

## Criminal Liability for the Perpetrator of Wife and Child Abandonment in the Household

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### Abstract

**Introduction:** Criminal liability is a legal process that ensures that every individual who commits a criminal act must be responsible for his or her actions, in this case the neglect of wife and children, criminal liability serves to provide a deterrent effect to the perpetrator and protect the rights of victims who have been harmed.

**Purposes of the Research:** This study aims to analyze criminal liability for perpetrators of wives and children neglect in the household with a case study of Court Decision Number 45/Pid.Sus/2020/PN Psb.

**Methods of the Research:** The research methods used are normative research, legislative approaches, primary and secondary legal materials and material collection procedures using literature studies. The approaches used are: statute approach, conceptual approach, and casus approach. Legal material tracing techniques using document study techniques, and study analysis using qualitative analysis.

**Findings of the Research:** The results of the study show that criminal liability to the perpetrators of wives and children abandonment in the Court Decision Number 45/Pid.Sus/2020/PN. PSB, namely the defendant in being sentenced to prison for 3 (three) months, besides that the defendant will also improve his behavior and be responsible as the head of household for his family in the future.

**Keywords:** Criminal Liability; Neglect of Wife; Children.

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## INTRODUCTION

Social control can create a procedure for efforts to prevent social deviations as well as invite and direct people to behave and behave according to social norms and values contained in a society. Then with good social control, the community is expected to be able to straighten out members of the community who behave deviantly.<sup>1</sup> In the words of Margie Gladies Sopacua;; Any violence that occurs in society actually departs from a certain ideology that legitimizes the oppression on one side of both individuals and groups towards other parties that caused by inequalities that exist within the community. The position of women (as wives) is subordinate to husbands, where a woman must always submit and obey her husband.<sup>2</sup>

Margie Gladies Sopacua found out that Preventing violence against women is a shared responsibility between the government and the community, this can be seen in Chapter V concerning the obligations of the government and society in Article 12 and Article 15 of Law

<sup>1</sup> Margie Gladies Sopacua, "Criminology Study on the Circulation of the Sopi Traditional Liquor in the Villages of Zeith, Asilulu, and Kaitetu during the Covid-19 Pandemic," *Law Reform* 17, no. 2 (2021): 168-82, <https://doi.org/https://doi.org/10.14710/lr.v17i2.41743>.

<sup>2</sup> Margie Gladies Sopacua et al., "Preemptif and Preventive Measure in Combating Domestic Violence," *Journal of Law, Policy and Globalization* 80, no. 12 (2018): 211-22.

on the Elimination of Domestic Violence. Therefore it is our responsibility to prevent and eliminate all forms of violence that occur within the household<sup>3</sup>. Furthermore, according to Margie Gladies Sopacua, she expressed the opinion that "Besides that, to avoid the occurrence of domestic violence, the methods for handling it are needed, including";<sup>4</sup> 1) The need for strong faith to avoid committing domestic violence and things can be handled well and patiently; 2) Harmony and peace must be created within a family, that is derived from religious teachings about affection for mother, father, brother and others. So that family members can appreciate each other's opinions; 3) to create a harmonious household. If in a household there is no harmony and harmony between the two parties, it can also be a trigger for domestic violence; 4) Need mutual trust, understanding and respect among family members, so that households are based on mutual trust. If there is no sense of trust, jealousy and suspicion can be excessive; 5) A wife must be able to coordinate any kind of financial situation in the family, so a wife can handle and overcome any challenges as minimal income and economic shortages in the family.

Domestic violence, especially against wives, is a legal event that we often encounter in Indonesian society. Violence against wives that occurs in the household is not only experienced and found in the public area, but is also very popular in the domestic area which is categorized as one of the forms of violence contained in the Law on the Elimination of Domestic Violence (PKDRT Law). The occurrence of various cases of domestic violence, especially against wives, can be classified in this case as victims. The relationship between husband and wife should be a role model and example for their children and the relationship can be based on harmonious and happy nuances, but in reality the wife in her position faces many acts of violence from her husband, including physical, psychological, sexual violence and household neglect (economic).<sup>5</sup>

Domestic neglect is such an immoral and despicable act that it is considered a criminal offense that does not reflect concern for one's humanity. This neglect refers to the act of ignoring responsibilities and obligations towards family members who need care and support. According to Article 9 paragraph (1) of Law Number 23/2004 on the Elimination of Domestic Violence which stipulates that every person is prohibited from neglecting a person within the scope of his/her household, whereas according to the law applicable to him/her or by agreement or treaty he/she is obliged to provide life, care or maintenance to that person. Then in Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014 regulates the prohibition of treatment that should not be carried out against children, both physically and psychologically. This is regulated in Article 76 B which states that every person is prohibited from placing, involving, or ordering children to be involved in situations of mistreatment and neglect. This means that the law prohibits actions that harm children, either directly or indirectly, including situations where children are placed or forced to engage in situations that may harm or neglect their needs and rights.

