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Juridical Analysis of Criminal Liability for Perpetrators of Child Neglect in Indonesia

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Abstrak

Penelantaran anak merupakan bentuk pelanggaran hak asasi manusia yang memiliki dampak serius terhadap tumbuh kembang anak, baik dari segi fisik, psikologis, maupun sosial. Penelitian ini bertujuan untuk menganalisis pertanggungjawaban pidana terhadap pelaku penelantaran anak berdasarkan Undang-Undang Nomor 35 Tahun 2014 tentang Perlindungan Anak serta mengidentifikasi hambatan dalam penegakan hukum terhadap kasus ini. Metode yang digunakan dalam penelitian ini adalah pendekatan hukum normatif dengan analisis terhadap peraturan perundang-undangan yang relevan serta kajian doktrinal terhadap praktik hukum yang berlaku. Hasil penelitian menunjukkan bahwa meskipun regulasi telah mengatur sanksi pidana bagi pelaku, dalam implementasinya masih terdapat kendala dalam pembuktian unsur kesengajaan dan kelalaian. Selain itu, lemahnya sistem pengawasan serta rendahnya tingkat pelaporan dari masyarakat menyebabkan banyak kasus penelantaran anak tidak mendapatkan penanganan hukum yang maksimal. Oleh karena itu, diperlukan upaya yang lebih kuat dalam aspek pengawasan, peningkatan kesadaran hukum, serta optimalisasi koordinasi antar lembaga dalam menangani kasus penelantaran anak guna memberikan perlindungan yang lebih efektif bagi anak-anak di Indonesia.

Kata Kunci: *Penelantaran Anak, Sanksi Pidana, Perlindungan Anak, Hukum Pidana, Undang-Undang Nomor 35 Tahun 2014, Pengawasan Hukum, Hak Anak.*

Abstract

Child neglect is a form of human rights violation that has a serious impact on the growth and development of children, both in terms of physical, psychological, and social aspects. This study aims to analyze the criminal liability of perpetrators of child neglect based on Law Number 35 of 2014 concerning Child Protection and identify obstacles in law enforcement of this case. The method used in this research is a normative legal approach by analyzing relevant laws and regulations as well as doctrinal studies of applicable legal practices. The results showed that although the regulation has regulated criminal sanctions for perpetrators, in its implementation there are still obstacles in proving the elements of intent and negligence. In addition, the weak supervision system and the low level of reporting from the public cause many cases of child neglect not to receive maximum legal handling. Therefore, stronger efforts are needed in the aspects of supervision, increasing legal awareness, and optimizing coordination between institutions in handling child neglect cases in order to provide more effective protection for children in Indonesia.

Keyword: Child Neglect, Criminal Sanctions, Child Protection, Criminal Law, Law Number 35 Of 2014, Legal Supervision, Children's Rights.

INTRODUCTION

Child neglect is a form of human rights violation that can threaten a child's physical, psychological and social development. Children, as individuals who are still in the stage of growth and development, have the right to get protection and fulfillment of basic needs from parents, guardians, or parties responsible for their care. In the Indonesian legal system, child neglect is categorized as a criminal act that can be subject to legal sanctions as stipulated in Law Number 35 of 2014 on Child Protection and the Criminal Code (KUHP). Although there is a clear legal basis, the practice of law enforcement against perpetrators of child neglect still faces various complex challenges, both in terms of evidence, reporting mechanisms, and the effectiveness of the criminal sanctions applied.

One of the main problems in child neglect cases is the low level of public awareness of the categories and legal limits of such acts. Many cases that occur within the family or community are considered normal, so they are not reported as criminal offenses. Article 76B of Law Number 35 of 2014 explicitly states that every person is prohibited from neglecting children in their care, while Article 77B provides criminal penalties for those who intentionally commit neglect that results in the suffering of children. However, in practice, many cases are difficult to process because victims do not have access to reporting or adequate legal protection.

Another problem that becomes an obstacle in law enforcement is the limitation in proving the element of intent or significant negligence in cases of child neglect. In the

criminal law system, to be subject to criminal sanctions, an act must fulfill the elements of an unlawful act and it can be proven that there is an element of intent or gross negligence (Suryantoro, 2023). However, in the context of child neglect, this issue becomes complex because many perpetrators argue that they do not have the economic ability or certain reasons that are considered as justification for their actions. This results in many cases that do not proceed to the legal process due to a lack of strong evidence to show that there is an element of intent in the neglect committed (Sengkandai, 2020).

