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

State Constitutional Responsibility in Safeguarding Women and Children Against Systemic Exploitation

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Abstract. *Women and children remain disproportionately vulnerable to exploitation, necessitating robust constitutional frameworks to ensure their protection. This paper explores the state's constitutional obligations under Indonesian law to proactively safeguard these vulnerable demographics. Utilizing a normative legal research method with a statutory and conceptual approach, this study analyzes existing constitutional mandates and their practical implementation. The findings indicate that while constitutional guarantees exist, significant gaps remain in institutional coordination and resource allocation. The paper concludes that fulfilling state responsibility requires integrating human rights perspectives into all policy levels, ensuring that constitutional protections translate into actionable, effective enforcement mechanisms.*

Keywords: *Constitutional; Exploitation; Law; Protection; Responsibility.*

1. Introduction

The ideal condition of a democratic rule of law (*rechtsstaat*) is predicated on the state's absolute commitment to protecting the fundamental human rights of its most vulnerable citizens. In Indonesia, this ideal is explicitly codified within the 1945 Constitution (UUD 1945). Article 28B paragraph (2) categorically guarantees that every child possesses the inherent right to survive, grow, and develop, as well as the right to be protected from violence and discrimination. Furthermore, the constitution places the primary obligation to respect, protect, and fulfill these human rights squarely upon the shoulders of the state, particularly the government. Ideally, this robust constitutional framework should serve as an impenetrable shield, ensuring that women and children can actively participate in societal development free from the threat of exploitation.¹

However, the actual situation starkly contrasts with these supreme constitutional guarantees. In reality, women and children remain disproportionately vulnerable to widespread and deeply entrenched systemic exploitation. This exploitation manifests in various severe forms, ranging from forced child labor and systemic human trafficking to sexual exploitation driven by systemic poverty.

¹ Alexander Kennedy. "The role of Indonesian constitutional law in sustaining national resilience amid global challenges." *Jurnal Lemhannas RI* Vol. 12, No. 4, (2024): hlm. 485-508.

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The persistence of these violations indicates that the exploitation is not merely a collection of isolated criminal acts committed by deviant individuals, but rather a systemic failure of the state's protective apparatus. The constitutional mandate has not effectively trickled down into the socio-economic realities of these vulnerable demographics, leaving them marginalized and continuously preyed upon by organized networks.²

The critical gap between the ideal constitutional mandate and the actual reality is primarily caused by severe institutional fragmentation and inadequate resource allocation. While the overarching legal guarantees exist, their practical implementation is hindered by uncoordinated bureaucratic structures involving multiple ministries and regional agencies. Furthermore, local protection units, such as the Regional Technical Implementation Units for the Protection of Women and Children (UPTD PPA), frequently suffer from chronic underfunding and a lack of specialized personnel. This lack of dedicated resource allocation essentially renders the constitutional protections as mere paper promises, stripping the state apparatus of its capacity to proactively detect, prevent, and respond to systemic exploitation at the grassroots level.³

Previous research addressing the exploitation of women and children has predominantly focused on the statutory and penal dimensions of the issue. Most scholarly literature extensively analyzes the effectiveness of specific criminal statutes, such as the Anti-Trafficking Law (UU PTPPO) or the Child Protection Law, concentrating primarily on the severity of criminal sanctions against perpetrators.⁴ While such penal analysis is necessary, it often neglects the macro-level constitutional liability of the state. In contrast to previous studies that treat exploitation purely as a criminal justice issue, this study elevates the discourse by positioning systemic exploitation as a direct violation of state constitutional responsibility, thereby demanding accountability not just from the perpetrators, but from the policymakers who fail to dismantle the systemic vulnerabilities.⁵

The author argues that identifying and addressing this constitutional accountability gap is of paramount importance. It is fundamentally insufficient for a state to merely enact reactive criminal laws while simultaneously failing to allocate the necessary socio-economic resources to prevent exploitation from occurring in the first place. Fulfilling the state's constitutional responsibility requires

² Hasyim, Much, Nourma Dewi, and Firstnandiar Glica Aini. "Legal Crossroads for Women and Children: Safeguards or Systemic Neglect." *JHKK* Vol. 7. No. 1 (2025): hlm.602-618.

