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The Transformation of the State's Role in Child Protection in Indonesia

Sulistyowati[1], Widya Romasindah Aidy[2], Gusti Bintang Maharaja[3]
[1,2]Universitas Nasional, Jakarta
[3]Universitas Pembangunan Nasional "Veteran" Jakarta
Koresponden : sulistyowatiadvokat@gmail.com

Abstract

The state's role in child protection in Indonesia has undergone a fundamental shift over time. Initially, the Indonesian state played only a minimal role, adopting a charitable or philanthropic approach. However, over time—and driven by various pressures from international law as well as domestic needs—the state became the primary guarantor of the fulfillment and protection of children's rights. This transformation did not occur suddenly but rather through a series of ratifications of international conventions, constitutional amendments, and the establishment of various laws and child protection institutions. This article aims to provide an in-depth analysis of the evolution of child protection law and policy in Indonesia, as well as a theoretical reconstruction of the state's responsibilities. Additionally, this article examines the implementation of institutional structures and the decentralization of services. The method used is a literature review employing a normative qualitative approach. The findings indicate that although various national indicators—such as the child protection index—continue to improve and public awareness regarding the reporting of violence cases is also increasing, there remain several serious structural barriers. These obstacles include a shortage of professional human resources at the regional level, weak inter-sectoral coordination, and a legal vacuum regarding the criminal liability of parents who neglect their duty to supervise their children. This article recommends strengthening regional capacity by recruiting experts, reforming juvenile criminal law by applying the theory of dual liability, integrating the national information system, and fostering sustainable cross-sectoral collaboration.
Keywords: Child Protection, State Transformation

INTRODUCTION

Child protection is a global issue that continues to receive serious attention from various countries, including Indonesia. As the nation's future generation, children have fundamental rights that must be fulfilled, protected, and guaranteed by the state. However, throughout its history, the Indonesian state's role in child protection has not always been as strong and clear as it is today. In the early years of independence, the approach taken was more charitable in nature and limited to social welfare. Children were not yet viewed as legal subjects with autonomous rights but were more often treated as objects of social assistance. [1]

A paradigm shift began when Indonesia joined the broader international human rights movement. The adoption of the 1924 Geneva Declaration of the Rights of the Child, the 1948 Universal Declaration of Human Rights, and the 1959 United Nations Declaration of the Rights of the Child served as important moral foundations. However,

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the most decisive turning point came when the United Nations adopted the Convention on the Rights of the Child on November 20, 1989. This convention is legally binding on the states that ratify it. Indonesia finally ratified the convention through Presidential Decree No. 36 of 1990. This ratification radically transformed the focus of child protection policy in Indonesia. Children's rights are no longer merely a matter of prohibiting child labor or providing assistance; rather, they are comprehensively recognized as civil, political, economic, social, and cultural rights equal to those of adult citizens.

Following the 1998 reforms, the state's commitment to child protection was further strengthened. The Second Amendment to the 1945 Constitution of the Republic of Indonesia explicitly incorporated children's rights into Article 28B, paragraph 2. This constitutional mandate was subsequently elaborated in various organic laws, including Law No. 39 of 1999 on Human Rights, Law No. 23 of 2002 on Child Protection—later amended by Law No. 35 of 2014—and Law No. 11 of 2012 on the Juvenile Criminal Justice System. Additionally, the government established the Indonesian Child Protection Commission (KPAI) as an independent state institution tasked with overseeing the fulfillment of children's rights. [2]

Although regulatory and institutional progress have been quite rapid, implementation on the ground still faces various challenges. National data show that cases of violence against children, particularly sexual violence, continue to rise each year. Furthermore, the Child-Friendly City and Regency (KLA) policy promoted by the Ministry of Women's Empowerment and Child Protection also faces capacity disparities across regions. Many regions fail to meet minimum administrative standards due to limited human resources, budget constraints, and weak cross-sectoral coordination. On the other hand, within the family court system, although judges have been granted ex officio authority to protect children's rights following divorce, there are still many cases where child support is not paid or custody arrangements are not carried out in accordance with the principle of the child's best interests.

