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Legal Crossroads for Women and Children: Safeguards or Systemic Neglect?

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Original Article

Abstract

The protection of children and women as vulnerable groups is a constitutional mandate enshrined in Article 28C of the 1945 Constitution of Indonesia, and it reflects both universal human rights principles and the foundational values of Pancasila. This study aims to examine the alignment of national legal norms with universal human rights standards, assess the effectiveness of legal protections afforded to children and women, and identify regulatory and implementation gaps that contribute to structural injustice. Employing a normative-juridical approach and analyzing five case studies of violence, the findings reveal that while Indonesia's legal framework is relatively progressive, its implementation remains hindered by institutional, socio-cultural, and political challenges. The study concludes that legal reform, institutional strengthening, and a more victim-centered legal approach are essential to achieving substantive justice for vulnerable populations. These findings provide important insights for the development of more comprehensive and impactful legal policy frameworks.

Keywords: *Legal Protection, Vulnerable Groups, Human Rights*

Abstrak

Perlindungan terhadap anak dan perempuan sebagai kelompok rentan merupakan mandat konstitusional sebagaimana tercantum dalam Pasal 28C UUD 1945, serta merupakan refleksi dari prinsip-prinsip universal Hak Asasi Manusia (HAM) dan nilai-nilai Pancasila. Penelitian ini bertujuan untuk menganalisis kesesuaian norma hukum nasional dengan prinsip universal HAM, mengevaluasi efektivitas implementasi perlindungan hukum bagi anak dan perempuan, serta mengidentifikasi kelemahan regulasi dan implementasi hukum yang berdampak pada ketidakadilan struktural. Menggunakan pendekatan yuridis-normatif dan studi kasus terhadap lima perkara kekerasan, penelitian ini menemukan bahwa meskipun kerangka hukum Indonesia cukup progresif, implementasinya masih menghadapi persoalan serius dari aspek kelembagaan, sosial-budaya, dan politik. Kesimpulannya, diperlukan reformasi regulasi, penguatan institusi perlindungan, serta pendekatan hukum yang lebih berpihak pada korban untuk memastikan keadilan substantif bagi kelompok rentan. Temuan ini penting guna perumusan kebijakan hukum yang lebih substansial.

Kata kunci: *Perlindungan Hukum, Kelompok Rentan, Hak Asasi Manusia*

1. INTRODUCTION

Human rights protection serves as the cornerstone for building a just, dignified, and inclusive society. In a rule-of-law-based state such as Indonesia, the guarantee of individuals' fundamental rights is constitutionally enshrined, particularly in Articles 28A–28J of the 1945 Constitution of the Republic of Indonesia. Indonesia has also ratified several key international human rights instruments, including the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). However, these normative commitments have not been fully translated into effective implementation within the national legal framework. This gap is evident in the persistently high incidence of rights violations against vulnerable groups—particularly women and children—and in the continued weakness of law enforcement in addressing such cases.

Article 5(3) of Law No. 39 of 1999 on Human Rights affirms that individuals belonging to vulnerable groups are entitled to special treatment and protection aligned with their specific conditions. Nonetheless, the law's definition of “vulnerable groups” remains narrow and does not reflect the complexities of current social realities. The explanatory section of the law includes only children, the elderly, the poor, persons with disabilities, and pregnant women. In contrast, international human rights norms recognize a broader spectrum of vulnerable populations, including refugees, indigenous peoples, migrant workers, and national minorities. This discrepancy indicates a disconnect between Indonesia's legal framework and international standards, undermining the substantive protection of these groups.

Although national legislation provides a legal basis for the protection of human rights, the principal challenge lies in its implementation. Weak law enforcement, limited accountability among public officials, and the persistent dominance of patriarchal values in society serve as major barriers. Cases of domestic violence, workplace discrimination, and violations of children's rights remain widespread and are frequently inadequately addressed by the judicial system. These issues are further compounded by low public awareness of constitutional rights and the lack of accessible, effective grievance and redress mechanisms.

Within the philosophical framework of Pancasila—especially the second principle, “Just and Civilized Humanity”—human rights protection should serve as a fundamental value guiding all legal and policy formulations. This principle calls for the affirmation of human dignity, social justice, and non-discrimination. Yet in practice, these values are not fully embedded within state policies or reflected in the conduct of law enforcement officials. Consequently, many individuals, particularly from vulnerable communities, continue to face marginalization, systemic discrimination, and structural violence without adequate protection.

