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

Analysis of the State's Constitutional Responsibility in Protecting Women and Children Towards the Implementation of Human Rights in A State of Law

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Abstract. *This study analyzes the constitutional responsibility of the state in protecting women and children in relation to the implementation of human rights within a rule of law (rechtstaat) framework. The main focus of this research is to examine the extent to which the state fulfills its constitutional obligations to guarantee, protect, and fulfill the rights of women and children as vulnerable groups under a legal system based on human rights principles. This research employs a normative juridical method using statutory, conceptual, and case approaches to analyze the implementation of constitutional norms and human rights instruments at both national and international levels. The data were analyzed qualitatively to provide a comprehensive understanding of the effectiveness of state responsibility in practice. The findings indicate that, normatively, the state has a strong constitutional foundation for human rights protection. However, its implementation still faces several challenges, including weak law enforcement, suboptimal inter-agency coordination, and socio-cultural barriers that hinder the effective protection of women and children. The study concludes that strengthening the state's constitutional responsibility is necessary through legal reform, institutional strengthening, and mainstreaming a human rights-based approach in all public policies.*

Keywords: *Child Protection; Constitutional Responsibility; Human Rights; Law Enforcement; Rule of Law; Women Protection.*

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1. Introduction

Humans have been endowed with rights since birth. These rights are free and fundamental. The formation of a state and the administration of state power must not diminish these freedoms and rights without clear legal mechanisms. Protection and respect for human rights are essential pillars of any state claiming to be a state based on the rule of law. A state that ignores or violates human rights and fails to address them fairly cannot be called a state based on the rule of law in the true sense.¹

The concept of the Indonesian state as a state based on law is clearly stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia). The essence of the rule of law as expressed by scholars emphasizes the submission of state power to the law.² The central idea of *rechtsstaat* is the recognition of human rights (HAM).³ So that the recognition and protection of human rights based on the principles of freedom and equality is something that must be guaranteed and fulfilled by the state.

From 2008 to 2019, violence against women has increased by 792%, meaning that over 12 years, violence against women has increased almost 8-fold.⁴ Throughout 2019 alone, the National Commission on Violence Against Women (Komnas Perempuan) recorded 431,471 cases of violence against women, an increase from 406,178 cases the previous year.⁵ West Java Province was the province with the highest number of violence cases with 2,738 cases, followed by Central Java with 2,525 recorded cases, and the Special Capital Region (DKI) of Jakarta which recorded 2,318 cases.⁶ Based on the collected data, the dominant type of violence against women is violence in the personal sphere. The most common form of violence is physical violence, accounting for 43% of the total cases, followed by sexual violence, accounting for 25% of all cases.⁷ However, according to the National Commission on Violence Against Women, these high figures do not necessarily reflect the extent of violence in the province. It is likely that the low rates of violence against women in certain provinces are due to the absence of victim complaint bodies or low levels of public trust in the existing institutions.⁸

¹Bahder Johan Nasution, *The State of Law and Human Rights*, Mandar Maju, Bandung, 2018, p. 14.

²*Ibid.*, p. 1

³*Ibid.*, p. 6

⁴National Commission on Violence Against Women, *Violence is Increasing: Policy on the Elimination of Sexual Violence to Build Safe Spaces for Women and Girls (Notes on Violence Against Women in 2019)*, National Commission on Violence Against Women, Jakarta, 2020, p. 8.



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⁵Ibid., p. 1

⁶Ibid., p. 10

⁷Ibid., p. 13

⁸Ibid.

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The Indonesian National Police (POLRI) followed by the Women's Crisis Center (WCC), Non-Governmental Organizations (NGOs) or Civil Society Organizations (CSOs), and non-governmental organizations (NGOs) in second place, and the Integrated Service Center for the Empowerment of Women and Children (P2TP2A) in third place.⁹ However, although the UPPA, as the police agency, is the primary recipient of reports, the low number of cases processed by the District Court (PN) could indicate a stagnation in the legal process. The issue of sexual violence remains hampered by legal resolution.¹⁰

Women are disqualified from legal formulation, and officials are largely reluctant to make legal breakthroughs. This reluctance reflects a lack of responsiveness to the needs and interests of victims.¹¹ Authorities frequently dismiss authentic evidence of the violence that occurred.¹² The victims, who are the ones who suffer the most, do not receive as much protection as the perpetrators.¹³

The limited legal protection available, disproportionate to the complexity of sexual violence cases, leads to impunity, recurrence, and frustration among victims seeking justice, truth, and reparation. The numerous cases of sexual violence are not accompanied by comprehensive legal instruments. Protecting Indonesian women from gender-based violence remains a serious undertaking by the state.¹⁴ The rapid development of society cannot be followed by new legal paradigms, so that the law becomes unresponsive to women's issues.¹⁵

