

Improving the Protection of Children's Constitutional Rights Through Constitutional Court Decision

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Abstract. A child as a legal subject occupies a particular position in the constitution because his constitutional rights are regulated explicitly in the provisions of Article 28B paragraph (2) of the 1945 Constitution. Thus, the state should guarantee the constitutional rights of children in various aspects of life. Problems with violations of children's rights occurred by the inadequacy of laws and regulations to protect and guarantee children's rights. The several studies before have not been yet researched and compile comprehensively on how the Indonesian Constitutional Court decisions affected the protection of children rights. This study aims to know how the regulation of children's rights in the framework of international human rights law and national law and how the Constitutional Court decisions uphold the violations of children's constitutional rights. This research is normative legal research that uses library data materials such as the 1945 Constitution, laws related to children's rights and decisions of the Constitutional Court, and international legal regulations on children's rights such as the CRC. This research combines statutory and analytical approaches to find answers in the formulation of the problem. Several rules were found that were not in line with the Declaration of Human Rights, the Declaration of Children's Rights, and the 1945 Constitution, such as the Marriage Law and the Juvenile Court Law. The presence of the Constitutional Court is significant in maintaining the constitutional rights of children. It shows in the Constitutional Court Decision Number 1/PUU-VIII/2010, which changes the minimum age limit for children to be processed in court and the Constitutional Court Decision Number 22/PUU-XV/2017 amends the minimum age for girls to marry. Thus, the protection mechanism for children's constitutional rights still needs improvement and strengthening to ensure the sustainability of the rights of Indonesian children.

Keywords: Child, Constitutional Rights, Decision, Constitutional Court

1 Introduction

The position of children in national law and international law has a remarkable position because as the next generation for their nation, they need to be protected from birth until birth. Talking about a child's life will not be separated from discussing the rights and obligations attached to it. The state is obliged to guarantee and protect children's rights because children are one of the country's development capital. For this reason, not only in international conventions but also through national law, the protection of the implementation of children's rights is regulated in Indonesian laws and regulations. The existence of Law Number 23 of 2002 concerning Child to complete several laws, related children. As stated in the Child Protection Law consideration section, various laws that existed before formed this law, such as the Child

Welfare Law and the Human Rights Law, have not been accommodated yet to regulate all aspects of child protection. In addition, the state needs to provide institutional support and legislation to prevent and overcome violations of children's rights in all aspects of life.

According to data from the Indonesian Ministry of Women and Child Protection [1], the most reported cases of child complaints at the Indonesian Child Protection Commission (KPAI) were cases of children in conflict with the law, namely 1,251 children. Meanwhile, according to the Criminal Investigation Unit of the Police report, in 2019, the number of children as perpetrators of criminal acts was 2,981 children. Another complaint that is no less important in the case of children related to family and alternative care environments, namely 896 cases. The data shows that most of the problems in children are children as perpetrators of criminal acts. However, based on the Child Protection Law, there are at least 15 (fifteen) types of certain conditions in which the central government, regional governments, and other state institutions are obliged to provide exceptional protection for these children. The fifteen types include (1) children in emergencies; (2) the child conflicts with the law; (3) children from minority and isolated groups; (4) economically and sexually exploited children; (5) children who are victims of abuse of narcotics, alcohol, psychotropic substances, and other addictive substances; (6) children who are victims of pornography; (7) children with HIV/AIDS; (8) child victims of abduction, sale, and/or trafficking; (9) child victims of physical and/or psychological violence; (10) child victims of sexual crimes; (11) child victims of terrorist networks; (12) children with disabilities; (13) child victims of abuse and neglect; (14) children with deviant social behaviour; and (15) children who are victims of stigmatization from labelling related to their parents' condition. The fifteen types of children are considered to have more potential to experience violations of their rights.

Since the issuance of Law Number 35 of 2014 concerning the first amendment to the Child Protection Law, the parties who are obliged to protect children's rights have expanded that the community, families, and parents or guardians are obliged and responsible for the implementation of Child protection [vide Article 20 The Child Protection Law]. Thus, any violation of children's rights that is considered contrary to the constitution, anyone can submit a judicial review to the Constitutional Court. It can find The contribution of the Indonesian Constitutional Court to protecting the constitutional rights of children in several of its decisions, one of which is the Constitutional Court's Decision Number 32/PUU-XV/2017 on the review of Law Number 21/2007 concerning the Eradication of Trafficking in Persons which the Court rejected. This application was submitted by a cobek seller who asked that the phrase "exploit" be interpreted as an act aimed at educating and helping the family economy and instilling the values of children's independence. The applicant is subject to criminal charges for employing minors as sellers of mortar. In its decision, the Constitutional Court rejected the applicant's application because, according to the Court, trafficking in persons whose substance is formulated in Article 2 paragraph (1) of Law 21/2007 cannot be classified as a job decent living for humanity. In addition, the Constitutional Court strongly opposes the existence of trafficking in persons, especially women and children, because it is contrary to human dignity and violates human rights.

