



Application of Law by Judges to Family Neglect Reviewed from a Criminal Law Perspective

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ABSTRACT

Domestic neglect is a serious offense that harms family members who depend on the abuser to meet their basic needs. Law Number 23 of 2004 concerning the Elimination of Domestic Violence (UU PKDRT) regulates this action in Indonesian criminal law. To uphold justice and provide protection to victims, judges must apply the law against perpetrators of domestic neglect. In this article, we focus on the judicial process, the imposition of prison sentences, and the impact of the judge's decision on family neglect from a criminal law perspective. The judge examines evidence and witness statements thoroughly during the trial process to ensure that all elements of the criminal act of neglect are met. The aim of imposing a prison sentence is to punish the perpetrator, protect the victim from threats, and uphold justice. However, imposing a prison sentence can also have negative impacts on victims, including economic, psychological and social pressure. To reduce these negative effects, mitigation measures are needed which include economic assistance, psychological support, child protection, education and public awareness, as well as rehabilitation of perpetrators. To do this, governments, local communities and non-governmental organizations (NGOs) must work together. As a result, judges can take effective legal action against perpetrators of domestic neglect, providing justice, and ensuring that victims are protected and rehabilitated as best as possible.

Keyword:

Domestic Neglect,
Domestic Violence Law,
Imprisonment, Judges,
Victim Impact,
Mitigation Steps.

INTRODUCTION

If an individual contravenes established regulations and inflicts harm or suffering upon others, they may be deemed to have perpetrated a criminal offence. Conduct that infringes upon the stipulations of criminal law is characterized as a crime. From a jurisprudential standpoint, a crime encompasses any human activity that transgresses criminal law. If the conduct is

not distinctly forbidden by criminal law, it fails to meet the criteria for a crime.

Particular criminal behaviors within a society are commonly regulated by distinct legal provisions, thereby categorizing them as criminal offences. Challenges are bound to emerge within society; thus, timely and suitable law enforcement interventions are essential for their resolution (Marpaung, 2010).

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Neglect is frequently observed in divorce; however, this phenomenon is not exclusive to disintegrated familial structures. Numerous societal examples illustrate that parents, spouses, or partners may exhibit neglectful behaviors towards their families as a result of issues such as alcoholism, gambling addiction, or extramarital relationships, thereby leaving children, spouses, or dependents without adequate care. Moreover, the mother must embrace the obligations related to raising and educating her offspring.

Neglecting the responsibilities associated with the household is deemed inappropriate and indicative of disgraceful conduct. Individuals who exhibit neglect towards their familial obligations are frequently perceived as engaging in conduct that lacks honor and is subject to societal sanctions or stigmatization. Based on prevailing legal standards, neglect in a home setting could be seen as a variant of domestic violence, as it is defined as behavior that is outlawed by criminal legislation and is consequently liable to sanctions. Offenders are commonly partners who forsake their children and spouses, failing to assume the responsibility of meeting the essential needs of the family members they are legally and morally obligated to support.

By Article 2 of Law Number 23 of 2004 About the Abolition of Domestic Violence, the composition of the family encompasses spouses, offspring, individuals connected by sanguinity, marital ties, lactation, adoption, and custodianship residing within the domestic sphere, as well as individuals who contribute to the household and cohabit within it. A multitude of manifestations of domestic violence transpires, with the preponderance of victims comprising adult females and minors (Bermawi et al., 2013).

However, the legislation about the Abolition of Domestic Violence applies to all familial constituents across the nation. As

stipulated in Article 1, Paragraph 3 of the Law on the Abolition of Domestic Violence, "a victim is defined as an individual who endures acts of violence within the domestic sphere or is subjected to the prospects of violence within the domestic environment."

The legal framework delineates that victim may include spouses, offspring, domestic aides, grandparents, or other individuals engaged in the familial milieu (Khairullah et al., 2017). While it is largely acknowledged that male figures and fathers are the primary offenders of domestic violence, one must consider that female figures and mothers are also capable of such actions in the family dynamic (Prastyanda, 2016).

The report for 2022 issued by the National Commission on Violence Against Women indicates that domestic or personal violence was the primary form of violence that women faced in 2020, with a staggering 11,105 cases logged, representing 75% of the cumulative incidents from the prior year. In comparison to alternative categories of criminal offenses, incarceration emerges as the most prevalently administered penalty by judicial authorities in Indonesia (Potabuga, 2013).

