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

State Responsibility and Constitutional Protection for Women and Children in Indonesia: Between Legal Norms and Implementation

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Abstract. *The protection of women and children constitutes an essential aspect of state responsibility as guaranteed by the Constitution of Indonesia and various national and international human rights instruments. Although the legal framework has significantly evolved through constitutional provisions, statutory regulations, and public policies, its implementation continues to face substantial challenges, including the high incidence of violence against women and children, unequal access to justice, and insufficient institutional coordination in ensuring effective protection. This paper aims to examine the state's responsibility in providing constitutional protection for women and children in Indonesia and to analyze the gap between legal norms and their practical implementation. This study employs normative legal research using statutory, conceptual, and case approaches. The data are analyzed qualitatively through the examination of legislation, judicial decisions, and relevant academic literature. The findings indicate that Indonesia has established a relatively comprehensive constitutional and legal framework to protect the rights of women and children. However, the effectiveness of such protection remains constrained by weak law enforcement, limited institutional capacity, low public legal awareness, and inadequate coordination among relevant stakeholders. Accordingly, strengthening policy implementation, enhancing the capacity of law enforcement institutions, and harmonizing legal and institutional frameworks are necessary to ensure more effective constitutional protection for women and children in Indonesia.*

Keywords: *Children; Constitutional Protection; Human Rights; State Responsibility; Women.*

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1. Introduction

The protection of women and children constitutes a fundamental dimension of human rights and the rule of law in Indonesia. As groups that may experience various forms of structural, social, economic, and legal vulnerability, women and children require effective protection from discrimination, violence, exploitation, trafficking, and other violations of fundamental rights. The Indonesian constitutional framework provides an important normative foundation for such protection through the 1945 Constitution of the Republic of Indonesia. Constitutional guarantees concerning equality before the law, human dignity, non-discrimination, and the specific rights of children demonstrate that the protection of women and children is not merely a matter of governmental policy but represents a constitutional responsibility of the state. Consequently, the state bears an obligation to ensure that constitutional rights are effectively respected, protected, fulfilled, and enforced through legislation, institutions, public policies, and accessible legal remedies.

Nevertheless, the existence of constitutional and statutory guarantees does not necessarily ensure effective protection in practice. Indonesia has developed various legal instruments addressing violence against women and children, discrimination, trafficking, sexual violence, and child protection. However, significant challenges remain in translating these normative commitments into substantive protection. The discrepancy between law in the books and law in action can be observed through difficulties in accessing justice, limited institutional capacity, insufficient coordination among relevant agencies, inadequate resources, and social and cultural attitudes that may perpetuate discriminatory practices. Victims may encounter barriers when reporting violations, obtaining legal assistance, receiving appropriate services, or pursuing effective remedies. Women and children may also experience secondary victimization when legal and institutional procedures fail to adequately consider their specific vulnerabilities and needs.

This situation raises an important question concerning the extent to which Indonesia's constitutional commitment to protecting women and children has been effectively implemented. Constitutional recognition should not be evaluated solely through the existence of progressive legal provisions but also through the capacity of state institutions to transform those provisions into concrete and accessible protection. The effectiveness of state responsibility therefore requires an examination of the relationship between constitutional norms, statutory frameworks, institutional practices, and the experiences of victims.

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Against this background, reconstructing state responsibility through a victim-centred and rights-based protection model becomes essential. Such a model requires a shift from a predominantly reactive approach toward comprehensive mechanisms emphasizing prevention, protection, access to justice, rehabilitation, restitution, compensation, and social reintegration. Women and children must be positioned as rights-holders rather than merely passive recipients of state protection. At the same time, governmental institutions should be equipped with adequate resources, clear responsibilities, effective coordination mechanisms, and accountability standards.

2. Research Methods

This study employs normative legal research using statutory, conceptual, and case approaches. The data are analyzed qualitatively through the examination of legislation, judicial decisions, and relevant academic literature.

3. Results and Discussion

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

The constitutional protection of women and children in Indonesia is fundamentally rooted in the recognition of human dignity, equality, and fundamental rights under the 1945 Constitution of the Republic of Indonesia. The Constitution establishes human rights as an essential component of the relationship between the state and its citizens and consequently imposes obligations upon the state to respect, protect, fulfill, and enforce those rights.

Within this constitutional framework, women and children occupy an important position because their protection is closely connected with the principles of equality, non-discrimination, human dignity, and social justice. Article 27 paragraph (1) recognizes equality before the law, while Article 28D paragraph (1) guarantees equal treatment before the law.

