



Reconstructing Legal Protection for Child Victims of Neglect under Law No. 23 of 2004 on the Elimination of Domestic Violence in Indonesia

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Abstract

Violence against children is extremely dangerous and must be addressed immediately. Therefore, scientific research is needed on the reconstruction of legal protection for child victims of child neglect under Law No. 23 of 2004. The issue to be discussed is how to reconstruct legal protection for child victims of child neglect crimes under Law No. 23 of 2004 on the Elimination of Domestic Violence. Previous research has discussed the reconstruction of legal protection for children who have come into contact with the law after diversion based on the principle of justice. This research focused on reconstructing specific regulations on the protection of children who have committed criminal offenses after diversion while maintaining the principle of justice. This study differs in that it focuses on the reconstruction of legal protection for children as victims of child abandonment crimes based on Law No. 23 of 2004. The purpose of this study is to provide solutions to research problems concerning the concept of legal protection of children from child neglect crimes. The research method used is normative legal research through a conceptual approach and a legislative approach. Through this research method, the results obtained indicate that children's rights must be properly considered and protected through criminal law and legislation. Research findings on the reconstruction of legal protection for child victims of child neglect based on Law No. 23 of 2004 on the Prevention and Handling of Domestic Violence indicate that the protection of children's rights remains a top priority. This research emphasizes the need for commitment from all law enforcement officials and the community to jointly enforce legal provisions to protect Indonesian children from neglect and violations of children's rights based on justice for children and human values.

Keywords: Child Victims, Domestic Violence, Legal Protection, Justice for Children

Abstrak

Kekerasan terhadap anak sangat berbahaya dan harus segera ditangani. Oleh karena itu, diperlukan penelitian ilmiah mengenai rekonstruksi perlindungan hukum bagi anak korban



penelantaran anak berdasarkan Undang-Undang No. 23 Tahun 2004. Permasalahan yang akan dibahas adalah bagaimana merekonstruksi perlindungan hukum bagi anak korban tindak pidana penelantaran anak berdasarkan Undang-Undang No. 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga. Penelitian sebelumnya telah membahas rekonstruksi perlindungan hukum terhadap anak yang berhadapan dengan hukum setelah dilakukan diversi berdasarkan asas keadilan. Penelitian tersebut berfokus pada rekonstruksi regulasi khusus mengenai perlindungan terhadap anak yang melakukan tindak pidana setelah dilakukan diversi dengan tetap menjunjung tinggi asas keadilan. Penelitian ini berbeda karena fokusnya adalah pada rekonstruksi perlindungan hukum bagi anak sebagai korban tindak pidana penelantaran anak berdasarkan Undang-Undang No. 23 Tahun 2004. Tujuan dari penelitian ini adalah untuk memberikan solusi atas permasalahan penelitian terkait konsep perlindungan hukum terhadap anak dari tindak pidana penelantaran anak. Metode penelitian yang digunakan adalah penelitian hukum normatif melalui pendekatan konseptual dan pendekatan perundang-undangan. Melalui metode penelitian ini, hasil yang diperoleh menunjukkan bahwa hak-hak anak harus diperhatikan dan dilindungi secara layak melalui hukum pidana dan peraturan perundang-undangan. Temuan penelitian mengenai rekonstruksi perlindungan hukum bagi anak korban penelantaran anak berdasarkan Undang-Undang No. 23 Tahun 2004 tentang Pencegahan dan Penanganan Kekerasan Dalam Rumah Tangga menunjukkan bahwa perlindungan terhadap hak-hak anak tetap menjadi prioritas utama. Penelitian ini menekankan pentingnya komitmen dari seluruh aparat penegak hukum dan masyarakat untuk bersama-sama menegakkan ketentuan hukum demi melindungi anak-anak Indonesia dari penelantaran dan pelanggaran hak-hak anak berdasarkan keadilan bagi anak dan nilai-nilai kemanusiaan.

Kata Kunci: Korban anak-anak, Kekerasan Dalam Rumah Tangga, Perlindungan Hukum, Keadilan bagi Anak.

Introduction

Children are the nation's assets as the next generation who will hold the leadership of the Indonesian nation and state in the future. Children must be used as assets that are equally guarded and well maintained. Every child has the right to survival, growth and development and the right to protection from violence and discrimination. Such provisions are stipulated in Article 28 B Paragraph (2) of the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as the 1945 Constitution). This means that every child has the rights and obligations to participate in developing the nation and state, which must be realised through the fulfilment of children's rights in the process of growth and development, as well as being protected from all forms of violence and discrimination.

Indonesia is the fourth most populous country in the world after the United States, China, and India. Because every year there is an increase in population growth. Indonesia experienced an increase in population with an average population growth of 1.00% per year.

¹ This increase has resulted in increasingly unstoppable negative impacts on the welfare system, the culture of society, the quality of life, the level of compliance with the law, and so on. Indonesia's demographic bonus always shows a significant increase, but it does not

¹ Cornellia Yulin and Esther Dita, "Analisis Kepadatan Penduduk Yang Berpengaruh Terhadap Kemiskinan Dan Degradasi Lingkungan," *Prosiding Seminar Nasional Ilmu Ilmu Sosial (SNIIS)* 01 (2022): 1-12.

always align with the legal culture of its people. Lawrence Meir Friedman explains that legal system theory consists of 3 subsystems consisting of substance, structure, and legal culture.²

Legal culture concerns the level of compliance of legal subjects with existing legal provisions both formally and materially.³ Regarding the problems that occur in society in the aspect of protection of the rights of children who are victims of criminal acts of child neglect, namely influenced by the accuracy of legal substance. Not only that, the problem is also caused by legal culture and the performance of law enforcement.⁴ Today, there are still frequent abuses and neglect of children's rights in Indonesia that have violated the mandate of the Indonesian constitution.

To realise the constitutional mandate of Article 28 B Paragraph (2) of the 1945 Constitution, Law of the Republic of Indonesia Number 23 Year 2004 on the Elimination of Domestic Violence (LNRI Year 2004 Number 95) or known as the Law on the Elimination of Domestic Violence (hereinafter abbreviated as PKDRT Law) was enacted. Legal substance that favours vulnerable or subordinated groups of society, especially children, is needed as a guarantee of human rights.⁵ Legal reform is needed because the existing laws and regulations are inadequate and no longer in accordance with the development of community law. Therefore, it is necessary to regulate the crime of domestic violence separately because it is unique and distinctive, regarding formal law and material law, where there is an interaction relationship between humans and other humans in society, namely the family as a social group in the form of a primary group (primary group) consisting of a number of people who interact directly, personally, and are characterised by more personal contact, small size and high frequency and strength of contact.⁶

By its nature, the family is a special primary group for individuals and society, because socially it has received recognition through religion and law, and gives rise to rights and obligations that are more priority in everyday life. Children and parents are essentially inseparable, like two sides of a coin that are interconnected, however, children are their own property that cannot be controlled or owned by their own parents physically or psychologically, because children are mandated by Allah SWT to every parent and will be held accountable for this mandate.⁷

According to Islamic teachings, the relationship between parents as trustees and children as those entrusted to parents, both boys and girls, the words of Allah SWT in the Qur'an Surah Ash-Shura, 42: 49-50, which means to Allah belongs the kingdom of the

² Priyo Hutomo and Markus Marselinus Soge, "Perspektif Teori Sistem Hukum Dalam Pembaharuan Pengaturan Sistem Pemasyarakatan Militer," *Legacy: Jurnal Hukum Dan Perundang-Undangan* 1, no. 1 (2021): 46-68, <https://doi.org/10.21274/legacy.2021.1.1.46-68>.

³ Mateja Čehulić, "Perspectives of Legal Culture: A Systematic Literature Review," *Revija Za Sociologiju* 51, no. 2 (2021): 257-283, <https://doi.org/10.5613/RZS.51.2.4>.

⁴ Andi Hakim Lubis et al., "Seeking Justice : Criticizing the Decision of the Tapak Tuan District Court Number 37 / Pid . Sus / 2020 / PN . Ttn Regarding Domestic Violence," *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 11, no. 1 (2024): 86-100.