Based on the above background, this article is structured around two main questions that will form the focus of the discussion. First, how has the legal policy on child protection evolved in Indonesia, and what is the theoretical reconstruction of the state's responsibility based on the concept of the welfare state and the parens patriae doctrine? Second, how do the implementation of institutional structures, the decentralization of child protection services, the "Child-Friendly City and Regency" policy, and the dynamics of family law following divorce effectively ensure children's rights? The purpose of this article is to present a comprehensive, systematic, and in-depth analysis of the transformation of the state's role in child protection in Indonesia, along with the challenges still faced, and to formulate strategic policy directions for the future.

RESULTS AND DISCUSSION

The Evolution of Child Protection Law and the Theoretical Reconstruction of State Responsibility

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The history of global child protection began in the early twentieth century. The 1924 Geneva Declaration was the first international instrument to address children's rights specifically. After World War II, the international community felt the need to establish a world order that better respected human rights. This led to the 1948 Universal Declaration of Human Rights, which, although it did not specifically address children, served as the foundation for recognizing every individual's rights. Then, in 1959, the UN General Assembly adopted a more comprehensive Declaration of the Rights of the Child. However, this declaration remained non-binding and lacked legal force.

The desire to create an internationally binding legal instrument grew stronger. In 1979, the Polish government proposed that the UN draft a convention on the rights of the child that all member states must ratify. A lengthy drafting process involving many parties finally culminated in the adoption of the Convention on the Rights of the Child by the UN on November 20, 1989. This Convention recognizes children as legal subjects who possess civil, political, economic, social, and cultural rights. The four main principles of this Convention are non-discrimination, the best interests of the child, the right to life and development, and respect for the child's views.

In Indonesia, child protection policy, before a minimalist approach, dominated the reform era, focused on labor protection and social welfare. In the early years of independence, a significant breakthrough came through Supreme Court Circular Letter No. 6 of 1959, which stipulated that criminal proceedings involving children must be conducted in closed sessions. This marked the first step toward protecting children in conflict with the law from social stigmatization. Subsequently, a key milestone in national regulation was marked by the enactment of Law No. 4 of 1979 on Child Welfare. Based on this law, the Association of Indonesian Kindergarten Organizations proposed July 23 as National Children's Day, which was later officially designated through Presidential Decree No. 44 of 1984.

The most radical transformation in legal policy occurred when Indonesia ratified the Convention on the Rights of the Child through Presidential Decree No. 36 of 1990.[1] This ratification shifted the policy focus from merely prohibiting child labor to a comprehensive recognition of children's rights as equal citizens. Following the reform era, this commitment was strengthened through the Second Amendment to the 1945 Constitution, which explicitly incorporated children's rights into Article 28B, paragraph 2. Regulations on child protection were subsequently systematically codified through various new laws. Law No. 39 of 1999 on Human Rights affirms children's rights as an integral part of human rights and requires that they be protected by parents, families, society, and the state. Law No. 23 of 2002 on Child Protection adopts the principles of the Convention on the Rights of the Child, encompasses 31 children's rights [2], and defines a child as any person from the moment of conception until the age of 18. Law No. 35 of 2014, amending Law No. 23 of 2002, clarifies the shared legal responsibilities among parents, society, the central government, and local governments. In addition, Indonesia has also ratified the Optional Protocols to the Convention on the Rights of the Child concerning the involvement of children in armed conflict, as well as concerning the

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sale of children, child prostitution, and child pornography, through Law No. 9 of 2012 and Law No. 10 of 2012, respectively.

Theoretically, the transformation of the state's role in child protection in Indonesia is underpinned by two main pillars: the concept of the welfare state and the doctrine of parens patriae. These two pillars provide both legal and philosophical justification for state intervention in the family's domestic sphere to protect the human rights of vulnerable children.

