

Equality Before the Law Against Police Officers Perpetrating Violence Against Children in the Tual Incident

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Abstract

Purpose of the study: This study analyses the implementation of equality before the law toward police officers who committed violence against children in the Tual incident and formulates the ideal model of criminal liability for such officers. **Methodology:** The study employs normative legal research using statutory and conceptual approaches, examining the 1945 Constitution, Law No. 1 of 2023 on the Criminal Code, Law No. 2 of 2002 on the Indonesian National Police, Law No. 35 of 2014 on Child Protection, and Law No. 39 of 1999 on Human Rights, analysed descriptively and qualitatively. **Main Findings:** Equality before the law has not been optimally realised, owing to entrenched esprit de corps, weak internal and external oversight, conflicts of interest arising from institutional self-investigation, and asymmetric power relations within the law-enforcement system. Ideal criminal liability must be independent, transparent, and accountable. **Novelty/Originality of this study:** This study situates equality before the law at the intersection of child protection, human rights, and the criminal accountability of state officials. It advances existing knowledge by offering a concrete model of liability that integrates criminal and ethical sanctions, independent external oversight, and institutional reform oriented toward the best interests of the child, addressing persistent preferential treatment in Indonesian law-enforcement practice.

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A. Introduction

Indonesia is a state based on law, as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. As a *rechtsstaat*, all administration of state power must be grounded in law and must uphold the principles of justice, legal certainty, and the protection of human rights. One of the cardinal principles of a state based on law is *equality before the law*, which guarantees that every citizen holds an equal position before the law without distinction of social status, position, or power (Rofingi et al., 2022).

The principle of *equality before the law* is intimately connected to the protection of human rights within the Indonesian legal system. Human-rights protection forms part of the constitutional mandate and must be realised through fair, transparent, and accountable law enforcement (Sulubara et al., 2024). The state therefore bears an obligation to ensure that everyone receives equal legal treatment without discrimination, an obligation reinforced by Article 28I paragraph (4) of the Constitution, which places the protection, promotion, and fulfilment of human rights upon the state, particularly the government.

The principle is not merely formal equality within legal norms; it also demands substantive equality of treatment in law-enforcement practice. Its realisation is a crucial element of the criminal justice system because it directly concerns the guarantee of equal legal treatment for all citizens (Amri, 2023). Consequently, the principle must be operative in every stage of the law-enforcement process, from investigation to adjudication (Sinergi International Journal of Law, 2024).

In practice, the implementation of *equality before the law* in Indonesia continues to confront structural and institutional obstacles. Human-rights law enforcement still faces problems related to the independence of law-enforcement officials and weak institutional oversight (Reynaldi, 2023). These conditions frequently generate a public perception that certain parties — particularly state officials — are treated differently before the law (Justisi, 2025). Empirical documentation supports this perception: civil-society monitoring has recorded hundreds of cases of police violence over recent years, many resulting in death, yet only a fraction proceed to genuine criminal accountability (USM Law Review, 2025).

The problem of *equality before the law* becomes especially acute when law-enforcement officers themselves become perpetrators of criminal acts. The police, as the principal law-enforcement institution, play an indispensable role in maintaining public order and security, protecting and serving the community, and enforcing the law. Yet the broad discretionary authority vested in police officers also carries the potential for abuse of power where it is not accompanied by effective oversight (Indonesian Journal of Health, Economics and Social Sciences, 2025). One form of abuse of power that raises grave concern is violence against children perpetrated by police officers. Children constitute a vulnerable group requiring special protection from the state because of their limited capacity for self-protection. The state is thus obliged to provide maximal legal protection for children against all forms of violence (International Journal of Law and Society, 2025).

Child victims of violence require comprehensive legal protection because they are vulnerable to physical and psychological trauma (Priyambudi et al., 2023). Furthermore, child-protection regulations in national and international law place the best interests of the child as a paramount principle governing every law-enforcement process (Manurung et al., 2025). In this respect, the application of *equality before the law* is decisive, because every child victim of violence holds a right to access justice without discrimination (Apriani & Sahari, 2024).

The incident of violence against children involving police officers in Tual has attracted considerable public attention because it is perceived to violate the principles of justice and the protection of children's rights. The case sharply illustrates the problematic implementation of *equality before the law*: state officials who are duty-bound to enforce the law instead become perpetrators of criminal acts. The state bears responsibility to provide legal protection to victims of human-rights violations through effective and non-discriminatory law enforcement (Wajdi & Imran, 2022); police officers who commit violence against children must therefore be prosecuted objectively, transparently, and accountably in accordance with applicable law.