Institutions such as the National Commission on Human Rights (Komnas HAM), the National Commission on Violence Against Women (Komnas Perempuan), and the Indonesian Child Protection Commission (KPAI) play a critical role in advocating for and safeguarding human rights. However, their effectiveness is significantly constrained by limited authority, inadequate funding, and a lack of strong political backing. Additionally, sectoral legal, educational, and social policies tend to operate in silos, lacking integration into a coherent and comprehensive protection system. Therefore, a critical legal analysis is necessary to evaluate the effectiveness of existing legal protections for vulnerable groups and to identify both normative and structural deficiencies that hinder the full realization of human rights principles in practice.

The issue of human rights protection—particularly for women and children—has been widely discussed in previous scholarship. Rasidi and Al-Farizi emphasize that the second principle of Pancasila offers a strong moral foundation for the protection of human rights in Indonesia, grounded in justice and human dignity. While Law No. 39 of 1999 and the ratification of key international instruments illustrate the state's formal commitment to human rights, persistent challenges remain. These include ongoing discrimination against minority groups and inconsistencies in law enforcement practices.¹

Research by Jaman et al. confirms that although Indonesia has adopted a range of legal policies aimed at protecting human rights, the effectiveness of their implementation remains suboptimal. Utilizing a mixed-methods approach, the study identified critical challenges, including weak inter-agency coordination among law enforcement bodies and the absence of comprehensive systemic support for victims of human rights violations, particularly women and children. The findings underscore the crucial role of civil society engagement and international cooperation in reinforcing human rights protections in Indonesia.²

Similarly, Mentari focused on the dynamics of the judiciary in handling cases of violence against women. She identified significant socio-cultural barriers—such as stigma, economic subordination, and gender bias within the legal apparatus—as major impediments to justice for female victims of violence. While legal frameworks like the Law on the Elimination of Domestic Violence (Law No. 23 of 2004) exist, their implementation has not fully addressed the specific needs of victims. The study

¹ Ibrahim Abdillah Rasidi and Mochamad Kemal Al-Farizi, "Implementasi Sila Kedua Pancasila Dalam Perlindungan Hak Asasi Manusia: Perspektif Teori Humanisme Dan Deklarasi Ham," *Nusantara: Jurnal Pendidikan, Seni, Sains Dan Sosial Humaniora* 2, no. 2 (2025): 1–13, <https://journal.forikami.com/index.php/nusantara/article/view/824>.

² Ujang Badru Jaman, Yana Priyana, and Mursyidin Ar-Rahmany, "Pengaruh Kebijakan Hukum Terhadap Perlindungan Hak Asasi Manusia Di Negara Berkembang: Studi Pada Negara Berkembang," *Jurnal Hukum Dan HAM Wara Sains* 2, no. 7 (2023): 556–65, <https://doi.org/10.58812/jhhws.v2i07.545>.

advocates for criminal justice reforms that adopt a more victim-centered approach and deliver substantive justice.³

In line with these findings, Nurliyah, in her research on the enforcement of Law No. 23 of 2004 concerning the protection of victims of domestic violence, observed that structural and cultural obstacles continue to hinder effective legal protection for women. Although the law offers mechanisms for protection, its implementation is constrained by patriarchal cultural norms and the limited capacity of victim protection institutions. The study recommends institutional strengthening, targeted training for law enforcement personnel, and enhanced cross-sectoral collaboration in addressing domestic violence.⁴

Ndolu et al. adopt a multidimensional framework to examine gender discrimination as a violation of human rights. Their research demonstrates that gender discrimination is both normative and systemic, encompassing legal, social, economic, cultural, and educational domains. The study highlights the critical role of state institutions such as the National Commission on Violence Against Women and the Ministry of Women's Empowerment and Child Protection. However, the effectiveness of these institutions is contingent on adequate political commitment and sufficient budgetary allocations.⁵

Krisnalita emphasizes that despite international agreements and Indonesia's formal commitments to eliminating gender-based discrimination, violations of women's rights persist systematically. Women continue to face significant barriers in employment, political participation, and access to social protection due to weak legal enforcement and deeply ingrained gender stereotypes.⁶ Daeng et al. further point out that despite constitutional guarantees of the principle of non-discrimination, gender-based discrimination remains widespread—particularly within patriarchal communities. The study argues that women's rights, as an integral component of human rights, must be upheld through a legal system that is both just and equitable. Legal and cultural reforms are advocated to ensure gender justice.⁷

³ Rahma Mentari, "Mewujudkan Keadilan: Perlindungan Hukum Bagi Perempuan Korban KDRT Dalam Sistem Peradilan Pidana Indonesia," *Spectrum: Journal of Gender and Children Studies* 4, no. 1 (2024): 32–45, <https://doi.org/10.30984/spectrum.v4i1.1019>.