⁵ Achmad Romsan et al., "Can the Right to A Good and Healthy Environment Be Claimed as a Human Right?," *Sriwijaya Law Review* 8, no. 1 (2024): 197-212, <https://doi.org/10.28946/slrev.Vol8.Iss1.1537.pp197-212>.

⁶ Moeljatno, *Asas-Asas Hukum Pidana, Edisi Revisi* (Jakarta: Rineka Cipta, 2008).

⁷ Amiruddin, "Amanah Dalam Perspektif Al-Quran (Studi Komparatif Tafsir Al-Misbah Dan Al-Azhar)," *Jurnal Mudarrisunah: Media Kajian Pendidikan Agama Islam*, 2021.

heavens and the earth, He creates what He wills, He gives daughters to whom He wills and gives sons to whom He wills, or He bestows both kinds of male and female (to whom He wills), and He makes barren whom He wills. Indeed, He is all-knowing and all-powerful. The verse explains that everything in the heavens and the earth belongs to Allah, including children as sustenance given to parents, essentially as a mandate that must be protected and given all its rights. Meaning, No one can prevent what He (Allah) gives, and no one can give what He (Allah) prevents, and Allah creates what He wills.

In the Quran Surah Al-Isra, 17: 31, Allah SWT says, which means: "And do not kill your children for fear of poverty. It is we who provide for them and for you. It is a great sin to kill them". The above verse emphasises the prohibition of killing children because they are considered unable to find sustenance, that sustenance is in the power of Allah. Allah states that the fear of poverty is not a reason to kill children, in addition, it can be said that the act of killing children for fear of hunger is included in prejudice against Allah. If the act is done out of fear of shame, then it is contrary to human values, as it leads to an attempt to destroy the continuity of humanity's existence in the world.

Children and the future are a unity that can be realised to form a generation of nations. Therefore, character building, skill building, mental and moral development must be improved as well as other aspects by prioritising the best interests of the child. The era of globalisation and digitisation is marked by various changes in values, so children must receive intensive and integrated guidance. For this reason, parents must pay attention to the physical, spiritual and intellectual development of children.⁸ The duties and responsibilities of the state are manifested through the Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia (KPPPA RI) in carrying out the duties and obligations to fulfil children's rights and ensure that children receive protection and services in a fast, accurate, integrated and comprehensive manner. One form of this responsibility is carried out by the availability of services through the Online Information System for the Protection of Women and Children (Simfoni PPPA) application to collect data by reporting and recording cases of violence against women and children, as a monitoring and evaluation of the protection of women and children.

Table 1. Table on crime rates against children and the implementation of the Child Protection Law.⁹

Case Type	Number of Cases (on 2021)	Number of Cases (on 2022)	Number of Cases (on 2023)
	Victim	Victim	Victim
	Male:5816 Female:13572	Male:3187 Female:18062	Male:2435 Female:9741
Physical Violence	3429	3748	2065
Psychological Violence	3693	4162	2314

⁸ Ariesani Hermawanto and Melaty Anggraini, *Globalisasi, Revolusi Digital Dan Lokalitas: Dinamika Internasional Dan Domestik Di Era Borderless World*, Cetakan Pe (Yogyakarta: LPPM Press, 2020).

⁹ "Sistem Informasi Online Perlindungan Perempuan Dan Anak (Simfoni PPPA)," Kemenpppa RI, 2023, <https://kekerasan.kemenpppa.go.id>.

Neglect	1040	1270	677
Sexual Violence	8700	9591	5616
Exploitation	274	216	131
Trafficking	404	219	122
Other Violence	1848	2043	1251
Total	19388 Case	21249 Case	12176 Case

Although the above data does not provide an overall picture of the number of cases of violence against children, especially cases of neglect, it is considered capable of correlating the problem of child neglect within the household with the potential economic disparities of the people. This condition is a concern for everyone to establish the position of children as human beings who must be taken into account and receive all the needs that are in accordance with children's rights. Fulfilment of children's rights, if connected with the principles of Islamic economic law, namely the principle of *al-bir wa al-taqwa*. *Al-bir* means virtue and balanced, or proportional, namely upholding justice or good behaviour. *Al-taqwa*, means caution, fear, straight path, and abandoning the useless, protecting and guarding yourself from the wrath of Allah.¹⁰

Violence against children that occurs as described above can occur in the family environment. Wrightsman refers to the family as The Cradle of Violence or often known as the cradle/birthplace of violence.¹¹ Neglect is a form of criminal offence because it does not reflect the human side of a person as a human being, which is evidenced by the non-performance of the obligations and responsibilities of parents in fulfilling the basic needs of children, including love and attention to children, where obligations are attached to parents, and rights are attached to children, but not a few facts that actually show how parents ignore their obligations in caring for and providing for children.¹² Various arguments are put forward by parents to justify or at least avoid the obligation to provide for children.¹³

Even when one parent is unable to interact with the child due to the care of the child being in the hands of the father or mother based on a court decision, and the parent always states that they have the right to meet and interact with the child, without realising that the parent actually only has an obligation to fulfil the child's rights, and on the contrary the child is entitled to all the attention and fulfilment of these rights from both parents. In the Netherlands, the estimated total number of child abuse cases in 2017 was 26 to 37 per 1000 children. The most important risk factors for child abuse are low parental education, unemployment, immigrant status, and single parenthood. Finally, in 46% of families reported child maltreatment occurred in the context of domestic violence.

Co-occurring domestic violence may indicate family violence observed in one couple could be a marker of dysfunction in the functioning of the family system. Child maltreatment

¹⁰ Farid Wajdi and Suhrawardi K. Lubis, *Hukum Ekonomi Islam, Edisi Revisi* (Jakarta: Sinar Grafika, 2021). 30

¹¹ Airlangga Justisia, *Pembuangan Bayi Dalam Perspektif Penelantaran Anak* (Fakultas Hukum UNAIR, UBELAJ, Vol. 3, No. 1, April 2018), 28

¹² Anonim, *Buku Pintar Perlindungan Anak*, Kementerian Sosial Republik Indonesia (Jakarta: 2018),35

¹³ Pengadilan Agama Banjarbaru, *Kontekstualisasi Hukum Perdata Islam* (Yogyakarta: Phoenix Publisher, 2018).50

remains a major problem in the Netherlands with a stable prevalence over the last 12 years and stability of characteristics that make families vulnerable to child maltreatment. Child maltreatment and inter-parental violence may be due to the violence used by the maltreating parent often being directed at multiple family members as such perpetrators may perceive physical maltreatment as an accepted form of discipline.¹⁴

Child welfare and protection are still not widely understood by the public, even though since 1979 the government has enacted the Law of the Republic of Indonesia Number 4 of 1979 concerning Child Welfare. The implementation of child welfare and protection (KHA) requires close cooperation between the government, the community and the family. These three components are responsible for the implementation of child protection, which must continue to be carried out by all elements.

The concept of protection intends to reveal whether requested or not requested, the maintenance of the child is the right of the child. The purpose of providing protection is so that children feel protected, so that children feel safe, do activities or exploit themselves against their environment. Child protection is an effort that creates conditions where every child can exercise or obtain their rights and obligations. This protection is a manifestation of justice in society, nation and state, as well as recognition and protection of human rights, namely the limitation and placement of obligations on society and government. The study of the concept of legal protection of child victims in this research discusses the things that become fundamental reasons so as to reveal the importance of legal protection of child victims of domestic neglect committed by parents.

The crime of child neglect is a neglect of the rights of the child and the obligations of the party who is or has responsibility for the victim (child), as well as an indicator of an imbalance in parental responsibility (husband and wife), so that the child is not properly protected and has the impact of becoming a victim of domestic neglect. Child neglect in the context of Indonesian law is not justified, because it contradicts the legal rules contained in the Child Protection Law and Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, as well as other laws and regulations that explicitly regulate the rights and obligations of children and parents within the family.

The previous study discussed the reconstruction of legal protection for children facing the law after diversion based on the value of justice. The study focused on reconstructing specific legislation on the protection of children who commit criminal acts after diversion while adhering to the principle of justice. In contrast, this study focuses on the reconstruction of legal protection for children as victims of neglect based on Law No. 23 of 2002. Previous studies focused on efforts to redesign the concept of protection for children in conflict with the law.¹⁵ Another previous research, namely *Reconstruction of Legal Protection Based on the Value of Justice, Reconstruction of Legal Protection Regulations Against Victims of Criminal Acts of Domestic Violence Based on the Value of Justice*, which discusses the regulation of legal protection against victims of criminal acts of domestic

¹⁴ Marit Hopman and Trudie Knijn, *Child Protection Victims and the "Evil Institutions"* (Utrecht: University of Utrecht, n.d.).

