

Formulation Of Criminal Legal Policy On Child Neglect Committed By Biological Parents (*Criminal law policy formulation regarding child negligence permitted by natural parents*)

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Abstract. *Legal protection for children is a collective obligation that must be carried out by the entire community, because children are the next generation who play a strategic role in realizing the ideals and future of the nation. Children, as the successors of the nation, not only function as subjects who will live their lives, but also as an integral part of the development and progress of the country. Therefore, it is important for every child to receive comprehensive protection and guidance from various aspects, both in terms of law and social. The purpose of this study is to determine and analyze the formulation of criminal law policies regarding child neglect committed by biological parents and to determine and analyze the application of criminal sanctions against child neglect committed by biological parents. The research method used in this study is a legal approach in a Juridical Sociological manner, this research is a type of analytical descriptive research, the data sources in this study are primary data obtained from field studies with data collection techniques through observation, and secondary data obtained from literature studies related to this research. From the results of this study, Child neglect as reviewed from Law Number 23 of 2002 in conjunction with Law of the Republic of Indonesia Number 35 of 2014 concerning child protection is the failure to fulfill the child's needs in a reasonable manner, whether physical, mental, spiritual, or social, even parents who fail to fulfill their obligations in fulfilling children's rights. Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, and develop, and participate optimally in accordance with human dignity and dignity, and receive protection from violence and discrimination. The form of criminal liability for parents who neglect their children is contained in Law Number 23 of 2002 in conjunction with Law Number 35 of 2014 in Article 77b, Article 77c, Article 78.B.*

Keywords: *Child; Criminal; Neglect; Parents.*

1. Introduction

Indonesia as a country of law guarantees the welfare of every citizen, including protection of children's rights which are the human rights of every child has the right to survival, growth and development and has the right to protection from violence and discrimination as mandated in the Constitution Republic of Indonesia in 1945.¹Children are a mandate and a gift from God Almighty, which we must always protect because they contain inherent dignity, honor, and rights as human beings that must be upheld. Children as shoots, potential, and the younger generation who continue the ideals of the nation's struggle, have a strategic role and have special characteristics and traits that guarantee the continued existence of the nation and state in the future, so that every child will be able to shoulder this responsibility, then he needs to get the widest possible opportunity to grow and develop optimally, both physically, mentally and socially, and have noble morals, it is necessary to make efforts to protect and realize the welfare of children by providing guarantees for the fulfillment of their rights and treatment without discrimination.²Children are the next generation of the nation who need special legal protection that is different from adults, due to physical and mental reasons that children are not yet adults and mature. Legal protection for children is interpreted as an effort to protect the law against the freedom and basic rights of children related to their welfare. Protection given to children must be given comprehensively which is continuously attempted by the Government to realize the welfare of society in order to create a safe, peaceful and prosperous atmosphere as implied in the national goals of the Indonesian nation stated in the Preamble to the 1945 Constitution, paragraph IV, namely to realize a just and prosperous society based on Pancasila and more clearly it has been mandated in Article 28B paragraph (2) of the Amendment to the 1945 Constitution that "Every child has the right to survival, growth and development and has the right to protection from violence and discrimination. The provisions of the 1945 Constitution are then explained in various laws and regulations, including Law Number 4 of 1979 concerning Child Welfare, Law Number 3 of 1997 concerning Juvenile Justice, Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection.³

Child neglect can include situations where children do not receive the attention, care, or basic needs they require from their parents. Conditions such as these can

¹ The 1945 Constitution, namely Article 28 D paragraph (1) of the 1945 Constitution

² Consideration of Law Number 23 of 2002 concerning Child Protection, State Gazette of the Republic of Indonesia Number 109 of 2002, Citra Umbara, Bandung, 2003, p. 1.

³Johanes Chrisna Adimas Bunyu, Legal Protection for Victims and Legal Consequences for Parents as Perpetrators of Child Neglect Due to Divorce in Kupang City. Volume 1

have a negative impact on a child's physical, mental, and emotional development. Child neglect is often caused by several factors, including economic inability, domestic violence, and the inability of parents to fulfill their responsibilities.

In recent years, there has been increasing attention to the issue of child neglect, both domestically and internationally. However, existing law enforcement is not fully adequate to address this complex case of neglect. Some of the main issues include:

- 1) **Inadequate Regulation:** Current regulations may not provide effective protection for children. Many cases of neglect do not receive adequate legal treatment, either due to unclear laws or a lack of understanding of their implementation.
- 2) **Law Enforcement Challenges:** Although there are laws regulating child protection, implementation in the field often experiences obstacles, such as lack of resources, training, and coordination between agencies.
- 3) **Need for Reform:** To effectively address child neglect, policy reforms may be needed that focus not only on punishment for perpetrators, but also on prevention and rehabilitation for child victims.

2. Research Methods

Normative research methods are research methods that use legal materials which in the broad sense are called library materials and other supporting legal materials.