⁴ Siti Nurliyah, "Perlindungan Hukum Korban Kekerasan Dalam Rumah Tangga Di Indonesia: Analisis Undang-Undang Nomor 23 Tahun 2004," *Depositi: Jurnal Publikasi Ilmu Hukum* 2, no. 4 (2024): 296–309, <https://doi.org/10.59581/deposisi.v2i4.4366>.

⁵ Winda W. Ndolu, Saryono Yohanes, and Jenny Ermalinda, "Perlindungan Hak Asasi Manusia Dalam Kasus Diskriminasi Gender," *Mahkamah: Jurnal Riset Ilmu Hukum* 1, no. 4 (2024): 207–222, <https://doi.org/10.62383/mahkamah.v1i4.212>.

⁶ Louisa Yesami Krisnalita, "Perempuan, HAM Dan Permasalahannya Di Indonesia," *Binamulia Hukum* 7, no. 1 (2023): 71–81, <https://doi.org/10.37893/jbh.v7i1.315>.

⁷ HM Yusuf Daeng et al., "Perlindungan Hak Asasi Manusia Pada Perempuan Dalam Jeratan Pidana Perspektif Feminisme/Feminist Legal Theory," *Motekar: Jurnal Multidisiplin Teknologi Dan Arsitektur* 2, no. 2 (2024): 449–60, <https://doi.org/10.57235/motekar.v2i2.2618>.

Anggraeni offers a legal analysis of violence against women through a human rights lens. She highlights the “tip of the iceberg” phenomenon, indicating that many cases remain unreported or unresolved due to structural deficiencies, despite the existence of relevant legal provisions. The study calls for a critical reassessment of the legal substance and advocates for more responsive and inclusive reforms to the protection system.⁸ In a related historical perspective, Kania argues that legal reform has been a pivotal moment in advancing human rights protections, especially for women. However, she contends that gender-sensitive legal provisions have not been fully realized. Laws often serve as instruments of discrimination due to biases embedded in both their formulation and application. Thus, she stresses the urgency of gender-just legal reforms.⁹

To date, limited scholarly attention has been devoted to comprehensively examining the gap between legal norms governing human rights protection and their practical implementation—particularly in relation to vulnerable groups such as women and children—through an analytical framework grounded in a normative legal approach and the philosophical foundation of Pancasila. This study seeks to address this research gap by emphasizing the urgency of law enforcement that reflects the principles of substantive justice and acknowledges the lived realities of social vulnerability. Accordingly, this research is designed to:

- 1) Analyze the extent to which Indonesian legal norms on human rights protection align with universal human rights principles and Pancasila values, with a particular focus on the protection of women and children as vulnerable groups;
- 2) Assess the effectiveness of existing legal implementation in ensuring the fulfillment of the rights of women and children, by investigating the inhibiting factors from legal, institutional, socio-cultural, and political dimensions; and
- 3) Identify gaps and weaknesses in regulatory frameworks and law enforcement practices that contribute to structural injustices against vulnerable populations.

2. RESEARCH METHODOLOGY

This study employs a normative juridical approach, which conceptualizes law as a system of normative rules and focuses on the analysis of relevant statutes, legal principles, and doctrinal interpretations. This approach is appropriate given the normative nature of the research object—specifically, the effectiveness of Indonesia’s legal framework in safeguarding human rights (HAM), particularly for vulnerable

⁸ Erwindya Julia Anggraeni, “Tinjauan Hak Asasi Manusia Terhadap Kekerasan Perempuan Dalam Peraturan Perundang-Undangan,” *Wicarana: Jurnal Hukum Dan Hak Asasi Manusia* 2, no. 1 (2023): 27–38, <https://doi.org/10.57123/wicarana.v2i1.28>.

⁹ Dede Kania, “Hak Asasi Perempuan Dalam Peraturan Perundang-Undangan Di Indonesia,” *Jurnal Konstitusi* 12, no. 4 (2015): 716–34, <https://doi.org/10.31078/jk1243>.

groups such as women and children. The primary objective is to assess the adequacy and internal consistency of legal norms within the Indonesian legal system in ensuring protection for these groups.

The analysis draws upon primary legal sources, including Articles 28A–28J of the 1945 Constitution of the Republic of Indonesia, Law No. 39 of 1999 on Human Rights, Law No. 35 of 2014 on Child Protection, and Law No. 23 of 2004 on the Elimination of Domestic Violence, along with their implementing regulations. In addition, international human rights instruments ratified by Indonesia, such as the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), are examined to evaluate the compatibility of national law with international standards.