¹⁵ Abdul Ghani, "Rekonstruksi Regulasi Perlindungan Anak Yang Berhadapan Dengan Hukum Pasca Diversi Berbasis Nilai Keadilan," 2023.

violence has not been fair, and discusses the weaknesses of legal protection regulations against victims of criminal acts of domestic violence at this time. This research also discusses the reconstruction of legal protection regulations for victims of domestic violence based on the value of justice.

This research is normative legal research, which is legal research that places law as a system of norms. This type of research is justified by Abdul Kadir Muhammad, who argues that the main focus of normative legal research is law as conceptualised in norms or rules that apply in society and serve as a reference for everyone's behaviour.¹⁶ What is meant by law as a system of norms in this study is legislation related to the reconstruction of the concept of legal protection for children as victims of criminal neglect (critical review of Article 9 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence). The nature of normative legal research is believed to be capable of finding answers to the problems being studied, because according to Zainuddin Ali, normative legal research discusses doctrines (expert opinions) or principles (basic principles) in legal science.¹⁷

Normative legal research is legal research that places the law as a building system of norms.¹⁸ This type of research is justified by Abdul Kadir Muhammad who argues that the main study in normative legal research is law conceptualised in norms or rules that apply in society and become a reference for everyone's behaviour.¹⁹ The same affirmation is given by Peter Mahmud Marzuki who believes that normative legal research is a process of finding legal rules, legal principles, and legal doctrines to answer observed legal problems, so as to ultimately produce new arguments, theories or concepts as prescriptions (instructions) in solving the problem at hand.²⁰ The approach taken in conducting this research is a statute approach, namely by using legislation and regulations. This research is an explanatory legal study, namely legal research that seeks to provide an explanation and aims to test a theory or hypothesis in order to strengthen or even reject the theory or hypothesis of previous research results.²¹ Literature study (library research) is a tool used to obtain secondary data by searching, collecting and collecting written legal materials relevant to the theme and title of this research through the National Library, Regional Public Library of North Sumatra Province, Indonesia.

The approach used in conducting this research is the statute approach, which involves the use of legislation and regulations. The choice of research approach is relevant to the nature of normative legal research. This is also in line with the reality that in normative legal research, the use of a juridical approach is very important, because what will be studied are various laws and regulations that are the focus and main theme of a study.

¹⁶ Tunggul Ansari Setia Negara, "Normative Legal Research in Indonesia: Its Originis and Approaches," *Audito Comparative Law Journal (ACLJ)* 4, no. 1 (2023): 1-9, <https://doi.org/10.22219/aclj.v4i1.24855>.

¹⁷ Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020). 35

¹⁸ Margie Gladies et.al Deassy J.A. Hehanussa, *Metode Penelitian Hukum*, ed. Elan Jaelani, *Jurnal Widina Bhakti Persada*, vol. 4 (Bandung: Widina Bhakti Persada Bandung, 2023).

¹⁹ Abdul kadir Muhammad, *Hukum Dan Penelitian Hukum*, 1st ed. (Bandung: Citra Aditya Bakti, 2004). 42

²⁰ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2019). 31

²¹ Peter Mahmud Marzuki, *Penelitian Hukum, Edisi Revisi* (Jakarta: Kencana, 2021). 52

The concrete manifestation of the statute approach in this study is to examine the regulations on the Reconstruction of the Concept of Legal Protection for Children as Victims of Criminal Neglect (Critical Review of Article 9 of Law Number 23 of 2004 on the Elimination of Domestic Violence), which can realise protection from the perspective of victims of neglect in the household, especially those experienced by children. This is in line with the essence of the statutory approach itself, which is applied to specific regulations or written laws, analysed in a: Comprehensive manner (related to one regulation with another); All-inclusive manner (the ability of a collection of legal norms to resolve legal issues); and Systematic manner (laws that are structured hierarchically). This research is explanatory in nature (explanatory legal study), which is legal research that seeks to provide explanations and aims to test a theory or hypothesis in order to strengthen or even reject the theory or hypothesis of previous research. Soerjono Soekanto and Sri Mamudji share the same opinion that the explanatory nature is intended to test certain hypotheses.²² The explanatory nature of the research tests the relationship between the research variables, so that the final result of this research is a cause-and-effect relationship. The explanatory nature of the research is believed to be able to answer the formulation of the problem of legal protection for child victims of criminal neglect, which is the focus of this research. Since this type of research is normative legal research, the data sources used are data obtained from indirect sources (secondary data). This is confirmed by Suteki and Galang Taufani, who state that secondary data is data that comes from indirect sources and is used for normative legal research.²³

Primary Legal Materials, namely legal materials that have authority, including legislation; official records/minutes in the drafting of legislation; court decisions. The primary legal materials in this study are the 1945 Constitution of the Republic of Indonesia. Law of the Republic of Indonesia Number 4 of 1979 concerning Child Welfare. Law of the Republic of Indonesia Number 7 of 1984 concerning the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women, Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights, and Law of the Republic of Indonesia Number 23 of 2002 on Child Protection; Law of the Republic of Indonesia Number 23 of 2004 on the Elimination of Domestic Violence.

Secondary Law, which refers to all publications related to law and are unofficial documents, including: textbooks, legal dictionaries, legal journals, and commentaries on judicial decisions, which are relevant to the issues examined in this study. Tertiary Legal Materials, which are publications that provide guidance on the interpretation of primary and secondary legal materials, sourced from dictionaries, encyclopaedias, newspapers, and other such sources, that are relevant to the issues being examined in this study. Data collection tools are techniques or methods used to obtain data in conducting research. The data collection tool used in this study, namely library research, is a tool used to obtain secondary data by searching for, compiling, and collecting relevant written legal materials related to the theme and title of this study through the National Library, the Provincial Public Library of

²² Soerjono & Sri Mamudji Soekanto, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Depok: Rajawali Press, 2019).

²³ Rifqi Anugerah Tama, "The Role of Legal Empowerment Based Advocacy for Rural Communities on Structural Social Inequality," *Indonesian Journal of Advocacy and Legal Services* 5, no. 1 (2023): 161-80, <https://doi.org/10.15294/ijals.v5i2.68240>.

North Sumatra, Indonesia. The Task Implementation Unit (UPT) of the University of Muhammadiyah North Sumatra Library, Indonesia, as well as the library of the National Land Agency. This method is justified by Suteki and Galang Taufani, who state that library research is an activity of searching, examining, reviewing, and analysing secondary data. Documentary research was conducted at the North Sumatra Provincial Office for Women's Empowerment, Child Protection, and Family Planning Cq. The Regional Technical Service Unit for Women and Child Protection of North Sumatra Province, the North Sumatra Regional Police Office, the Medan City Police Office, the Medan District Attorney's Office, or other institutions related to their role in the implementation of child protection activities for victims of domestic violence in North Sumatra Province, Indonesia. Documentary research was conducted to obtain secondary data in the form of documents related to the aforementioned activities. According to Suteki and Galang Taufani, these documents are not only official documents but can also include photos, images, videos, activity reports, meeting minutes, activity notes, and other documents. Interview guidelines were used to gather information from informants regarding the enforcement of criminal law against child neglect. According to Mukti Fajar and Yulianto Achmad, informants are individuals who provide information data according to the research needs within the limits of their knowledge, and researchers cannot direct their answers according to their preferences. The informants in this study came from academia, practitioners at relevant agencies, and the community (village heads, farmer groups, or others).

According to Nana Syaodih Sukmadinata, qualitative analysis is aimed at describing and analysing phenomena, events, social activities, attitudes, beliefs, perceptions, and thoughts of individuals and groups. Qualitative analysis is naturally directed toward the quality of data related to norms, principles, and rules relevant to the reconstruction of the concept of legal protection for children as victims of criminal neglect (Critical Review of Article 9 of Law Number 23 of 2004 on the Elimination of Domestic Violence).

