



Criminal Act of Child Neglect in the Household

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Abstract

Children are one of the groups who often become victims of discrimination, violence and exploitation. As a legal state based on Pancasila as the ideology and foundation of a state that upholds the values of social justice, Pancasila has the aim of achieving balance, or harmony and being able to embrace society. The purpose of this paper is to analyze and discuss the regulation of the crime of child neglect in the household scope in laws and regulations and to analyze and discuss the form of the crime of child neglect in the household scope. The type of research used is normative legal research. The problem approach used is the legislative approach and the conceptual approach. The sources of legal materials are primary legal materials and secondary legal materials. The procedure for collecting legal materials through literature studies. Qualitative processing and analysis of legal materials. The results of the study show that the regulation of the crime of child neglect in laws and regulations is regulated in the Criminal Code (old), the Child Protection Law, the Domestic Violence Law and Law Number 1 of 2023 concerning the Criminal Code (New). Child neglect is more explicitly regulated in the Child Protection Law. This is based on Article 9 paragraph (1) of the Domestic Violence Law where the provisions indicate that the regulation of the crime of neglect is not limited to children, but rather to a wider scope. Therefore, when the Domestic Violence Law is compared with the Child Protection Law, it is clear that the Child Protection Law specifically regulates child neglect. The results of further research show that child neglect is a form of domestic violence and is included in the category of criminal acts or acts prohibited by criminal law and perpetrators of domestic neglect can be subject to sanctions. The forms of child neglect in the household are physical neglect, educational neglect, emotional neglect and medical neglect.

Keywords: Criminal Acts; Child Neglect; Household Scope.

INTRODUCTION

Household is the smallest form of society which usually consists of father, mother, and child. A household is expected to radiate happiness and warmth full of love.¹ The scope of the household, a sense of security, freedom from all forms of violence and the absence of discrimination will be born from a complete and harmonious household, to realize that depends greatly on the quality of behavior and self-control of each person in the household.² However, in reality, many households become places of suffering for other family members due to acts of violence.

According to Arif Gosita, domestic violence is unlawful acts, which are done intentionally by someone against another person either for their own benefit or for the benefit of others, and which cause mental, physical, and social suffering.³ According to Elli Hasbianto, domestic violence is a form of abuse, both physically and psychologically, which is a way of controlling a partner in domestic life.⁴ There are also causes of frequent domestic violence in Indonesia, namely at least three reasons, including: 1) Domestic violence has so far not been recognized as a crime in society even though it occurs in a number of places; 2) Most victims

¹ Moerti hadiati soeroso, *Kekerasan Dalam Rumah Tangga Dalam Perspektif Yuridis-Viktimologis*, (Jakarta: Sinar Grafika, 2011), p. 24

² Guse Prayudi, *Berbagai Aspek Tindak Pidana Kekerasan Dalam Rumah Tangga*, (Pangkejene: Merkid Press, 2011), p.1

³ Rena Yuliana, *Viktimologi Perlindungan Hukum Terhadap Korban Kejahatan*, (Yogyakarta: Graha Ilmu, 2010), p. 7

⁴ Akhdhiat, Hendra. *Psikologi Hukum*. (Bandung: Penerbit Pustaka Setia, 2011).

cannot speak openly about the cases they experience in their families; 3) Misunderstanding the myth with the facts of domestic violence in society.⁵

Law Number 23 of 2004 concerning the Elimination of Domestic Violence (hereinafter referred to as the PKDRT Law), Article 1 number (1) defines domestic violence: "Any act against a person, especially a woman, that results in physical, sexual, psychological misery or suffering, and/or neglect of the household, including threats to commit acts, coercion, or unlawful deprivation of liberty within the household." Regarding the explanation of the prohibition on household neglect, apart from what is referred to in Article 5 letter D of the Domestic Violence Law: Every person is prohibited from committing domestic violence against people within their household, by: a) physical violence; b) psychological violence; c) sexual violence; or d) domestic neglect.

