Consistency In The Regulation Of Aggravating Circumstances For Parents Under Child Protection Law Following The Enactment Of The National Criminal Code (Focusing on the Incompleteness of Provisions on Aggravated Penalties for the Crime of Child Trafficking)

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Abstract

The enactment of Law No. 1 of 2023 on the Criminal Code and Law No. 1 of 2026 on Criminal Adjustments has created a need to examine the sustainability and consistency of provisions regarding aggravated penalties for parents who commit criminal offenses against their children. This study aims to analyze changes in the provisions regarding aggravated penalties for parents following the enactment of the National Criminal Code and to assess the consistency of these provisions in cases of child trafficking by comparing them to other specific criminal offenses against children. This study is a normative legal study employing legislative, conceptual, and historical approaches. Primary and secondary legal materials were collected through a literature review and analyzed qualitatively using legal interpretation and comparative analysis of legal provisions. The results of the study indicate that the status of parents continues to be recognized as a relevant factor for aggravating penalties in certain criminal offenses against children; however, the basis, scope, and formula for such aggravation are not uniformly defined. In the crime of child trafficking, Article 13(2) of the Child Protection Act contains a general basis for aggravation, but the relationship between its application and Article 76F in conjunction with Article 83—particularly the sentencing consequences for biological parents—has not been clearly defined. This issue highlights the incompleteness of the formulation and the uncertainty in the application of the legal norms, rather than a direct contradiction between the provisions. Aggravating factors based on the child's status as a victim also do not, by themselves, resolve the issue of aggravating factors based on the parents' status as perpetrators. This study concludes that there are gaps in the formulation and uncertainty in the application of legal norms, which require clarification of the regulations while upholding the principles of legality, legal certainty, and proportionality in criminal law.
Keywords: aggravated penalties, parents, child trafficking, National Criminal Code, child protection.

Abstrak

Berlakunya Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana dan Undang-Undang Nomor 1 Tahun 2026 tentang Penyesuaian Pidana menimbulkan kebutuhan untuk mengkaji keberlanjutan dan konsistensi pengaturan pemberatan pidana terhadap orang tua yang melakukan tindak pidana terhadap anak. Penelitian ini bertujuan menganalisis perubahan pengaturan pemberatan pidana terhadap orang tua setelah berlakunya KUHP Nasional dan menilai konsistensi pengaturannya dalam tindak pidana perdagangan anak dengan membandingkannya terhadap tindak pidana tertentu lainnya terhadap anak. Penelitian ini merupakan penelitian hukum normatif dengan pendekatan perundang-undangan, konseptual, dan historis. Bahan hukum primer dan sekunder dikumpulkan melalui studi kepustakaan dan dianalisis secara kualitatif menggunakan penafsiran hukum serta perbandingan antar ketentuan. Hasil penelitian menunjukkan bahwa kedudukan orang tua tetap diakui sebagai keadaan yang relevan untuk memperberat pidana dalam tindak pidana tertentu terhadap anak, tetapi dasar, cakupan, dan formula pemberatannya tidak dirumuskan secara seragam. Dalam tindak pidana perdagangan anak, Pasal 13 ayat (2) Undang-Undang Perlindungan Anak memuat dasar pemberatan secara umum, tetapi hubungan penerapannya dengan Pasal 76F jo. Pasal 83, terutama konsekuensi pemidanaan terhadap orang tua kandung, belum dirumuskan secara tegas. Persoalan ini menunjukkan ketidaklengkapan formulasi dan ketidakpastian penerapan norma, bukan serta-merta pertentangan langsung antar ketentuan. Pemberatan berdasarkan status anak sebagai korban juga tidak dengan sendirinya menjawab persoalan pemberatan berdasarkan kedudukan orang tua sebagai pelaku. Penelitian ini menyimpulkan adanya ketidaklengkapan formulasi dan ketidakpastian penerapan norma yang memerlukan penegasan pengaturan dengan tetap memperhatikan asas legalitas, kepastian hukum, dan proporsionalitas pidana.
Kata kunci: pemberatan pidana, orang tua, perdagangan anak, KUHP Nasional, perlindungan anak.

A. Introduction

Children are legal subjects who have the right to survival, growth, and development, as well as protection from violence, discrimination, and exploitation. The fulfillment of these rights is not only the responsibility of the state and society but also rests with parents as parties who have a legal relationship and special responsibility toward their children. In this relationship, parents do not merely act as individuals interacting with their children, but also as parties expected to carry out the functions of care, upbringing, and protection.[1] Therefore, when a criminal offense against a child is committed by the child's own parents, the issue at hand extends beyond the fulfillment of the elements of the crime; it also concerns the abuse of a relationship of trust and the violation of the special obligations inherent in the parental role.

In criminal law, the determination of the type and severity of punishment relates to an assessment of the reprehensible nature of an act and the perpetrator's liability. Aggravating circumstances are one of the instruments that lawmakers can use to indicate that certain circumstances add an additional dimension to the reprehensibility of a criminal act.[2] However, the basis for aggravating circumstances cannot be derived solely from a moral assessment of the perpetrator. That basis must be traced through applicable norms, the rationale underlying the establishment of those norms, and the relationship between the aggravating circumstances and the criminal offense in question. The pattern of criminal aggravation in special criminal law highlights the importance of a justifiable framework in determining criminal penalties. Ambiguity in the pattern of aggravation can raise issues regarding the consistency of regulations and the proportionality of sentencing.

This issue becomes particularly relevant when the perpetrator of a crime against a child is the victim's parent. The parent-child relationship places the perpetrator in a position of special responsibility and trust; consequently, the abuse of this relationship has the potential to constitute a relevant circumstance in assessing the reprehensibility of the act. However, the relevance of this relationship must be distinguished from the fact that the victim is a child. The victim's status as a child and the perpetrator's position as a parent are two conceptually distinct circumstances. Both may be equally relevant to sentencing policy, but their normative basis, scope, and legal consequences must be examined separately to avoid conflating special protection for child victims with the aggravating factor of based on the special relationship between the perpetrator and the victim.[3]

In the Indonesian legal system, child protection is realized through various provisions that not only prohibit acts harmful to children but also establish criminal consequences for violations of those rights and protections. Law No. 23 of 2002 on Child Protection, as amended by Law No. 35 of 2014 and Law No. 17 of 2016, regulates various forms of criminal offenses against children along with their corresponding criminal penalties. In the regulation of certain criminal offenses, the perpetrator's status as a parent, guardian, or person with custodial responsibility holds particular relevance in determining aggravated penalties.[4] Such provisions demonstrate that the relationship between the perpetrator and the child victim is not always viewed merely as the background of the incident, but can serve as a relevant factor in assessing the nature of the act and determining its criminal consequences. Therefore, the provisions regarding aggravated penalties for parents must be examined not only based on the severity of the criminal penalties but also based on the normative rationale underlying the recognition of this special relationship.

