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

State Responsibility for the Protection of Women and Children in Indonesia

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Abstract. *The purpose of this research is to identify and analyze the state's responsibility for the protection of women and children, as well as the challenges and opportunities in protecting women and children. This research uses a normative legal approach. The results show that although various legal efforts have been made to protect women and children, many challenges remain. Some of these challenges include a lack of awareness, social stigma, lack of access to the justice system, and a lack of resources to effectively enforce the law. Therefore, the protection of women and children from a legal perspective must be continuously improved and strengthened to achieve true justice and equality.*

Keywords: *Responsibility; State; Women and Children.*

1. Introduction

Pancasila is the ideology and foundation of the Indonesian state which contains noble values as a guideline for national and state life.¹ Pancasila functions as the source of all sources of Indonesian law, which is the basis for the formation of laws and regulations and reflects the values contained in the 1945 Constitution of the Republic of Indonesia.²

The Republic of Indonesia is a state based on law based on Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. One of the characteristics of a state based on law is that the state is obliged to protect and fulfill the basic

¹ Muhammad Burhanuddin, Dewi Hertiningsih, Sabri Noor Herman. Mining Industry Activities Related To Mining Management Issues. *The 2nd International Conference And Call Paper*, Vol 1, No 1, 2020, p. 1

² Anis Mashdurohatun, Constructing And Developing The Social Function Principlesin Utilising Copyright Products Related To The Fundamental Rights, *South East Asia Journal of Contemporary Business, Economics and Law*, Vol. 7, Issue 4 (Aug.), 2015. p. 88



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rights of its citizens. In this context, women and children are vulnerable groups who constitutionally receive special protection from the state.³

Normatively, the state's responsibility to protect women and children has been affirmed in various regulations. Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that "every child has the right to survive, grow, and develop and has the right to protection from violence and discrimination." Meanwhile, Article 28G paragraph (2) guarantees the right of every person to be free from torture and treatment that degrades human dignity.⁴

Protection of women and children is strengthened through Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection, Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence, and Law No. 7 of 1984 concerning Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (*Convention On The Elimination Of All Forms Of Discrimination Against Women*). These instruments affirm that the state has three main obligations, namely to respect and protect, and to fulfill the rights of women and children.⁵

Although existing regulations are adequate, the situation on the ground shows significant problems. Based on data collected by the author from *Online Information System for the Protection of Women and Children (Simfoni PPA)*, recorded in 2024, there were 25,673 cases of violence against women. Of these, 62% were domestic violence.⁶ Meanwhile, 2024 KPAI data recorded 4,162 complaints of child abuse. The most common forms were physical, psychological, sexual, and neglect. Data from the National Commission on Violence Against Women's 2024 Annual Report showed a 14% increase in gender-based violence cases compared to the previous year. Most cases occurred in the private/domestic sphere. Ironically, 73% of victims did not report cases due to fear, stigma, and distrust of the legal system.⁷

³ Lindri Purbowati, Legal Policy in Handling Domestic Violence: The Role of Protection and Legal Institutions, *Journal of Comprehensive Science*, Vol. 3. No. 11 November 2024, p. 5514

⁴ Andi Lala, Eman Suparman, Amin Purnawan, Abdullah Khudori, Sexual Violence Against Women In The View Of Legal And Human Rights In Indonesia, *International Journal of Environmental, Sustainability, and Social Science*, Vol. 4 No, 2 P. 596

⁵ Bambang Tri Bawono, Devita Mesayu, Anis Mashdurohatun, Legal Reconstruction of Women's Empowerment Government Policies in Realizing Gender Equality, *Scholars International Journal of Law, Crime and Justice*, , Vol. 6, Issue 3, 2023. p. 189

⁶ <https://kekerasan.kemenpppa.go.id/ringkasan> di akses pada tanggal 14 Juli 2026

⁷ <https://www.kpai.go.id/laporan/laporan-akhir-tahun-2024-kpai-penguatan-pengawasan-dan-perlindungan-anak-di-indonesiia> di akses pada tanggal 14 Juli 2026



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This situation demonstrates a gap between the law in regulations and the law in practice. In welfare state theory, the state not only functions as a security guard but is also obligated to be present to achieve social justice.⁸ Prof. Jimly Asshiddiqie stated that the state has a constitutional obligation to guarantee the fulfillment of citizens' rights, especially those of vulnerable groups.⁹

The state's responsibility for protecting women and children can be divided into three levels: first, policy-making, policy implementation, and guarantee and oversight. In Indonesia's constitutional system, this responsibility is shared by the Executive, Legislative, and Judicial branches.