Article 5 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence states that there are four types of criminal acts that are qualified as domestic violence crimes, namely physical violence, psychological violence, sexual violence, and domestic neglect.⁶ Domestic neglect is also regulated in Article 49 of the Domestic Violence Law, which states that: Punishable by imprisonment for a maximum of 3 years or a maximum fine of IDR. 15,000,000.00 (Fifteen Million Rupiah), anyone who: 1) Neglecting other people within the scope of his/her household as referred to in Article 9 paragraph (1); 2) Neglecting other people as referred to in Article 9 paragraph (2).

The legal basis underlying this Law is the 1945 Constitution Article 28 G. Likewise, several laws and regulations that are closely related and have been in effect previously, namely: Law Number 1 of 1946 concerning the Criminal Code and its amendments, Law Number 8 of 1981 concerning the Criminal Procedure Code, Law Number 1 of 1974 concerning marriage, Law Number 7 of 1984 concerning the ratification of the convention concerning the elimination of all forms of discrimination against women and Law Number 39 of 1999 concerning Human Rights.⁷

Most victims of domestic violence are women (wives) and children, or people who are subordinated in the household. The perpetrators or victims of domestic violence are people who have blood relations, marriage, breastfeeding, care, guardianship with the husband, and children, even domestic helpers, living in this house. Ironically, cases of domestic violence are often covered up by the victims because they are linked to cultural structures, religions and legal systems that are not yet understood.⁸ Children are one of the groups who often become victims of discrimination, violence and exploitation. As a legal state based on Pancasila as the ideology and foundation of a state that upholds the values of social justice, Pancasila has the aim of achieving balance, or harmony and being able to embrace society.

As a written law in Indonesia, the 1945 Constitution has a noble purpose in the opening of the 1945 Constitution. Based on this purpose, of course the state has a responsibility in efforts to improve the welfare of society and of course the protection of children from violence, discrimination, exploitation and street children. A child should be the pride of the family and even the nation, not become a street child and beggar. As explained in Law Number 35 of 2014 concerning Child Protection, what is meant by child neglect is neglecting

⁵ Rosma Alimi dan Nunung Nurwati, "Faktor Penyebab Terjadinya Kekerasan Dalam Rumah Tangga Terhadap Perempuan", *Jurnal Pengabdian dan Penelitian Kepada Masyarakat* 2, no. 1 (2021): 23-24.

⁶ Prayudi, G. *Berbagai Tindak Pidana Kekerasan Dalam Rumah Tangga*. (Yogyakarta: Merkid Press, 2012).

⁷ Sri Rejeki Sumaryoto, "Pengesahan Undang-undang Kekerasan dalam Rumah Tangga", Portal Menegpp, go. Id. 23 September 2024.

⁸ <http://id.portalgaruda.org/?ref=browse&mod=viewarticle&article=404452>.

all basic needs of children, both physically and spiritually. Human rights issues occur along with changes in society that cannot be separated from the reality that continues to develop and will always intersect. Therefore, in national life, human rights must provide guarantees related to legal certainty that underlies the reality of protection with the principles of morality and justice.

Domestic neglect can also be done by parents towards their children. If domestic neglect is done by parents towards their children, then what applies is Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection or commonly referred to as UUPA. Article 26 Paragraph (1) of UUPA reads: "Parents are obliged and responsible for: a) caring for, nurturing, educating, and protecting children; b). Developing children according to their abilities, talents, and interests; and c) preventing child marriages." This means that parents are responsible for caring for, nurturing, educating and protecting their children, and if they do not carry out their obligations then the parents can be said to be neglecting their children, or in this context, domestic neglect. Related to this, examples of cases of domestic neglect, cases of child neglect handled by the Women and Children Protection Unit of the Ambon Island and Lease Islands Police in 2022 were 28 cases. In 2023 there were 23 cases and in 2024 there were 4 cases.

