



Repositioning Legal Protection For Victims of Domestic Neglect In Indonesia: Between Legal Breakthroughs and Reality?

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Abstract

Domestic neglect is frequently occurring yet often overlooked and considered less significant compared to physical and sexual violence. This research employs normative juridical research methods and is analyzed qualitatively through a comparative legal study approach in Indonesia, India, and South Africa. The findings reveal that there have been legal breakthroughs in terms of criminalizing domestic neglect; however, the actual legal protection for the victims does not correspond proportionately. Certain limitations within domestic neglect result in the lack of assured legal protection. Even though it is considered an ordinary offense, its effectiveness is hindered due to minimal reporting, and the provision of rights does not align with the victims' needs. This situation exists in all three countries compared in the legal comparative process, although there are aspects that can be referred to in India's regulations. Addressing this issue involves repositioning the victims by reformulating the addition of victim rights according to their needs, including negligence as an element of neglect, reformulating restitution, and transferring assets to victims as a form of criminal sanction for perpetrators, incorporating domestic neglect in law enforcement agencies' case disclosure targets and annual programs in government agencies, and reinforcing legal-cultural awareness among the community to halt the domino effect of victims suffering from domestic neglect.

Keywords: Domestic Neglect, Protection, Repositioning, Victims

Abstrak

Penelantaran rumah tangga merupakan perbuatan yang sering terjadi namun justru dianggap tidak penting dan serius dibandingkan dengan bentuk kekerasan fisik dan seksual. Penelitian ini menggunakan metode penelitian yuridis normatif dan dianalisis secara kualitatif dan studi perbandingan hukum di Indonesia, India, dan Afrika Selatan. Hasil penelitian menunjukkan bahwa telah adanya terobosan hukum berupa kriminalisasi terhadap pelaku penelantaran rumah tangga, namun realitanya tidak berbanding lurus dengan perlindungan hukumnya bagi korban. Adanya batasan-batasan tertentu dalam penelantaran rumah tangga yang menyebabkan belum terjaminnya perlindungan hukum, dan sekalipun merupakan delik biasa namun belum berjalan efektif karena minimnya pelaporan, serta pemberian hak belum sesuai dengan kebutuhan korban. Kondisi demikian terjadi di ketiga negara yang menjadi target dari proses perbandingan hukum, ditemukan bahwa terdapatnya berbagai regulasi di tingkat internasional dan nasional, masih belum cukup dalam memenuhi perlindungan korban penelantaran domestik. Menyikapi hal tersebut perlu adanya komitmen penegakan hukum baik melalui reposisi hingga implementasi, agar pemberian hak sesuai dengan kebutuhan korban, serta diperlukan pula penguatan legal kultural terhadap kesadaran masyarakat, sehingga dapat menghentikan efek domino penderitaan korban akibat penelantaran rumah tangga.

Kata kunci: Reposisi, Perlindungan, Korban, Penelantaran Rumah Tangga.

I. Introduction

The Constitution explicitly guarantees legal protection for its citizens, suggesting that a nation's dignity can be assessed by its commitment to upholding the rights of its people¹. However, the reality seems to indicate otherwise. The Public Prosecutor, representing the state's victims, appears unreliable as they often do not represent the victims' interests². Crime victims are marginalized within the criminal justice system³. Prompting advocates for victims' rights to address the unmet needs of these victims⁴.

This situation further diminishes the hopes of victims who, normatively, lack legal protection. Moreover, the scope of "victim" extends to dependent family members and even heirs⁵. Victims of domestic neglect, in this context, are in an especially disadvantaged position. Even though perpetrators can be prosecuted under Article 304 of the Criminal Code, the boundaries remain ambiguous, and there is no foundational right for victims.

There are three previous articles that review the historical roots of the problem of domestic neglect, the role of women, and other potential causes of domestic neglect. Research by Ade Irma Sakina and A Dessy Hasanah Siti highlights the history of domestic violence and domestic neglect. Fransiska Novita and Edy S, highlight more aspects of the role of women and patriarchal culture, while Imamul Arifin et al., highlight the causes or triggers of domestic violence including domestic neglect. In Ade Irma's study, historically, the problem of domestic neglect in Indonesia cannot be separated from the patriarchal culture that is still inherent in the structure of society. This system dominates, causing gender inequality. ⁶ The role of women is traditionally seen only as subordinate to their husbands and as bearers of offspring. ⁷ This system clearly encourages the emergence of cases of violence against women in domestic relationships. ⁸

Other research by Imamul Arifin et al., the potential for domestic neglect is also due to disregard for religious values, low education levels,⁹ and a lack of legal awareness. Even if outsiders are aware of the neglect, they may hesitate to intervene, uncertain if such neglect constitutes a criminal act. This mindset perpetuates the cycle of domestic neglect, with family members becoming consistent victims over time.