Legal Protection of Children in Indonesia

Regulations become a limitation for society in burdening or taking action against individuals. The existence of these rules and the implementation of these rules creates legal certainty. Normative legal certainty is when a regulation is made and promulgated with certainty because it regulates clearly and logically.²⁴ Clear in the sense that it does not cause doubts (multiple interpretations) and logical. Clear in the sense that it becomes a system of norms with other norms so that it does not clash or cause norm conflicts. Legal certainty refers to clear, fixed, consistent and consequent law enforcement whose implementation cannot be influenced by subjective circumstances. Therefore, the notion of children is described and defined in several laws in Indonesia. This is to ensure the definition and limitation of the notion of children.²⁵ In fact, the definition of a child in several laws is

²⁴ Elmadiantini et al., "Legal Consequences of Designating Cultivation Rights as Abandoned Land in the Context of Credit Collateral Objects," *Sriwijaya Law Review* 9, no. 1 (2025): 157-72, <https://doi.org/10.28946/slrev.Vol9.Iss1.4029.pp157-172>.

²⁵ Fadillah Sabri, "Perlindungan Hukum Dengan Restitusi Terhadap Anak Yang Menjadi Korban Tindak Pidana," *UNES Journal of Swara Justisia* 6, no. 4 (2023): 398, <https://doi.org/10.31933/ujsj.v6i4.293>.

regulated according to the needs of the law. Children in the child protection law are clearly and definitively regulated in Article 1 paragraph (1) of Law Number 17 of 2016 concerning Child Protection which states: a child is a person who is not yet 18 (eighteen) years old, including children who are still in the womb.

The family is the smallest unit in society and cannot be separated from the rules and/or laws determined either by the State or by society and religion. This is also confirmed in Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, which is the basis for procedures in a legal marriage, furthermore Article 1 Point 4 of Law of the Republic of Indonesia Number 4 of 1979 concerning Child Welfare, family is defined as the smallest unit of society consisting of father, mother and child. Children are a mandate as well as a gift from God Almighty, which we must always protect because in them are inherent dignity and rights as human beings that must be upheld.

Child rights are human rights contained in the 1945 Constitution, Children as the hope of the nation in the future, get rights through their parents since they are born in the world based on laws and regulations. Parents, families and communities are responsible for safeguarding and maintaining these human rights in accordance with the obligations imposed by law. Similarly, in the context of implementing child protection, the state and government are responsible for providing facilities and accessibility for children, especially in ensuring their optimal and directed growth and development. This law emphasises that the responsibility of parents, family, community, government and the state is a series of activities that are carried out continuously for the protection of children's rights. The series of activities must be sustainable and directed to ensure the growth and development of children, both physical, mental, spiritual and social. This action is intended to realise the best life for children who are expected to be potential successors of the nation, resilient, have nationalism imbued with noble morals and the values of Pancasila, and are strong-willed to maintain the unity and integrity of the nation and state.

Child protection efforts need to be implemented as early as possible, namely from the fetus in the womb until the child is 18 (eighteen) years old. Starting from the conception of child protection that is whole, thorough, and comprehensive, the legal protection of children can be interpreted as an effort to protect the law against various freedoms and fundamental rights and freedoms of children and various interests related to the welfare of children, as found in the Explanation of the General Provisions of the Child Protection Law. Utrecht argues that legal certainty contains two meanings, namely: First, the existence of general rules that make individuals know what actions can and cannot be done. Second, in the form of legal security for individuals from government arbitrariness against the existence of general rules so that individuals can know what the state can impose or do to them.

Legal protection for child victims of neglect is part of the fulfilment of legal certainty in order to obtain guarantees of the fulfilment of children's rights. The prohibition for parents or anyone who is obliged to carry out the protection of children is part of a general rule that makes individuals understand the act is prohibited by law and the violation of it can be given criminal sanctions. This is also done in order to fulfil security for individuals from the arbitrariness of the government against the existence of general rules so that individuals can know what is prohibited or done by the state against them.

Violence is very close to children's lives, the experience of children dealing with violence is very diverse in terms of the forms of violence experienced, the perpetrators of violence, the place of occurrence, and the causes of violence. Forms of mistreatment and violence committed by parents against children will have a long-term impact and psychological impact on the process of child development until adulthood. Child protection in Islam means the fulfilment of children's rights and protection from things that can harm them. Parents do not have the right to neglect the needs of children, both clothing and food. Allah SWT says in the Quran Surah Al-Baqarah, 2: 233, which means 'And it is the duty of the father to provide for them and clothe them in an appropriate manner'. Neglecting the needs of children is a sin for parents. Prophet Muhammad SAW said: 'Quite sinful is the one who wastes the maintenance of those who are his dependents' (HR. Abu Dawud and Ahmad). It is said that a former slave Abdullah bin 'Amr intended to settle in Bait al-Maqdis for one month. Abdullah asked him, "Have you left enough for your family for one month? The man replied, 'No'. So Abdullah told him to return to first provide for one month of his departure. The above narration clearly illustrates that in Islam children must be protected, both from their families, society, and the state.

The provisions of laws and regulations and the Qur'an confirm that parents maintain, care for and educate children in accordance with the rights of every child from the womb to adulthood. For the survival of children, their rights are needed in the process of growth and development and proper survival as contained in the previous explanation. According to Abdur Rozak, children have rights, namely the rights of children before and after being born, the rights of children in the sanctity of their descendants, the rights of children in receiving good names, the rights of children in receiving arrangements, the rights of children in getting care, care and maintenance, the rights of children in the field of education and teaching.

Child protection is defined as efforts to prevent, rehabilitate and empower children, so that children are free from child abuse, exploitation and neglect. These efforts are nothing but a guarantee for the continuity of children to live and develop normally, both physically, mentally and socially. Arif Gosita said that child protection is an effort to protect children for the fulfilment of their rights and obligations. The protection of children's rights is closely related to legislation as a guarantee of legal certainty with the consideration that children are a very vulnerable age group (dependet), and another thing is that there are groups of children who experience obstacles and developmental growth, both spiritually, physically and socially. C.S.T Kansil states that legal protection is a variety of legal efforts that must be provided by law enforcement officials to provide a sense of security, both in mind / mental and physical from disturbances and various threats from any party.²⁶

Fitzgerald explained that legal protection aims to integrate and coordinate various interests in society because in a traffic of interests, protection of certain interests can only be done by limiting various interests on the other hand. The interest of law is to take care of human rights and interests, so that the law has the highest authority to determine human

²⁶ M. Arief Kurniawan and Dkk, "Perlindungan Hukum Terhadap Anak Yang Berkonflik Dengan Hukum Dalam Sistem Peradilan Pidana Anak, SANKSI 2023," in *Seminar Nasional Hukum, Sosial Dan Ekonomi*, 2023.

interests that need to be regulated and protected.²⁷ Legal protection must see the stages, namely legal protection born from a legal provision and all legal regulations given by the community which is basically an agreement of the community to regulate behavioural relationships between members of the community and between individuals and the government which is considered to represent the interests of the community. The issue of legal protection and children's rights is one side of the approach to protect children to get regular, orderly and responsible protection from various parties, it requires laws or rules that are in line with the development of Indonesian society that fully animates the values of Pancasila and the 1945 Constitution. The protection shows that the government pays serious attention to children.

The implementation of child protection is the obligation and responsibility of the state, government, community, family and parents which includes protection in the fields of religion, education, health and social. Legal protection efforts against children, so that children's lives are comfortable and safe. The quality of protection of children should have a degree or level that is at least equal to the protection of adults, because everyone has the same position before the law (equality before the law) in a state of law. Some regulations related to child protection include the United Nations Standard Minimum Rules for the Administration of Juvenile Justice 'The Beijing Rules' (UN Assembly Resolution No. 40/33, dated 29 November 1985). This provision addresses the United Nations Standard Minimum Rules for the Administration of Juvenile Justice 'The Beijing Rules' (Adopted by General Assembly resolution 40/33, 29 November 1985). 'The Beijing Rules', uses the term a juvenile to refer to a child without mentioning his/her age. A juvenile is a child or young person who, under the respective legal system, may be dealt with for an offence in a manner which is different from an adult.