This issue has become increasingly important in the context of changes to national criminal law. The enactment of Law No. 1 of 2023 on the Criminal Code and the enactment of Law No. 1

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[1] Abdulkadir Muhammad, *Hukum Dan Penelitian Hukum* (Bandung: Citra Aditya Bakti, 2004).

[2] M.Hum. Dr. Johnny Ibrahim, S.H., *Teori & Metodologi Penelitian Hukum Normatif* (Malang: Bayu Media, 2013).

[3] Ramdani Ramdani, "Hak Anak Dalam Sistem Peradilan Pidana Anak Di Indonesia," *Negara Dan Keadilan* 9, no. 1 (2020): 91, https://doi.org/10.33474/hukum.v9i1.7626.

[4] Chairul Huda, "Pola Pemberatan Pidana Dalam Hukum Pidana Khusus," *JURNAL HUKUM* 4, no. 1 (2022): 1–23, https://doi.org/10.37729/amnesti.v4i1.1399%0Ahttp://ridum.umanizales.edu.co:8080/jspui/bitstream/6789/377/4/Mu�oz_Zapata_Adriana_Patricia_Art�culo_2011.pdf.

of 2026 on Criminal Adjustments necessitate a review of criminal provisions that have been amended, repealed, transferred, or adjusted. This review is necessary to determine whether considerations regarding the parent-child relationship are maintained in the current regulations, have undergone a change in form, or reflect differing approaches between provisions. Thus, regulatory changes should not be understood merely as technical matters concerning the formulation of offenses and criminal penalties, but must also be analyzed from the perspective of the continuity of the legislature's policy in assessing circumstances that may serve as grounds for aggravated penalties.

Within this framework, the criminal offense of child trafficking is one of the key issues that must be examined. The Child Protection Act, through Article 76F in conjunction with Article 83, establishes prohibitions and criminal penalties related to the abduction, sale, and/or trafficking of children. On the other hand, Law No. 21 of 2007 on the Eradication of the Crime of Trafficking in Persons provides for aggravated penalties in Article 17 for certain criminal offenses referred to in those provisions when committed against a child. Although both of these provisions provide criminal protection for children, aggravating factors based on the victim's circumstances must be distinguished from those specifically based on the perpetrator's status as a parent. This fundamental distinction is important because the child's status as a victim and the special relationship between the parent as the perpetrator and the child as the victim are two distinct circumstances.[5] Therefore, regulations on child trafficking need to be examined in relation to patterns of criminal aggravating factors applied to parents in certain other criminal offenses against children, particularly to assess how the special relationship between the perpetrator and the victim is taken into account in the design of legislation.[6]

A number of previous studies have examined parental involvement in human trafficking offenses as well as the application of aggravating factors. Rizkyansyah and Mardijono (2025), for example, addressed the application of aggravating factors against parents who are perpetrators of human trafficking. Natalia and Rahmat (2025) examined the involvement of biological mothers in human trafficking cases through Judgment No. 1451/Pid.Sus/2021/PN Mdn. Both studies are relevant for understanding the issue of parents as perpetrators and the importance of the parent-child relationship in human trafficking cases, as well as the patterns of aggravated penalties in special criminal law more generally.[7] Although they provide a foundation for discussions on reprehensibility and aggravation patterns, these studies have a different focus from the analysis to be developed in this article. Previous studies have addressed parental involvement in human trafficking offenses and the issue of criminal aggravation; however, analyses of parental involvement as perpetrators do not, in and of themselves, resolve the issue of consistency in the formulation of aggravation following the enactment of the National Criminal Code. This article takes a different approach by examining the changes and continuity in the provisions regarding aggravated penalties for parents in several criminal offenses against children, using the crime of child trafficking as the focus of analysis. The analysis focuses on the distinction between aggravating factors based on the child's status as a victim and those based on the parent's status as a perpetrator, including the relationship between Article 13(2) and Article 76F in conjunction with Article 83 of the Child Protection Act. Thus, the novelty of this article lies in examining the interrelationships and clarity of legal provisions within the context of changes in national criminal law, rather than merely discussing parents as perpetrators of child trafficking.

Based on this background, this study addresses two issues. First, what is the consistency and continuity of provisions regarding aggravated penalties for parents in child protection law following the enactment of the National Criminal Code? Second, to what extent are the provisions regarding aggravated penalties for parents in child trafficking crimes incomplete when compared to provisions

[5] Septian Rizkyansyah and Adianto Mardijono, "Pemberatan Pidana Terhadap Orang Tua Yang Menjadi Pelaku Human Trafficking Ini Termaktub Dalam Kalimat : "... Oleh Karena Itu Dibentuklah Pemerintahan Negara Indonesia , Serta Memajukan Kesejahteraan Umum , Pendidikan Dalam Kehidupan Metode Penelitian Bak" 3, no. 2 (2025): 132–38.

[6] C.MT Prof. Dr. Edi Ribut Harwanto, S.H., M.H., C.CLAd., C.LC., C.CM., *Pembaruan Sistem Hukum Pidana Indonesia: Keadilan Substantif Dalam KUHP Dan KUHAP Baru* (Purwokerto: Pustaka Devata, 2026).

[7] Rizkyansyah and Mardijono, "Pemberatan Pidana Terhadap Orang Tua Yang Menjadi Pelaku Human Trafficking Ini Termaktub Dalam Kalimat : "... Oleh Karena Itu Dibentuklah Pemerintahan Negara Indonesia , Serta Memajukan Kesejahteraan Umum , Pendidikan Dalam Kehidupan Metode Penelitian Bak."

for aggravated penalties in other crimes against children, and what are the needs for reform? This study aims to analyze the changes and continuity in the provisions regarding aggravated penalties for parents and to assess the clarity of the basis and consequences of such aggravation in the crime of child trafficking through a comparison with certain other crimes against children. The analysis does not proceed from the assumption that all criminal offenses committed by parents must be subject to aggravated penalties using the same formula; rather, it examines whether differences in the regulations have a justifiable normative basis and whether the special relationship between parents and children has been clearly articulated within the framework of the principles of legality, legal certainty, and proportionality of criminal penalties.

B. Reseach Methodology

This study is a normative legal research project—that is, research focused on examining legal norms, principles, and legal systems to identify and analyze legal issues based on the literature.[8] The subject of this study is the legal framework governing aggravated penalties for parents who commit criminal offenses against their children within the Indonesian legal system following the enactment of the National Criminal Code, with the crime of child trafficking as the primary focus of analysis. The study aims to examine the legal basis for aggravating circumstances, the status of parents as perpetrators, and the changes and continuity in the formulation of aggravating circumstances within legislation. Therefore, the analysis focuses not only on the severity of the criminal penalties but also on the clarity of the interrelationships between legal norms and the legal basis that allows the status of parents to be considered as an aggravating factor in criminal sentencing.

