

Criminal Liability and the Non Punishment Principle for Trafficking Victims in Indonesia

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Abstract

The non-punishment principle for trafficking victims is recognized in Article 18 of Law Number 21 of 2007 on the Eradication of the Crime of Trafficking in Persons, which stipulates that victims who commit criminal acts as a result of coercion by traffickers shall not be subject to punishment. However, this provision does not clearly define the doctrinal parameters of coercion, nor does it explain how criminal liability should be assessed when an unlawful act is committed within conditions of exploitation, dependence, intimidation, or constrained autonomy. This article examines the relationship between criminal liability and the non-punishment principle for trafficking victims in Indonesia. It employs normative legal research by analyzing statutory regulations, criminal law doctrine, international instruments, and relevant scholarly literature. The study finds that the non-punishment principle should not be understood merely as a procedural exemption from punishment, but rather as a doctrinal mechanism for excluding culpability where the victim's conduct is directly connected to trafficking-related coercion. It further argues that Indonesian law requires a more clearly articulated framework for assessing coercion, including the causal relationship between trafficking and the offense, the degree of the victim's constrained autonomy, and the evidentiary burden borne by victims. The contribution of this article lies in proposing a more precise doctrinal approach to distinguishing punishable conduct from victimization-driven conduct in trafficking cases, thereby ensuring that Article 18 functions as an effective instrument of victim protection rather than a formal guarantee that remains difficult to implement in practice.

Keywords: *Criminal Liability; Human Trafficking; Legal Framework; Principle of Non-Punitive.*

1. INTRODUCTION

Human trafficking is not only a serious crime of exploitation, but also a legal problem that may place victims in a vulnerable position within the criminal justice system.¹ In many trafficking cases, victims are not merely passive objects of exploitation; rather, they may be compelled, controlled, or manipulated by traffickers to engage in unlawful acts.² This situation raises a complex issue of criminal liability, as the victim's conduct may formally satisfy the elements of a

¹ Dipo Lukmanul Akbar, "Criminal Law Policy in Handling Digital Asset-Based Money Laundering in Indonesia," *Journal of Law and Legal Reform* 1, no. 1 (October 2019): 129–76, <https://doi.org/10.15294/jllr.v1i1.35543>.

² D. Husak, "The Criminal Law as Last Resort," *Oxford Journal of Legal Studies* 24, no. 2 (June 2004): 207–35, <https://doi.org/10.1093/ojls/24.2.207>.

criminal offense while substantively arising from coercion, dependence, intimidation, or constrained autonomy.³ In this context, the non-punishment principle becomes essential to ensure that trafficking victims are not treated as ordinary offenders when their unlawful conduct is directly connected to their victimization.

Human trafficking, particularly involving women and children, constitutes a serious transnational crime that requires not only effective prosecution of traffickers but also adequate protection of victims within the criminal justice process.⁴ The problem becomes more intricate when trafficked persons are compelled to commit unlawful acts as part of the exploitation imposed upon them. In such circumstances, criminal liability cannot be assessed solely on the basis of whether the formal elements of an offense have been fulfilled. It must also consider whether the victim acted with genuine culpability, free will, and moral blameworthiness.⁵ As Roeslan Saleh emphasizes, criminal responsibility is inseparable from consideration of justice, since punishment can only be justified when the offender can fairly be blamed for the act committed.⁶ This perspective is particularly relevant to the non-punishment principle, which seeks to prevent trafficking victims from being punished for conduct that is directly caused by coercion, control, or exploitation.

Herbert Packer's conception of criminal sanctions further illuminates this issue by demonstrating that punishment is not a neutral legal response, but a deliberate exercise of state coercion imposed upon a person deemed blameworthy for violating legal norms.⁷ Punishment entails consequences that are inherently burdensome and is administered by legal authority against an actual or presumed offender. This framework is especially significant in trafficking cases, where victims may formally commit unlawful acts while, in substance, acting under coercion, intimidation, dependence, or control by traffickers. If punishment is imposed without careful examination of whether the victim possessed genuine culpability and autonomous will, the criminal justice system risks mischaracterizing victimization-driven conduct as ordinary criminal offending. Packer's theory therefore reinforces the necessity of the non-punishment principle: where the unlawful act is directly linked to trafficking-related coercion, the state's punitive authority must be limited and reoriented toward victim protection rather than criminal condemnation.