Based on the provisions of The Beijing Rules, there is no age limit for children/young people, which means that the age limit for children/young people is different for each country. "The Beijing Rules only provide guidelines so that the age limit of children should not be set too low, because their actions cannot be held criminally responsible due to the emotional, mental and intellectual condition of children/adolescents. Secondly, in the Universal Declaration of Human Rights, the rules that specifically regulate the rights of children are found in Articles 25 and 26. The rights of children regulated in these provisions are in Article 25 Paragraph 1, which explains that everyone has the right to a level of living adequate for the health and welfare of himself and his family, including the right to food, clothing, housing and health care and necessary social services, and has the right to security when unemployed, suffering from illness, disability, becoming a widow / widower, reaching old age or other circumstances that cause him to lack sustenance, which is beyond his control.

Paragraph 2 explains that mothers and children are entitled to special care and assistance. All children, whether born within or outside marriage, shall receive equal social protection. Furthermore, Article 26 Paragraph 1 explains that everyone has the right to

²⁷ Mia Amiati and Iman Prihandono, "Human Rights Violations and Corporate Criminal Liability : An Analysis of the New Indonesian Criminal Law," *Sriwijaya Law Review* 8, no. 2 (2024): 230–48, <https://doi.org/10.28946/slrev.Vol8.Iss2.3687.pp230-248>.

education. Education shall be free of charge, at least at the lower school and primary levels. Lower education should be compulsory. Technical and vocational education in general should be open to all, and higher education should be accessible in the same way to all, on the basis of merit. Paragraph 2 explains that education should aim at the broadest possible development of the individual and at strengthening respect for human rights and fundamental freedoms. Education should promote mutual understanding, tolerance and friendship among all nations, racial groups and religions, and should promote the activities of the United Nations in maintaining peace. Third, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (UN General Assembly Resolution No. 45/113, 14 December 1990).

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty Adopted by General Assembly Resolution 45/113, 14 December 1990 is that the juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles. Imprisonment should be the last alternative. Juvenile justice shall not discriminate on the basis of race, colour, age, language, religion, nationality, political opinions, beliefs, or cultural practices, property, birth or family status, ethnic or social origin, physical disability, religion, and moral concepts. Juveniles who have not been tried should be presumed innocent. Juveniles who are still in legal proceedings should be separated from juveniles who have already been sentenced. Juveniles who have not been tried and are in legal proceedings have the right to be assisted by a legal advisor free of charge, to be provided with the opportunity to work for a wage, to continue their education, to own and keep their entertainment items, data relating to juveniles is confidential, juveniles in detention have the right to education, skills training and vocational training, recreation, religion, health care, and contact with the wider community.

The United Nations Guidelines for the Prevention of Juvenile Delinquency (UN General Assembly Resolution 45/112, dated 14 December 1990) is a guideline from the United Nations in order to prevent crimes committed by children. Some things that need to be known in the United Nations Guidelines for the Prevention of Juvenile Delinquency (Adopted by General Assembly Resolution 45/112, 14 December 1990), Riyadh Guidelines, are as follows Efforts to prevent crime by children / adolescents. This aims to avoid criminalising and penalising. General prevention is carried out by analysing each problem, formulating the responsibilities of each institution, coordination between institutions, continuing policy conformity, and involving community members. National and international mass media with a child perspective. Prioritised social policies, such as medical and mental services, education on drug abuse prevention and treatment, public services and facilities that lead to child welfare. Juvenile justice legislation and administration, by developing and enforcing juvenile-specific procedures to protect the rights and welfare of juveniles. National instruments on child protection. Protection of children can be found in the preamble of the 1945 constitution, this is reflected in the sentence:

‘...Then, in order to form a Government of the State of Indonesia which shall protect the whole Indonesian nation and all the people of Indonesia and to promote the general welfare, the intellectual life of the nation, and to participate in the implementation of world order based on freedom, lasting peace and social justice, the Indonesian National Independence shall be established...’

The state's commitment to protect its citizens as mentioned in the Fourth Paragraph of the 1945 Constitution is further elaborated in Chapter XA on Human Rights. Specifically for the protection of children, Article 28B Paragraph (2) of the 1945 Constitution states: 'Every child has the right to survival, growth and development and the right to protection from violence and discrimination'. Children's human rights are explicitly contained in Article 28B Paragraph (2) of the 1945 Constitution. However, if we look at the entirety of Article 28 of the 1945 Constitution, as long as it is enforceable and acceptable, as well as beneficial to children, then the rights in question must be addressed to children and are not the monopoly of adult humans. In addition to Article 28 of the 1945 Constitution, there are also children's rights in Article 29(2), Article 31(1) and (2), and Article 34(1) and (2). Juridically, these articles of the 1945 Constitution are addressed to everyone, meaning that adults and children have the same rights. Furthermore, if the mandate of the 1945 Constitution is implemented optimally, then all Indonesian children will grow and develop into a generation of quality, noble and prosperous nations.

Regulations on children can be found in several articles and laws, namely Article 28B Paragraph (2), and Article 34 of the 1945 Constitution; Article 2, and Article 330 of the Civil Code; Article 45, Article 46, Article 287, Article 288, Article 294, Article 295, and Article 330 of the Criminal Code (hereinafter referred to as the Criminal Code); Articles 42 to 55 of Law of the Republic of Indonesia Number 1 of 1974 Concerning Marriage (hereinafter referred to as the Marriage Law); Law of the Republic of Indonesia Number 7 of 1984 Concerning the Elimination of all Forms of Discrimination Against Women (Convention on the Elimination of all Forms of Discrimination Against Women); Article 171, and Article 153 paragraph (5) of the Criminal Procedure Code (hereinafter referred to as the Criminal Procedure Code); Presidential Decree of the Republic of Indonesia Number 36 of 1990 Concerning the Ratification of the Convention on the Rights of the Child;

Law of the Republic of Indonesia No. 12 of 1995 Concerning Correctional Institutions (Correctional Institutions Law); Law of the Republic of Indonesia No. 3 of 1997 Concerning Juvenile Courts (hereinafter referred to as Juvenile Court Law); Law of the Republic of Indonesia No. 4 of 1997 Concerning Persons with Disabilities; Law of the Republic of Indonesia No. 20 of 1999 Concerning the Ratification of International Labour Organization (ILO) Convention No. IX. 138 Concerning Minimum Age for Admission to Employment; Law of the Republic of Indonesia No. 39 of 1999 Concerning Human Rights (hereinafter referred to as the Human Rights Law); Law of the Republic of Indonesia No. 1 of 2000 Concerning the Ratification of ILO Convention No. 182 Concerning the Prohibition and Exploitation of Employment. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; Law of the Republic of Indonesia No. 13 of 2003 on Labour (hereinafter referred to as the Labour Law); Law of the Republic of Indonesia No. 20 of 2003 on the National Education System; Law of the Republic of Indonesia No. 12 of 2006 on Citizenship (hereinafter referred to as the Citizenship Law);

Law of the Republic of Indonesia Number 23 of 2004 on the Elimination of Domestic Violence (hereinafter referred to as PKDRT Law); Law of the Republic of Indonesia Number 21 of 2007 on the Eradication of Trafficking in Persons (hereinafter referred to as PTPPO Law); Law of the Republic of Indonesia Number 11 of 2009 on Social Welfare (hereinafter referred to as Social Welfare Law); Law of the Republic of Indonesia Number 35 of 2009 on

Narcotics (hereinafter referred to as Narcotics Law); Law of the Republic of Indonesia Number 17 of 2023 on Health (hereinafter referred to as Health Law); Law of the Republic of Indonesia Number 19 of 2011 on the Ratification of the Convention on the Rights of Persons With Disabilities; Law of the Republic of Indonesia Number 11 of 2012 on the Juvenile Justice System (hereinafter referred to as the SPPA Law); Law of the Republic of Indonesia Number 24 of 2013 on the Amendment to Law Number 23 of 2006 on Population Administration (hereinafter referred to as the Population Administration Law); Law of the Republic of Indonesia Number 31 of 2014 on the Amendment to Law Number 13 of 2006 on Witness and Victim Protection (hereinafter referred to as the LPSK Law);