3. Results and Discussion

3.1. Formulation of Criminal Legal Policy on Child Neglect Committed by Biological Parents.

Children are a mandate and gift from God Almighty that we must preserve, because they contain human dignity, honor, and rights that must be respected and protected. Children's human rights, as part of the human rights stated in the 1945 Constitution, are rights that must be fulfilled in the context of national and state life. Children are the future of the nation and the next generation of the nation's ideals, so they have the right to a sustainable life, the opportunity to grow and develop, participation, and protection from violence, discrimination, and neglect. Discussions about children and their protection will continue to be relevant

throughout history, considering that children are the next generation of the nation and the future of the country, including Indonesia.⁴

Legal protection for children is a collective obligation that must be carried out by the entire community, because children are the next generation who play a strategic role in realizing the ideals and future of the nation. Children, as the successors of the nation, are not

only serve as subjects who will live their lives, but also as an integral part of the development and progress of the country. Therefore, it is important for every child to receive comprehensive protection and guidance from various aspects, both in terms of law and social. The guidance and protection in question include various actions aimed at ensuring that children can grow and develop in a safe, healthy, and supportive environment. This includes protection from all forms of violence, neglect, and discrimination, as well as providing adequate access to education, health, and other basic needs. With an effective protection system, children can not only avoid potential dangers and threats that they may face, but can also take advantage of various opportunities to develop their potential optimally.⁵

Children's rights are based on four general principles that serve as important references for the state in fulfilling, respecting, and protecting children's rights. These principles are:

- 1) **Principle of Non-Discrimination:** This principle requires states to ensure that all children, including those in conflict with the law, receive equal treatment without discrimination. Every child must enjoy the same rights regardless of their background, social status or other personal circumstances.
- 2) **Principle of the Best Interests of the Child:** This principle emphasizes that every decision and action taken by relevant bodies must systematically consider and prioritize the best interests of the child. The decision must ensure that the rights and welfare of the child are the main priority in every policy or action taken.
- 3) **Principles of Survival and Development:** This principle underlines the importance of ensuring that children not only survive, but also have the opportunity to grow and develop optimally. This includes providing basic needs, such as food, education, and health, as well as support for children's physical, mental, and emotional development.

⁴Eleanora, FN 2020. Protection of children's human rights as perpetrators and victims of criminal acts (the role and function of the National Commission for Child Protection). Permanent Lecturer, Faculty of Law, Bhayangkara University, Jakarta Raya.

⁵Wahyudi, TS, & Kushartono, T. (2020). Legal protection of the rights of children who are victims of domestic violence in relation to Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning child protection. *Journal of Legal Dialectics*, 2(1), p. 57.

4) **Principle of Respect for Children:** This principle demands recognition and respect for the rights of children as individuals with dignity and worth. This means that children must be respected as members of society with the right to be heard and to participate in decisions that affect their lives.⁶

Law No. 35 of 2014, explains the threat of imprisonment and fines. In Law No. 35 of 2014 concerning child protection in Article 76 letters a and b and Article 77 letter b concerning criminal provisions which state that:

- a. Treating children in a discriminatory manner which results in the child experiencing losses, both material and moral, thereby hindering their social function;
- b. Everyone is prohibited from placing, allowing, involving, ordering children to be involved in situations of mistreatment and neglect.

According to Harlock, in the context of psychology, the age of children can be divided into two main categories. The early childhood category includes ages 2 to 6 years, while the late childhood category includes ages 6 to 12 years. The phase after 12 years is called the adolescent phase, which is then followed by the adult phase. Children According to Law No. 35 of 2014 concerning Child Protection The definition of a child based on Article 1 paragraph (1) of Law No. 35 of 2014 concerning Child Protection is a person who is not yet 18 (eighteen) years old, including children who are still in the womb. Children are the seeds of the birth of a new generation who are the successors to the ideals of the nation's struggle and human resources for national development.⁷

Children are national assets, the future of the nation and state in the future is in the hands of today's children. The better the child's personality now, the better the future life of the nation, and vice versa, if the child's personality is bad, the life of the nation in the future will also be bad. Children are vulnerable individuals because of the complex developments that occur at every stage of childhood and adolescence. Furthermore, children are also physiologically more vulnerable than adults, and have limited experiences, which affect their understanding and perception of the world. It is important to remember that in order for every child to be able to shoulder responsibilities in the future, they need to be given the widest possible opportunity to grow and develop optimally in physical, mental, social, and moral aspects. To achieve this goal, effective protection efforts are needed and guarantees of the fulfillment of children's rights without discrimination. This protection aims to ensure that children can grow in an

⁶UNICEF. (2019). Four principles of the Convention on the Rights of the Child.

⁷Eleanora, Fransiska Novita et al., Textbook of Law on the Protection of Children and Women, Madza Media, Malang, 2021, p. 9

environment that is supportive, safe, and meets their needs, so that they can develop into prosperous and responsible individuals in the future.

