturally lack the full capacity to protect themselves, thus requiring affirmative legal intervention and protection (Nurjanah 2018).

Child protection is a manifestation of the responsibility of a state based on the rule of law (*rechtsstaat*), which places respect for human dignity as a fundamental principle (Ramadani 2023; ZA, Rahmayanti, and Ramadani 2025). The state is not only obligated to respect but also to protect and fulfill children's rights. This principle has been internalized in various international legal instruments, particularly the Convention on the Rights of the Child, and has been adopted into Indonesia's national legal system.

However, in socio-legal reality, children are the most vulnerable group to various forms of organized crime, one of which is the illegal practice of child trafficking. Child trafficking is an extraordinary crime because it is systemic, organized, transnational, and has multidimensional impacts on victims. Children are treated as economic commodities that can be traded for the benefit of

certain parties, completely ignoring human dignity and worth.

The illegal practice of child trafficking encompasses various forms of exploitation, including sexual exploitation, forced labor, domestic slavery, street begging, illegal adoption, and other forms of exploitation that deprive children of their basic rights. This crime often involves complex networks, including recruiters, intermediaries, exploiters, and those who profit financially. This complexity makes child trafficking a difficult crime to uncover and effectively prosecute (Nurhayati, Arnita, and Tanjung n.d.; Zalukhu, Fitrianto, and Nurhayati 2024).

In the Indonesian context, child trafficking is inextricably linked to structural societal conditions, such as poverty, social inequality, low levels of education, weak family resilience, and minimal legal literacy (Gultom, Aspan, and Sahlevi 2025a; Sidi 2020). These factors are exacerbated by the development of information technology, which allows child recruitment and exploitation to be carried out covertly and across national borders. Thus, child trafficking is not solely a criminal law issue but also an intertwined social, economic, and cultural issue.

Normatively, Indonesia has various legal instruments governing child protection and the eradication of human trafficking, including child trafficking. The 1945 Constitution of the Republic of Indonesia expressly guarantees children's rights to survival, growth, and development, as well as

protection from violence and discrimination. These constitutional guarantees were then further elaborated in Law Number 35 of 2014 concerning Child Protection and Law Number 21 of 2007 concerning the Eradication of the Crime of Human Trafficking.

Despite this, the existence of relatively comprehensive regulations has not been able to significantly suppress the practice of child trafficking. This phenomenon demonstrates a gap between law as a norm and law as a social reality (*das sein*). In law enforcement practice, various weaknesses remain, ranging from inconsistent legal application, limited understanding of child protection perspectives by law enforcement officials, to weak coordination between relevant institutions.

Furthermore, the criminal justice system often has not fully adopted a child rights-based approach. Child victims of trafficking are still frequently positioned merely as evidence in the judicial process, rather than as legal subjects whose rights and dignity must be restored. This situation has the potential to lead to secondary victimization, which actually exacerbates the suffering of child victims.

From a legal theory perspective, this situation demonstrates problems in legal effectiveness and substantive justice. Laws that normatively promise maximum protection for children have not yet fully delivered real justice to victims. This raises fundamental questions about the extent to which the national legal system has been able to realize the principle of the best interests of the child in law enforcement practices against child trafficking crimes.

Furthermore, child protection against illegal child trafficking is closely related to the state's legal policy. The legal policy choices made by the state, both in the formulation of regulations and in their enforcement, reflect the extent of the state's commitment to prioritizing child protection in legal development. Therefore, the legal analysis in this research focuses not only on normative aspects but also examines the philosophical, theoretical, and sociological dimensions of child protection (Sahlepi 2023).

Based on this description, a comprehensive and in-depth legal analysis of child protection against illegal child trafficking is required. This analysis is expected to uncover the root causes, evaluate the effectiveness of the existing legal framework, and propose a more progressive and equitable legal framework. With this approach, this research is expected to provide academic contributions and relevant policy recommendations for strengthening the child protection system in Indonesia (Medaline, Rafianti, and Sembiring 2021).

Indonesia, as a state based on the rule of law (*Rechtsstaat*), places law as the primary foundation for the exercise of state power. The concept of a state based on the rule of law demands the protection of human rights, limitations on power, and just law

enforcement. In the context of child protection, the concept of a state based on the rule of law cannot be understood merely formally but must be interpreted substantively, namely, that the state is obliged to actively protect vulnerable groups (Aspan et al. 2023).

Modern rule of law theory emphasizes that the state functions not only as a guardian of order but also as a welfare state responsible for ensuring the welfare and protection of its citizens, including children (Syahrannuddin et al. 2024). Therefore, the state's failure to prevent and address child trafficking can be viewed as a failure to fulfill its constitutional responsibilities (Azwar, Sidi, and Fitrianto 2023).

