

THE ROLE OF POST-DIVORCE CHILDREN'S RIGHTS ADVOCACY IN INDONESIA

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Abstract

Children's rights advocacy is a series of systematic efforts made by individuals, groups, institutions, or organizations to protect, promote, and ensure the fulfillment of children's rights in accordance with international and national legal standards and norms. This advocacy aims to fight for the best interests of children so that their rights such as the right to protection, education, health, and participation are respected and guaranteed by the state, family, and society, especially in Indonesia which is greatly influenced by religious norms, morals and decency in addition to legal norms. However, children's rights can be threatened due to divorce events that occur between their parents. The divorce triggers those related to the interests of the child whether they are fulfilled or not fulfilled. The divorce process not only has an impact on married couples, but also has significant implications for the children who are part of the family. Children who are in divorce situations are prone to experiencing various negative impacts, both psychological, social, and economic. This study examines the role of advocacy for children's rights after divorce and what are the factors that make the role of advocacy effective. The research uses normative research methods. Normative legal research itself is legal research that is carried out by researching literature materials or secondary data. To then conduct an analysis and study of the ministry a conclusion is taken.

Keywords: *Advocacy, Children's rights, Divorce*

INTRODUCTION

Divorce¹ is a social phenomenon that is increasing in various parts of the world, including Indonesia. The divorce process not only has an impact on married couples, but also has significant implications for the children who are part of the family.² Children who are in divorce situations are prone to experiencing various negative impacts, both psychological, social, and economic. Therefore, advocacy for children's rights after divorce is very important as a mechanism for protecting and fulfilling children's rights in order to maintain an environment conducive to their growth and development. Children's rights are inherent human rights and must be protected by the state and all levels of society. The Convention on the Rights of the Child (CRC) ratified by Indonesia through Law Number 23 of 2002 is the main foundation in ensuring comprehensive child protection.³ In the context of divorce, the rights of children⁴ that must be guaranteed include the right to good upbringing, the right to education,

¹ Divorce is a process or circumstance in which a married couple officially ends their marital bond according to the applicable law. Divorce marks the end of marital status and eliminates the rights and obligations arising from the marital relationship. Legally, divorce is usually carried out through judicial procedures or authorized institutions in accordance with the laws and regulations of a country. In the context of Indonesian law, divorce is regulated in Law No. 1 of 1974 concerning Marriage and its amendments, as well as procedural law provisions in the Religious Court for Muslim couples and the District Court for non-Muslims

² However, we must understand well that the norms that apply in Indonesia are social and legal rules that regulate the behavior of individuals and society in order to create order and justice in the life of society and the state. These norms are divided into several types that complement each other, namely: Religious, legal, social and modest norms.

³ Nursyahbani Katjasungkana, *Children's Rights in the Perspective of Law and Human Rights*, (Jakarta: Komnas Anak, 2010), p. 45.

⁴ In the 1945 Constitution, the guarantee of human rights protection is explicitly contained after amendments were made in 1999-2002, especially in Articles 28A to 28J which regulate in detail various human rights that must be upheld by the state and every citizen. These articles are a strong legal basis for the protection and enforcement of human rights in Indonesia, while affirming that the state is obliged to protect these rights so that they are not violated by both the government and other parties.

health, protection from violence, and the right to be heard according to the level of maturity of the child.⁵ The importance of the principle of "best interest of the child" in the divorce process requires special attention from law officials, families, and the community so that the decisions taken do not harm the physical and mental development of the child.⁶

Table. I.1 Number of Divorces in Indonesia (Year 2020–2024)⁷

Year	Number of Divorces (Cases)
2020	291.677
2021	447.743
2022	516.344
2023	463.654
2024	394.608

Divorce has complex psychological consequences for children, including feelings of loss, anxiety, depression, and social behavior disorders. Developmental psychology studies show that children who experience divorce are at higher risk of emotional distress and decreased academic achievement if they do not receive adequate support.⁸ In addition, deteriorating economic conditions after divorce can result in limited access to children's basic needs, which has the potential to affect optimal growth and development.⁹

Table. I. 2. Violence Against Children From 2020-2024¹⁰

Year	Number of Cases	Number of Victims	Victims of Sexual Violence	Victims of Physical Violence	Victims of Psychological Violence
2020	11.264	12.410	6.969	2.899	2.734
2021	14.446	15.914	8.730	3.437	3.602
2022	16.106	17.641	9.588	3.746	4.162
2023	18.175	20.221	0.932	4.410	4.511
2024	19.628	21.499	11.771	4.890	4.838