A distinctive difficulty arises because the police, as an institution, are frequently the body that investigates offences committed by their own members. This structural feature generates a conflict of interest that may compromise the independence and objectivity of the process, so that most investigations into police misconduct remain internal and frequently culminate in impunity (Indonesian Journal of Social Technology, 2025). Cultural factors compound the structural ones: internal oversight

is often hindered by a strong *esprit de corps*, resistance to supervision, and a tendency to preserve institutional image (Proceedings of the International Conference on Islamic Community Studies, 2025).

A number of prior studies have examined *equality before the law*. Research on the application of the principle to perpetrators of general crimes among the Suku Anak Dalam community demonstrates that its implementation still confronts structural and legal-cultural barriers in law-enforcement practice (Thamariska et al., 2023). Other work situates the principle as an essential requirement for realising justice in society, demanding equal legal treatment for everyone irrespective of status or position (Purwadi et al., 2022), while further studies confirm that objectivity in law enforcement is shaped not only by legal norms but also by legal culture and power relations within enforcement institutions (Nugroho, 2025; Rofingi et al., 2022).

Notwithstanding this body of scholarship, existing studies have largely addressed *equality before the law* either in general terms or in relation to ordinary offenders, without focusing on the specific situation in which state officials are the perpetrators of violence against children. The intersection of three dimensions the criminal accountability of police officers, the protection of children as a vulnerable group, and the guarantee of *equality before the law* remains under-examined. This study addresses that gap.

Accordingly, this study examines two questions: (1) how the principle of *equality before the law* is applied to police officers who committed violence against children in the Tual incident; and (2) what constitutes the ideal form of criminal accountability for police officers who commit violence against children. The novelty of the study lies in analysing the application of *equality before the law* to police perpetrators of child violence from the combined perspective of child protection, human rights, and the criminal responsibility of state officials, and in offering a normative model of accountability oriented toward substantive justice.

B. Methods

Research and Research Approach

This study employs normative legal research using a statutory approach and a conceptual approach. Normative legal research is appropriate because the study focuses on the analysis of legal norms, legal principles, and legal concepts relating to the application of *equality before the law* to police officers who commit violence against children (Restorative Justice in Indonesian Law Enforcement, 2023). The statutory approach is conducted by examining the legal provisions relevant to *equality before the law*, human-rights protection, child protection, and the criminal liability of police officers. The instruments analysed include the 1945 Constitution of the Republic of Indonesia; Law No. 1 of 2023 on the Criminal Code; Law No. 2 of 2002 on the Indonesian National Police; Law No. 35 of 2014 amending Law No. 23 of 2002 on Child Protection; Law No. 11 of 2012 on the Juvenile Criminal Justice System; and Law No. 39 of 1999 on Human Rights.

Data collection techniques

The conceptual approach is pursued through a study of doctrine, legal principles, and expert perspectives concerning the concepts of *equality before the law*, child protection, human rights, and law enforcement against state officials. This approach affords a deeper understanding of how the principle operates within law-enforcement practice in Indonesia. The legal materials used comprise primary,

secondary, and tertiary sources. Primary legal materials consist of the laws and regulations related to the object of study. Secondary legal materials comprise peer-reviewed journal articles, legal treatises, research reports, and scholarly commentary relevant to the research problem. Tertiary legal materials consist of legal dictionaries and other supporting references. Legal materials were collected through library research by inventorying and reviewing the sources relevant to the research problem. The materials were subsequently analysed descriptively and qualitatively through legal interpretation and the systematic examination of the legal norms governing the application of *equality before the law* to police officers who commit violence against children. To sharpen the analysis, the Tual incident is treated as an illustrative case that situates the abstract legal norms within a concrete factual setting.

C. Results (Findings)

This study analyses the operation of *equality before the law* in the Tual incident through the three interacting components of the legal system as conceived by Friedman (1975) legal substance, legal structure, and legal culture. The analysis yields four principal findings, which are reported here before being interpreted in the Discussion.