Victims of sexual violence are actually the ones who receive punishment, as in the case of Baiq Nuril, even though she ultimately received amnesty from President Joko Widodo.¹⁶ The case began when Baiq Nuril was accused of distributing a recording of a phone conversation with her superior, H. Muslim, the principal of Mataram State Senior High School (SMAN) 7. Muslim allegedly engaged in verbal sexual harassment during the conversation. Unwilling to have the recording circulated, Muslim reported Baiq to the police.¹⁷ In the first instance court, Baiq was declared free. Against this acquittal verdict, the Prosecutor filed an appeal. In the Supreme Court (MA) cassation decision, Baiq was found guilty and proven to have distributed content containing indecency as regulated in Article 27 paragraph (1) of Law Number 11 of 2008 in conjunction with Law Number 19 of 2016 concerning Electronic Information and Transactions (hereinafter referred to as the ITE Law).¹⁸ The Supreme Court also rejected Baiq Nuril's judicial review (PK). This rejection highlights the problematic cybercrime law in Indonesia and the widespread practice of victimization of women online.¹⁹

⁹Ibid., p. 9



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¹⁰Ibid

¹¹Maidin Gultom, Legal Protection for Children and Women, Refika Aditama, Bandung, 2018, p. 22

¹²Ibid., p. 23

¹³Didik M. Arief Mansur and Elisatris Gultom, The Urgency of Protecting Crime Victims Between Norms and Reality, Raja Grafindo Persada, Jakarta, 2006, p. 24.

¹⁴Ibid., p. 67

¹⁵Sulistiyowati Irianto, Women and the Law: Towards a Law with a Perspective of Equality and Justice, Yayasan Obor Indonesia, Jakarta, 2006, p. 31.

¹⁶Zakki Amali, "Baiq Nuril Receives Jokowi's Amnesty Presidential Decree, Officially Freed from Criminal Charges under the ITE Law", Tirto.ID, <https://tirto.id/baiq-nuril-terima-keppres-amnesti-jokowi-resmi-bebas-pidana-uu-ite-efv7>, Accessed June 18, 2026

¹⁷Mochamad Januar Rizki, "The Lessons from the Baiq Nuril Case, the Right Moment to Revise the ITE Law", Hukumonline, <https://www.hukumonline.com/berita/baca/lt5d3af0b0580b9/hikmah-kasus-baiqnuril-momen-tepat-revisi-uu-ite>, accessed on June 18, 2026.

¹⁸Mochamad Januar Rizki, "The Lessons from the Baiq Nuril Case, the Right Moment to Revise the ITE Law", Hukumonline, <https://www.hukumonline.com/berita/baca/lt5d3af0b0580b9/hikmah-kasus-baiqnuril-momen-tepat-revisi-uu-ite>, accessed on June 18, 2026.

¹⁹ELSAM, "ELSAM Press Release, Baiq Nuril's PK Decision: Evidence of Women's Vulnerability in Cyberspace", Institute for Policy Research and Advocacy, <https://elsam.or.id/putusan-pk-baiqnuril-bukti-rentannya-perempuan-di-ruang-siber/>, Accessed on June 18, 2026

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Law enforcement officials often have difficulty determining which legal regulations can be applied due to the complexity of sexual violence cases. The existing legal gap causes perpetrators of sexual violence to be charged using other laws and regulations. In the 'Gilang Bungkus' case, for example, Gilang was not charged with the article on sexual harassment. He was charged with Article 27 paragraph (4) in conjunction with Article 45 paragraph (4) and/or Article 29 in conjunction with Article 45B of the ITE Law and/or Article 335 of the Criminal Code (hereinafter referred to as the KUHP) concerning unpleasant acts.²⁰ The use of articles in the ITE Law and articles on unpleasant acts shows the confusion of law enforcement officers in handling complex cases of sexual violence.

Although various regulations in Indonesia have recognized various types of terminology that explain criminal acts related to sexual violence. Starting from crimes against morality in the Criminal Code, crimes against honor in several translations of the Criminal Code, sexual crimes in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (hereinafter referred to as the Child Protection Law), sexual violence in Law Number 23 of 2004 concerning the Elimination of Domestic Violence (hereinafter referred to as the PKDRT Law) and Law Number 44 of 2008 concerning Pornography (hereinafter referred to as the Pornography Law).²¹ However, even though the above laws and regulations contain various criminal acts related to sexual violence, the Criminal Code itself does not provide a specific definition of criminal acts related to sexual violence, but rather directly describes it in the formulation of articles. Likewise, the Child Protection Law only refers to the Criminal Code, Law Number 21 of 2007 concerning the Eradication of Criminal Acts of Human Trafficking (hereinafter referred to as the PTPPO Law) which only regulates violence in the context of human trafficking for the purpose of sexual exploitation, and the Domestic Violence Law which does not provide a clear definition of sexual violence.²²