METHODS OF THE RESEARCH

This paper uses a normative legal research method because the focus of the study starts from the ambiguity of norms, using the approaches: statute approach, and conceptual approach. The legal material search technique uses a literature study technique, and the analysis of legal materials uses qualitative analysis.

RESULTS AND DISCUSSION

A. Children as Victims of Crime

Children are a gift from God that must be guarded, cared for, loved and cherished, because children are a mandate as well as a gift from God Almighty that must always be guarded because in them are inherent dignity, dignity and rights as human beings that must be upheld and the most beautiful treasure that God sends to every parent in this world, the position of children as the young generation who will continue the noble ideals of the nation, future leaders of the nation and as a source of hope for the previous generation, need to be given the widest possible opportunity to grow and develop naturally both spiritually, physically and socially.⁹

Children are the living messages we send to a time we will not see (children are living messages we send to a time we will not see), that is how John W Whitehead in Lenny N. Rosalin describes the importance of children as the next generation and the greatest asset for the future. In a visionary view, children are a form of investment that is an indicator of a nation's success in implementing development. The success of child development will determine the quality of human resources in the future, and is a generation that will become the nation's successor so that they must be prepared and directed from an early age so that they can grow and develop into children who are physically and mentally healthy, advanced, independent and prosperous to become quality resources and can face challenges

⁹ Angger Sigit Pramukti Dan Fuady Primaharsya, *Sistem Peradilan Pidana Anak*, (Yogyakarta: Pustaka Yustisia, 2015), p. 5.

in the future. Therefore, efforts to develop children must begin as early as possible from the womb to the next stages of growth and development.

Children are the next generation. The good and bad future of the nation also depends on the good and bad conditions of the children today. In relation to this, treating children in a good way is our shared obligation, so that they can grow and develop well and can become the bearers of the message of civilization of this nation. In relation to the treatment of children, it is important for us to know the rights and obligations of children.

According to the general understanding of children and the opinions of experts, when children grow up and their parents are unable, then children are the parents' hope to rely on. However, in the increasingly sophisticated era, children's relationships must also be considered carefully. Children's relationships and who children are friends with can influence their lives and their journeys in adulthood. In the general meaning, attention is not only paid to the field of science (the body of knowledge) but can be examined from the perspective of a centralistic view of life. For example, religion, law and sociology make the understanding of children more rational and actual in the social environment. Accompanied by legal provisions or equality before the law, it can provide formal legality to children as someone who is unable to carry out legal events determined by the provisions of the legal regulations themselves, or lay down legal provisions that contain details about the classification of the ability and authority to carry out legal events from the child concerned. Privilege rights granted by the state or government arising from the Constitution and statutory regulations.¹⁰

In the general sense of society, a child is the fruit of love from a married couple, a man and a woman. According to Soedaryo Soimin, "A child in a family must be a dream as a successor to the generation."¹¹ Viewed from the psychological aspect, human growth experiences phases of mental development, each of which is marked by certain characteristics. To determine the criteria for a child, in addition to determining it based on age limits, it can also be seen from the growth and development of the soul that he experiences, in the phases of development experienced by a child.¹²

Children are the future of a nation, therefore they need to be fostered and protected so that later these children will grow into high-quality human development. The position of children in the legal environment as legal subjects is determined by the legal system for children as a group of people who are in legal status and are classified as unable or underage. One way of fostering and protecting is through the existence of law.¹³

Law Number 1 of 1974 Concerning Marriage (hereinafter abbreviated as the Marriage Law) does not directly regulate the benchmark for when someone is classified as a child, however this is implied in Article 6 paragraph (2) which contains provisions on marriage requirements for people who have not reached the age of 21 (twenty one) years to obtain permission from both parents. Article 7 paragraph (1) of the Marriage Law contains the minimum age limit for marriage for men is 19 (nineteen) years and for women 16 (sixteen) years.

¹⁰ Fatchur Rahman, *Ilmu Waris*, (Bandung: Penerbit Al-Ma' Arif 1981), p. 42.