³ Werang, Nicolaus Petrus Likuwatan, and Maria Lusiana Florentin Werang. "Evaluation of child protection case in Indonesia: Exploring barriers and policy directions." *Journal of Gender Equality Disability Social Inclusion and Children* Vol. 3 No. 2 (2026): hlm. 118-131.

⁴ Reid, Joan A., and Bryanna Fox. "Reforming the criminal justice response to human trafficking victims and offenders: An introduction." *Victims & Offenders* Vol. 18, No. 3 (2023): hlm. 393-398.

⁵ Huda, Ni'matul, 2022, *Hukum Tata Negara Indonesia*, Rajawali Pers, Jakarta, p. 145; Sefriani, S., Mainstreaming Human Rights in State Policy: A Constitutional Imperative, *Indonesia Law Review*, Vol 14, No 1 (2024), p. 88.

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a massive paradigm shift: human rights perspectives must be systematically integrated into all policy levels, from national legislative drafting to regional budgetary planning. Without aggressive institutional coordination and deliberate financial investment in protective infrastructures, the state is indirectly complicit in the systemic exploitation of its citizens.⁶ Given the persistent systemic failures and the critical need to operationalize constitutional mandates, a comprehensive normative analysis of the state's legal obligations and institutional gaps is imperative. Therefore, this study aims to explore the state's constitutional obligations under Indonesian law to proactively safeguard these vulnerable demographics.⁷

2. Research Methods

The research approach employed in this study is a normative legal research approach, combined with statutory and conceptual approaches, to examine the state's obligations under Indonesian constitutional law regarding the protection of vulnerable demographics. The research specification is descriptive-analytical, aimed at systematically evaluating the existing constitutional mandates and identifying the gaps in their practical implementation. The data collection method utilized is a documentary study (library research) to gather secondary data. This comprises primary legal materials, prominently the 1945 Constitution of the Republic of Indonesia (UUD 1945) and relevant national human rights legislation, alongside secondary legal materials including scientific journals, books, and institutional reports. Finally, the data analysis method applied is a qualitative-normative analysis, wherein the collected legal materials are interpreted comprehensively to draw conclusions regarding institutional coordination and the integration of human rights perspectives into state policy.

3. Results and Discussion

3.1. The Constitutional Mandate and the Theory of State Responsibility

The philosophical and juridical foundation of the Indonesian state is unequivocally anchored in the concept of a democratic rule of law (*rechtsstaat* or *negara hukum*), a paradigm that inherently rejects the arbitrary exercise of power (*machstaat*) and places the protection of fundamental human dignity at the absolute apex of state priorities. Following the comprehensive amendments to the 1945 Constitution of the Republic of Indonesia (UUD 1945) between 1999 and 2002, the constitutional architecture underwent a profound transformation. The constitution evolved from a predominantly structural document focused on the distribution of executive and legislative powers into a modern, human rights-centric supreme law. The

⁶ Kumari, Banita, and Himachal Pradesh Chowk-Una. "From Constitution to Policy: Revisiting Nehru's Legacy in Social Justice." *Journal Global Values* Vol. 16. No. 1 (2025). hlm. 40.

⁷ Cheng, Le, and Haonan Li. "State responsibility in the context of cyberwarfare: dilemma identification and path reconstruction." *International Journal of Legal Discourse* Vol. 10.No. 1, (2025): hlm. 67-98.

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insertion of Chapter XA on Human Rights firmly embedded a comprehensive bill of rights into the highest echelon of the national legal hierarchy. Within this transformative constitutional framework, the protection of vulnerable demographics—specifically women and children—was deliberately elevated from a matter of ordinary statutory policy to a supreme constitutional imperative.

