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

Reconstruction of Legal Protection Policy for Children in Vulnerable Conditions Based on the Child Protection Law Grounded in the Best Interests of the Child

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Abstract. *This study aims to analyze and reconstruct the legal protection policy for children in vulnerable conditions based on Law Number 35 of 2014 amending Law Number 23 of 2002 on Child Protection, by placing the principle of the best interests of the child as the guiding principle. The research employs a normative juridical approach using primary legal materials in the form of legislation and secondary materials in the form of legal literature, analyzed prescriptively and qualitatively. The findings show that the existing normative framework still relies on reactive and sectoral protection, and therefore has not optimally reached children in vulnerable conditions, such as child victims of violence, child victims of trafficking, and children exposed to risks in cyberspace. The proposed policy reconstruction emphasizes integrating the best interests of the child into all stages of law-making and law enforcement, strengthening state responsibility as a consequence of the welfare state, and adopting a progressive law approach that treats the child as a subject rather than a mere object of protection. The study concludes that cross-sectoral regulatory harmonization and anticipatory protection mechanisms are needed to fulfill children's constitutional rights.*

Keywords: *Best Interests of the Child; Child Protection; Legal Protection; Policy Reconstruction; Vulnerable Children.*



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1. Introduction

Children are both a trust and the bearers of the nation's aspirations, whose survival, growth, and development are constitutionally guaranteed. Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia affirms that every child has the right to survival, growth, and development, as well as to protection from violence and discrimination. This guarantee positions child protection not as an optional policy but as a constitutional obligation of the state.¹

Indonesia's commitment to child protection was reinforced through the ratification of the Convention on the Rights of the Child by Presidential Decree Number 36 of 1990, which affirms four core principles: non-discrimination, the best interests of the child, the right to life and development, and respect for the views of the child.² This principle was subsequently absorbed into Law Number 35 of 2014 amending Law Number 23 of 2002 on Child Protection as a guiding principle of child protection.

Although a normative framework exists, reality shows persistently high rates of violence, exploitation, and exposure of children to risk, particularly for children in vulnerable conditions, including child victims of sexual violence, child victims of trafficking, and children exposed to dangers in cyberspace.³ This condition reveals a gap between *das sollen* and *das sein* in the administration of child protection.

Protection of vulnerable children who are victims of sexual violence is strengthened by Law Number 12 of 2022 on Sexual Violence Crimes, while protection of child victims of trafficking rests on Law Number 21 of 2007 on the Eradication of the Crime of Trafficking in Persons.⁴ Meanwhile, protecting children in the digital sphere requires reading Law Number 1 of 2024 on the Second Amendment to Law Number 11 of 2008 on Electronic Information and Transactions.

The fundamental problem lies in the character of protection policy that remains reactive and sectoral, so that it has not fully made the best interests of the child a primary consideration integrated into every stage of law-making and enforcement.⁵ This fragmentary approach renders protection unable to anticipate new forms of vulnerability.

¹ Muhammad Joni and Zulchaina Z. Tanamas, *Aspek Hukum Perlindungan Anak dalam Perspektif Konvensi Hak Anak*, Citra Aditya Bakti, Bandung, 2012, p. 35.

² Convention on the Rights of the Child, Article 3 paragraph (1), ratified through Presidential Decree Number 36 of 1990.

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Based on this background, this study addresses two problems: how legal protection for children in vulnerable conditions is currently regulated in Indonesian positive law, and how the legal protection policy for vulnerable children can be reconstructed on the basis of the best interests of the child. This study aims to analyze the regulation of legal protection for children in vulnerable conditions and to formulate a policy reconstruction grounded in the best interests of the child.

2. Research Methods

This study uses a normative juridical approach with descriptive-analytical research specifications. It applies the statute approach and the conceptual approach. Primary legal materials consist of legislation, secondary legal materials consist of books, journals, and research results, while tertiary materials consist of legal dictionaries, all collected through library research. The analysis is conducted prescriptively and qualitatively to produce legal arguments that can serve as the basis for policy reconstruction.

3. Results and Discussion

3.1. Regulation of Legal Protection for Children in Vulnerable Conditions in Indonesian Positive Law

Legal protection for children in Indonesian positive law rests on Law Number 35 of 2014 in conjunction with Law Number 23 of 2002 on Child Protection. This law regulates children's rights, special protection, and the distribution of responsibility among the state, family, and community.⁶ According to Philipus M. Hadjon, legal protection may be preventive or repressive; preventive protection aims to prevent violations, while repressive protection aims to resolve disputes and restore rights.⁷

In the context of vulnerable children, Article 59 of the Child Protection Law specifies categories of children requiring special protection, including child victims of physical and/or psychological violence, child victims of sexual crimes, and child

³ Maidin Gultom, *Perlindungan Hukum terhadap Anak dan Perempuan*, Refika Aditama, Bandung, 2014, p. 12.

⁴ Law Number 12 of 2022 on Sexual Violence Crimes and Law Number 21 of 2007 on the Eradication of the Crime of Trafficking in Persons.

⁵ Philipus M. Hadjon, *Perlindungan Hukum bagi Rakyat di Indonesia*, Bina Ilmu, Surabaya, 1987, p. 25.

