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

Study of Constitutional Law after the Amendment of the 1945 Constitution on the Protection of Women and Children as a Constitutional Obligation of the State

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Abstract. *Following the amendments to the 1945 Constitution of the Republic of Indonesia, there has been a strengthening of the rule of law principle and a clearer affirmation of human rights guarantees, including the protection of women and children as part of the state's constitutional obligations. Although the constitutional framework has been significantly strengthened normatively, in practice the protection of women and children still faces various challenges, such as high rates of violence, discrimination, and suboptimal effectiveness of state policy implementation. This study aims to analyze the development of constitutional law after the amendments to the 1945 Constitution regarding the protection of women and children as a constitutional obligation of the state, as well as to examine the effectiveness of state policy implementation in realizing such protection. This research employs a normative legal method with statutory, conceptual, and historical-constitutional approaches. Data are collected through library research involving the post-amendment 1945 Constitution, relevant legislation, constitutional law literature, academic journals, and reports from national and international institutions. The findings indicate that the constitutional amendments have strengthened the legal foundation for the protection of women and children; however, there remains a gap between constitutional norms and policy implementation in practice. Therefore, strengthening regulatory harmonization, enhancing institutional capacity, and improving oversight mechanisms are necessary to ensure that the protection of women and children as a constitutional obligation of the state can be effectively realized.*

Keywords: *1945 Constitution Amendments; Constitutional Law; Constitutional Obligation; Rule of Law; Women and Child Protection.*

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1. Introduction

Children are a trust and a gift from God Almighty, which we must always protect because they are inherent in the dignity, honor, and rights of human beings that must be upheld. Children's human rights are part of the human rights contained in the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) and the United Nations Convention on the Rights of the Child. From the perspective of national and state life, children are the future of the nation and the next generation of the nation's ideals, so that every child has the right to survive, grow and develop, participate and have the right to protection from violence and discrimination as well as civil rights and freedoms.¹

The state guarantees the rights and obligations of children as regulated in Article 34 paragraph (1) of the 1945 Constitution, which states: "The poor and neglected children are cared for by the state." This clearly states that the state is responsible for the function of protecting and protecting neglected children in Indonesia. This article clearly constitutes a constitutional right for all poor citizens or neglected children in Indonesia, the fulfillment of which should be guaranteed by the state.²

There is a certain legal construction if the Convention on the Rights of the Child, Presidential Decree Number 36 of 1990, and Law Number 23 of 2002 are connected. First, Presidential Decree Number 36 of 1990 ratified the Convention on the Rights of the Child. Second, Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection designates the principles contained in the Convention on the Rights of the Child as the basis or basis for the implementation of child protection. What can be emphasized in this construction is that textually the principles contained in the Convention on the Rights of the Child in the implementation of child protection, namely the principle of non-discrimination, the principle of what is best for the child, the principle of the right to life, survival and development, and the principle of respect for the opinion of the child, plus the principle of active protection, must be the basis or basis for legislation in the implementation of child protection.³

Abandoned children are children whose parents neglect and/or are unable to fulfill their obligations, so that their physical, spiritual, and social needs are not met. Abandoned children are children aged 5-18 years who, due to certain reasons (due to several possibilities: poverty, one of the parents/guardian is sick, one/both parents/guardian dies, family disharmony, no caregiver), cannot have their basic needs met properly, both physical, spiritual, and social. Abandoned children are children who live in poor families up to the age of 18 years.⁴



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¹Imam Sukadi, "State Responsibility Towards Neglected Children in Government Operations in the Field of Child Rights Protection," *Journal de Jure* 5, no. 2 (2013): 117-118.

²Sukadi, "State Responsibility Towards Neglected Children in Government Operations in the Field of Child Rights Protection: 118.

³Rosmi Darmi, Implementation of the Convention on the Rights of the Child in Relation to the Protection of Children Facing Legal Processes, *De Jure* 16, no. 4 (2016).

⁴Maidin Gultom, Legal Protection for Children in the Juvenile Criminal Justice System in Indonesia (Bandung: Refika Aditama, 2010).



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Based on data from the Ministry of Social Affairs taken from the Integrated Social Welfare Data Dashboard (DTKS) SIKS-NG in 2019, there were 64,053 Abandoned Children recorded. Meanwhile, in the following year as of December 15, 2020, the number of abandoned children in Indonesia was 67,368 people, meaning that during the COVID-19 pandemic, there was a significant increase of 3,315 abandoned children in Indonesia. This also includes the impact of COVID-19 which has hit Indonesia since 2019.⁵

In 2020, cases of violence against children increased during the pandemic. "According to SIMFONI PPA data, from January 1 to June 19, 2020, there were 3,087 cases of violence against children, including 852 physical violence, 768 psychological violence, and 1,848 sexual violence. This figure is considered high.⁶

According to Retnowulan Sutianto (retired Supreme Court Justice), child protection is an area of National Development. Children are meant to protect humans and develop them as fully as possible. The essence of National Development is the development of whole Indonesian people with noble character. Ignoring child protection issues will not strengthen national development. The lack of child protection will give rise to various social problems that can disrupt law enforcement, security, and national development. Therefore, this means that child protection must be pursued if we want to achieve satisfactory national development.⁷

Various regulations in religious and cultural teachings laws discuss child protection, but still, from year to year, child protection violations continue to increase along with the development of the times due to the less visionary form of regulation so that it tends to be seen as a new problem.⁸



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2. Research Methods

1. Types of research

This research is a normative legal research which focuses on the study of constitutional legal norms, especially after the amendment to the 1945 Constitution, which regulates:

- 1) Constitutional obligations of the state
- 2) Protection of women and children
- 3) Indonesian constitutional system

2. Research Approach

This research uses a normative legal approach with a combination of several legal approaches (doctrinal approaches) which are analytical, evaluative and prescriptive.

