



Legal Protection for Children Victims of Neglect by Parents with Mental Disorders within Indonesia's Legislative Framework

Citra Agustine Putri Rumpaidus^{a,1,*}

^a Magister Ilmu Hukum Universitas Surabaya, Indonesia

¹ s124124505@student.ubaya.ac.id

* corresponding author

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ABSTRACT

The issue of child neglect by parents with mental disorders raises complex legal and social challenges, as both the child and the mentally ill parent are vulnerable groups requiring legal protection and State responsibility to ensure their rights. Mental illness often impairs parental capacity to provide adequate care, placing the child in a highly vulnerable and precarious situation. From a criminal law perspective, such mental conditions may serve as a ground for excuse under the Indonesian Penal Code, potentially eliminating criminal responsibility. This raises the question of who is accountable for ensuring the child's protection. This normative legal research aims to analyze the available forms of legal protection for children in such circumstances under Indonesian law, particularly Law No. 23 of 2002 on Child Protection as amended by Law No. 35 of 2014, and to examine State responsibility through the lens of Child Rights Theory and the Best Interests of the Child principle. The study finds that while Indonesia's legal framework is relatively comprehensive, highlighted by Government Regulation No. 44 of 2017 on the Implementation of Child Care and Government Regulation No. 78 of 2021 on Special Protection for Children, implementation remains hindered by significant challenges, including weak institutional coordination, limited resources, and an insufficiently child-centered approach. The State thus has a positive obligation to take concrete preventive and curative measures to ensure children's rights protection, including providing appropriate alternative care and access to psychosocial recovery services.

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1. Introduction

The family serves as the primary social environment for children, providing the first and most fundamental space in which their physical, emotional, social, and psychological needs are met.¹ In this context, parents hold a central responsibility to ensure adequate care, fulfilling moral, social, and legal obligations.² Within Indonesia's legal framework, children are recognized as individuals with inherent rights, entitled to survival, development, protection, and participation.³ These rights are explicitly enshrined in Article 28B, paragraph (2) of the 1945 Constitution of the Republic of Indonesia and further detailed in Law No. 23 of 2002 on Child Protection, as amended by Law No. 35 of 2014.⁴ As a result, the State carries a constitutional mandate and a positive obligation to ensure that every child receives comprehensive protection, free from discrimination.⁵

However, empirical evidence reveals that not all children are able to fully enjoy these rights.⁶ Child neglect remains a persistent social and legal issue, and in certain cases, it is directly linked to mental disorders experienced by parents. Child neglect arising from parental mental illness is a multifaceted issue that intersects family law, criminal law, child protection law, social policy, and mental health governance. Mental disorders can significantly reduce or even eliminate a parent's capacity to provide adequate care, thereby affecting the fulfillment of the child's physical, emotional, and socio-economic needs.⁷ Numerous cases in Indonesia illustrate this complexity. For instance, in Palangkaraya, authorities discovered a neglected five-year-old child despite the presence of both parents; the father worked long hours as an informal scavenger, while the mother was suspected of

¹ Muhammad Ali Muhsim, Muhamad Ali Muhsim, dan Ali Hamdan, "Penerapan Dwangsom pada Putusan Hak Asuh Anak Perspektif Teori Keadilan Aristoteles," *Al adalah: Jurnal Hukum dan Politik Islam* 7, no. 2 (2022): 124–50, <https://doi.org/https://doi.org/10.35673/ajmpi.v7i2.2606>.

² Oliver Nahkur dan Dagmar Kutsar, "Family Type Differences in Children's Satisfaction with People They Live with and Perceptions about Their (Step) parents' Parenting Practices," *Social Sciences* 11, no. 5 (2022), <https://doi.org/https://doi.org/10.3390/socsci11050223>.

³ Darmawati et al., "Assessing the New Model Fulfilling the Right to Education for Correctional Students," *Al-Adalah: Jurnal Hukum dan Politik Islam* 8, no. 1 (2023): 1–14.

⁴ N M Sukma, "Development of physical and mental abilities in fulfilling children's rights in the program of 'Kampung Anak Negeri' in Surabaya," *Indian Journal of Forensic Medicine and Toxicology* 15, no. 1 (2021): 213–16, <https://doi.org/10.37506/ijfmt.v15i1.13407>.

