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The Constitutional Responsibility of the State in Legal Protection for Women and Children: A Normative Juridical Study of Indonesia's Constitutional Law Framework

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Abstract. *The protection of women and children constitutes a constitutional obligation of the state, explicitly guaranteed under Article 28B paragraph (2), Article 28D, and Article 28G of the 1945 Constitution of the Republic of Indonesia. This constitutional guarantee is reinforced through a number of national legislative instruments, including Law Number 23 of 2004 on the Elimination of Domestic Violence (PKDRT) and Law Number 12 of 2022 on Sexual Violence Crimes (TPKS), which provide mechanisms for the protection and recovery of victims of sexual violence. Nevertheless, the implementation of these norms continues to face serious challenges. The 2024 Annual Report (CATAHU) of the National Commission on Violence Against Women (Komnas Perempuan) reveals persistently high rates of sexual violence despite the enactment of the TPKS Law, with Komnas Perempuan urging the government to promptly issue implementing regulations under the TPKS Law in order to strengthen the effectiveness of law enforcement. Meanwhile, cases of violence against children rose by 12% in 2024, with sexual violence recorded as the most prevalent type of case a primary factor driving the regulatory evaluation and reform efforts of 2025. This gap between normative construction and implementation reality reflects fundamental problems in the institutional architecture and state responsibility from the perspective of constitutional law. This research employs normative legal research methodology with a statute approach, a conceptual approach, and a comparative approach. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 35 of 2014 on Child Protection, Law Number 23 of 2004 on Domestic Violence Elimination, Law Number 12 of 2022 on Sexual Violence Crimes, as well as international legal instruments ratified by*

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Indonesia, such as CEDAW and the Convention on the Rights of the Child. The ratification of CEDAW through Law Number 7 of 1984 and UNCPRD through Law Number 19 of 2011 form part of the legal corpus analyzed, given that such ratifications impose legal obligations on the state to harmonize national legislation. Secondary legal materials, consisting of scholarly literature, court decisions, and reports from state institutions, are processed qualitatively through descriptive-prescriptive analysis. The research yields two principal findings. First, Indonesia's constitutional law framework normatively contains a comprehensive construction of state responsibility in the protection of women and children; however, there exists a disharmony between statutory-level regulations and implementing regulations, which weakens law enforcement in practice. Implementation of the TPKS Law in several regions reveals that the Women and Children Protection Technical Implementation Units (UPTD PPA) as mandated by law have been established in only a fraction of districts/cities, while others are still in the process of formation or have yet to be established at all. Second, three institutional dimensions require strengthening: (a) inter-agency coordination within an integrated protection system; (b) the availability of service infrastructure such as safe houses and integrated service centers; and (c) synergy among the National Police, the Prosecutor's Office, and relevant ministries. The establishment of the Directorate for Women, Children, and Human Trafficking (PPA-PPO), which by early 2026 had been operational in 11 Regional Police headquarters and 22 District Police offices, reflects the state's commitment not merely to prosecuting perpetrators, but also to comprehensively protecting and rehabilitating victims. This study recommends strengthening institutional coordination mechanisms grounded in the principle of state obligation under constitutional law, as well as accelerating the issuance of implementing regulations under the TPKS Law as a prerequisite for the effective constitutional protection of women and children in Indonesia.

Keywords: Child Protection; Constitutional Law; Indonesian Constitution; State Responsibility; TPKS Law; Women's Protection.

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1. Introduction

The protection of women and children is an essential component of the constitutional commitment of the Indonesian state to the recognition, protection, and fulfilment of fundamental human rights. Women and children may experience particular vulnerabilities to violence, discrimination, exploitation, trafficking, sexual violence, and other forms of rights violations. These vulnerabilities create a constitutional obligation for the state to establish a legal and institutional framework capable of preventing violations, protecting victims, ensuring access to justice, and providing effective remedies. Within Indonesia's constitutional order, the responsibility to protect women and children is not merely a matter of governmental policy but forms part of the broader obligation to uphold human dignity, equality, and fundamental rights under the 1945 Constitution of the Republic of Indonesia. (Firmansyah, Mohamad Daffa Putra, Ratna Herawati, and Lita Tyesta Addy Listya Wardhani; 2025).

