

LICS 2026

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

Constitutional Governance and State Responsibility in Protecting Women and Children: Toward a Rights-Based Legal Framework

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Abstract. *The protection of women and children constitutes a fundamental indicator of a democratic state governed by the rule of law and committed to the promotion of human rights. Although constitutional guarantees, statutory regulations, and international human rights instruments provide a comprehensive normative framework, the effective protection of women and children continues to face significant challenges, including gender-based violence, exploitation, discrimination, and institutional fragmentation in fulfilling constitutional rights. These challenges demonstrate the need to strengthen constitutional governance by recognizing state responsibility as a legal obligation to respect, protect, and fulfill the rights of women and children. This paper aims to examine the relationship between constitutional governance and state responsibility in ensuring legal protection for women and children, while proposing a more effective and rights-based legal framework. The study employs a normative legal research method using statutory, conceptual, and comparative approaches to analyze national legislation alongside relevant international legal instruments. Data are collected through library research, including the examination of legislation, judicial decisions, legal doctrines, and international human rights instruments. The findings indicate that the protection of women and children cannot rely solely on the existence of legal regulations but requires constitutional governance that ensures state accountability, policy harmonization, institutional strengthening, effective access to justice, and the integration of human rights principles into legislative and policy-making processes. Accordingly, developing a rights-based legal framework represents a strategic approach to strengthening constitutional protection for women and children while promoting inclusive, accountable, and sustainable governance.*

Keywords: *Constitutional; Framework; Governance; Responsibility.*

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1. Introduction

The protection of women and children is a key indicator of the successful functioning of a democratic state governed by the rule of law. In a modern state governed by the rule of law, the constitution serves not only as the foundation for establishing state institutions but also as a primary instrument for guaranteeing the respect, protection, and fulfillment of human rights. Consequently, the state bears a constitutional responsibility to ensure that every woman and child receives effective protection against all forms of violence, discrimination, exploitation, and human rights violations (Asshiddiqie, 2010).

This commitment is enshrined in the 1945 Constitution of the Republic of Indonesia specifically Articles 28B(2), 28D(1), and 28I(4) and further elaborated through various legislative instruments, such as Law No. 39 of 1999 on Human Rights, Law No. 35 of 2014 on Child Protection, and Law No. 12 of 2022 on the Crime of Sexual Violence (UUD NRI 1945; UU No. 39/1999; UU No. 35/2014; UU No. 12/2022; CEDAW, 1979; CRC, 1989). Furthermore, Indonesia has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC), affirming that the protection of women and children constitutes a state obligation under both national and international law.

Nevertheless, the existence of these various legal instruments has not yet fully ensured effective protection. Incidents of violence against women and children remain prevalent manifesting as physical, psychological, and sexual violence, economic exploitation, human trafficking, child marriage, and technology-facilitated violence. This situation reveals a gap between established legal norms and their practical implementation. These issues stem not only from weak law enforcement but are also compounded by suboptimal institutional governance and inter-agency coordination, inadequate victim protection mechanisms, and limited access to justice (Komnas Perempuan, n.d.; Marlina, 2022).

This issue demonstrates that the protection approach developed thus far tends to be oriented toward the creation of regulations (a rule-based approach), whereas the aspect of constitutional governance has not received adequate attention. Yet, constitutional governance requires all state authorities to exercise their powers based on the principles of constitutional supremacy, respect for human rights, accountability, transparency, and the protection of vulnerable groups. Consequently, the effectiveness of protecting women and children is determined not only by the comprehensiveness of regulations but also by the state's capacity to implement constitutional principles through integrated policies, institutional frameworks, and law enforcement (Sulaiman & Nasir, n.d.).

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On the other hand, studies regarding the protection of women and children in Indonesia generally still focus on aspects of criminal law, victim protection, or the sectoral implementation of legislation. Research examining the relationship between constitutional governance, state responsibility, and a rights-based approach as a framework for protecting women and children remains relatively limited. It is crucial to address this research gap, given that the protection of the rights of women and children is fundamentally an embodiment of the state's constitutional responsibility, rather than merely the implementation of administrative policy.

Based on the foregoing explanation, this study aims to analyze the implementation of constitutional governance and state responsibility regarding the protection of women and children within the Indonesian legal system, as well as to formulate a rights-based legal framework capable of enhancing the effectiveness of such protection in accordance with the principles of the rule of law and human rights.