One of the main principles of child protection theory is the principle of the best interest of the child. This principle requires that all policies, actions, and legal decisions relating to children prioritize the interests of children above all else. In the context of child trafficking, this principle requires the legal system to prioritize the recovery of child victims; prevent re-victimization; and guarantee children's rights to rehabilitation and social reintegration (Gultom, Aspan, and Sahlevi 2025b).

This theory is the basis for criticizing criminal justice practices which are still oriented towards the perpetrator (offender-oriented justice) and have not fully adopted the approach of protecting child victims.

## II. RESEARCH METHODOLOGY

### A. Type and Characteristics of the Research

This research is qualitative, focusing primarily on the analysis of legal norms, legal principles, and their implementation in the context of protecting children from the illegal practice of child trafficking. Qualitative legal research was chosen because the issues under study cannot be understood solely quantitatively but require in-depth interpretation of the meaning, values, and objectives of the law.

In the context, legal research is understood not only as an examination of the text of laws and regulations, but also as a critical study of how the law works (law in action) to protect children from the crime of trafficking. Thus, this research positions law as both a system of norms and a social instrument that interacts with the realities of society.

### B. Research Approach

To comprehensively address the research questions, several complementary legal research approaches were used, namely:

#### 1. Statutory Approach

The statutory approach is used to examine and analyze various laws and regulations related to child protection and the eradication of child trafficking. This approach aims to understand the normative structure, regulatory consistency, and the compatibility between regulations.

The regulations reviewed include:

- a) The 1945 Constitution of the Republic of Indonesia;
- b) The Law on Child Protection;
- c) The Law on the Eradication of the Crime of Human Trafficking;
- d) Government regulations and related implementing regulations;
- e) Ratified international legal instruments.

Through this approach, it is analyzed whether existing legal norms adequately accommodate the principles of child protection, particularly the principle of the best interests of the child.

## 2. Conceptual Approach

The conceptual approach is used to examine relevant legal concepts, such as child protection, child trafficking, human rights, substantive justice, and state responsibility. This approach is based on legal doctrine, expert opinions, and evolving legal theories.

The conceptual approach is crucial in this research because it encompasses various terms and concepts with complex legal and philosophical meanings. This approach allows researchers to develop clear and consistent operational definitions for use throughout the analysis.

## 3. Case Approach

A case approach is used to analyze court decisions related to the illegal practice of child trafficking. Court decisions are seen as concrete manifestations of the application of legal norms in practice.

Through case analysis, this study examines:

- a) Judges' reasoning patterns;
- b) Treatment of child victims;
- c) Consistency in the application of child protection principles;
- d) Justice orientation used in decisions.

This approach allows researchers to assess the extent to which child protection principles have been internalized in judicial practice.

## 4. Philosophical Approach

The philosophical approach is used to explore the fundamental values underlying child protection and the eradication of child trafficking. This approach is crucial for assessing whether the applicable legal system reflects the values of humanity, justice, and legal morality.

The philosophical approach is also used to critique the tendency of legal positivism to overemphasize formal normative aspects without considering the substantive impact on child victims.

## 5. Socio-Legal Approach (Supporting Empirical Approach)

Although this research is normative legal research, the socio-legal approach is used to a limited extent as a supporting tool to understand the social context of child trafficking practices. This approach

helps explain non-legal factors that influence the effectiveness of legal protection, such as community legal culture and institutional performance.

The socio-legal approach is not intended as primary field research, but rather as a complement to enrich the normative analysis.

## C. Sources and Types of Legal Materials

### 1. Primary Legal Materials

Primary legal materials are binding sources of law, consisting of:

1. National laws and regulations;
2. Court decisions regarding child trafficking;
3. Relevant international legal instruments.

Primary legal materials serve as the primary basis for analyzing the legal framework for child protection.

### 2. Secondary Legal Materials

Secondary legal materials include:

- a) Legal textbooks;
- b) National and international scientific journals;
- c) Dissertations, theses, and master's thesis;
- d) Opinions of legal experts.

Secondary legal materials are used to strengthen theoretical and conceptual analysis.

### 3. Tertiary Legal Materials

Tertiary legal materials include:

- a) Legal dictionaries;
- b) Legal encyclopedias;
- c) Indexes and bibliographies.

These materials are used to help researchers accurately understand legal terms and concepts.

## D. Legal Material Collection Techniques

Legal material collection was conducted through:

1. Library research, by exploring relevant legal literature.
2. Searching legal databases, both national and international.
3. Inventorying regulations and decisions, to ensure the completeness of primary legal materials.

This technique was chosen to guarantee the validity and completeness of the legal data analyzed.

## E. Legal Material Analysis Techniques

Legal material analysis was conducted qualitatively and normatively, with the following stages:

1. Inventorying relevant legal norms;
2. Classifying and systematizing legal materials;
3. Interpreting the law, using grammatical, systematic, teleological, and historical interpretation methods;
4. Evaluating the effectiveness of the law, by comparing norms and practices;
5. Legal reconstruction, as the final result of the research.

