

LICS 2026

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

Constitution Law and State Responsibility in Protecting Women and Children

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Abstract. *As a rechtsstaat, the Indonesian state bears a constitutional responsibility to protect, respect, and fulfill human rights, including the rights of women and children who are sociologically vulnerable to discrimination and violence. This article examines the constitutional law foundations of state responsibility in protecting women and children and identifies the gap between legal norms and their implementation. The research employs a normative juridical method using statutory and conceptual approaches). The findings indicate that state responsibility for the protection of women and children has been institutionalized constitutionally through Articles 28B and 28I of the 1945 Constitution, elaborated through various organic statutes, and reinforced by the ratification of international legal instruments. Nevertheless, the effectiveness of such protection still faces structural, institutional, and cultural challenges that require strengthened cross-sectoral coordination and consistent law enforcement.*

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

1. Introduction

The Indonesian state as a state of law (*rechtsstaat*), as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, entails the consequence that every exercise of state power must be based on the law (1945 Constitution of the Republic of Indonesia). The rule of law principle does not only carry a formal meaning of compliance with legal procedures, but also a material meaning that demands the realization of substantive justice for all citizens, including vulnerable groups such as women and children. One of the fundamental principles in constitutional law is that the state bears a constitutional obligation to protect, respect, and fulfill human rights without discrimination, as mandated in Article 28I paragraph (4) of the 1945 Constitution, which states that the protection, advancement, enforcement, and fulfillment of human rights are the responsibility of the state, especially the government (1945 Constitution of the Republic of Indonesia).

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Women and children are groups that are historically and sociologically vulnerable to experiencing discrimination, violence, and marginalization, both in the domestic and public spheres. This vulnerability arises due to unequal power relations, the socio-cultural construction of patriarchy, as well as limited access to education, economy, and legal justice. This condition places women and children in a position that requires special legal protection (affirmative protection) so that the principle of substantive equality can be realized, as explicitly guaranteed in Article 28B paragraph (2) of the 1945 Constitution regarding the right of the child to survival, growth, and development, as well as the right to protection from violence and discrimination (1945 Constitution of the Republic of Indonesia).

Indonesia's commitment to the protection of women and children is also reflected in the ratification of various international legal instruments, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) through Law Number 7 of 1984 and the Convention on the Rights of the Child (CRC) through Presidential Decree Number 36 of 1990 (Law No. 7 of 1984; Presidential Decree No. 36 of 1990). This ratification creates a legal obligation for the state to harmonize national legislation with international human rights protection standards, which was subsequently realized through the enactment of Law Number 35 of 2014 concerning Child Protection, Law Number 23 of 2004 concerning the Elimination of Domestic Violence, and Law Number 12 of 2022 concerning Crimes of Sexual Violence (Law No. 35 of 2014; Law No. 23 of 2004; Law No. 12 of 2022).

Nevertheless, in practice, there is still a gap between the legal norms that have been established and their implementation on the ground. Data from the National Commission on Violence Against Women records that cases of violence against women still show a significant trend every year, while data from the Online Information System for the Protection of Women and Children (SIMFONI-PPA) also confirms the high rate of violence against children in various regions (Komisi Nasional Anti Kekerasan terhadap Perempuan, 2024; Kementerian Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia, 2025). These conditions raise fundamental questions regarding the extent to which the concept of state responsibility within the framework of constitutional law has been concretely implemented. Based on this background, this article is arranged to examine the constitutional law foundation regarding state responsibility in protecting women and children as well as the obstacles faced in its implementation.

2. Research Methods

This article was prepared using a normative legal research method, namely research that focuses on the study of applicable positive legal norms. The approaches used include the

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statutory approach to examine laws and regulations related to the protection of women and children, the conceptual approach to analyze the concept of state responsibility in constitutional law, and a limited case approach to illustrate the implementation of norms in practice. The legal materials used consist of primary legal materials in the form of legislation, secondary legal materials in the form of literature, scientific journals, and institutional reports, as well as tertiary legal materials in the form of legal dictionaries. The analysis was conducted descriptively-qualitatively with a prescriptive analysis technique.