Packer's distinction between punishment and treatment is also instructive, as it highlights that criminal law does not operate exclusively through retribution, but may also pursue protective and rehabilitative objectives.⁸ However, in the context of trafficking victims who commit unlawful acts under coercion, the central issue extends beyond the choice between punishment and rehabilitation. The more fundamental question is whether such individuals can justifiably be regarded as a culpable offender at all.⁹ When

³ Milda Istiqomah, Rika Kurniaty, and Rizky Kurnia, "The Role Of The New Criminal Code As An Effort To Eradicate Criminal Acts Of Terrorism In Indonesia," *International Journal Of Humanities Education and Social Sciences (IJHES)* 3, no. 5 (April 2024), <https://doi.org/10.55227/ijhess.v3i5.990>.

⁴ Benny Irawan et al., "State Responsibility and Strategy in Preventing and Protecting Indonesian Fisheries Crews Working on Foreign Fishing Vessels from Modern Slavery," *Australian Journal of Maritime & Ocean Affairs*, March 30, 2024, 1–21, <https://doi.org/10.1080/18366503.2024.2333107>.

⁵ M.Zaelani Tammaka, *Nuju Jurnalisme Berperikemanusiaan Kasus Trafficking Dalam Liputan Media Di Jawa Tengah Dan DIY*, (Surakarta, 2003).

⁶ Roeslan Saleh., *Pikiran-Pikiran Tentang Pertanggungjawaban Pidana*. Ghalia Indonesia. (Jakarta., 1982).

⁷ Herbert Packer, *The Limit of The Criminal Sanction* (Stanford: Sytanford University Press, 1968).

⁸ Aroma Elmina Martha, *Kekerasan Dalam Rumah Tangga* (Yogyakarta: Aswaja Pressindo, 2015).

⁹ Raffka Nur and Handar Subhandi Bakhtiar, "The Imposition of Sanctions for Children," *Hasanuddin Law Review* 6, no. 2 (August 2020): 165, <https://doi.org/10.20956/halrev.v6i2.2493>; Henny Yuningsih et al., "Ratio Legis of Chemical Castration to the Perpetrators of Sexual Violence against Children," *Sriwijaya Law Review* 4, no. 2 (2020): 285–303, <https://doi.org/10.28946/slrev.Vol4.Iss2.432.pp285-303>.

the unlawful conduct is directly linked to trafficking-related coercion, intimidation, or control, the imposition of criminal sanctions would risk disregarding the victim's constrained autonomy.¹⁰ In such circumstances, attributing full criminal responsibility would obscure the structural condition under which the act was committed. For this reason, the non-punishment principle should be understood as a doctrinal safeguard that prevents the criminal justice system from transforming victims of exploitation into objects of punitive condemnation.

The transnational character of human trafficking further necessitates forms of international cooperation that extend beyond the prosecution of traffickers to include the identification, protection, and recovery of victims. In cross-border trafficking cases, victims are often misclassified as irregular migrants, document offenders, or participants in unlawful activities, despite the fact that their conduct is closely connected to exploitation and coercion.¹¹ Accordingly, inter-state cooperation must incorporate victim-sensitive mechanisms to ensure that trafficked persons are accurately identified prior to the imposition of criminal liability. Such measures are essential for the effective implementation of the non-punishment principle, as the failure to recognize a person's status as a trafficking victim may result in wrongful prosecution or punishment for conduct that is a direct consequence of victimization. Thus, international cooperation must be oriented not only toward strengthening law enforcement against traffickers, but also toward the protection of victims from unjust criminalization.

In judicial practice, the term punishment is sometimes used in a manner that suggests its interchangeable use with treatment. This usage indicates that certain legal practitioners view the preventive, and non-retributive aims of punishment as compatible with the notion of treatment, even though such measures remain classified as criminal sanctions.¹² The prevention and control of human trafficking crimes are shared responsibility involving the government, society, and families. This is due to the transnational nature of human trafficking, which not only occurs within a single country but also involves cross-border activities.¹³ Therefore, effective responses to trafficking require not only domestic legal measures but also international cooperation.¹⁴ Such cooperation may be developed through mutual legal assistance treaties in criminal matters and/or other forms of technical cooperation in accordance with the provisions of the prevailing laws and regulations.¹⁵

Article 18 of Law Number 21 of 2007 on the Eradication of the Crime of Trafficking in Persons provides that trafficking victims who commit criminal acts as a result of coercion by traffickers shall not be punished. This provision constitutes the main legal basis for the non-punishment principle in Indonesian trafficking law. However, its doctrinal scope remains limited because it does not clearly define the parameters of

¹⁰ Herbert Packer, *The Limit of The Criminal Sanction*.