The phenomenon of spousal abandonment is experiencing an upward trajectory, notwithstanding the implementation of various strategies to mitigate this issue, including rigorous enforcement of laws against offenders. Nevertheless, this situation appears to fail in inducing trepidation or apprehension regarding the potential legal ramifications that may ensue. Natabangsa Surbakti articulated that the application of criminal law is preserved as a measure of last resort to address the pervasive issue of domestic violence (Prayudi, 2008).

Household neglect committed by a husband or wife within the jurisdiction of the Kotobaru District Court involves

leaving children and spouses responsible for caring for and maintaining them.

RESEARCH METHODS

The researcher utilizes a library-based research methodology, engaging with literature texts, legal statutes, and supplementary written resources pertinent to the selected topic of discourse. Legal research constitutes a scientific investigation that scrutinizes particular legal phenomena by applying systematic methodologies and rational reasoning. Normative juridical research represents a category of inquiry that concentrates on implementing principles or standards inherent in positive law (Purwati, 2020). This type of research is grounded in the positivist legislative theory. The notion that law is synonymous with the regulations formulated and instituted by sanctioned entities or officials is perceived as a self-contained and autonomous normative framework, impervious to the influences of societal dynamics.

RESULTS AND DISCUSSION

Sentencing for Perpetrators of Domestic Neglect

If a person commits an act that violates criminal law as established by legislation, they can be sentenced. Engaging in actions prohibited by criminal law includes crimes such as murder, theft, robbery, rape, fraud, and others.

In cases of domestic neglect, under the Domestic Violence Act (UU PKDRT), a person can be sentenced if they fail to meet the basic needs of their dependents. The presence of malicious intent (*mens rea*) is key, as intentional acts are committed with a specific purpose or intent. For example, someone who plans and carries out a murder has clear intent. Negligence, on the other hand, refers to actions taken without the necessary caution, resulting in harm or danger to others, such as traffic accidents caused by reckless drivers.

According to Law No. 1 of 1974 on Marriage, both state law and religious law are responsible for recognizing marriages (Article 2). Additionally, Article 3 paragraph (1) establishes the principle of monogamy, with certain exceptions outlined in Article 3 paragraph (2), Article 4, and Article 5. The general explanation includes three conditions: (1) the desire of the involved parties; (2) permission under the religious law of the parties involved; and (3) a court decision. In other words, the state does not prohibit polygamy as long as it aligns with the religious beliefs of both parties and meets the conditions set by the Marriage Law.

The presence of a criminal act (*actus reus*) must be proven through concrete actions that violate criminal law, supported by clear and tangible evidence. There must be a clear causal link between the act and the resulting consequences, such as violence causing physical injury to the victim.

According to Kelsen (2019), law is a coercive rule. Djindang (1983) describes law as a regulation governing society that must be obeyed. Kansil (2008) sees law as a compulsory rule for living, while Kusumaatmadja (2000) defines law as encompassing principles that not only regulate societal life but also determine what should be done.

Law, as a set of norms or rules governing social life, has been defined differently by various experts. Several Indonesian scholars have also formulated definitions of law. S.M. Amin states that law is a set of rules consisting of norms and sanctions, with the purpose of creating order in human interactions to maintain security and order. According to J.C.T. Simorangkir and Woerjono Sastropranoto, law is a coercive regulation created by an official body responsible for determining human behavior in society, with violations leading to actions, including punishment.

MH Tirtaatmadjadja defines law as all rules (norms) that must be followed in social conduct, with the threat of penalties for violations, such as loss of liberty, fines, and other forms of punishment. From a legal perspective, a crime is any human behavior that violates criminal law provisions. Any conduct that violates these rules and harms or causes suffering to others is considered a crime.

Article 49 of the Domestic Violence Act states: "Anyone who neglects another person within the scope of their household as referred to in Article 9 paragraph (1); or neglects another person as referred to in Article 9 paragraph (2)" shall be sentenced to imprisonment for up to 3 years or a fine of up to IDR 15,000,000.00 (fifteen million rupiah)." Therefore, domestic neglect here refers to parental neglect of children. However, based on Article 2 above, domestic neglect can also occur within the immediate family if someone abandons another family member living with them, relying on the household head for survival.