More specifically, Article 28B paragraph (2) provides constitutional protection for children by recognizing their right to survival, growth, and development and their right to protection from violence and discrimination. These provisions demonstrate that the protection of women and children constitutes a constitutional responsibility rather than merely a matter of governmental policy.

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State responsibility in this context extends beyond the formulation of legal norms. The state is required to establish an effective legal and institutional framework through legislation, law enforcement, public services, and social policies capable of translating constitutional guarantees into substantive protection. For women, such responsibility includes protection from discrimination, gender-based violence, exploitation, trafficking, and other violations that may arise from unequal social and economic relationships.

For children, state responsibility encompasses protection against abuse, neglect, exploitation, trafficking, violence, and discrimination, while simultaneously ensuring access to education, healthcare, identity, and appropriate developmental opportunities. The constitutional obligation therefore requires the state to adopt both preventive and responsive measures.

The principle of state responsibility also requires attention to structural factors that may prevent women and children from effectively exercising their constitutional rights. Formal equality before the law does not necessarily produce substantive equality when victims face economic dependency, social stigma, limited legal knowledge, institutional barriers, or difficulties accessing justice.

Consequently, constitutional protection must be understood through a broader rights-based perspective that recognizes the particular vulnerabilities experienced by women and children without diminishing their status as autonomous rights-holders.

Moreover, the constitutional mandate requires coordination among governmental institutions, law-enforcement agencies, courts, healthcare providers, educational institutions, and social services. Effective protection cannot depend exclusively on criminal sanctions after a violation has occurred. It must include prevention, early intervention, victim assistance, rehabilitation, restitution, and reintegration. Such an approach reflects the understanding that state responsibility is continuous and multidimensional.

Ultimately, constitutional recognition provides the normative foundation for protecting women and children, but its effectiveness depends upon the state's capacity to transform constitutional principles into accessible and enforceable mechanisms. The existence of constitutional guarantees should therefore be evaluated not only through the strength of legal provisions but also through their practical implementation.

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A meaningful constitutional protection system requires the state to ensure that women and children can exercise their rights, obtain effective remedies when violations occur, and receive comprehensive protection that preserves their dignity, equality, security, and future development.

3.2. The Gap Between Legal Norms and the Implementation of Protection for Women and Children

Indonesia has established a relatively comprehensive legal framework for the protection of women and children through constitutional provisions, statutory regulations, and various institutional mechanisms. Nevertheless, the existence of legal norms does not necessarily guarantee their effective implementation.

A significant gap remains between the protection formally guaranteed by law and the protection actually experienced by women and children in practice. This gap illustrates the distinction between law in the books and law in action, where progressive legal provisions may encounter institutional, social, economic, and cultural obstacles during implementation.

Consequently, the effectiveness of legal protection must be assessed not merely from the number of regulations enacted but from the extent to which these regulations provide accessible, effective, and meaningful protection.

One of the principal challenges concerns the accessibility of justice. Women and children who become victims of violence, exploitation, trafficking, or discrimination may face difficulties in reporting violations and obtaining appropriate legal remedies. Fear of stigma, economic dependency, family pressure, limited legal awareness, and distrust of law-enforcement institutions can discourage victims from pursuing formal legal processes.

Children face additional barriers because of their age, psychological vulnerability, and dependence on adults. In some circumstances, legal procedures that are not sufficiently sensitive to their particular needs may cause secondary victimization and further undermine their willingness to seek justice.

Institutional limitations also contribute significantly to the implementation gap. Protection of women and children involves various institutions, including the police, prosecution services, courts, healthcare providers, social services, educational institutions, and local governments.

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Weak coordination among these institutions may result in fragmented services, delayed intervention, inconsistent responses, and inadequate protection for victims. Although legal mechanisms may formally provide rights to protection, assistance, rehabilitation, and remedies, these rights become ineffective when institutions lack sufficient resources, trained personnel, infrastructure, or clear mechanisms for inter-agency cooperation.

Another important issue is the persistence of social and cultural structures that may reinforce discrimination and unequal power relations. Legal reform cannot immediately eliminate attitudes that normalize violence, subordinate women, or regard children as passive objects rather than independent rights-holders. Therefore, implementation requires not only stronger law enforcement but also broader social transformation through education, public awareness, gender-sensitive policies, and child-protection programs.

Bridging the gap between legal norms and implementation consequently requires a shift from a predominantly formalistic approach toward substantive rights protection. The state must ensure that legal guarantees are accompanied by effective institutions, adequate resources, accessible complaint mechanisms, victim-centred procedures, and meaningful remedies.