Law of the Republic of Indonesia Number 35 Year 2014 on the Amendment to Law Number 23 Year 2002 on Child Protection (hereinafter referred to as the PA Law); Law of the Republic of Indonesia Number 8 Year 2016 on Persons with Disabilities (hereinafter referred to as the PWD Law); Law of the Republic of Indonesia Number 17 of 2016 on the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 on the Second Amendment to Law Number 23 of 2002 on Child Protection into Law (hereinafter referred to as the PA Law); Law of the Republic of Indonesia Number 5 of 2018 on the Amendment to Law Number 15 of 2003 on the Stipulation of Government Regulation in Lieu of Law Number 1 of 2002 on the Eradication of the Criminal Offence of Terrorism into Law (hereinafter referred to as the Terrorism Law); Law of the Republic of Indonesia Number 12 of 2022 on the Crime of Elimination of Sexual Violence (hereinafter referred to as the TPKS Law); Government Regulation of the Republic of Indonesia Number 3 of 2002 on Compensation, Restitution, and Rehabilitation for Victims of Gross Human Rights Violations; Government Regulation of the Republic of Indonesia Number 54 of 2007 on the Implementation of Child Adoption (hereinafter referred to as PP on Child Adoption); Government Regulation of the Republic of Indonesia Number 65 of 2015 on Guidelines for the Implementation of Diversion and Handling of Children Under the Age of 12 (Twelve) Years;

North Sumatra Provincial Regulation No. 9/2017 on the Amendment to North Sumatra Provincial Regulation No. 3/2014 on the Implementation of Child Protection; Supreme Court Regulation No. 4/2014 on Guidelines for the Implementation of Diversion in the Juvenile Justice System; Supreme Court Regulation No. 3/2017 on Guidelines for Adjudicating Cases of Women Against the Law; Government Regulation of the Republic of Indonesia No. 44/2017 on the Implementation of Childcare (PP Childcare).

The legal framework for the protection of children in Indonesia has several weaknesses that remain challenges in its implementation. Some of these include the lack of effective implementation of existing regulations. Although Law No. 23 of 2002 on Child Protection clearly regulates children's rights, its implementation is often inconsistent. Another issue is the lack of awareness and supervision. Many cases of child rights violations go unreported due to a lack of public concern and weak oversight mechanisms. Treatment of Children in Conflict with the Law. Children involved in criminal acts are often treated like adults, which contradicts the principle of child protection. Violence and exploitation, as cases of violence against children remain high, including economic and sexual exploitation, and a lack of protection for children, such as street children without parents or underprivileged children. Furthermore, there is a lack of support for child victims. Children who are victims of violence or exploitation often do not receive adequate rehabilitation and support.

Reconstruction of legal protection for child victims of criminal offences of child neglect in Law No. 23/2004 on the Elimination of Domestic Violence

The Law on PKDRT still has the potential to harm children in the law enforcement process, disputes between husbands and wives who play the role of head of the family and head of the household to men and housewives to women have the potential to ignore the rights of children which results in acts of neglect. The existence of provisions that divide the roles of husband and wife is very contrary to the principles of the UUP, especially the principle of providing equal rights and position between husband and wife, whereas the principle of the best interests of the child can certainly be applied also in disputes between husband and wife in household matters.

The Child Protection Law (UUPA) has endeavoured to cover ideal principles with the aim of providing maximum protection to children. UUPA also regulates the rights of children so that they can be fulfilled. It is complemented by the PKDRT Law which regulates the responsibilities of parents towards children so that children get their rights, so that they can grow and develop optimally. However, there are still some provisions in the division of roles in the family that cannot be separated from the patriarchal culture that develops in society, where the law itself is the result of the influence of this culture. In addition, the high rate of domestic violence against wives or women, fuelled by patriarchal culture and gender ideology, has an impact on various aspects of life. This causes the criminal offence of child neglect to occur as a result of problems in the division of tasks in the household.

The law on domestic violence is very important because without a clear rule of law or public policy, the practice of domestic violence will grow. In fact, the issue of domestic violence is often not considered a public problem and is still considered a trivial issue that occurs in the domestic sphere. The provisions governing child neglect in the Domestic Violence Law are considered to still have shortcomings in providing adequate protection for child victims of neglect, because the time limit for fulfilling children's rights that are not fulfilled becomes a measure of whether parents or other family members have fulfilled their obligations to meet the needs of children.

The limitations of the regulation are often used to ensnare perpetrators of child neglect within the household. In reality, perpetrators of neglect are often punished very lightly, within days or months, even if they are on probation. Not only that, in the law enforcement process, it is not uncommon for victims to not respond quickly to resolve the neglect case. Not to mention the problem of the application of the law which requires clarity from law enforcement officials.

As a result, it is not surprising that many women who are victims of domestic violence prefer to remain silent and not take the matter to court. If a victim of domestic violence decides to pursue a criminal case, the charges are often withdrawn due to the husband's position as the breadwinner, which is considered more important than the safety of the victim's life. Therefore, there needs to be a change of view that emphasises that domestic violence does not only involve violence between husband and wife, but also includes other family members. This is also based on the fact that domestic violence does not only affect married couples, but also has a psychological and physical impact on other family members, especially children.

Domestic violence should be considered a violation of human rights, not just a private family matter, which makes special regulations such as the PKDRT Law necessary. Although the PKDRT Law has been passed, there are still some notes, such as marital rape being regulated as an offence of complaint and minor violence also being treated as an offence of complaint, with the aim of making households less prone to outside interference. These records show that domestic violence remains a controversial issue. On the one hand, policymakers recognise the existence of domestic violence, but on the other hand, they are trying to keep the issue less affected by outsiders. In other words, although domestic violence is a tragedy, not everyone agrees that it should be regulated in the legal system.

In relation to the role of the state, each state has an obligation to protect, fulfill and respect the rights of children. Based on these state obligations, the child and family welfare system is implemented within a policy framework that is sustainable from the macro to micro level. Based on the provisions of Law Number 1 of 1974 concerning Marriage Chapter VI concerning the Rights and Obligations of Husbands and Wives, which basically, especially for a husband, must love each other, respect, be loyal and provide physical and mental assistance to one another, the husband is obliged to protect his wife and provide all the necessities of household life according to his ability, then referring to the provisions of Chapter X regarding the rights and obligations between parents and children in the aforementioned law which basically states that parents are obliged to maintain and educate their children as well as possible even though the marriage between the two parents has broken down and as long as their authority as parents has not been revoked, they are still obliged to provide maintenance costs to the child. Thus, the Defendant as a husband and father according to the law applicable to him has obligations towards his wife and children. In not fulfilling this obligation, the Defendant has not complied with or violated the law that applies to him.

That based on the conflicting evidence, the Defendant is the husband of the Victim Witness Riskwati based on the Marriage Certificate Quotation 0019/019/I/2017 in the name of the husband and in the name of wife I issued by the Office of Religious Affairs of Prohibition District, Pamekasan Regency, so that the provisions of Article 2 Paragraph (1) of Law No. 23/2004 on the Elimination of Domestic Violence can be applied to the Defendant.²⁸ Furthermore, it must be proven whether the Defendant's actions have neglected Victim Witness I and their two children Sahdan Faza Sucandra and Sahwa Humaira Sucandra with the consideration that the element of neglect is the Defendant's actions that cause an effect, so that there are victims, namely Victim Witness I and their two children Sahdan Faza Sucandra and Sahwa Humaira Sucandra. As a result, there must be causality between the actions of the Defendant and the existence of victims (the wife of the Defendant and their children). Therefore, the Panel of Judges based on the principle of *conditio sine qua non* which is a teaching that determines every effect can be determined by its causes and each cause has an influence on the occurrence of an effect; Supreme Court of the Republic of Indonesia. Child Neglect According to Law No. 23 of 2002 in conjunction with Law of the Republic of Indonesia No. 35 of 2014 Concerning Child Protection, the portrait of the situation and variety of problems of children in Indonesia is increasingly alarming.

²⁸ Jill Poole, "Introduction to the Law of Contract," in *Textbook on Contract Law* (Cambridge: Cambridge University Press, 2020), 1–24, <https://doi.org/10.1093/he/9780199687220.003.0001>.