¹¹ Soedaryo Soimin, *Hukum Orang dan Keluarga Perspektif Hukum Perdata Barat/BW-Hukum Islam & Hukum Adat*, (Jakarta: Sinar Grafika, 1992), p. 49.

¹² Zakiah Daradjat, *Remaja Harapan dan Tantangan*, (Jakarta: Ruhama, 1994), p. 12.

¹³ Syafruddin Hasibuan, *Penerapan Hukum Pidana Formal Terhadap Anak Pelaku Tindak Pidana Oleh Marlina dalam Bunga Rampai Hukum Pidana Dan Kriminologi Serta Kesan Pesan Sahabat Menyambut 70 Tahun Muhammad Daud*, (Medan: Pustaka Bangsa Press, 2004). p. 78

Article 47 paragraph (1) of the Marriage Law states that "Children who have not reached the age of 18 (eighteen) years or have never been married are under the authority of their parents as long as they are not removed from their authority". Article 50 paragraph (1) of the Marriage Law states that "Children who have not reached the age of 18 (eighteen) years and have never been married are not under the authority of their parents, they are under the authority of a guardian. From the articles above, it can be concluded that children in the Marriage Law are those who are not yet adults and are adults, namely 16 (sixteen) years for women and 19 (nineteen) years for men.

According to common knowledge, what is meant by a child is someone born from a relationship between a man and a woman. While what is meant by children or juvenale, is someone who is still under a certain age and is not yet an adult and not yet married. The intended definition is the definition that is often used as a guideline in studying various issues about children. Ter Haar stated that when someone becomes an adult is when he (male or female) as a married person, leaves the house of his parents or parents-in-law to live in another house as a young husband and wife is a family that stands alone.¹⁴

The Child Protection Law also explains that children are an inseparable part of human survival and the sustainability of a nation and state. In order to be able to be responsible for the sustainability of the nation and state, every child needs to be given the widest possible opportunity to grow and develop optimally, both physically, mentally, and socially. For this reason, it is necessary to make protection efforts to realize the welfare of children by providing guarantees for the fulfillment of their rights without discriminatory treatment.

Children are an inseparable part of human survival and the survival of a nation and state. The 1945 Constitution explains that children receive special attention, namely in Human Rights (HAM) regarding children, therefore, the best interests of children should be lived as the best interests for the survival of humanity.¹⁵ A child is a person who is not yet 18 (eighteen) years old, including children who are still in the womb, as stated in Article 1 number 1 of the Child Protection Law which explains what is meant by a child. Children are a gift and grace from God Almighty who have been attached to them as human beings with complete dignity and honor. All children born into this world have dignity and honor that must be upheld by the government or anyone else and every child's rights must be given without being asked by the child beforehand.¹⁶

The victims of pornography crimes are basically not only individuals or groups who directly suffer from acts that cause harm to themselves or their group, but even more broadly include close family or direct dependents of the victim and people who suffer losses when helping the victim overcome their suffering or prevent victimization. The victim's losses that must be taken into account do not always have to come from losses due to being a victim of crime, but losses due to mistakes caused by not doing a job.

The development of victimology, in addition to inviting everyone to look more closely at the position of the victim, also selects the type of victim until various types of victims emerge, namely as follows: 1) Nonparticipating victims, efforts to combat criminal acts that they do not care about; 2) Latent victims, meaning everyone who has certain behavior so that they

¹⁴ Ter Haar dalam Syafiyudin Sastrawujaya, *Beberapa Masalah Tentang Kenakalan Remaja*, (Bandung: Karya Nusantara, 1977), p. 18.

¹⁵ A. Masyhur Effendi dan Taufani Sukmana Evandri, *HAM dalam Dimensi/Dinamika Yuridis, Sosial, Politik, dan Proses Penyusunan/Aplikasi Ha-Kham (Hukum Hak Asasi Manusia) dalam Masyarakat*, (Bogor: Ghalia Indonesia, 2007), p. 51.