In the legal realm¹¹, advocacy plays a role in ensuring that court decisions related to custody, visitation rights, and child support are based on the best interests of the child. Legal assistance for children and families helps prevent exploitation or discrimination in the divorce process.¹² Advocacy also encourages the existence of comprehensive regulations and their consistent implementation to ensure children's rights¹³. Some of the challenges faced in advocating for children's rights include a patriarchal culture that is still strong so that decisions tend to be biased, a lack of resources and competent professionals, and a lack of awareness of children's rights among the community and related officials.¹⁴ To overcome this, it is necessary to strengthen the capacity of advocacy institutions through training, network development, and adequate funding. In addition, the development of a

⁵ Sri Mulyani, *The Impact of Divorce on Child Psychology*, (Yogyakarta: Pustaka Siswa, 2015), pp. 83-85.

⁶ Agus Santoso, *Legal Protection for Children in Divorce Cases*, (Surabaya: Airlangga University Press, 2017), pp. 109-112.

⁷ It is compiled based on official data from the Central Statistics Agency (BPS) and other related sources. This data includes the number of divorces nationally and by province, as well as the factors that cause divorce.

⁸ Dewi Lestari, *Psychosocial Assistance for Post-Divorce Children*, (Bandung: Remaja Rosdakarya, 2018), pp. 59-61.

⁹ Rina Kurniawati, *Advocacy for Children's Education in the Family*, (Jakarta: Rajawali Press, 2019), pp. 122-125.

¹⁰ Data on the number of cases of violence against children in Indonesia during the period 2020 to 2024, based on data from the Ministry of Women's Empowerment and Child Protection (KemenPPPA) through the Online Information System for the Protection of Women and Children (SIMFONI-PPA):

¹¹ The meaning in this context is that it is related to legal aid.

¹² M. Hasanuddin, *The Challenge of Child Rights Advocacy in Indonesia*, (Jakarta: Prenadamedia Group, 2021), pp. 91-94.

¹³ Regulations regarding children's rights in Indonesia are specifically regulated in Law of the Republic of Indonesia Number 35 of 2014 concerning Child Protection, which is an amendment to Law Number 23 of 2002 concerning Child Protection. This law is a national legal instrument that adopts the principles of the ratified United Nations Convention on the Rights of the Child (UNCRC)

¹⁴ M. Hasanuddin, *The Challenges of Child Rights Advocacy in Indonesia*, (Jakarta: Prenadamedia Group, 2021), pp. 95-98

collaborative framework between government agencies, NGOs, and communities is an effective strategy in expanding the scope of advocacy.¹⁵

Divorce can occur for a variety of reasons, such as irreconcilable differences, ongoing disputes, domestic violence, infidelity, or other causes that cause the marital relationship to be untenable.¹⁶ In addition to the legal aspect, divorce also has significant social and psychological implications for spouses and family members, especially children, so it is often a complex problem to solve properly¹⁷.

RESEARCH METHODS

In order to obtain accurate and relevant data to this study, the author uses the following methods:

1. Types and Properties of Research

This research is a normative research. Normative legal research itself is legal research that is carried out by researching literature materials or secondary data.¹⁸

2. Nature of Research

The nature of research in the preparation of this journal is descriptive-analytical,¹⁹ which is an effort to collect and compile data, then analyze and interpret.²⁰ This means that the compiler explains and explains matters related to the Role of Post-Divorce Children's Rights Advocacy.

3. Data Source

In the writing carried out is a library *research* model, what is meant by literature study is the study of written information about the law that comes from various sources and is widely published and is needed in normative law research,²¹ namely writing based on data that is used as an object of research, such as laws and regulations, books, magazines, articles, newspapers, bulletins, about all problems in accordance with this thesis which will be compiled and studied comprehensively.²² When viewed in terms of binding power, secondary data in the field of law can be differentiated into:

- a) Primary legal materials, including: the Constitution of the Republic of Indonesia in 1945, and the Law.²³
- b) Secondary legal materials are legal materials that provide explanations or further discuss matters that have been researched in primary legal materials.
- c) Tertiary legal materials are additional legal materials, outside of primary and secondary legal materials. Including, legal materials obtained from texts, journals, cases, desertion, research results related to the problem being studied.