The legal analysis adopts legislative, conceptual, and comparative approaches to assess the substantive content of the law and to identify normative inconsistencies or regulatory disharmony. Data sources consist of primary legal materials, secondary sources (including scholarly literature, journal articles, and expert commentary), and tertiary materials (such as legal dictionaries and encyclopedias). The data are analyzed both descriptively and analytically through systematic interpretation of legal norms, with particular attention to their effectiveness in upholding justice, promoting non-discrimination, and aligning with the foundational values of Pancasila.

3. RESEARCH RESULT AND DISCUSSION

3.1. Conformity of Legal Norms Protecting Human Rights in Indonesia with Universal Human Rights Principles and the Values of Pancasila

This section analyzes the extent to which Indonesia's legal norms on human rights protection align with universal human rights principles and the philosophical values of Pancasila, with a particular focus on the protection of women and children as vulnerable groups. The study specifically examines the application of Article 28C of the 1945 Constitution within national legislation, using five representative case studies of human rights violations to evaluate consistency with principles of non-discrimination, justice, and respect for human dignity.

Article 28C of the 1945 Constitution serves as a foundational legal provision, affirming that every individual has the right to personal development and protection from violence and injustice. This constitutional mandate directly implicates the legal obligation to provide enhanced protection for children and women—groups recognized internationally as requiring special safeguards. In the case of Habib Bahar bin Smith, who was convicted of child abuse, the legal process proceeded and resulted in a conviction. However, public concern centered on the lack of attention to the psychosocial well-being of the child victim and the implications of the perpetrator's prominent public role. According to the international human rights principle of due

diligence, the state bears not only the responsibility to prosecute perpetrators but also to ensure access to reparations and guarantees of non-repetition for victims.

The case of BL, a sexual violence survivor who was criminally charged for undergoing an abortion, reveals systemic bias in the legal treatment of female victims. From the perspective of both international human rights and Pancasila—particularly the second principle, “Just and Civilized Humanity”—victims should be protected, not criminalized. While a rehabilitation verdict was eventually delivered, the initial discriminatory response highlighted inconsistencies between positive law and the principle of substantive justice.

In the case of Herry Wirawan, the state demonstrated significant responsiveness by imposing a severe sentence, including the death penalty and ordering restitution to the victims. Nevertheless, this case exposed institutional shortcomings, particularly regarding the lack of oversight in religious educational institutions where abuse of authority can occur. The preventive aspects of child and women protection—although emphasized in law—have yet to be meaningfully embedded in institutional structures and practices. The case involving ABH, a juvenile offender in a sexual violence case, serves as a critical example of the need to differentiate the legal treatment of children from that of adults. The court’s decision to prioritize rehabilitation over incarceration aligns with restorative justice principles outlined in the Convention on the Rights of the Child and Indonesia’s Juvenile Justice Law (Law No. 11 of 2012). However, such restorative approaches remain inconsistently applied across different jurisdictions in Indonesia.

The Sumenep case, in which the perpetrators of child sexual abuse were the victim’s biological mother and her partner, underscores a failure of protective mechanisms within the family. Although the state responded through legal action and psychosocial support via the Ministry of Women’s Empowerment and Child Protection, the case raises concerns about the adequacy of preventive measures and early detection systems in domestic settings. Article 28C’s protective guarantees have not been fully operationalized in cases where perpetrators are individuals in the victim’s immediate environment.

The findings of this research reveal a considerable gap between constitutional guarantees and their practical implementation. While legal frameworks ostensibly uphold the rights of vulnerable groups, enforcement remains inconsistent and highly dependent on the sensitivity of legal actors, civil society advocacy, and the availability of victim support systems. These findings are consistent with those of Anggyamurni et al., who argue that the application of constitutional values often appears selective and inadequately responsive to evolving social conditions.¹⁰

¹⁰ Virna Septia Anggyamurni, Yusya Rugaya Salsabilah, and Ewaldo Duta Salsa, “Konstitusi Dalam Praktik Ketatanegaraan Di Indonesia,” *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 23, no. 2 (2020): 427–44, <https://doi.org/10.15642/alqanun.2020.23.2.427-444>.

From the standpoint of universal human rights instruments—such as the Universal Declaration of Human Rights (UDHR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC)—the principles of substantive justice, non-discrimination, and human dignity are foundational. The case studies presented in this research illustrate that these principles have yet to be fully integrated into Indonesia's criminal justice system and victim protection frameworks, particularly in cases marked by power asymmetries and the systemic disempowerment of victims.