In addition, there are gaps in the regulations governing sanctions against perpetrators of child neglect. Law Number 35 of 2014 has stipulated criminal sanctions for perpetrators, but there are different interpretations in its implementation, especially regarding the categories and levels of neglect that can be charged with criminal provisions. Some cases show that perpetrators are only given light sentences that do not provide a deterrent effect, while in other cases, law enforcement against perpetrators does not run optimally due to a lack of coordination between law enforcement officials, child protection agencies, and the community (Nurhalizah & Salsabila, 2023).

Apart from the criminal law perspective, civil law aspects also need to be considered in cases of child neglect. Under Article 45 of Law Number 1 of 1974 on Marriage, parents have an obligation to nurture, maintain and educate their children. This obligation remains, even if the parents have separated or are experiencing economic difficulties. However, in practice, many parents neglect this responsibility, and neglected children have no effective legal mechanism to demand the fulfillment of their rights. Although the courts can issue judgments that require parents to take responsibility for their children's welfare, the implementation of such judgments often encounters obstacles, especially when parents have no steady income or avoid their legal obligations (Novita & Hermansyah, 2018).

Child neglect is also closely related to the increasing number of street children and child exploitation. Many neglected children are forced to work or beg to survive, which in turn places them in a condition that makes them more vulnerable to exploitation and violence. In Law Number 35 of 2014, child exploitation, including the neglect of children living in inappropriate conditions, is a criminal offense that can be subject to criminal sanctions. However, due to weak monitoring systems and lack of attention to high-risk groups of children, many children are neglected without any real legal action against the perpetrators.

Data from the Indonesian National Commission for Child Protection (KPAI) shows that in 2022 and 2023 there were 5,208 case reports regarding children in Indonesia with

the child rights fulfillment cluster dominating. Some cases involve economic factors, divorce, or parents' ignorance of children's basic rights. A concrete case that illustrates this problem occurred in 2023 in Bekasi, West Java, where a teenage boy with disabilities was chained by his parents and denied the right to education during that time. This case then became the public spotlight and received responses from various parties including law enforcement officials. The victim's parents were charged with Article 77b juncto 76b and/or Article 80 juncto Article 76c of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. In this case, the role of related institutions such as KPAI is to oversee and follow up on reports of child neglect cases, provide advocacy to child victims, and mediate between related parties and the child. The police act as law enforcement officers who investigate and prosecute cases of child neglect and provide protection to children from further harm. Collaboration between other agencies regarding the handling of child neglect cases in Indonesia is needed to ensure that child victims receive maximum protection and their rights are protected.

Based on the various problems that have been described, this study aims to analyze the criminal liability of perpetrators of child neglect in Indonesia based on Law Number 35 of 2014 concerning Child Protection. This study also aims to identify obstacles in the law enforcement process and evaluate the effectiveness of criminal sanctions that have been applied against perpetrators of child neglect. Thus, this study is expected to provide a more comprehensive understanding of the legal dynamics in an effort to protect children from various forms of neglect that can jeopardize their welfare.

RESEARCH METHODS

This research uses a normative legal method, which is a research method that focuses on analyzing legal norms that apply in the Indonesian legal system. This method is used to examine laws and regulations as well as legal principles relating to criminal liability for perpetrators of child neglect. Legal norms will be studied as the main data in order to obtain a systematic understanding of how the law regulates and provides protection to children who experience neglect.

From its nature, this research is descriptive analytical, which means that all legal materials collected will be described systematically before further analysis. The description of the legal provisions applicable in cases of child neglect is the first step to understanding how existing regulations are applied in practice. Furthermore, this research will conduct a legal analysis of the effectiveness of the applicable norms as well as the obstacles faced in

the process of law enforcement against perpetrators of child neglect.

As a basis for analysis, this research uses primary legal materials, namely legal materials that have binding force in the Indonesian legal system. Primary legal materials used in this research include:

1. The 1945 Constitution of the Republic of Indonesia as the constitutional basis for child protection in Indonesia.
2. The Criminal Code (KUHP) is the main reference in the formulation of criminal sanctions against perpetrators of child neglect.
3. The Criminal Procedure Code (KUHAP) regulates the legal settlement mechanism in criminal cases related to child neglect.
4. Law Number 35 of 2014 on Child Protection as a specific legal instrument that regulates child protection and sanctions for perpetrators of child neglect.