Legal Substance: The Norm Is Robustly Guaranteed

At the level of legal substance, *equality before the law* is guaranteed robustly and coherently. It is anchored in Article 27 paragraph (1) of the 1945 Constitution, which affirms that all citizens hold an equal position before the law and government, and in Article 28D paragraph (1), which guarantees every person recognition, security, protection, and fair legal certainty. Article 28I paragraph (4) places the protection, promotion, and fulfilment of human rights upon the state. In the domain of child protection, Articles 2 and 59 of Law No. 35 of 2014 affirm that every child has the right to protection from all forms of violence, discrimination, and maltreatment, reinforced by Law No. 39 of 1999 and Indonesia's international human-rights commitments (Justisi, 2025; Journal of Law and Sustainable Development, 2023). The normative guarantee, in short, is not deficient.

Legal Structure: A Built-In Conflict of Interest

At the level of legal structure, the institutional architecture for processing officer-suspects is compromised by a built-in conflict of interest. When a police officer becomes a suspect as in the Tual incident the initial investigation is ordinarily conducted by the same institution to which the officer belongs, so that most investigations into police criminal conduct remain in police hands, a configuration that empirically correlates with high rates of impunity (Indonesian Journal of Social Technology, 2025; USM Law Review, 2025). Internal oversight through the Profession and Security Division and the Police Ethics Commission, and external oversight through the National Police Commission, exist normatively but are widely assessed as formalistic or lacking binding investigative and prosecutorial power (Journal of Cultural Analysis and Social Change, 2026).

A Protective Esprit de Corps

At the level of legal culture, a strong *esprit de corps*, a tendency to preserve institutional image, and asymmetric power relations shape how the structure is actually used (Proceedings of the International Conference on Islamic Community Studies, 2025). Officials vested with authority typically enjoy greater access and influence than ordinary citizens, and internal solidarity frequently produces a deficit of

transparency and a perception of institutional protection for officers who violate the law (Reynaldi, 2023).

The Combined Effect in the Tual Incident

Taken together, the three components produce selective enforcement. In the Tual incident a strong legal substance did not translate into equal treatment, because it was filtered through a permissive legal structure and a protective legal culture. The finding is therefore not that officers are formally exempt from the equality norm, but that the norm is neutralised in practice at the point of application precisely where the child victim is least able to counterbalance the officers' structural and cultural advantages.

D. Discussion

Locating the Deficit: Why the Problem Is Not the Norm

The four findings, read through Friedman's legal-system theory, support a single interpretive claim: the failure of *equality before the law* in the Tual incident is not located in legal substance but emerges from the interaction of legal structure and legal culture. Because the normative guarantee is strong and internally consistent (Finding One), the gap between the promise of the principle and its practice cannot be explained primarily as a defect of regulation. The norm is not the bottleneck. This reframing is the analytical pivot of the study: the explanatory weight must shift downstream, toward the institutions that apply the norm and the values that animate them. It distinguishes the present analysis from accounts that treat the deficit as incomplete regulation to be cured by further legislation alone.

2The Structure Culture Mechanism and the Inversion of Due Process

Interpreting Findings Two and Three together supplies the mechanism. Legal structure introduces discretion at exactly the point where impartiality is most needed the same institution investigates its own member and removes the external check that would ordinarily constrain that discretion. Legal culture then activates this latent weakness: where the structure merely permits discretion, an *esprit de corps* directs that discretion toward the protection of the corps. The two components therefore interact multiplicatively rather than additively; a strong legal substance is neutralised when a permissive structure is combined with a protective culture, and the product is selective enforcement. This explains why successive legislative reinforcements of the equality norm have not, by themselves, altered outcomes in cases involving officers they operate on the component (substance) that was never the binding constraint.

The consequence can be characterised through Packer's two models of the criminal process. The ordinary citizen is processed under a system that at least professes the due-process model, whereas the accused officer is effectively processed under an institutional logic closer to self-protection and crime-control expediency. *Equality before the law* thus becomes structurally conditional the moment the accused is an officer: the very authority the police hold in order to guarantee equal enforcement for citizens becomes, when turned inward, the channel through which that equality is diluted. Violence against children by officers is the most revealing test of this asymmetry, because the victims belong to the group least able to counterbalance the officers' advantages, so the inequality the principle is meant to correct appears in its most extreme form.