It was only with the enactment of Act No. 23 of 2004 on the Elimination of Domestic Violence that there was a repositioning of victims. This law included neglect as a form of domestic violence crime, thereby granting victim certain rights. This repositioning is considered a legal breakthrough in providing legal protection to victims of domestic neglect. However, nearly 20 years after the enactment of Act No. 23 of 2004, its relevance is worth re-examining. Faced with the changing times, Act No. 23 of 2004, once hailed as a legal innovation, now confronts contemporary challenges. The phenomenon of women workers represents progress and success

¹ Julius Mandjo and Mohamad Taufik Zulfikar Sarson, "The Right to Obtain Free Assistance and Legal Protection for The Indigent People Through Legal Assistance Organizations," *Jambura Law Review* 3, no. 2 (July 2021): 30, <https://doi.org/10.33756/jlr.v3i2.9424>.

² Enggal Prayoga Wijaya, "Knowing Victims to Protect Them, A Book Review `Viktimologi: Perlindungan Korban Dan Saksi' Bambang Waluyo, S.H., M.H., Sinar Grafika Jakarta, 2011, 320 Pages, ISBN 978979074378," *Journal of Indonesian Legal Studies* 6, no. 2 (November 2021): 30, <https://doi.org/10.15294/jils.v6i2.36097>.

³ Mahrus Ali et al., "Compensation and Restitution for Victims of Crime in Indonesia: Regulatory Flaws, Judicial Response, and Proposed Solution," *Cogent Social Sciences* 8, no. 1 (2022), <https://doi.org/10.1080/23311886.2022.2069910>.

⁴ Marcus A Asner and Gillian L Thompson, "Restitution from the Victim's Perspective---Recent Developments and Future Trends," *Federal Sentencing Reporter* 26, no. 1 (October 2013): 1, <https://doi.org/10.1525/fsr.2013.26.1.59>.

⁵ Dipa Dube, "Victim Compensation Schemes in India: An Analysis," *International Journal of Criminal Justice Sciences* 13 (2018): 2.

⁶ Ade Irma Sakina dan A Dessy Hasanah Siti, "Menyoroti Budaya Patriarki Di Indonesia," *Bagikan : Jurnal Pekerjaan Sosial* 7 (Juli 2017): 1, <https://doi.org/10.24198/share.v7i1.13820>.

⁷ Fransiska Novita Eleanora and Edy Supriyanto, "Violence against Women and Patriarkhi Culture in Indonesia," *International Journal of Multicultural and Multireligious Understanding* 7 (October 2020): 9, <https://doi.org/10.18415/ijmmu.v7i9.1912>.

⁸ Imamul Arifin, Alicia Pranepi Yudani, and Firha Maulina Aziza, "Patriarki Sebagai Pemicu Kekerasan Pada Wanita Dalam Rumah Tangga Menurut Perspektif Al -- Qur'an Dan Kemasyarakatan," *ISTIGHNA* 5, no. 1 (2022): 18-31.

⁹ C Elida Khairullah and S Sahara, "Tindak Pidana Penelantaran Dalam Rumah Tangga Di Wilayah Hukum Pengadilan Negeri Kualasimpang," *Jurnal Hukum Samudra Keadilan* 12, no. 1 (2017): 146-57.

in challenging patriarchal culture.¹⁰ It remains an irony to this day that domestic neglect continues to be perceived as less significant and serious compared to other forms of violence.

However, no researcher has studied in depth the limitations of the concept of domestic neglect, compared it with other countries, or discussed efforts to reposition legal protection. This study will offer a different perspective, where the novelty of this article is the repositioning of legal protection for victims of domestic neglect based on the expansion of the concept and comparison of other countries. These aspects will be explored in depth in this article.

Therefore, to reposition the status of victims, the definitions and boundaries of domestic neglect need to be revisited, including the current reality of its legal protection. This is essential to ensure that the rights of domestic neglect victims are tailored to their specific needs, which are distinct from victims of other forms of domestic violence, such as physical and sexual abuse.

II. Research Problems

There are four problems that the author will explore: **First**, "How does Act No. 23 of 2004 define the concept of domestic neglect and the legal protection of its victims?" This study aims to assess the relevance of its normative scope to the current needs of victims. **Second**, "What is the reality of legal protection for victims of domestic neglect?" This study seeks to analyze the inhibiting factors to gauge its existence. **Third**, is to understand "How the comparison of efforts to protect victims of household violence differs among several countries". **Fourth**, how should the legal protection of domestic neglect victims be repositioned in Indonesia, based on a comparative study of regulations in India and South Africa, and what aspects need strengthening to provide optimal protection to victims?" This study aims to re-establish the domestic neglect victims as a group deserving attention and to design fair legal protection tailored to their needs through a comparative study with other countries.