3.2. Forms of Criminal Legal Protection for Children Who are Victims of Neglect by Their Biological Parents

victims including children, can be done in two main forms: abstract protection and concrete protection. Abstract protection is basically a form of protection that provides emotional or psychological benefits. This includes a feeling of satisfaction or security that can be felt by the victim even though it is not always physically visible. This type of protection focuses on the psychological and emotional aspects of the victim, such as providing moral support or psychological assistance that helps the victim feel safer and more valued.⁸

Child abuse in the form of neglect is often demonstrated through various actions that ignore the basic needs and rights of the child. This neglect can involve a number of situations that significantly harm the child's well-being. These forms of neglect include:

- 1) **Health Neglect:** One serious form of neglect is the neglect of a child's health care needs.
- 2) **Security Neglect:** Neglect in terms of child safety occurs when a child does not receive adequate protection from dangerous situations or environments.
- 3) **Educational Neglect:** Education is a basic right of every child, and educational neglect includes situations where a child does not have access or opportunities for age-appropriate education.
- 4) **Physical Neglect:** Physical neglect involves the failure to meet a child's basic needs such as food, clothing, and shelter. If a child does not receive sufficient food intake, Rusmil explained that child neglect includes not only ignoring physical needs, but also psychological and emotional needs.

When parents are unable to provide the necessary attention, or do not provide the means to support the child's development, this is also a form of neglect. Involvement in hazardous work, such as being a factory worker, domestic helper, or scavenger, is also considered neglect if the activity interferes with the child's well-being and development. Child neglect in any form has a significant impact on the child's well-being and requires immediate attention and intervention to protect and fulfill the child's rights. The government, society, and related institutions must work together to prevent and address cases of child neglect, and

⁸ Dwi, Putri.Melati. (2015) "Implementation of Handling of Cases of Violence Against Children by the Indonesian Child Protection Commission", *Journal of Legal Studies*, 42-46.

ensure that every child has access to basic needs and opportunities to develop properly.⁹

On the other hand, concrete protection is a form of protection that provides real and direct benefits. This form of protection can be divided into two main categories: material and non-material. Material protection includes the provision of compensation or restitution, such as financial assistance to cover living or educational expenses. It can also include direct support in the form of goods or services that help victims recover from the losses or suffering they have experienced. Meanwhile, non-material protection includes measures such as release from threats, protection from news that degrades human dignity, or restrictions on access to information that could harm victims. Non-material protection focuses on aspects that protect the dignity and privacy of victims, ensuring that they are not subject to surveillance or negative judgment that could worsen their situation. By combining these two forms of protection, it is hoped that victims, including children, can feel comprehensive protection that covers both their emotional and practical needs. This approach aims to ensure that victims not only receive the necessary assistance for physical and material recovery, but also deep emotional support to help them recover psychologically from traumatic experiences.¹⁰ Child protection includes providing comprehensive guarantees for their rights and efforts to protect them from violence and discrimination. This protection is provided through a positive legal framework or laws that regulate the rights and welfare of children. The main objective of child protection is to ensure that children can grow, develop, and participate in society in accordance with their dignity and human rights. Here are some laws that regulate child protection:

1) Law Number 39 of 1999 concerning Human Rights

According to Law No. 39 of 1999 concerning Human Rights (HAM), every child has the right to receive protection from parents, family, society, and the state. Children's rights are human rights and are recognized and protected by law.

Forms of legal protection according to Law No. 39 of 1999 are stated in:

a. **Article 52 (1):** This article emphasizes that child protection is an obligation that must be carried out by parents, society, and the state. This protection covers various aspects, including the physical, emotional, and social well-being of children. Parents are directly responsible for the welfare of children in the family environment, while society and the state have an important role in providing a

⁹Maidin Gultom, "Legal Protection for Children in the Juvenile Criminal Justice System in Indonesia", (Bandung: Refika Aditama, 2008). p.18

¹⁰ Noventari, W., & Suryaningsih, A. (2020.). Efforts to protect children from acts of violence (bullying) in the world of education reviewed from the legal and human rights aspects.

safe and supportive environment for the growth and development of children.

b. **Article 58 (1)**: This article stipulates that every child has the right to receive legal protection from various forms of violence, sexual harassment, and unpleasant acts. This protection includes preventive and reactive measures to combat violence and harassment, as well as legal mechanisms to ensure that children do not become victims of such acts.

c. **Article 64**: This article stipulates that children must be protected from work that may be harmful to their physical health, morals and social life. This protection is important to prevent the exploitation of children in work that is not appropriate to their age and abilities, and to ensure that work does not harm the child's health or social development.

d. **Article 65**: This article provides protection rights to children from sexual abuse, kidnapping, child trafficking, exploitation activities, and abuse of narcotics, psychotropics, and other addictive substances. This protection aims to avoid various forms of exploitation and abuse that can endanger the welfare and future of children.