4. Data Analysis

The data that has been managed will be analyzed qualitatively using inductive analysis instruments. Inductive mindset is a mindset that is based on specific facts, then researched and then found to solve problems that are general. The analysis method used is qualitative analysis, namely: an analysis method

¹⁵ Agus Santoso, *Legal Protection for Children in Divorce Cases*, (Surabaya: Airlangga University Press, 2017), pp. 115-118

¹⁶ M. Hasanuddin, *The Challenge of Child Rights Advocacy in Indonesia*, (Jakarta: Prenadamedia Group, 2021), pp. 50-55.

¹⁷ In Indonesia, the regulation of couples in marriage is regulated The regulation on marriage in Indonesia is mainly regulated in the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage (hereinafter abbreviated as the Marriage Law). This law is a basic regulation that regulates all aspects of marriage law in Indonesia, including the establishment, rights and obligations of husband and wife, and the dissolution of marriage.

¹⁸ Salim HS and Erlies Septiana Nurbani, *Application of Legal Theory to Thesis Research and Desertification*, (Jakarta, Raja Grafindo, 2013), p. 12

¹⁹ Mukhtar wrote, a thesis is a scientific work that is made in depth (elaborative). See Mukhtar, *Thesis Guidance, Thesis and Scientific Articles*, (Echo Persada Press, Cet-2, Jakarta, 2009), tth.

²⁰ Winarno Surahmad, *Introduction to Scientific Research, (Basic, Method, Technique)*, (Tarsito, Bandung, 1990), pp. 139-140

²¹ Abdul Kadir Muhammad, *Law and Legal Research*, (Citra Aditia Bakti, Bandung, 2004), p. 81

²² Widodo Dwi Putro, wrote in an article entitled "*Criticizing Legal Positivism: The First Step to Enter Methodological Discourse in Legal Research*", that the opening valve of the discourse (normative and empirical legal research) that encourages the emergence of methodological disputes in legal research, which is commonly known as empirical versus normative legal research, according to him, began with the emergence of the school of positivism in Europe, especially after the eruption of the Revolution Industry in England and the Bourgeois Revolution in France in the mid-18th century. See, Sulistyowati Irianto and Shidarta, *Constellation Law Research Methods and Reflections*, (Yayasan Obor Indonesia, Jakarta, 2009), p. 3

²³ Zainuddin Ali, *Legal Research Method*, (Sinar Grafika, Jakarta, 2009), p. 47

that basically uses logical thinking, analysis with logic, with induction, analogy/interpretation, comparison, and the like. The thinking method used is an inductive method, which is from data/facts to a higher level of abstraction, including synthesizing and developing theories (if necessary and the data support).²⁴ Secondary Data,²⁵ Secondary Data is obtained from literature and documentation which is basic data in normative legal research, which is a foothold to answer the problems and objectives of the research.

DISCUSSION

A. Definition and Role of Advocacy

Advocacy²⁶ is one of the important mechanisms in the life of society and the state to fight for the interests of individuals and groups, especially those in vulnerable or underprivileged positions. The term advocacy comes from the Latin *advocare* which means to call to help or defend. In the modern context, advocacy encompasses a series of activities that aim to influence social policies, laws, or practices to be more equitable and in line with the needs and rights of communities.²⁷

In general, advocacy can be understood as an active process undertaken by individuals, groups, or organizations to influence decision-making at the level of public policy or social practice. Advocacy aims to change or maintain policies, regulations, and practices to reflect justice, equality, and fulfillment of basic human rights.²⁸

Advocacy is not just protest or demonstration activities, but involves various strategies such as public education, lobbying for policymakers, media campaigns, and legal and social assistance. Advocacy also has collaborative²⁹ and sustainable characteristics that involve various parties including civil society, government, and the private sector.³⁰ In practice, advocacy can be carried out through various approaches and methods, including:

1. Legal Advocacy: Litigation and non-litigation assistance to fight for the legal rights of individuals or groups.
2. Policy Advocacy: Conduct lobbying and dialogue with policymakers for policy development or change.
3. Public Advocacy: Awareness campaigns through mass media, social media, and community activities to change public perception.
4. Psychosocial Advocacy: Providing emotional and social assistance to support groups experiencing discrimination or violence.³¹

Successful advocacy relies heavily on the right strategy, extensive network, and adequate resource support.