III. Research Methods

Research on repositioning victims of domestic neglect requires in-depth study to understand the complexity of conceptual boundaries, challenges, and appropriate repositioning designs. The research method used is a normative approach, which emphasizes applicable legal norms¹¹, so the data used are secondary data. The first problem was analyzed using a conceptual approach to understand the basic concepts and limitations of domestic neglect. The second problem was analyzed using a legislative approach to assess the extent to which the substance meets the interests of the victims. The third problem was analyzed using a comparative approach with other countries, namely India and South Africa. These countries were chosen because they have different legal systems but face similar conditions in dealing with domestic neglect, allowing the identification of the advantages and disadvantages of each to design comprehensive legal protection for victims of domestic neglect. The fourth problem was analyzed using a conceptual approach to produce a victim protection design that is justice-based and aligns with the interests of victims. The data were processed using data reduction, display, and categorization techniques and analyzed using the content analysis method. This allows for a holistic understanding of the data, connecting it with legal theories or concepts, resulting in a comprehensive repositioning of victim protection.

¹⁰ Mariyawati Mariyawati et al., "Pendampingan Terhadap Perempuan Pekerja Korban Kekerasan Dalam Rumah Tangga Di Kabupaten Banyumas," *Jurnal Analisa Sosiologi* 12, no. 2 (April 2023): 30, <https://doi.org/10.20961/jas.v12i2.66258>.

¹¹ I Gusti Ketut Ariawan, "Metode Penelitian Hukum Normatif," *Kertha Widya* 1, no. 1 (2013): 21-30.

IV. Result And Discussion

1. Conceptual Boundaries of Domestic Neglect and Legal Protection of Victims in Act No. 23 of 2004 on the Elimination of Domestic Violence

Article 5 of Act No. 23 of 2004 explicitly defines forms of domestic violence to include sexual, psychological, physical, and domestic neglect¹². This law also delineates the scope of individuals within a household, not limited to the nuclear family but also encompassing stepchildren or adopted children, individuals related by blood, marriage, guardianship, caregiving, and even those working and residing within the household¹³. Although children in contemporary non-traditional families currently grapple with inheritance issues¹⁴, this definition can encompass anyone living in the said household¹⁵, hence, the researchers deem it still relevant to date.

The concept of domestic neglect also has normative boundaries set in Article 9 of Act No. 23 of 2004. Specifically, subsection (1) refers to neglecting another person within one's household, despite an agreement or contract to provide sustenance, care, or maintenance to that individual; or subsection (2) inducing economic dependency by restricting or prohibiting suitable employment, thus placing the victim under the perpetrator's control¹⁶.

Based on the aforementioned formulation, the legal construction for the occurrence of domestic neglect includes the following components. First, failure to provide for the family. This primarily refers to the inability or refusal to provide sustenance or financial support, commonly understood as neglecting the duty to provide alimony or maintenance. Second, Neglect of care or household maintenance. This encompasses the neglect of responsibilities such as the abandonment of sick family members without care. It also includes the duty to care for family members with disabilities. Third, Economic dependency through employment restrictions. This form of neglect results in creating economic dependence by limiting or prohibiting the victim from working. In this context, economic abuse can be categorized into two forms (a) Severe economic abuse, which involves intentional economic exploitation and (b) Mild economic abuse, this pertains to deliberate actions designed to make the victim financially dependent¹⁷.

The aforementioned definitions carry specific legal implications. For instance, a wife (female) can also be deemed as a perpetrator of domestic neglect if confronted with certain household obligations, such as neglecting a sick husband or child¹⁸. This suggests that the definition is sufficiently flexible to address the adverse effects of the modern era where women are increasingly self-actualizing, which can sometimes result in domestic neglect. However, on the flip side, there exists a disparity in the definition of domestic violence, which seems more tailored towards female victims. Historically, this regulation was indeed aimed at countering patriarchal culture, but it appears less relevant today when children and the elderly are also highly susceptible to becoming victims. The law also lacks clarity on whether domestic neglect is categorized as a common offense or a complaint-based offense. This contrasts with physical, psychological, and sexual violence, which are explicitly defined as complaint-based offenses.

¹² Mahfud Mahfud and Rizanizarli Rizanizarli, "Domestic Violence against Women in Indonesia: The Recent Domestic Violence Elimination Law Analysis," *Fiat Justisia: Jurnal Ilmu Hukum* 15, no. 4 (June 2021): 30, <https://doi.org/10.25041/fiatjustisia.v15no4.2276>.

¹³ Arni Ranita Tamba and Ali Masyhar, "Protection of Victims of Domestic Violence (Study Decision Number: 2660/Pid.Sus/2015/PN Mdn)," *Journal of Law and Legal Reform* 1, no. 2 (January 2020): 26, <https://doi.org/10.15294/jllr.v1i2.36008>.