¹¹ Yurii E. Pudovochkin, "Criminal Law Measures and Criminal Liability: Scientific Discussion and Search for Solutions," *Penitentiary Science* 14, no. 4 (December 2020): 542–51, <https://doi.org/10.46741/2686-9764-2020-14-4-542-551>.

¹² Vivien Miller, "Punishment in America," in *The Routledge History of Crime in America* (New York: Routledge, 2024), 80–100, <https://doi.org/10.4324/9781003300151-7>.

¹³ Cassandra E. DiRienzo and Jayoti Das, "Human Trafficking and Country Borders," *International Criminal Justice Review* 27, no. 4 (December 2017): 278–88, <https://doi.org/10.1177/1057567717700491>; Marie Segrave, "Human Trafficking and Human Rights," *Australian Journal of Human Rights* 14, no. 2 (April 2009): 71–94, <https://doi.org/10.1080/1323238X.2009.11910855>.

¹⁴ Belardo Prasetya Mega Jaya, "Transnational Criminal Case Settlement Through International Cooperation (A Case Study of Harun Masiku)," *Ajudikasi : Jurnal Ilmu Hukum* 4, no. 1 (2020): 69–82, <https://doi.org/10.30656/ajudikasi.v4i1.2203>.

¹⁵ Sulaf Abdullah Hama Rashid, "The Investigation into Human Trafficking Crimes in Light of National and International Legislation," *Journal of Organizational Behavior Research* 5, no. 1 (2020): 109–23.

coercion, the degree of connection required between trafficking-related coercion and the criminal act, or the evidentiary standard to be applied when victims seek protection under this article.¹⁶ As a result, the protection offered by Article 18 may be difficult to implement in practice, particularly in cases where the victim's conduct formally satisfies the elements of a criminal offense but is substantively shaped by exploitation, intimidation, dependence, or constrained autonomy. This ambiguity constitutes the central research problem of this article.

This study aims to examine how criminal liability should be assessed in cases where trafficking victims commit unlawful acts as a direct consequence of coercion, exploitation, or constrained autonomy. More specifically, it seeks to clarify the doctrinal relationship between Article 18 of Law Number 21 of 2007, the non-punishment principle, and the requirement of culpability in Indonesian criminal law. It further aims to identify the legal ambiguity surrounding the meaning of coercion under Article 18 and to propose a victim-sensitive framework for distinguishing punishable conduct from victimization-driven conduct. By doing so, this study contributes to the development of a more precise and operational approach for judges, prosecutors, and law enforcement authorities in applying the non-punishment principle to trafficking victims.

This research employs normative legal research through statutory, conceptual, and doctrinal approaches. The statutory approach is used to examine Article 18 of Law Number 21 of 2007, along with relevant provisions of Indonesian criminal law, criminal procedure law, and judicial power legislation. The conceptual approach is applied to analyze the doctrines of criminal liability, culpability, excuse, coercion, and the non-punishment principle.¹⁷ Meanwhile, the doctrinal approach is used to interpret the relationship between trafficking victimization and the exclusion of criminal liability. The legal materials consist of primary legal materials, including statutes and international instruments relevant to the protection of trafficking victim, as well as secondary legal materials, including books, journal articles, and scholarly commentaries.¹⁸ These materials are analyzed qualitatively through grammatical, systematic, and purposive legal interpretation in order to formulate a coherent doctrinal framework for assessing criminal liability in cases involving trafficking victims who commit offenses under coercion.¹⁹

2. ANALYSIS AND DISCUSSION

2.1 Normative Recognition and Practical Gap of Article 18

Although Article 18 of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons formally recognizes the non-punishment principle for victims who commit criminal acts under coercion, the provision leaves unresolved an important legal problem. Article 18 affirms that trafficked persons who commit criminal

¹⁶ Nicole Siller, "The Prosecution of Human Traffickers?," *European Journal of Comparative Law and Governance* 2, no. 3 (September 2015): 236–61, <https://doi.org/10.1163/22134514-00203005>; Silvia Rodríguez-López, "Criminal Liability of Legal Persons for Human Trafficking Offences in International and European Law," *Journal of Trafficking and Human Exploitation* 1, no. 1 (February 2017): 95–114, <https://doi.org/10.7590/24522775114>.