Implications: An Ideal Model of Criminal Liability

The second research question follows directly from this diagnosis. Because the deficit originates in structure and culture rather than substance, an adequate model of criminal liability must intervene at those two levels rather than merely restating the norm. Everyone who commits an offence must be held accountable regardless of status, position, or profession (Rofingi et al., 2022); operationalising that principle for officer-perpetrators requires four mutually reinforcing elements. First, the process must follow Packer's due-process model in full: officers must be prosecuted through the same transparent, adversarial, and publicly reviewable mechanisms as civilians, so that openness substitutes for the impartiality that institutional self-investigation cannot guarantee (Indonesian Journal of Law, Crime and Justice, 2026). Second, criminal and ethical accountability must operate simultaneously and cumulatively; ethical or disciplinary mechanisms must not displace criminal prosecution, since substituting the former for the latter reproduces the perception of protection that contradicts *equality before the law* (Journal of Cultural Analysis and Social Change, 2026; Amri, 2023). Third, external oversight must be strengthened into an independent civilian body with genuine investigative and charging authority, because reliance on internal mechanisms alone tends to reproduce impunity (USM Law Review, 2025; Reynaldi, 2023). Fourth, structural reform must be paired with cultural reform through sustained human-rights and professional-ethics education, realigning the institution's values with the equality its substance already prescribes.

This model must be integrated with, rather than set against, the protection of the child victim. Accountability aims not only to sanction the perpetrator but also to guarantee the victim's rights to protection, physical and psychological recovery, legal assistance, and social rehabilitation, in accordance with the best interests of the child (Priyambudi et al., 2023; Manurung et al., 2025). Restorative elements may be used to centre the recovery of the child victim, but — critically — without diluting the criminal responsibility of the adult officer, since diversion and restorative logics designed for child offenders cannot be transposed to shield an adult state official (Brawijaya Law Journal, 2019; International Journal of Social Science Research and Review, 2025). The state's positive obligation to protect victims of human-rights violations through effective, non-discriminatory enforcement supplies the normative warrant for this integration (Wajdi & Imran, 2022; International Journal of Law and Society, 2025).

Comparison with Prior Studies and Theoretical Contribution

Situating these findings against prior scholarship clarifies the study's contribution. Thamariska et al. (2023) found that *equality before the law* still confronts structural and legal-cultural barriers in enforcement against ordinary offenders; the present study confirms that finding but extends it to a qualitatively harder case perpetrators who are themselves state officials and victims who are children where the obstacles are not merely present but amplified. Purwadi et al. (2022) analysed the principle as a general requirement for societal justice; this study specifies that general claim within an aggravated context and identifies the precise mechanism (the structure–culture interaction) that defeats the principle in practice. The systemic mapping offered by Rofingi et al. (2022) is consistent with, and is here given explicit theoretical scaffolding through, Friedman's three-component model.

The theoretical contribution is threefold. First, the study relocates the equality deficit from legal substance to the interaction of legal structure and legal culture, predicting that substance-only reforms will fail. Second, it uses Packer's models to characterise the asymmetry between how citizens and officers are processed as an inversion of the due-process guarantee rather than a mere lapse in enforcement. Third, it derives a reform model that couples the criminal accountability of state

perpetrators with the substantive protection of child victims an intersection previous scholarship has treated only in isolation. Together, these moves offer both a diagnosis and a normative blueprint for realising *equality before the law* where the accused wields the authority of the state.

E. Conclusion

The principle of *equality before the law* is a fundamental foundation of the rule of law, requiring that everyone receive equal treatment before the law regardless of status, position, or profession. In the context of police officers who commit violence against children, the principle demands an objective, transparent, and non-discriminatory enforcement process, as guaranteed by the 1945 Constitution and the laws relating to child protection. Its implementation, however, remains obstructed by a strong culture of *esprit de corps*, conflicts of interest arising from institutional self-investigation, weak internal and external oversight, and low transparency in handling cases involving officers. These conditions foster preferential treatment, impede the realisation of equality before the law, and erode public trust in enforcement institutions.

Criminal accountability for police officers who commit violence against children must be pursued through the same legal mechanisms that apply to civilians, without impunity or institutional protection. Enforcement must aim not only to sanction perpetrators but also to guarantee the protection, recovery, and fulfilment of children's rights as victims, in accordance with the best interests of the child. The effective realisation of *equality before the law* therefore requires institutional reform of the police through strengthened internal and external oversight, enhanced transparency and accountability, the firm enforcement of criminal and ethical sanctions, and the strengthening of human-rights and professional-ethics education. In this way, substantive justice, the protection of children's rights, and the rule of law can be optimally realised within the Indonesian legal system.

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