¹⁴ Danaya C Wright, "Inheritance Equity: Reforming the Inheritance Penalties Facing Children in Non-Traditional Families," *Cornell Journal of Law and Public Policy* 25 (2015): 1.

¹⁵ Sabungan Sibarani, "Prospek Penegakan Hukum Undang-Undang Penghapusan Kekerasan Dalam Rumah Tangga (UU PKDRT)," *Jurnal HAM* 7 (August 2016): 1, <https://doi.org/10.30641/ham.2016.7.1-9>.

¹⁶ Dewi Setyowati and Emmilia Rusdiana, "Relevance of Criminal Law Formulation in the Law of Domestic Violence Elimination in Indonesia," *Journal of Indonesian Legal Studies* 5, no. 1 (May 2020): 4, <https://doi.org/10.15294/jils.v5i1.35362>.

¹⁷ Andrie Irawan, "Batasan Penelantaran Rumah Tangga Dalam Perspektif Hukum Kekerasan Dalam Rumah Tangga Dan Hukum Perkawinan Di Indonesia," *Jurnal Hukum Responsif* 7, no. 2 (2019): 100-110.

¹⁸ Irawan.

In relation to the legal protection of victims, several rights are outlined in Article 10. These include protection from family, police, prosecutors, courts, lawyers, social institutions, or other parties; access to healthcare services; confidentiality of identity; accompaniment by social workers and legal assistance; and spiritual guidance¹⁹. Meanwhile, perpetrators of domestic neglect face a maximum penalty of 3 years imprisonment or a fine of up to fifteen million rupiah²⁰. Thus, this threat presents an alternative, with no minimum threat, and fails to accommodate the right to compensation. Therefore, the current definition of legal protection and sanctions for perpetrators is not victim-oriented.

This is evident in several court decisions. Firstly, the Masoho District Court Decision No. 02/Pid.Sus/2013/PN/MSH, which sentenced the perpetrator to three months in prison. Secondly, the Merauke District Court Decision No. 67/Pid.B/2012/PN Mrk, actually sentenced the perpetrator to four months in prison with a conditional sentence, so that the perpetrator did not have to serve their sentence. Thirdly, the Padang Panjang District Court Decision No. 61/Pid.sus/2015/PN Pdp, which opted for a fine of four million rupiah, and of course, the fine will go to the state treasury and not be intended for the victim.

These three rulings also do not provide compensation for victims. Referring to the consequences of existing limitations, it is necessary to reposition the boundaries of the concept of domestic neglect and the types of sanctions based on the interests and needs of victims of neglect.

2. The Reality of Legal Protection for Victims of Domestic Neglect in Indonesia

Evidence suggests that Act No. 23 of 2004, despite being a legal breakthrough, has failed to prioritize victims of domestic neglect as a group requiring serious intervention. This is evident from the limited number of reports from victims and the prevailing indifference towards the issue. Moreover, the data released lacks a comprehensive national perspective²¹, making the position of neglect victims resemble an iceberg²², where only the tip is visible. Legal awareness remains a fundamental issue, with the majority of society still perceiving domestic violence as synonymous with physical abuse²³. The deep-rooted Eastern culture that prioritizes the sanctity of the family unit means that many victims tend to react with apathy²⁴. This indicates a normalization of domestic neglect, often justified through religious, moral, and ethical values. This suggests that the digital era, despite its easy access to information and education, struggles to dismantle deep-seated cultural beliefs.

While the digital age, combined with a focus on human rights, education, and economic advancements, has empowered women to break free from patriarchal confines, it has also reshaped domestic dynamics. Today's women have greater opportunities for self-actualization in the public sector and exhibit increased independence, both financially and intellectually. However, this shift has implications for household roles, influencing potential perpetrators and victims. Evidence suggests that in some cases, wives or children can be the perpetrators of domestic neglect, with men as the victims²⁵.

The definitions of violence in Act No. 23 of 2004 and societal perspectives predominantly position women as the most likely victims. This bias further discourages husbands from reporting

¹⁹ Rahim Magfira Alex, Fenty U Puluhalawa, and Nuvazria Achir, "Pelaksanaan Perlindungan Hukum Oleh Unit PPA Polda Gorontalo Terhadap Korban Penelantaran Rumah Tangga Oleh Suami," *Journal of Comprehensive Science* 2 (2023): 4.

²⁰ Suheflihusnaini Ashady, "Kebijakan Penal Terhadap Korban Kekerasan Dalam Rumah Tangga," *Jurnal Fundamental Justice* 1, no. 1 (February 2020): 3, <https://doi.org/10.30812/fundamental.v1i1.630>.