¹⁶ Rika Saraswatti, *Anak Perlindungan Hukum Di Indonesia*, (Bandung: Citrana Aditya Bakti, 2009), p.1.

are minimally victims; 3) Proactive victims, those who cause the urge to commit criminal acts; 4) Participating victims, those who behave inappropriately so that they easily become victims; 5) False victims, because the victim's own actions make them victims.¹⁷

Based on the five types of victims above, it can be classified that victims of pornography crimes are included in the 3 (three) types of victim classifications above, namely Latent victims, Participating victims, and False victims, where a person or object will become a victim of Pornography Crimes because it usually occurs to someone who is dressed immodestly or also someone who is not dressed so that it can make it an object of Pornography crimes can be said to be due to the victim's negligence or the victim accidentally positions himself in a dangerous situation. However, pornography crimes can also occur because of mutual consent between men and women which leads to having sex then making photos or videos that are prohibited and then spread via the internet and can be spread, in other words, the victim and the perpetrator both have a role in causing Pornography Crimes.

A person who becomes a victim of a crime must face crucial legal problems. After experiencing the experience of being a victim of a crime, he must experience further victimization due to systematic rejection by the criminal justice system. This rejection occurs because of the view that the victim's position has been taken over by the state, so that further involvement of the victim in the judicial process to fight for his rights is considered to be a burden on the existing system. In addition, it is also considered to have an impact on the effectiveness and efficiency of the work of law enforcement officers.

Indonesian law places the victim as the most disadvantaged party, because in addition to the victim having suffered losses due to the crime that befell him, both materially, physically and psychologically, the victim must also bear double suffering because without realizing it, he is often treated only as a means to realize legal certainty, for example having to re-state, remember and even reconstruct the crime that befell him for the sake of investigation, inquiry or when in court. Legal protection for victims of crime is needed in a country, one of the reasons being that many victims have fallen because there is no guarantee given to victims or witnesses of a crime.

Victims as the party who suffers and is harmed by violations of criminal law are usually only involved in providing testimony as a victim witness, as a result of which victims often feel dissatisfied with the criminal charges filed by the Public Prosecutor and/or the verdict handed down by the Judge because they are considered not in accordance with the values of justice for the victim. This is because the criminal justice system is organized to try perpetrators of criminal acts, not to serve the interests of victims of criminal acts, because criminal acts are acts of the perpetrator against the state. The existence of the criminal justice system is intended for the interests of the state and society, not for the personal interests of citizens. This causes the losses due to criminal acts suffered by victims of criminal acts to be a disaster that must be borne by the victim himself because it is not the function of the criminal justice system to bear it.

The relationship between the perpetrator and the victim in a crime cannot be separated. Hans von Hentig in "Remark on the Interaction of Perpetrator and Victim" said that the victim also has an important role so that the crime that befell and caused suffering to him/her occurs. Hentig further said that the victim can also be a trigger for a crime, for

¹⁷ Dikdik M. Arief Mansur & Elisatris Gultom, *Loc.Cit*, p. 49.

example: someone who is the trigger for a Pornography Crime and a Pornography action occurs, then the victim of the Crime is reported on charges of Pornography.

B. Child Neglect as a Form of Domestic Violence

Household or family is an environment where several people who are still related by blood and unite. Household is defined as a group of people who live in one house who are still related by blood or kinship due to marriage, birth, adoption, and so on. A family consisting of a father, mother and unmarried children is called a nuclear family. As the smallest social unit living in society, the nuclear family has certain roles, namely: a) the nuclear family acts as a protector for the individuals who are members, where peace and order are obtained in this container; b) the nuclear family is a socio-economic unit that materially fulfills the needs of its members; c) the nuclear family fosters the foundations for the rules of social interaction; d) the nuclear family is a container where humans experience the initial socialization process, namely a process where humans learn and obey the rules and values that apply in society.