From a welfare state perspective, the state bears an absolute responsibility to ensure the fulfillment of its citizens' basic needs, including social security, education, health care, and special protection for vulnerable groups such as children.[3] The primary goal is to minimize social inequality arising from free-market mechanisms. Theoretically, there are various models of the welfare state worldwide. Institutional or universal models, such as in Sweden, prioritize the broad rights of citizens without conditions. Corporate or Bismarckian models, such as in Germany, place greater emphasis on employment-based social contributions. Residual models, such as those in the United Kingdom and the United States, are selective and short-term in nature. Meanwhile, minimalist models are implemented by developing countries such as Indonesia, the Philippines, and Sri Lanka due to limited budgets for social development.

Constitutionally, Indonesia has adopted a fairly strong welfare mandate. This is enshrined in Article 34, Paragraph 1 of the 1945 Constitution, which clearly states that the poor and neglected children are to be cared for by the state. This policy obligates the government to restore the rights of neglected children so they can grow and develop normally, just like other children. One example of this welfare concept's implementation can be seen in Purbalingga Regency. The local government formulated a women-friendly policy for the false hair and eyelash industry.[4] This policy aims to support the economic independence of mothers to prevent child neglect resulting from poverty.

Meanwhile, still on the topic of protection, there is the doctrine of parens patriae, which originates in ancient English law, in which the state acts as a protective parent—a concept frequently encountered in environmental law.[5] However, within that legal system, the king also held the prerogative to act as a protector or parent for individuals unable to defend themselves, including children. In Indonesia, this principle was first enshrined in theory in Article 6, paragraph 2, of Law No. 4 of 1979, which states that children who commit legal violations must be provided with services and care, not merely punishment. This doctrine emphasizes that law enforcement officials must act as providers of assistance, companions, and protectors, not as cold-hearted executioners.

The principle of parens patriae was subsequently implemented progressively through Law No. 11 of 2012 on the Juvenile Criminal Justice System (SPPA). This law mandates the application of restorative justice through diversion mechanisms at every stage of the proceedings. The aim is to avoid social stigmatization, limit the detention of children to a last resort, and support the social reintegration of children back into society. However, theoretical analysis reveals a fundamental flaw in Indonesia's SPPA

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Law. This weakness lies in the lack of provisions regarding the criminal liability of parents—referred to as “parental criminal liability”—for criminal acts committed by minors. This creates a legal vacuum because the law positions the child as an autonomous perpetrator without considering the factor of parental neglect, which is often the root of the problem.

To address this shortcoming, experts have developed a new theory known as the Theory of Dual Accountability. This theory recommends imposing proportional criminal or administrative sanctions on parents who are proven beyond a reasonable doubt to have been negligent in supervising their children. Such sanctions may include fines, community service, or mandatory participation in parenting programs. In addition, the doctrine of protection also encompasses the state’s obligation to restore the rights of child victims of violence through restitution mechanisms. Restitution is compensation that must be paid by the perpetrator to the child victim or their heirs, based on the principle of restoration to the original state [6], or restitutio in integrum. This right is explicitly guaranteed in Article 71D(2) of Law No. 35 of 2014 and is further regulated by Government Regulation No. 44 of 2008 and Government Regulation No. 3 of 2003

Institutional Implementation, Service Decentralization, KLA Policy, and the Dynamics of Family Law

The transformation of the state’s role in child protection does not stop at the level of regulations and theory. Still, it is also realized in practice through the establishment of an independent oversight agency and the decentralization of technical service units down to the regency and city levels. This step is intended to ensure that cases of violence against children are handled promptly, effectively, and accountably at the local level.

The Indonesian Child Protection Commission, abbreviated as KPAI, was established pursuant to Presidential Decree No. 77 of 2003. KPAI is an independent state institution tasked with overseeing the fulfillment of children’s rights throughout Indonesia. It is important to distinguish KPAI from other institutions such as the Indonesian Child Protection Agency (LPAI) and the National Commission for Child Protection (Komnas PA). The latter two institutions are civil society organizations that do not possess formal oversight authority like KPAI. In carrying out its functions, KPAI promotes the establishment of Regional Indonesian Child Protection Commissions (KPAID) at the provincial and regency/city levels in a vertical structure to strengthen oversight at the local level.