²¹ Khaerul Umam Noer, Siti Chadijah, and Endang Rudiatin, "There Is No Trustable Data: The State and Data Accuracy of Violence against Women in Indonesia," *Heliyon* 7 (December 2021): 12, <https://doi.org/10.1016/j.heliyon.2021.e08552>.

²² Agung Budi Santoso, "Kekerasan Dalam Rumah Tangga (KDRT) Terhadap Perempuan: Perspektif Pekerjaan Sosial," *KOMUNITAS* 10, no. 1 (September 2019): 23, <https://doi.org/10.20414/komunitas.v10i1.1072>.

²³ Alex, Puluhalawa, and Achir, "Pelaksanaan Perlindungan Hukum Oleh Unit PPA Polda Gorontalo Terhadap Korban Penelantaran Rumah Tangga Oleh Suami."

²⁴ R A Diah Irianti, "Kekerasan Dalam Rumah Tangga Antara Mempertahankan Keutuhan Keluarga Dan Sanksi Pidana Menurut Undang-Undang Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga," *Pamulang Law Review* 3 (November 2020): 2, <https://doi.org/10.32493/palrev.v3i2.7990>.

²⁵ Aleksandar Jovanovski and Kire Sharlamanov, "Male as a Victims: Domestic Violence from a Different Perspective," *International Journal of Scientific and Engineering Research* 12 (2021): 3.

abusive wives, given societal skepticism and the potential stigma of failing traditional gender roles.

On one hand, they suffer neglect, but on the other, they may feel financially, emotionally, or physically dependent on the perpetrator. This dependency is exacerbated for victims without familial support, those reluctant to burden others, individuals whose assets are controlled by the perpetrator, or those in vulnerable states due to illness or old age.

Victims of domestic neglect face a conundrum when confronted with the existing legal sanctions, which are limited to imprisonment or fines. These penalties do not prioritize the victims' interests, as many victims are in dire need of compensation. Furthermore, the rights granted to victims under Act No. 23 of 2004 do not align with the specific needs of domestic neglect victims, who require support that can bolster their financial independence and aid in household maintenance and care.

Another stark reality highlights the challenges faced by regional agencies, both at the district and provincial levels, tasked with protecting victims. For instance, the Women and Children Protection Unit (*PPA*) within the police force lacks psychologists for counseling and does not provide dedicated monitoring or resting spaces for victims. In the Gorontalo region, over the past four years (from 2019 to 2022), no victims have been reported to the Integrated Service Center for the Empowerment of Women and Children (*P2TP2A*) to access safe houses, psychological support, or legal assistance. Additionally, the *PPA* Unit has never requested a court-issued protection order, which is crucial to shield victims from intimidation or repeated neglect during ongoing legal proceedings²⁶.

Integrated Service Centers (*PPT*) in regional governments, specifically in areas such as Medan, Manado, Jayapura, and DKI Jakarta, demonstrate suboptimal performance. Various challenges impede their effectiveness, including issues related to funding, human resources, infrastructure, and a lack of coordination among stakeholders. Additionally, there is an absence of consistent regulations across different regions²⁷.

Considering the current reality, legal protection for victims of domestic neglect needs to commence by eliminating all forms of normalization of neglectful behavior in households, thereby encouraging significant reporting. Formulative and applicable policies, including court decisions, should be grounded in the specific needs of neglect victims, which inherently differ from those of victims of physical and sexual violence within the household.

3. Comparison of Efforts in Protecting Victims of Domestic Violence in Several Countries

At the international level, a consensus among various countries on the prohibition of domestic neglect can be found in several conventions. The United Nations Convention on the Rights of the Child 1990 (CRC) emphasizes in Article 19, Paragraph (1), the obligation of countries to protect children from all forms of violence, abuse, neglect, and exploitation, regardless of the perpetrator, including caregivers. This article also mandates in Paragraph (2) the establishment of effective social procedures and programs by State Parties to support children and caregivers, facilitate prevention, and ensure appropriate responses, including potential judicial involvement, to child neglect cases.

In an international context, it is crucial to compare how other countries, such as India and South Africa, address similar issues. The focus should be on contrasting the regulations of these three nations in tackling domestic neglect. Through a comparative analysis, insights into the strengths and weaknesses of each country's approach can be gleaned, which will subsequently serve as valuable input for refining regulations in Indonesia.

The Convention on the Elimination of All Forms of Discrimination Against Women 1981 (CEDAW), although not directly addressing domestic neglect, highlights in Article 5 the

²⁶ Alex, Pulu Hulawa, and Achir, "Pelaksanaan Perlindungan Hukum Oleh Unit PPA Polda Gorontalo Terhadap Korban Penelantaran Rumah Tangga Oleh Suami."