Grounded in the values of Pancasila, particularly the second principle (Just and Civilized Humanity) and the fifth principle (Social Justice for All), social justice and respect for human rights are fundamental pillars of the Indonesian legal system. Any deviation from fair and equitable treatment of children and women signals a failure to fully integrate Pancasila values as ethical guidelines in legal practice. Legal scholar Wignjosoebroto has emphasized the need for Indonesian law to transition from being merely law on the books to law in action—prioritizing justice for vulnerable populations.¹¹

This research reinforces and extends the findings of Lubis, who critiqued the inconsistent enforcement of laws in cases of sexual violence¹², and Marzuki and Faridy, who highlighted the urgent need for criminal law reform to better serve vulnerable groups.¹³ However, the present study makes a more substantial contribution by conducting a legal analysis of five concrete cases, integrating constitutional interpretation, universal human rights principles, and a Pancasila-based normative evaluation—a combination rarely employed in existing literature. Based on the findings, the study concludes that:

- 1) Article 28C of the 1945 Constitution plays a central role in guaranteeing legal protection for children and women as vulnerable groups; however, its practical application continues to face significant structural and cultural barriers.
- 2) In judicial practice, the principles of non-discrimination and substantive justice are not consistently applied by law enforcement officials, especially in cases involving vulnerable victims.
- 3) Legal protection for children and women remains largely reactive rather than preventive, as evidenced by delayed state responses in cases of domestic violence or sexual assault by individuals within the victims' close circles.

¹¹ Soetandyo Wignjosoebroto, *Pergeseran Paradigma: Dalam Kajian-Kajian Sosial Dan Hukum*, 3rd ed. (Malang: Setara Press, 2017).

¹² Elvi Zahara Lubis, "Upaya Perlindungan Hukum Terhadap Anak Korban Kekerasan Seksual," *JUPIIS: Jurnal Pendidikan Ilmu-Ilmu Sosial* 9, no. 2 (2017): 141, <https://doi.org/10.24114/jupiis.v9i2.8242>.

¹³ Ismail Marzuki and Faridy Faridy, "Relevansi Hukum Dan Hak Asasi Manusia Dengan Agenda Reformasi: Dimensi Nasional Dan Internasional," *Jurnal Cendekia Hukum* 5, no. 2 (2020): 350–59, <https://doi.org/10.33760/jch.v5i2.242>.

- 4) In several instances, civil society advocacy has played a decisive role in prompting law enforcement agencies to pursue justice-oriented and human rights-compliant actions.
- 5) The values of Pancasila, particularly those enshrined in the second and fifth principles, have not yet been fully internalized within the criminal justice system in relation to the protection of vulnerable groups.

3.2. Effectiveness of the Implementation of the National Legal Framework Guaranteeing the Fulfillment of the Rights of Children and Women as Vulnerable Groups

This section evaluates the effectiveness of Indonesia's national legal framework in ensuring the fulfillment of the rights of children and women as vulnerable groups. Employing a normative juridical approach and an analysis of five representative cases involving children and women—within the constitutional framework of Article 28C of the 1945 Constitution—this study investigates the extent to which the empirical implementation of law reflects universal human rights principles, the foundational values of Pancasila, and constitutional mandates. The analysis focuses on key inhibiting factors across four dimensions: legal-normative, institutional, socio-cultural, and political.

1) Legal-Normative Aspects

Article 28C of the 1945 Constitution provides a robust constitutional basis for the legal protection of children and women. However, the effectiveness of legal implementation is weakened by overlapping statutes and ambiguous definitions—particularly within the Child Protection Law, the Domestic Violence Law, and related regulatory instruments. For instance, in the case of Habib Bahar, while the criminal proceedings were carried out and the verdict upheld, the absence of structured psychosocial rehabilitation for the child victim highlights the limited orientation of criminal law toward restorative outcomes.

2) Institutional Aspects

Fragmentation among law enforcement agencies—including the police, prosecutors, judiciary, and victim protection bodies such as the Witness and Victim Protection Agency (LPSK) and the Ministry of Women's Empowerment and Child Protection (KemenPPPA)—continues to hinder coordinated responses. The BL and Herry Wirawan cases demonstrate that meaningful institutional intervention by LPSK and KemenPPPA tends to occur only under intense public scrutiny. This reflects a reactive rather than systemic approach, in which protection mechanisms are not yet institutionalized as standard procedures in case handling.

3) Socio-Cultural Aspects

Deep-seated patriarchal norms, victim-blaming attitudes, and stigmatization of female survivors remain pervasive in Indonesian society. The BL case initially revealed a disturbing trend toward victim criminalization, exacerbated by inadequate mediation and social understanding. Conversely, in the ABH case—despite the offender being a child—there was a conflicting societal perception that child perpetrators should not face imprisonment, even when the victim was also a minor, underscoring inconsistencies in public attitudes toward justice for children.

