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

Juridical Analysis of Ending Child Neglect and Economic Exploitation Based on the Values of Justice

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Abstract. Children are holders of human rights who possess a dual vulnerability, thereby requiring special protection from the state, society, and family. However, the empirical reality in Indonesia reveals a concerning phenomenon regarding the high rate of child neglect and economic exploitation. The practice of employing underage children, both in the formal and informal sectors such as street begging syndicates, constitutes a clear violation of children's constitutional rights to grow, develop, and receive an education. This article aims to examine in depth how Indonesia's positive legal framework responds to the crimes of child neglect and economic exploitation, and why the existing legal instruments often fail to provide substantive protection for victims. The analysis focuses on the conflict between rigid statutory provisions and the reality of structural poverty, which is often used as a justification for child exploitation. This study employs a normative legal (juridical-normative) research method using conceptual and statutory approaches. The study focuses on examining the harmonization between the 1945 Constitution of the Republic of Indonesia, the Child Protection Law, and the Manpower Law. This approach was chosen to dissect the structural weaknesses in child protection provisions, which tend to be reactive and lack coercive mechanisms to directly restore children's economic rights. The results of this juridical analysis recommend a regulatory reconstruction grounded in the value of substantive justice. The law must not stop at textual certainty but should be dismantled and rebuilt to deliver distributive and restorative justice. This reconstruction includes the need to formulate new legal norms requiring the state to automatically assume responsibility for caregiving and educational financing for children who become victims of economic exploitation. In addition, harsher criminal sanctions and administrative fines are needed for corporations or syndicates proven to employ children. Through this holistic regulatory reconstruction, it is hoped that Indonesia's legal system will be able to break the cycle of child neglect and restore the sovereignty and dignity of the nation's future generations.

Keyword: Children; Exploitation; Human; Justice.

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1. Introduction

Human Rights (HR) constitute the primary pillar of modern civilization, demanding respect and protection from the state without discrimination. Within the spectrum of human rights, children's rights occupy the most essential and fundamental position because children are individuals who have not yet attained the physical and psychological maturity necessary to defend themselves. Philosophically, the protection of children is not merely a moral obligation of adults but an indispensable instrument for ensuring the continuity of human civilization. If children's fundamental rights are neglected, then civilization is destroying its own future by creating a generation that is physically, mentally, and intellectually vulnerable.¹

Within Indonesia's constitutional system, the commitment to child protection has been enshrined at the highest legal hierarchy, namely the Constitution. Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia guarantees unequivocally that, "Every child has the right to survival, growth, and development and shall have the right to protection from violence and discrimination." This provision legitimizes child protection as the state's constitutional obligation. This means that the state's presence in preventing all forms of violence, including neglect, is an absolute requirement for the existence of a just rule-of-law state.

Although the constitutional foundation is firmly established, the sociological reality at the grassroots level often presents a heartbreaking paradox. Structural poverty, low levels of parental education, and economic pressures are the primary criminogenic factors driving the high incidence of child neglect. Neglect is not only understood as the physical abandonment of a child but also as the failure of families and the state to provide proper care, access to education, and adequate nutrition. This condition of neglect makes children one of the most marginalized groups, whose sovereignty over their childhood is taken away by the harsh demands of survival.

It is from this root of neglect that a far more destructive derivative crime emerges, namely the economic exploitation of children. Children driven by poverty are often "forced" or "manipulated" into entering the labor market prematurely. They are employed in sectors that endanger their health and safety, such as working as sand miners, laborers in informal factories, or becoming objects of exploitation by urban street begging syndicates. This cruel practice

¹ Asshiddiqie, Jimly. *Konstitusi dan Konstitusionalisme Indonesia*. Jakarta: Konstitusi Press, 2006.

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reduces children, who should be legal subjects engaged in learning, into mere commodities or money-making machines for the adults around them.

The modus operandi of economic exploitation has become increasingly concealed and well organized. Many third parties or even biological parents hide behind the pretext of "helping the family economy" or "teaching independence" to legitimize such exploitation. They exploit legal loopholes and weak state supervision to continue extracting labor from children. The work assigned often exceeds reasonable working hours, eliminates children's time for play, and, most critically, forces them to permanently drop out of school in order to continue working to meet financial quotas.

The impact of child neglect and economic exploitation severely damages every aspect of a child's life. Physically, child laborers are highly vulnerable to respiratory illnesses, malnutrition, disabilities caused by extreme exhaustion, or workplace accidents. Psychologically, they lose a secure attachment figure, leading to trauma, low self-esteem, and identity crises. Furthermore, socially, this exploitation perpetuates the vicious cycle of poverty because, without proper education, these children are likely to grow into impoverished adults who may, in turn, exploit their own children in the future.