²⁷ Penny Naluria Utami, "Optimalisasi Pemenuhan Hak Korban Kekerasan Terhadap Perempuan Melalui Pusat Pelayanan Terpadu," *Jurnal HAM 7* (August 2016): 1, <https://doi.org/10.30641/ham.2016.7.55-67>.

obligation of member states to eradicate prejudices and customs based on notions of gender superiority, whether male or female. Article 5 also mentions the equal responsibility of both men and women in fulfilling their roles in the upbringing and development of their children. The CRC has been signed by 196 countries worldwide²⁸, meanwhile, CEDAW has been agreed upon by 185 countries. This widespread agreement indicates that nearly all countries globally recognize domestic violence as a serious global issue warranting significant attention.

In South Africa, child abuse is a grave concern, drawing attention from the international community, local government, and local society. According to the Optimus Study, one in four children in the country experiences maltreatment, encompassing physical, sexual, emotional abuse, or neglect²⁹.

In South Africa, provisions for the protection against child neglect can be found in The Children's Act (No 38 of 2005), specifically in Article 150. This article provides a detailed account of the circumstances under which a child is deemed to require care and protection. Domestic neglect of a child is further elaborated in Article 150(h), which notes that a child is also considered in need of care and protection if they experience physical or mental neglect, or if they are maltreated, abused, deliberately neglected, or demeaned by the person responsible for their care.

South Africa also has distinct regulations concerning the elimination of domestic violence, encapsulated in The Domestic Violence Act 116 of 1998. The definition of domestic violence can be found in Article 1 of this regulation. Although, similar to India's Domestic Violence Act No. 43 of 2005, it does not explicitly address "domestic neglect". However, within South Africa's DV Act 1998, such actions can be encompassed under various forms of abusive behavior, as mentioned in paragraph (viii) letter (j).

The experience of children subjected to neglect as a form of domestic violence has profound long-term implications for their development. According to a study in South Africa, children exposed to violence, neglect, and witnessing familial violence are at an elevated risk of enduring adverse health, behavioral, and interpersonal outcomes later in life. These repercussions include severe mental health disorders, depression, anxiety, substance and alcohol abuse, interpersonal violence, and self-harming behaviors. Violence against children also negatively impacts health outcomes and health-risk behaviors and is associated with subsequent violent actions by the victims as adults³⁰.

Deep-seated injustices are often endured by women and children, especially female children, in South Africa. This ranges from the neglect of women with HIV/AIDS to the treatment of child victims sexually abused by their biological fathers and relatives. This trauma is exacerbated by the myth that having intercourse with a minor can cure HIV/AIDS³¹. In terms of regulations, the rights of domestic neglect victims in Indonesia are more comprehensive compared to those in South Africa. However, Indonesia needs to consider the advantages of the South African Children's Act regulations, which explicitly place children in care and protection if they experience physical or psychological neglect, as well as belittlement.

Domestic violence is a significant issue in India. According to a report from the National Crime Records Bureau (NCRB), every 33 minutes, an Indian woman faces violence from her husband³². India has clear regulations addressing gender-based violence, primarily found in the Domestic Violence Act of 2005, specifically in Article 3. While the term "neglect" is not explicitly

²⁸ Save the Children UK, "UN Convention on the Rights of the Child," accessed September 10, 2023, <https://www.savethechildren.org.uk/what-we-do/childrens-rights/united-nations-convention-of-the-rights-of-the-child>.

²⁹ Marianne Strydom, Ulene Schiller, and Julie Orme, "The Current Landscape of Child Protection Services In South Africa: A Systematic Review," *Social Work* 56 (October 2020): 4, <https://doi.org/10.15270/56-4-881>.

³⁰ Celia Hsiao et al., "Violence against Children in South Africa: The Cost of Inaction to Society and the Economy," *BMJ Global Health* 3 (January 2018): 1, <https://doi.org/10.1136/bmjgh-2017-000573>.

³¹ Omololu Fagbadebo, "A Discourse on the Plight of South African Women in the Face of Abuse and Neglect," *Law, Democracy and Development* 25 (November 2021): 1-23, <https://doi.org/10.17159/2077-4907/2020/ldd.v25.spe5>.

³² B N Raveesh et al., "Domestic Violence Current Legal Status: Psychiatric Evaluation of Victims and Offenders," *Indian Journal of Psychiatry* 64 (March 2022): S134-45, https://doi.org/10.4103/indianjpsychiatry.indianjpsychiatry_715_21.

mentioned, Article 3 encompasses various forms of domestic violence, including physical, sexual, verbal, emotional, and economic abuse. Actions such as withholding economic resources or restricting access to essential life-sustaining facilities can be considered forms of neglect.

Several contributing factors to these cases include poor nutrition, unsafe water, substandard prenatal and birthing processes, and neglect during a child's early developmental stages³³. Such practices are prevalent in communities with limited knowledge and awareness, often overlooking child care.