2. Research Methods

This study is a normative legal research project employing the statute approach, the conceptual approach, and the case approach. These approaches are utilized to analyze the regulations concerning constitutional governance and state responsibility for the protection of women and children, grounded in the principles of the rule of law and human rights. The legal materials employed consist of primary sources namely the 1945 Constitution of the Republic of Indonesia, statutory regulations, and international legal instruments as well as secondary sources such as books, scholarly journals, and relevant research findings. Data collection was conducted through library research, while analysis was performed qualitatively using a descriptive-analytical method to examine applicable legal norms and formulate a right based legal framework for the protection of women and children.

3. Result and Discussion

3.1. The Constitutional Basis for the Protection of Women and Children in Indonesia

The protection of women and children is an integral part of the administration of a constitutional state. Within the concept of a constitutional state, the constitution serves not only as the source of legitimacy for state power but also as a primary instrument for guaranteeing, protecting, and fulfilling human rights. Therefore, every state official bears a constitutional obligation to ensure that the rights of women and children are safeguarded through policies, regulations, and equitable law enforcement (Huda, 2020).

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From the perspective of Indonesian constitutional law, the 1945 Constitution of the Republic of Indonesia establishes human rights as a fundamental pillar of state governance. Following the amendments to the 1945 Constitution, the regulation of human rights became more comprehensive through Chapter XA, which enshrines various constitutional rights guarantees for every citizen without discrimination. These provisions demonstrate that the protection of human rights is not merely a moral obligation but a legal obligation binding upon all state organs.

The most specific constitutional basis regarding the protection of women and children is found in Article 28B, Paragraph (2) of the 1945 Constitution, which states that "Every child has the right to survival, growth, and development, as well as the right to protection from violence and discrimination." This provision affirms the state's obligation to guarantee the comprehensive fulfillment of children's rights ranging from the right to life, protection, and optimal development to the right to be free from all forms of violence and discriminatory treatment. Such protection reflects the Constitution's recognition of the child as a legal subject possessing fundamental rights that must be respected by the state, the family, and society.

Furthermore, Article 28D, Paragraph (1) of the 1945 Constitution guarantees that every person has the right to recognition, guarantees, protection, and fair legal certainty, as well as equal treatment before the law. This provision serves as the constitutional basis for protecting women against various forms of discrimination, gender-based violence, and treatment that degrades human dignity. The guarantee of equality before the law requires the state to eliminate legal and social barriers that prevent women from receiving equal legal protection. In this context, the principles of equality before the law and equal protection of the law form the foundation for formulating policies that are responsive to the needs of women and children (Harkrisnowo, 2010).

Furthermore, Article 28G, Paragraph (1) of the 1945 Constitution guarantees the right of every individual to protection of their personal self, family, honor, and dignity, as well as a sense of security against the threat of fear regarding the exercise or non-exercise of their fundamental rights. This provision is highly relevant to the protection of women and children against various forms of physical, psychological, and sexual violence, exploitation, and digital technology-based violence. The right to a sense of security entails not only a state obligation to prevent violations but also the provision of effective protection should such violations occur.

This constitutional guarantee is reinforced by Article 28I paragraph (4) of the 1945 Constitution, which stipulates that the protection, promotion, enforcement, and fulfillment of human rights are the responsibility of the state, particularly the government. This provision implies that the

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state must not remain passive in the face of various forms of violations against the rights of women and children. Conversely, the state is obligated to take legislative, administrative, and judicial measures, as well as public policy actions, to ensure the effective protection of rights. Thus, the state's responsibility extends beyond the enactment of legislation to encompass implementation, oversight, law enforcement, and the restoration of victims' rights.

As a state based on the rule of law as affirmed in Article 1, Paragraph (3) of the 1945 Constitution Indonesia adopts the principle that all actions taken by state officials must be grounded in law and the Constitution. Indonesia's concept of the rule of law emphasizes not only the aspect of legality but also integrates values such as justice, respect for human rights, democracy, and the protection of vulnerable groups. Consequently, the protection of women and children is a logical outcome of a rule-of-law framework oriented toward respect for human dignity (Rahardjo, 2006).

This constitutional foundation is subsequently implemented through various legislative acts, including Law Number 39 of 1999 on Human Rights, Law Number 35 of 2014 on Child Protection, Law Number 23 of 2004 on the Elimination of Domestic Violence, and Law Number 12 of 2022 on Sexual Violence Crimes. The existence of these regulations demonstrates the state's effort to translate the constitutional mandate into more operational legal instruments. However, the effectiveness of protection is determined not only by the comprehensiveness of regulations but also by the quality of constitutional governance, institutional coordination, and consistent law enforcement.