Research that examines the role of the Indonesian Constitutional Court in the protection of children's constitutional rights by summarizing several decisions of the Constitutional Court has not been widely carried out. For example, Hanum [2] only analyzes the legal considerations related to Constitutional Court Decision Number 22/PUUXV/2017 and its legal consequences in protecting children's rights. Then the research conducted by Thania [3] concluded about the need for the state's role to be more in favour of neglected children and to be more severe in solving the problems of neglected children through policy-making and legislation. Fitriani [4]

examined the role of child protection providers consisting of five pillars (parents, family, community, regional and state governments) in protecting and fulfilling children's rights. In addition, a violation of the protection of children's rights is also considered a violation of human rights. Thus, this study aims to examine how children's rights in Indonesia are regulated within the framework of international law and national law and how the Constitutional Court decisions can be used to uphold the violations of children's constitutional rights.

2 Research Method

This research is normative legal research or doctrinal legal analysis, which is research conducted on statutory regulations and other legal materials, including judges' decisions. The legal materials used are primary legal materials such as the 1945 Constitution, Laws related to the Rights of the Child and international law such as the UDHR, the Convention on the Rights of the Child, etc. Then secondary legal materials include books, legal journals, and articles related to children's rights concerning the Constitutional Court's role. In this literature research, the writer uses the statutory approach and the analytical approach to analyze laws, regulations and the constitutional court decision related to children's rights and the constitutional court's role in reviewing statutes relating to children's rights. Furthermore, several legal theories such as the rule of law theory, the human rights law, and the idea of child protection are also used to analyze and develop data on legal materials, data on laws and international legal regulations related to children's rights.

3 Results and Discussion

3.1 The Regulation of Children's Rights

According to the Indonesian Language Dictionary (Kamus Besar Bahasa Indonesia/KBBI) [5], the definition of a child is a second descendant of their parents or any person under the age of 18 (eighteen) years old. Meanwhile, according to the Child Protection Law, the definition of a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. Child protection is all activities to guarantee and protect children and their rights to live, grow, and develop. Develop, and participate optimally in accordance with human dignity and receive protection from violence and discrimination [*vide* Article 1 of Child Protection law]. Indeed, children's constitutional rights are part of human rights as regulated in the 1945 Constitution and specifically mentioned the rights of children in the provisions of Article 28B paragraph (2) of the 1945 Constitution. Thus, 4 (four) fundamental rights of children refer to Article 28B paragraph (2) The 1945 Constitution is the right to survival, growth and development, protection from violence and discrimination.

The issue of child protection in the international world is a problem that has always been one of the critical issues and is highly considered by the international community in the world. It is somewhat different from the situation in Indonesia, which pays less attention to the issue of child protection. However, children are vulnerable to become victims of crime because of the physical and psychological condition of children who are not yet mature. For this reason, the regulation of children's rights departed from the UDHR and then regulated more specifically in the Convention on the Rights of the Child, which the UN set in 1989. Meanwhile, the types of

child rights and child protection according to national law vary. For example, in Presidential Decree No. 36/1990, it is stated that there are 29 kinds of children's rights, according to the Child Welfare Law, there are 11 kinds of child rights, and the Child Protection Law as many as 20 types of children's rights. Then, the types of children's rights/protection of children's rights according to the Convention on the Rights of the Child are regulated in the provisions of Articles 6 to 17, including the child's right to birth registration, the child's right to a name, nationality and family relations, the child's right to freedom of expression, the child's right to education, etc.

Fundamentally, the implementation of rights and child protection are both guided by Pancasila and the 1945 Constitution as well as the basic principles of the Convention on the Rights of the Child, including:

- a. Principle of Non-discrimination [Article 2 para.1 and para.2 CRC].
- b. The Best Interest of the Child Principle [Article 3 para.1 CRC].
- c. The Right to Life, Survival and Development principled. [Article 6 para.1 and para.2 CRC].
- d. Respect for the views of the Child principle [Article 12 para.1 CRC].