e. **Article 66**: This article guarantees that children have the right to freedom and humane treatment. In addition, children have the right to receive effective legal assistance if they face legal problems, as well as special treatment if they are involved in a criminal case. This article also affirms the right of children to obtain justice in the juvenile justice system, ensuring that legal procedures pay special attention to the needs and rights of children.¹¹

2) Law Number 23 of 2004 concerning the Elimination of Domestic Violence

Article 5 of this law contains the prohibition of domestic violence, both physical and psychological violence and neglect in the household. Forms of protection for children are:

Forms of legal protection against violence against children involve various aspects, including physical, psychological, sexual and social violence, which require special and effective legal handling to protect children from various forms of torture and rights violations.

a) Physical child abuse includes acts of torture, abuse, and beatings, whether done with or without objects, resulting in physical injury or even death of the child. Legal protection in this context focuses on providing strict sanctions against the perpetrators as well as medical and rehabilitation measures for the victims to overcome the physical impacts suffered.

¹¹Law Number 39 of 1999 concerning Human Rights

b) Psychological violence against children involves acts such as scolding, insulting, or showing pornographic images. Legal protection here includes providing psychological assistance and counseling for child victims, as well as sanctions for perpetrators involved in acts that damage the child's mental and emotional health.

c) Sexual violence against children includes sexual contact, whether done directly or indirectly. Legal protection for sexual violence involves strict law enforcement against perpetrators, as well as providing medical and psychological support for the recovery of child victims, to ensure they receive proper treatment and their rights are protected.

d) Social violence against children includes neglect and exploitation, which means ignoring the child's basic needs or forcing the child to engage in hazardous work. Legal protection against social violence focuses on efforts to prevent neglect, provide social assistance, and ensure children's access to education, health, and protection from harmful exploitation.¹².

1) Law Number 35 of 2014 concerning Child Protection Forms of child protection based on the Child Protection Law are written in:

a. **Article 13 Paragraph 1:** This article emphasizes that children under the care of parents, guardians, or other responsible parties must receive protection from various forms of violence, abuse, neglect, discrimination, and injustice. This includes physical and emotional protection, ensuring that children do not experience actions that could harm their well-being. This concept emphasizes that the responsibility for protection lies not only with parents, but also with other parties who have authority in the care of children.

b. **Article 15:** This article establishes the right of children to be protected from abuse in the context of politics, involvement in violence, and warfare. Children should not be involved in political activities that could harm or exploit them. In addition, children should not be used as tools in armed conflict or other violent activities. This protection is important to ensure that children can grow and develop in a safe and peaceful environment without being affected by political situations or violence.

c. **Article 16:**

Verse (1): States that children must be protected from all forms of torture, ill-treatment and inhumane punishment. This means that the treatment of children must always give priority to their dignity and fundamental rights. Any form of

¹²Yunus, A. (2021). Legal protection for children as victims of domestic violence (perspective of the Domestic Violence Law and the Child Protection Law). *Khatulistiwa: Journal of Education and Social Humanities*, 1(4), 01-16. 2021

punishment or treatment that could impair the physical or mental integrity of the child must be avoided.

Verse (2): Guaranteeing the freedom of children, which includes the right to be free from unlawful detention or restriction. This freedom also includes the right to think, speak and express themselves according to their age and development.

Verse (3): Provides that the arrest and detention of children may only be carried out in accordance with applicable law and in a manner that takes into account the rights of the child. This ensures that legal action against children is carried out in an appropriate and fair manner, taking into account their best interests.¹³

2) Preventive Legal Protection

Preventive legal protection is carried out by the government to protect its citizens. The public is given the freedom to express their opinions so that they can prevent legal problems from arising. In the context of legal protection for children, the focus is on prevention before legal problems occur. Many cases make children victims of violence in the family environment because of their weak social and legal position. Children are often the target of emotional abuse by parents. Preventive legal protection aims to prevent violence against children in the family environment.¹⁴

Children are a gift from God Almighty, in which there is also a dignity and dignity possessed by adults in general, so children must also receive special protection so that they can grow and develop well in the future, because children are the young generation who will continue the nation and play a role in ensuring the continued existence of a nation and the state itself. Child neglect is one type of crime that is interesting and demands serious attention. Various news reports on child neglect in the mass media show that there is an increase in the quantity of both types and forms of child neglect crimes. The main perpetrators of this child neglect crime are mostly women, namely the baby's biological mother. Currently, cases of child neglect committed by the mother who gave birth to the child have increased along with the decline in morals and ethics of social interaction in the surrounding community. The crime of child neglect committed by a mother against her own biological child is stated as something that is impossible to happen if there is no specific cause. Cases of child neglect tend to be psychological problems, the presence of pressure or psychological burden borne by a mother towards the child she gave birth to. Furthermore, neglect is not only detrimental to the child, but parents must also bear the risk of their actions, namely the appropriate

¹³Law Number 35 of 2014 concerning Child Protection

¹⁴Hakmad, I. (2021). Criminal sanctions for child neglect in Indonesia. Faculty of Sharia and Law, State Islamic University of North Sumatera, Medan.

punishment in Law Number 23 of 2002 concerning Child Protection. Cases of child neglect are very common in Indonesia, but their handling is still very lacking.