Several existing laws actually outline several rights of victims of sexual violence.²³ Victims' rights are enshrined in various laws, such as the Child Protection Law, the Domestic Violence Law, Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, as amended by Law Number 31 of 2014 (hereinafter referred to as the Witness and Victim Protection Law), and the PTPPO Law. However, these rights are only regulated normatively. Meanwhile, other laws actually contain victims' rights that differ from one another, both in terms of their implementation and enforcement.²⁴

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This is a concern for the author because it is crucial for Indonesia to have legal instruments that can prevent and address issues related to sexual violence and fulfill and protect the rights of victims. The scattered regulations on sexual violence and victims' rights and their fulfillment have caused the issue of sexual violence to become an uncoordinated and non-comprehensive problem. There are no specific provisions that guarantee that victims obtain their rights as victims of sexual violence. Currently, Indonesia has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter referred to as CEDAW) through Law Number 7 of 1984. Given this, the author is interested in analyzing related matters, especially regarding legal protection for victims of sexual violence in Indonesia and the state's responsibility in handling cases of sexual violence, considering the many cases of sexual violence that are not just for victims.

2. Research Methods

1. Types of research

Normative legal research is used because the object of the research study focuses on legal norms that regulate the state's constitutional responsibilities in protecting women and children, both contained in the 1945 Constitution of the Republic of Indonesia, national laws and regulations, and international legal instruments relating to human rights. This research positions law as a norm or rule that serves as a guideline in regulating the relationship between the state and its citizens, particularly in fulfilling and protecting the rights of women and children.

2. Research Approach

This research uses a normative juridical approach by combining several complementary legal approaches to obtain a comprehensive understanding of the state's constitutional responsibilities in protecting women and children as part of the implementation of human rights in a state of law.

²⁰Adi Briantika, "The Trap of Sexual Harassment Disappears in the 'Gilang Bungkus' Case", *Tirto.ID*, <https://tirto.id/jerat-pelecehan-seksual-menghilang-dalam-kasus-gilang-balut-fWX1>, Accessed on June 18, 2026

²¹Maidina Rahmawati and Supriyadi Widodo Eddyono, *Towards Strengthening Victims' Rights in the Draft Law on the Elimination of Sexual Violence*, Institute for Criminal Justice Reform, Jakarta, 2017, p. 6.

²²*Ibid*

²³*Ibid.*, p. 9.

²⁴*Ibid*



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3. Data source

a. Primary Legal Materials

- 1) The 1945 Constitution of the Republic of Indonesia, especially Articles 28A to 28J concerning Human Rights and Article 34 which regulates the state's responsibility towards vulnerable groups.
- 2) Law Number 39 of 1999 concerning Human Rights.
- 3) Law Number 23 of 2002 concerning Child Protection as last amended by Law Number 35 of 2014 and Law Number 17 of 2016.
- 4) Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT).
- 5) Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (TPKS).

b. Secondary Legal Materials

- 1) Scientific books
- 2) Reputable National and International Journal Articles relevant to the protection of human rights and vulnerable groups.

4. Analysis Method

Qualitative analysis was conducted on primary, secondary, and tertiary legal materials collected through library research. The data obtained were not processed into numbers or statistics, but were systematically analyzed through a process of legal interpretation to discover the meaning, relationship, and relevance between legal norms and the practice of protecting women and children in national life.

3. Results and Discussion

Constitutional rights are rights guaranteed by the 1945 Constitution of the Republic of Indonesia, while legal rights arise based on guarantees in laws and regulations under it. After the provisions on human rights were fully adopted in the 1945 Constitution of the Republic of Indonesia, human rights and citizens'

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basic rights can be linked to the definition of "constitutional rights" guaranteed by the 1945 Constitution of the Republic of Indonesia (Asshiddiqie, 2007).

Women's Human Rights, which are part of Human Rights, are also guaranteed by the 1945 Constitution of the Republic of Indonesia. This means that constitutional rights also apply to women. The application of constitutional rights to women is evident in its formulation using the phrases "every person," "all citizens," "every citizen," or "every citizen," which indicate that constitutional rights are held by every individual citizen without distinction, whether based on ethnicity, religion, political beliefs, or gender.