4) Political Aspects

Political will and public pressure play a critical role in shaping legal outcomes. In high-profile cases such as BL and Herry Wirawan, legal responses were significantly influenced by advocacy from civil society organizations and women's rights groups. These movements successfully pushed for the imposition of heavier penalties and a rights-based framing of the verdicts. This demonstrates that, in practice, legal enforcement alone is often insufficient without the accompanying force of sociopolitical mobilization.

Based on this multidimensional analysis, the study concludes that the implementation of legal protections for children and women in Indonesia remains suboptimal, despite the existence of clear constitutional mandates. The primary obstacles include normative inconsistencies across legal instruments, fragmented institutional coordination, entrenched social stigma, patriarchal cultural values, and reactive institutional frameworks. Nonetheless, public advocacy and civil society engagement have proven to be effective catalysts for improving legal outcomes. Notably, certain court decisions—such as in the Herry Wirawan and BL cases—have begun to reflect a shift toward human rights-based approaches, including the use of restorative justice and victim restitution, albeit in a limited and case-specific manner.

The findings of this study are consistent with those of Mentari and Nurliyah, who identified significant obstacles in addressing domestic and sexual violence against women, particularly those stemming from gender-based stigma and bias.¹⁴ However, this research offers an added constitutional perspective through the application of Article 28C of the 1945 Constitution and includes more recent and representative case studies. Unlike the work of Jaman et al., which broadly examined the effectiveness of legal policy, this study focuses specifically on the implementation of legal norms in actual cases and highlights the influence of external socio-political factors.¹⁵ Furthermore, whereas Ndolu et al. primarily addressed systemic gender discrimination, this research

¹⁴ Mentari, “Mewujudkan Keadilan: Perlindungan Hukum Bagi Perempuan Korban KDRT Dalam Sistem Peradilan Pidana Indonesia”; Nurliyah, “Perlindungan Hukum Korban Kekerasan Dalam Rumah Tangga Di Indonesia: Analisis Undang-Undang Nomor 23 Tahun 2004.”

¹⁵ Jaman, Priyana, and Ar-Rahmany, “Pengaruh Kebijakan Hukum Terhadap Perlindungan Hak Asasi Manusia Di Negara Berkembang: Studi Pada Negara Berkembang.”

illustrates how such discrimination directly affects legal access and outcomes in five concrete cases.¹⁶

The findings reveal that the prevailing legal paradigm remains overly penal and retributive in nature. The implementation of Article 28C requires a deeper commitment to integrating restorative and substantive justice frameworks to ensure that victims receive comprehensive protection—beyond mere criminal prosecution. This study also underscores the urgency of institutional reform, including the establishment of integrated units within the police and prosecution services, equipped with technical expertise in child and women's legal protection. It further recommends the institutional integration of the Witness and Victim Protection Agency (LPSK) and the Ministry of Women's Empowerment and Child Protection (KemenPPPA) across all stages of law enforcement processes.

Importantly, the entrenched influence of patriarchal culture remains the greatest obstacle to achieving legal certainty based on human rights principles. Transformative change through human rights education and community empowerment must be prioritized as a long-term strategy. In addition, the study affirms the critical role of political dynamics—including public pressure, media engagement, and civil society advocacy—in enhancing the effectiveness of positive law. As Alfarisi and Hakim have noted, legal effectiveness increases significantly when supported by active socio-political actors.¹⁷ Accordingly, the state should establish formal spaces within the legal system to accommodate and institutionalize advocacy efforts. This study concludes the following:

- 1) Article 28C of the 1945 Constitution provides a strong legal foundation for the protection of vulnerable groups, but significant challenges persist in its implementation.
- 2) Key inhibiting factors include normative issues (regulatory fragmentation), institutional weaknesses (limited capacity and reactive responses), socio-cultural barriers (stigma and patriarchal norms), and political constraints (reliance on public pressure for equitable enforcement).
- 3) Despite the presence of firm criminal sanctions and restitution orders in certain cases, psychosocial protection and victim recovery remain poorly institutionalized.
- 4) Restorative justice and rehabilitation, while present in some rulings, represent promising practices that should be expanded within the juvenile and women's justice systems.

¹⁶ Ndolu, Yohanes, and Ermalinda, "Perlindungan Hak Asasi Manusia Dalam Kasus Diskriminasi Gender."

¹⁷ Salman Alfarisi and Muhammad Syaiful Hakim, "Hubungan Sosiologi Hukum Dan Masyarakat Sebagai Kontrol Sosial," *Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia* 1, no. 2 (2019): 20–28, <https://doi.org/10.52005/rechten.v1i2.37>.

- 5) The active participation of civil society, the media, and advocacy organizations has proven vital in ensuring that legal processes align with the principles of human rights and the values of Pancasila.