In Article 13 of Law Number 35 of 2014 concerning Child Protection, an amendment to Law Number 23 of 2002, it is stated that paragraph (1) every child while in the care of parents, guardians, or any other party responsible for care, has the right to receive protection from the following treatment: Discrimination, Exploitation, both economic and sexual, Neglect, Cruelty, violence, and abuse, Injustice and other mistreatment. (2) In the event that parents, guardians, or caregivers of children commit any form of neglect as referred to in paragraph (1), the perpetrators are subject to increased legal sanctions. However, in fact, even though the Law has regulated the sanctions for criminal acts of child neglect, there are still cases of criminal acts of child neglect committed in society.¹⁵

Law Number 23 of 2002 concerning Child Protection regulates various aspects of child protection in Indonesia, which include the fields of religion, health, education, social, and special protection. The following is a more detailed explanation of protection in the fields of religion and health:

1) Protection in the Field of Religion

a. Right to Worship: Children have the right to worship according to their religion. This protection ensures that children can practice their religion without hindrance, according to their religious beliefs.

b. Protection Guarantee: The state, government, society, family, parents, guardians, and social institutions have an obligation to protect children's rights to embrace religion. This protection includes:

1) Formation: The process of educating children in religious teachings.

2) Guidance: Providing guidance to understand and practice religious teachings.

3) Practice: Practicing religious teachings in children's daily lives.

2) Protection in the Health Sector

a. Health Facilities: The government is required to provide complete health facilities and carry out comprehensive health efforts for children. This includes access to adequate and quality health services.

b. Health Responsibility: Parents and families are responsible for maintaining the health of their children. If they are unable to carry out this responsibility, the government must provide the necessary support and assistance.

c. Disease Prevention: States, governments, families and parents must ensure

¹⁵Chazawi Adami, *Criminal Law Lesson 1*, Jakarta, PT. Raja Grafindo, Fifth Edition, 2010

that children are born free from life-threatening or life-threatening diseases. This includes preventive measures and appropriate medical care.

d. Transplantation and Research: Protection in the health sector also includes:

1) Organ Transplantation: Protecting children from having their organs removed for the benefit of others without regard to the child's health.

2) Buying and Selling Organs: Protecting children from buying and selling organs.

3) Health Research: Children must be protected from health research that uses them as subjects without parental consent and that does not have the child's best interests at heart.

3) Protection in the Social Sector

Handling of Abandoned Children: If a child is abandoned due to the negligence of parents in carrying out their obligations, an institution, family, or authorized official can file an application with the court. The court will determine the child's status as an abandoned child and determine the appropriate shelter, care, and treatment. This process aims to ensure that abandoned children receive the necessary attention and support in safe and decent conditions.

4) Special Protection

a. Protection for Refugees: Refugee children should receive special protection in accordance with international humanitarian law. This protection ensures that children's basic rights are respected even when they are in a refugee situation.

b. Protection for Child Victims of Riots and Disasters:

1) Fulfillment of Basic Needs: Children who are victims of riots, disasters, and armed conflicts must obtain fulfillment of basic needs such as food, clothing, housing, education, health, and opportunities for learning and recreation. Security guarantees and equal treatment must also be ensured.

2) Special Needs: Children with disabilities or psychosocial disorders require special attention to ensure that their needs are met properly, both in terms of medical care, psychosocial support, and accessibility to various services.

5) Protection for Children in Conflict with the Law:

a. Humane Treatment: Children in conflict with the law must be treated humanely, in accordance with the dignity and rights of the child. This includes fair treatment and respect for their fundamental rights.

b. Special Assistance and Facilities: Providing special child support officers and appropriate facilities is essential to support children in conflict with the law. This

ensures that children are not alone in the legal process and receive the necessary support.

c. **Appropriate Sanctions:** Sanctions must be imposed with the best interests of the child in mind. Sanctions must be oriented towards the rehabilitation and reintegration of the child into society.

d. **Monitoring and Recording:** A continuous process of monitoring and recording the progress of children in conflict with the law is necessary to ensure that they receive the necessary support and that their progress is properly monitored.

e. **Relationships with Family:** Ensuring that relationships with parents or family are maintained is essential to the child's emotional well-being. Efforts should be made to maintain and facilitate these relationships throughout the legal process.

f. **Identity Protection:** Children in conflict with the law must be protected from reporting their identity through the mass media to avoid labeling and stigma that can harm their psychological and social development.¹⁶