Monitoring and accountability mechanisms should also be strengthened to evaluate whether government institutions fulfill their constitutional and statutory responsibilities. Ultimately, the success of Indonesia's legal framework for women and children depends on its capacity to transform normative guarantees into tangible protection. The true measure of legal effectiveness is therefore not simply whether protective laws exist, but whether women and children can safely exercise their rights, obtain justice, and receive comprehensive protection when those rights are violated.

3.3. Reconstruction of State Responsibility Through a Victim-Centred and Rights-Based Protection Model

The reconstruction of state responsibility for the protection of women and children in Indonesia requires a fundamental shift from a predominantly reactive legal approach toward a victim-centred and rights-based protection model. Although the state has established constitutional and statutory guarantees, the effectiveness of protection ultimately depends on whether these guarantees are translated into mechanisms that respond to the actual needs, vulnerabilities, and rights of victims.

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Women and children should therefore be recognized not merely as beneficiaries of state protection but as autonomous rights-holders whose dignity, participation, security, and recovery must constitute the central objectives of legal and institutional policies.

A victim-centred model requires the state to place the experiences and interests of victims at the centre of every stage of the protection process. This includes prevention, identification, reporting, investigation, prosecution, adjudication, recovery, and reintegration. Legal institutions should provide accessible complaint mechanisms and ensure that victims can report violations without intimidation, discrimination, or fear of retaliation. For children, procedures must be adapted to their age, maturity, psychological condition, and best interests. Similarly, women who experience violence or exploitation require gender-sensitive procedures that recognize the structural inequalities and social pressures that may prevent them from accessing justice. Such mechanisms are essential to prevent legal proceedings from becoming a source of secondary victimization.

A rights-based approach further requires the state to understand protection as a positive obligation rather than simply an obligation to refrain from violating individual rights. The government must actively establish policies, institutions, resources, and services capable of preventing violations and providing effective remedies when violations occur. Protection should therefore encompass access to legal assistance, healthcare, psychological services, temporary shelter, rehabilitation, restitution, compensation, and social reintegration. Criminal prosecution remains important, but punishment alone cannot fully restore the rights and dignity of victims.

The reconstruction of state responsibility must also strengthen institutional accountability and coordination. Protection mechanisms frequently involve multiple institutions, including law-enforcement agencies, courts, healthcare providers, social services, educational institutions, and local governments.

Their responsibilities should be clearly defined and supported by effective coordination, adequate funding, professional training, and measurable performance standards. Monitoring mechanisms should evaluate not only whether institutions comply with formal legal requirements but also whether victims actually receive effective protection and remedies.

Furthermore, women and children should be given meaningful opportunities to participate in decisions concerning their protection and recovery. Participation strengthens the legitimacy of protection policies and ensures that state

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interventions correspond to the diverse circumstances experienced by victims. In the case of children, participation must be implemented in accordance with their evolving capacities and best interests.

Ultimately, reconstructing state responsibility requires Indonesia to move beyond formal legal recognition toward substantive constitutional protection. A victim-centred and rights-based model connects legal norms with practical implementation by emphasizing prevention, accessibility, accountability, recovery, and empowerment.

The success of state responsibility should therefore be measured by whether women and children are able to exercise their rights, obtain effective remedies, recover from violations, and live with dignity and security. Such reconstruction would transform constitutional protection from a formal legal commitment into a practical system of rights protection responsive to the realities faced by vulnerable groups.

4. Conclusion

The analysis of state responsibility and constitutional protection for women and children in Indonesia demonstrates that the country possesses a substantial normative foundation for safeguarding their fundamental rights. The 1945 Constitution of the Republic of Indonesia establishes equality, human dignity, non-discrimination, and specific protection for children as essential constitutional principles. These provisions establish that the protection of women and children is not merely a matter of governmental discretion but constitutes a constitutional obligation that requires the state to respect, protect, fulfill, and enforce their rights. Consequently, state responsibility must be understood as extending beyond the formulation of legislation toward the establishment of effective institutions, policies, public services, and legal remedies capable of ensuring substantive protection. However, the existence of constitutional guarantees and comprehensive statutory regulations has not entirely eliminated the gap between legal norms and their implementation. Women and children continue to encounter various obstacles in accessing justice and obtaining effective protection. Institutional fragmentation, limited resources, inadequate coordination, insufficient victim-oriented services, and disparities in institutional capacity may weaken the practical effectiveness of legal protection. In addition, social stigma, economic dependency, cultural attitudes, and limited legal awareness can further prevent victims from reporting violations and pursuing remedies. These circumstances demonstrate that formal legal equality does not automatically produce substantive equality. The effectiveness of constitutional



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protection must therefore be assessed by examining how legal norms operate in practice and whether they genuinely respond to the needs of victims.

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