3. Result and Discussion

3.1. The Concept of State Responsibility from a Constitutional Law Perspective

The concept of state responsibility in constitutional law is rooted in the idea of a state of law that places the state not only as a power holder, but also as a bearer of legal obligations towards its citizens. Theoretically, this idea can be traced to John Locke's social contract theory, which states that state power is born from the surrender of a portion of individuals' natural rights to the state with the primary goal of obtaining protection over basic rights that cannot be guaranteed individually, namely the rights to life, liberty, and property (Locke, 1988). In this perspective, the legitimacy of state power is functional: power is only valid as long as it is used to protect the people, so the state's failure to provide protection is essentially a denial of its own basis of legitimacy.

Hans Kelsen, through the theory of the hierarchy of norms (*stufentheorie*), places the state as the personification of the legal order itself, so that every state action both in the form of norm formation and its implementation is essentially a legal action that must be hierarchically accountable to higher norms, up to the basic norm (*grundnorm*) (Kelsen, 1961). The implication is that the state's obligation to protect women and children is not merely a policy choice, but a normative necessity that flows directly from the constitution as the highest norm, so that every legal product below it, whether laws, government regulations, or regional regulations, must be consistent and must not contradict these protection guarantees.

Padmo Wahjono asserts that the main characteristic of the Indonesian state of law (Indonesia as a *rechtsstaat* in the sense of Pancasila) is not solely oriented towards the limitation of power as in the classic liberal state of law concept, but is also oriented towards the welfare and protection of the people as a manifestation of the principle of social justice (Wahjono, 1986). This view is in line with the shift in the paradigm of the modern state from the concept of a passive night-watchman state (*nachtwakerstaat*) to an active welfare state (*verzorgingsstaat*) that intervenes to protect vulnerable groups from social and economic inequality. Within this

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framework, state responsibility towards women and children cannot be interpreted passively as a prohibition for the state to commit violations, but actively as an obligation to build legal, institutional, and public service systems that tangibly prevent and address violence and discrimination.

Mahfud MD affirms that national legal politics must be directed towards realizing state goals as enshrined in the Preamble to the 1945 Constitution, namely to protect the entire Indonesian nation and the entire homeland of Indonesia (Mahfud MD, 2010). In the context of human rights, James Nickel posits that state responsibility for human rights encompasses three dimensions of obligations, namely the obligation to respect, the obligation to protect, and the obligation to fulfill (Nickel, 2007). The obligation to respect requires the state to refrain from committing actions that violate the rights of women and children through its own apparatus; the obligation to protect requires the state to prevent violations by third parties, including in domestic and community relations; while the obligation to fulfill requires the state to proactively provide facilities, services, and policies that enable these rights to be tangibly realized, for example through complaint services, safe houses (shelters), psychosocial mentoring, and victim recovery.

Sri Soemantri explains that in the Indonesian constitutional law system, the state's responsibility towards its citizens stems from the constitutional relationship between the state and the citizen which gives rise to reciprocal rights and obligations (Soemantri, 2014). The state, through its branches of power legislative, executive, and judicial has an obligation to form, implement, and enforce laws that are oriented towards the protection of human rights, including the rights of vulnerable groups. This division of obligations reflects the principle of separation and distribution of powers adopted in the Indonesian constitutional system, where the legislative body is responsible for forming adequate protection norms, the executive body is responsible for implementing and providing protection services, and the judicial body is responsible for enforcing these norms consistently through a fair judicial process.

Specifically in the context of child protection, constitutional law recognizes the *parens patriae* doctrine, which is a doctrine that grants authority as well as an obligation to the state to act as a protector for citizens who have not or cannot fully protect themselves, especially children. This doctrine places the state in the position of the "ultimate guardian" whose obligations transcend those of biological parents or guardians when both fail or are unable to provide adequate protection, so the state must be present through legal and institutional instruments to take over this protection function.

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From an international law perspective, the International Law Commission formulates that state responsibility arises when there is an act or omission attributable to the state that constitutes a breach of its international obligations (International Law Commission, 2001). This attribution principle is relevant for assessing the responsibility of the Indonesian state, because the failure of state apparatus to prevent or act against violence toward women and children including structural negligence such as the lack of complaint services or slow legal processes can be categorized as a form of state obligation violation, which is also in line with the rule of law principle proposed by A.V. Dicey, namely that every individual, including vulnerable groups, is entitled to equal treatment and legal protection (equality before the law) without exception (Dicey, 1915).