The state has responded to this threat through various positive legal instruments, including Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 on Child Protection, as well as Law Number 13 of 2003 on Manpower, which explicitly prohibits the involvement of children in the worst forms of labor. However, enforcement of these laws frequently encounters bureaucratic obstacles and weaknesses in doctrinal interpretation within the courts. Law enforcement officials often face difficulties in proving the element of "intent to exploit" when the perpetrators are the children's own parents, resulting in such cases often ending merely with counseling rather than legal resolutions capable of producing a deterrent effect.

This failure of the legal system stems from a paradigm of legal certainty that is excessively positivistic and blind to social realities. Justice in handling cases of child exploitation has yet to reach the dimension of substantive justice. Substantive justice requires the law not only to punish perpetrators of exploitation with imprisonment but also to ensure that child victims receive compensation (restitution), rehabilitation, and guaranteed continuation of their education by the state. The current judicial system remains highly retributive and has yet to provide a bridge toward the socioeconomic recovery of the child who has been victimized.

In response to these glaring legal loopholes, a sharp legislative analysis is needed to unravel the complexities of injustice. Progressive legal scholars recognize that the law must continually be

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reconstructed to remain aligned with the pulse of justice in society.² The need to reconstruct regulations concerning child neglect and economic exploitation can no longer be postponed. This reconstruction must place the values of Pancasila justice namely, social justice that humanizes humanity as the primary foundation for revising both procedural and substantive legal rules relating to child protection.

Therefore, this article has been prepared to conduct a comprehensive juridical analysis of the weaknesses in law enforcement regarding cases of child neglect and economic exploitation. Through an examination of regulations and the identification of legal loopholes, this research seeks to offer a roadmap for improving the national legal system. It is hoped that the findings of this study will provide critical and constructive contributions for policymakers in creating child protection regulations that are just, restorative, and fully centered on the future of child victims.

2. Research Methods

This study employs a Normative Legal Research (juridical-normative) method, namely a method that examines the law from an internal perspective by analyzing the structure of legal norms, doctrines, and the applicable legislative system.³ The approaches used include the Statutory Approach and the Conceptual Approach. Primary legal materials are derived from the 1945 Constitution of the Republic of Indonesia, Law Number 39 of 1999 on Human Rights, Law Number 13 of 2003 on Manpower, and Law Number 35 of 2014 on Child Protection. Secondary data, consisting of legal textbooks, analyses of Indonesian jurisprudence, and scholarly journals, were analyzed qualitatively using a deductive approach to identify current regulatory gaps and formulate legal prescriptions in the form of practical regulatory reconstruction ideas based on the values of justice.

3. Results and Discussion

3.1. Forms and Root Causes of Neglect and Economic Exploitation

The crimes of child neglect and economic exploitation do not occur in a vacuum or arise suddenly. Rather, they are the end product of a series of systemic failures within the economic and social structures of society. Based on a socio-juridical analysis, these crimes stem from the inability of a social ecosystem—including families, communities, and the state to establish a

² Rahardjo, Satjipto. *Hukum Progresif: Sebuah Sintesa Hukum Indonesia*. Yogyakarta: Genta Publishing, 2009.

³ Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group, 2005.

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resilient safety net for the most vulnerable groups.⁴ When the economic structure fails to provide decent employment opportunities for adults, the burden of survival is often unfairly shifted onto children, who should still be in a stage requiring absolute protection.

Conceptually, child neglect often serves as the primary gateway leading to more severe forms of physical and economic exploitation. When parents neglect a child's fundamental rights to adequate nutrition, access to basic education, and affection, the child loses their natural line of defense.⁵ The absence of supervision and guidance from primary attachment figures (parents) forces children onto the streets to seek substitutes for the basic needs that remain unmet at home.

Under such conditions of isolation and neglect, third parties with malicious intent such as illegal labor brokers, street gangs, or organized begging syndicates take advantage of these vulnerabilities. Neglected and hungry children are easily enticed with small amounts of money, food, or promises of a better life, causing them to voluntarily surrender themselves to exploiters. The psychological manipulation employed by these syndicates makes children feel indebted, even though they are actually being led into modern slavery.

