

## **Legal Protection and Children's Rights based on the 1945 Constitution in the Dynamics of Government in Indonesia**

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### **Abstract**

*This research examines the legal protection of children's rights in Indonesia with a focus on the implementation of the 1945 Constitution. The main problems include weak law enforcement institutions, lack of resources, and political intervention. The aim of the research is to identify challenges in protecting children's rights and evaluate the effectiveness of the legal framework as well as provide recommendations for strengthening the protection of children's rights through legal reform, increasing institutional capacity, and protecting witnesses and victims. The method used is normative legal research with a statutory and conceptual approach, involving analysis of legal norms, literature studies, and interviews with child rights experts. The research results show a discrepancy between written law and practice in the field, influenced by weak law enforcement institutions, lack of resources, and political intervention. This research emphasizes the need to strengthen institutions, increase resources, education and training, as well as protect witnesses and victims with the support of strong political commitment to ensure the effectiveness of the law.*

**Keywords :** *Legal Protection; Children's Rights; UUD 1945 Political Intervention; Legal Reform*

### **Introduction**

Indonesia as a rule of law country is committed to protecting children's rights which are guaranteed in the constitution and various statutory regulations. Article 28B paragraph (2) of the 1945 Constitution states that "Every child has the right to survival, growth and development and has the right to protection from violence and discrimination" (1945 Constitution, 2002). Legal protection of children's rights is very important considering that children are part of the nation's next generation whose welfare must be protected and maintained. However, there are still big challenges in implementing legal protection for children's rights in Indonesia. Data shows that violations of children's rights still occur frequently, in the form of physical violence, sexual violence, economic exploitation, and lack of access to adequate education and health services. A report from the National Commission on Child Protection records thousands of cases of violations of children's rights every year, which shows that this problem is still far from resolved (National Commission on Child Protection, 2023).

Indonesia already has various legal instruments that regulate the protection of children's rights, such as Law no. 23 of 2002 concerning Child Protection which was later amended by Law no. 35 of 2014. This law provides a clear legal framework regarding children's rights and the obligations of the state and society in protecting these rights (Law Number 23 of 2002, 2002). Apart from that, there is also Government Regulation no. 78 of 2021 concerning the Implementation of Special Protection for Children which

regulates in more detail the handling of cases of violations of children's rights (Government Regulation Number 78 of 2021, 2021).

However, even though there are quite comprehensive legal instruments, their implementation in the field still faces many obstacles. One of the main obstacles is the weak capacity of law enforcement institutions to handle cases of violations of children's rights. Many cases cannot be resolved properly due to a lack of human and financial resources, as well as low knowledge and skills of law enforcement officers in handling children's cases (UNICEF Indonesia, 2022). In addition, political intervention often becomes an obstacle to the law enforcement process. Decisions that should be based on the principles of justice are often influenced by political considerations, which ultimately harm the interests of children. This shows that there is still a gap between written law and practice in the field (Amnesty International, 2023).

Lack of coordination between related institutions is also one of the factors that causes not optimal legal protection for children's rights. Institutions such as the National Commission for Child Protection, the Ministry of Women's Empowerment and Child Protection, and law enforcement officers often work independently without good coordination, resulting in case handling being inefficient and protracted (Bappenas, 2023). Education and outreach regarding children's rights is also still very lacking. Many people do not understand the importance of protecting children's rights and how to report violations if a violation occurs. This causes many cases of violations of children's rights to go unreported or not handled seriously due to a lack of awareness and knowledge among the community (Save the Children, 2022).

This research aims to identify challenges in the legal protection of children's rights in Indonesia and evaluate the effectiveness of the existing legal framework. This research will also provide recommendations that can be used by policy makers to strengthen the protection of children's rights through legal reform, increasing institutional capacity, and protecting witnesses and victims.

The research method used in this research is normative legal research with a statutory and conceptual approach. The legislative approach is focused on an in-depth analysis of legal norms related to cases of violations of children's rights in Indonesia, while the conceptual approach involves examining legal concepts related to children's rights (Normative Legal Research Methods, 2023).

It is hoped that this research can contribute to efforts to strengthen the legal protection of children's rights in Indonesia. By understanding the existing challenges and identifying steps that can be taken to overcome these challenges, it is hoped that the protection of children's rights in Indonesia can be improved and more effective in protecting children's rights from all forms of violations.