This study employs the statutory approach, the conceptual approach, and the historical approach. The statutory approach was used by identifying, analyzing, and comparing relevant provisions in Law No. 23 of 2002 on Child Protection and its amendments, Law No. 21 of 2007 on the Eradication of the Crime of Trafficking in Persons, Law No. 1 of 2023 on the Criminal Code, and Law No. 1 of 2026 on Criminal Penalty Adjustments. This study focuses on the basic formulation of aggravated penalties, the subjects to whom such penalties may apply, the scope of criminal offenses, and the consequences of such penalties. A conceptual approach is used to analyze the concept of aggravated penalties, the consistency of regulations, the principle of legality, legal certainty, and the proportionality of penalties, as well as the relevance of parents' special responsibility toward their children as the basis for aggravated penalty policies. Meanwhile, a historical approach was used to trace the development of the regulations by comparing provisions before and after relevant legal changes, including to identify provisions that were retained, amended, repealed, or transferred to other regulations following the enactment of the National Criminal Code.[9]

Legal research materials consist of primary and secondary legal sources. Primary legal sources include laws and regulations governing child protection, the crime of human trafficking, aggravated penalties for parents, and adjustments to criminal provisions within the national legal system. Secondary legal materials include scholarly books, journal articles, and relevant research findings on the concepts of aggravated criminal liability, criminal liability, child protection, and the legal relationship between parents and children. Legal materials were collected through a literature review by identifying sources based on their relevance to the research questions, cataloging related provisions, and examining literature that could explain the conceptual foundations and regulatory developments. Subsequently, the collected legal materials were grouped based on the issues under study, namely changes and continuity in regulations regarding aggravated penalties for parents, as well as regulations on aggravated penalties in the crime of child trafficking.[10]

The analysis of legal materials was conducted qualitatively through legal interpretation and a comparison of provisions. The analysis was carried out by first identifying the norms that provide for aggravating factors based on the perpetrator's status as a parent and the norms that provide for

[8] Sri Mamudji Soerjono Soekanto, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Raja bGrafindo Persada, 1986).
[9] Jonaedi Effendi, *Cepat Dan Mudah Memahami Hukum Pidana* (Jakarta: Fajar Interpratama Mandiri, 2014).
[10] Intan Nurina Seftiniara, "Analisis Pertanggungjawaban Pidana Terhadap Pelaku Penipuan Perempuan Yang Dijadikan Pekerja Seks Komersial," *Pranata JHukum Jurnal Ilmu Hukum* 10, no. 2 (2015): 17–17.

aggravating factors based on the child's status as a victim. These two categories were then compared based on the grounds for aggravation, the subjects covered, the types of criminal offenses regulated, the clarity of the sentencing formula or consequences, and the continuity of the provisions following changes to national criminal law. In the context of child trafficking offenses, the analysis specifically focuses on the relationship between Article 13(2) and Article 76F in conjunction with Article 83 of the Child Protection Act, while taking into account other relevant provisions within the legal framework governing human trafficking offenses. The results of this comparison are used to assess whether differences in the wording of the provisions can be justified based on the nature of the criminal offense and the objectives of legal protection, or whether they instead result in incomplete formulations or uncertainty in the application of the norms. Through these steps, the study draws conclusions regarding the consistency of the regulations and the need for their revision, taking into account the principles of legality, legal certainty, and proportionality of criminal penalties.

C. Discussion And Analysis

Changes and Continuity in the Regulation of Aggravated Penalties for Parents Following the Enactment of the National Criminal Code

Patterns of Aggravated Sentencing Provisions for Parents in Crimes Against Children

Aggravating circumstances are an instrument of criminal law policy that allows lawmakers to impose harsher criminal consequences when a criminal act is committed under circumstances deemed to increase the reprehensibility of the act. The determination of aggravating circumstances is not solely related to the severity of the resulting harm, but may also relate to the characteristics of the perpetrator, the perpetrator's relationship to the victim, the manner in which the act was committed, or special circumstances accompanying the criminal offense.[11] In this context, the relationship between parents and children holds particular relevance because parents not only share a biological or familial bond with their children but also bear a legal responsibility to care for, nurture, educate, and protect them.

This responsibility is grounded in Law No. 23 of 2002 on Child Protection. Article 13(1) provides protection to children under the care of parents, guardians, or other parties responsible for their care against various forms of mistreatment, including discrimination, economic or sexual exploitation, neglect, cruelty, violence, abuse, injustice, and other forms of mistreatment. Furthermore, Article 13(2) stipulates that if a parent, guardian, or caregiver commits the acts referred to in paragraph (1), the perpetrator shall face an aggravated sentence. This provision indicates that the legislature has recognized the caregiving relationship as a relevant factor in determining the legal consequences of mistreatment of children.[12] However, this provision does not explicitly specify the extent of the additional penalty or the formula for aggravation applicable to each criminal offense. Therefore, the scope of its application to specific offenses must still be analyzed by considering the wording of the offense, the accompanying sentencing provisions, and the principle of legality.

A more specific recognition of the perpetrator's status can be found in Article 80(4) of the Child Protection Law, which provides for an increase in the sentence by one-third if the criminal act of cruelty, violence, threats of violence, or abuse against a child, as referred to in that article, is committed by a parent, guardian, caregiver, educator, or educational staff member.[13] This provision demonstrates a pattern of aggravated punishment that explicitly takes into account the perpetrator's relationship with the child victim. The status as a parent is not merely the perpetrator's identity but a circumstance that the legislature deems relevant for increasing the criminal consequences for the specified offenses. A similar pattern previously existed in the regulations governing sexual offenses against children. Articles 81 and 82 of the Child Protection Law, in the version in effect prior to the enactment of the National Criminal Code, provided for aggravated penalties for perpetrators who

[11] Kadek Nandha Pradistha, Made Sugi Hartono, and I Wayan Landrawan, "DISPARITAS PEMIDANAAN DALAM KASUS PERSETUBUHAN TERHADAP ANAK (Studi Kasus Putusan Nomor 140/Pid.Sus/2022/PN.Sgr Dan Putusan Nomor 10/Pid.Sus/2023/PN.Sgr,)" 4 (2024): 1–12.

[12] "Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak," Pub. L. No. 23 (2002).

[13] Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak.

were parents, guardians, caregivers, educators, or school staff.[14] Under these provisions, the aggravating factor is formulated as an increase of one-third of the prescribed penalty. Thus, the provisions governing violent crimes and sexual offenses against children demonstrate that the special relationship between the perpetrator and the victim was once accommodated through aggravating provisions that explicitly named specific categories of perpetrators.