⁵ M Azzasyofia, C Fouche, dan L Beddoe, "The representation of indigenous children in policies in Indonesia," *Asian Social Work and Policy Review* 18, no. 2 (2024), <https://doi.org/10.1111/aswp.12310>.

⁶ H Beazley, L Butt, dan J Ball, "Like it, don't like it, you have to like it': children's emotional responses to the absence of transnational migrant parents in Lombok, Indonesia," *Children's Geographies* 16, no. 6 (2018): 591–603, <https://doi.org/10.1080/14733285.2017.1407405>; Imam Suyuti et al., "Integrating Islamic Educational Programs for Street Children in Central Java : A Contextual Analysis," *Al-Ishlah: Jurnal Pendidikan* 16, no. 4 (2024): 4551–65, <https://doi.org/10.35445/alishlah.v16i4.5661>.

⁷ Ana Isabel Lopes dan Ana Isabel Sani, "Parental Mental Health Problems and the Risk of Child Maltreatment: The Potential Role of Psychotherapy," *Social Sciences* 11, no. 3 (2021): 1–9, <https://doi.org/https://doi.org/10.3390/soc11030108>.

suffering from a severe mental disorder that impaired her caregiving ability.⁸ A similar pattern was observed in East Java, where, in early 2025, the Provincial Social Service reported fourteen abandoned infants, several of whom were from parents with mental disorders.⁹ These cases highlight that the issue is not merely individual pathology but rather a structural challenge that demands a clear legal and policy response.

Under Indonesian law, individuals with mental disorders (Orang Dengan Gangguan Jiwa/ODGJ) are explicitly recognized in Law No. 17 of 2023 on Health, particularly Article 74 paragraph (1), as persons whose psychological condition limits their ability to function optimally in daily life. At the global level, the World Health Organization (WHO) emphasizes that severe mental disorders, such as schizophrenia, major depressive disorder, and other neuropsychiatric conditions, constitute a major public health concern with far-reaching consequences for family stability and child well-being.¹⁰ In the Indonesian context, the complexity of mental health problems is further exacerbated by persistent social stigma, limited accessibility and uneven distribution of mental health services, socio-economic vulnerability, and, in certain regions, the continued practice of *pasung*, notwithstanding its explicit prohibition under national law.¹¹ Collectively, these structural conditions substantially increase the risk of child neglect and simultaneously reveal systemic deficiencies in the design, coordination, and implementation of child protection and social welfare mechanisms.

Existing literature predominantly focuses on mental health policy, stigma, psychiatric treatment, the human rights of persons with mental disorders, and the psychosocial impacts on families (Maybery et al., 2024). Several studies have also examined the psychological effects on children living with mentally ill parents, highlighting the importance of community-based interventions. While quantitative and qualitative research has provided valuable insights into the experiences and coping strategies of these children, a significant gap remains regarding the socio-legal dimensions of child neglect arising specifically from parental mental disorders, particularly within the Indonesian legal context. Few studies critically analyze how the law conceptualizes and operationalizes protection for children in situations of “double vulnerability,” where both the child and the parent are recognized as vulnerable groups entitled to state protection. Evidence from scoping reviews of Families where a Parent has a Mental Illness (FaPMI) supports this gap, showing that

⁸ Palangkaraya Dinsos, “Pendampingan anak terlantar lintas instansi,” *dinsos.palangkaraya.go.id*, 2025, <https://dinsos.palangkaraya.go.id/pendampingan-anak-terlantar-lintas-instansi/>. Accessed November 21, 2025.

⁹ Rahardi Soekarno, “Dinsos Jatim Terima 14 Bayi Telantar , Diduga Dibuang dan Ada Ortu ODGJ,” *beritajatim.com*, 2025, <https://beritajatim.com/dinsos-jatim-terima-14-bayi-terlantar-diduga-dibuang-dan-ada-ortu-odgj>. Accessed November 21, 2025.

¹⁰ Nadira Lubis, Hetty Krisnani, dan Muhammad Fedryansyah, “PEMAHAMAN MASYARAKAT MENGENAI GANGGUAN JIWA DAN KETERBELAKANGAN MENTAL,” *Share : Social Work Journal* 4, no. 2 (2014).