The economic exploitation experienced by children generally manifests in two equally destructive forms. The first is exploitation in the informal sector, which is fluid, unstructured, and therefore the most difficult for state authorities to monitor. The involvement of children as domestic helpers without clear employment contracts or wages, porters in traditional markets working before dawn, or newspaper vendors at intersections are concrete examples of informal exploitation that society often normalizes.

Even more horrifying, in this informal sector many children are systematically controlled by local thugs to become street musicians, beggars, or street clowns. Within this system, children are required to hand over a specified amount of money each day to a "coordinator" or local gangster controlling the area. If they fail to meet the target, they often face threats of physical violence, reduced food rations, or psychological abuse that shatters their mental development.⁶

The second form of child exploitation is hidden exploitation in small and medium-sized industries (both formal and semi-formal), often concealed behind the walls of home-based factories. In this sector, children are employed as workers in cracker factories, garment

⁴ Soerjono Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*, (Jakarta: Rajawali Pers, 2014), hlm. 22-25

⁵ Arif Gosita, *Masalah Perlindungan Anak*, (Jakarta: Akademi Pressindo, 2004), hlm. 41.

⁶ Harkristuti Harkrisnowo, *Kriminologi dan Masalah Kejahatan Struktural*, (Jakarta: Kemitraan, 2008), hlm. 67.

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workshops, or cigarette rolling operations, enduring extremely inhumane working hours that exceed the physical endurance even of adults. They are forced to work in poorly ventilated environments, exposed to hazardous chemicals, and in body positions that endanger their still-developing skeletal structures.

These cruel practices in both sectors clearly and covertly violate Indonesia's international commitments, particularly its ratification of the International Labour Organization (ILO) Convention No. 182 concerning the Prohibition of the Worst Forms of Child Labour, which has been incorporated into national legislation.⁷ Exploitation that deprives children of education, endangers their morality, and damages their physical health unquestionably falls within the category of the worst forms of child labor that must be eliminated without compromise. Tolerating such practices constitutes defiance of the global labor law framework.

However, tracing the roots of the persistence of these exploitative practices leads to a complex sociological reality: the manipulation of power relations between parents and children. In many cases, the primary perpetrators or those who permit exploitation are the children's biological parents or close relatives. They exploit their legitimacy as parents to pressure children into working under oppressive conditions.

Customary law, inherited traditions, and patriarchal culture in certain regions are often misused indiscriminately to normalize such coercion.⁸ Misguided beliefs that children are the family's "economic assets" or that children are obligated to work to "repay" the cost of being raised are used as shields to justify exploitation. This distorted sociological perspective causes child exploitation to be viewed not as a crime, but merely as an expression of filial devotion.

This social construction, which legitimizes exploitation under the guise of culture, ultimately creates resistance and dilemmas for law enforcement officials in the field. Police officers and social workers often hesitate to take firm action and prosecute parents as perpetrators of economic exploitation. Concerns about damaging family relationships, provoking conflicts with local customary leaders, or being perceived as interfering in domestic family affairs render law enforcement ineffective. Consequently, genuine justice for children is buried beneath superficial arguments of economic and cultural tolerance.

⁷ Undang-Undang Republik Indonesia Nomor 1 Tahun 2000 tentang Pengesahan Konvensi ILO

⁸ Sulistyowati Irianto, *Perempuan dan Hukum: Menuju Hukum yang Berperspektif Kesenjangan dan Keadilan*, (Jakarta: Yayasan Obor Indonesia, 2006), hlm. 112.

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3.2. Analysis of Legislation and Weaknesses in Law Enforcement

Indonesia's positive legal framework has, in fact, expressly prohibited child exploitation through various robust legislative instruments. The state's commitment to protecting children's future has been embodied in special criminal law provisions that classify crimes against children as serious offenses. This protection is intended to serve as an impenetrable legal shield against any party, whether corporations, organized criminal syndicates, or parents who abuse their parental authority.

Specifically, this prohibition is clearly stipulated in Article 76I of the Child Protection Law. The provision states: "Every person is prohibited from placing, allowing, committing, ordering, or participating in the economic and/or sexual exploitation of a child." [6] The wording of this article is intentionally broad to encompass all possible actors involved, from principal offenders to those who merely allow the exploitation to occur.