To address these structural gaps, the study recommends: (a) expanding legal provisions to require mandatory inclusion of victim recovery and restitution in judicial decisions; (b) establishing integrated and specialized units within law enforcement agencies for handling cases involving children and women; (c) promoting human rights and anti-stigma education rooted in Pancasila for both officials and the broader community; and (d) institutionalizing effective practices within law enforcement agencies to ensure systemic, rather than ad hoc, protection for vulnerable groups.

3.3. Weaknesses in Regulations and Law Enforcement Implementation in Indonesia That Contribute to Structural Injustice Against Vulnerable Groups

This section aims to identify and analyze the regulatory and enforcement gaps in Indonesia's legal system that contribute to structural injustices against vulnerable groups, particularly children and women. Drawing upon Article 28C (1) of the 1945 Constitution—which guarantees the right to personal development and protection from violence—this study assesses the extent to which the state fulfills its constitutional obligations through five case studies that reflect the complexities of legal protection for vulnerable populations.

- 1) The Habib Bahar bin Smith Case (2018)
This case illustrates the judiciary's capacity to convict public figures for acts of violence. However, it also reveals critical gaps in the victim protection system. Although the perpetrator received a three-year prison sentence for child abuse, no restitution or psychosocial rehabilitation was provided to the victim. This indicates a significant shortfall in the legal system's ability to support child victims, despite the protections guaranteed under Article 28C of the Constitution.
- 2) The BL Case (2020)
The criminalization of BL, a rape survivor prosecuted for undergoing an abortion, exemplifies a severe breach of child protection and non-discrimination principles. Law enforcement failed to recognize her status as a victim and did not prioritize her recovery. A rehabilitative legal approach was only adopted after considerable public pressure and sustained advocacy from civil society. This case exposes the lack of victim-centered perspectives in prosecutorial discretion and judicial decision-making.
- 3) The Herry Wirawan Case (2021–2022)

While the judiciary imposed a severe sentence, including the death penalty and restitution for victims, protective measures for female students in Islamic boarding schools were only activated after the case received widespread media attention. Prior to this, institutional oversight within religious educational settings was ineffective. This reflects systemic deficiencies in preventive frameworks and early protection mechanisms for vulnerable children in institutional environments.

4) The ABH Case (2020)

Involving a child offender, this case highlights the inconsistency in applying punitive versus rehabilitative approaches to minors in conflict with the law. Although the court eventually chose a more humane, rehabilitative route, the absence of standardized procedures in such cases underscores regulatory fragmentation and weak harmonization between the Juvenile Justice System Law, the Child Protection Law, and constitutional guarantees under Article 28C.

5) The 2024 Rape Case by Biological Mother and Her Partner

This case represents an extreme violation of child rights perpetrated by individuals within the victim's immediate family—the very individuals expected to serve as protectors. In addition to serious shortcomings in early detection and community-based monitoring, the state's post-incident response was primarily legalistic and failed to provide comprehensive psychosocial rehabilitation. Although the legal proceedings followed formal procedures, victim recovery efforts remain fragmented and insufficiently institutionalized.

The findings of this study reveal that sectoral regulations are not yet fully aligned with the constitutional values enshrined in Article 28C, particularly regarding the provision of comprehensive and integrated protection for vulnerable groups. Law enforcement practices remain largely reactive and are frequently influenced by media coverage and public opinion rather than systematic legal mandates. Moreover, restorative justice and victim recovery mechanisms are not embedded as core components of the legal process, except in high-profile cases. Finally, persistent stigma and bias among law enforcement and judicial actors—often manifesting in the treatment of victims as suspects—underscore the structural inequities that continue to undermine justice for children and women in Indonesia.

These findings reinforce previous research by Mentari and Ndolu et al., which highlighted the inadequate legal protection afforded to victims of sexual violence and the persistent tendency among law enforcement officials to blame victims.¹⁸ However, this study extends the analysis by comparing five distinct cases involving various forms of human rights violations and perpetrators, emphasizing that structural injustice

¹⁸ Mentari, "Mewujudkan Keadilan: Perlindungan Hukum Bagi Perempuan Korban KDRT Dalam Sistem Peradilan Pidana Indonesia"; Ndolu, Yohanes, and Ermalinda, "Perlindungan Hak Asasi Manusia Dalam Kasus Diskriminasi Gender."

originates not only from deficiencies in the legal substance but also from institutional frameworks and discriminatory legal culture. Unlike earlier works that predominantly employed normative legal analysis, this study adopts a case-based empirical approach that more explicitly reveals the gap between constitutional principles and their implementation in practice. These findings also align with the critique by Jaman et al., who emphasized the lack of institutional coordination in realizing the rights of vulnerable groups.¹⁹