¹¹ N Simanjuntak, M Tampubolon, dan F Farinella, “Discrimination of Persons with Mental Illness: Testing the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care in Indonesia,” in *Studies in Systems, Decision and Control*, vol. 516, 2024, 601–13, https://doi.org/10.1007/978-3-031-49544-1_53.

existing research largely concentrates on psychosocial outcomes and intervention strategies, while socio-legal perspectives and governance mechanisms remain underexplored.¹²s

Against this background, this study aims to analyze the legal protection afforded to children neglected by parents with mental disorders under Indonesian positive law. It further examines the role and responsibility of the State through the lens of Child Rights Theory and the principle of the Best Interests of the Child. By integrating doctrinal legal analysis with socio-legal perspectives, this research seeks to contribute to both scholarly discourse and policy development by offering a more comprehensive, child-centered, and rights-based understanding of legal protection for children affected by parental mental illness. Accordingly, this study specifically examines the extent to which Indonesia's legislative framework provides effective legal protection for children who become victims of neglect due to parental mental disorders, with a view to strengthening the legal framework and promoting more effective, just, and humane child protection measures.

2. Legal Material and Methods

This study adopts a normative juridical (doctrinal) research method, complemented by a socio-legal perspective, to examine the legal protection afforded to children neglected as a result of parental mental disorders within the Indonesian legal framework. The doctrinal approach is employed to systematically analyze constitutional norms and statutory instruments governing child protection, state responsibility, and mental health regulation. Meanwhile, the socio-legal perspective is used to contextualize the operation of these legal norms in practice, particularly in settings shaped by social stigma, limited access to mental health services, and broader structural barriers that affect the effective realization of children's rights.

Primary legal materials comprise the 1945 Constitution of the Republic of Indonesia, Law No. 23 of 2002 on Child Protection as amended by Law No. 35 of 2014, Law No. 17 of 2023 on Health, Government Regulation No. 44 of 2017 on the Implementation of Child Care, and Government Regulation No. 78 of 2021 on Special Protection for Children. Secondary legal materials consist of peer-reviewed scholarly literature, policy reports, and authoritative legal commentaries on child rights, mental health law, and state responsibility. All materials are examined qualitatively using interpretive and deductive reasoning to assess normative coherence, evaluate the adequacy of the regulatory framework, and determine the extent to which Indonesian law reflects the best interests of the child principle and fulfills the State's positive obligations toward children in situations of parental mental illness. This study does not involve empirical fieldwork but relies on secondary socio-legal sources to contextualize legal norms and assess their practical implications.

¹² Darryl Maybery, Anne Grant, dan Gavin Davidson, "Summarising Quantitative Outcomes in Parental Mental Illness Research," *International Journal of Mental Health Nursing* 33, no. 6 (2024): 1761–95, <https://doi.org/10.1111/inm.13385>.

3. Results and Discussion

The protection of children constitutes a constitutional mandate and a non-derogable obligation of the State.¹³ In the specific context of children neglected by parents with mental disorders, the principle of the best interests of the child must operate as the paramount consideration guiding all legal and policy decisions. This includes, where strictly necessary, the possibility of separating the child from parental care as a measure of last resort,¹⁴ particularly when it is demonstrably evident that the parents lack the capacity to fulfill their caregiving responsibilities. Inadequate or dysfunctional caregiving environments expose children to heightened risks of psychological, social, and moral harm, while simultaneously increasing the likelihood of violations of their fundamental human rights.¹⁵ Consequently, the existence of a robust and coherent framework of legal certainty is indispensable, alongside an enhanced and proactive role of the State to ensure comprehensive, effective, and sustainable protection for children situated in conditions of compounded vulnerability.