There are various reasons for neglect, namely economic neglect (not meeting financial needs), physical (not providing proper care or shelter), psychological (ignoring emotional needs), and status (leaving a partner without a valid reason).<sup>6</sup> Neglect can thus cause

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<sup>3</sup> Sopacua et al., "Preemptif and Preventive Measure in Combating Domestic Violence."

<sup>4</sup> Sopacua et al.

<sup>5</sup> Margie Gladies Sopacua, "Konsep Ideal Pencegahan Kekerasan Dalam Rumah Tangga Terhadap Perempuan," *Jurnal Pembangunan Hukum Indonesia* 4, no. 2 (2022): 213–26, <https://doi.org/10.14710/jphi.v4i2.213-226>.

<sup>6</sup> Kantor pengacara, "Sekilas Mengenai Penelantaran Dalam Rumah Tangga" <https://kantorpengacara.co/sekilas-mengenai-penelantaran-dalam-rumah-tangga/> (diakses pada tanggal 10 juni 2024)

significant negative impacts, such as psychological disorders, malnutrition, and emotional instability for the victim. Therefore, an effective legal approach is needed to address and prevent domestic neglect. Domestic neglect not only violates human rights but also contributes to social and economic instability in society. Children who experience neglect often grow up in unhealthy conditions, both physically and mentally, which can affect their development and the future of the nation. In addition, abandoned wives face significant financial and emotional hardships, resulting in exacerbated gender inequality.

There are many cases where individuals are unable or unwilling to provide adequate financial support for their families, leaving their wives and children in a state of deprivation or economic uncertainty. In these situations, families are often forced to face major challenges to meet their basic needs, such as food, shelter, education and healthcare which can result in significant financial stress and economic instability.<sup>7</sup>

Perpetrators of neglect of wives and children in the household may be subject to criminal liability sanctions stipulated in Law Number 23 Year 2004 on the Elimination of Domestic Violence. Perpetrators may be subject to criminal sanctions in the form of imprisonment and/or fines. The act of neglect is considered a serious offense that harms the welfare of the family, especially children who are the main victims of such neglect. Law enforcement against perpetrators of neglect aims to provide a deterrent effect and protect the rights of neglected wives and children. In the criminal act of neglect in the form of neglect of wife and children who do not provide physical and mental support as the obligation of a husband to his wife in a marriage bond. This study will discuss the neglect of people within the scope of the household, especially wives and children, which is influenced by economic factors. The sanctions for a father who does not fulfill the obligations of a father to provide for his child are charged with Article 49 letter a of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT), namely imprisonment for a maximum of three years or a maximum fine of Rp. 15,000,000.00 (fifteen million rupiah). Therefore, this research was conducted to analyze what criminal law provisions were violated by the perpetrators of neglect of wives and children in the household study of decision number 45/Pid.Sus/2020/PN Psb and whether the criminal sanctions imposed on the perpetrators of neglect of wives and children were in accordance with the applicable criminal law provisions.

## METHODS OF THE RESEARCH

The research method used is normative research, statutory approach, primary and secondary legal materials and material collection procedures using literature studies. the approaches used are:<sup>8</sup> statute approach, conceptual approach, and casus approach. The technique of searching for legal materials uses document study techniques, and analyzes the study using qualitative analysis.

## RESULTS AND DISCUSSION

### A. Breach of Legal Obligation

Margie Gladies Sopacua is of the opinion that "The Law of the Republic of Indonesia on Human Rights provides an affirmation that what is meant by human rights are all rights

<sup>7</sup> Alibasyah, R, *Keluarga Bermasalah: Penyebab, Dampak, dan Solusi*, Jakarta: Prenada Media Group, 2017, p. 34.