Article 1 paragraph 1 of Law No. 23 of 2004 on the Elimination of Domestic Violence (UU KDRT) defines domestic violence as "any act against a person, especially a woman, that results in physical, sexual, psychological suffering, and/or neglect within the household, including threats to commit acts, coercion, or deprivation of liberty against the law within the household." (Rahardjo, 2010).

Forms of violence categorized as domestic violence vary widely, including physical violence (such as hitting, abuse, etc.), psychological violence (such as exploitation, harassment, insults, threats, etc.), sexual violence, and economic-related domestic violence.

Women are more likely to be victims of domestic violence, but the national Domestic Violence Act applies to all family members. Article 1 paragraph 3 of the Act defines "victim" as someone who experiences violence within the household

and/or threats of violence within the household. According to the above explanation, victims can include husbands, wives, children, domestic helpers, grandparents, or anyone typically living within the household.

Article 2 of the Domestic Violence Act outlines the household structure as including: husbands, wives, and children; individuals related by blood, marriage, breastfeeding, adoption, or guardianship living in the household; and/or individuals working to assist the household who live within it.

Individuals working under clause (c) are considered family members as long as they reside in the household. Many family members fall victim to domestic violence, and perpetrators are subject to criminal penalties. Physical violence usually includes acts causing pain, illness, or severe injury (Article 6 of the Domestic Violence Act), making slapping, kicking, and cigarette burns illegal.

Article 26 paragraph 1 of the Domestic Violence Act states that victims have the right to report domestic violence directly to the police, either where the victim is located or where the incident occurred. If the victim is a child, the child's parents, guardians, caregivers, or the child themselves can report the domestic violence to the police, either where the victim is located or where the incident occurred. The victim can also authorize a family member or another person to make the report. The report must be made in accordance with applicable laws and regulations.

Families can still take additional actions to prevent further violence against the victim. Article 15 of the Domestic Violence Act states that the community is obligated to prevent such violence. "Anyone who hears, sees, or knows of domestic violence must take steps within their ability to" as listed below:

a. Prevent the criminal act;

- b. Protect the victim;
- c. Provide emergency assistance;
- d. Assist in the process of applying for protective measures.

If domestic neglect occurs, whether by the husband or wife, they can be reported and subjected to penalties. Such neglect also falls under Article 9 of Law No. 23 of 2004 on the Elimination of Domestic Violence (UU KDRT), which prohibits anyone from neglecting someone within their household, even if they are legally obligated, by agreement, or by contract to provide care or support. Neglect as referred to in paragraph (1) also applies to anyone who causes financial dependency by restricting, prohibiting, or making it impossible to perform appropriate work inside or outside the home, leaving the victim under their control.

In cases of suspected criminal neglect, household neglect can be reported to the local police. Article 49 of the Domestic Violence Act sets penalties for domestic neglect that involves: a. neglecting someone within the household as referred to in Article 9 paragraph (1); or b. neglecting someone as referred to in Article 9 paragraph (2).

Various pieces of evidence, such as witnesses or any proof showing that a partner neglected their household, must be used to support claims of neglect. Domestic violence is typically a complaint-based offense, where law enforcement (police) can only act if a complaint is made. However, without a complaint, authorities cannot provide protection or security.

Physical or psychological violence that does not cause illness or impede work, occupation, livelihood, or daily activities is generally considered a complaint-based offense (Article 51 and 52 of the Criminal Code). Therefore, criminal proceedings can only be initiated after a complaint or report from the victim or their representative, according to Article 52 of the Criminal

Vulnerability and Violence Act (KDRT). Victims of criminal acts can withdraw their complaint if reconciliation occurs within three (3) months of filing (Article 75 of the Criminal Code).

Victims of domestic violence have rights protected under Article 10 of the Domestic Violence Act, which includes the following rights:

- a. Protection from family members, police, prosecutors, courts, advocates, social institutions, or other parties, both temporarily and after a court protection order is granted;
- b. Health services according to medical needs;
- c. Special handling regarding the victim's privacy;
- d. Legal assistance and support at every level of examination according to legal provisions; and
- e. Spiritual guidance.