The suffering experienced by Indonesian children has shown that the right to life of children as an integral part of human rights has been neglected, threatened without handling and solutions. The suffering and various problems of children are eliminated from a religious social environment that always places children in a sacred position, namely as God's entrustment and gift. And the state, in its political and juridical responsibilities mandated by the constitution, should not allow and simply hand over the responsibility of protecting, fulfilling and respecting children's rights to the community and family. Meanwhile, the state is still reluctant to place the position of children in development policy in line with political and economic issues. As a result, the position of children is at the crossroads of lost generation. Government policies in responding to the plight of children, especially children who need special protection, often place children as a domestic issue.

The PKDRT Law does not clearly stipulate the necessity of displaced victims, but if you look closely at Article 1 point 1 of the PKDRT Law, which defines 'Domestic violence as any act against a person, especially women, which results in physical, sexual, psychological, and/or domestic neglect, including threats to commit acts, coercion, or unlawful deprivation of liberty within the scope of the household'. Therefore, this provision should be read and applied to the 'criminal offence of domestic neglect', in other words, neglect must cause the victim to experience 'physical, sexual, psychological misery or suffering'.

Article 9 paragraph (1) states: Every person is prohibited from neglecting a person within the scope of his/her household, when according to the law applicable to him/her or by agreement or treaty he/she is obliged to provide life, care or maintenance to such person. While the paragraph states (2) Neglect as referred to in paragraph (1) also applies to every person who causes economic dependence by restricting and/or prohibiting proper work inside or outside the home so that the victim is under the control of that person. The construction of the Article on neglect in the PKDRT Law can be seen as follows:

- a. A person who is obliged by agreement to provide life, care, or maintenance to another person within the scope of the household;
- b. A person who is obliged by agreement to provide life, care, or maintenance to another person within the scope of the household;
- c. A person who is obliged by law to provide life, care or maintenance to another person within the scope of the household;
- d. It is prohibited to fail to fulfil the obligation hereinafter referred to as 'neglect'.

Prayudi's statement quoted by Joko Sriwidodo looks at the construction of the 'prohibition' of this article, it appears that the main element is 'depriving the victim of freedom' in the form of:²⁹

- a. Restricting and/or prohibiting proper work inside or outside the home. Restrictions and prohibitions by the perpetrator are aimed at the victim, so that the victim does not do any work inside or outside the home. This restriction and prohibition is carried out by the perpetrator using unlawful means, namely either by using violence or threats of violence.
- b. Causing the victim to be under the control of this person. Where as a result of these restrictions and prohibitions, the perpetrator can control the victim, so

²⁹ Joko Sriwidodo, *Pengantar Hukum Kekerasan Dalam Rumah Tangga*, 2021, 264

that the will and wishes of the victim are in accordance with the will and wishes of the perpetrator.

- c. The victim experiences economic dependence on the perpetrator. In the end, the restriction/prohibition and control of the victim by the perpetrator results in economic dependence on the perpetrator.
- d. The victim is abandoned. This element is the core of this type of criminal offence, where people who are economically dependent on the perpetrator due to the restriction/prohibition and control are then abandoned by the perpetrator.

By looking at these conditions, this article requires the consequences of the act of abandonment, namely that the victim who is economically dependent on the perpetrator becomes 'neglected'. Although the substance of the law has changed, if the legal culture and legal apparatus do not change their thinking, the PKDRT Law will be useless. A change of mindset for the legal apparatus and society at all levels is very important because the patriarchal mindset and gender bias are still inherent in society, including women themselves. Many women who are victims of domestic violence feel that the violence they experience is their own fault, so whatever they do does not satisfy the perpetrator and they feel that the violence is deserved. Most women also choose to remain silent because they believe that telling others about the violence will only make things worse, without providing adequate solutions. As a result, they are forced to try to forget and forgive the perpetrator, even though the violence continues to recur. In light of these events, the researcher utilised the Beneficence Theory. This theory, also known as 'maslahah mursalah', refers to a benefit that is not described in the Shari'ah, but if implemented can bring goodness. In this maslahah mursalah, several legal rules emerge, such as adversity is defined as something that can cause harm to the lives of human beings, both physically and mentally, and therefore must be abandoned; An evil must not be removed by creating a new evil; Rejecting the evil must take precedence over attracting the good; A specific evil must be endured in order to reject a greater evil; Doing the lesser benefit when faced with a choice of 2 dangers; Something that has to be done permits something that is forbidden; Shortsightedness must be eliminated; The necessity is placed in the place of the evil; Difficulty brings ease; Traditions that are known to mankind and are well-established, and which serve a purpose, are sources of law; All intermediaries that lead to the goal must be blocked and prevented if they bring harm and must be opened if they bring good.

These rules are described by way of example as follows: 1) Violence that causes harm must be abandoned, 2) Legal sanctions in the form of fines should not cause new misery for women, so the law must be reconstructed, 3) Rejecting (fines) must take precedence to attracting benefits, 4) Adversity (compensation) must be done to reject greater harm (fines), 5) Doing good (giving compensation / compensation) to the victim is lighter when compared to 2 adversities (between fines or compensation), 6) Women commit violence because they are forced (self-defense), 7) Fines are a shortsightedness, because the more the victim suffers the more the state benefits, therefore it must be eliminated, 8) The need to protect women from the burden of suffering in the form of fines is a necessity, 9) The existence of the burden of suffering due to violence can bring ease or relief in the form of compensation/compensation/restitution, 10) Human traditions reject violence protected by

religion can be a source of law, 11) PKDRT Law rejects domestic violence, reconstruction of PKDRT Law is an effort to protect the law against women from fines to compensation/compensation/restitution to cover the misuse of PKDRT Law as a government interest.

The reconstruction of law enforcement against child neglect in the PKDRT Law, based on the value of Islamic justice and benefit, needs to be done as follows, the time limit for neglect that can be processed so that it is clear and firm how long it can be considered that people have despicable intentions that do not carry out their obligations to fulfill the rights of the people they are responsible for; Changing the form of sanctions that are currently in the form of fines paid to the state, to sanctions in the form of compensation or restitution that must be given to victims of neglect. Sanctions for violence committed by parents or other family members, including neglect, must be tailored to individual situations and conditions, because this difference in treatment can create a perception in society that neglect by certain people is more understandable and tolerated. In fact, the PKDRT Law aims to eliminate all forms of violence, including neglect of child victims. To include assistance and psychological recovery for child victims of neglect.

Developing an integrative model between religious principles and positive law in the context of protecting child victims of neglect can be done in several steps:

- a. Religious value-based approach, religious principles that emphasize compassion, justice, and protection of children can be used as the basis for designing legal policies that are more humanist.
- b. Harmonization with positive law, the integration between religious norms and positive law must be done by considering applicable legal principles, so that it does not conflict with the national legal system.
- c. Increasing the role of the community and religious institutions. Religious institutions can play a role in educating the public about the importance of child protection and become partners in law enforcement.
- d. Strengthening protection and recovery mechanisms. This means that the state must ensure that child victims of neglect receive optimal protection, including psychological and social rehabilitation.
- e. Responsive policy making. This means that regulations made must consider aspects of social justice and children's welfare, by involving various parties in the formulation process.

The impact of legal culture on child protection in Indonesia comprehensively requires an approach that includes social, legal and policy aspects. Efforts that can be made include a critical analysis of the existing legal culture. The legal culture in Indonesia is still influenced by social, legal and policy norms. Efforts made to increase public awareness by educating about children's rights and the importance of legal protection must be strengthened through public campaigns, education in schools, and the active role of the media in disseminating accurate information. Meanwhile, there is a need to strengthen policies and regulations. The government needs to ensure that existing regulations are actually implemented and do not just become rules on paper. Supervision of the implementation of the Child Protection Law must be stricter, including in handling cases of child abuse and exploitation. In addition, collaboration with religious and social institutions needs to be done as well as possible.

Religious and social institutions have an important role in shaping a legal culture that favors child protection. Religious and social institutions can be partners in advocating and conducting counseling to the community. As part of the specific recommendations, in addition to strengthening the legal substance, it is also necessary to strengthen the capacity of police, prosecutors and judges through special training in handling child protection cases so that they are more sensitive to the needs of children and not only focus on formal legal aspects.