Nevertheless, this pattern cannot be generalized to imply that all criminal offenses against children are automatically subject to aggravating circumstances simply because the perpetrator is a parent. Each provision has its own scope of conduct, subject, and penal consequences.[15] Therefore, Article 13(2), as a general provision regarding aggravating factors, must be distinguished from specific provisions that explicitly mandate additional penalties for certain criminal offenses. This distinction is crucial to prevent the conclusion that every criminal offense committed by a parent against a child automatically warrants an additional penalty calculated using the same formula.

The issue regarding this pattern of aggravation aligns with the pattern for determining the type and severity of criminal penalties in special criminal laws. The study highlights that differences in aggravation patterns without adequate justification can raise issues of disparity and consistency in sentencing policy.[16] Although the study does not specifically examine the parent-child relationship, its reasoning is relevant as a foundation for analyzing whether differences in the regulation of aggravation against parents in various criminal offenses against children have a policy basis that can be normatively explained.

Changes in Provisions Following the Enactment of the National Criminal Code

Changes to national criminal law require a reexamination of the existence and continuation of aggravated penalty provisions that were previously scattered across sectoral laws. Law No. 1 of 2023 on the Criminal Code took effect on January 2, 2026. Concurrently, Law No. 1 of 2026 on Criminal Law Adjustments was enacted to align criminal provisions in legislation outside the Criminal Code with Book One of the Criminal Code, as well as to adjust a number of provisions within the Criminal Code itself. Therefore, these changes should not simply be understood as a replacement of legal sources but must be analyzed based on the provisions that have been repealed, those that have been re-enacted, and those that remain in force.[17]

One relevant change is found in Article 622(1)(n) of the National Criminal Code, which repeals Article 81(1) and Article 82 of the Child Protection Act. Article 622 also provides for the replacement of references to those provisions with references to the corresponding articles in the new Criminal Code. For the criminal offense of sexual intercourse with a child, the reference to Article 81(1) is replaced with Article 473(4) of the Criminal Code, while the reference to Article 82 is replaced with Article 415 or Article 417 of the Criminal Code, depending on the specific criminal offense in question. These transitional provisions demonstrate that the legislature has integrated certain criminal provisions on child protection into the national criminal code.[18]

However, the repeal and replacement of these provisions should not be interpreted to mean that all aggravating factors against parents in sexual offenses against children have been eliminated. Article 473 of the Criminal Code (KUHP), for example, still includes an aggravating factor in paragraph (9) if the victim of the criminal offense referred to in paragraph (4) is the perpetrator's biological child, stepchild, or a child under the perpetrator's guardianship, with an additional penalty of one-third of the penalty prescribed in paragraph (4). Thus, at least in the case of sexual intercourse with a child covered by these provisions, the special relationship between the perpetrator and the

[14] Undang-Undang Nomor 23 Tahun 2002 Tentang Perlindungan Anak.
[15] Darmika Ika, "Renewing of Child Criminal Justie Systems in Indonesia Pembaharuan Sistem Peradilan Pidana Anak Di Indonesia," *Jurnal Hukum De'rechtsstaat* 5, no. 2 (2019): 85–86.
[16] Aidil Fernando Arya Jalu Pananjung, Devi Dameriza, Sari Tiara, Rahmi Akhmal, "Perubahan Pidana Dari KUHP Lama Ke Baru Sebagai Reformasi Penegakan Hukum Di Indonesia Sistem Hukum Pidana Indonesia Mengalami Transformasi Fundamental Dengan Disahkannya Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana (KUHP) P," *Jurnal Riset Rumpun Ilmu Sosial, Politik Dan Humaniora* 5 (2026): 603–19.
[17] Yolanda Fitria Salma et al., "Analisis Pemidanaan Pada Anak Yang Melakukan Tindak Pidana Dalam Perspektif KUHP Nasional 2023," *Terang : Jurnal Kajian Ilmu Sosial, Politik Dan Hukum* 2, no. 4 (2025): 213–22, https://doi.org/10.62383/terang.v2i4.1475.
[18] "Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana," Pub. L. No. 1 (2023).

victim is still accommodated in the formulation of aggravating circumstances following the enactment of the National Criminal Code.[19]

This situation must be carefully considered in conjunction with changes to the provisions governing the criminal offense of sexual molestation of a child. Article 415 of the Criminal Code (KUHP) governs the criminal offense of committing an indecent act with a person known or reasonably suspected to be a child, while Article 417 governs the act of inducing a child to commit or allow an indecent act to be committed through the giving or promise of a gift, the abuse of authority arising from a relationship or circumstances, or deception. Unlike Article 473(9), the wording of Articles 415 and 417 does not include a one-third aggravation provision specifically based on the perpetrator's status as a parent.[20] This difference indicates that codification changes can result in inconsistent aggravation patterns for each type of criminal offense against a child. However, these differences in wording must be assessed based on the nature and scope of each offense, rather than being immediately treated as evidence of inconsistency without further analysis.

Within this framework, it is also important to distinguish between the repeal of a provision and the replacement of a reference to that provision. Article 622 of the Criminal Code not only specifies the repealed provision but also establishes how references in other regulations are to be aligned with the corresponding article in the National Criminal Code. Therefore, research on the continuity of criminal aggravation cannot be adequately conducted by simply reading the old and new articles in isolation. An examination must be conducted of the relationships between provisions, including whether the aggravating provision remains in effect, whether its aggravating formula is retained, and whether the replacement provision governs equivalent circumstances.[21]

The application of this approach can be seen in the provisions regarding the criminal offense of human trafficking. Article 622(1)(q) of the National Criminal Code repeals Article 2 of Law No. 21 of 2007 on the Eradication of the Crime of Trafficking in Persons, while Article 622(9) provides for the replacement of the reference to Article 2 in the aforementioned law with a reference to Article 455 of the National Criminal Code. Thus, these changes should not be understood merely as the repeal of the old provisions, as there is also a mechanism for replacing the reference within the National Criminal Code. Consequently, the continued applicability of the aggravated penalty in Article 17 of the Law on the Eradication of the Crime of Trafficking in Persons must be assessed by reading the wording of Article 17 in conjunction with the provision on the replacement of references and the applicable legal changes, rather than by relying solely on the wording of Article 2 prior to the National Criminal Code coming into effect.