A household or family is formed by a legal marriage between a man and a woman. After the marriage contract, rights and obligations arise, the rights and obligations of husband and wife are the rights of the wife which are the obligations of the husband and the obligations of the husband which are the rights of the wife. The fuqaha (jurisprudence experts) in this matter are of the opinion that if the marriage contract has taken place legally, then the consequences that must be carried out by the husband and wife are to fulfill their rights and obligations. Some of these obligations include: a) A wife's rights must be fulfilled by her husband; b). A husband's rights must be fulfilled by his wife; c) Mutual rights that must be fulfilled by both parties.

One of the rights that a husband must fulfill towards his wife is to be fully responsible for providing her support. Subsistence is all the needs and requirements that apply according to circumstances and place, such as food, clothing, housing and so on. Family neglect or household neglect is not a new issue, because the fact of household neglect often occurs in the reality of society around us. For example, husbands who do not provide for their wives, parents who let their children be neglected, malnutrition, children abandoned by their parents and there are still many cases regarding this.

Legally, domestic neglect falls within the realm of Domestic Violence or commonly called KDRT, which is regulated in Law Number 23 of 2004 concerning the Elimination of Domestic Violence, or known as the PKDRT Law. The definition of Domestic Violence according to Article 1 paragraph (1) of the PKDRT Law states that: "Domestic violence is any act against a person, especially a woman, which results in physical, sexual, psychological misery or suffering, and/or neglect of the household, including threats to commit acts, coercion, or unlawful deprivation of liberty in the household environment." Article 1 is reinforced by Article 5 of the Domestic Violence Law, which states that: "Everyone is prohibited from committing domestic violence against people within their household, by means of: a) physical violence; b) psychological violence; c) sexual violence; or d) neglect of the household."

Domestic neglect as a form of domestic violence, according to Article 9 paragraph (1) and (2) of the Domestic Violence Law is: Article (1): "Everyone 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 to that person."

Article (2): "The neglect as referred to in paragraph (1) also applies to anyone who results in economic dependency by limiting and/or prohibiting decent work inside or outside the home so that the victim is under the control of that person."

Both articles show that neglect in the household is a form of domestic violence. The sound of both verses can be interpreted as: a) "every person". This means both men and women; b) "neglect". This means not providing a living, not caring for, allowing including limiting and/or prohibiting decent work inside or outside the home; c) "household". This means both the perpetrator and the victim are people within the scope of the household, namely this household (husband, wife, and children), including people who have blood relations, marriage (in-laws, sons-in-law, brothers-in-law, and in-laws), milking, caregiving, and guardianship, and those who work to help the household and live in the household concerned.

To understand domestic neglect as a form of Domestic Violence (DV), we must first explain the definition of Domestic Violence itself. According to Law Number 23 of 2004 concerning the Elimination of Domestic Violence, Domestic Violence is defined as any act against a person, especially women, which results in physical, sexual, psychological misery or suffering, and/or neglect of the household, including threats to commit acts, coercion, or unlawful deprivation of liberty within the scope of the household.

The definition contained in the Domestic Violence Law refers to the understanding of violence against women contained in the Declaration on the Elimination of Violence Against Women held by the UN in 1993. Article 1 of the Declaration reads: "Violence against women is an act based on gender differences (gender-based violence) that results in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."

Referring to the provisions above, it can be understood that domestic neglect is a form of domestic violence. The perpetrators of domestic neglect are mostly men and/or husbands and parents (fathers), but neglect can also be done by women and/or mothers as parents. While the victims of domestic neglect are mostly women (wives) and children. This does not rule out the possibility that domestic neglect is carried out by husbands and/or wives against Domestic Workers (PRT). Domestic neglect where the victim is a PRT, for example: PRT is not paid, PRT is not fed and so on. Cases of domestic neglect have recently often surfaced, and are reported to the mass media.

Looking at the various cases that exist, the perpetrators and victims of domestic neglect have an unbalanced relationship where the victims are those who do not have a bargaining position in the household. The forms of domestic neglect are very diverse, namely it can be done by parents to children, it can be done by husbands to wives and it can also be done by children to other household members in the household who are their responsibility.