¹⁷ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif* (Jakarta: Rajawali, 1985).

¹⁸ Belardo Prasetya Mega Jaya et al., "Republic of Indonesia Sovereign Right in North Natuna Sea According to United Nations Convention on the Law of the Sea 1982," *Australian Journal of Maritime & Ocean Affairs* 16, no. 1 (January 2024): 127–40, <https://doi.org/10.1080/18366503.2023.2206261>.

¹⁹ Rully Syahrul Mucharom et al., "WTO Subsidies Agreement on Fisheries (2022-2024): Agreed Terms and Implications for Indonesia," *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 2 (August 2024): 285–99, <https://doi.org/10.29303/ius.v12i2.1394>.

acts as a result of coercion shall not be punished. However, it does not provide clear legal parameters for determining when coercion is sufficiently established, or how such coercion should be assessed within the doctrine of criminal liability. Nor does it clarify whether the victim's conduct should be understood within the framework of excuse, compulsion, or another ground excluding punishment. This gap can be seen in cases where individuals allegedly connected to trafficking situations are processed primarily as criminal offenders before their victim status is adequately examined. The case of Mary Jane Veloso illustrates this difficulty. Although she was convicted in Indonesia for drug trafficking, she consistently maintained that she had been deceived and exploited by a criminal network. Subsequent proceedings in the Philippines shifted attention to the role of her recruiters in an alleged trafficking scheme. This example shows that the absence of clear operational parameters for Article 18 may cause trafficking-related coercion to be overlooked, especially where the victim's conduct formally satisfies the elements of another criminal offense. As a consequence, Article 18 offers a protective guarantee at the legislative level, but does not adequately equip law enforcement authorities and judges with a clear doctrinal and evidentiary framework for its application in concrete cases.

This ambiguity reveals the legal gap addressed in this study. The gap does not lie in the total absence of legal recognition, because Indonesian law has already incorporated a non-punishment orientation through Article 18 of Law Number 21 of 2007. Rather, the gap lies in the disconnection between normative recognition and juridical operability. In practice, the protection of trafficked persons remains dependent on proving coercion within ordinary evidentiary structures. Yet trafficking typically places victims in conditions of dependence, intimidation, deception, vulnerability, and control that are inherently difficult to establish in a conventional criminal process. Consequently, a victim who is normatively recognized as deserving protection may, in procedural reality, still be treated as a punishable offender unless the coercive context is sufficiently established before the court.

This problem becomes more apparent when Indonesia's approach is situated within broader international standards. International instruments and policy guidelines increasingly recognize that trafficked persons should not be punished for unlawful conduct that is a direct consequence of their trafficking situation. For example, the Council of Europe Convention on Action against Trafficking in Human Beings requires States to provide the possibility of not imposing penalties on victims who have been compelled to engage in unlawful activities. Similarly, the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking emphasize that trafficked persons should not be detained, charged, or prosecuted for unlawful acts that are direct consequence of their victimization. Compared with these standards, Article 18 of Law Number 21 of 2007 reflects the same protective orientation. However, it does not yet provided sufficient operational guidance for determining coercion, assessing the causal link between trafficking and the offense, or allocating evidentiary burdens in a victim-sensitive manner.

For that reason, the main issue in this study is not merely whether victims of trafficking should be exempted from punishment in principle, but how criminal liability should be assessed when the unlawful acts are committed within structures of exploitation and constrained autonomy. It is at this point that study positions its contribution. It

examines the relationship between the non-punishment principle and the doctrine of criminal liability in Indonesian law, while also situating Article 18 within international standards on victim protection. By identifying this gap, the discussion moves beyond a general affirmation of victim protection toward a more precise analysis of how the law should distinguish between culpable offending and victimization-driven conduct. The non-punishment principle, however, is conceptually distinct from both grounds of justification and excuse. Unlike traditional grounds of justification and excuse, the non-punishment principle is not explicitly incorporated into the Trafficking Protocol nor is it expressly codified in the United Nations Convention against Transnational Organized Crime (UNTOC). Nevertheless, the non-punishment of trafficked persons has evolved into a core component of the State's obligation to protect victims, particularly where offenses are committed as a direct consequence of victimization.