To enhance the effectiveness of oversight, KPAI implements various strategic partnership programs with national partner institutions. Collaboration with the Directorate of Women and Children’s Protection (PPA PPO) under the Criminal Investigation Division (Bareskrim) of the Indonesian National Police aims to accelerate coordination in handling cases of physical and sexual violence against children. The partnership with the HMI Women’s Corps (KOHATI) focuses on creating a safe, supportive, and violence-free family care ecosystem. Meanwhile, the collaboration with

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the Master's Program in Sociology at the Faculty of Social and Political Sciences (FISIPOL), UNESA, is directed toward conducting scientific research and preventing cases of child homicide by parents—a phenomenon known as filicide. Additionally, KPAI is collaborating with the Special Detachment 88 (Densus 88) Anti-Terrorism Unit to carry out rehabilitation and deradicalization for children who have been exposed to terrorist networks.

At the regional level, the Ministry of Women's Empowerment and Child Protection (Kemen PPPA), in collaboration with Bappenas and with support from UNICEF, has published the Child Protection System (SPA) Pocket Guide. This guide serves as a reference for local governments in planning comprehensive and integrated child protection programs. Implementation of the child protection system is then delegated to the Regional Technical Implementation Unit for Women's and Children's Protection (UPTD PPA), established at the regency and city levels.

The UPTD PPA is responsible for providing various operational services. These services include 24-hour safe houses or shelters, legal assistance for victims, and psychological recovery services through counseling and therapy. Interestingly, according to Moore's 1995 Public Value Theory proposed by Moore in 1995, the performance of service units such as the UPTD PPA should not be evaluated solely on administrative compliance.[1] While adherence to procedures is important, the primary measure of success is the extent to which these services deliver tangible value for the safety, justice, and restoration of children's rights. For example, the UPTD PPA in Siak Regency was deemed successful not because of its meticulous reporting, but because it was able to restore a sense of safety to victims of violence.

The dynamics of case handling by UPTD PPAs at the regional level can be seen from actual data in Bandung City in 2025. Throughout that year, a total of 196 cases of violence against children were reported and handled. In addition, there were 94 cases of spousal abuse, 90 cases of violence against women, as well as one case of domestic violence and one case of violence against a man. The year-over-year increase in the number of reported cases in various regions, such as Bandung and Sidoarjo, reflects two contrasting social phenomena. On the one hand, this data reveals the "tip of the iceberg"—cases of violence that had long been hidden due to shame, fear, or social pressure are finally coming to light and being reported. On the other hand, this increase also indicates that public awareness and trust in state protection agencies are growing. The public no longer hesitates to report incidents because they feel the state will provide support and ensure justice.

The success of national child protection programs is periodically evaluated using a quantitative indicator known as the Child Protection Index (IPA).[2] This index is compiled by the Ministry of Women's Empowerment and Child Protection (PPPA) in collaboration with the Central Statistics Agency (BPS). The IPA consists of two main dimensions. The first dimension is the Child Rights Fulfillment Index (IPHA), which measures clusters of civil, family, health, and educational rights. The second dimension is the Special Child Protection Index (IPKA), which measures the handling of children in

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emergencies, such as children involved in legal conflicts, child victims of disasters, or children in situations of economic exploitation. Since 2024, the Ministry of Women's Empowerment and Child Protection has refined the IPA calculation by reducing the number of indicators from 27 to just 19. The goal is to improve the precision and focus of the measurement.

Nationally, the projected IPA score has continued to increase gradually year over year. However, the education and civil rights clusters remain the greatest challenges. These two clusters have relatively low sectoral index scores due to persistent disparities in access to school and health facilities between urban and rural areas. Children in remote or underdeveloped areas still face difficulties accessing quality education and adequate health services.