In addition to the National Criminal Code, Law No. 1 of 2026 on Criminal Penalty Adjustments also affects the interpretation of criminal penalties in sectoral laws. Article I, paragraph (1) of the Criminal Penalty Adjustment Act provides for the adjustment of criminal provisions in laws outside the Criminal Code that contain specific minimum penalties, with exceptions for certain criminal offenses specified in those provisions.[22] Therefore, the provisions of Article 83 of the Child Protection Act must be interpreted in conjunction with these adjustment provisions. Provided they are not included in the specified exceptions, the specific minimum penalties in Article 83 can no longer be treated as specific minimums that remain in effect, while the maximum penalties must be assessed based on the wording in effect following the adjustment. This change must be distinguished from the issue of aggravated penalties based on the status of biological parents: the adjustment of criminal penalties in Article 83 does not in and of itself establish a specific aggravated penalty formula for parents who engage in child trafficking.[23]

Based on these changes, the continued application of aggravated penalties against parents

[19] Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana.
[20] Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana.
[21] Ani Triwati and Doddy Kridasaksana, "Pijakan Perlunya Diversi Anak Dalam Pengulangan Tindak Pidana," *USM Law Review* 4, no. 2 (2021): 828–43, https://core.ac.uk/download/pdf/482747703.pdf.
[22] "Undang-Undang Nomor 1 Tahun 2026 Tentang Penyesuaian Pidana" (2026).
[23] Amnah Nur I et al., "Dilema Pemberatan Pidana Pada Tindak Pidana Korupsi Dalam KUHP Nasional 2023," *Zitteliana* 7, no. 1 (2023): 159–70, http://jurnal.staialanwar.ac.id/index.php/itqon/article/view/52%0Ahttp://jurnal.staialanwar.ac.id/index.php/itqon/article/download/52/89.

following the enactment of the National Criminal Code cannot be assessed solely based on the repeal or replacement of provisions in sectoral laws. The new provisions indicate that the special relationship between the perpetrator and the child victim is still accommodated in certain criminal offenses, as reflected in Article 473(9) of the Criminal Code, while the wording of aggravating factors in other offenses under the " " category needs to be examined based on the scope of the offense and its legal consequences.[24] Therefore, differences in wording do not in and of themselves indicate inconsistency, but must be examined based on the grounds for aggravation and the normative rationale behind them. This issue becomes significant when this regulatory framework is compared with the provisions on aggravating factors in criminal offenses involving child trafficking.

Inadequacies in the Legal Framework for Aggravated Penalties Against Parents in Child Trafficking Offenses

Basis for Aggravating Penalties in Child Trafficking Offenses

An assessment of the consistency of provisions regarding aggravated penalties for parents who traffic children must begin by identifying the grounds for aggravation available in positive law. In this context, there are at least two circumstances that must be distinguished: those related to the child as a victim and those related to the parent's status as a perpetrator.[25] This distinction is important because each is based on different considerations. Aggravation due to the victim being a child is grounded in the need for special protection of the child, whereas aggravation due to the perpetrator being a parent relates to the special responsibility inherent in the parent-child relationship.[26]

Prior to the enactment of the National Criminal Code, the criminal offenses of abduction, sale, and/or trafficking of children were regulated under Article 76F of the Child Protection Act, with penalties prescribed under Article 83. Meanwhile, Law No. 21 of 2007 on the Eradication of the Crime of Trafficking in Persons regulates the crime of trafficking in persons in Article 2 and provides for aggravated penalties under Article 17 if the crimes referred to in Articles 2, 3, and 4 are committed against a child. Thus, these provisions give special attention to the circumstances of victims who are still children. However, aggravating factors based on the victim's age or status are not identical to those based on the perpetrator's relationship as the victim's biological parent.[27]

This distinction can be explained by the respective purposes of each provision. Aggravation because the victim is a child reflects the need to provide greater protection to a group that is legally deemed to require special protection. Conversely, when the perpetrator is a biological parent, there is an additional circumstance that must be assessed: the parent's responsibility to care for, nurture, educate, and protect the child. If a parent instead treats the child as an object of a transaction or a means of obtaining profit, such conduct has the potential to demonstrate a deviation from the responsibilities inherent in the parental role.[28] This circumstance can serve as the basis for an argument regarding the increased reprehensibility of the act; however, its application as a basis for criminal aggravation must still have an adequate normative foundation.

In the Chil`d Protection Law, the relevant provision for analysis is Article 13(2), which states that if a parent, guardian, or caregiver commits the acts referred to in Article 13(1), the perpetrator shall face an aggravated sentence. This provision explicitly acknowledges that the abuse of a caregiving relationship can result in more severe criminal consequences. However, the wording of Article 13(2) does not specifically mention a formula for increasing the penalty for the crime of

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[24] Agnestika R.R, "Penegakan Hukum Terhadap Tindak Pidana Perdagangan Anak Di Bawah Umur Di Provinsi Lampung (Studi Putusan Nomor: 692/PID.SUS/2024/PN.TJK)," *HELIUM - Journal of Health Education Law Information and Humanities* 2, no. 1 (2025): 771–96.

[25] Rizkyansyah and Mardijono, "Pemberatan Pidana Terhadap Orang Tua Yang Menjadi Pelaku Human Trafficking Ini Termaktub Dalam Kalimat : "... Oleh Karena Itu Dibentuklah Pemerintahan Negara Indonesia , Serta Memajukan Kesejahteraan Umum , Pendidikan Dalam Kehidupan Metode Penelitian Bak."

[26] Felix Ang and Evi Retno Wulan, "Prinsip Keadilan Dalam Penjatuhan Sanksi Alasan Pemberat Pidana Dalam Tindak Pidana Kekerasan Seksual: Studi Kasus Nomor 724/Pid.B/2023/Pn Sda," *PESHUM : Jurnal Pendidikan, Sosial Dan Humaniora* 4, no. 3 (2025): 3789–95, https://doi.org/10.56799/peshum.v4i3.8051.

[27] Muhammad, *Hukum Dan Penelitian Hukum*.

[28] Shinta Aidika et al., "Proceeding of Conference on Law and Perbedaan Paradigma Di Dalam KUHP Lama Dan KUHP 2023," 2023.

child trafficking. Therefore, the relevance of this provision to the acts defined in Article 76F in conjunction with Article 83 must be assessed based on the relationship between the forms of treatment referred to in Article 13(1), the nature of the criminal act committed, and the applicable sentencing system.[29] This analysis must avoid two equally far- conclusions. First, it is incorrect to assume that Article 13(2) automatically imposes a specific additional penalty on every parent who engages in child trafficking, as that provision does not specify the extent of the aggravating factor or the formula for calculating it. Second, it is also incorrect to disregard this provision merely because Article 83 does not explicitly list parental status as an aggravating circumstance. An assessment of the scope of Article 13(2) must be conducted through a systematic interpretation, taking into account the interrelationships among the provisions of the Child Protection Law, the principle of legality, and legal certainty in the imposition of criminal penalties.

To determine the scope of Article 13(2), it is necessary to first examine the relationship between the treatment referred to in Article 13(1) and the acts prohibited under Article 76F. Article 13(1) covers various forms of treatment of children, including economic and sexual exploitation, violence, abuse, and other forms of mistreatment, while Article 76F specifically prohibits the abduction, sale, and/or trafficking of children. There is a potential connection between these two provisions if the act of child trafficking also falls within the scope of the treatment referred to in Article 13(1). However, this connection should not be automatically considered to resolve the issue of aggravated punishment. It remains to be determined how Article 13(2) is applied in conjunction with the specific criminal provisions in Article 76F in conjunction with Article 83, particularly regarding the legal basis for imposing additional penalties and the limits of the resulting criminal consequences. Thus, the legal issue lies not only in the presence or absence of a provision addressing aggravated penalties but also in the clarity of the normative relationship and the legal consequences that can be applied to the perpetrator.