The non-punishment principle is also explicitly affirmed in various policy instruments, such as the Recommended Principles and Guidelines on Human Rights and Human Trafficking issued by the Office of the United Nations High Commissioner for Human Rights (UN Doc. E/2002/68/Add.1). Principle 7 of the guidelines explicitly provides that:

“Individuals who have been trafficked must not be subjected to detention, criminal charges, or prosecution due to the unlawful nature of their entry into, or stay within, transit or destination countries, nor for participating in illegal activities, insofar as such actions are a direct result of their status as victims of trafficking.”

Law Number 21 of 2007 on the Eradication of the Crime of Trafficking in Persons (hereinafter referred to as the Anti-Trafficking Law) reflects Indonesia's commitment to implementing the 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol), which has been signed by the Government of Indonesia. The provision exempting victims from criminal liability for offenses committed under coercion is set out in Article 18 of the Anti-Trafficking Law, which states that: “Victims who commit criminal acts as a result of coercion by the perpetrator of trafficking in persons shall not be punished.” The elucidation of this article further explains that “coercion” refers to a condition in which an individual or victim is compelled to perform an act in a manner contrary to his or her own will.

However, the provision does not offer a more detailed explanation of the criteria for determining what constitutes such a state of coercion. Accordingly, in order to identify the meaning legal criteria of coercion under the Anti-Trafficking Law (Law on the Eradication of the Crime of Trafficking in Persons), as a possible basis for excluding criminal liability, it is necessary to begin from the general principle that every person who commits a criminal act is, in principle, criminally responsible—unless the law provides otherwise.²⁰ Legal certainty becomes particularly important, because the determination of whether an individual may be held criminally liable depends on the fulfillment of specific evidentiary requirements in the judicial process.

²⁰ Prija Djatmika, Milda Istiqomah, and Heru Kurniawan, “Discourse on the Death Penalty: A Study of Public Perceptions in Indonesia,” *Yustisia Jurnal Hukum* 13, no. 1 (April 2024): 38, <https://doi.org/10.20961/yustisia.v13i1.81938>.

2.2 Criminal Liability, Culpability, and the Logic of Excuse in Trafficking Cases

Criminal liability refers to the legal condition under which a person may be held accountable for conduct that violates criminal law.²¹ In this sense, liability is not merely a formal consequence of committing an unlawful act, but a normative judgment that the person can fairly be blamed and subjected to criminal consequences.²² Roscoe Pound's understanding of liability as a legal situation in which one party may be subjected to legal exaction is helpful insofar as it highlights the relational character of legal accountability.²³ However, in criminal law, such accountability must be distinguished from civil compensation or restitution. Criminal liability requires a more precise assessment of culpability,²⁴ free will, and the absence of grounds excluding responsibility. This distinction is crucial in trafficking cases, because a victim who commits an unlawful act under coercion may be legally involved in the act, but may lack the blameworthiness required for punishment.²⁵

Statutory criminal law is intended to protect for the public by maintaining order and legal certainty, while punishment is often justified in part by its deterrent function.²⁶ In this context, attention should remain focused on criminal liability, which differs from civil compensation or restitution and depends fundamentally on the presence of culpability.²⁷ A more precise formulation is that culpability, as a prerequisite for criminal liability, lies in the existence of fault.²⁸ In criminal law doctrine, this requirement is reflected in the principle *nulla poena sine culpa* or no punishment without fault. Criminal punishment may only be imposed when the court is convinced that the defendant not only committed the act, but also possessed the culpability required for criminal responsibility. Article 183 of the Indonesian Criminal Procedure Code requires judges to base a conviction on at least two valid items of evidence and judicial conviction that the criminal offense occurred and that the defendant is guilty of committing it. However, in trafficking-related cases, this evidentiary structure raises a particular difficulty. Victims who commit unlawful acts under coercion may not face difficulty in showing that the act occurred. The greater obstacle lies in proving the coercive context behind their conduct, especially where intimidation, deception, dependence, or control by traffickers is not easily documented. Therefore, the assessment of fault should not rely solely on the formal fulfillment of offense elements, but must also examine whether the victim's autonomy was substantially constrained by trafficking-related coercion. This connection

²¹ Romly Atmasasmita, *Perbandingan Hukum Pidana* (Bandung: Mandar Maju, 2000).

²² Roscoe Pound, *An Introduction to the Philosophy of Law*, Yale University Press (Yale University Press, 1975).