3.3. Application of Criminal Penalties Towards Child Neglect Committed by Parents.

The application of criminal sanctions for child neglect committed by parents is an important step in law enforcement and child protection. Child neglect, as a serious violation of children's basic rights, can harm their physical, emotional, and social well-being. In the context of criminal law, sanctions are applied to follow up on cases of child neglect in order to provide a deterrent effect on the perpetrator and prevent similar cases from recurring in the future. These criminal sanctions include various types of punishments designed to reflect the severity of the violation. In practice, these penalties can be fines, imprisonment, or even prison, depending on how severe the neglect is. In addition to punishment, the court often requires the perpetrator to make improvements, such as providing compensation or restitution to the neglected child, as well as participating in rehabilitation or education programs to improve their behavior. In the legal process, it is important to ensure that all aspects of child protection are considered, including fulfilling the child's basic needs and improving their living conditions. Thus, law enforcement does not only focus on imposing punishment, but also on the child's recovery and welfare, so that it can create a safer and more supportive environment for the development of children in the future.¹⁷

Based on the 1945 Constitution, neglected children are the responsibility of the state. This means that the government has an obligation to care for and foster

¹⁶Sudiono, V., Mamengko, RS, & Soepeno, MH (2023). Study of child protection from a civil law perspective.

¹⁷Kurniawan, FA. Criminal aspects of child neglect by parents. Magelang. 2020

neglected children, including street children. The rights of neglected children and street children are basically the same as other human rights as regulated in Law Number 39 of 1999 concerning Human Rights and Presidential Decree of the Republic of Indonesia Number 36 of 1990 concerning Ratification of the Convention on the Rights of the Child. These children have the right to have their basic rights fulfilled, including civil rights and freedoms, the right to a decent family and care, and access to basic health and welfare. The government, society, and related institutions must work together to ensure that these rights are respected and fulfilled, so that children can develop in a safe and supportive environment.

In the Law on Domestic Violence (UU KDRT), protection for children as victims of violence or neglect is not much different from the provisions contained in the Child Protection Law. However, the Law on Domestic Violence emphasizes more on concrete and firm protection for victims. One important aspect that needs attention is the fulfillment of victims' rights, such as compensation, damages, and restitution.¹⁸

In this case, Stephen Schafer in his book "The Victim and His Criminal" puts forward five systems for providing compensation and restitution to victims of crime, which include:

1. **Civil Compensation:** This system provides compensation through a civil legal process, which is separate from the criminal legal process. This compensation can be obtained through a lawsuit filed by the victim or the victim's family in a civil court, regardless of any criminal process that may be ongoing.
2. **Criminal Compensation:** This system provides compensation through the criminal law process. In this case, compensation is awarded as part of a criminal court decision and often involves payment by the perpetrator of the crime as part of a sentence or restitution.
3. **Civil and Criminal Restitution:** This system combines civil and criminal elements in granting restitution. This restitution can be granted through a criminal process, where the perpetrator is required to pay a sum of money to the victim as part of the criminal sentence.
4. **Civil Compensation Through Criminal Process:** In this system, civil compensation is given as part of the criminal process, with the support of state resources. This means that compensation to victims can be done through criminal courts with financial support from state sources, to ensure that victims receive proper compensation.

¹⁸President of the Republic of Indonesia. (2004). Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Domestic Violence. Jakarta: President of the Republic of Indonesia

5. Neutral Compensation Through Special Procedures: This system provides compensation through special procedures designed to deal with specific cases. These procedures may involve special mechanisms outside of civil and criminal legal processes, to ensure that compensation is provided fairly and in accordance with the needs of the victim.¹⁹

In addition to the recognition of special laws outside the Criminal Code, the Criminal Code itself recognizes the existence of Special Criminal Acts, even M Sudrajat Bassar refers to them as "Certain Criminal Acts in the Criminal Code which include the following matters:

- 1) Crimes and Violations regarding endangering the situation
- 2) Crimes and violations concerning people's wealth.
- 3) Crimes and violations involving people's lives and bodies.
- 4) Crimes and Violations regarding people's honor.
- 5) Crimes and Offenses regarding decency.
- 6) Crimes and Offenses regarding counterfeiting.
- 7) Crimes and Violations regarding the position of the State.

The crimes or criminal acts discussed are crimes regulated in Law No. 23 of 2002 concerning child protection, namely the act of neglecting a child who is still a minor by his/her parents.