Schema. I.1 Advocacy Methods



²⁴ Sanapiah Faisal, *Qualitative Research: Basics and Applications*, Y A 3, (Malang, 1999), p. 39

²⁵ According to Amiruddin and Zainal Asikin in their writings, for normative law research that only recognizes secondary data, which consists of: primary legal materials, secondary legal materials, and tertiary legal materials, then in processing and analyzing these legal materials cannot be separated from various interpretations known in legal science. See, Amiruddin and Zainal Asikin, *Introduction to Legal Research Methods*, (Rajawali Pers, Cet-6, Jakarta, 2012), p. 163

²⁶ In Indonesia, the understanding of advocacy is often aimed at the profession of advocates or lawyers

²⁷ Robert J. Chambers, *Advocacy and Social Change*, (London: Routledge, 2013), pp. 3-7.

²⁸ John Gaventa, *Power and Powerlessness: Quiescence and Rebellion in an Appalachian Valley*, (Urbana: University of Illinois Press, 1980), pp. 20-25.

²⁹ Establishing Cooperation and adding colleagues in a matter or interest

³⁰ Susan A. Fainstein, *Advocacy Planning and the Right to the City*, (New York: Routledge, 2010), pp. 15-18.

³¹ Anna K. Smith, *Methods of Advocacy*, (Oxford: Oxford University Press, 2015), pp. 78-82.

Children's rights advocacy is a series of systematic efforts made by individuals, groups, institutions, or organizations to protect, promote, and ensure the fulfillment of children's rights in accordance with international and national legal standards and norms. This advocacy aims to fight for the best interests of children so that their rights—such as the right to protection, education, health, and participation—are respected and guaranteed by the state, family, and society. More specifically, advocacy for children's rights includes activities such as counseling, legal assistance, involvement of children in decision-making that concerns them, and supervision of the implementation of policies that have an impact on children. Advocacy also plays a role in increasing public awareness and policy makers about the importance of respecting children's rights so that violations or discrimination against children do not occur³², especially those in vulnerable conditions such as children who are victims of divorce, violence, or neglect.³³

B. Children According to Positive Law

Children are one of the community groups that receive special attention in the national and international legal systems.³⁴ The protection and fulfillment of children's rights is a priority in the preparation of various regulations. Positive law as a collection of rules that apply in a country provides special definitions and protections for children. This study discusses the definition of children according to positive law in Indonesia, as well as the legal implications attached to the status of the child.

According to Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, a child is defined as any human being under the age of 18 (eighteen) years old and unmarried.³⁵ This definition is the main reference in various policies and regulations related to the rights and protection of children. In addition, Article 1 paragraph (1) of Law Number 39 of 1999 concerning Human Rights also emphasizes the need for special protection for children as vulnerable individuals and requires more attention in fulfilling human rights.³⁶ Indonesia's positive law regulates various rights of children that must be fulfilled and protected, including:

1. Right to Protection. Children have the right to protection from violence, discrimination, exploitation, and adverse treatment both in the family and in society.³⁷
2. The Right to Education and Health. Children have the right to proper education and adequate health services as part of the right to live and develop optimally.³⁸
3. Right to Participation. Children have the right to have their opinions heard in all matters concerning themselves according to their level of maturity and age.³⁹
4. Right to Identity and Family. Children are entitled to name, citizenship, and the right to live in a harmonious family environment.⁴⁰

In the context of criminal law, children who are in conflict with the law receive special treatment based on the Law on the Juvenile Criminal Justice System (UU SPPA) Number 11 of 2012. This law regulates the mechanism for handling children who face the law in a fair manner and oriented towards rehabilitation and social reintegration.⁴¹ In addition, the Child Protection Law regulates strict sanctions against perpetrators of child violence

³² See Law of the Republic of Indonesia No. 35 of 2014 concerning Child Protection (as amended by Law No. 23 of 2002 concerning Child Protection).

³³ Nursyahbani Katjasungkana, *Children's Rights in the Perspective of Law and Human Rights*, (Jakarta: Komnas Anak, 2010), pp. 22-26.

³⁴ Children in Indonesian positive law are clearly defined as individuals who are under the age of 18 and unmarried, who have fundamental rights that must be protected. Legal protection of children includes aspects of human rights, education, health, and special treatment in the criminal justice system. Although the regulations are adequate, implementation challenges need to be overcome to ensure that children's rights are optimally fulfilled.