²³ Joseph Postell, "The Anti-New Deal Progressive: Roscoe Pound's Alternative Administrative State," *The Review of Politics* 74, no. 1 (March 2012): 53–85, <https://doi.org/10.1017/S0034670512000046>.

²⁴ Mitchell McInnes, "The Measure of Restitution," *The University of Toronto Law Journal* 52, no. 2 (2002): 163, <https://doi.org/10.2307/825965>; Lawrence P. Fletcher, "Restitution in the Criminal Process: Procedures for Fixing the Offender's Liability," *The Yale Law Journal* 93, no. 3 (January 1984): 505, <https://doi.org/10.2307/796171>.

²⁵ Daniel Muñoz, "Duty to Self: Moral, Political, and Legal Self-Relation," *Ethics* 133, no. 3 (April 2023): 450–55, <https://doi.org/10.1086/723261>; Antony Duff, "Legal and Moral Responsibility," *Philosophy Compass* 4, no. 6 (December 2009): 978–86, <https://doi.org/10.1111/j.1747-9991.2009.00257.x>.

²⁶ Anna Korobova, "The Problem of the Relationship between the Concepts of 'Public Order' and 'Public Safety' in Modern Legal Science," *Legal Science and Practice: Journal of Nizhny Novgorod Academy of the Ministry of Internal Affairs of Russia* 2024, no. 4 (December 2024): 205–11, <https://doi.org/10.36511/2078-5356-2024-4-205-211>, no. 4 (December 2024).

²⁷ M. C. Bassiouni, "International Recognition of Victims' Rights," *Human Rights Law Review* 6, no. 2 (July 2006): 203–79, <https://doi.org/10.1093/hrlr/nlg1009>.

²⁸ Herman, *Application of Liability Principle in the National Criminal Law*, 66 (2017): 15–21, <https://iiste.org/Journals/index.php/JLPG/article/download/39360/40469>; G. Lamond, "What Is a Crime?," *Oxford Journal of Legal Studies* 27, no. 4 (January 2007): 609–32, <https://doi.org/10.1093/ojls/gqm018>; Alan Brudner, "Subjective Fault for Crime: A Reinterpretation," *Legal Theory* 14, no. 1 (March 2008): 1–38, <https://doi.org/10.1017/S1352325208080014>.

is essential to ensure that Article 18 of Law Number 21 of 2007 operates consistently with the principle of no punishment without fault.²⁹

The requirement of culpability also determines whether punishment can be morally and legally justified. Jareborg's critique of punishment without guilt is relevant because it emphasizes that criminal sanctions lose their normative legitimacy when imposed on a person who cannot fairly be blamed for the act. In trafficking cases, this principle becomes particularly important. A victim may appear to have committed an unlawful act, yet the act may have been produced by coercion, intimidation, deception, or control exercised by traffickers.³⁰ If culpability is absent or substantially undermined, punishment would no longer express legitimate moral condemnation, but would instead reproduce the injustice already experienced by the victim. Therefore, the non-punishment principle should be understood as a concrete application of the broader doctrine that punishment must not be imposed without fault.

In Indonesian criminal law, the rejection of punishment without fault is operationalized through the recognition of grounds excluding criminal liability, particularly justification and excuse. A justification removes the unlawfulness of the act, whereas an excuse removes the personal blameworthiness of the offender even though the act remains formally unlawful. In trafficking cases, coercion experienced by victims is more appropriately examined through the framework of excuse and the non-punishment principle. This is because the victim's conduct may formally satisfy the formal elements of a criminal offense while lacking genuine culpability. For example, a trafficked person may be forced to use false documents, transport goods, recruit other vulnerable persons, or participate in unlawful work under threats, deception, debt bondage, or control by traffickers. In such situations, the decisive question is not merely whether the criminal act occurred, but whether the act was directly connected to the victim's trafficking condition and whether the victim retained sufficient autonomy to be fairly blamed. This practical context shows why Article 18 of Law Number 21 of 2007 should be applied through a victim-sensitive assessment of coercion, rather than an ordinary offender-based model of criminal liability.

In the Indonesian criminal justice system, the fulfillment of the formal elements of a criminal offense does not automatically warrant the imposition of punishment. A judge must still assess whether the defendant can be held criminally responsible, particularly by examining the existence of grounds for justification or excuse. Justificatory grounds remove the unlawfulness of the act, whereas excusatory grounds remove the offender's blameworthiness even though the act remains formally unlawful. This distinction is crucial in trafficking cases because a victim may engage in unlawful conduct under condition of coercion, intimidation, deception, dependence, or control by traffickers. In such circumstances, the relevant inquiry is not merely whether the act occurred, but whether the victim retained sufficient autonomy and culpability to be fairly blamed.