Imprisonment for Perpetrators of Domestic Neglect in Court Rulings and Its Impact on Victims

The imposition of imprisonment for perpetrators of domestic neglect in court rulings is intended to deter the offender and protect the victim. In criminal law, the principle of fault is a key aspect of criminal responsibility, ensuring that those who commit criminal acts are held accountable (Wahyuni & Yoserwan, 2023). However, this decision can have both positive and negative impacts on the victims. On the positive side, imprisonment can prevent the perpetrator from interacting directly with the victim, providing a sense of safety and protection from further harm. It can also serve as a deterrent, making the offender aware of their wrongdoing and discouraging them from repeating it, while offering the victim a sense of justice (Sutrisno & Wahyuni, 2024). Moreover, the ruling can empower victims to start a new life without fear or intimidation, allowing them to seek the social and psychological

support needed to rebuild their lives. The legal affirmation through such a sentence also sends a clear message to society that domestic neglect is unacceptable and will be met with firm action (Candra et al., 2023).

On the negative side, however, imprisonment can lead to economic dependency, especially if the perpetrator is the primary breadwinner, potentially leaving the family in financial hardship. The legal process and the imprisonment itself can also add psychological stress to the victim, who may have to endure social stigma, prolonged court proceedings, and the emotional toll of separation. Children in the affected family may suffer emotionally and psychologically from their parent's incarceration, impacting their development and long-term well-being. Additionally, the social stigma associated with domestic neglect can lead to isolation, as victims may feel abandoned by their community and extended family, exacerbating their emotional distress.

The primary goal of imprisoning domestic neglect perpetrators is to punish them, protect the victim, and uphold justice. However, this approach can also have unintended negative consequences for the victims, including economic dependence, psychological stress, social isolation, and adverse effects on children. To mitigate these impacts, it is crucial to implement measures such as financial assistance, psychological support, childcare services, and educational and social awareness programs. Government subsidies and job training programs can help victims become financially independent, while counseling services and crisis hotlines can provide the emotional support needed to cope with trauma. Child protection programs and educational support can ensure that children affected by domestic neglect continue to receive the care and education they need. Finally, awareness campaigns and law enforcement

training can help reduce the stigma associated with domestic neglect and improve the overall response to such cases.

CONCLUSION

The sentencing for domestic neglect committed by a husband includes imprisonment and/or fines in accordance with the Domestic Violence Law (UU PKDRT). This legal process involves reporting, investigation, prosecution, and trial, with protection and support provided to the victim throughout. Preventive measures are crucial to avoid future instances of domestic neglect. Victims experience complex impacts from the imprisonment of perpetrators of domestic neglect. While this action can offer protection and justice for the victim, it may also lead to additional psychological and financial pressure. As a result, both the justice system and society must offer comprehensive support to victims, including financial assistance, psychological support, child protection, and public education. By doing so, the negative effects can be mitigated, enabling victims to recover and lead better lives.

LIMITATION

This study primarily focuses on the legal aspects and the application of the law concerning domestic neglect from the perspective of Indonesian criminal law, specifically under the Domestic Violence Law (UU PKDRT). The research is limited by its reliance on normative juridical methods, which emphasize legal principles and statutes without extensive empirical analysis or data from real-life case studies. As a result, the findings may lack practical insights into how these laws are applied in various regions of Indonesia with different social and cultural contexts. Additionally, this study does not delve deeply into the long-term impacts on victims beyond the immediate legal outcomes, such as their economic recovery and psychological well-being after the legal process concludes. The

limitation in analyzing different forms of preventive measures and the challenges faced by law enforcement and social services in implementing these laws is another constraint of this research.

IMPLICATION

The findings of this study underline the importance of a comprehensive approach in addressing domestic neglect cases through both legal and social measures. The research highlights that while imprisonment serves as a significant deterrent and provides immediate protection to victims, it can also have unintended negative consequences, such as financial instability and psychological stress for the family. The implications for policymakers include the need to strengthen support systems for victims, such as economic assistance, counseling services, and child protection initiatives, to mitigate the adverse effects of legal action. Additionally, the study calls for better integration between legal enforcement and social welfare systems to ensure that victims receive holistic support throughout the legal process and beyond. For future research, there is a need to explore more empirical data on the effectiveness of these legal measures and how they interact with social factors across different regions in Indonesia. The study's implications also extend to public education and awareness campaigns, which are vital in reducing the stigma faced by victims and promoting early intervention in cases of domestic neglect.

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