³⁵ Republic of Indonesia, *Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection*, (Jakarta: State Secretariat of the Republic of Indonesia, 2014), pp. 1-3.

³⁶ Republic of Indonesia, *Law No. 39 of 1999 concerning Human Rights*, (Jakarta: State Secretariat of the Republic of Indonesia, 1999), pp. 5-7.

³⁷ Nursyahbani Katjasungkana, *Protection of Children's Rights in Indonesia*, (Jakarta: Komnas Anak, 2010), pp. 30-33.

³⁸ Sri Mulyani, *Children's Rights and Education*, (Yogyakarta: Pustaka Siswa, 2015), pp. 45-48.

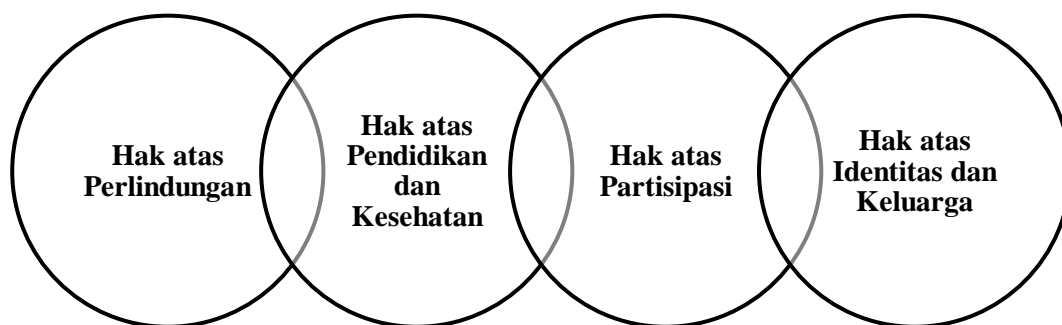
³⁹ Agus Santoso, *Children's Participation in Legal Perspectives*, (Surabaya: Airlangga University Press, 2017), pp. 18-22.

⁴⁰ Dewi Lestari, *Protection of Children's Identity in Law*, (Bandung: Remaja Rosdakarya, 2018), pp. 15-17.

⁴¹ Republic of Indonesia, *Law No. 11 of 2012 concerning the Juvenile Criminal Justice System*, (Jakarta: State Secretariat of the Republic of Indonesia, 2012), pp. 2-6.

and exploitation as an effective form of legal protection.⁴² Although positive law has been comprehensively regulated, the implementation of child protection still faces various challenges, such as limited resources, unequal public awareness, and a culture that sometimes conflicts with the principles of children's rights.⁴³ Synergy efforts between the government, community institutions, and communities are key to overcoming this challenge.⁴⁴

Schema. I.2. Children's Rights



C. The Challenges of Advocacy for Children's Rights After Divorce

Despite having an important role, advocacy faces various challenges such as resistance from stakeholders, limited resources, and lack of strong legal support. In addition, complex political and social dynamics often hinder the smooth process of advocacy.⁴⁵ Therefore, advocates need to have flexibility, resilience, and good negotiation skills. Advocacy as a systematic effort to fight for the rights and interests of groups and individuals often faces various challenges that are internal and external. These challenges can affect the effectiveness of advocacy in achieving desired social, political, and legal goals. The following is a description of the various main challenges in advocacy based on academic studies and field experience.

1. Structural and Political Challenges

Advocacy often deals with established power structures and tends to maintain the status quo. The government or those in power may show resistance to changes proposed by advocates for a variety of reasons, such as political, economic, or ideological interests.⁴⁶ This situation can make it difficult for advocacy to find a constructive dialogue space or even face restrictions, censorship, and intimidation.

2. Resource Limitations

Resources are the main obstacle in advocacy, both human, financial, and technical resources. Organizations or individuals who advocate often have limited budgets, a lack of experts, and minimal access to critical information.⁴⁷ These limitations limit the ability of advocacy to conduct research, campaigns, training, and legal assistance effectively and sustainably.⁴⁸

3. Complexity of Issues and Advocacy Targets

The issues advocated are often complex and multidimensional, involving a wide range of stakeholders with different interests. This requires advocates to have in-depth knowledge and effective communication strategies in order to unite interests and reach common agreements.⁴⁹ In addition, advocacy targets such as policymakers or state institutions are often difficult to reach or unresponsive to people's aspirations.