The dualistic approach to criminal responsibility is particularly useful in this context because it distinguishes between the criminal act and the attribution of responsibility. Under this approach, a person may formally commit an act that satisfies the elements of an offense, yet still be exempted from punishment if culpability is absent or substantially

²⁹ Evgeny Tikhonravov, "Nulla Poena Sine Lege in Continental Criminal Law: Historical and Theoretical Analysis," *Criminal Law and Philosophy* 13, no. 2 (June 2019): 215–24, <https://doi.org/10.1007/s11572-018-9466-9>; Eric Colvin, "Exculpatory Defences in Criminal Law," *Oxford Journal of Legal Studies* 10, no. 3 (1990): 381–407, <https://doi.org/10.1093/ojls/10.3.381>.

³⁰ Neils Jareborg, *Uppsala, The Coherence of The Penal System, Dalam Arnhem, Criminal Law in Action, An Overview of Current Issues in Western Societies* (Gourda Quint, 2003).

undermined. Article 18 of Law Number 21 of 2007 reflects this dualistic logic by requiring courts to examine whether the victim's conduct was a direct consequence of trafficking-related coercion. Therefore, coercion in trafficking cases should be understood primarily through the framework of excuse and the non-punishment principle, rather than through an ordinary offender-based model of criminal liability.

The distinction between monistic and dualistic approaches remains important for understanding how Article 18 of Law Number 21 of 2007 should be applied to trafficking victims. Under the monistic view, the commission of a criminal act is closely linked to the possibility of punishment because the act, unlawfulness, fault, and accountability are treated as part of one integrated structure. By contrast, the dualistic approach separates the criminal act from criminal responsibility. This distinction is particularly relevant in trafficking cases, where a victim may formally satisfy the elements of a criminal offense while responsibility is excluded due to coercion, intimidation, deception, dependence, or control by traffickers.³¹ Article 18 is therefore more consistent with a dualistic understanding of criminal liability, since it requires the court not only to determine whether an offense has occurred, but also to assess whether the victim can fairly be blamed for the act. In this sense, the non-punishment principle functions as a doctrinal safeguard against treating trafficked persons as punishable offenders solely on the basis of their conduct.

Normative fault is understood as a form of culpability in which guilt is not determined solely by the offender's psychological relationship with the act, but also by a normative evaluation of whether the person can fairly be blamed under the circumstances. This assessment requires the court to consider what the offender could reasonably have been expected to do under the specific circumstances. In trafficking cases, this inquiry becomes crucial because the victim's will may be substantially constrained by coercion, intimidation, deception, dependence, or control exercised by traffickers. Although the victim's conduct may formally satisfy the elements of a criminal offense, the normative basis for blameworthiness may be absent or significantly weakened if the act was committed as a direct consequence of trafficking-related coercion. Therefore, the assessment of normative fault must be conducted in a victim-sensitive manner. Criminal liability should not be imposed solely on the basis of the act, but must also reflect a careful evaluation of the victim's constrained autonomy and the exploitative context of the offense.

Culpability in criminal law requires more than the mere existence of intent or negligence. It also requires that the offender possess the capacity for criminal responsibility and that no grounds exist to exclude liability. Among the recognized grounds for exclusion, the distinction between justification and excuse is particularly important. A justification removes the unlawfulness of the act, whereas an excuse removes the offender's blameworthiness even though the act remains formally unlawful. In trafficking cases, coercion is more appropriately examined through the framework of excuse and the non-punishment principle. A trafficked person may commit an unlawful act, but where that act is directly caused by coercion, intimidation, deception, dependence, or control by traffickers, the victim cannot fairly be regarded as blameworthy. Therefore, the application of Article 18 of Law Number 21 of 2007 should focus on whether the victim's criminal conduct was a direct consequence of trafficking-related coercion, rather than merely on whether the formal elements of the offense have been fulfilled.

³¹ Bastianto Nugroho, "Peranan Alat Bukti Dalam Perkara Pidana Dalam Putusan Hakim Menurut KUHAP," *Yuridika* 32, no. 1 (August 2017): 17, <https://doi.org/10.20473/ydk.v32i1.4780>.