Furthermore, Article 17 of the Law on the Eradication of Human Trafficking must be read carefully. This provision establishes the status of a child victim as grounds for aggravating the criminal offense of human trafficking referred to therein. However, the article does not explicitly stipulate that the penalty must be further aggravated merely because the perpetrator is the victim's biological parent. This means that the existence of aggravating factors within the " " framework for combating human trafficking does not automatically resolve the issue regarding the relevance of the parent's status as the perpetrator. These two circumstances must be analyzed separately to ensure that the grounds for aggravation are not conflated and to prevent double counting of the same circumstance.[30]

Once the National Criminal Code takes effect, the aggravating circumstances in Article 17 of the Law on the Eradication of Trafficking in Persons must be interpreted in light of Article 622 of the Criminal Code, particularly the provision that replaces the reference to Article 2 of that Law with Article 455 of the Criminal Code. This change in reference requires that the assessment of Article 17 be based on the adjusted wording, not solely on the structure of the article prior to January 2, 2026.[31] Furthermore, a distinction must be made between aggravating factors based on the victim's status as a child and those based on the perpetrator's status as a biological parent. The replacement of the reference to Article 455 does not in and of itself establish a specific aggravating factor based on the parent-child relationship. Therefore, even though the provisions on human trafficking provide a basis for the protection of child victims, the issue regarding the basis and formula for aggravating penalties against biological parents still needs to be analyzed separately within the framework of the Child Protection Law.[32]

Thus, the sustainability of the policy of imposing harsher penalties on parents must be assessed

[29] Christanti Natalia and Diding Rahmat, "Kajian Yuridis Terhadap Keterlibatan Ibu Kandung Dalam Tindak Pidana Perdagangan Orang (Studi Putusan Nomor 1451/Pid.Sus/2021/PN Mdn)" 2, no. 14 (2025): 60–76.

[30] A Carolin and B Harefa, "Urgensi Penanggulangan Tindak Pidana Perdagangan Anak Di Indonesia Melalui Upaya Hukum Penal Dan Non Penal," *JUSTITIA: Jurnal Ilmu Hukum Dan …* 8, no. 4 (2021): 525–39, http://jurnal.um-tapsel.ac.id/index.php/Justitia/article/view/2611.

[31] Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana.

[32] Zainab Ompu Jainah Daffa Renaldy, Aristo Fadhil Khalik, Hafidza Rafi Andhika, "Perlindungan Hukum Terhadap Anak Korban Tindak Pidana Perdagangan Orang Di Indonesia" 10, no. 1 (2023): 6–24.

through a measured comparison between different criminal offenses. Such a comparison must, at a minimum, consider the basis for the harsher penalty, the perpetrator's status, the nature of the crime, the scope of the victims, and the consequences of the punishment. Aggravation based on the victim being a child cannot be equated with aggravation based on the perpetrator being a parent, even though both factors may be present in the same case. It is this framework that is used to assess the consistency of regulations on child trafficking compared to certain other criminal offenses against children, without first assuming that differences in wording always constitute inconsistencies in the policy of the legislature.

The Status of Parents as the Basis for Aggravating Circumstances and the Issue of Consistency in Legal Provisions

The status of parents can have a broader legal significance than merely a biological relationship. Within the framework of child protection, this relationship entails a legal responsibility to ensure the fulfillment of the child's rights and best interests. Law No. 1 of 1974 on Marriage, as amended by Law No. 16 of 2019—specifically through Article 45—requires both parents to care for and raise their children to the best of their ability. This obligation demonstrates that the parent-child relationship is not merely a personal one but also one that gives rise to legal responsibilities.

In criminal offenses against children, violations committed by parents may carry an additional dimension when the acts are committed by abusing the trust, dependence, or authority arising from that relationship. In child trafficking, for example, the parents' position may influence access to the child, control over the child's care, or the ability to make decisions regarding the child's whereabouts and relocation. If that position is intentionally used to facilitate the sale or trafficking of a child, the parent-child relationship is not merely a factual backdrop but a circumstance that has the potential to increase the reprehensibility of the act.[33] Nevertheless, the basis for aggravating circumstances should not be formulated solely by relying on a moral judgment that the parent's actions are more reprehensible. In criminal law, assessments of aggravating circumstances must be grounded in a normatively justifiable basis. The parent-child relationship can explain the policy rationale for imposing aggravating factors, but the imposition of additional penalties must still adhere to the provisions of applicable law.[34] In other words, arguments regarding the high reprehensibility of the act and arguments regarding the legal authority to impose a harsher penalty are two interrelated issues.

The distinction between these normative grounds and policy justifications is crucial for assessing the consistency of legal provisions. Consistency should not be interpreted as an obligation to apply an identical aggravating formula to all criminal offenses against children. Differences in the nature of the act, the legal interests protected, the level of danger, and the form of abuse within the relationship between the perpetrator and the victim may serve as grounds for the legislature to establish different patterns of aggravation. However, when a specific relationship is recognized as the basis for aggravation in one category of criminal offenses, while in another category the same relationship is not explicitly regulated, this discrepancy warrants scrutiny to determine whether there is sufficient legal justification.[35]

On that basis, the consistency of the provisions in this article is examined through several parameters. First, is the perpetrator's status as a parent or a person responsible for the child's care explicitly recognized as an aggravating circumstance? Second, does the basis for aggravation relate to the nature of the criminal offense or solely to the victim's circumstances? Third, does the law establish a clear and applicable formula for aggravation? Fourth, whether the basis for aggravation was retained, modified, or no longer explicitly formulated following changes to national criminal law. Fifth, whether differences in provisions across offenses can be explained by differences in the nature of the acts and the objectives of legal protection.[36] These parameters are not intended

[33] Prija Djatmika, M. Nur Syafiuddin, Safa'at, and Istislam, "Understanding Child Support in the Pattern of Child Protection Based on the Principle of Child Protection," *International Journal of Multicultural and Multireligious Understanding* 8, no. 1 (2021): 92, https://doi.org/10.18415/ijmmu.v8i1.2260.

[34] M.H. Mahrus Ali, S.H., *Dasar-Dasar Hukum Pidana* (Jakarta: Sinar Grafika, 2011).

[35] Triwati and Kridasaksana, "Pijakan Perlunya Diversi Anak Dalam Pengulangan Tindak Pidana."