4. Lack of Community Awareness and Support

⁴² Rina Kurniawati, *Legal Protection of Children Victims of Violence*, (Jakarta: Rajawali Pers, 2019), pp. 40-43.

⁴³ M. Hasanuddin, *The Challenges of Child Protection in Indonesia*, (Jakarta: Prenadamedia Group, 2021), pp. 50-54.

⁴⁴ There is a harmonization of the relationship between the government and an institution or a community

⁴⁵ Michael Edwards, *Civil Society*, (Cambridge: Polity Press, 2009), pp. 91-95.

⁴⁶ Michael Edwards, *Civil Society*, (Cambridge: Polity Press, 2009), pp. 94-96.

⁴⁷ Anna K. Smith, *Methods of Advocacy*, (Oxford: Oxford University Press, 2015), pp. 85-88.

⁴⁸ Potential delay in advocacy activities for the community in general

⁴⁹ John Gaventa, *Power and Powerlessness*, (Urbana: University of Illinois Press, 1980), pp. 22-26.

The success of advocacy is highly dependent on the support of the wider community. However, low awareness of certain issues or a lack of active community participation can weaken the social pressures needed to drive change.⁵⁰ Inadequate education and socialization make advocacy difficult to develop and sustain.

5. Cultural and Social Barriers

Cultural values, social norms, and traditions can be an obstacle to advocacy, especially in communities that are conservative⁵¹ or have hierarchical social structures. For example, in advocacy for women's or children's rights, patriarchal norms and hereditary habits can hinder the acceptance and implementation of advocacy results.⁵²

6. Legal and Regulatory Challenges

Inadequate legal frameworks or overlapping regulations can hinder advocacy, especially if there is no legal certainty and effective enforcement mechanisms. Additionally, convoluted legal processes and complicated bureaucracy often slow down the resolution of advocacy cases.⁵³

Challenges in advocacy are diverse and require a strategic, collaborative, and adaptive approach to address them. Advocates must be able to manage resources optimally, build strong networks, and develop effective communication and negotiation strategies. In addition, increasing public awareness and policy reform are important factors in strengthening the effectiveness of advocacy.

CONCLUSION

The role of child advocacy after divorce must be well understood by various circles, advocacy about children's rights does not only encompass basic rights such as the right to life and basic rights that are decisive. However, it is also about rights related to children's welfare, such as education, health, economy, a good environment and the attention and affection of both parents. Therefore, the role of advocacy as a protection of children due to the divorce of both parents can be carried out by lawyers, judges, prosecutors, police, institutions related to children or social. And if viewed from the language side, it turns out that advocacy can be carried out by anyone and anytime adjusted to circumstances and conditions.

The judiciary can provide the law directly if there is a neglect of the rights inherent in the child. In this part, the judge's decision will greatly determine the child's health. Whether the judge's decision is really realized or just stops at a verdict that is only thick on sheets of paper. Because of the lack of public awareness and support, the problem of advocacy for children's rights after divorce is increasingly difficult to realize.

SUGGESTION

1. To law enforcers, especially judicial institutions, have a big role related to the direction of the course of judicial institutions in this country (Indonesia), law enforcement is currently no longer able to only expect legal norms, precisely what is important as a benchmark is the enforcement of religious norms, morality and politeness. Of course, comprehensive law enforcement is able to maximize the role of post-divorce haka nak advocacy going well.
2. It is time for scholars and academics to provide quality and useful formulations related to judicial institutions and as a trigger for justice, certainty and legal benefits which are actually required to get a larger portion so that it will have an impact on the decisions of judges, especially those related to the rights of children after divorce.

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Anna K. Smith, *Methods of Advocacy*, Oxford: Oxford University Press, 2015.

⁵⁰ Robert J. Chambers, *Advocacy and Social Change*, (London: Routledge, 2013), pp. 15-18.

⁵¹ Etymologically, the word conservative comes from the Latin conservare which means "to guard" or "to maintain." In social, political, cultural, or thought contexts, the term conservative refers to attitudes, views, or actions that tend to defend existing values, traditions, institutions, or structures, as well as reject drastic or revolutionary change.

⁵² Nursyahbani Katjasungkana, *Human Rights and Advocacy*, (Jakarta: Komnas HAM, 2012), pp. 48-51.

⁵³ Evert Vedung, *Policy Instruments: Typologies and Theories*, (New York: Transaction Publishers, 1998), pp. 36-39.

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