The study reveals that structural injustice against women and children arises not merely from inadequate law enforcement, but from a legal design that fails to respond adequately to conditions of social vulnerability. Although Article 28C of the 1945 Constitution guarantees the right to personal development and protection from violence, its normative substance has not been comprehensively translated into derivative legislation or institutional mechanisms. Moreover, the fact that cases such as BL and Herry Wirawan only received serious legal attention following widespread public outcry illustrates the justice system's ongoing reliance on external advocacy rather than a consistent, rights-based due process. This reflects a legal culture still entrenched in conservative and discriminatory paradigms, which contradict the progressive constitutional mandates.²⁰

This situation is further exacerbated by the absence of institutionalized victim recovery mechanisms, including psychological support services, restitution procedures, and sustained legal protections. For instance, while the ABH case employed a rehabilitative approach, it lacked a structured social reintegration framework, placing child offenders at risk of long-term stigmatization and marginalization. Accordingly, this study confirms the existence of four interrelated dimensions of structural injustice within Indonesia's legal protection framework for vulnerable groups:

- 1) Gaps in Substantive Law: Article 28C of the 1945 Constitution has not been fully operationalized within sectoral laws such as the Child Protection Law, the Juvenile Justice System Law, and the Criminal Code. Key provisions concerning restitution and rehabilitation remain non-mandatory and inconsistently applied in cases involving women and children.
- 2) Weaknesses in Implementation and Institutional Integration: Protection agencies such as the Witness and Victim Protection Agency (LPSK), the Integrated Service Center for the Empowerment of Women and Children (P2TP2A), and the Ministry of Women's Empowerment and Child Protection (KemenPPPA) have

¹⁹ Jaman, Priyana, and Ar-Rahmany, "Pengaruh Kebijakan Hukum Terhadap Perlindungan Hak Asasi Manusia Di Negara Berkembang: Studi Pada Negara Berkembang."

²⁰ Refita Fadilatul Janah, "Penghapusan Diskriminasi Penegakan Hukum Di Indonesia," *Jurnal Hukum Dan Pembangunan Ekonomi* 10, no. 2 (2022): 1–17, <https://doi.org/10.20961/hpe.v10i2.62846>; Nurindria Naharista Vidyapramatya, "Hilangnya Keadilan Dalam Penegakan Hukum Menurut Teori Diskriminasi," *Jurnal Hukum Dan Pembangunan Ekonomi* 8, no. 2 (2020): 141–55, <https://doi.org/10.20961/hpe.v8i2.49763>.

- yet to be structurally embedded within the criminal justice process. Their involvement tends to be reactive and ad hoc, rather than systemic and sustained.
- 3) **Patriarchal Social Norms and Victim Stigmatization:** Cases like BL highlight the continued prevalence of moralistic and patriarchal perspectives in the legal system, where victims are often subjected to judgment rather than granted protection as rights-bearing individuals.
 - 4) **Dependence on External Pressure for Justice:** Legal responses that favor victims frequently occur only in response to substantial media coverage and public mobilization. This indicates that substantive justice has not yet been internalized as a core principle within the legal apparatus.

4. CONCLUSION

This study aims to examine the alignment of Indonesia's legal norms on human rights protection with universal human rights principles and the foundational values of Pancasila, assess the effectiveness of legal implementation in safeguarding the rights of children and women as vulnerable groups, and identify regulatory and practical gaps that contribute to structural injustice. The findings reveal that, at the normative level, Indonesia possesses a legal framework that is relatively consistent with universal human rights standards and Pancasila's humanitarian values—particularly as embodied in the 1945 Constitution, the Child Protection Law, the Law on the Elimination of Domestic Violence, and the Law on Sexual Violence Crimes. Nevertheless, implementation on the ground remains weak and inconsistent. This is due to overlapping regulations, poor inter-agency coordination, limited institutional resources, entrenched patriarchal norms, and insufficient victim-oriented support from law enforcement officials.

The study affirms that structural inequality and discrimination against vulnerable groups are systemic problems that demand a comprehensive and transformative response. The primary contribution of this research lies in offering an academic basis and concrete policy recommendations to enhance legal protection grounded in human rights and the values of Pancasila. However, the study is limited by its qualitative approach and its inability to represent the full diversity of legal jurisdictions across Indonesia. Consequently, it is recommended that the government prioritize regulatory harmonization and reinforce community-based mechanisms for victim protection. Future research should include quantitative and comparative regional studies to more accurately map patterns of human rights violations against women and children and to assess the effectiveness of current legal interventions.

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