All constitutional rights applicable to citizens are also the constitutional rights of every female Indonesian citizen. Likewise, children are part of the nation's citizens who must be protected because they are the nation's future generation who will continue the leadership of the Indonesian nation. Every child is required to receive not only formal education, but also moral education so they can grow into useful individuals for the nation and state. This is in accordance with the provisions of the Convention on the Rights of the Child, ratified by the Indonesian government through Presidential Decree No. 36 of 1990.²⁵ The protection of children's rights has received little attention from various parties, including concrete steps to protect them. Likewise, efforts to protect children's rights violated by the state, adults, or even their own parents have been lacking. In reality, children, one of the nation's assets, often face legal problems.²⁶ The quality of child protection should be at least equal to that of adults, as everyone has equal standing before the law (equality before the law). Child protection encompasses efforts to support the realization of the rights and obligations of children. Therefore, a child who obtains and maintains the right to grow and develop in a balanced and positive manner is treated fairly and protected from harmful threats. Child protection efforts can be legal actions with legal consequences, thus protecting children from arbitrary parental actions.²⁷

Legislation has regulated the protection of children from acts of violence, exploitation, and abuse of power, but violence against children still often occurs, influenced by various factors, such as the environment, lack of education or religious knowledge, factors from within a child, family, psychology, and so on.

²⁵Ningtias DR, Sampara S, Djanggih H. Diversion as a Form of Settlement of Child Criminal Cases. *J Lex Gen.* 2020;1(5):18–35

²⁶Lestari R. IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON THE RIGHTS OF THE CHILD IN INDONESIA. *J Chem Inf Model.* 2017;4(2):1–10

²⁷Vivi Arfiani Siregar AS. Restorative Justice Perspective in Child Protection as a Criminal Justice System in Indonesia. *Das Soll.* 2020;IV(1):1–24

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Violence is generally used to describe behavior, whether overt or covert, and whether aggressive or defensive, which is accompanied by the use of force against others.²⁸ Institutionally, the state has also established various institutions to protect women and children, such as the National Commission on Violence Against Women (Komnas Perempuan), the Indonesian Child Protection Commission (KPAI), and the Regional Technical Implementation Unit for the Protection of Women and Children (UPTD PPA). These institutions represent concrete manifestations of the state's obligation to guarantee human rights protection.²⁹ However, the effectiveness of legal protection still faces various obstacles. Many victims of violence do not receive optimal access to justice due to limited legal assistance facilities, low public legal awareness, and the persistence of a patriarchal culture that influences the law enforcement process. In many cases, women and child victims experience re-victimization when confronted with the criminal justice system.³⁰

4. Conclusion

The state's constitutional responsibility to protect women and children is a binding constitutional mandate that must be implemented by all state officials. This constitutional basis is reflected in the 1945 Constitution of the Republic of Indonesia, specifically the provisions regarding human rights that guarantee equality before the law, protection for vulnerable groups, and the right of children to protection from all forms of violence and discrimination. This responsibility is also reinforced by various national and international legal instruments that Indonesia has ratified. The implementation of the state's constitutional responsibility to protect women and children has been realized through the establishment of various regulations and institutions oriented towards fulfilling human rights. The existence of the Child Protection Law, the Law on the Elimination of Domestic Violence, the Law on the Crime of Sexual Violence, and various institutions for the protection of women and children demonstrates the state's commitment to fulfilling its constitutional obligations. However, this implementation has not been fully effective due to the persistently high rates of violence, discrimination, exploitation, and violations of the rights of women and children in various sectors of life. The implementation of the state's constitutional

²⁸ Gede Sadia Dwi Ratmaja. Protection of Children's Human Rights Against Violent Crimes in the Study of Legislation. Vol. 6 No. 1, February 2020. Journal of Legal Communication (JKH), Ganesha University of Education

²⁹ Philip Alston and Ryan Goodman, *International Human Rights* (New York: Oxford University Press, 2013), p. 899.

³⁰ Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge: Harvard University Press, 1989), p. 191.

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responsibilities still faces various obstacles stemming from legal substance, legal structure, legal culture, and institutional aspects. Regulatory inconsistencies, limited capacity of law enforcement officials, low public legal awareness, patriarchal culture, and suboptimal inter-agency coordination are key factors hampering the effectiveness of women's and children's protection in practice. Strengthening the state's constitutional responsibility requires a comprehensive, systematic, and human rights-based approach. These efforts include harmonizing laws and regulations, strengthening the capacity of law enforcement officials, increasing access to justice for victims, optimizing institutional coordination, and integrating human rights principles and a gender perspective into all public policies. Thus, protection for women and children is not merely normative but can be substantively realized as a manifestation of a democratic, just, and human rights-respecting state based on the rule of law. Overall, this research confirms that the successful implementation of human rights in a state governed by the rule of law is largely determined by the state's ability to effectively carry out its constitutional responsibilities. Therefore, the protection of women and children must be prioritized in national legal development to achieve justice, legal certainty, and welfare for all citizens without discrimination.

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