As stated in Child Protection Law No. 23 of 2002:

a. Article 77

Any person who intentionally carries out acts of discrimination and neglect that result in a child becoming sick or suffering physically, mentally or socially can be punished with a maximum prison sentence of 5 years and/or a maximum fine of IDR 100,000,000.

b. Article 82

Any person who intentionally commits violence or threats of violence, forces, commits trickery, a series of lies or persuades a child to commit or allow indecent acts to be committed shall be punished with imprisonment of 15 years, a minimum

¹⁹Handoko, H. (2019). Legal protection for children who are victims of criminal acts of neglect in the family.

of 3 years and a maximum fine of IDR 300,000,000 and a minimum of IDR 60,000,000.

c. Article 83

Anyone who trades, sells and kidnaps children for themselves or for others, shall be punished with imprisonment of at least 3 years and/or a fine of at least IDR 60,000,000 and at most IDR 300,000,000.

d. Article 89

Any person who exploits a child economically and sexually with the intention of benefiting themselves or others, shall be punished with imprisonment of up to 10 years and/or a fine of at least IDR 200,000,000,-

Article 2 of Law No. 23 of 2004 paragraph 1 states that the scope of households in this Law includes:

- 1) husband, wife and children
- 2) people who have family relationships with people as referred to in letter a, due to blood relations, marriage, breastfeeding, fostering and guardianship, who reside in the household; and/or
- 3) a person who works to help with the household and lives in the household.

Meanwhile, Law No. 23 of 2004 clearly explains about neglect in the household. As stated in Article 9:

- 1) Every person is prohibited from neglecting a person within his household, even though according to the law applicable to him or because of an agreement or contract he is obliged to provide life, care or maintenance for that person.
- 2) Neglect as referred to in paragraph (1) also applies to anyone who causes economic dependency by limiting and/or prohibiting proper work inside or outside the home so that the victim is under the control of that person.

Meanwhile, criminal provisions to emphasize the existence of domestic violence laws that specifically address child neglect are contained in Article 49. Anyone who:

- a. neglecting other people within the scope of his/her household as referred to in Article 9 paragraph (1);
- b. neglecting other people as referred to in Article 9 paragraph (2)

Apart from the government that has provided a legal umbrella for the creation of protection for children, parents, and awareness are very necessary for the creation

of welfare for all children in Indonesia. Because a rule no matter how strict if not supported by awareness within oneself will not run well.²⁰

Providing clear and firm legal guarantees will make perpetrators of child neglect in the family think twice about committing acts that clearly violate the law. In fact, when a child is treated according to his/her dignity and status, all rights and obligations are carried out properly, this will also encourage the growth of a conducive environment for the achievement of the child's own ideals, and the progress of the nation and state in general. However, in society there is still a growing misconception that the law in our country can be bought. This is because many cases involving children of officials or rulers are not touched or when they reach the court table, they will simply disappear. This is where law enforcement officers are challenged not to be selective in investigating cases in Indonesia.

The community as the existing social control must also participate in enforcing the existing law. By participating in the community, perpetrators or victims of child neglect will be immediately detected so that they can immediately get help, both medically and morally.

In addition to the issue of children's rights that must be protected and provided without the child asking for it. In order to optimize and increase the effectiveness of the implementation of child protection, the government has formed a commission, namely the Child Protection Commission, because the Child Rights Convention (KHA) states that every country that ratifies must have a national commission. The formation of the KPAI shows a reality that the government is paying attention and trying to provide protection for children so that children are protected from acts that are detrimental both physically and socially.

Child Protection Law No. 23 of 2002 states that every child has the right to receive protection from abuse in political activities.

Love is the most basic psychological need in a child's life, and it is highly dependent on the conscience and awareness of parents. Consistent and caring love has a significant impact on a child's emotional and mental development. However, in practice, many parents may not fully realize the importance of love in childcare, which can affect the child's psychological development and overall well-being, a sense of security and protection of children from all forms of violence and discrimination is very important to create a healthy and supportive environment. The emotional and physical safety of children depends not only on the physical structure of the household, but also on the quality of relationships between family members. A harmonious and loving household can create an environment where children feel safe and valued, which is an important foundation for healthy growth

²⁰Handoko, H. (2019). Legal protection for children who are victims of criminal acts of neglect in the family.

and development. To realize wholeness and harmony in the household, each individual must contribute well. The quality of behavior and self-control of each family member plays a major role in creating a positive and supportive atmosphere. When family members respect each other and understand each other's roles, and apply the principles of love and understanding, the household can be a place that supports optimal child development. The responsibility of parents and other family members involves efforts to create an environment free from violence and discrimination. This includes understanding and meeting children's emotional needs, promoting open and healthy communication, and providing the support needed to help children face their challenges and develop.²¹

Child neglect is one type of crime that is interesting and demands serious attention. Various news reports on child neglect in the mass media show that there is an increase in the quantity of both types and forms of child neglect. The main perpetrators of this child neglect crime are mostly women, namely the baby's biological mother. Currently, cases of child neglect committed by the mother who gave birth to the child have increased along with the decline in morals and ethics of social interaction in the surrounding community.