3.1 Legal Certainty in the Protection of Children Neglected by Parents with Mental Disorders

Philosophically, the concept of legal protection is deeply rooted in natural law theory, which conceives law as an instrument for realizing substantive justice and safeguarding human dignity.¹⁶ As Satjipto Rahardjo argues, law is not merely a set of formal rules but a reflection of moral and social values that serve the welfare of society. Plato understands law as an ethical instrument designed to secure the common good, while Aristotelian thought associates law with both distributive and corrective justice.¹⁷ Similarly, Zeno links law to the rational order governing human existence.¹⁸ Within this philosophical framework, law transcends its coercive and procedural dimensions and emerges as a normative value system intended to balance individual liberty, societal interests, and, crucially, the protection of vulnerable groups.¹⁹

¹³ Suci Dini Lubis dan Syaddan Dintara Lubis, "Regulations on Diversion in the Settlement of Children in Conflict with the Law: A Comparative Analysis of Positive Law and Islamic Criminal Law," *Al-Adalah: Jurnal Hukum dan Politik Islam* 9, no. 2 (2024): 208–23, <https://doi.org/https://doi.org/10.30863/ajmpi.v9i2.7021>.

¹⁴ Republik Indonesia, "Undang-Undang Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak" (2014). Article 14(1) affirms a child's right to parental care, subject only to lawful separation in the best interests of the child as a last resort.

¹⁵ C Canaert dan L De Wilde, "The Meaning of Shared Parenthood in Long-Term Foster Care: The Perspectives of Parents and Foster Carers," *Child and Family Social Work* 30, no. 3 (2025): 387–97, <https://doi.org/10.1111/cfs.13177>.

¹⁶ John Finnis, *Natural Law & Natural Rights*, Oxford University Press, 1980.

¹⁷ A F Natoli, "To Rule, or Not to Rule? The 'Happy Philosopher' Crux of Plato's Republic," *Polis (United Kingdom)* 42, no. 3 (2025): 397–421, <https://doi.org/10.1163/20512996-12340480>.

¹⁸ Ikkurthi Ajay Sri Harsh, "Stoicism and law," *International Journal of Novel Research and Development (IJNRD)* 8, no. 5 (2023): 724–31.

¹⁹ J Jahner, "Justice, theories of," in *Elgar Concise Encyclopedia of Law and Literature*, 2025, 282–85, <https://doi.org/10.4337/9781803925912.ch74>.

Building upon these philosophical foundations, the framework of the Rule of Law as articulated by A.V. Dicey provides an institutional and normative mechanism through which ideals of justice, human dignity, and the protection of vulnerable groups are translated into binding legal principles.²⁰ A lawful state, according to Dicey, rests upon three fundamental pillars: the supremacy of law, equality before the law, and the guarantee of due process of law. These principles constitute the normative foundation of a comprehensive system of legal protection, ensuring that the exercise of state power is constrained by law and oriented toward justice.²¹ In the Indonesian context, these ideals are explicitly reflected in Article 1 paragraph (3) of the 1945 Constitution, which affirms Indonesia as a state based on law, as well as in various statutory instruments guaranteeing the protection of human rights, including the rights of children. Consequently, child protection is not merely a matter of policy preference, but a constitutional mandate that the State is legally bound to fulfill.

Within this Rule of Law framework, Philipus M. Hadjon conceptualizes legal protection as encompassing two interrelated dimensions: preventive and repressive protection.²² Preventive protection seeks to avert violations of rights through the establishment of clear and predictable regulatory frameworks, effective supervision, accessible complaint mechanisms, and participatory avenues for legal objection. Repressive protection, by contrast, operates after violations have occurred, relying on dispute resolution mechanisms, sanctions, and restorative measures to redress harm.²³ In the sphere of child protection, particularly in cases involving parental incapacity due to mental disorders, these two dimensions must function synergistically to ensure legal certainty and effective safeguarding of children's rights. La Porta further underscores that robust legal protection depends not only on the existence of comprehensive normative arrangements but also on institutional capacity and the consistent enforcement of law, thereby ensuring that legal interventions are proportional, fair, and accountable in practice.²⁴

Children occupy a distinctive juridical position as vulnerable subjects of law who lack sufficient physical, psychological, and socio-legal capacity to protect their own interests.²⁵ Consequently, the State bears constitutional, moral, and juridical responsibility to ensure the fulfillment of children's fundamental rights as mandated by child protection

²⁰ A.V Dicey, *Pengantar Studi Hukum Konstitusi, Terjemahan dari Introduction to the Study of the Law of the Constitution*, Nusamedia (Bandung, 2008), 254–59.

