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Criminalization Of The Crime Of Child Neglect In The Household

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Abstract

Domestic neglect is an omission offence that is difficult to prove and often leaves children as invisible victims. This study aims to describe the elements of Article 9 in conjunction with Article 49 letter a of Law Number 23 of 2004 on the Elimination of Domestic Violence, to evaluate the judges' reasoning on the status of the child in Soe District Court Decision Number 158/Pid.Sus/2014/PN. Soe, and to identify legal obstacles and an ideal construction for applying the provision. This is a normative legal study of a descriptive-analytical nature, using statute, case, and conceptual approaches, with secondary data collected through library research and processed qualitatively. The findings show that the elements of the offence are formally satisfied on the basis of the husband's maintenance obligation under the Marriage Law, but the court treated the child as part of the household without assessing the impact of school dropout or the restoration of the child's rights. Legal obstacles include the undefined formulation of neglect, evidentiary difficulties, the mistaken perception of the offence as a complaint-based offence, lenient penalties, and a restitution gap for children. An ideal application requires alternative charges under the Child Protection Law, reasoning oriented to the best interests of the child, and integrated recovery measures.

Keywords: Domestic neglect, omission offence, child protection, restitution.

A. Introduction

Children are a vulnerable group that has the right to full protection from the state, family, and society, as expressly guaranteed in Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that every child has the right to survival, growth, and development, as well as the right to protection from violence and discrimination.[1] The totality of these constitutional guarantees is strengthened by the ratification of the Convention on the Rights of the Child through Presidential Decree Number 36 of 1990, which affirms Indonesia's commitment to protect children from all forms of violence, abuse, and neglect.[2] However, the house that is ideally the safest space for children's growth and development often turns into a locus for the occurrence of Domestic Violence (KDRT),

[1] Indonesia, *Constitution of the Republic of Indonesia of 1945*, Article 28B paragraph (2).
[2] Indonesia, *Presidential Decree on the Ratification of the Convention on the Rights of the Child*, Presidential Decree No. 36 of 1990.

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which is any act that results in physical, sexual, psychological, and/or domestic suffering or neglect as defined in Article 1 paragraph (1) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT Law).[3]

Article 5 of the PKDRT Law classifies domestic violence into four forms, namely physical violence, psychological violence, sexual violence, and domestic neglect.[4] The provisions of domestic neglect are specifically regulated in Article 9, which distinguishes two main forms: paragraph (1) regulates neglect in the form of negligence in providing life, care, or maintenance to a person who according to law or agreement is obliged to provide maintenance; while paragraph (2) regulates the form commonly called economic violence, which is an act that results in economic dependence by limiting and/or prohibiting the victim from working properly so that the victim is under the economic control of the perpetrator.[5] The act of neglect is threatened with criminal sanctions in Article 49 letter a of the PKDRT Law with a maximum prison sentence of 3 (three) years or a maximum fine of Rp15,000,000.00 (fifteen million rupiah).[6]

Among the four forms of domestic violence, neglect in the domestic sphere has distinctive characteristics. In contrast to physical, psychological, or sexual violence which is an active act (*commission*) and is relatively easier to recognize and prove, neglect is an act of *omission* that is continuous *(continuing offence*) and often leaves no physical evidence. This characteristic makes neglect much more difficult to identify or prove in court. These difficulties are in line with the findings of the study of Kismala et al. which show that provisions on economic neglect and violence are still not effectively implemented by law enforcement officials due to limited legal awareness, socio-cultural norms that consider family financial affairs as a private domain, and the difficulty of proving the elements of economic dependence and control.[7]

The scale of the problem of domestic violence in Indonesia is very concerning. Data from the Ministry of Women's Empowerment and Child Protection (Kemen PPPA) through the Online Information System for the Protection of Women and Children (SIMFONI-PPA) recorded 19,628 cases of violence against children throughout 2024, with the number of victims reaching 21,648 children.[8] This trend will continue in 2025, where as of July 3, 2025, SIMFONI-PPA recorded 14,039 cases of violence against women and children, which were dominated by incidents in the domestic realm.[9] This formal reporting data was even admitted by the Minister of PPPA that only describes a small part of the actual conditions on the ground (*iceberg phenomenon*), considering that many victims do not feel safe to report. This condition is estimated to be much stronger in cases of neglect because of its

[3] Indonesia, *Law on the Elimination of Domestic Violence*, Law No. 23 of 2004, LN No. 95 of 2004, Article 1 paragraph (1).
[4] Ibid, Article 5.
[5] Ibid., Article 9 paragraphs (1) and (2).
[6] Ibid., Article 49 letter a.
[7] Tria Putri Kismala et al., "Why Economic Domestic Violence Remains Underenforced in Indonesian Criminal Law?," *UIR Law Review* (2024).
[8] Ministry of Women's Empowerment and Child Protection, "SYMFONI PPA v.3 Improves Women and Child Protection Services," Press Release, August 15, 2025.
[9] SIP Law Firm, "Building an Anti-Sexual Violence Culture through Prevention of Trafficking based on PP 30/2025," August 22, 2025.