Meanwhile, the arrangements for the implementation of children's rights within the framework of international law and national law are as follows:

- a. International law, namely:
 - 1) Article 25 paragraph (2) of the Universal Declaration of Human Rights (UDHR).
 - 2) Article 2 of the Convention on the Rights of the Child.
 - 3) Article 24 paragraph (1) of The International Covenant on Civil and Political Rights.
 - 4) ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination for the Worst Forms of Child Labor.
- b. National law
 - 1) Article 28B, Article 28G paragraph (1) and paragraph (2), Article 28H paragraph (1) paragraph (2), Article 28I paragraph (1) and paragraph (2) but specifically stated in Article 28B paragraph (1) 1945 Constitution.
 - 2) Law Number 17 of 2016 concerning Stipulation of Government Regulation in place of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection into Law.
 - 3) Law No. 35 of 2014 concerning Amendments to Law No. 23/2002 on Child Protection.
 - 4) Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.
 - 5) Law Number 21/2007 concerning Eradication of the Crime of Trafficking in Persons.
 - 6) Law Number 32 of 2004 concerning Elimination of Domestic Violence.
 - 7) Law Number 23 of 2002 concerning Child Protection.
 - 8) Chapter III Part Ten of Law Number 39 of 1999 concerning Human Rights.
 - 9) Law Number 4 of 1979 concerning Child Welfare.
 - 10) Presidential Decree Number 36 of 1990 concerning Ratification of the Convention on the Rights of the Child.

In Indonesia, human rights regulation is included in the written constitution, so that what is called a constitutional right. Because the constitution is a fundamental or primary law, any state action contrary to constitutional rights can be annulled because it is suitable with the nature of the constitution as a basic law (fundamental) [6]. The formation and legislation itself can be one of the state's actions that can violate citizens' constitutional rights if it is contrary to the constitution. In general, and objectively, human rights violations are violations that occur when there are active or passive actions by state actors or non-state actors who abuse, ignore or allow fundamental human rights (including civil, political, economic, social and cultural rights) in a manner or result in harm or suffering to others. Acting actively means that state actors commit

human rights violations intentionally, while acting passively means that perpetrators of human rights violations do not allow the occurrence of these violations. Thus violations of the constitutional rights of children can be active or passive. Moreover, in a democratic country like Indonesia, the perpetrators of violations of children's rights can be committed by anyone, not only the state but also by fellow citizens [7]. Enforcement of children's constitutional rights violations is significant because children are individuals who have the same rights as adult humans and have a vital role as the successor to the continuity of human life in the future.

The issue of violations of children's rights in each country can be different. PLAN International [8], a global organization for the protection of children's rights, concluded 7 (seven) main issues of violation of children's rights around the world, including Child marriage, child labour, lack of access to education, child soldiers, lack of access to clean water, female genital mutilation and lack of access to healthcare. Meanwhile, the Indonesian Child Protection Commission divides into 10 (ten) child protection clusters, including social and children in emergencies, family and alternative care, religion and culture, civil rights and participation, health and Narcotics Addictive Substances, education, pornography, and cybercrime, children in conflict with the law, both as perpetrators and victims, or witnesses, trafficking and exploitation, and finally other cases of child protection [9]. Furthermore, the National Commission for Child Protection states that at least 8 (eight) factors cause violence against children, including weak community involvement in preventing violations of children's rights, low public knowledge, especially families, regarding children's rights in the applicable positive law, degradation of values and a crisis of solidarity between communities, lack of knowledge of the government, especially law enforcement officers, on children's rights, The government's approach is still sectoral, weak coordination between Child Protection Institutions in the community and government institutions, lack of local government budget allocations for child protection, and few related regulations children's rights in the region.

Given that there are still many violations of children's rights in Indonesia, the government has made several efforts, such as replacing the Law on the Juvenile Court System with Law No. 11/2012. In Law 11/2012, there are several changes to the concept of protecting children's rights, one of which is the presence of institutions that have a specific role in child protection, such as the Child Special Guidance Institution (LPKA), Temporary Child Placement Institution (LPAS), and Social Welfare Organizing Institution (LPKA). Another government effort is the establishment of Law 17/2016. In the past few years, the state has started to rise and strive optimally in increasing child protection efforts, one of which is the establishment of Law Number 17/2016. The formation of this Law is motivated by the ineffectiveness of the enactment of Law number 35 of 2014. In the general explanation section of Law number 17/2016, it is explained that the existence of Law Number 35/2014, which emphasizes the provision of more severe criminal sanctions against perpetrators of child sexual violence, is seen as not having a significant impact. Thus, the state carries out heavier criminal sanctions and prevents by giving punishments in the form of chemical castration, installing electronic detection devices and rehabilitation for perpetrators of child sexual violence to provide a deterrent effect on perpetrators and prevent child sexual violence.