Implementing the state's responsibility to protect women and children still faces obstacles. For example, in a case in Pati Regency, dozens of children at an Islamic boarding school experienced sexual violence for years.¹⁰ The state, through the Ministry of Social Affairs and local governments, has been negligent in its oversight. This demonstrates a failure of its function.*to protect*.

Based on the above explanation, protecting women and children is not merely a moral issue, but a constitutional obligation of the state. If the state neglects this, it is violating its own constitution. According to Hans Kelsen's theory of state responsibility, a state can be held accountable if it fails to protect the rights of its citizens.¹¹

The purpose of writing this research is to determine and analyze how state responsibilities are formulated in the constitution and laws and regulations and to identify the effectiveness and obstacles in implementing these responsibilities.

⁸ Elviandri, Khuzdaifah Dimyati, dan Absori, Quo Vadis Negara Kesejahteraan: Meneguhkan Ideologi Welfare State Negara Hukum Kesejahteraan Indonesia, *Mimbar Hukum*, Vol. 31, No. 2, 2019, p. 252

⁹ Violeta Elenabella, Friderikus Nopeli Giawa, Peran Konstitusi Dalam Menjamin Hak Dan Kewajiban Warga Negara Di Indonesia, *Jurnal Media Akademik (JMA)*, Vol. 3, No. 6, 2025, p. 4

¹⁰ [https://jateng.suara.com/read/2026/05/02/160301/duh-dugaan-kekerasan-seksual-oknum-kiai-di-pati-korban-capai-50-orang#:~:text=Oknum%20pengasuh%20pondok%20pesantren%20di%20Tlogowungu%2C%20Pati%2C%20diduga,puluhan%20santriwati%20melakukan%20tindakan%20asusila%20di%20lingkungan%20sekolah](https://jateng.suara.com/read/2026/05/02/160301/duh-dugaan-kekerasan-seksual-oknum-kiai-di-pati-korban-capai-50-orang#:~:text=Oknum%20pengasuh%20pondok%20pesantren%20di%20Tlogowungu%2C%20Pati%2C%20diduga,puluhan%20santriwati%20melakukan%20tindakan%20asusila%20di%20lingkungan%20sekolah.). Di akses pada tanggal 14 Juli 2026

¹¹ Fatahillah, Pertanggung Jawaban Negara Terhadap Tindak Pidana Internasional, *Jurnal Ilmu Hukum Reusam*, Vol. 9 No. 2, 2021, p. 17



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2. Research Methods

The method that is used is the method of approach of juridical normative. The research is a qualitative research.¹² method approach of juridical normative is research that explains about the provisions in the regulatory legislation which applies, it is connected with the fact that there are in the field , and then analyzed by comparing between the demands of the values of an ideal that is there in the regulatory legislation with the fact that there in the field.¹³

The type of research it is descriptive analysis, since researchers want to describe or explain on the subject and the object of research, which is then analyzed and finally drawn conclusions from the results of the study are.¹⁴ It is said descriptive because of the study is expected to obtain a picture that is clear, detailed, and systematic, while saying the analysis because the data obtained from the research literature as well as the data of cases that will be analyzed to solve to the problem in accordance with the provisions of the law that applies.¹⁵

3. Results and Discussion

3.1. Implementation of State Responsibility in Protecting Women and Children

The 1945 Constitution of the Republic of Indonesia as the highest basic law in Indonesia clearly states that Indonesia is a state of law, with one of its characteristics being the guarantee of human rights in the administration of the state.¹⁶ The state's responsibility to protect women and children has been affirmed in various regulations. Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that "every child has the right to survive, grow, and develop and has the right to protection from violence and discrimination." Meanwhile, Article 28G paragraph (2) guarantees the right of every person to be free from torture and treatment that degrades human dignity.¹⁷

¹² Anis Mashdurohatun, Ferry Susanto Limbong, Legal Protection of Trademarks Based on the Justice Value, *International Journal of Innovation, Creativity and Change*. Volume 12, Issue 12, 2020. p. 1213

¹³ Ronny Hanitijo Soemitro, *Legal and Jurimetric Research Methodology*, Ghalia Indonesia, Jakarta, 1990, p. 33.