The constitutional foundations of state responsibility can be identified through several provisions of the 1945 Constitution. Article 28B paragraph (2) expressly guarantees every child's right to survival, growth, development, and protection from violence and discrimination. Article 28D paragraph (1) guarantees recognition, guarantees, protection, and fair legal certainty as well as equal treatment before the law, while Article 28I paragraph (2) recognizes the right of every person to be free from discriminatory treatment. These constitutional provisions establish an important normative basis for the development of specific protective measures for women and children. Furthermore, the constitutional recognition of human rights demonstrates that the state has both negative and positive obligations: it must refrain from violating rights while simultaneously taking active measures to prevent violations by state and non-state actors. (Nurhakim, Abdul Aziz; 2023).

The fulfilment of these constitutional obligations is reflected in various statutory and institutional mechanisms concerning human rights, child protection, the elimination of domestic violence, the eradication of human trafficking, and the prevention of sexual violence. These legal instruments translate constitutional principles into more specific forms of protection, including prevention, investigation, prosecution, victim assistance, rehabilitation, and access to legal remedies. However, the existence of extensive legislation does not automatically guarantee effective legal protection. Normative recognition may remain insufficient when victims encounter difficulties in reporting violations, accessing legal assistance, obtaining protection, or securing effective remedies. (Padang, Andi Tenri, Sofyan, and Muhammad Safaat Gunawan; 2023).

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State obligations should therefore be understood through interconnected preventive, protective, and remedial dimensions. Prevention requires the government to formulate laws, policies, educational programs, and institutional measures that address the structural and social conditions contributing to violence and discrimination. Protection requires law enforcement and public institutions to respond promptly and appropriately when violations occur. Remedial obligations require victims to receive rehabilitation, restitution, compensation, psychological assistance, social reintegration, and other appropriate forms of redress. The effectiveness of these mechanisms depends substantially on institutional coordination among law enforcement agencies, courts, ministries, local governments, social-service institutions, and specialized protection bodies. (Safrudin and Romainur; 2022).

A further challenge concerns the need to ensure that legal protection is responsive to the different circumstances of women and children. Formal equality alone may be inadequate when social, economic, cultural, and institutional conditions create unequal access to justice. A gender- and child-sensitive approach is therefore necessary to ensure substantive equality. Legal procedures should be accessible, confidential, non-discriminatory, and responsive to the specific needs of victims. In proceedings involving children, the best interests of the child should serve as a fundamental consideration, while protection mechanisms for women should address both direct discrimination and structural forms of gender-based violence. (Saputra, Dian, Jamaluddin, and Yulia; 2021).

These conditions demonstrate the necessity of reconstructing constitutional legal protection toward a more gender- and child-sensitive model of state responsibility. Such reconstruction requires continuous evaluation of existing legislation to identify normative gaps, overlapping provisions, and weaknesses in implementation. It also requires clearer institutional mandates, stronger coordination mechanisms, adequate resources, professional capacity, and effective accountability. Judicial institutions have an important role in ensuring that legislation and governmental actions remain consistent with constitutional guarantees, while legislative and executive institutions must ensure that constitutional rights are translated into effective policies and public services.

2. Research Methods

This research employs normative legal research methodology with a statute approach, a conceptual approach, and a comparative approach. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 35 of 2014 on Child Protection, Law Number 23 of 2004 on Domestic Violence

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Elimination, Law Number 12 of 2022 on Sexual Violence Crimes, as well as international legal instruments ratified by Indonesia, such as CEDAW and the Convention on the Rights of the Child. The ratification of CEDAW through Law Number 7 of 1984 and UNCPRD through Law Number 19 of 2011 form part of the legal corpus analyzed, given that such ratifications impose legal obligations on the state to harmonize national legislation.

3. Results and Discussion

3.1. Constitutional Foundations of State Responsibility for the Protection of Women and Children

The protection of women and children constitutes an essential dimension of the constitutional responsibility of the Indonesian state. The 1945 Constitution of the Republic of Indonesia provides a fundamental legal basis for recognizing, respecting, protecting, and fulfilling human rights. Article 28B paragraph (2) expressly guarantees every child's right to survival, growth, and development, as well as protection from violence and discrimination. In addition, Article 28D paragraph (1) guarantees equality before the law and the right to fair legal certainty, while Article 28I paragraph (2) establishes the constitutional right of every person to be free from discriminatory treatment. These provisions establish a strong constitutional foundation for developing legal protection mechanisms specifically responsive to the vulnerabilities of women and children.