Basically, Article 1 para 2 and para 3 of the 1945 Constitution reflected how Indonesia is a democratic constitutional state law. In the concept of the rule of law, legal protection of the people right's is one fundamental essence that needs to be fulfilled by a state of law. According to Asshiddiqie [10], one of the principles of modern state law is the Due Process of Law that is all the government actions must be based on valid and written law regulations. In this case, the law becomes the crucial instrument in implementing the protection of children's rights. The provisions of Article 21 of Law 35/2014 concerning Child Protection emphasizes the obligations

and responsibilities of the State, Government, and Regional Government in fulfilling and protecting children's rights. However, Said [11] research concluded that the increase in child protection violations was due to a form of regulation that was less visionary, thus creating new problems. Various rules and legislation that the Indonesian government has carried out are considered ineffective in reducing the level of crime against children.

However, some various state policies outlined in the law to implement the fulfilment and protection of children's rights should not be negated. In the Decision of the Constitutional Court Number 6/PUU-XV/2017 regarding the review of the Child Protection Law, the Court rejected the teacher's petition that teachers who gave educational sanctions and punishments such as physical punishment could be justified. In its legal considerations, the Court believes that the imposition of sanctions, notably in corporal punishment on children at school, cannot be justified. The Article that regulates the protection of children's rights at school is in line with the constitution. Thus, it shows that the existence of the law could protect the rights of the children.

3.2 The Role of the Constitutional Court of the Republic of Indonesia

3.2.1 The Dispositions of the Court

Basically, the implementation of human rights is divided into two types: 1) the implementation of human rights has been carried out properly, and 2) human rights violations. According to the Human Rights Law, the definition of a violation of human rights is every act of a person, or group of people, including state officials, whether intentionally or unintentionally limiting and or revoking the human rights of a person or group of people guaranteed by law [12]. Moreover, they cannot accept a fair and correct legal settlement in resolving these problems according to the applicable legal procedures. Because violations of human rights can also be a violation of children's constitutional rights, the state's obligation to guarantee children's constitutional rights, apart from being regulated in the 1945 Constitution, requires regulation in the form of rules below such as law. This provision refers to Article 28I paragraph (5) of the 1945 Constitution, which reads, "To uphold and protect human rights with the principles of a democratic rule of law, the implementation of human rights is guaranteed, regulated, and outlined in-laws and regulations". Therefore, several laws related to child protection were formed as a form of state responsibility. However, in the implementation, several provisions were found that turned out to have the potential and impact on the violation of the child's rights. Judicial review to the Constitutional Court is one solution to overcome these problems.

The presence of the Indonesian Constitutional Court began with the third amendment to the 1945 Constitution Article 24C paragraph (1), where one of the powers of the Constitutional Court is to examine laws against the Constitution at the first and final levels, which are final and binding. Thus, after the Constitutional Court's decision is handed down, there is no legal effort to change it. As the supreme law of state administration, the Constitution has functions, among others, to protect human rights based on the Constitution so that they become the constitutional rights of citizens. For this reason, the Constitutional Court is often referred to as the protector of the citizen's constitutional rights and the protector of human rights [13]. Thus, the Constitutional Court's role in protecting the children's constitutional rights is crucial since the 1945 constitution regulated.

3.2.2 The Decision related the Children's Constitutional Rights

Several Constitutional Court Decisions related to the protection of children's constitutional rights, including:

- a. The Decision Number 011/PUU-III/2005 judicial review to the Law of 20/2003 on the national education system

This application was submitted by teachers, lecturers, students and students because the explanation of Article 49 paragraph (1) of the National Education System Law is considered contrary to Article 31 paragraph (4) of the 1945 Constitution. The Court believes that the 1945 Constitution *expressis verbis* has determined that the education budget must prioritize a minimum of 20%, which is regulated in the APBN and The APBD. Thus, the minimum number must not be reduced by laws and regulations that are hierarchically subordinate. The Court decided in the middle legal stance to determine state obligation of transparent assessment of the progress in order to allocate of funds to education under the Constitution. In this decision, the Constitutional Court affirms the rights of children in the field of education.