The crime of child neglect committed by a mother against her own biological child is stated as something that is impossible to happen if there is no specific cause. Cases of child neglect tend to be psychological problems, the presence of pressure or psychological burden borne by a mother towards the child she gave birth to. Furthermore, neglect is not only detrimental to the child, but parents must also bear the risk of their actions, namely the appropriate punishment in Law Number 23 of 2002 concerning Child Protection. Cases of child neglect occur very often in Indonesia, but their handling is still very lacking. Criminal acts against perpetrators of child neglect committed shortly after the child is born by the biological mother as explained in Article 305 of the Criminal Code that "anyone who places a child under the age of seven in a place to be collected by another person, or with the intention of being free from the care of the child, abandons it, is punished with imprisonment for a maximum of five years and 6 months". In Article 13 of Law Number 35 of 2014 concerning Child Protection, an amendment to Law Number 23 of 2002, it is stated that paragraph (1) every child while in the care of parents, guardians, or any other party responsible for care, has the right to receive protection from the following treatment: Discrimination, Exploitation, both economic and sexual, Neglect, Cruelty, violence, and abuse, Injustice and other mistreatment. (2) In the event that parents, guardians, or caregivers of children

²¹Susila, INA, Prasetya Ningrum, PA, Suseni, KA, & Kemenuh, IA (2024). The urgency of protecting children from sexual crimes from the perspective of customary law in Buleleng Regency. STAH Negeri Mpu Kuturan Singaraja. 2024.

commit any form of neglect as referred to in paragraph (1), the perpetrator shall be subject to increased legal sanctions.

According to Okto, seen from the aspect of the application of criminal sanctions, it is the judge who decides in the Jantho District Court and the judge who determines how much criminal sanctions are given to the perpetrator who committed the crime of child neglect, whether the maximum or not the maximum threat of punishment that has been imposed in accordance with the laws that have been applied. From the police, they only conduct investigations and prepare files, after which the files are sent to the Court, then the police bring the perpetrator to the Court for trial.

Article 305 of the Criminal Code contains the provision that: "Anyone who places a child under the age of seven in a place to be collected by another person, or with the intention of freeing the child from the care of the child, abandons him, shall be punished by imprisonment for a maximum of five years and 6 months.

In the Republic of Indonesia Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, it is explained about the prohibition and criminal threats against perpetrators of child neglect. In Article 76B concerning the prohibition against perpetrators of child neglect which reads "everyone is prohibited from placing, allowing, involving, ordering to involve children in situations of mistreatment and neglect." The criminal threat is stated in Article 77B which reads "anyone who violates the provisions as referred to in Article 76B, shall be punished with imprisonment of a maximum of 5 (five) years and/or a maximum fine of IDR 100,000,000.00 (one hundred million rupiah)

Factors Causing the Crime of Child Neglect

a. Social and Cultural Factors According to the results of an interview with a Lecturer at the Faculty of Criminal Law, Syiah Kuala University, Riza Nizarli, said that social and cultural factors also influence the factor where feelings of shame can drive someone to commit the crime of child neglect. This factor is more of a psychological or individual mental factor. Factors that arise from within the individual, because of the pressure that disturbs a person's mental condition that is unbearable so that taking a solution to solving the problem of the results of giving birth to a child outside of marriage is a disgrace.

b. Factors: Lack of Understanding of Religion. Lack of religious education which is a guide and guidance for teenagers' lives has caused them to lose direction in life and give rise to negative symptoms such as promiscuity between men and women and of course having relationships outside of the Shari'a. This causes teenage girls to become pregnant before there is a legal union.

c. Economic factors The same thing was also said by Ilham about economic factors can also be a factor in perpetrators abandoning their children with low

economy where someone can be pushed to commit child abandonment. A person's inability to support and raise their child later, encourages a mother to abandon the child she gave birth to in the hope that the abandoned child will be found by someone who can support and provide for their child's life.

d. Technological factors With the advancement of technology that is not supported by the readiness of society to filter information. The more the era develops, the advancement in the field of information technology offers sophistication and convenience in various aspects of life, society is increasingly easy to access any information through the sophistication of the internet.

e. Free association factor Free association factor where one form of deviant behavior that crosses the limits of obligations, demands, and conditions. Where family conditions greatly influence the behavior or psychological development of adolescents where the inharmonious state of parents disrupts the child's psychological development and children tend to seek pleasure outside to feel happy and forget what happened in their family.²²

4. Conclusion

Child neglect as reviewed from Law Number 23 of 2002 in conjunction with Law of the Republic of Indonesia Number 35 of 2014 concerning child protection is the failure to fulfill a child's reasonable needs, whether physical, mental, spiritual, or social, or even parents who fail to fulfill their obligations in fulfilling children's rights. Strategies to overcome the formulation of criminal law policies regarding child neglect include increasing education and awareness, increasing resources, coordination and collaboration between government agencies. The form of criminal law protection for children who are victims of neglect by their parents is in the form of abstract protection, namely protection that provides emotional and psychological benefits and concrete protection, namely a form of protection that provides real and direct benefits. The application of criminal sanctions for child neglect committed by parents is presented through five compensation and restitution systems for victims of crime, which include: civil compensation, criminal compensation, civil and criminal restitution, civil compensation through criminal proceedings, neutral compensation through special procedures.

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