3.2. The State as a Power Organization Bound by Responsibility

In state science and constitutional law, the state is understood not as a single abstract entity, but as a power organization that operates through state organs (*staatsorganen*), each of which bears specific functions and responsibilities. Moh. Kusnardi and Bintan R. Saragih explain that every state organ, whether supreme or high-level, is essentially an instrument through which the state's will and responsibility toward its people are concretely realized (Kusnardi & Saragih, 2000). Consequently, state responsibility in protecting women and children is not a single responsibility burdened solely on one institution, but a responsibility distributed functionally across all state organs according to their respective constitutional authorities.

Asep Saepudin Jahar asserts that state obligations in human rights protection issues are layered obligations, ranging from the central government, regional governments, down to the smallest technical service units such as the Integrated Service Center for the Empowerment of Women and Children (P2TP2A) at the district/city level, all of which are bound to the same constitutional accountability chain and cannot detach themselves from this obligation (Jahar et al., 2013). This layered structure confirms that protection failures at the local level cannot merely be seen as regional administrative failures, but remain part of the failure to fulfill overall state responsibilities, considering that the unitary state of Indonesia adopts a limited autonomy principle and remains within the framework of national accountability.

3.3. Dimensions of State Obligation: Obligation of Conduct and Obligation of Result

State responsibility in the perspective of international human rights law can also be analyzed through the distinction between the obligation of conduct and the obligation of result. The United Nations CEDAW Committee affirms that the obligations of states parties to the convention are not limited to the formal formation of legislation alone, but also include the

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obligation to achieve tangible results in the form of eliminating discrimination against women in everyday daily practices (Committee on the Elimination of Discrimination against Women, 2010). This distinction is relevant for critically assessing the responsibility of the Indonesian state: the existence of the Child Protection Law, the Law on the Elimination of Domestic Violence, and the Law on Crimes of Sexual Violence merely fulfills the dimension of obligation of conduct, while the fulfillment of the obligation of result is only achieved when the rates of violence against women and children truly decrease significantly, victims receive proper recovery, and perpetrators are consistently prosecuted through a fair judicial process.

The mere formation of legal norms, without being accompanied by continuous evaluation of their effectiveness, has the potential to trap the state in legal formalism that does not touch the substance of the issue. Yuliandri reminds that the formation of good legislation must pay attention to the principle of sustainability, namely the existence of a mechanism for periodic norm evaluation and adjustment so that it remains responsive to the development of community needs, including the protection needs of women and children which continue to evolve along with changes in violence patterns, for example, online gender-based violence which is increasingly rampant in the digital era (Yuliandri, 2010).

3.4. State Accountability Mechanisms in the Constitutional Structure

In order for state responsibility not to become a normatively empty concept, Indonesian constitutional law provides various accountability mechanisms to ensure its implementation can be measured and accounted for. Jimly Asshiddiqie categorizes state accountability into three types, namely legal accountability, political accountability, and moral accountability, all three of which work simultaneously in overseeing the execution of state obligations (Asshiddiqie, 2010). Political accountability is manifested, among others, through the oversight function of the House of Representatives regarding the implementation of laws and government policies, including policies in the field of women and child protection, as stipulated in Article 20A paragraph (1) of the 1945 Constitution (1945 Constitution of the Republic of Indonesia).

Legal accountability is manifested, among others, through the authority of the Constitutional Court to review the constitutionality of laws relating to the protection of the rights of women and children against the 1945 Constitution, as regulated in Law Number 24 of 2003 concerning the Constitutional Court as amended. In addition, the oversight function regarding the quality of public services in the field of women and child protection is also strengthened through the authority of the Ombudsman of the Republic of Indonesia in overseeing the provision of public services by state administrators, including complaint services and the handling of victims of violence. The existence of these accountability mechanisms confirms that state responsibility in

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Indonesian constitutional law is not a standalone concept, but is integrated into a system of checks and balances designed to prevent the abuse of power while simultaneously ensuring the state truly fulfills its protection obligations consistently and sustainably.

In summary, a review of the concept of state responsibility from a constitutional law perspective shows that this responsibility is multidimensional: rooted in the theory of power legitimacy (social contract and hierarchy of norms), functionally distributed to all state organs from the central to the regional levels, covering both obligations of conduct and obligations of result, and overseen through mutually complementary legal, political, and moral accountability mechanisms. This conceptual framework serves as the foundation for further analyzing how this responsibility is spelled out constitutionally and implemented in regulations and institutional practices, as will be elaborated in the following sub-chapter.