In addition to primary legal materials, this research also uses secondary legal materials, namely legal materials that serve as an explanation of primary legal materials. Secondary legal materials used in this research include law books, scientific journals, previous research results, as well as the opinions of experts relevant to this study. The approach to secondary legal materials aims to obtain an academic perspective on the legal issues under study, including in identifying obstacles and challenges in the application of criminal sanctions against perpetrators of child neglect.

The method of data collection in this research is conducted through library research by inventorying and identifying various laws and regulations, legal documents, legal records, research results, and other legal literature. Literature study is used to obtain accurate and in-depth information about the juridical aspects of enforcing criminal sanctions against perpetrators of child neglect. In the process of collecting legal materials, this research prioritizes a normative approach by referring to applicable legal principles and analyzing the application of existing regulations in various relevant concrete cases.

In the analysis stage, this research uses the legal interpretation method, which interprets the provisions in the legislation to understand how existing legal norms can be applied in cases of child neglect. By using the research methods described above, this research is expected to provide a comprehensive academic contribution in analyzing the criminal liability of perpetrators of child neglect and identifying challenges in law enforcement that have occurred so far.

RESULTS AND DISCUSSION

Guaranteeing the protection of children is a fundamental aspect of the legal system that aims to ensure children's rights can be fulfilled optimally. As individuals who are still in the process of growth, children need special protection in order to develop physically, emotionally and socially properly. However, there are still various cases of neglect that cause children to lose their rights, both in the family environment and in society. Indonesian law has established regulations governing child protection through the Child Protection Law and various other regulations. These provisions not only serve to protect children from the threat of exploitation and violence, but also to enforce sanctions against those proven to have committed acts of neglect (Rompas, 2017).

Child protection in the national legal system is rooted in the principles set out in the constitution as well as international conventions that prioritize children's rights. These principles include the prohibition of discrimination, the best interests of the child, the right to life and development, and respect for the child's opinion. The concept of the best interests of the child emphasizes that every policy and decision relating to children should be based on its impact on their well-being. In addition, the right to development requires guarantees from the government and society so that children can obtain education, health, and protection from all forms of threats that can hinder their growth.

In the perspective of criminal law, child neglect is categorized as an offense that can be subject to criminal sanctions in accordance with applicable laws and regulations. The KUHP and Law Number 35 of 2014 on Child Protection have regulated sanctions for parties who are proven to have intentionally or negligently committed acts of child neglect. However, although regulations are available, there are still obstacles in the implementation of the law, especially in proving the elements of intent and negligence. In order for law enforcement to be effective, cooperation is needed from various parties, including law enforcement officials, child protection agencies, and the community at large.

Law Number 35 of 2014 on Child Protection provides legal certainty regarding the obligations of parents or guardians in fulfilling children's rights and regulates sanctions for those who fail to carry out these responsibilities. This regulation emphasizes that children as individuals who are still in the growing stage are entitled to maximum protection, both in the aspects of maintenance, security, and welfare of their lives. Therefore, any form of negligence or neglect of children can be categorized as unlawful acts that have criminal consequences for the perpetrators.

The provisions in Article 76B of Law Number 35 of 2014 explicitly prohibit the neglect

of children in one's care. This rule underlines that every party responsible for the care of children is obliged to fulfill the basic needs of children, both in aspects of protection, maintenance, and other aspects related to their growth and development. If a violation of this provision occurs, then based on Article 77B, the perpetrator who is proven to have neglected the child to cause physical, psychological, or social suffering may be subject to criminal penalties in the form of imprisonment or a fine determined based on the level of the offense committed.

Although there is a legal basis that regulates criminal sanctions for perpetrators of child neglect, there are various obstacles in its implementation in the field. One of the main obstacles is proving the element of intent or gross negligence committed by the perpetrator. In criminal law, an act can be categorized as a criminal offense if it meets the elements of unlawful acts that include aspects of intent or negligence in childcare. However, in many cases, perpetrators often argue that economic conditions or other external factors are the main cause of neglect (Ganitri et al., 2021). This makes the evidentiary process more complex and potentially hampers the effectiveness of law enforcement against perpetrators of child neglect.