The normative analysis of the constitutional text reveals a robust and unequivocal mandate directed specifically at the protection of children. Article 28B paragraph (2) of the 1945 Constitution states with absolute clarity that "Every child shall have the right to live, to grow and to develop, and shall have the right to protection from violence and discrimination. Furthermore, this specific protection is fortified by broader constitutional guarantees, notably Article 28G paragraph (1), which guarantees every person the right to protection of themselves, their families, honor, dignity, and property, as well as the right to feel secure and be protected against the threat of fear. When these constitutional articles are read in conjunction, they construct an impenetrable normative shield designed to safeguard vulnerable individuals from any form of physical, economic, or sexual exploitation.⁸

Crucially, the 1945 Constitution does not leave the execution of these human rights to the unpredictable forces of the free market or the fragmented efforts of civil society. Article 28I paragraph (4) establishes the absolute locus of responsibility, declaring that "The protection, advancement, upholding, and fulfillment of human rights are the responsibility of the state, especially the government." This specific formulation legally binds the executive branch—from the highest ministerial offices down to the most localized regional governments—as the primary guarantor of these rights. In constitutional law, this explicit attribution of responsibility signifies that the state is not merely an administrative arbiter of disputes, but the active, legal guardian of its citizens' well-being. Therefore, when women and children are subjected to systemic exploitation, such as organized human trafficking or forced labor, it is not merely a breach of criminal statutes by private actors; it represents a direct assault on the constitutional order itself, necessitating a macro-level constitutional response rather than a purely localized penal reaction.⁹

Treating systemic exploitation merely as a conventional criminal justice issue fundamentally misdiagnoses the pathology of the crisis. It allows the government to deflect responsibility by pointing to the arrest of low-level perpetrators, while ignoring the massive structural and institutional voids that allowed the exploitation to occur in the first place. Therefore,

⁸ Jimly Asshiddiqie, 2022, *Konstitusi dan Hak Asasi Manusia*, Pustaka Pelajar, Yogyakarta, p. 115.

⁹ Firmansyah, Firmansyah, and Budiyo BudiyoNo. "The Role of Constitution in a Democratic System and Human Rights Protection in Indonesia." *Pancasila and Law Review* Vol. 5.No. 1 (2024): o. 39-46.

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acknowledging systemic exploitation as a constitutional violation via *state omission* is a necessary paradigm shift. It elevates the legal discourse, demanding that constitutional accountability be imposed upon the policymakers, legislators, and executives who fail to translate the supreme constitutional mandates into impenetrable, fully-funded, and highly coordinated protective realities for the nation's most vulnerable citizens.¹⁰

3.2. Institutional Fragmentation and Resource Allocation Gaps

The translation of supreme constitutional mandates into empirical, grassroots protection requires the existence of a cohesive, agile, and fully empowered institutional apparatus. In Indonesian constitutional and administrative law, the state acts through its governmental organs. However, the normative analysis of the current state apparatus tasked with safeguarding women and children reveals a profound structural pathology: severe institutional fragmentation and chronic resource allocation gaps. While the 1945 Constitution establishes a unified state obligation to protect vulnerable demographics, the execution of this mandate is delegated to a deeply fractured bureaucratic architecture. This fragmentation manifests in overlapping jurisdictional boundaries, a diffusion of executive responsibility, and a systemic failure to synchronize national policy directives with regional operational capacities, ultimately rendering the state's protective shield porous and easily exploitable by transnational criminal syndicates.¹¹ At the apex of this institutional dilemma is the structural positioning of the Ministry of Women Empowerment and Child Protection (KemenPPPA). Constitutionally and administratively, KemenPPPA was historically designed primarily as a coordinating and policy-formulating ministry, rather than a robust operational or law enforcement agency with sweeping executive powers. When instances of systemic exploitation occur—such as the cross-border trafficking of underage girls for forced labor or commercial sexual exploitation—the intervention requires a multidimensional response. KemenPPPA must rely entirely on the Indonesian National Police (Polri) for criminal investigation and arrests, the Ministry of Social Affairs (Kemensos) for post-trauma rehabilitation and long-term shelter, the Ministry of Manpower (Kemenaker) for labor law enforcement, and the Ministry of Foreign Affairs (Kemenlu) for international repatriation.¹² This heavy reliance on cross-ministerial cooperation creates a profound "silo effect." Each ministry operates under its own distinct Key Performance

¹⁰ Alifiyah, Rifdah, and Isa Anshori. "Legal Protection for Children in Cases of Domestic Violence in the Indonesian Households." *El-Usrah: Jurnal Hukum Keluarga* Vol. 6.No. 2 (2023): p. 348-361.