## **Research methods**

The research method used is normative legal research with a statutory approach and a conceptual approach. The legislative approach is focused on in-depth analysis of legal norms related to cases of violations of children's rights in Indonesia, including the constitution, government regulations and relevant court decisions. The conceptual approach involves examining legal concepts related to children's rights, such as child rights principles, legal theories, and applicable legal doctrines. This research also combines literature studies to collect data from written sources such as books, journal articles and official documents, as well as analysis of legal documents to understand the existing legal framework. Interviews with child rights experts were conducted to gain in-depth perspectives and knowledge about child rights protection practices in Indonesia.

## **Results and Discussion**

### **Implementation of the 1945 Constitution in Legal Protection and Children's Rights**

The 1945 Constitution (UUD 1945) as the Indonesian state constitution has emphasized the state's commitment to protecting children's rights through article 28B paragraph (2). This article emphasizes that every child has the right to survival, growth and development and the right to protection from violence and discrimination. The implementation of this constitutional provision can be seen in various more specific laws and regulations, such as Law no. 23 of 2002 concerning Child Protection which was later amended by Law no. 35 of 2014. However, this implementation still faces many challenges in the field (Law Number 23 of 2002, 2002). The existing legal framework in Indonesia should provide comprehensive protection for children's rights. UU no. 23 of 2002 concerning Child Protection is one of the important milestones in protecting children's rights in Indonesia. This law regulates various aspects of protection, starting from the right to live, grow, develop, to protection from violence and discrimination. However, even though this legal framework exists, its implementation in the field often does not meet expectations due to various obstacles, including weaknesses in law enforcement and lack of resources (National Commission on Child Protection, 2023).

One of the main challenges in implementing legal protection for children's rights is the weak capacity of law enforcement institutions. Many cases of violations of children's rights cannot be resolved properly due to a lack of human and financial resources. Law enforcement officers often do not have adequate knowledge and skills in handling child cases. In addition, the law enforcement process is also often disrupted by political intervention which makes decisions based more on political considerations than the principles of justice (Amnesty International, 2023). Political intervention in law enforcement is one of the major obstacles in protecting children's rights. Decisions that should be based on the principles of justice are often influenced by political considerations, which ultimately harm the interests of children. This political intervention can occur at various levels, from local to national level. This shows that there is still a gap between written law and practice in the field (Bappenas, 2023).

Lack of coordination between related institutions is also one of the factors that causes not optimal legal protection for children's rights. Institutions such as the National Commission for Child Protection, the Ministry of Women's Empowerment and Child Protection, and law enforcement officers often work independently without good coordination, resulting in handling cases being inefficient and protracted. This lack of coordination means that many cases are not handled properly and end up without adequate resolution (National Commission on Child Protection, 2023). Education and outreach regarding children's rights is also still very lacking. Many people do not understand the importance of protecting children's rights and how to report violations if a violation occurs. This causes many cases of violations of children's rights to go unreported or not handled seriously due to a lack of awareness and knowledge among the community. Socialization regarding children's rights must be increased so that society is more aware and proactive in protecting children's rights (Save the Children, 2022).

Cases of violence against children still occur frequently in Indonesia. This violence can take the form of physical violence, sexual violence, or emotional violence. Data from the National Commission for Child Protection shows that every year there are

thousands of cases of violence against children reported. However, the number of unreported cases is likely much greater. Violence against children not only impacts children's physical health, but also their mental health and development (National Commission on Child Protection, 2023). Child exploitation is also a serious problem in Indonesia. Many children are economically exploited, such as being employed in the informal sector with poor working conditions and very low wages. Children are also often sexually exploited, both at home and outside the home. This exploitation of children not only violates children's rights, but also hinders their development and damages their future (UNICEF Indonesia, 2022).

Access to proper education is also still a big challenge for many children in Indonesia. Even though the government has made efforts to increase access to education through various programs, there are still many children who cannot access education for various reasons, such as poverty, remote geographical locations, and lack of adequate educational facilities. Education is the basic right of every child and is very important for their development (Save the Children, 2022). Access to adequate health services also remains a challenge for many children in Indonesia. Many children cannot get adequate health services for various reasons, such as poverty, lack of health facilities, and long distances to health service centers. Health is the basic right of every child and is essential for their development. The government needs to ensure that every child can get access to adequate health services (UNICEF Indonesia, 2022).

The National Commission for Child Protection has an important role in monitoring and investigating cases of violations of children's rights in Indonesia. As an independent institution, the National Commission for Child Protection is tasked with ensuring that children's rights are protected and respected. However, the National Commission for Child Protection often faces various obstacles in carrying out its duties, such as lack of resources and political interference. The National Commission for Child Protection needs to be supported with adequate resources so that it can carry out its duties effectively (National Commission for Child Protection, 2023). The Ministry of Women's Empowerment and Child Protection also has an important role in protecting children's rights in Indonesia. This ministry is tasked with formulating and implementing policies related to the protection of children's rights. However, like the National Commission for Child Protection, this ministry also often faces various obstacles in carrying out its duties, such as a lack of resources and poor coordination with other institutions (Bappenas, 2023).