This analysis is directed at finding structural and normative weaknesses in child protection.

#### F. Validity and Validity of Research

To maintain the validity of the research:

1. Triangulation of legal sources, by comparing various legal materials;
2. Consistency of interpretation, using a clear theoretical framework;
3. Logical and systematic argumentation, to avoid subjective bias.

Validity in legal research is not measured statistically, but rather through the coherence of arguments and accuracy of interpretation.

#### G. Research Limitations

This research is limited to:

1. Legal protection for children as victims of trafficking;
2. Analysis of Indonesian national law;
3. Normative and implementation aspects of child protection.

These limits were set to maintain focus and depth of analysis.

#### H. Research Stages

This research was carried out through stages:

1. Identify legal issues;
2. Collection of legal materials;
3. Analysis and interpretation;
4. Preparation of legal reconstruction;
5. Drawing conclusions and recommendations.

### III. RESULTS AND DISCUSSION

#### A. Overview of Illegal Child Trafficking Practices from a Legal Perspective

Research findings indicate that illegal child trafficking is a complex, multidimensional, and systemic crime. Child trafficking cannot be understood solely as an individual crime, but rather as an organized crime involving various actors and interests. In practice, children are recruited, transferred, housed, and exploited through means often disguised as employment, education, marriage, or even adoption.

From a legal perspective, child trafficking constitutes a serious violation of children's human rights. Children are deprived of their rights to liberty, security, education, health, and the right to grow and develop properly. Research findings indicate that in many cases, children are unaware that they have become victims of trafficking, as the recruitment process is carried out through persuasion, deception, or economic pressure on the family.

Normatively, child trafficking has been classified as a serious crime in the Indonesian legal system. However, the reality shows that this practice continues with various evolving *modus operandi*. This indicates that the existence of legal norms alone

is not sufficient to guarantee effective child protection.

#### B. Legal Construction of Child Protection Against Child Trafficking Practices

##### 1. Child Protection within the Legislative Framework

The research results indicate that, normatively, the legal framework for child protection in Indonesia comprehensively regulates prohibitions and sanctions against child trafficking practices. The Constitution provides fundamental guarantees for children's rights, which are further elaborated in sectoral laws.

The Law on Child Protection affirms that children have the right to protection from all forms of exploitation, including economic and sexual exploitation. Meanwhile, the Law on the Eradication of the Crime of Trafficking in Persons specifically regulates the elements of human trafficking, including child trafficking, with severe criminal penalties.

However, the analysis indicates a tendency toward regulatory fragmentation. Several legal provisions remain sectoral and have not been fully integrated into a holistic child protection system. This situation has the potential to lead to overlapping authority between institutions and legal uncertainty in implementation.

##### 2. The Principle of the Best Interests of the Child in Regulation

The principle of the best interests of the child has been normatively adopted in legislation. However, research shows that this principle has not yet fully become the primary paradigm in legal implementation.

In practice, the handling of child trafficking cases is still often oriented toward proving the crime and punishing the perpetrator, while the rehabilitation of child victims has not received proportional attention. This indicates a gap between the normative objectives of child protection law and the practical orientation of law enforcement.

#### C. Implementation of Law Enforcement Against Child Trafficking Practices

##### 1. The Role of Law Enforcement Officials

Research findings indicate that law enforcement officials play a strategic role in protecting children from child trafficking practices. However, implementation in the field still faces various obstacles, such as limited understanding of the child protection perspective, minimal specialized training, and a lack of cross-sector coordination.

In several analyzed court decisions, it appears that judges' considerations tend to focus on the formal elements of the crime, without in-depth exploration of the psychological and social impacts experienced by child victims. This reflects a legal approach that remains positivistic and not yet fully substantive.



## 2. Secondary Victimization of Child Victims

One important finding of this study is the persistence of secondary victimization of child victims of trafficking. Children often experience repeated examinations, lengthy judicial processes, and prolonged social stigma.

From a victimology perspective, this situation indicates that the legal system is not yet fully child-friendly. Treatment that is insensitive to children's psychological conditions has the potential to exacerbate trauma and hinder victims' recovery.

## 3. Protection and Recovery of Child Victims

The results of this study indicate that the protection and recovery mechanisms for child victims of trafficking are still limited and uneven. Access to psychological rehabilitation, education, and social reintegration depends heavily on the capacity of child protection institutions and support from local governments.

In many cases, child victims of trafficking do not receive adequate legal and psychosocial assistance. This indicates that legal protection has not been fully realized in the lives of child victims.