Articles containing complaint offenses also need to be reviewed, so that acts of domestic child neglect become a shared responsibility between the community and the government to deal with them fairly. Fair treatment of victims, including their protection, includes fair treatment by law enforcement officials, such as judges. As competent and independent law enforcers, judges must be free from personal interests or particular tendencies towards victims in their application. Fair treatment of victims also means not asking tricky or prejudicial questions, especially in cases of sexual violence.

Questions from law enforcement officers are prohibited from blaming or cornering victims in the Criminal Procedure Code emphasized in article 155 with the sentence that questions of an ensnaring nature are prohibited from being asked to expert witnesses or to the defendant, besides that in the process of examining cases at every stage law enforcers must present and examine witnesses or experts submitted by women victims in the Criminal Procedure Code there are progressive rules regarding the protection of witnesses and victims in article 40 the form of protection stated in the bill, In the context of women's protection, witness or victim protection is often carried out in the form of placing witnesses or victims in safe houses, even though the needs of witnesses and victims can be in the form of being kept away by the perpetrator within a certain radius so that the witness or victim is not allowed to reach the placement of witnesses or victims in a safe house.

For victims, relocation can cut them off from their usual social life, impacting on their ability to recover, work, and take care of their children's education. In addition, additional forms of protection also include situations where witnesses, victims, or their families, as well as victim advocates, face threats that endanger their lives or property. In this case, the Indonesian National Police are obliged to provide protection, both before, during and after the case examination process. The process of applying for and granting temporary protection must also be easily accessible and provide legal certainty for victims.

Glory for witnesses or victims of criminal offenses related to victim recovery requires several forms of recovery which are often referred to as reparations. These forms of reparation include restitution, compensation, rehabilitation, satisfaction, and restitution guarantees. Restitution aims to return the victim to the condition before the crime occurred, both in terms of restoring the violated legal freedom, social status, residence, employment, return of confiscated goods, and family life. However, in some cases, restitution cannot be made, for example when the victim is permanently disabled. Therefore, other forms of remedy are important. In Indonesia, restitution is the responsibility of the perpetrator or third party.³⁰

³⁰ Monaria Hasna Salsabila, "Tantangan Restitusi Sebagai Perlindungan Terhadap Anak Korban Kekerasan Seksual Di Indonesia" 13, no. 1 (2024): 2024.

Compensation aims to compensate for the damage caused by the criminal offense, both physical and mental damage, including suffering, emotional distress, and loss of opportunity.³¹ This compensation becomes the responsibility of the state because the perpetrator is unable to provide full compensation to the victim, which is actually the obligation of the perpetrator.³² In Indonesia, the right to compensation only applies to victims of gross human rights violations, and applications for compensation can be made by victims through the courts or witness and victim protection agencies in the KUHAP. The provision of compensation should be expanded, not only for victims of gross human rights violations, but also for women who are victims of violence.³³

Rehabilitation is a remedy provided to victims, which in some cases must be provided immediately without waiting for a court decision. Rehabilitation must also be provided to support the victim to undergo the judicial process related to the criminal offense that happened to them.³⁴ Rehabilitation is the responsibility of the state, which includes medical services, legal services, and social services to help victims return to their original state, and can continue after a court decision. The fulfillment of a sense of justice and guarantees for victims is also regulated by Komnas Perempuan in this concept of recovery.

In a broader sense, recovery for victims involves the role of family, community, advocates, and the state to provide effective and sustainable support. This recovery is part of the victim's rights that must be fulfilled and cannot be separated from one another. The idea of victim recovery needs to be included in the KUHAP with the formulation of article 134 as follows: "every victim or their heirs are entitled to restitution".³⁵ Restitution as referred to in paragraph 1 is in the form of compensation for loss of wealth or income for the cost of medical or psychological treatment and or other losses suffered by the victim, so that the guarantee of the fulfillment of the rights of the obligations imposed can be clearly seen.³⁶

Article 9 paragraph (1) of the PKDRT Law currently regulates the provisions on the prohibition of people neglecting people within the scope of their household, even though according to the law applicable to them or because of an agreement or agreement they are obliged to provide life, care or maintenance to that person. Meanwhile, as an input on the time limit for neglect that can be processed so that it is clear and firm how long it can be

³¹ Marlina and Mahmud Mulyadi, "Building Restorative Justice in Gampong as a Bottom-up Legitimation of the Protection of Children in Conflict with the Law in Indonesia: Case Study in Aceh," *Cogent Social Sciences* 10, no. 1 (2024), <https://doi.org/10.1080/23311886.2024.2347410>.

³² A Rahmawati and O Yudianto, "Pengaturan Pemberian Restitusi Dalam Suatu Tindak Pidana Pembunuhan (Studi Putusan Nomor 22-K/PMT-II/AD/II/2022)," *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance* 3, no. 2 (2023): 1677-96.

³³ LPO Beremanda, Hafrida, and Siregar Elizabeth, "Prinsip Keadilan Restoratif Dalam Pengehntian Penuntutan Melalui Kompensasi Dan Restitusi," *PAMPAS: Journal of Criminal Law* 4, no. 2 (2023): 279-279.

³⁴ Emmanuel Ariananto Waluyo Adi, "Penal Mediation as the Concept of Restorative Justice in the Draft Criminal Procedure Code," *Lex Scientia Law Review* 5, no. 1 (2021): 139-64, <https://doi.org/10.15294/lesrev.v5i1.46704>.

³⁵ Maria Novita Apriyani, "Implementasi Restitusi Bagi Korban Tindak Pidana Kekerasan Seksual," *Jurnal Risalah Hukum* 17, no. 1 (2021): 1-10.

³⁶ Fahrizal S Siagian, Mahmud Mulyadi, and Rosmalinda, "Criminal Law Policy Concerning Providing Restitution to Victims of Crimes of Serious," *Semarang Law Review* 5, no. 2 (2024): 13-36.

considered that a person has a reprehensible intention not to carry out his obligations to fulfill the rights of the person he must be responsible for.

Articles 44 to 48 of the PKDRT Law regulate provisions regarding criminal offenses that are subject to imprisonment and fines; the more serious the criminal offense, the higher the fine that must be paid by the perpetrator to the state. All types of fines listed in Articles 44, 45, 46, 47, and 48 of the PKDRT Law, which were previously payable to the state, must be transferred to the victim. This can be done either in the form of compensation provided by the state to the victim, or in the form of restitution that must be borne by the perpetrator to the victim. In addition, any form of violence, regardless of the type or perpetrator, that can endanger a person's life, is the social responsibility of society. The state has the obligation to provide the necessary legal protection. Meanwhile, Article 51, Article 52, Article 53 of the PKDRT Law regulates the provisions of criminal acts in the form of Physical violence as referred to in Article 44 paragraph (4); Psychological violence as referred to in Article 45 paragraph (2), and Sexual violence as referred to in Article 46 committed by a husband against his wife or vice versa is a complaint offense.

Articles containing legal violations also need to be reviewed, so that child neglect within the household becomes a shared responsibility between the community and the government to be handled fairly. Children in Indonesia must be protected in accordance with international conventions that have been agreed upon to protect the interests of children. Therefore, it is necessary for the state to maximise the protection of children's rights and pay attention to the rights of neglected children. Children must be well cared for because the future of this nation lies in the hands of the younger generation as the nation's successors. The concept of improving regulations that maximise the protection of children's rights, based on children's rights, is also greatly needed as a solution to address issues related to child neglect.

Conclusion

The reconstruction of legal protection under the PKDRT Law is based on the values of justice and public interest, namely the time limit for when a person can be declared to have committed neglect. Additionally, the form of fines previously imposed on perpetrators to be paid to the state should be reconstructed into sanctions requiring perpetrators to provide compensation or restitution to victims of violence. A review of provisions containing complaint-based offences is necessary, so that acts of domestic violence also become the social responsibility of society and the government. Penalties for violence committed by spouses and other family members must be based on the principle of justice, taking into account the circumstances and conditions of each case. Differences in the imposition of penalties may lead to the perception that violence between spouses is more acceptable and tolerable, whereas the Domestic Violence Act aims to eliminate all forms of violence against anyone. The reconstruction that needs to be considered in the PKDRT Law is the bias towards children as victims of neglect, including the time limit for declaring that someone has committed neglect, the issue of criminal complaints, equal punishment for perpetrators of violence both within the household and against other people, and the change from fines that benefit the state to compensation or restitution for victims of violence.

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