As explained above, referring to Article 9 paragraph (1 and 2) of the PDKRT Law, what is meant by neglect is not providing a living, not maintaining, allowing, including limiting and/or prohibiting decent work inside or outside the home. Meanwhile, households, namely the core household (husband, wife and children), include people who have a household relationship with the core household due to blood relations, marriage (in-laws, sons-in-law, brothers-in-law, and in-laws), breastfeeding, foster care, and guardianship, and those who work to help the household and reside in the household concerned. Referring to these criteria, the forms of neglect in the household are not only not providing a living, but also

not maintaining, providing, including limiting and/or prohibiting decent work inside or outside the home, by the person who has responsibility in the household.

C. Regulation of Child Neglect in Legislation

Referring to applicable law, child neglect is a form of violence against children. According to the World Health Organization (WHO), violence against children is an act of abuse or mistreatment of children in the form of physical, emotional, sexual harm, neglect of care and exploitation for commercial interests that can actually or not endanger their health, survival, dignity or development, acts of violence obtained from people who are responsible, trusted or have power in protecting the child.¹⁸ In addition, the meaning of neglected children according to criminal law in Indonesia is a child whose needs are not met properly, whether physical, mental, spiritual, or social. The cause of this condition is usually because parents neglect their obligations and responsibilities to their children, so that the child's needs cannot be met.¹⁸

When viewed from the perspective of the values contained in human rights, then child neglect is a form of violation. Children as part of the legal subject certainly have basic rights inherent in themselves. As reflected in the Convention on the Rights of the Child in 1989 which contains provisions that children for the development of their personality in a complete and harmonious way, must grow up in a family environment with an atmosphere of happiness, love and understanding.¹⁹ These provisions guarantee legal recognition and protection of the rights held by children. As an important note, Indonesia has bound itself to the convention through Presidential Decree of the Republic of Indonesia Number 36 of 1990 concerning the Ratification of the Convention on the Rights of the Child.²⁰

Legal protection efforts for children in Indonesia have been clearly and explicitly regulated in the constitution, namely in Article 28B paragraph (2) and Article 34 paragraph (1) of the 1945 Constitution. Article 28B paragraph (2) of the 1945 Constitution states that, "Every child has the right to survive, grow, and develop and has the right to protection from violence and discrimination". Then Article 34 paragraph (1) of the 1945 Constitution states that, "The poor and neglected children are cared for by the state". These two provisions indicate the state's attention to protecting the rights of children in realizing the implementation of social justice and humanity.

In Indonesia, in the context of criminal law, there are several legal regulations governing the crime of child neglect, namely: the Criminal Code (Old Criminal Code), Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (Child Protection Law), Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law), and Law Number 1 of 2023 concerning the Criminal Code (New Criminal Code). Each of these legal regulations regulates the crime of child neglect in various ways, especially regarding the criminal penalties. However, of course, it raises a question regarding which regulation is used as the legal basis in the process of resolving cases of child neglect at this time. Therefore, it is

¹⁸ Febri Argo Kurniawan, "Aspek Pidana Penelantaran Anak oleh Orang Tua", 2022, http://eprintslib.ummg.ac.id/2485/1/16.0201.0073_BAB%20I_BAB%20II_BAB%20III_BAB%20V_DAFTAR%20PUSTAKA.pdf,

¹⁹ Unicef, "Convention on the Rights of the Child", 1989, <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/crc.pdf>.

²⁰ Recky Angellino C. Roring, "Analisis terhadap Penelantaran Anak dalam Perspektif Hukum Pidana," *Jurnal Lex Crimen* 8, no. 2, (2018), p. 149.

necessary to first analyze the principle of *lex specialis derogat legi generali* in this matter. The existence of the analysis of the principles of criminal law above regarding the existence of various regulations on criminal acts of child neglect aims to find the legal consequences that will be received by perpetrators of criminal acts of child neglect.