However, Indonesia as a welfare legal state guarantees the right to education of every citizen based on the constitution. Therefore, education is part of human rights because it becomes an instrument of self-development to improve the quality of life and welfare. In addition, the consideration of Law 20/2003 includes the preamble to the 1945 Constitution, states that the government is obliged to educate the nation's life. For this reason, education as an effort to improve the quality of human resources should become the main priority of development in Indonesia.

- b. Constitutional Court Decision Number 1/PUU-VIII/2010 concerning the review of Law Number 3/1997 Juvenile Court

This issue concerns the constitutionality of the minimum age for criminal responsibility for children proposed by the Indonesian Child Protection Commission and the Medan Child Protection and Study Center Foundation.

The Court uses international legal instruments, the Child Convention and the UN Recommendation on the Rights of the Child as a comparison only, not as a touchstone in assessing the constitutionality of the norms being tested. However, the Court believes that a minimum age of 12 (twelve) years is seen as a relatively stable age to be criminally responsible. In addition, setting a minimum age of 12 years has become a common practice or common practice in several countries. The Court's decision was later applied in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, which revoked the previous Law Number 3 of 1997 concerning Juvenile Court. In Law 11/2012, Children in Conflict with the Law are 12 (twelve) years old, but not yet 18 (eighteen) years old who are suspected of committing a crime.

The determination of the minimum age limit for children under legal responsibility from the age of 8 years to 12 years by the Court is a manifestation of the Constitutional Court's role not only in protecting children's constitutional rights, especially the right to life but also in upholding the philosophy of punishment itself. According to Mulyadi [14], the current legislative body does not apply the philosophy of punishment in its policies. This institution should work based on the philosophy of punishment based on the fundamental values that live in Indonesian society today. Law 3/1997 was finally replaced with Law 11/2012 which emphasised a restoration/restorative justice approach to maintain their dignity and ensure the legal protection of children's rights in the court system.

c. Constitutional Court Decision Number 46/PUU-VIII/2010 concerning the review of Law No. 1/1974 concerning marriage

The application submitted by Machica Mochtar and his son departed from the awareness to protect the rights of their children as stated in Article 28B paragraph (2) of the 1945 Constitution, namely the right to live, grow and develop and the right to be treated equally/non-discriminatory. The marital status of the parents is not clear. It is considered invalid because the unregistered religious marriage is resulting in the child only had a civil relationship with the mother and her mother's family. Moreover, eliminating the child's constitutional right to obtain legal status/origin that is clear and legal in the eyes of the state. The Constitutional Court granted the petitioners and state that Article 43 paragraph (1) is contrary to the 1945 Constitution and has no legal force if it is not interpreted as: "Children born out of wedlock have a civil relationship with their mother and their mother's family as well as with men, like his father, who can be proven based on science and technology and/or other evidence according to the law". Thus, it has blood relations, including civil relations with his father's family.

The Court believes that children born need to get protection regardless of the marriage procedure/administration. In addition, children who are born without a clear father status are often mistreated. Therefore, Article 43 paragraph (1) is contrary to the constitution if it is not interpreted as having civil relations with men as long as it can be proven by science and technology and/or other evidence-based on the law having blood relations as his father. Regulating marriage registration in the Marriage Law is an effort by the state to ensure the protection and fulfilment of human rights, especially the rights of women and children who will be born. Although the explanation of the Marriage Law stated that marriage registration is not a determining factor for the validity of marriage as some religions or beliefs believe, it does not cause the slightest loss if a marriage is registered. It relates to the issue of children born out of wedlock who are not registered. The Marriage Law stipulates that a child born out of wedlock does not have a civil relationship with his father. Because the Court believes that an unregistered marriage does not make a wedding non-existent, a child born outside of marriage can have a civil relationship with his father as long as it can be proven. The Court believes that the law must provide adequate legal protection and certainty to avoid unfair treatment of the child.

d. Constitutional Court Decision Number 18/PUU-XI/2013 Review of Law Number 23 of 2006 concerning Population Administration

A parking attendant submitted this application in Surabaya regarding the constitutionality of the birth registration procedure, which exceeds the one-year time limit, which requires a very long and complicated process and requires a lot of money. In its legal considerations, the Court believes that the residence document is the right of every resident. In addition, since the child is born, the child has the right to a name as self-identity and citizenship status. According to the Court, delays in reporting births of more than one year through a court order can harm the community, especially for those who live far away in remote areas. For this reason, the state is obliged to serve every citizen in fulfilling their fundamental rights and needs, providing identity and citizenship, which is the mandate of the 1945 Constitution. If a person does not have self-identity, a birth certificate, his existence is de jure considered non-existent by the state. The worst legal consequences are causing widespread exploitation of children because children's identities can be manipulated, child trafficking, use of child labour, and violence against children. Thus, the Court partially granted the Petitioner's request and stated that the provision for registration of births beyond the time limit required a district court ruling contrary to the constitution. In this decision, the Constitutional Court affirms children's rights to identity and

citizenship and in line with Article 24 paragraph (2) and paragraph (3) of Law 12/2005 concerning ICCPR.