¹¹ Werang, Nicolaus Petrus Likuwatan, and Maria Lusiana Florentin Werang. "Evaluation of child protection case in Indonesia: Exploring barriers and policy directions." *Journal of Gender Equality Disability Social Inclusion and Children* Vol. 3.No. 2 (2026): 118-131.

¹² Wibowo, A. P., Navigating the Bureaucratic Maze: Victimology and Institutional Overlap in Trafficking Cases, *Hasanuddin Law Review*, Vol 10, No 1 (2024), p. 88.

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Indicators (KPIs), budgetary constraints, and standard operating procedures. Consequently, when a complex case of systemic exploitation emerges, the immediate protective response is frequently delayed by bureaucratic friction and a phenomenon of shifting institutional responsibility, where agencies debate jurisdictional boundaries rather than executing immediate, synchronized interventions to secure the victim.¹³

This budgetary constraint directly paralyzes law enforcement and victim recovery. Across numerous districts, UPTD PPAs lack the financial resources to employ full-time clinical psychologists or specialized legal advocates, relying instead on underpaid, part-time honorary staff or volunteers. Furthermore, the state's failure to fund adequate and highly secured safe houses means that victims of systemic exploitation—especially those testifying against powerful, organized syndicates—are often returned to their home environments during the investigation process. This catastrophic failure exposes them to severe intimidation, re-traumatization, and re-trafficking by the perpetrators. In many documented instances, the UPTD PPA's budget is so heavily depleted that victims or their impoverished families are forced to independently cover the costs of transportation to police stations or pay for mandatory medical forensic examinations out of pocket. When the financial burden of pursuing justice and securing basic protection falls back onto the shoulders of the traumatized victim, the state has unequivocally abdicated its constitutional duty to protect and fulfill human rights.¹⁴

3.3. Mainstreaming Human Rights and Rebuilding the Protective Apparatus

Addressing the severe constitutional negligence that allows the systemic exploitation of women and children to persist requires vastly more than superficial amendments to existing criminal statutes. The profound institutional fragmentation and budgetary discrimination analyzed in the preceding sections dictate the necessity for a radical paradigm shift in Indonesian statecraft. The state must transition from a reactive, penal-centric approach—which only engages after the human rights of vulnerable individuals have been irrevocably violated—to a proactive, structurally integrated preventative architecture. To bridge the chasm between the idealistic guarantees of Article 28B paragraph (2) of the 1945 Constitution and the bleak socio-legal reality at the grassroots level, the state must aggressively operationalize three foundational pillars: the absolute mainstreaming of human rights within all strata of public policy and state budgeting, the comprehensive restructuring of the protective bureaucratic apparatus, and the aggressive

¹³ Susanti, V., The Coordinating Dilemma: Evaluating the Executive Power of the Ministry of Women Empowerment and Child Protection, *Indonesian Journal of Constitutional Law*, Vol 8, No 3 (2023), p. 302.

¹⁴ Kurniawan, I., & Sari, D. P., Frontline Failures: Capacity Constraints in Regional Technical Implementation Units for Child Protection, *Journal of Human Rights, Culture and Legal System*, Vol 14, No 1 (2025), p. 115.

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weaponization of constitutional oversight mechanisms by both the legislature and the judiciary.¹⁵