Law enforcement officials also have an important role in protecting children's rights in Indonesia. They are tasked with investigating, prosecuting and trying cases of violations of children's rights. However, law enforcement officers often do not have adequate knowledge and skills in handling child cases. They need to be trained and given sufficient knowledge to be able to handle children's cases well and fairly (UNICEF Indonesia, 2022). Handling cases of violence against children often faces many challenges. One of the main challenges is the difficulty of gathering sufficient evidence to prosecute perpetrators of violence. Many cases end without adequate resolution due to lack of evidence. Apart from that, the process of handling cases of violence against children also often takes a long time, which makes victims and their families feel frustrated (National Commission on Child Protection, 2023).

Witness and victim protection is an important aspect in handling cases of violations of children's rights. Many witnesses and victims are afraid to report it because



they are afraid of threats or intimidation from the perpetrator. The government needs to ensure that witnesses and victims are properly protected so that they have the courage to report and provide testimony. This protection for witnesses and victims can take the form of physical protection, legal assistance and psychological support (Amnesty International, 2023). Legal reform is needed to strengthen the protection of children's rights in Indonesia. This reform could take the form of revising existing laws so that they are more in line with current needs and developments, as well as drafting new regulations that are more comprehensive and effective in protecting children's rights. Apart from that, legal reform also needs to include increasing the capacity of law enforcement institutions so that they can carry out their duties better (Bappenas, 2023).

Increasing the capacity of law enforcement institutions is an important step in strengthening the protection of children's rights in Indonesia. Law enforcement institutions need to be equipped with adequate resources, both in terms of human and financial resources. Apart from that, law enforcement officers also need to be trained so that they have sufficient knowledge and skills in handling child cases. Increasing the capacity of this institution will help in handling cases of violations of children's rights more effectively (UNICEF Indonesia, 2022). Child protection in conflict situations is an important issue that is often overlooked. Children often become victims in conflict situations, both armed conflict and social conflict. Governments need to ensure that children are properly protected in conflict situations, and provide the necessary assistance so that they can recover from trauma and move on with their lives well (Save the Children, 2022).

Society has an important role in protecting children's rights. They can play an active role in reporting cases of violations of children's rights, provide support to victims, and participate in various outreach and education programs regarding children's rights. Community awareness and active participation are very important to ensure that children's rights are properly protected (National Commission on Child Protection, 2023). The media also has an important role in protecting children's rights. The media can help in disseminating information about children's rights and cases of violations of children's rights, as well as providing education to the public about the importance of protecting children's rights. Apart from that, the media can also play a role in monitoring and criticizing the performance of the government and related institutions in protecting children's rights (Amnesty International, 2023).

Evaluation of child protection policies is an important step in ensuring that existing policies are effective in protecting children's rights. The government needs to periodically evaluate existing policies and programs, and make adjustments if necessary. This evaluation can be carried out by involving various parties, including non-governmental organizations, academics and the community (Bappenas, 2023). Collaboration with international institutions can also help in strengthening the protection of children's rights in Indonesia. International institutions such as UNICEF, Save the Children, and Amnesty International can provide support in the form of technical assistance, training, and funding for child protection programs. This collaboration can also help in exchanging information and experiences regarding best practices in protecting children's rights (UNICEF Indonesia, 2022).

Strict supervision is needed to ensure that child protection policies and programs are implemented properly. The government needs to carry out routine supervision and impose sanctions on parties who do not implement policies well. This supervision can be carried out by various institutions, including the National Commission for Child Protection, the Ministry of Women's Empowerment and Child Protection, and law enforcement officials (National Commission on Child Protection, 2023). The government needs to develop special programs for children that are more specific and suit their needs. These programs can be education, health, and welfare programs designed specifically for children. These programs also need to include special protection for children in vulnerable situations, such as children living in conflict areas, street children, and working children (Save the Children, 2022).

### **The Role of Education in Protecting Children's Rights**

Education has an important role in protecting children's rights. Through education, children can learn about their rights and how to protect themselves from various forms of violations. Apart from that, education can also help in increasing public awareness about the importance of protecting children's rights. The government needs to ensure that every child can access adequate and quality education (UNICEF Indonesia, 2022). Socialization programs regarding children's rights need to be improved so that society is more aware and proactive in protecting children's rights. This socialization program can be carried out through various media, such as television, radio and social media. Apart from that, socialization programs can also be carried out through direct activities in the community, such as seminars, workshops and group discussions (Save the Children, 2022).