[36] I Nyoman Nurjaya Abdul Madjid, Apriyanto Nusa and Bambang Sugiri, "The Meaning of Waiver of Case for Public Interest (Seponeering) in the Criminal Justice System," *International Journal of Social Science Research and Review* 5, no. 1 (2023):

to equate all criminal provisions, but rather to identify patterns in legislative policy and assess whether the differences therein are justifiable. With this approach, consistency is assessed based on the alignment between the objectives of child protection, the grounds for aggravation, the formulation of legal norms, and the consequences of punishment—not merely based on the similarity or difference in the numerical values of criminal penalties.

Evaluation of Incomplete Provisions on Aggravated Penalties for Biological Parents in Child Trafficking Offenses

Child trafficking is a relevant context for testing the consistency of provisions for aggravated penalties, as such acts may involve parties who have a special relationship with the child, including biological parents. In such circumstances, a legal assessment must not only identify the child as a victim of trafficking but also examine whether the parents' status as perpetrators has been adequately considered in the definition of the criminal offense and its sentencing provisions. This issue does not imply that the status of a parent must always automatically result in an aggravated sentence. Rather, this special relationship must be assessed based on the legal obligations inherent in the parental role, the nature of the abuse of that position, and the normative basis available for treating it as an aggravating circumstance.[37]

An evaluation of these provisions must distinguish between the criminal penalties for the crime of child trafficking and aggravating factors based on the perpetrator's status. The criminal penalties in the provisions on child trafficking are intended to address prohibited acts and the characteristics of the crime itself. Meanwhile, aggravating factors based on the parental role relate to the possibility of an additional dimension of reprehensibility when the perpetrator abuses the responsibility, access, or trust arising from the parent-child relationship. Therefore, the existence of severe criminal penalties does not in and of itself answer the question of whether the abuse of a parental role has been assigned clearly defined criminal consequences.

A comparison with other criminal offenses against children shows that the relationship between the perpetrator and the child can be explicitly accommodated in the formulation of aggravating circumstances. Article 80(4) of the Child Protection Law, for example, stipulates an one-third increase in the penalty under Article 80 if the criminal offense is committed by a parent, guardian, caregiver, educator, or educational staff member. Meanwhile, Article 473(9) of the Criminal Code provides for an aggravating factor within the scope of certain criminal offenses if the victim is the perpetrator's biological child, stepchild, or a child under the perpetrator's guardianship.[38] Both of these provisions demonstrate that the legislature can define a special relationship between the perpetrator and the child as a relevant factor in determining the sentence. However, the scope of the criminal offenses and the grounds for aggravation differ in each provision. This comparison is therefore not intended to equate all aggravation formulas, but rather to assess whether the differences in the regulations regarding child trafficking offenses have a clear and justifiable basis. Nevertheless, these two provisions cannot be treated as entirely equivalent aggravation formulas.[39] Article 80(4) explicitly links aggravating factors to specific categories of perpetrators—including parents, guardians, and caregivers—within the scope of the criminal offense regulated by Article 80. Meanwhile, Article 473(9) applies to the scope of the criminal offense referred to in that paragraph and bases aggravating factors on a specific relationship between the perpetrator and the child victim. Therefore, these two provisions are used as a comparison to demonstrate that the special relationship between the perpetrator and the child can be characterized as an aggravating circumstance, rather than as a basis for concluding that the same formula must be applied to the criminal offense of child trafficking.

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[37] Muhammad Joni Zulchaina Z. Tanamas, *Aspek Hukum Perlindungan Anak Dalam Perspektif Konvensi Hak Anak* (Bandung: Citra Aditya Bakti, 2017).

[38] Alendra et al., *Reformulating Criminal Law Policy on Child Perpetrators of Human Trafficking in Indonesia: A Child Victim-Offender Approach*, *Indonesian Journal of Criminal Law Studies*, vol. 11, 2026, https://doi.org/10.15294/ijcls.v11i1.42124.

[39] Monika Dita Puspa Dewi and Muhammad Iqbal Baiquni, "Tanggung Jawab Orang Tua Terhadap Anak Sebagai Korban Child Trafficking Di Indonesia," *JIL : Journal of Indonesian Law* 2, no. 1 (2021): 81–105, https://doi.org/10.18326/jil.v2i1.81-105.

In the context of child trafficking, this issue must be examined in light of the relationship between Article 13(2), Article 76F, and Article 83 of the Child Protection Act. Article 13(2) stipulates that the acts referred to in paragraph (1) when committed by a parent, guardian, caregiver, educator, or educational staff member are subject to aggravated penalties. However, this provision does not specify the extent of the increased penalty or the formula for calculating it. Therefore, it is necessary to systematically examine whether and to what extent this provision can serve as a basis for imposing an enhanced penalty on biological parents who engage in child trafficking, as well as how the consequences of their criminal punishment can be determined under applicable law. This issue cannot be resolved by relying solely on the wording of Article 13(2), but requires an interpretation of the scope of the treatment referred to, the relationship between the provisions, and the limits of its application based on the principles of legality and legal certainty.[40]

The incompleteness of these regulations needs to be examined from three perspectives. First, regarding the scope of the provision, Article 13(2) identifies parents, guardians, and caregivers as parties subject to aggravated penalties; however, its application to the criminal offense of child trafficking remains contingent on the relationship between the treatment referred to in Article 13(1) and the act described in Article 76F. Second, regarding the relationship between provisions, Article 76F in conjunction with Article 83 establishes the prohibition and criminal penalties for child trafficking, whereas Article 13(2) sets out a more general basis for aggravated penalties without specifying how it applies to that criminal offense. Third, regarding the consequences of sentencing, Article 13(2) does not specify the amount or formula for increasing the sentence that specifically applies to biological parents in cases of child trafficking. These three aspects indicate that the issue at hand is not the complete absence of a normative basis, but rather the failure to explicitly articulate the relationship between general aggravating factors, specific criminal provisions, and the applicable sentencing consequences. The conclusion regarding the incompleteness of this formulation must still be distinguished from the assertion that Article 13(2) is entirely inapplicable, as the latter issue requires further systematic interpretation.