3.5. Constitutional Foundations for the Protection of Women and Children

The constitutional foundation for the protection of women and children in Indonesia can be traced from several provisions in the 1945 Constitution. Article 28B paragraph (2) explicitly guarantees the right of every child to survival, growth, and development, as well as the right to protection from violence and discrimination (1945 Constitution of the Republic of Indonesia). This provision is reinforced by Article 28I paragraph (4) which affirms that the protection, advancement, enforcement, and fulfillment of human rights are the responsibility of the state, especially the government, as well as Article 71 of Law Number 39 of 1999 concerning Human Rights which asserts the government's obligation to respect, protect, enforce, and advance human rights (Law No. 39 of 1999).

At the constitutional level as well, the Constitutional Court through its rulings has strengthened the interpretation regarding child protection guarantees, including children born out of wedlock, by asserting that every child has the right to legal protection regardless of the civil status of their parents (Mahkamah Konstitusi Republik Indonesia, 2010). This ruling reflects that the Constitutional Court as the guardian of the constitution also plays a role in ensuring that child protection norms are interpreted progressively in accordance with the spirit of the constitution.

3.6. Result Regulatory and Institutional Instrumentation

State responsibility in protecting women and children is translated into various regulatory instruments. Maria Farida Indrati explains that statutory regulations are the primary instruments of a modern state of law to translate constitutional norms into more operational

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and directly applicable rules (Indrati S., 2007). This is reflected in the enactment of Law Number 35 of 2014 concerning Child Protection which regulates the principles of non-discrimination, the best interests of the child, the right to life, and respect for the views of the child; Law Number 23 of 2004 concerning the Elimination of Domestic Violence which provides protection for women from domestic violence; as well as Law Number 12 of 2022 concerning Crimes of Sexual Violence which broadens the scope of protection for victims of sexual violence, including recovery and restitution for victims (Law No. 35 of 2014; Law No. 23 of 2004; Law No. 12 of 2022).

In the institutional dimension, the state established independent institutions as a tangible manifestation of the state's presence in fulfilling its protection obligations, including the National Commission on Violence Against Women which plays a role in monitoring, assessing, and advocating for policies on the elimination of violence against women, and the Indonesian Child Protection Commission which functions to supervise the implementation of child protection. Central and regional governments are also obligated to carry out mandatory governmental affairs in the field of women's empowerment and child protection as stipulated in Law Number 23 of 2014 concerning Regional Government, which is then further elaborated through national strategic policies, including Presidential Regulation Number 181 of 2014 concerning the National Strategy on the Elimination of Violence Against Children (Law No. 23 of 2014; Presidential Regulation No. 181 of 2014).

3.7. Implementation and Challenges of State Responsibility

Although the normative framework for the protection of women and children is relatively comprehensive, its implementation on the ground still faces various challenges. Susilawati posits that these challenges include weak inter-agency coordination, minimal protection budgets at the regional level, and low public legal awareness regarding reporting mechanisms and victim assistance (Susilawati, 2021). These conditions indicate that state responsibility is not sufficiently fulfilled solely through the formation of norms, but requires political commitment and adequate resource support in its implementation.

In the perspective of international law, the concept of due diligence obligation affirms that the state can be held accountable not only for the direct actions of its apparatus, but also for its negligence in preventing, investigating, punishing, and redressing human rights violations committed by non-state actors. This principle is relevant to be applied in the Indonesian context, considering that the majority of violence cases against women and children occur in the domestic sphere involving non-state actors, so the state is demanded to build a responsive and sustainable prevention and handling system.

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Bagir Manan reminds that a good constitution is not merely a constitution that contains ideal norms, but a constitution that can be tangibly implemented in state life (Manan, 2004). Therefore, it is necessary to strengthen three main aspects, namely strengthening institutional capacity in case handling, harmonizing regulations between central and regional regulations, and strengthening the community's legal culture through continuous education and socialization of the rights of women and children.

4. Conclusion

Based on the above discussion, it can be concluded that state responsibility in protecting women and children has a strong constitutional law foundation, whether at the constitutional level through Article 28B and Article 28I of the 1945 Constitution, at the legislative level through various organic laws, or at the institutional level through the establishment of independent institutions functioning as oversight and advocacy instruments. This responsibility is also reinforced by Indonesia's commitment to international legal instruments such as CEDAW and CRC. Nevertheless, the effectiveness of legal protection for women and children still faces structural, institutional, and cultural challenges, hence continuous efforts are needed to strengthen the implementation of the established legal norms.

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