The Indian government has enacted various laws addressing child abuse. Notably, The Juvenile Justice (Care and Protection of Children) Act, 2015 categorizes children into two groups: "children in conflict with the law" and "children in need of care and protection." This act mandates the establishment of Juvenile Justice Boards and Child Welfare Committees to ensure children's rights and well-being are safeguarded. Additionally, the legislation introduces provisions for adolescents aged 16-18 involved in heinous crimes to be tried as adults. Despite these protective measures, numerous cases remain unreported³⁴. The regulatory framework for child protection in India was further reinforced with the establishment of The Protection of Children from Sexual Offences (POCSO) Act in 2012³⁵. This regulation underwent subsequent modifications with The POSCO (Amendment) Act of 2019. Furthermore, the amendment accentuated the reporting mechanisms for child exploitation in India, providing a more detailed framework than its predecessor. India currently ranks 118th on the End of Childhood Index. A similar trend is observed in the handling of domestic violence cases against women, which notably surged during the Covid-19 pandemic³⁶.

The similarities among the three countries, namely Indonesia, India, and South Africa, are evident in several aspects. Firstly, all three have ratified CEDAW and CRC. Secondly, they each possess regulations related to domestic neglect. In Indonesia, these are generally governed by Act No. 39 of 1999 and Act No. 23 of 2004, while in India, they are covered by the Indian Protection of Women from Domestic Violence Act 5 of 2005, The Indian Protection of Children from Sexual Offences (Amendment) Act of 2019, The Indian Penal Code of 1860, and The Dowry Prohibition Act of 1961. In South Africa, these regulations are specified under The Children's Act No. 38 of 2005 and The Domestic Violence Act 116 of 1998.

However, there are notable differences. Indonesia boasts several advantages, with certain districts having Regional Regulations specifically addressing the protection of gender-based violence and child victims. This differs from India and South Africa, where regulations primarily exist in the form of Act. In Indonesia, victim support is not solely managed by the central government, institutions, and NGOs, but there are also specialized units at the regional level, such as Integrated Service Centers, directly addressing neglect cases in those areas. In contrast, in India, institutions such as the Asian & Pacific Islander Institute on Domestic Violence and The National Indigenous Women's Resource Center handle these cases³⁷.

Indonesia could benefit from considering the advantages of South African Children's Act regulations, which explicitly address the care and protection of children in cases of neglect, encompassing physical and psychological neglect, abandonment, and humiliation. This differs from Indonesia, where neglect within households tends to be more focused on economic factors.

In India, under The Indian Penal Code 1860 Section 498A, it is stipulated that a husband or a husband's relative who perpetrates cruelty against his wife is punishable by imprisonment for up to 3 years, and the punishment can be extended. Here, cruelty encompasses any deliberate

³³ N Saini, "Child Abuse and Neglect in India: Time to Act," *Japan Medical Association Journal*, no. 56 (2013): 5.

³⁴ Prerona Sil, "Child Abuse Laws in India: Fortifying the Formative Years," *Lexology*, December 21 (2022), <https://www.lexology.com/library/detail.aspx?g=81085a3e-dd44-4dc4-ab5e-94d8e3d1fdab>.

³⁵ Ishita T Manral et al., "A Multi-Speciality Approach to the Protection of Children from Sexual Offences Act: A Review," *Industrial Psychiatry Journal* 32, no. 1 (2023): 4-8, https://doi.org/10.4103/ipj.ipj_169_21.

³⁶ Suman Singh and Rituparna Bhattacharyya, "A Review of Domestic Violence against Women in India during Lockdown," *International Journal of Innovation, Creativity and Change*, September, no. 30 (2020): 230.

³⁷ Auliya Hamida and Joko Setiyono, "Analisis Kritis Perlindungan Terhadap Anak Korban Kekerasan Dalam Rumah Tangga: Kajian Perbandingan Hukum," *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (2022): 73-88.

behavior that tends to drive a woman to commit suicide or poses a danger to her life, body parts, or her mental or physical health. This provision needs referencing in Indonesia, considering that neglectful actions can lead to suicidal behavior and damage mental and physical health. Not infrequently, in Indonesia, instances arise where the despair of housewives, neglected by their husbands, leads them to contemplate suicide alongside their young children.

The Indian Protection of Women from Domestic Violence Act 5 2005 defines domestic violence as any action, negligence, or any act that harms or injures women physically, mentally, or sexually within a domestic relationship. This law expands its protection to those living together, having familial relationships, or household members. It also empowers victims to obtain protection orders, including restraining orders, residence orders, and financial assistance. Regulations in India also acknowledge a woman's right to reside in the shared household, regardless of ownership of the property (house). These provisions aim to shield victims from losing their homes or being compelled to leave them. These regulations are not stipulated in Indonesia, which is interesting as they include neglect as an aspect of domestic violence. This element is undoubtedly crucial to reference in Indonesia, where neglect often leads to domestic neglect. Financial assistance is not explicitly addressed in Indonesian regulations, despite the fact that victims of neglect require financial independence and welfare assistance. Additionally, the absence of regulations granting victims the right to remain in their homes appears pertinent for reference in Indonesia, considering that one of the weaknesses faced by victims of domestic neglect is the lack of control over property ownership, often leading to eviction threats.