⁶ Law Number 35 of 2014 amending Law Number 23 of 2002 on Child Protection, Article 1 number 2 and Article 59.

⁷ Philipus M. Hadjon, *op.cit.*, p. 30.

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victims of trafficking. However, these provisions are scattered across various sectoral laws whose enforcement is not yet optimally coordinated.

Law Number 12 of 2022 on Sexual Violence Crimes provides a more comprehensive protection framework for child victims of sexual violence by regulating victims' rights to handling, protection, and recovery.⁸ Meanwhile, Law Number 21 of 2007 treats children as victims of trafficking entitled to restitution and rehabilitation.⁹

In the human rights dimension, child protection is an inseparable part of human rights as regulated in Law Number 39 of 1999 on Human Rights. John Locke taught that every individual possesses natural rights to life, liberty, and property that the state is obliged to protect.¹⁰ For children, these natural rights demand more intensive protection given children's limited capacity to protect themselves.

Nevertheless, the reactive character of protection shows that positive law operates only after a violation occurs. Children's exposure to cyber risks, for instance, has not obtained an anticipatory protection framework even though Law Number 1 of 2024 has strengthened the regulation of the digital sphere.¹¹ This fragmentation is the weak point of protection for vulnerable children in current positive law.

3.2. Reconstruction of Legal Protection Policy for Vulnerable Children Based on the Best Interests of the Child

The reconstruction of protection policy for vulnerable children must place the best interests of the child as an operational guiding principle, not merely declarative. This principle requires that in every action concerning children, the primary consideration shall be the best interests of the child.¹² Accordingly, the best interests of the child must become the benchmark in the formation, interpretation, and application of legal norms.

The welfare state theory provides the foundation for the state's active responsibility in guaranteeing child protection. The state must not remain passive

⁸ Law Number 12 of 2022 on Sexual Violence Crimes, Article 66 and Article 67.

⁹ Law Number 21 of 2007 on the Eradication of the Crime of Trafficking in Persons, Article 48 and Article 51.

¹⁰ John Locke, *Two Treatises of Government*, Cambridge University Press, Cambridge, 1988, p. 271.

¹¹ Law Number 1 of 2024 on the Second Amendment to Law Number 11 of 2008 on Electronic Information and Transactions, Article 16A and Article 16B.

¹² Convention on the Rights of the Child, Article 3 paragraph (1).

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but is obliged to administer comprehensive protection through policy, budget, and institutions.¹³ Within this framework, protection of vulnerable children becomes a positive obligation of the state to fulfill, respect, and protect children's rights.

Through the idea of progressive law, Satjipto Rahardjo asserts that law is made for human beings, not the other way around, so that law must be read dynamically for the sake of substantive justice.¹⁴ The progressive approach treats the child as an active legal subject rather than merely an object of protection, so that protection does not stop at recovery but also encompasses prevention and empowerment.

On this basis, the policy reconstruction can be directed toward three aspects. First, integrating the best interests of the child into all stages of law-making and enforcement through a child impact assessment mechanism for every policy affecting children. Second, harmonizing cross-sectoral regulations to eliminate fragmentation among the laws on child protection, sexual violence, trafficking, and electronic information. Third, building anticipatory protection mechanisms, particularly against new forms of vulnerability in the digital sphere.

Such reconstruction aligns with the legal purposes articulated by Gustav Radbruch, namely justice, utility, and legal certainty, which in the context of child protection must be arranged by prioritizing justice and utility for the child.¹⁵ With this framework, protection of vulnerable children is no longer residual but becomes a priority of state policy.

4. Conclusion

The regulation of legal protection for children in vulnerable conditions in Indonesian positive law is available through the Child Protection Law and several sectoral laws, yet it remains reactive and fragmentary and has therefore not optimally reached all forms of child vulnerability. The proposed policy reconstruction is the integration of the best interests of the child into every stage of law-making and enforcement, the strengthening of state responsibility as a consequence of the welfare state, cross-sectoral regulatory harmonization, and the development of anticipatory protection mechanisms grounded in progressive

¹³ Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia*, Sinar Grafika, Jakarta, 2010, p. 95.

¹⁴ Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum Indonesia*, Genta Publishing, Yogyakarta, 2009, p. 18.

¹⁵ Gustav Radbruch as cited in Satjipto Rahardjo, *Ilmu Hukum*, Citra Aditya Bakti, Bandung, 2012, p. 19.



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law. It is recommended that lawmakers harmonize regulations and adopt a child impact assessment mechanism to ensure the comprehensive fulfillment of children's constitutional rights.

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Regulation:

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Law Number 12 of 2022 on Sexual Violence Crimes;

Law Number 21 of 2007 on the Eradication of the Crime of Trafficking in Persons;

Law Number 23 of 2002 on Child Protection;

Law Number 35 of 2014 amending Law Number 23 of 2002 on Child Protection;

Law Number 39 of 1999 on Human Rights;

Presidential Decree Number 36 of 1990 on the Ratification of the Convention on the Rights of the Child.

The 1945 Constitution of the Republic of Indonesia;