The status of biological parents is particularly relevant when that relationship is deliberately exploited to facilitate child trafficking. Parents have a legal responsibility to care for, educate, and protect their children. If that responsibility is instead abused to sell or traffic a child, the act potentially carries an additional dimension of reprehensibility because the perpetrator acts in violation of the obligations inherent in their status. However, this policy rationale must be distinguished from the legal basis for imposing a more severe penalty. The high degree of reprehensibility of an act may support the argument for legislative reform, but it does not, in and of itself, grant the authority to impose penalties beyond the grounds established by law.[41]

A distinction must also be made regarding aggravating factors in human trafficking offenses based on the victim's status as a child. Article 17 of the Law on the Eradication of Human Trafficking Crimes provides for aggravating factors for certain criminal offenses when committed against a child. The basis for these differs from aggravating factors based on the perpetrator's status as a biological parent. The victim's status as a child relates to the need for special protection, whereas the perpetrator's status as a parent relates to a special responsibility that is susceptible to abuse.[42] Both circumstances may arise in the same case, but they must be analyzed separately to avoid mixing the grounds for aggravation or unjustified double counting. Its application must also take into account changes in national criminal law, including the replacement of references in Article 622 of the Criminal Code, so that the relationship between the provisions still in force and those referred to can be ascertained based on the applicable legal provisions. Thus, the adjustment of references in Article 622 of the Criminal Code must be taken into account when determining which human trafficking provisions serve as the basis for aggravating circumstances regarding child victims. However, these changes to the references do not address a separate issue: whether the status of

[40] Juwita Indayani, Johari Johari, and Fatahillah Fatahillah, "Pemidanaan Terhadap Tindak Pidana Pencurian Dengan Pemberatan Dalam Perspektif Kriminologi," *Jurnal Ilmiah Mahasiswa Fakultas Hukum Universitas Malikussaleh* 8, no. 3 (2025), https://doi.org/10.29103/jimfh.v8i3.22736.

[41] Erny Herlin Setyorini Adelia Arya Wahaning, "Pertanggung Jawaban Pidana Orang Tua Yang Memperdagangkan Anak Kandungnya Sendiri," *Journal Evidence Of Law* 2, no. 2 (2023): 10, https://jurnal.erapublikasi.id/JEL/article/view/399/476.

[42] Faris Fachrizal Jodi, "Obstruction of Justice Dalam Upaya Penegak Hukum," *Jurnal Litigasi* 25, no. 1 (2024): 110–23.

biological parents as perpetrators has been established as a distinct basis for aggravating circumstances in the provisions on child trafficking. This distinction indicates that aggravating circumstances based on the victim's status and those based on the perpetrator's special relationship with the victim must be assessed separately, even though both may be relevant in a single case.[43]

Based on this comparison, the issue that warrants attention is not that all provisions regarding aggravated penalties for parents have been shown to contradict one another, but rather that the formulation of aggravated penalties for biological parents who engage in child trafficking has not specifically and precisely articulated the consequences of the perpetrator's status. Differences in the technical formulation of offenses do not in and of themselves prove inconsistency, as the legislature may establish different aggravation patterns in accordance with the nature of the act and the legal interests being protected. However, when the special relationship between the perpetrator and the child has been explicitly accommodated in specific provisions, the absence of a comparable specific formula in the context of child trafficking must be accompanied by adequate policy justification.[44] Thus, the findings of this evaluation are more appropriately directed at the incompleteness of the formulation and the need to clarify the application of the norms, rather than at the conclusion that there is absolutely no relevant legal basis. Consequently, the contribution of this analysis lies in distinguishing three issues that are often conflated: the existence of a normative basis for aggravated penalties, the clarity of the relationship between general provisions and specific criminal provisions, and certainty regarding the consequences of criminal punishment. This distinction shows that the incompleteness of the formulation regarding the criminal offense of child trafficking cannot be concluded solely from the absence of a specific provision for parents in Article 83, but must be assessed in conjunction with the possible application of Article 13(2), the limits of its interpretation, and changes in national criminal law.

Therefore, the revision of the regulations must consider the formulation of aggravating factors that explicitly accommodate situations where biological parents abuse their position to engage in child trafficking. This formulation must clarify the subjects to whom aggravating factors may apply, the relationship between the perpetrator's position and the criminal act, and proportionate criminal consequences. Furthermore, the revision must clarify its relationship to aggravating factors based on the victim's status as a child, so that each basis for aggravation serves a clear normative function and does not result in overlap. With a more carefully calibrated formulation, child protection can be strengthened while maintaining legal certainty, the principle of legality, and consistency in sentencing policies.

D. Conclusion

The provisions for aggravating criminal penalties against parents in child protection law following the enactment of the National Criminal Code demonstrate the continuity of a legal policy that treats the parent-child relationship as a relevant factor in aggravating criminal penalties, although the specific wording and scope vary depending on the criminal offense. This continuity is reflected in specific provisions that explicitly consider the perpetrator's status as a parent, including Article 80(4) of the Child Protection Law and Article 473(9) of the National Criminal Code. However, this continuity does not establish a uniform pattern of aggravating factors for all criminal offenses against children. Thus, the finding of this study is not that there is a direct conflict of norms, but rather that there are differences in the formulation of aggravating factors that need to be assessed based on the nature of the criminal offense, the basis for aggravation, and the certainty of the resulting criminal penalties. C. In criminal cases involving child trafficking, the legal issue lies in the lack of clarity and specificity regarding the application of aggravated penalties when the perpetrator is a biological parent. Article 13(2) of the Child Protection Law does indeed provide a basis for imposing aggravated penalties on parents, guardians, or caregivers who commit the acts referred to in Article 13(1). However, this provision has not explicitly defined how it applies to the crime of child trafficking as

[43] Daffa Renaldy, Aristo Fadhil Khalik, Hafidza Rafi Andhika, "Perlindungan Hukum Terhadap Anak Korban Tindak Pidana Perdagangan Orang Di Indonesia."

[44] Devi Nur, Maya Sari Novita, and Abdul Rahman M S, "Transformasi Pengaturan Aturan Peralihan Dari KUHP Lama Ke KUHP Nasional Sebagai Implementasi Pembaruan Hukum Pidana," 2026, 13056–63.

regulated in Article 76F in conjunction with Article 83, including the formula for the additional penalty that may be imposed due to the perpetrator's status as a biological parent. Unlike provisions that explicitly stipulate additional penalties based on the perpetrator's status, aggravating factors based on the child's status as a victim do not automatically address the issue of aggravation based on the parent-child relationship. Therefore, this study identifies gaps in the formulation and interpretive uncertainty, rather than concluding that all applicable provisions are mutually contradictory. The status of biological parents, the duty to protect children, and the abuse of trust and parental authority can serve as the basis for criminal policy considerations; however, their application as aggravating factors in criminal sentencing still requires a clear normative foundation.

Based on these findings, legal reforms should focus on formulating provisions that explicitly stipulate enhanced penalties for biological parents who commit the crime of child trafficking. These provisions must clarify the basis for the enhanced penalties, the scope of the offenders and the criminal acts, as well as the form or extent of the additional penalties that can be applied proportionally. Furthermore, the relationship between the general provisions regarding aggravated penalties for parents in the Child Protection Act and the specific provisions regarding child trafficking must be clarified to prevent differing interpretations in their application. These amendments must continue to uphold the principles of legality, legal certainty, proportionality of punishment, and the prevention of double counting of the same circumstances as grounds for aggravated penalties. Thus, child protection can be realized through regulations that not only acknowledge the gravity of violations of parental obligations but also provide a clear and consistent basis for criminal punishment.

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