<sup>8</sup> Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana Prenada Media Group, 2016)

that are inherent and contained in humans as creations of God Almighty. The rights regulated in the Human Rights Law must be respected, protected, and maintained by the state through various positive legal regulations. Human rights originate from God Almighty as the creator. The state must protect them as the holder of the power to make legal regulations to protect the human rights of each human being").<sup>9</sup> Margie Gladies Sopacua further stated that "Indonesia, as a developing country, has a poor reputation towards the issue of human rights violations, one of which is the violation of women's rights. Furthermore, violations of women's rights can be classified as acts of violence against women".<sup>10</sup>

Issues that arise in the community provide different perceptions in general, where women themselves get less attention and women are classified as weak. Thus, the violence experienced by women is continuously neglected and remain hidden. This view is influential and affecting how society conducts daily activities, in connection with the values that develop in the community regarding the position of women in society.<sup>11</sup>

Violation of legal obligations in the context of neglect of wife and children occurs when the perpetrator, as a husband or father, does not fulfill the obligation to provide maintenance, protection, or attention to which the wife and children are entitled. This obligation is regulated in Article 49 letter a in conjunction with Article 9 paragraph (1) of the PKDRT Law which requires husbands and fathers to provide a decent living for their families. In the case of neglect, perpetrators who ignore this obligation intentionally or due to negligence can be held criminally liable. Violation of this obligation has a direct impact on the welfare of the victims (wife and children), who are entitled to receive protection and maintenance according to the ability of the perpetrator. Perpetrators who do not fulfill this obligation, despite being economically capable, can be charged with criminal sanctions as a form of legal accountability for their negligence or bad intentions that harm the family. The wrongdoing of the perpetrator in these neglect cases is a direct violation of the basic rights of the wife and children, and proper law enforcement is essential to ensure justice for the victims.

Every criminal offense in the Criminal Code can generally be described in elements that can basically be divided into two kinds of elements, namely subjective elements (*mans rea*) and objective elements (*actus reus*). The subjective element (*mans rea*) is a component related to the perpetrator and includes intention, awareness, or motivation within the perpetrator. Meanwhile, the objective elements (*actus reus*) are elements related to the conditions or situations in which the perpetrator's actions are carried out. This objective element is not contained in the offense description of each separate criminal offense, and does not have to be included in the indictment. In general, it is considered that this requirement has been fulfilled as long as there is no evidence to show that the *actus reus* was committed.<sup>12</sup>

The subjective element (*mans rea*) refers to the intention or mental state of the perpetrator when committing a criminal offense. In the case of neglect of wife and children in the household, the subjective elements (*mans rea*) that must be fulfilled are human action,

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<sup>9</sup> Margie Gladies Sopacua, "Perception of Indonesia and Afghanistan in Preventing Psychic Violence Against the Household Women," *Jarlev: Jambura Law Review* 5, no. 2 (2023): 251-77, <https://doi.org/10.33756/jlr.v5i2.18529>.

<sup>10</sup> Margie Gladies Sopacua, "Legal Politics and Strategy on Protection of Women from Violence in Human Rights Context," *Research on Humanities and Social Sciences* 9, no. 4 (2019): 34-40, <https://doi.org/10.7176/RHSS/9-4-04>.

<sup>11</sup> Sopacua.

<sup>12</sup> P. A. F. Lamintang, *Dasar-Dasar Hukum Pidana Indonesia*, Bandung: Citra Aditya Bakti, 2013, p. 143.



unlawful nature, punishable, ability to be responsible, fault (Schuld), and intent. The objective element (actus reus) refers to actual acts or omissions that violate legal norms. In cases of neglect of wife and children in the household, the objective element that needs to be met is action or negligence. Negligence occurs when the perpetrator fails to fulfill the obligation of support and care due to lack of attention or planning without malicious intent, the impact of the act or negligence is such as neglect that causes suffering to the wife and child. While intentionality occurs when the perpetrator consciously and deliberately ignores these obligations with the intention or awareness that his actions will cause suffering. The result of this action is neglect, where the wife and children do not get the basic needs needed to live a decent life.

Actus Reus (Wrongful Act) neglect in the context of criminal law often refers to not providing adequate basic needs for the wife and children, such as food, clothing, shelter, education, and health. Identify the specific acts committed or omitted by the defendant that resulted in the neglect. The objective element (actus reus) refers to actual acts or omissions that violate legal norms. In cases of domestic neglect of wife and children, the objective element that needs to be met is an act or omission. Negligence occurs when the perpetrator fails to fulfill the obligation of support and care due to lack of attention or planning without malicious intent, the impact of the act or negligence is such as neglect that causes suffering to the wife and child. While intentionality occurs when the perpetrator consciously and deliberately ignores these obligations with the intention or awareness that his actions will cause suffering. The result of this action is neglect, where the wife and children do not get the basic needs needed to live a decent life.