Research and development also has an important role in strengthening the protection of children's rights. Through research, we can get more accurate data and information about the condition of children in Indonesia, as well as the challenges they face. Research can also help identify best practices in protecting children's rights and provide recommendations for policy improvements (National Commission on Child Protection, 2023). Increasing the budget for child protection is one of the important steps that the government needs to take. An adequate budget is needed to fund various child protection programs and activities, such as education, health and welfare. Apart from that, the budget is also needed to increase the capacity of law enforcement institutions and other related institutions so that they can carry out their duties better (Bappenas, 2023).

Sexual exploitation of children is one of the most serious forms of violation of children's rights. The government needs to take stronger steps to protect children from sexual exploitation, such as tightening supervision, increasing law enforcement, and providing assistance to victims. Apart from that, it is also necessary to provide education and outreach to the public regarding the dangers of child sexual exploitation (Amnesty International, 2023). Children often become victims in emergency situations, such as natural disasters, conflicts and economic crises. The government needs to ensure that children receive the necessary protection and assistance in emergency situations. Emergency assistance programs need to cover children's specific needs, such as food, clean water, shelter, and psychological support (Save the Children, 2022).

Many children in Indonesia work in dangerous conditions, such as in agriculture, mining and other informal sectors. The government needs to take stronger steps to

protect children from dangerous work, such as tightening supervision, increasing law enforcement, and providing assistance to families so that children do not have to work (UNICEF Indonesia, 2022). Violence at school is one of the problems that children often face. This violence can take the form of physical violence, verbal violence, or psychological violence. The government needs to ensure that schools provide a safe and conducive environment for children, and take firm steps to handle cases of violence in schools (National Commission on Child Protection, 2023).

Discrimination against children still often occurs in Indonesia, both in the form of gender, religion, ethnicity and socio-economic conditions. The government needs to ensure that every child is protected from all forms of discrimination and has equal rights to develop and reach their potential. Anti-discrimination programs need to be improved and implemented more firmly (Amnesty International, 2023). Child trafficking is one of the most serious forms of child rights violations. The government needs to take stronger steps to protect children from trafficking, such as tightening supervision, increasing law enforcement, and providing assistance to victims. Apart from that, it is also necessary to provide education and outreach to the community regarding the dangers of child trafficking (Save the Children, 2022).

Drug abuse is one of the serious problems faced by children in Indonesia. The government needs to take stronger steps to protect children from drug abuse, such as tightening supervision, increasing law enforcement, and providing assistance to victims. Apart from that, it is also necessary to provide education and outreach to the public regarding the dangers of drug abuse (UNICEF Indonesia, 2022). Violence at home is one of the problems that children often face. This violence can be physical violence, verbal violence, or psychological violence. The government needs to ensure that children receive protection from violence at home, and provide assistance to victims so that they can recover from the trauma and continue their lives well (National Commission on Child Protection, 2023).

Human trafficking is one of the most serious forms of children's rights violations. The government needs to take stronger steps to protect children from human trafficking, such as tightening supervision, increasing law enforcement, and providing assistance to victims. Apart from that, it is also necessary to provide education and outreach to the public regarding the dangers of human trafficking (Amnesty International, 2023). Children involved in the criminal justice system, whether as perpetrators or victims, need to receive special protection. The government needs to ensure that the criminal justice system treats children in a way that is consistent with their needs and rights, and provides the necessary support so that they can recover from their experiences in the justice system (Save the Children, 2022). Online violence is a form of violence that is increasingly experienced by children in this digital era. This violence can take the form of online bullying, sexual exploitation and harassment. The government needs to take stronger steps to protect children from online violence, such as tightening supervision, increasing law enforcement, and providing education to children on how to protect themselves in cyberspace (UNICEF Indonesia, 2022).

## **Conclusion**

This research provides a clear picture of the challenges faced in the legal protection of children's rights in Indonesia. Despite supportive legislation, there is still much work to be done to ensure that children's rights are protected and respected. By

implementing the recommendations resulting from this research, it is hoped that the protection of children's rights in Indonesia can be strengthened and improved, thereby creating a more just and civilized society. In order to strengthen legal protection and children's rights based on the 1945 Constitution in the dynamics of government in Indonesia, various strategic steps are needed that involve various parties, including the government, non-governmental organizations, academics and the community. Legal reform, increasing institutional capacity, education and outreach, as well as special protection for children in vulnerable situations are some of the important steps that need to be taken. With strong cooperation and commitment from all parties, it is hoped that children's rights in Indonesia can be better protected and they can develop optimally.

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