To ensure compliance with this prohibition, the state has established severe criminal sanctions under Article 88 of the same law. Anyone proven to have violated Article 76I faces a maximum imprisonment of ten (10) years and/or a maximum fine of IDR 200,000,000 (two hundred million rupiah). Philosophically, these significant sanctions are intended to create a strong deterrent effect so that no one dares sacrifice a child's future for short-term material gain.⁹

Nevertheless, doctrinal legal analysis reveals a fundamental weakness in this provision: the absence of a definitive definition and objective parameters within the law itself. The law fails to clearly distinguish between "light work intended to educate children toward independence" and "destructive economic exploitation." This ambiguity creates a vast grey area in legal interpretation, often exploited by defense attorneys in court to undermine prosecutors' indictments.¹⁰

This lack of clear parameters directly affects the difficulty of proving exploitative intent (*mens rea*) during police investigations. When parents instruct their children to sell tissues on the streets until late at night, investigators frequently struggle to determine whether the act constitutes unlawful exploitation or merely a survival strategy employed by impoverished families under the guise of teaching entrepreneurial skills. Such uncertainty in interpreting the criminal elements often leads to the termination of investigations.

⁹ Undang-Undang Republik Indonesia Nomor 35 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak, Pasal 76I.

¹⁰ *Ibid.*, Pasal 88.

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Furthermore, overlapping regulations are also found in labor legislation, particularly the Manpower Law. In principle, Article 68 explicitly mandates that employers are strictly prohibited from employing children.¹¹ This provision aligns with the commitment to eliminate child labor. However, the law also provides several administrative exceptions that, in practice, frequently become loopholes exploited for corporate crime.

These exceptions apply to children aged between 13 and 15 years, who are permitted to perform "light work" as long as it does not interfere with their physical, mental, and social development. Unfortunately, these "light work" requirements are frequently manipulated by unscrupulous employers. They recruit children within this age range under contracts designating the work as light, but in practice exploit them with workloads equivalent to those of adult workers while paying wages far below the minimum standard.

This situation is exacerbated by the absence of strict and continuous supervision by regional labor inspectors. Weak institutional capacity, a shortage of inspectors, and the potential for collusion in the field mean that children employed under the pretext of light work are rarely assessed based on their actual working conditions. In reality, many work until late at night, are exposed to industrial dust, and operate in highly toxic environments. Weak administrative sanctions and the absence of business license revocations demonstrate the existence of an operational legal vacuum that endangers children's lives.

The most critical weakness in the current legislative framework is the absence of a victim-oriented perspective. Existing regulations focus exclusively on a purely penal approach, where the ultimate outcome of the entire judicial process is simply the imprisonment of exploiters.¹² The criminal justice system considers its responsibility fulfilled once the judge's gavel falls and the offender is incarcerated, without ever considering what will happen to the victimized child's education and livelihood the following day.

For example, if the perpetrator is a poor single mother convicted and imprisoned for forcing her child to beg, imprisoning her without any state intervention would simply create another tragedy. Her imprisonment deprives the child of their sole caregiver, resulting in a second and even more devastating cycle of neglect. This legal deadlock clearly demonstrates that rigid

¹¹ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, (Jakarta: Kencana Prenada Media Group, 2011), hlm. 89

¹² Undang-Undang Republik Indonesia Nomor 13 Tahun 2003 tentang Ketenagakerjaan, Pasal 68.

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enforcement of statutory law, without a holistic analysis of substantive justice, ultimately generates new forms of injustice and suffering for victims.

3.3. Regulatory Reconstruction Based on Substantive Justice

In response to this normative deadlock and the reality of law enforcement that often disadvantages victims, the state must immediately adopt progressive measures. There is no alternative but to comprehensively reconstruct existing regulations in order to harmonize written legal texts with the substantive justice sought by society. Child criminal law should no longer function merely as an instrument of state retribution against offenders, but must be dismantled and rebuilt to fulfill a restorative function that heals victims and guarantees their future.¹³

The most urgent structural reform that lawmakers must implement is an amendment to the Child Protection Law. This amendment should specifically incorporate and institutionalize the doctrine of strict liability for corporations, medium-sized business owners, and organized syndicates.¹⁴ At present, employers often escape legal responsibility by claiming they were unaware that workers supplied by labor agencies were underage, making it difficult to prove criminal intent (*mens rea*) in court.

With the application of strict liability, criminal proceedings would become significantly simpler and more transformative. If authorities discover an underage child working at any business location whether a factory, plantation, or store the business owner should automatically and absolutely be held criminally liable. Police and prosecutors would no longer need to prove that the employer had knowledge or criminal intent. The mere physical presence of a child worker at the workplace would be sufficient evidence for criminal conviction.