²¹ M D Walters, "The Spirit of Legality: A. V. Dicey and the Rule of Law," in *The Cambridge Companion to the Rule of Law*, 2021, 153–70, <https://doi.org/10.1017/9781108600569.009>.

²² Phillipus M. Hadjon, *Perlindungan hukum bagi rakyat di Indonesia Sebuah studi tentang prinsip-prinsipnya, penanganannya oleh pengadilan dalam lingkungan peradilan umum dan pembentukan peradilan administrasi negara*, Bina Ilmu (Surabaya, 1987), 4.

²³ Hadjon, 5.

²⁴ Rafael La Porta et al., "Investor protection and corporate governance," *Journal of Financial Economics* 58, no. 1–2 (2000): 3–27.

²⁵ Nurjaini Nurjaini dan Mar'ie Mahfudz Harahap, "Perlindungan Hukum Terhadap Anak Korban Tindak Pidana Pelecehan Seksual," *Al-Adalah: Jurnal Hukum dan Politik Islam* 8, no. 2 (2023): 162–73, <https://doi.org/10.30863/ajmpi.v8i2.5101>.

legislation. This responsibility becomes considerably more complex when child neglect is committed by parents experiencing mental disorders. From a legal standpoint, mental disorders are not merely a matter of public health, but also raise critical questions concerning legal capacity, the ability to perform parental responsibilities, and the attribution of accountability under both criminal and civil law. These complexities directly affect the degree of legal certainty in determining who bears responsibility for safeguarding the child's best interests.

Mental disorders may substantially diminish or impair parental capacity to fulfill caregiving obligations physically, emotionally, morally, and economically. In severe cases, such conditions may give rise to behaviors that place children at risk, expose them to neglect, or create hazardous caregiving environments. Under Indonesian criminal law, child neglect constitutes a criminal offense, as regulated in Article 76B in conjunction with Article 77B of Law No. 35 of 2014 on Child Protection.²⁶ Nevertheless, when neglect occurs in the context of parental mental disorder, a more nuanced legal analysis is required, particularly with regard to criminal responsibility. Article 44 of the Indonesian Penal Code recognizes mental incapacity as a ground for excluding criminal liability,²⁷ thereby raising complex questions concerning accountability, legal certainty, and the extent of the State's obligation to intervene to protect the child.

Accordingly, psychiatric examination becomes a legal imperative rather than a discretionary measure. Law No. 18 of 2014 on Mental Health, as reinforced by Law No. 17 of 2023 on Health, mandates the treatment, rehabilitation, and clinical as well as medico-legal assessment of persons with mental disorders. The results of psycholegal evaluations may constitute a crucial juridical basis for determining legal capacity under civil law, assessing parental custody and guardianship eligibility, and establishing criminal responsibility.²⁸ In the civil law domain, the existence of mental disorder may justify the restriction or revocation of parental custody through judicial mechanisms in order to safeguard the best interests of the child.²⁹ In the criminal law context, mental disorder may operate as a ground for excluding criminal liability; however, such exemption does not

²⁶ Indonesia, Undang-Undang Nomor 35 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2002 tentang Perlindungan Anak.

²⁷ I D M Suartha, I.D.A.G.M. Martha, dan B Hermanto, "Between Mental Illness, Criminal Policy Reform, and Human Rights: Discourse on Reformulation of The Article 44 Indonesia Criminal Code," *International Journal of Criminal Justice Sciences* 17, no. 1 (2022): 1–21, <https://doi.org/10.5281/zenodo.4756086>.

²⁸ Kalbianti, Rosita, dan Irfan Amir, "Pemenuhan Hak Aksesibilitas Layanan Peradilan Bagi Penyandang Disabilitas Berhadapan Dengan Hukum," *Constitutional Law Review* 1, no. 1 (2022): 1–11.