Constitutional responsibility should not be interpreted merely as the obligation of the state to enact legislation. It encompasses a broader positive duty to establish effective institutions, policies, public services, and enforcement mechanisms that prevent violations and provide remedies when rights are infringed. The state must therefore ensure that women and children are protected from violence, exploitation, trafficking, discrimination, and other forms of abuse through comprehensive legal and institutional mechanisms.

From a normative juridical perspective, constitutional provisions must be examined in conjunction with relevant statutory instruments concerning human rights, child protection, elimination of domestic violence, eradication of human trafficking, and sexual violence. These laws represent the legislative translation of constitutional principles into more specific forms of protection. However, the existence of legislation alone cannot demonstrate the fulfilment of constitutional obligations. Legal protection must be accessible, enforceable, and capable of responding to the particular circumstances and vulnerabilities of victims.

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The constitutional principle of equality also requires the state to address substantive rather than merely formal equality. Women and children may face structural barriers that limit their access to justice and public services. Therefore, differentiated protective measures may be constitutionally justified when necessary to achieve genuine equality and prevent further harm. Ultimately, constitutional responsibility requires continuous state action to transform constitutional guarantees into effective protection, ensuring that women and children can exercise their rights with dignity, security, and equal access to justice.

3.2. State Obligations and the Legal Protection Mechanism for Women and Children

The Indonesian state has a constitutional obligation to establish and maintain effective legal protection mechanisms for women and children as part of its broader responsibility to respect, protect, and fulfil fundamental human rights. This obligation extends beyond the formulation of legislation and requires the state to ensure that legal norms are effectively implemented through functioning institutions, accessible procedures, adequate public services, and appropriate remedies. Women and children may face particular vulnerabilities to violence, exploitation, trafficking, discrimination, and abuse; therefore, state protection must be designed to address both individual violations and structural conditions that contribute to such vulnerabilities.

The legal protection mechanism can be understood through three interconnected dimensions: prevention, protection, and recovery. Preventive obligations require the government to formulate laws, policies, educational programs, and institutional measures aimed at reducing the risks of violence, exploitation, and discrimination. Protective obligations require law enforcement agencies and relevant governmental institutions to respond promptly when violations occur, protect victims from further harm, investigate alleged perpetrators, and ensure access to justice. Recovery obligations require the state to facilitate rehabilitation, restitution, compensation, psychological assistance, social reintegration, and other appropriate remedies according to the nature of the violation.

Effective protection also depends on institutional coordination. Women and children may interact with police, prosecutors, courts, social-service agencies, health institutions, and specialized protection bodies during the legal process. Fragmented institutional responsibilities can create procedural gaps, delays, and inconsistent victim protection. Consequently, the state must establish clear institutional mandates, referral mechanisms, information-sharing procedures, and

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accountability standards to ensure that protection remains continuous throughout the legal process.

Furthermore, legal mechanisms must adopt gender-sensitive and child-sensitive approaches. Procedures should be accessible, confidential, non-discriminatory, and responsive to the age, circumstances, and specific needs of victims. Children's best interests should constitute a primary consideration, while women should receive protection from discriminatory practices and gender-based violence. Victims should also receive adequate legal assistance so that socioeconomic circumstances do not prevent them from accessing justice.

Ultimately, the fulfilment of state obligations requires more than the existence of protective legislation. Effective constitutional protection depends on enforcement, institutional capacity, adequate resources, victim-centred procedures, and meaningful remedies. By strengthening these elements, Indonesia can ensure that the legal protection of women and children becomes a substantive constitutional commitment rather than merely a formal recognition of rights.

3.3. Reconstruction of Constitutional Legal Protection toward a Gender- and Child-Sensitive State Responsibility

The reconstruction of constitutional legal protection for women and children in Indonesia requires a substantive transformation in the way state responsibility is understood and implemented. Constitutional recognition of human rights should not remain merely declarative but must be translated into effective legal, institutional, and policy mechanisms that respond to the specific vulnerabilities experienced by women and children. A gender- and child-sensitive constitutional framework should therefore place equality, dignity, non-discrimination, protection from violence, and access to justice at the centre of state action.