In addition to national law, the constitutional basis for the protection of women and children is further strengthened by Indonesia's commitment to various international human rights instruments. The ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) via Law Number 7 of 1984 and the Convention on the Rights of the Child (CRC) via Presidential Decree Number 36 of 1990 reinforces the state's obligation to eliminate discrimination against women and to ensure the best interests of the child. The integration of these constitutional norms and international instruments demonstrates that the protection of women and children constitutes both a constitutional responsibility and a commitment by Indonesia within the international human rights legal system.

Thus, the constitutional framework for the protection of women and children in Indonesia rests on three main pillars: the recognition of human rights as constitutional rights, the affirmation of the state's responsibility to protect and fulfill those rights, and their reinforcement through national and international legal instruments. These three pillars serve as the foundation for a system of constitutional governance oriented toward respect for human dignity, equality before

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the law, non-discrimination, and effective protection for women and children as groups requiring special protection.

3.2. Constitutional Governance and State Responsibility for the Protection of Women and Children

Constitutional governance refers to the exercise of government authority grounded in the constitution, the rule of law, respect for human rights, accountability, and the principles of good governance. In the context of protecting women and children, constitutional governance mandates that all government policies and actions focus on fulfilling the constitutional rights of vulnerable groups, as stipulated in the 1945 Constitution of the Republic of Indonesia. Consequently, the protection of women and children serves not merely as a moral obligation but also as a constitutional responsibility binding upon all state officials.

From a human rights perspective, state obligations comprise three core responsibilities: to respect, to protect, and to fulfill the rights of women and children. The obligation to respect requires the state to refrain from taking actions that could violate these rights. The obligation to protect demands that the state prevent violations by other parties through effective regulation and law enforcement. The obligation to fulfill requires the state to provide policies, services, and redress mechanisms that ensure the rights of victims are fully realized.

This responsibility is fulfilled through the enactment of regulations, the provision of protection services, law enforcement, and inter-institutional coordination involving relevant ministries, law enforcement agencies, local governments, and independent bodies. However, the effectiveness of protection efforts remains hampered by various issues, such as poor inter-agency coordination, overlapping mandates, limited access to justice, and the insufficient integration of gender and child-rights perspectives into law enforcement. The mere existence of regulations is insufficient without efficient constitutional governance.

Therefore, strengthening constitutional governance requires a focus on policy harmonization, enhanced inter-agency coordination, victim-sensitive law enforcement, and the strengthening of oversight and accountability mechanisms. Such a strategy will ensure that the protection of women and children extends beyond mere norms, translating into tangible outcomes through policies and public services centered on the respect, protection, and fulfillment of human rights.

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3.3. Challenges in Implementing the Protection of Women and Children from the Perspective of Constitutional Governance

Although Indonesia possesses a sufficiently comprehensive constitutional and regulatory framework to protect women and children, its implementation faces a number of challenges. From the perspective of constitutional governance, this issue stems not merely from a lack of legal norms, but also from state governance that has yet to effectively translate the constitutional mandate into efficient policies and practices.

One of the primary obstacles is the lack of solid inter-agency coordination within the protection system for women and children. The involvement of various ministries, local governments, law enforcement agencies, and victim support services often lacks an integrated coordination system, resulting in slow case handling, overlapping efforts, and a lack of legal certainty for victims. This situation indicates that the constitutional management framework has not yet fully succeeded in harmonizing regulatory, institutional, and public service functions into an efficient protection system.

A further challenge is the limited access to justice for women and children. Victims often face obstacles such as complex legal procedures, a lack of legal and psychosocial support, and social stigma, resulting in many cases going unreported or unaddressed. From a constitutional perspective, this situation reflects a failure to fully realize the principles of equality before the law and the protection of human rights guaranteed by the 1945 Constitution.

Furthermore, the effectiveness of protection is also influenced by the uneven capacity of law enforcement officials to apply perspectives regarding human rights, gender equality, and the best interests of the child. Law enforcement that focuses on procedural approaches often overlooks the need for protection and recovery for victims. Consequently, the constitutional goal of providing fair and dignified protection has not yet been fully realized.