²⁹ D Tustin, *Psycho-Legal Concepts for Parenting in Child Custody and Child Protection: Volume 4: Therapy Interventions for Vulnerable Families*, *Psycho-Legal Concepts for Parenting in Child Custody and Child Protection: Volume 4: Therapy Interventions for Vulnerable Families*, vol. 4, 2024, <https://doi.org/10.1007/978-981-97-5854-8>.

extinguish the State's positive obligation to ensure effective and continuous protection of the child's rights.³⁰s

Legal certainty in cases involving children neglected by parents with mental disorders must therefore be understood in a comprehensive and substantive manner. Legal certainty is not confined to the mere existence of regulatory norms, but also encompasses procedural clarity, institutional competence, and the availability of accessible, effective, and coordinated protection mechanisms.³¹ Where parents are demonstrably incapable of fulfilling their caregiving obligations, the transfer of custody to extended family members should be prioritized in accordance with the principle of family-based care. In circumstances where familial capacity is absent or inadequate, the State bears a direct obligation to intervene through guardianship mechanisms, alternative care arrangements, and special protection measures as provided under national child protection legislation. Throughout all such processes, the principle of the best interests of the child must remain the paramount and guiding consideration.³²

Accordingly, legal certainty in the protection of children neglected by parents with mental disorders should be understood as encompassing three interrelated and indispensable dimensions. First, certainty concerning the legal status of child custody, ensured through clear, timely, and child-centered judicial processes that prioritize the child's best interests. Second, certainty regarding the psychiatric treatment, management, and rehabilitation of parents with mental disorders as an integral component of social protection and the State's public health responsibility. Third, certainty in the fulfillment of children's rights through an integrated, equitable, and effective child protection system that guarantees the child's safety, development, and human dignity. Together, these dimensions underscore that legal certainty functions not merely as a formal legal principle, but as a substantive safeguard for children facing layered vulnerabilities.

Through such an approach, child protection transcends the mere enforcement of legal norms and emerges as a concrete manifestation of the State's responsibility to ensure substantive justice and uphold human dignity. In cases of child neglect involving parents with mental disorders, legal intervention must therefore move beyond a narrowly punitive orientation toward a comprehensive, child-centered, and humanistic protection model. This model should simultaneously safeguard children's rights while ensuring appropriate care,

³⁰ Erfaniah Zuhriah et al., "Dimensions of The Islamic Law and Human Rights in The Protection of Children from Convicted Parents," *De Jure: Jurnal Hukum dan Syar'iah* 16, no. 2 (2024): 432–55, <https://doi.org/http://dx.doi.org/10.18860/j-fsh.v16i2.25150>.

³¹ J Zumbach, "Mental Disorders in Children and Parents in Family Law Proceedings: Cases on Child Protection Matters Versus Child Custody and Visitation Issues," *Journal of Child and Family Studies* 25, no. 10 (2016): 3097–3108, <https://doi.org/10.1007/s10826-016-0476-8>.

³² C Chapdelaine-Feliciati, "Translating the meaning- intention behind the 'best interests of the child' principle in the Convention on the Rights of the Child," in *Intersemiotic Perspectives on Emotions: Translating across Signs, Bodies and Values*, 2022, 116–29, <https://doi.org/10.4324/9781003056652-9>.

treatment, and social reintegration for parents with mental disorders, as an integral part of a holistic child protection and social welfare framework.

3.2 The Role and Responsibility of the State towards Children Neglected by Parents with Mental Disorders: A Human Rights and Best Interests of the Child Perspective

The phenomenon of child neglect committed by parents with mental disorders reflects a complex intersection between child protection law, mental health governance, and the State's human rights obligations. This issue is not merely incidental, but structurally significant within the Indonesian context. Empirical indicators underscore its magnitude. National data reported by Kompas indicate that approximately 1.7 million individuals in Indonesia experience severe psychological distress while living within intact family structures,³³ highlighting the urgent need for proactive State intervention in the mental health sector as a preventive strategy to reduce the risk of child neglect. This reality reinforces the imperative for the State to assume responsibility not only for safeguarding children's rights, but also for developing a comprehensive and accessible mental health care system as an integral component of its constitutional duties and international human rights commitments.