The first dimension of reconstruction concerns the strengthening of legal norms. Existing legislation should be continuously reviewed to identify normative gaps, overlapping provisions, and inconsistencies that may weaken the protection of women and children. Legislative development should incorporate substantive equality rather than relying exclusively on formal equality. This requires laws and policies to recognize that women and children may face different forms of vulnerability and therefore may require differentiated protective measures. In relation to children, the best interests of the child should constitute a fundamental consideration in legislative, administrative, and judicial decision-making.

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The second dimension involves institutional reform. Effective constitutional protection requires clear responsibilities among law enforcement agencies, courts, ministries, local governments, and specialized protection institutions. Stronger coordination mechanisms should be established to prevent victims from experiencing fragmented services or repeated procedural barriers. Government institutions should also develop gender- and child-sensitive standards for investigation, prosecution, adjudication, victim assistance, and recovery.

The third dimension concerns access to effective remedies. Women and children who experience rights violations should have access to legal assistance, protection, rehabilitation, restitution, compensation, and other appropriate remedies. Legal procedures should be accessible, confidential, non-discriminatory, and sensitive to trauma. Special safeguards are particularly necessary when victims are children because their age and developmental circumstances may limit their ability to participate independently in legal proceedings.

Finally, constitutional reconstruction requires stronger governmental accountability. The state should establish measurable indicators for evaluating the implementation of protective laws, allocate adequate resources, and ensure effective oversight of institutions responsible for protecting vulnerable groups. Judicial review can also strengthen constitutional protection by ensuring that legislation and governmental actions remain consistent with constitutional rights.

Ultimately, a gender- and child-sensitive constitutional framework should transform state responsibility from a formal legal obligation into an operational commitment. Through stronger legislation, coordinated institutions, accessible remedies, adequate resources, and effective accountability, Indonesia can strengthen the realization of constitutional guarantees and ensure meaningful protection of women and children within its constitutional legal order.

4. Conclusion

The Indonesian state bears a constitutional responsibility to protect women and children through effective legal, institutional, and policy mechanisms. The 1945 Constitution provides a fundamental basis for equality, non-discrimination, protection from violence, and the fulfilment of children's rights. However, constitutional guarantees require effective implementation through prevention, protection, access to justice, rehabilitation, and appropriate remedies. The reconstruction of constitutional legal protection should therefore strengthen gender- and child-sensitive legislation, institutional coordination, victim-centred

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procedures, adequate resources, and governmental accountability. A comprehensive framework that transforms formal constitutional guarantees into substantive and enforceable protection is essential to ensuring dignity, equality, justice, and effective human rights protection for women and children in Indonesia. Furthermore, the protection of women and children must be understood as a continuing constitutional obligation that requires constant adaptation to emerging forms of rights violations and social vulnerability. The state cannot rely solely on the existence of legislation but must ensure that laws are effectively enforced and supported by institutions with adequate authority, resources, and professional capacity. In this context, coordination between law enforcement agencies, courts, governmental institutions, and specialized protection bodies is essential to prevent gaps in legal protection and ensure that victims receive comprehensive assistance. A gender- and child-sensitive approach should also become an integral principle in legislative development, judicial interpretation, and public policy. Such an approach recognizes that women and children may face different forms and degrees of vulnerability and therefore require protection mechanisms tailored to their circumstances. For children, the best interests of the child should remain a fundamental consideration in every legal and administrative decision. For women, substantive equality requires the state to address both direct discrimination and structural conditions that limit access to justice and protection. Ultimately, reconstructing the constitutional framework requires a shift from reactive protection toward a comprehensive system based on prevention, empowerment, accountability, and effective remedies. The state should establish measurable standards for evaluating the implementation of protective policies and provide accessible mechanisms for complaints, rehabilitation, restitution, and compensation. Through these measures, constitutional responsibility can be transformed from a formal legal principle into a practical guarantee. Such reconstruction would strengthen Indonesia's constitutional democracy by ensuring that the protection of women and children becomes an integral and enforceable dimension of human rights, social justice, and the rule of law.

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