3. Data source

a. Primary Legal Materials

- 1) The 1945 Constitution of the Republic of Indonesia (post-amendment), in particular:
 - Article 28A–28J concerning Human Rights
 - Article 28B paragraph (2) concerning children's rights
 - Article 28G concerning self-protection and a sense of security
 - Article 1 paragraph (3) concerning the rule of law

b. Secondary Legal Materials

- 1) Literature and Law Books
- 2) Scientific work

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3) Expert Opinion

4. Analysis Method

This research uses qualitative legal analysis with a normative-analytical approach combined with socio-legal analysis (normative-empirical), which is evaluative, interpretative, and prescriptive-reconstructive.

3. Results and Discussion

The definition of neglected children is explained in Article 1 paragraph (6) of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection, namely: "Neglected children are children whose needs are not met properly, whether physically, mentally, spiritually or socially." Basically, "neglected children compared to children who are victims of violence (child abuse), acts of child neglect often receive less serious public attention."⁹The suffering experienced by neglected children is not considered as dramatic as that experienced by abused children. However, considering the increasing number and impact of child neglect, it requires special attention from the government and society to effectively address it.

The role of the state is crucial in achieving social welfare. The state aims to improve the welfare of its citizens. In running its government, the state has a constitution as its fundamental law. The word "constitution" comes from the French word "Constituer," which means to form. According to Jimly Asshiddiqie, the constitution is the basic law that serves as a guideline for governing a state.¹⁰The state and society are interconnected and inseparable, as they are interdependent components. The state issues regulations and policies for society, and society needs policies.¹¹

The Constitution is a written constitution that holds the highest position in the hierarchy of laws and regulations. In running the state, it grants power to the state

⁹Bagong Suyanto, *Social Problems of Children Revised Edition* (Jakarta: Prenadamedia Group, 2013), 218

¹⁰Jimly Asshiddiqie, *Constitutional Law & Pillars of Democracy* (Jakarta: Sinar Grafika, 2012), 198-201.

¹¹I. Wibowo, *State and Society: Reflecting on the Experience of the PRC* (Jakarta: Gramedia Pustaka Utama, 2000), 8.

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in the form of authority.¹²This authority was created by the government to regulate policies that impact general prosperity and welfare.

The 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) is the constitutional foundation of the Unitary State of the Republic of Indonesia. The 1945 Constitution of the Republic of Indonesia is the highest basic law in the implementation of national and state life which has been amended four times in 1999, 2000, 2001, 2002 and resulted in a much stronger formulation of the Constitution to guarantee the constitutional rights of its citizens. As mandated in Article 34 paragraph (1) states that "the poor and neglected children are cared for by the state". Looking at the meaning of the word "Pelihara" which means care and guard according to the Big Indonesian Dictionary, the State has been mandated with the responsibility by the constitution to look after and care for neglected children and the poor in Indonesia.¹³

The issue of legal protection and children's rights is one approach to implementing legal protection for children. In order for the protection of rights to be implemented properly and responsibly, legal regulations are needed to regulate it as stipulated in Article 34 paragraph (1) of the 1945 Constitution. Caring for the future of children is the same as caring for and saving the future of the Indonesian nation and state.¹⁴Therefore, provisions governing the obligations and responsibilities for the management and protection of children in Indonesia are very important. In Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, these obligations and responsibilities have been outlined, regulated in Chapter IV starting from Article 20 to Article 26, the state, government, society, family, and parents are obliged and responsible for the implementation of child protection.¹⁵

4. Conclusion

The function and role of the state in protecting constitutional rights, especially for neglected children in Indonesia, has now been sufficiently implemented, meaning that in accordance with the 1945 Constitution of the Republic of Indonesia Article

¹²Sjachran Basah, *Science of the State* (Bandung: Citra Aditya Bhakti, 1994), 135

¹³Anna Syahra, and Mulati, "Legal Aspects of State Responsibility for the Protection of Abandoned Children Reviewed from Article 34 Paragraph 1 of the 1945 Constitution of the Republic of Indonesia," *Adigama Law Journal* 1, no. 1 (2018): 6.

¹⁴Nurul Qamar and Farah Syah Rezah. *State Science (Staatswissenschaft)* (Jakarta: Mitra Wacana Media, 2015).

¹⁵Mardi Candra, *Aspects of Indonesian Child Protection: Analysis of Underage Marriage* (Jakarta: Prenadamedia Group, 2017), 61.

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34 Paragraph 1, the State through the Ministry of Social Affairs has established child welfare programs, including PKSA (Child Welfare Program) and TASA (Children's Social Savings). In these programs, neglected children get access to housing, education, birth certificates, clothing, food and shelter, health insurance and cash assistance so that neglected children's basic needs, both physical and spiritual, are met. However, during the implementation of these programs, many neglected children have not received benefits, and many are not properly targeted. This is because many neglected children are not registered with Child Welfare Institutions (LKSA). Furthermore, the implementation of protection related to neglected children is hampered by too many legal regulations, resulting in suboptimal protection for neglected children.

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