Given these circumstances, the challenge in implementing protections for women and children is essentially a matter of constitutional governance; it requires strengthened institutional coordination, enhanced personnel capacity, expanded access to justice, and robust government accountability mechanisms. Consequently, the effectiveness of such protection depends not merely on the existence of regulations, but also on the state's ability to uphold constitutional principles through a system of governance that is responsive, integrated, and focused on the fulfillment of human rights.

3.4. Towards a Rights-Based Legal Structure to Protect Women and Children

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The rights-based approach is a paradigm that views women and children as legal subjects possessing constitutional and human rights that must be respected, protected, fulfilled, and restored by the state. Unlike the rule-based approach which focuses solely on compliance with regulations the rights-based approach emphasizes that all processes regarding policymaking, governance, and law enforcement must be oriented toward the fulfillment of individual rights. Consequently, the measure of success in protection is determined not merely by the number of regulations implemented, but by the extent to which the state can guarantee tangible protection for women and children (Yanti, 2025).

From the perspective of constitutional governance, the development of a rights-based legal framework must begin with institutional strengthening. Protecting women and children requires an integrated institutional system involving the central government, local governments, law enforcement agencies, the judiciary, and specialized protection bodies. Inter-agency cooperation must be established through a clear division of responsibilities, data-sharing mechanisms, and consistent service standards to ensure that every victim receives protection promptly, efficiently, and sustainably. Without effective coordination, legal protection remains limited, thereby reducing the efficiency with which victims' rights are upheld.

Furthermore, a rights-based legal framework must be implemented through a victim-centered justice system. Law enforcement processes have traditionally focused on punishing the perpetrator, while the needs of victims including protection, support, rehabilitation, restitution, compensation, and psychological recovery have often been neglected. Yet, protecting victims is a constitutional responsibility of the state, as mandated by the 1945 Constitution and various human rights instruments. Therefore, every stage of the judicial process must prioritize the best interests of the child and a gender-equality perspective to ensure that victims' rights are upheld (Aniqurrohmah, n.d.).

In addition to institutional strengthening and law enforcement, a rights-based approach requires government accountability mechanisms. State officials are obligated to be accountable for implementing policies protecting women and children through systems of monitoring and evaluation, as well as by providing complaint mechanisms that are easily accessible to the public. Such accountability is crucial to ensuring that rights violations are effectively addressed and that policies are evaluated based on their impact on the fulfillment of women's and children's rights, rather than merely on administrative achievements.

Furthermore, the development of a rights-based legal framework must be driven by the harmonization of laws and regulations. Although Indonesia already possesses various regulations to protect women and children, their implementation remains hampered by

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overlapping authorities and inconsistent provisions across several sectors. Therefore, it is necessary to align national provisions, local policies, and ratified international legal instruments to establish a legal system that is coherent and responsive, while providing legal certainty for victims.

Another crucial aspect is ensuring access to justice. The state is obligated to guarantee that women and children have access to legal services, legal aid, psychological support, healthcare, safe shelters, and rehabilitation mechanisms, free from discrimination. Effective legal protection is measured not only by the successful imposition of sanctions on perpetrators but also by the state's ability to restore the rights, dignity, and sense of security of victims, as part of upholding human rights.

Therefore, the development of a rights-based legal framework for the protection of women and children must rest on five key pillars: (1) strengthening relevant institutions, (2) victim-oriented law enforcement, (3) state accountability, (4) harmonization of national and international regulations, and (5) improving access to justice and avenues for victim redress. These five pillars embody a constitutional approach that places human rights at the foundation of governance. Under a rights-based legal system, the protection of women and children is viewed not merely as an administrative responsibility, but as a manifestation of the state's constitutional obligation to guarantee the dignity, safety, and well-being of every individual, free from discrimination (Sukadi & Ningsih, n.d.).

4. Conclusion

The protection of women and children is a constitutional responsibility of the state, grounded in the 1945 Constitution of the Republic of Indonesia, the principles of the rule of law, and respect for human rights. Although Indonesia possesses a comprehensive regulatory framework, its implementation faces several challenges such as a lack of inter-agency coordination, suboptimal law enforcement, and limited access to justice for victims. This indicates that the primary challenge lies in constitutional implementation rather than merely the availability of regulations. Therefore, efforts to strengthen the protection of women and children must focus on establishing a rights-based legal structure that positions them as rights-holders whose rights must be respected, protected, and fulfilled by the state. Such efforts must be realized through institutional strengthening, regulatory harmonization, victim-centered law enforcement, and enhanced state accountability to ensure that legal protection is implemented effectively, equitably, and sustainably.

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