From the perspective of international law, the doctrine of State responsibility, as elaborated by Malcolm N. Shaw, comprises three essential elements: first, the existence of binding international legal obligations imposed upon the State; second, an act or omission attributable to the State that constitutes a breach of those obligations; and third, demonstrable harm resulting from such wrongful conduct.³⁴ These elements indicate that a State may be held internationally accountable where it fails to respect, protect, or fulfill its legally binding human rights commitments. In the Indonesian context, obligations relating to the protection and fulfillment of children's rights derive not only from constitutional guarantees under national law, but also from a range of international human rights instruments ratified by the State. These include the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), and, most notably, the Convention on the Rights of the Child (1989), ratified by Indonesia through Presidential Decree No. 36 of 1990.³⁵ By acceding to these instruments, Indonesia has assumed binding legal responsibility to ensure that every child is protected from neglect, violence, exploitation, and discrimination, including situations in which neglect arises from parental mental incapacity.

Children constitute an integral component of national continuity and development; accordingly, they must be protected from neglect, violence, social vulnerability, and the deprivation of fundamental rights.³⁶ Indonesian positive law explicitly mandates State

³³ Albertus Krisna, Margaretha Puteri Rosalina, dan M Paschalia Judith J, "1,7 Juta Warga Stres di Keluarga Utuh (7)," *Kompas.id*, 2024. Accessed November 21, 2025.

³⁴ Malcolm N. Shaw, *International Law, 6th Edition*, Cambridge University Press (New York, 2008), 781.

³⁵ Republik Indonesia, "Keputusan Presiden Nomor 36 Tahun 1990 Tentang Pengesahan Convetion On The Rights of The Child 9Konvensi Tentang Hak-Hak Anak," *Menteri/Sekretaris Negara Republik Indonesia*, 1990.

³⁶ Bob Lonne et al., "Child Protection and Practice Assessing the impacts on child welfare practice of important articles of the UN convention on the rights of the child : A comparison of Australia , Canada and the

responsibility in this regard, as reflected in Law No. 23 of 2002 on Child Protection as amended by Law No. 35 of 2014, Government Regulation No. 44 of 2017 on the Implementation of Child Care, and Government Regulation No. 78 of 2021 on Special Protection for Children. Collectively, these legal instruments affirm that children neglected by parents experiencing mental disorders fall within the category of children entitled to special protection, thereby requiring proactive and comprehensive intervention by the State.

Government Regulation No. 78 of 2021 explicitly mandates that special protection for neglected children be implemented through a comprehensive set of measures, including supervision, prevention, treatment, counseling, social rehabilitation, social assistance, and the provision of alternative care such as foster care and substitute families.³⁷ Complementarily, Government Regulation No. 44 of 2017 establishes a structured child care mechanism whereby, when parents are legally and psychologically incapable of fulfilling parental responsibilities, such as due to mental disorders child care responsibilities may be transferred to extended family members, legal guardians, or state-recognized childcare institutions, subject at all times to the principle of the best interests of the child.³⁸

The implementation of these protective measures necessarily requires professional psychological and psychiatric assessments to determine parental capacity and the extent of mental impairment affecting caregiving abilities. In this regard, the State's responsibility assumes a dual character.³⁹ First, the State is obligated to guarantee the fulfillment of children's fundamental rights through safe, nurturing, and stable caregiving arrangements that prevent further harm and rights deprivation. Second, the State bears responsibility for ensuring access to mental health treatment, rehabilitation, and recovery services for parents with mental disorders, with the aim of enabling potential family reunification insofar as such reunification remains consistent with the best interests of the child. In line with this approach, Government Regulation No. 78 of 2021 mandates the provision of psychosocial assistance, legal support, social reintegration programs, and long-term recovery services for children affected by neglect.

Within the framework of the Convention on the Rights of the Child, the State bears tripartite obligations to respect, protect, and fulfill the rights of every child.⁴⁰ The obligation to protect requires proactive state intervention where parents are demonstrably incapable of fulfilling caregiving responsibilities due to mental disorders, particularly when such incapacity exposes children to neglect or harm. The obligation to fulfill further mandates the

USA," *Child Protection and Practice* 8, no. October 2024 (2026): 100270, <https://doi.org/10.1016/j.chipro.2025.100270>.