In essence and according to applicable law, providing for children is the obligation and responsibility of parents, especially the father as a leader or head of the family.²¹ If parents neglect their children, it means that the parents have violated the law. Based on this, the actions of parents must be accounted for according to applicable law in accordance with the provisions on the crime of child neglect.

Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection (hereinafter referred to as the Child Protection Law) Article 76 letter b in conjunction with Article 77 letter b and Law Number 23 of 2004 concerning the Elimination of Domestic Violence (hereinafter referred to as the PKDRT Law) Article 9 paragraph (1) in conjunction with Article 49 letter a. An interesting fact about the two regulations is that each has similarities regarding the separation of articles between provisions on acts and provisions on punishment.

On the other hand, in legal science there are principles as basic principles that become the *ratio legis* of the formation of law.²² The principle related to the position of various regulations on child neglect crimes is the principle of *lex specialis derogat legi generali*. This principle emphasizes that special legal provisions override general legal provisions. This principle is standardized by Article 63 paragraph (2) of the Criminal Code which emphasizes that, "If an act falls under a general criminal rule, it is also regulated in a special criminal rule, then only the special one is applied".²³ This means that special criminal provisions are used when there is a condition where a crime is regulated by two or more legal provisions, where one of them is a general criminal law provision and the other is a special criminal law provision.²⁴

Based on the description above, if it is related between the legal principles and several previous legal regulations, then the legal provisions that specifically contain the crime of child neglect are the Child Protection Law. The reason is because in the Child Protection Law, the rules governing the crime of child neglect have specifically indicated the provisions when the act of neglect is committed against a child without questioning who the perpetrator is. This means that whether the perpetrator is a parent or someone else who commits the crime of child neglect, they are both threatened with the same punishment. Thus, various legal regulations on the crime of child neglect in the form of the Old Criminal Code, the New Criminal Code and the Domestic Violence Law are set aside because there are already more specific provisions. The reason why the Domestic Violence Law is not the legal provisions specifically on the crime of child neglect lies in the fact that the Domestic Violence Law regulates acts of neglect not only against children, but also against the scope of the household. Referring to the scope of the household itself, it consists of husband, wife, children, relatives, and workers who live

²¹ Eka Dewi Adnan, Syahrudin Nawi, Dachran S. Busthami, "Efektifitas Tanggungjawab Ayah Terhadap Nafkah Anak Setelah Perceraian (Studi Putusan di Pengadilan Agama Klas 1B Sungguminasa Nomor 1038/Pdt.G/2021/PA.SGM)," *Jurnal Lex Generalis* 3, no. 10 (2022), p. 1744

²² Suyanto, *Pengantar Hukum Pidana*, (Yogyakarta: Deepublish, 2018), p. 23.

²³ Shinta Agustina, "Implementasi Asas *Lex Specialis Derogat Legi Generali* dalam Sistem Peradilan Pidana," *Jurnal Masalah-Masalah Hukum* 44, no 4 (2015), p. 505

²⁴ *Ibid.*

in the household concerned. Article 9 paragraph (1) states that, "Everyone is prohibited from neglecting a person within the scope of 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 to that person." This provision indicates that the regulation of the crime of neglect is not limited to children, but rather covers a wider scope. Therefore, if the Domestic Violence Law is compared with the Child Protection Law, it is clear that the Child Protection Law regulates more specifically the regulation of child neglect.

CONCLUSION

Based on the description that has been explained above, it can be concluded that The regulation of the crime of child neglect in the legislation is regulated in the Criminal Code (old), the Child Protection Law, the Domestic Violence Law and Law Number 1 of 2023 concerning the Criminal Code (New). Child neglect is more explicitly regulated in the Child Protection Law. This is based on Article 9 paragraph (1) of the Domestic Violence Law where this provision indicates that the regulation of the crime of neglect is not limited to children, but rather to a wider scope. Therefore, when the Domestic Violence Law is compared with the Child Protection Law, it is clear that the Child Protection Law regulates more specifically the regulation of child neglect.

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