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nature that lasts silently for a long time.[10] This picture is emphasized by the 2024 National Survey of Life Experiences of Children and Adolescents (SNPHAR) which revealed that around 11.5 million children or 50.78 percent of children aged 13–17 years in Indonesia have experienced at least one form of violence throughout their lives.[11]

The main factor that often underlies household neglect is family economic pressure, where the percentage of poor people in Indonesia in March 2025 is still recorded at 8.47 percent or equivalent to 23.85 million people.[12] From a criminological perspective, this condition is explained through *the strain* theory pioneered by Robert K. Merton and developed by Robert Agnew, that pressure due to the inability to meet economic needs produces negative emotions that if not managed properly have the potential to be channeled through neglect of responsibility for the weakest family member, namely children.[13]

The problem of the application of Article 9 of the PKDRT Law is concretely illustrated in the SoE District Court Decision Number 158/Pid.Sus/2014/PN. Soe.[14] This case prosecutes the defendant Eduard Tapatab who left his wife and four children since May 2013 without providing maintenance, which violated his husband's legal obligations under Article 34 of Law Number 1 of 1974 concerning Marriage.[15] As a result of the neglect, the victim's witness (wife) had to work alone in the garden, and the second child, MY (13 years old), had dropped out of school because he had to help his mother garden and work as a motorcycle taxi driver.[16] The Panel of Judges imposed a prison sentence of 7 months based on Article 49 letter a of the PKDRT Law.[17] However, in its legal considerations, the Panel of Judges placed the wife and children as a unit of "persons within the scope of the household" without giving special consideration to the impact of neglect on the right to education of children as vulnerable groups.[18] The judge's consideration was formalistic and ignored the position of the child as a victim who needed the restoration of rights.[19]

The legal framework for child neglect is basically complemented by Law Number 35 of 2014 concerning Child Protection and Law Number 12 of 2022 concerning the Crime of Sexual Violence.[20] In addition, the government has social protection instruments such as

[10] Ministry of Women's Empowerment and Child Protection, "Minister of PPPA: Many Women and Children Victims of Violence Do Not Dare to Report," Press Release, August 5, 2025.

[11] Antaranews, "Ministry of Agriculture: Prevalence of Violence Against Children in 2024 Increases Compared to 2021," October 7, 2024.

[12] Central Statistics Agency, "Percentage of poor population in March 2025 drops to 8.47 percent," Official News of Statistics, July 25, 2025.

[13] Robert K. Merton, "Social Structure and Anomie," *American Sociological Review* 3, no. 5 (1938): 672–682; Robert Agnew, "Foundation for a General Strain Theory of Crime and Delinquency," *Criminology* 30, no. 1 (1992): 47–88.

[14] SoE District Court, *Decision Number 158/Pid.Sus/2014/PN. Soe*.

[15] Indonesia, *Law on Marriage*, Law No. 1 of 1974, Law No. 1 of 1974, Article 34.

[16] SoE District Court, *Decision No. 158/Pid.Sus/2014/PN. Soe*, pp. 3–4.

[17] Ibid., pp. 22–23.

[18] Ibid., pp. 17–20.

[19] Indonesia, *Law on Amendments to Law No. 23 of 2002 concerning Child Protection*, Law No. 35 of 2014, Law No. 297 of 2014; Indonesia, *Law on the Crime of Sexual Violence*, Law No. 12 of 2022, Article 4.

[20] Indonesia, *Regulation of the Minister of Social Affairs on the Family Hope Program*, Permensos No. 1 of 2018, Article 1 paragraph (1).

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the Family Hope Program (PKH) based on the Regulation of the Minister of Social Affairs Number 1 of 2018 to overcome poverty in vulnerable families.[21] However, the existing legal instruments still place the perpetrator as the subject of criminal liability alone, without providing an affirmative mechanism for children who are indirect victims of economic neglect, and has not been synchronized with social assistance programs.

A number of previous studies have discussed the issue of neglect. Asliani's research focuses on the legal category and criminal responsibility of perpetrators in general without analyzing concrete case decisions and the position of children. Derman Giawa's research examines Decision Number 179/Pid.Sus/2021/PN.Tbt, but the considerations studied are limited to fulfilling formal elements without discussing in depth the position of children as the main victims.[22] Meanwhile, Santoso and Bachri's study reviews Article 9 of the PKDRT Law from a general and conceptual perspective without using case studies.[23]

The main limitation of previous studies is the absence of studies that specifically integrate the juridical analysis of the proof of the crime of omission of neglect in judicial practice with the position of children as indirect *victims*. The novelty (*scientific merit*) of this article lies in the in-depth analysis of the evidence of the elements of Article 9 juncto Article 49 letter a of the PKDRT Law in the Decision of the SoE District Court Number 158/Pid.Sus/2014/PN. Soe, to evaluate the extent to which the judge's consideration of children's rights and how criminal law enforcement can be harmonized with the restoration of children's rights.