³⁷ Government Regulation of the Republic of Indonesia No. 78 of 2021 on Special Protection for Children, Articles 75 and 78

³⁸ Government Regulation of the Republic of Indonesia No. 78 of 2021 on Special Protection for Children, Article 10

³⁹ Lopes dan Sani, "Parental Mental Health Problems and the Risk of Child Maltreatment: The Potential Role of Psychotherapy."

⁴⁰ S Ashton, "The rights of children and young people in state care," *Educational Philosophy and Theory* 46, no. 9 (2014): 1082-88, <https://doi.org/10.1080/00131857.2014.931432>.

State to ensure children's effective access to essential services, including health care, education, psychosocial assistance, and safe and dignified living conditions. Central to the implementation of these obligations is the principle of the best interests of the child, which must operate as the primary consideration in all decisions concerning child custody, alternative care arrangements, and potential family reunification, ensuring the prioritization of children's safety, emotional stability, dignity, and holistic development.

Mental health legislation further reinforces the State's responsibility in this regard. Law No. 18 of 2014 on Mental Health and Law No. 17 of 2023 on Health explicitly assign both central and regional governments the duty to ensure the availability, accessibility, and continuity of mental health services, including treatment, rehabilitation, and social reintegration. In parallel, Law No. 39 of 1999 on Human Rights and Law No. 8 of 2016 on Persons with Disabilities enshrine the principles of non-discrimination and the obligation to allocate adequate resources for the protection and fulfillment of the rights of persons with psychosocial disabilities. Accordingly, child protection in cases involving parents with mental disorders must be pursued through a holistic and integrated policy framework—one that simultaneously safeguards children's rights and promotes parental recovery, thereby creating pathways for safe family restoration where such reunification aligns with the best interests of the child.

Despite the existence of an ostensibly comprehensive normative and institutional framework, empirical realities continue to reveal persistent cases of child neglect linked to parental mental disorders. Evidence from East Java in early 2025 illustrates this gap, where the Provincial Social Service reported receiving fourteen neglected infants, several of whom were abandoned by parents experiencing mental illness. Such cases underscore that the problem does not lie solely in normative deficiencies, but rather in structural weaknesses related to policy implementation, inter-agency coordination, resource allocation, and the limited reach of community-based support systems. Consequently, the persistence of child neglect in these contexts exposes a disjunction between legal commitments and their effective realization on the ground.

Thus, while Indonesian law establishes a robust legal and moral foundation for safeguarding children neglected by parents with mental disorders, the effective realization of these protections necessitates stronger institutional commitment, enhanced inter-agency coordination, improved mental health infrastructure, and a consistently child-centered approach to governance. Only through such integrated and sustained efforts can the State genuinely fulfill both its constitutional mandate and its binding international human rights obligations, thereby ensuring that every child is protected, nurtured, and afforded the opportunity to live, develop, and thrive with dignity.

4. Conclusion

The protection of children neglected by parents with mental disorders constitutes a multifaceted legal issue situated at the intersection of family law, child protection law, health law, and disability law. This study demonstrates that Indonesia's positive legal framework, particularly Law No. 23 of 2002 on Child Protection as amended by Law No. 35 of 2014, along with implementing regulations such as Government Regulation No. 44 of 2017 on

Child Care Implementation and Government Regulation No. 78 of 2021 on Special Protection for Children, provides a formally comprehensive and normative foundation to safeguard children while ensuring appropriate care and rehabilitation for parents with mental disorders as a vulnerable group. These instruments operationalize the principle of the best interests of the child and establish mechanisms for alternative care, social rehabilitation, institutional support, and access to health services.

However, the practical effectiveness of this framework remains constrained by persistent implementation challenges. Ongoing cases of child neglect reveal a gap between legal provisions and empirical realities, driven by limited resources, inadequate institutional coordination, insufficient early intervention mechanisms, and policy approaches that are not yet fully attuned to the needs of vulnerable populations. Such discrepancies undermine constitutional mandates, human rights principles, and the State's positive obligations toward children's welfare.

Therefore, a holistic, integrated, and child-centered approach is imperative—one that not only removes children from harmful environments but also ensures dignified alternative care, the fulfillment of basic and psychosocial needs, and the provision of adequate medical and social rehabilitation for parents with mental disorders. Only through such an approach can Indonesia achieve an effective, just, and humane system of child protection.

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