4. Repositioning Domestic Neglect Victim Protection Based on Justice

Given the current realities and their relevance for both the present and future, there is a pressing need to reposition the protection of domestic neglect victims based on the principles of justice. Here, justice implies actions that align with the circumstances, needs, and interests of the victims. There are several primary aspects that require repositioning: Firstly, there is a need to introduce additional rights for victims, which include job training and placement, business capital assistance, living cost support, scholarships, transfer of victim guardianship, medical care, or placement in nursing homes, hospitals, or safe houses, as well as the right to stay in their homes (protection from eviction). These rights are crucial for victims of domestic neglect, given the nature of their suffering, which often necessitates financial independence or caregiving support.

Secondly, there's a pressing need to redefine negligence as one of the contributing factors to abandonment as per Indian regulations. This involves revising sanctions against offenders, namely formulating special minimum penalties as a demonstration of the state's commitment to eliminating all forms of normalized neglectful behavior, rather than imposing alternative criminal penalties, and prioritizing restitution or the transfer of the offender's assets to the victim. This measure would bolster the victim's bargaining position within their household, simultaneously challenging patriarchal norms and fostering a greater willingness among victims to report their experiences. Thirdly, it's essential to position women, men, children, the elderly, or anyone else as equally potential victims of neglect. Consequently, the phrase "especially against women" in the definition of domestic violence should be eliminated, reflecting the ongoing shift in household roles.

Fourthly, a tangible commitment from law enforcement agencies is crucial, which can be manifested by including domestic neglect offenses in their disclosure targets. This inclusion recognizes that the repercussions of domestic neglect can potentially drive victims to commit crimes. Fifthly, strengthening the legal structure of agencies or institutions capable of providing protection to victims is imperative. Such entities must incorporate the protection of domestic neglect victims into their annual work programs. Sixthly, there's a need to fortify the cultural legal framework by enhancing the legal awareness of both the general public and potential victims. This can be achieved through extensive education, offering rewards for informants, and establishing a whistleblowing system at the neighborhood level that connects directly with local police stations. The introduction of such an integrated reporting system would cultivate a

heightened sense of community vigilance, encouraging mutual oversight and promoting the reporting of neglect incidents.

V. Conclusion

From a regulatory perspective, three primary criteria define domestic neglect: failure to provide for the household, neglect in household care or maintenance, and economic dependency by restricting or prohibiting employment. However, there are limitations in the forms of legal protection and sanctions for perpetrators, which are not victim-oriented. The reality indicates that Act No. 23 of 2004, although a legal breakthrough, has not been able to provide optimal protection. Comparing the legal frameworks of Indonesia, India, and South Africa, all three nations have recognized the CRC and CEDAW at the international level. However, each country still requires refinements in their domestic neglect regulations and commitments. There are several aspects that can be referred to from regulations in India, especially concerning negligence, financial aid, and the right to stay at home. Indonesia needs to refer to the advantages of the South African Children's Act regulations which explicitly place children in care and protection if they experience various conditions of neglect.

Given the current and future relevance of this issue, several aspects need repositioning. Firstly, there's a need to expand victims' rights. Secondly, sanctions against perpetrators should be reformulated to include compensation, restitution or the transfer of the offender's assets to the victim, while recognizing the element of negligence. Thirdly, it's essential to recognize women, men, children, the elderly, or anyone as equally potential victims of neglect. Fourthly, domestic neglect offenses should be included in disclosure targets to ensure they are prioritized by law enforcement agencies. Fifthly, regional agencies or institutions capable of providing victim protection must incorporate domestic neglect victim protection into their annual work programs. Sixthly, strengthening the cultural legal framework is crucial. This can be achieved through extensive education and establishing a whistleblowing system. In the proposed suggestion for addressing domestic neglect centers on broadening victims' rights, offering job training, financial aid, and healthcare to facilitate recovery and independence. It recommends redefining penalties for perpetrators, focusing on financial restitution and asset transfers. The approach emphasizes recognizing neglect across all demographics, urging law enforcement to prioritize these cases, while the manuscript also advocates for incorporating victim protection in regional agency agendas for better localized responses. Finally, the paper emphasizes reinforcing the cultural and legal framework in Indonesia through educational programs, incentives for reporting neglect, and setting up community-level whistleblowing systems to proactively combat neglect.

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