#### **B. Criminal Responsibility Applied to the Perpetrator of Wife and Child Abandonment in Decision Number 45/Pid.Sus/2020/PN.PSB**

The defendant is the husband in a religiously and legally valid couple, while the witness Lastri is the wife in this couple. They have four children, namely Rivo Handria, Ripan Handrian, Afrizal Dendi, and Intan Cahyati. Since December 2016, the defendant left home and never returned, leaving his wife (Lastri) and their four children at home. The defendant sent money several times, the first time was in April by the defendant through the account of the witness's mother's younger brother named Nurasi amounting to Rp. 1,000,000.00 (one million rupiah), the second money was sent at the beginning of Ramadan through Nurasi's account amounting to Rp. 500,000.00 (five hundred thousand rupiah), the third was sent at the end of Ramadan through the account of the witness's younger brother named Resno Rp. 1,000,000.00 (one million rupiah). Subsequently the defendant no longer provided alimony to Lastri and their children. Due to these economic conditions, Lastri had to work hard to fulfill the needs of life and the education of their children. Sometimes she had to borrow money from neighbors to cover the costs of living and education. In addition to the significant financial impact, the defendant's departure also resulted in a lack of love and attention for their four children. For the actions of Efendi Pgl Epin Bin Amur, it has been proven legally and convincingly that he committed the crime of child neglect as charged in the first alternative, which is regulated in Article 77B jo Article 76B of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection or secondly violating Article 49 letter a jo Article 9 paragraph (1) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence.

The crime of neglect of household members, such as wives and children, is regulated in Law No. 23/2004 on the Elimination of Domestic Violence. The punishment is lighter than in cases of domestic violence or maltreatment. The crime of neglect of persons within the scope of the household is regulated in Article 9 paragraph 1 of Law Number 23 Year 2004 which states that: "Every person is prohibited from neglecting a person within the scope of his/her household, whereas according to the law applicable to him/her or by agreement or treaty he/she is obliged to provide life, care or maintenance to such person". Sanctions and penalties for people who commit the crime of neglect of persons within the scope of the household as stated in Law Number 23 Year 2004 Article 49, namely: "Shall be punished with imprisonment of 3 (three) years or a maximum fine of Rp 15,000,000.00 (fifteen million rupiah)".

Decision Number 45/Pid.Sus/2020/PN Psb, the defendant has violated the norms of Law Number 23 of 2004 concerning the Elimination of Domestic Violence by not fulfilling the financial needs of his wife and children, ignoring emotional needs, leaving his spouse without valid reasons, and neglecting his wife and children so that his wife has to work hard to make ends meet and pay for his children's education, while his four children do not receive affection from both parents. Article 76B of Law of the Republic of Indonesia Number 35 of 2002 concerning Child Protection prohibits every form of neglect of children, including neglect of basic needs such as food, clothing, shelter, as well as emotional and educational attention, where violations of this article can result in serious impacts on children such as physical and mental health problems, developmental delays, and wider social impacts. In Decision Number 45/Pid.Sus/2020/PN Psb, the defendant was charged with violating the norms of Article 76B by neglecting his obligations to fulfill his child's basic needs, placing, allowing, involving, causing to involve children in situations of mistreatment, and neglect. In the case of neglect of wife and child in Decision Number 45/Pid.Sus/2020/PN Psb, the judge imposed a lighter sentence than the criminal penalty stipulated in the law. The defendant in this case was sentenced to 3 (three) months imprisonment, even though the maximum penalty in the PKDRT Law is 3 (three) years. There are several factors that can explain why the judge decided on a lighter sentence than the maximum penalty provided for in the law, in addition the defendant will improve his behavior and be responsible as the head of the household towards his family in the future.

## CONCLUSION

The crime of neglect of persons within the scope of the household is regulated in Article 9 paragraph 1 of Law Number 23 Year 2004 which states that: "Every person is prohibited from neglecting a person within the scope of his/her household, whereas according to the law applicable to him/her or by agreement or treaty he/she is obliged to provide life, care or maintenance to such person". Sanctions and penalties for people who commit the crime of neglect of persons within the scope of the household as stated in Law Number 23 Year 2004 Article 49, namely: "Shall be punished with imprisonment of 3 (three) years or a maximum fine of Rp 15,000,000.00 (fifteen million rupiah)". Criminal Responsibility for the Perpetrator of Wife and Child Abandonment in Decision Number 45/Pid.Sus/2020/PN.PSB, namely the defendant was sentenced to imprisonment for 3 (three) months, besides that the defendant will improve his behavior and be responsible as the head of the household for his family in the future.

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