Protection of children's rights has become an obligation of the state, government, community, family and parents as stipulated in Article 20 of Law Number 35 of 2014 on Child Protection. The state has the primary responsibility in ensuring that every child receives optimal protection in various aspects of their lives, including the right to grow and develop properly. This obligation is also clarified in Law Number 1 of 1974 on Marriage, which stipulates that both parents have full responsibility for the maintenance and education of children until they are able to stand on their own or are married. Therefore, any form of neglect of this obligation can be categorized as a form of violation of children's rights with implications for legal action (Mointi et al., 2024).

The Unitary State of the Republic of Indonesia places child protection as part of human rights that must be safeguarded and respected by all elements of society. Children are a gift that has dignity that cannot be ignored, so their existence must be guaranteed both in the family environment and society at large. Stability in household life is also an important factor in ensuring children's welfare, as explained in Article 29 of the 1945 Constitution of the Republic of Indonesia, which emphasizes that every aspect of life, including in the household sphere, must be based on religious values. Therefore, children's welfare cannot be separated from harmonization within the family, which must be built on morality, self-control, and respect for their basic rights.

As the next generation of the nation, children have a strategic role in ensuring the continued existence of the state and nation in the future. The 1945 Constitution of the Republic of Indonesia and the Convention on the Rights of the Child ratified by the United Nations have established children's rights to survival, growth and development, and protection from all forms of violence and exploitation. Therefore, the state and all elements of society have an obligation to ensure that children's rights are fulfilled without any form of discrimination. Although Law Number 39 of 1999 on Human Rights has explicitly stated children's rights, the implementation of child protection still requires optimization in various aspects. Thus, the fulfillment of children's rights is not only a legal obligation, but also an integral part of national development in order to realize the welfare of society and the progress of the nation.

The application of criminal sanctions against perpetrators of child neglect must be carried out strictly as stipulated in Law Number 35 of 2014 on Child Protection. Lack of firmness in sentencing or weak sanctions imposed on perpetrators can lead to the recurrence of child neglect cases in the community. Uncertainty in the implementation of legal sanctions often leads to a low deterrent effect for perpetrators, so child neglect is still a problem that has not been resolved effectively. Therefore, stronger law enforcement is needed to ensure optimal child protection and reduce the number of similar cases in the future (Andika et al., 2021).

As a form of protection for children's rights, Law Number 35 of 2014 has clearly regulated the prohibitions and criminal penalties for individuals who commit criminal acts of child neglect. Article 76B states that every person is prohibited from placing, allowing, involving, or ordering children in situations that lead to mistreatment and neglect. This provision emphasizes that actions that ignore children's rights in any form are violations of the law that can be subject to criminal sanctions. With this regulation, the state seeks to close legal loopholes that can be utilized by perpetrators to avoid accountability for their actions (Wardhany, 2025).

In order to strengthen the deterrent effect for perpetrators, Law Number 35 of 2014 also provides criminal penalties for those who violate the provisions related to child neglect. Article 77B states that any individual proven to have committed an offense as stipulated in Article 76B may be sentenced to a maximum imprisonment of five years and/or a maximum fine of IDR 100,000,000. This provision provides a legal basis for law enforcement officials to impose sanctions commensurate with the impact caused by the perpetrator's actions. Thus, legal protection for children is not only normative, but must

also be implemented effectively through a judicial system that is consistent in taking action against offenses related to child neglect (Sengkandai, 2020).

Law Number 35 of 2014, which is an amendment to Law Number 23 of 2002 on Child Protection, has provided a clear legal basis for the fulfillment of children's rights and the responsibility of parents in providing welfare for their children. Although this regulation has been in effect for a long time, the reality on the ground still shows that child welfare has not been fully achieved. This condition proves that although there are various regulations governing the position of children and the obligations of parents, cases of child neglect are still often found. Lack of understanding and weak law enforcement are the main factors that cause this problem to recur without an effective solution.

Children who experience neglect are regulated in Article 1 Point 6 of Law Number 35 of 2014. Neglected children are defined as children who do not get the fulfillment of basic needs, both physically, psychologically, and socially. This form of child neglect can occur in various situations, ranging from the non-fulfillment of children's basic rights to food, clothing, shelter, to the right to adequate education and health. This neglect can be caused by various factors, such as parents' ignorance of their obligations, economic limitations, or even deliberate relinquishment of responsibility for the children they are supposed to protect. In many cases, neglect perpetrated by biological parents often takes the form of neglecting custody rights to leaving children outside the home without protection.