¹⁴ Mukti Fajar ND and Yulianto Achmad, *Dualism of Normative and Empirical Legal Research*, Student Library, Yogyakarta, 2010, p. 183

¹⁵ Anis Mashdurohatun, Hayyan Ul Haq, Sony Zulhuda, Social Function Reconstruction Of Intellectual Property Rights (Ipr), Based On Justice Values, *International Journal of Law Reconstruction*, Volume I, Issue 1, September 2017, p. 143

¹⁶ Nadine Rayna Salsabila, Isharyanto, Analisis Tanggung Jawab Negara dalam Perlindungan Anak Korban Konflik Sosial dari Perspektif Hukum Nasional, *Res Publica* Vol. 6 No. 2, 2022, p. 194

¹⁷ Andi Lala, Eman Suparman, Amin Purnawan, Abdullah Khudori, Op.,Cit

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The state's responsibility for protecting women and children in Indonesia, viewed from a national legal perspective, has been regulated clearly and harmoniously, as follows:

- a. The 1945 Constitution of the Republic of Indonesia places the responsibility on the state to guarantee human rights (including children's rights) comprehensively. Articles 28A to 28J contained in Chapter XA on Human Rights, regulate provisions regarding: a) The right to life; b) The right to have a family and have children; c) The right to develop oneself and receive an education; d) The right to legal protection; e) The right to embrace a religion; f) The right to obtain information; g) The right to protection of oneself and one's family; h) The right to live in prosperity and have a place to live; i) The right not to be tortured and freedom of thought; and j) The obligation to respect the human rights of others. Article 29 paragraphs (1) and (2) also explain that the state guarantees the freedom of each citizen to embrace their respective religion and to worship according to their religion and beliefs. The 1945 Constitution of the Republic of Indonesia as the highest legal norm has included children's rights in the body of the constitution, so that the status and protection of children's rights by the state is an important matter that must be further regulated and implemented in accordance with applicable laws and regulations.
- b. Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection provides the state with the responsibility to guarantee protection for children in special situations, including: children in emergency situations (children who are refugees, victims of riots, victims of natural disasters, and children in situations of armed conflict); children from minority and isolated groups; children who are victims of kidnapping, sale, and/or trafficking; children who are victims of physical and/or psychological violence; children who are victims of terrorist networks; and children who are victims of stigmatization from labeling related to the condition of their parents. In this context, the state is obliged to provide support for facilities, infrastructure, access to education, health, and guarantees of freedom for children to enjoy and use their culture, and practice their religious teachings. In order to ensure the effectiveness of the implementation of child protection, the ministry that organizes government affairs in the field of child protection must carry out cross-sectoral coordination with related institutions, through monitoring, evaluation, and reporting on the implementation of child protection.
- c. Law No. 12 of 2022 concerning Criminal Acts of Sexual Violence, in addition to emphasizing the principles of regulating criminal acts of sexual violence based on human dignity, non-discrimination, the best interests of victims, justice, expediency, and legal certainty, also emphasizes the purpose of its regulations,



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namely to prevent all forms of sexual violence, handle, protect, and rehabilitate victims, enforce the law and rehabilitate perpetrators, create an environment free from sexual violence, and ensure the non-recurrence of sexual violence. These things have never existed in previous legal regulations.¹⁸

In accordance with the focus of using the legislative approach (*statute approach*) In this study, it can be said that the laws and regulations in the field of women and children protection, both vertically and horizontally, are synchronized and harmonious. This harmony can be seen from the absence of conflict between one regulation and another, but rather one regulation with another strengthens, emphasizes, and clarifies each other. However, there is a gap between the existence of legal regulations and the reality of law enforcement in the field, which does not side with women and children.

The state's failure to protect women and children is reflected in the case that occurred in Pati Regency, where dozens of children at an Islamic boarding school experienced sexual violence for years.¹⁹ The state, through the Ministry of Social Affairs and local governments, has been negligent in its oversight. This demonstrates a failure of its function. *to protect* According to Hans Kelsen's theory of state responsibility, a state can be held accountable if it fails to protect the rights of its citizens.²⁰

Indonesia already has a strong legal framework to protect women and children. However, its implementation remains partial and discriminatory at regional levels. The main failure lies in its function. *to protect* And *to fulfil* Without structural and budgetary reforms, the state's constitutional responsibilities will remain mere jargon.