## D. Barriers to Legal Protection for Child Victims of Trafficking

The research identified several key barriers to protecting children from the illegal practice of child trafficking, namely:

1. Normative Barriers, in the form of inconsistent regulations and suboptimal arrangements regarding victim recovery;
2. Structural Barriers, in the form of weak coordination between law enforcement agencies and child protection agencies;
3. Cultural Barriers, in the form of low public legal awareness and persistent social tolerance for child exploitation;
4. Institutional Barriers, in the form of limited human resources and budget.

These barriers are interconnected and form a cycle of problems that complicate effective child protection efforts.

## E. Critical Analysis from the Perspective of Legal Theory and Philosophy

### 1. Analysis Based on the Theory of the Rule of Law and Human Rights

From the perspective of the theory of the rule of law and human rights, research results indicate that the state has not fully fulfilled its obligation to protect and fulfill children's rights. Failure to effectively prevent and address child trafficking can be viewed as a structural failure of the rule of law.

The state still tends to position the law as an instrument of repression, rather than as a means of protecting and empowering children. This contradicts the principles of a modern rule of law, which prioritizes welfare and substantive justice.

### 2. Analysis Based on Child Protection Theory

From the perspective of child protection theory, research results indicate that the principle of the best interests of the child has not fully become the primary paradigm in law enforcement. The criminal justice system is still predominantly perpetrator-oriented, not victim-oriented.

This situation indicates the need for a paradigm shift from a retributive approach to a more restorative approach oriented toward the recovery of child victims.

## 3. Philosophical Analysis of Justice and Humanity

Philosophically, the practice of child trafficking violates the values of humanity and justice. Children are reduced to economic objects, contradicting the principle that humans are ends, not means.

Laws that fail to protect children from exploitation lose their moral legitimacy. Therefore, child protection must be positioned as a fundamental moral and ethical issue within the legal system.

## IV. CONCLUSION

Based on normative, conceptual, philosophical, and implementation analyses, this study concludes that legal protection for children against illegal child trafficking practices in Indonesia is normatively well-established but substantively weak in implementation. The Indonesian legal framework—comprising the 1945 Constitution of the Republic of Indonesia, the Child Protection Law, and the Law on the Eradication of the Crime of Trafficking in Persons—has explicitly recognized children as legal subjects entitled to special protection from all forms of exploitation and human rights violations. However, the existence of comprehensive legal instruments has not automatically ensured effective protection in practice. This research reveals a significant gap between law in the books (*das soll*) and law in action (*das sein*). Law enforcement efforts against child trafficking remain constrained by weak inter-institutional coordination, limited understanding of child protection principles among law enforcement officials, and a predominantly formalistic and offender-oriented approach within the criminal justice system. Furthermore, this study finds that child victims of trafficking continue to experience secondary victimization throughout the legal process. Children are often treated merely as sources of evidence rather than as rights-holders requiring recovery, rehabilitation, and social reintegration. Consequently, the principle of the best interests of the child has not been fully internalized in judicial reasoning or procedural practices. Protection mechanisms for child victims, particularly in terms of psychological recovery, education, and social

reintegration, remain fragmented and uneven across regions. From the perspective of the rule of law and human rights theory, these conditions indicate that the state has not yet fully fulfilled its constitutional obligation to protect vulnerable groups. Law enforcement still tends to prioritize punitive and retributive justice over substantive justice and victim-centered protection. This situation contradicts the concept of a modern rule-of-law state and welfare state, which demands proactive state intervention to safeguard human dignity, especially that of children. In conclusion, legal protection against illegal child trafficking in Indonesia requires a paradigm shift from a purely repressive legal approach toward a child-centered, restorative, and rights-based framework. Strengthening legal implementation, harmonizing regulations, enhancing institutional capacity, and fostering synergy between government agencies, law enforcement institutions, and child protection organizations are essential to ensuring meaningful and effective protection for children. Without such structural and paradigm reforms, the legal system risks failing to uphold justice, humanity, and the future well-being of children as the nation's most valuable generation.

## V. RECOMMENDATIONS

The government needs to strengthen and update child protection regulations by ensuring alignment between child protection laws, human trafficking crimes, and regulations related to child adoption. Legal loopholes that could potentially be exploited in illegal child trafficking practices must be closed through the formulation of firm norms, proportional sanctions, and strict oversight mechanisms.

Law enforcement must be carried out consistently and in an integrated manner by strengthening coordination between the police, prosecutors, courts, social services, and immigration. Law enforcement officers need to be provided with specific training in handling child victims so that their approach is oriented toward the best interests of the child.

Prevention efforts need to be increased through legal education for the public, strengthening community-based reporting systems, and improving the welfare of economically and socially vulnerable families. The state is also obliged to guarantee comprehensive protection and recovery for child victims, including legal assistance, medical and psychological rehabilitation, and social reintegration. Furthermore, national and international cooperation

must be strengthened to effectively combat cross-regional and cross-border child trafficking.

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