In an effort to provide legal protection to children who are victims of neglect, Law Number 35 of 2014 in Article 59A has regulated the steps that must be taken by the state. Protection of child victims of neglect includes several important aspects, such as rapid treatment through physical, psychological, and social treatment and rehabilitation. In addition, psychosocial assistance is also provided to children victims of neglect so that they can recover emotionally and mentally. The government also has an obligation to provide social assistance for children from poor families so that they continue to receive their basic rights. Further protection includes legal assistance in every child protection process to ensure that their rights are not ignored. With this regulation, it is hoped that child victims of neglect can obtain their rights properly and get maximum protection from the state.

From a juridical perspective, child neglect is also related to children's human rights as stipulated in Article 4 of Law Number 35 of 2014, which states that every child has the right to live, grow, develop, and receive protection from violence and discrimination. However, many cases of neglect lead to violations of children's basic rights, such as lack of access to

education, health, and protection from exploitation. This problem is further exacerbated by the lack of supervision from the authorities on the fulfillment of children's rights in the family and social environment (Noor et al., 2024).

In addition, social and cultural factors are also a challenge in law enforcement against perpetrators of child neglect. There are still many people who think that childcare issues are internal family matters that should not be interfered with by outsiders. As a result, many cases of neglect go unreported or are even considered a normal form of discipline. This misunderstanding contributes to the low reporting rate of child neglect cases, so that many children continue to suffer without adequate legal protection.

Another challenge in law enforcement is the lack of a strict monitoring mechanism for parents' obligations to provide protection to children. In Article 26 of Law Number 35 of 2014, parents have the obligation and responsibility to nurture, maintain, educate, and protect children from various forms of violence and neglect. However, in practice, there are many cases where parents ignore this responsibility without any real legal consequences. This is due to the weak monitoring system that should be carried out by government agencies and community organizations that focus on child protection.

In addition to the weak monitoring system, the difficulty in handling child neglect cases is also caused by the lack of community involvement in preventing and reporting cases. Although Article 72 of Law Number 35 of 2014 mandates the government, community and social institutions to participate in child protection, public awareness to play an active role in preventing and reporting cases is still very low. Many people are reluctant to report cases of child neglect for fear of being perceived as interfering in the personal affairs of other families or fear of experiencing social pressure as a result of reporting.

In terms of law enforcement, limited resources are also an obstacle in handling child neglect cases. Many regions still lack experts, such as forensic psychologists and social workers, who should play a role in providing assistance to victims and assisting in the process of proving cases in court. These limitations mean that many cases cannot be followed up optimally, resulting in injustice for victims who should receive optimal legal protection.

Thus, although Indonesia has regulations that clearly regulate criminal sanctions against perpetrators of child neglect, in practice there are still various obstacles that hinder the implementation of the law. The weak monitoring system, low level of public awareness, as well as various obstacles in the process of evidence and law enforcement have caused

many cases to be poorly resolved. Therefore, further analysis of the criminal responsibility of perpetrators of child neglect is crucial in an effort to strengthen legal protection for children in Indonesia.

CONCLUSION

Law enforcement against perpetrators of child neglect in the Indonesian legal system has a clear foundation through Law Number 35 of 2014 on Child Protection. This regulation strictly regulates the obligations of parents, guardians, or other parties responsible for children to fulfill their basic rights and provides criminal penalties for those who fail to carry out these responsibilities. However, in practice, there are still various obstacles in applying sanctions against perpetrators of child neglect. Difficulties in proving the element of intent, weak monitoring mechanisms, and low levels of public awareness of the importance of child protection are the main factors that cause the low effectiveness of law enforcement in this case. Inequality in sanctioning also often occurs, where perpetrators do not always receive punishment that provides a deterrent effect, so that similar cases continue to recur in various regions.

In order for the legal protection of children who experience neglect to be more effective, it is necessary to strengthen various aspects. Strengthening the supervisory mechanism must be done by ensuring that the parties responsible for the care of children do not neglect their obligations. Increasing public awareness of the impact of child neglect also needs to be done through wider socialization and legal education, so that people can play an active role in reporting cases of neglect that occur around them. In addition, law enforcement officials should be given special training in handling child neglect cases so that the legal process can run more effectively and provide maximum protection for children as victims. Harmonization of regulations and coordination between related institutions are also important steps in creating a better and more sustainable child protection system.

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