Data compiled in the SIMFONI PPA information system show that the number of reported cases of violence nationwide reached 26,889 in 2023. Of this total, sexual violence ranked highest with a total of 12,056 victims. An in-depth sociological analysis has successfully debunked a long-held social myth—namely, the myth linking sexual violence to the way victims dress. A survey conducted by the Coalition for Safe Public Spaces (KRPA), involving 62,224 respondents, proved that the majority of sexual assault victims were actually wearing modest, loose-fitting clothing—and some were even wearing a hijab—at the time the assault occurred. Furthermore, boys are also vulnerable to becoming targets of sexual violence. Data shows that 2,888 cases of sexual violence were committed against boys. Quantitative research conducted by INFID in collaboration with the Demography Institute at the University of Indonesia indicates that perpetrators of sexual violence are predominantly drawn from the victim's immediate social circle. Friends accounted for the highest percentage at 33.3 percent, followed by strangers at 30.2 percent, and romantic partners or boyfriends/girlfriends at 13.4 percent. Cases of sexual violence also frequently occur in alternative settings such as boarding schools run by religious educational institutions. This situation demands much stricter state oversight of these institutions.

The transformation of the state's role in safeguarding children's rights has also extended to family courts. Religious Courts are now beginning to adopt the principles of restorative justice in resolving post-divorce disputes.

In accordance with the provisions of the Compilation of Islamic Law and the Marriage Law, the best interests of the child serve as the primary consideration for judges in ruling on custody cases—known in Islamic law as hadanah—as well as child support cases. Judges in Religious Courts are granted ex officio authority. This authority allows judges to rule beyond what is claimed by the parties in the lawsuit—a concept known as ultra petita. With this authority, judges can proactively protect the rights of wives and children after divorce, without waiting for a claim from the plaintiff. Judges may independently determine child custody, establish visitation rights for the non-custodial parent, and order the father to provide child support (hadanah) for at least until the child reaches adulthood or the age of 21, in accordance with his financial capacity. This measure is crucial to minimize the negative psychological impact children experience as a result of their parents' divorce, while also preventing the neglect of

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children's basic needs following the divorce. In essence, the state must do everything in its power to protect constitutional rights, including those of neglected children.

CONCLUSION

The transformation of the state's role in child protection in Indonesia has brought about fundamental and systemic changes to the legal framework, institutional structure, and national policies. The transition from a voluntary, charitable social service approach to an integrated, tiered, and legally binding child protection system demonstrates that the state is beginning to position itself seriously as a sovereign protector entrusted with the mandates of parens patriae and the welfare state. The year-on-year increase in reports of sexual and physical abuse, while concerning, is positive evidence that legal and psychosocial support systems at the local level are beginning to function. These systems have succeeded in breaking down the wall of sociological silence that has long shielded perpetrators and in revealing the tip of the iceberg of child abuse nationwide.

However, various administrative achievements and improvements in child protection indices are still overshadowed by serious structural constraints at the operational level.

To realize a sustainable and increasingly robust child protection ecosystem leading up to Indonesia Emas 2045, future policy directions must prioritize several strategic steps. First, strengthening the capacity of human resources and local infrastructure through the allocation of a special budget sourced from the Regional Budget (APBD) and the State Budget (APBN) to recruit certified child-friendly clinical psychologists and professional counselors evenly across every UPTD PPA and second, reforming juvenile criminal law by pushing for legislative changes to the Juvenile Criminal Justice System Act to adopt the theory of dual accountability, so that the state can impose administrative sanctions or minor criminal penalties on parents proven to be negligent in raising and supervising their children. Third, integrate the national information system by maximizing the interoperability of SIMFONI PPA 3.0 data with the population administration system and law enforcement databases to facilitate tracking victims' histories and expedite legal proceedings against perpetrators. Fourth, sustainable cross-sectoral collaboration among government agencies, academics, the media, and the business community to conduct large-scale public education campaigns aimed at eliminating the domestic stigma that shields perpetrators of child abuse, as well as expanding child-friendly zones down to the village level. Only through such comprehensive and coordinated efforts can Indonesia truly guarantee a future for its children as an outstanding, competitive next generation for the nation.

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