3.2. Challenges and Opportunities in Implementing Protection of Women and Children

Protection against violence against women and children is divided into prevention and response. Prevention occurs when violence has not yet occurred

¹⁸ Prianter Jaya Hairi, Marfuatul Latifa, Implementasi Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual, *Negara Hukum*, Vol. 14, No. 2, 2023, hlm. 167

¹⁹ <https://jateng.suara.com/read/2026/05/02/160301/duh-dugaan-kekerasan-seksual-oknum-kiai-di-pati-korban-capai-50-orang#:~:text=Oknum%20pengasuh%20pondok%20pesantren%20di%20Tlogowungu%2C%20Pati%2C%20diduga,puluhan%20santriwati%20melakukan%20tindakan%20asusila%20di%20lingkungan%20sekolah.> Di akses pada tanggal 14 Juli 2026

²⁰ Fatahillah, Op.,Cit

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but has the potential to occur, through policies, advocacy, outreach, and law enforcement. Response occurs when violence has already occurred, through services that refer to Minimum Service Standards (SPM) and empowerment.²¹ Implementing protection for women and children presents challenges and opportunities that need to be considered. Here are some of them:

a. Challenge

1) Systemic injustice

Unfair legal systems and institutions can hinder the protection of women and children. Lack of resources, corruption, and weak law enforcement can hinder access to justice for victims and allow perpetrators of violence to avoid accountability.

2) Lack of awareness and understanding

Many people still lack awareness of the rights of women and children and the various forms of violence and discrimination they face. Greater public education and awareness are needed to change perceptions and build strong support for the protection of women and children.

3) Lack of access to services

Many women and children who are victims of violence or abuse face difficulties in accessing appropriate services such as crisis centers, courts, medical care, and psychosocial support. A lack of adequate infrastructure and resources can be a barrier to their access²².

b. Opportunity

1) Strong regulations and laws

The existence of clear and firm regulations and laws on the protection of women and children provides a strong foundation for law enforcement and their protection. Opportunities lie in improving effective implementation and enforcement.

2) Social awareness and movements

²¹ Zulfiani, Dini. Indrawati, Oktavianus Kondorura, And Meuthia Sahda Af. "Penanganan Kekerasan Terhadap Perempuan Dan Anak Di Provinsi Kalimantan Timur." *Jurnal Administrative Reform*, Vol. 6, No. 3, p. 141.

²² Suryamizon, Anggun Lestari. "Perlindungan Hukum Preventif Terhadap Kekerasan Perempuan Dan Anak Dalam Perspektif Hukum Hak Asasi Manusia." *Marwah: Jurnal Perempuan, Agama Dan Jender* Vol. 16, No. 2, p. 112



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Growing awareness of women's and children's protection issues has sparked powerful social movements in many countries. Activists, non-governmental organizations, and civil society are increasingly working together to champion the rights of women and children.

3) Technology and social media

Technological advances, especially social media, have provided a powerful platform for disseminating information, raising awareness, and mobilizing support for the protection of women and children.

4) Education and training

Investing in quality education and training on women's and children's rights, as well as preventing violence and discrimination, can help change people's mindsets and behaviors. Inclusive and gender-sensitive education is a strong foundation for child protection²³.

In facing these challenges and taking advantage of these opportunities, governments, legal institutions, civil society organizations, and individuals need to work together to strengthen the protection of women and children and create a just and safe society for them.

4. Conclusion

Based on the explanation above, it can be concluded that the law recognizes the need for special protection for women and children because they are considered vulnerable to various forms of violence, oppression, and abuse. This protection aims to ensure their safety, human rights, well-being, and healthy development. Although various legal efforts have been made to protect women and children, many challenges remain. Some of these challenges include lack of awareness, social stigma, lack of access to the justice system, and a lack of resources to effectively enforce the law. Therefore, the protection of women and children from a legal perspective must be continuously improved and strengthened to achieve true justice and equality.

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²³ Dermawan, Ari. "Peran Dinas P2kbp3 Kabupaten Asahan Dalam Memberikan Perlindungan Hukum Terhadap Perempuan Dan Anak The." *Doktrina : Journal Of Law*, Vol. 2, No. 3, 2019, p.32



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