e. Constitutional Court Decision Number 22/PUU-XV/2017 reviewing Article 7 paragraph (1) of Law 1/1974 concerning Marriage

This application was submitted by 3 (three) housewives who underwent early marriage due to poverty. The Petitioner believes that the provisions of Article 7 paragraph (1) of Law 1/1974 are contrary to the constitution because the determination of the age of marriage in the Marriage Law is a form of real discrimination between women and men. Moreover, the Petitioners describe some of the impacts experienced in early marriage, such as the loss of opportunities to continue their education, the risk of health problems such as reproductive development disorders, and increased exploitation of children by both their parents and others on. In addition, the age limit provided in Article 7 paragraph (1) provides the potential for domestic violence.

Indeed, the provisions of Article 7 para. 1 of the marriage law at that time reflected the values prevailing in society. However, in line with the development of the Indonesian state administration, namely increasing the guarantee of protection of human rights, to prevent friction or sharp friction between the laws before, adjustments and harmonization with other rules are needed. Judicial review is one of the mechanisms for harmonizing the law. Thus, the Court believes that the minimum age limit for children to marry in the Marriage Law needs to be adjusted to the values that develop in today's society. Early marriage causes a lot of harm, especially to the child himself, for example, psychological and health disorders due to unpreparedness in undergoing a relationship. The Court believes that this is the right time to guarantee the children rights, as Article 28B para.2 of the 1945 Constitution stated. The adjustment of the minimum age limit for children to marry to 19 (nineteen) years is expected to restore the noble ideals of the ideal goal of marriage itself, namely to form a happy family based on the One Godhead.

In its legal considerations, the Court believes that the difference in treatment between men and women, which deter the fulfillment of citizens' fundamental rights or constitutional rights, including groups of civil and political rights, economic, social and cultural rights, is not allowed because it constitutes discrimination. Furthermore, Article 7 paragraph (1) of the Marriage Law also contradict the 1945 constitution, particularly of other constitutional rights such as the right to grow and develop [Article 28B paragraph (2)], the right to obtain and attend education [Article 28C paragraph 1) and Article 31 paragraph (2)].

The 5 (five) example of the decision above shows that there is some constitutional consideration to decide and protect the children's rights. Those are: the right of education (the Decision Number 011/PUU-III/2005), the right to life (the Decision Number 1/PUU-VIII/2010), the right of life and right to protection against discrimination (the Decision Number 46/PUU-VIII/2010), the right to identity and citizenship (the Decision Number 18/PUU-XI/2013), the right to grow and develop and attend education (the Decision Number 46/PUU-VIII/2010). As the protector of human rights, the Constitutional Court should prioritize children rights, particularly those written in the constitution. It is because besides the child classifies as vulnerable groups [vide explanatory Art.5 para.3 UU 39/1999], the children become the key to successful development. Moreover, in the concept of transitional human rights, children must get protection. This is because they have privileges and specificities; namely, children are a mandate from Allah SWT as the nation's next-generation; therefore, if they are not protected, then who will continue the nation's life in the future [15]. Suppose fundamental rights are binding against the state. In that case, a child whose fundamental rights have been violated by an administrative authority or by the law itself shall be entitled to obtain appropriate relief as

provided by the constitution. When a written constitution guarantees fundamental rights along the judicial review to enforce them, particular emphasis is added to the primary role of the judiciary, for the courts are regarded as the custodian or guardian of the guaranteed rights or the sentinel to guard them against violations by the organs of the state [16].

4 Conclusion

The regulation of the protection of children's constitutional rights, basically both in international law and national law, occupies a particular position considering that children are an asset of national development. Practically, the laws and regulations established by the government have the potential to intersect with the violation of the constitutional rights of children. For this reason, several Indonesian people have submitted a judicial review to the Constitutional Court of the Republic of Indonesia to uphold and develop the constitutional rights of children in Indonesia. Moreover, there needs to be an effort to socialize the legal instruments of children's constitutional rights and implement agencies to protect children's rights to increase awareness of the enforcement of children's constitutional rights in Indonesia.

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