Such uncompromising strictness is the most effective way to eliminate the operational space of the mafias and syndicates that have long exploited underage children. Faced with automatic criminal liability and no room for legal defenses, corporations and business owners would be compelled to independently improve their recruitment systems, conduct strict age verification, and firmly reject applicants suspected of being underage. This approach shifts the burden of prevention from the state to business owners.

¹³ Muladi, *Kapita Selekt Sistem Peradilan Pidana*, (Semarang: Badan Penerbit Universitas Diponegoro, 1995), hlm. 54.

¹⁴ Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum Indonesia*, (Yogyakarta: Genta Publishing, 2009), hlm. 14.

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The next stage of reconstruction should institutionalize an integrated Restorative Justice mechanism combined with the doctrine of State Responsibility. The new child criminal justice framework should prohibit courts from issuing judgments that impose only imprisonment upon offenders. Every judicial decision concerning the economic exploitation of children must be accompanied by an order for financial compensation or restitution calculated carefully and rationally.

Such restitution should not merely cover physical medical expenses but should instead prioritize the child's future by requiring exploiters to finance the victim's education until the age of 18.¹⁵ Individuals or corporations who deprive children of their right to education must establish an education trust fund in advance to ensure the child can continue schooling from primary education through graduation from senior high school without financial obstacles.

At the same time, the law must respond rationally to practical realities, particularly when the exploiter is an impoverished parent or a low-level member of a criminal syndicate with no assets available for seizure or auction. If offenders are financially incapable of paying educational restitution or are imprisoned without assets, the state must not abandon the child by allowing restitution rights to exist merely as empty promises in judicial decisions.

Under such circumstances, the reconstructed legal framework should mandate the establishment of a new mechanism called the Child Trust Fund. This emergency fund should be administered by an independent institution and financed through the State Budget (APBN) as well as assets confiscated from criminal activities. Whenever offenders fail to fulfill their restitution obligations, the Child Trust Fund should automatically assume responsibility for financing the child's education and living expenses until adulthood.¹⁶

The existence of a Child Trust Fund ensures that children will never again become victims of the poverty of those who exploited them. Through this comprehensive reconstruction, Indonesia's legal system would ultimately function not merely as an executioner that removes children from exploitative environments and imprisons offenders, but as a genuine protector. The state would physically and materially guarantee the victim's survival, health, and education, fulfilling the constitutional mandate.¹⁷

¹⁵ Romli Atmasasmita, *Asas-Asas Hukum Pidana Korporasi*, (Jakarta: Rajawali Pers, 2010), hlm. 76.

¹⁶ Eva Achjani Zulfa, *Keadilan Restoratif di Indonesia: Studi tentang Kemungkinan Penerapan Pendekatan Keadilan Restoratif dalam Praktek Penegakan Hukum Pidana*, (Depok: Badan Penerbit FH UI, 2009), hlm. 88.

¹⁷ Lembaga Perlindungan Saksi dan Korban (LPSK), *Buku Saku Pemenuhan Hak Restitusi dan Kompensasi bagi Korban Tindak Pidana*, (Jakarta: LPSK Press, 2018), hlm. 33.

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Ultimately, regulatory reconstruction that combines strict liability for perpetrators with the state's financial responsibility represents the purest implementation of the principle of social justice. The law is restored to its essential function as an instrument of social engineering that protects the vulnerable. Thus, the law is enforced not only to maintain public order but also to humanize the future of the nation's children, restore the dignity that was taken from them, and permanently break the vicious cycle of child exploitation throughout the Indonesian archipelago.

4. Conclusion

Child neglect and economic exploitation are not merely ordinary criminal offenses but constitute a denial of fundamental constitutional rights and crimes against human civilization. Although Indonesia has enacted various positive legal instruments, legislative analysis demonstrates that the current regulatory framework still suffers from serious structural weaknesses. The law is excessively rigid in punishing offenders while failing to ensure the long-term restoration of children's rights, whereas normative loopholes concerning the definition of light work continue to be exploited by profit-seeking syndicates. This systemic failure forces child victims of exploitation to bear a double burden: the destruction of their childhood and the absence of any meaningful guarantee of their future from the state. Therefore, regulatory reconstruction grounded in substantive justice is an absolute necessity. Through the implementation of strict corporate liability and the establishment of a state-funded recovery mechanism, the criminal justice system must evolve from merely punishing offenders toward restoring the lives of victims. Creating a just child protection regime means ensuring that Indonesian law becomes not merely lifeless words written in state gazettes but a genuine protector safeguarding the sovereignty, dignity, and rights of children to grow into physically and intellectually free human beings.

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