2.3. A Victim-Sensitive Coercion Assessment Model under Article 18

Criminal responsibility functions as a legal mechanism for determining whether a person who has committed an unlawful act can fairly be held accountable for it. In trafficking cases, this inquiry must be undertaken with particular caution because the victim's conduct may be shaped by coercion, intimidation, deception, dependence, or control by traffickers. In this context, the non-punishment principle under Article 18 of Law Number 21 of 2007 may operate as a ground for excluding criminal liability where the victim's unlawful act is directly caused by trafficking-related coercion. However, its application cannot be reduced to a formal claim of victim status. Rather, it requires a careful assessment of whether the victim retained sufficient autonomy and whether the criminal act was substantially connected to the trafficking situation.

The international legal framework reinforces this protective approach. Article 14 of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children encourages State Parties to consider not holding trafficking victims criminally or administratively liable for unlawful acts connected to their victimization. The ASEAN Human Rights Declaration likewise affirms protection from trafficking and non-discrimination, both of which are relevant to ensuring that trafficked persons are not treated as ordinary offenders when their conduct results from exploitation. Indonesia has reflected this protective orientation through Article 18 of the Anti-Trafficking Law. Nevertheless, the Indonesian framework remains incomplete because it does not provide operational criteria for identifying coercion, determining the causal link between trafficking and the offense, or guiding the evidentiary assessment in a victim-sensitive manner. Thus, although Indonesia has normatively adopted the non-punishment principle, its practical implementation still requires clearer doctrinal and procedural guidance.

For Article 18 to be applied effectively, coercion should be interpreted through several interrelated criteria. First, law enforcement authorities and judges should assess whether the person displays indicators of trafficking victimization, such as recruitment through deception, abuse of vulnerability, debt bondage, threats, restriction of movement, or control by another person. Second, there must be a direct or substantial connection between the trafficking situation and the criminal act committed. Third, the assessment should examine whether the victim's autonomy was meaningfully constrained, including whether refusal would have exposed the victim to violence, retaliation, further exploitation, or serious harm. Fourth, the evidentiary burden should not rest exclusively on the victim. Courts should also take into account contextual evidence, patterns of control, witness testimony, digital communication, travel history, employment arrangements, and other circumstantial indicators. These criteria would enable Article 18 to distinguish independent criminal conduct and victimization-driven conduct, thereby ensuring that the non-punishment principle functions as an effective form of protection rather than a merely a formal legal guarantee.

However, the exemption from punishment for trafficking victims is limited to circumstances in which the criminal act was committed under coercion. If the victim subsequently engages in other criminal conduct within the same period that is not directly linked to the coercive circumstances, the protection afforded by Article 18 may be rendered inapplicable. In such cases, the individual may be legally regarded as a perpetrator of a separate criminal offense, and coercion may no longer be recognized as a ground for excluding liability.

3. CONCLUSION

This study concludes that the non-punishment principle under Article 18 of Law Number 21 of 2007 should not be understood merely as a formal exemption from punishment. Rather, it should be constructed as a doctrinal basis for excluding criminal liability when the unlawful act committed by a trafficking victim is directly caused by coercion, intimidation, deception, dependence, or control by traffickers. Although Indonesian law has recognized this principle, Article 18 still lacks clear operational criteria for determining coercion and for assessing the relationship between trafficking victimization and the criminal act. As a result, trafficking victims may still face the risk of being treated as ordinary offenders when the coercive context behind their conduct is not adequately identified in the criminal justice process.

To address this gap, the interpretation of Article 18 should be developed through a victim-sensitive framework for assessing coercion. This framework should consider at least four elements. First, it should assess indicators of trafficking victimization, including deception, abuse of vulnerability, debt bondage, threats, restriction of movement, or control by traffickers. Second, it should examine whether there is a direct or substantial connection between the trafficking situation and the criminal act. Third, it should evaluate the extent to which the victim's autonomy was constrained by fear, dependence, or risk of retaliation. Fourth, it should rely on contextual and circumstantial evidence rather than placing the evidentiary burden solely on the victim. Future legal reform should clarify these criteria either through an amendment to the elucidation of Article 18, Supreme Court guidelines, prosecutorial guidelines, or law enforcement standard operating procedures. Such clarification would assist judges, prosecutors, and investigators in distinguishing independent criminal conduct from victimization-driven conduct, thereby ensuring that the non-punishment principle functions as an effective protection for trafficking victims rather than merely as a normative statement in legislation.

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