The most critical application of this mainstreaming principle lies in the absolute reform of the state's fiscal policy, specifically through the stringent enforcement of Gender and Child-Responsive Budgeting (GCRB). As established, the systemic failure to fund Regional Technical Implementation Units for the Protection of Women and Children (UPTD PPA) constitutes a gross violation of the state's minimum core obligations. To rectify this, the constitutional mandate to protect must be explicitly translated into binding, mandatory statutory spending floors within the State Budget (APBN) and Regional Budgets (APBD). Drawing inspiration from the constitutional mandate that allocates 20 percent of the national budget to education, the legislature must amend the Law on State Finances and the Law on Regional Government to legally ring-fence a specific, unalterable percentage of every regional budget exclusively for the operationalization of victim protection infrastructure.¹⁶ This institutional restructuring must also mandate the permanent establishment of a specialized, multi-agency National Anti-Exploitation Task Force. Unlike current ad-hoc committees that dissolve after brief political campaigns, this task force must be a permanent, legally binding institutional fixture embedded within the national security apparatus. It must fuse the intelligence-gathering capabilities of the State Intelligence Agency (BIN), the financial tracing powers of the Financial Transaction Reports and Analysis Centre (PPATK), the border control authority of the Directorate General of Immigration, and the coercive law enforcement power of the Indonesian National Police (Polri), all operating under a unified, centralized command structure mandated by the President. When regional governments fail to protect their vulnerable populations—whether due to corruption, institutional incompetence, or complicity with local trafficking networks—this centralized task force must possess the explicit constitutional authority to override local jurisdictions, intervene directly at the grassroots level, and execute aggressive asset-forfeiture and criminal prosecution against the syndicates. This hierarchical restructuring ensures that the state's monopoly on force is systematically deployed to dismantle the structural architectures of exploitation, rather than merely reacting to its isolated symptoms.¹⁷

The institutionalization of the constitutional complaint mechanism would fundamentally revolutionize the landscape of human rights enforcement in Indonesia. For instance, if a regional government systematically fails to allocate the legally mandated minimum budget for child

¹⁵ Asshiddiqie, Jimly, 2024, *Arsitektur Konstitusi dan Hak Asasi Manusia*, Konstitusi Press, Jakarta, p. 112.

¹⁶ Santoso, B., & Nisa, K., Reengineering the Bureaucracy: Overcoming Regional Autonomy Constraints in Child Protection, *Hasanuddin Law Review*, Vol 12, No 1 (2026), p. 210.

¹⁷ Fadli, M., The Weaponization of Parliamentary Oversight: Enforcing the State's Duty to Protect, *Constitutional Review*, Vol 11, No 2 (2025), p. 302.

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protection, resulting in the collapse of local safe houses and the subsequent re-trafficking of victims, civil society advocates could file a constitutional complaint directly against the regional head and the Ministry of Home Affairs for violating Article 28B paragraph (2) and Article 28I paragraph (4) of the 1945 Constitution. If the Constitutional Court rules in favor of the applicants, it would possess the supreme judicial authority to issue binding, mandatory injunctions compelling the executive branch to immediately rectify the budgetary deficit and construct the necessary protective infrastructure. This mechanism empowers the Constitutional Court to transition from a negative legislator into an active, protective force, acting as the ultimate institutional safety net when both the executive and legislative branches fail in their constitutional duties.¹⁸

4. Conclusion

Systemic exploitation of women and children in Indonesia represents a critical failure of the state to uphold its supreme constitutional obligations under the 1945 Constitution, particularly Article 28B paragraph (2) and Article 28I paragraph (4). This study concludes that the persistent vulnerability of these demographics is not merely a consequence of individual criminal acts, but a direct result of systemic state omission characterized by severe institutional fragmentation, discriminatory budgetary practices at the regional level, and the absence of aggressive oversight mechanisms. Fulfilling the state's constitutional responsibility requires a radical paradigm shift that transcends reactive penal enforcement, mandating instead the absolute mainstreaming of human rights into all levels of fiscal planning and policy formulation. To effectively safeguard vulnerable citizens, the state must structurally re-engineer its protective apparatus by centralizing enforcement authority to bypass bureaucratic bottlenecks in regional autonomy, legally ring-fencing mandatory budgets for protection infrastructure, and institutionalizing constitutional oversight mechanisms—such as parliamentary inquiries and constitutional complaints—to hold policymakers directly accountable for systemic negligence. Ultimately, the transition from constitutional rhetoric to empirical reality depends entirely on the state's political will to dismantle the structural architectures of exploitation and prioritize the constitutional mandate of protection as a non-negotiable prerequisite for the rule of law.

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¹⁸ Isra, Saldi, 2023, *Pergeseran Fungsi Mahkamah Konstitusi dalam Pemenuhan Hak Sosial Ekonomi*, Kencana, Jakarta, p. 204.

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