Based on this background, this article explores legal issues through the following research questions: (1) How are the elements of the crime of neglect in the domestic sphere regulated according to Article 9 juncto Article 49 letter a of the PKDRT Law, and how is it applied in the SoE District Court Decision Number 158/Pid.Sus/2014/PN. Soe?; (2) What is the legal consideration of the Panel of Judges in proving the elements of domestic neglect related to the position of the child as part of the abandoned victim?; (3) What are the juridical obstacles in the enforcement of the crime of domestic neglect in Indonesia, and how ideally Article 9 is applied to provide adequate protection for children as victims?

B. Research Methods

This research uses a normative legal research method that focuses on literature studies to examine rules, norms, legal principles, and criminal doctrines related to neglect in the household scope.[24] This research applies three main approaches, namely the statute *approach*, the *case approach*, and the *conceptual approach*.[25] The legislative approach is used to analyze in depth the legal construction of domestic neglect as stipulated in Article

[21] Asliani, "Neglect of People as a Form of Domestic Violence Reviewed from Law Number 23 of 2004," *Insis Journal* (2022).

[22] Derman Giawa, "Juridical Analysis of Criminal Acts in Domestic Neglect (Study of Decision Number 179/Pid.Sus/2021/PN.Tbt)" (Thesis, Muslim University of Nusantara Al-Washliyah, 2024).

[23] Mochamad Agus Rizal Dwi Santoso and Syabbul Bachri, "A Review of Human Rights Regarding Article 9 of Law Number 23 of 2004," *Legal Journal* (2022).

[24] Peter Mahmud Marzuki, *Legal Research*, cet. 13 (Jakarta: Kencana, 2017), p. 35.

[25] Johnny Ibrahim, *Theory and Methodology of Normative Legal Research* (Malang: Bayumedia Publishing, 2006), p. 300.

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9 juncto Article 49 letter a of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, as well as its relationship with child protection norms in Law Number 35 of 2014 and the legal obligations of husbands based on Law Number 1 of 1974 concerning Marriage.[26] The case approach is applied by examining the evidence of the elements of delicacy and the ratio decidendi of the Panel of Judges in the SoE District Court Decision Number 158/Pid.Sus/2014/PN. SOE.[27] Meanwhile, a conceptual approach is used to dissect the construction of neglect as a *delicta omissionis*, a form of economic violence, and the position of children as *indirect victims*.[28]

The data sources used in this study consist of primary, secondary, and tertiary legal materials.[29] Primary legal materials include the Constitution of the Republic of Indonesia in 1945, Law Number 23 of 2004, Law Number 1 of 1974, Law Number 35 of 2014, Presidential Decree Number 36 of 1990 concerning the Ratification of the Convention on the Rights of the Child, as well as SoE District Court Decision File Number 158/Pid.Sus/2014/PN. SOE. Secondary[30] legal materials include criminal law and child protection textbooks, reputable scientific journals, previous research results, and the views of legal experts relevant to the issue of economic violence and family neglect. [31] Tertiary legal materials are in the form of legal dictionaries and the Great Dictionary of Indonesian Language (KBBI) which are used to provide interpretation of juridical terms that are not explicitly explained in primary legal materials.[32] The technique of collecting legal materials is carried out through *library research* by searching through laws and regulations, the Directory of Supreme Court Decisions, and scientific journal articles.[33]

The analysis technique applied is descriptive-analytical with a qualitative approach.11 At the descriptive stage, this study systematically describes the legal facts, the public prosecutor's indictment, and the judge's considerations in the SoE District Court Decision Number 158/Pid.Sus/2014/PN. SOE.12 At the analytical stage, the author evaluates the application of the elements of omission offenses, assesses the extent to which children's rights are considered in the amar and criminal considerations, and identifies juridical obstacles in law enforcement.13 Through this qualitative analysis, the study seeks to formulate a reconstruction of the application of Article 9 of the PKDRT Law that is more ideal and oriented towards the protection and restoration of the rights of children as victims.

[26] Indonesia, *Law on the Elimination of Domestic Violence*, Law No. 23 of 2004, LN No. 95 of 2004.
[27] SoE District Court, *Decision Number 158/Pid.Sus/2014/PN. SOE.*
[28] Robert Agnew, "Foundation for a General Strain Theory of Crime and Delinquency," *Criminology* 30, no. 1 (1992): 47–88
[29] Soerjono Soekanto and Sri Mamudji, *Normative Legal Research: A Brief Review* (Jakarta: RajaGrafindo Persada, 2003), p. 13.
[30] Indonesia, *Constitution of the Republic of Indonesia of 1945*, Article 28B paragraph (2).
[31] Tria Putri Kismala et al., "Why Economic Domestic Violence Remains Underenforced in Indonesian Criminal Law?," *UIR Law Review* (2024).
[32] Marzuki, *Legal Research*, p. 181.
[33] Soekanto and Mamudji, *Normative Law Research*, p. 24.

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C. Results and Discussion

The discussion is arranged following three problem formulations. The first part describes the construction of the elements of Article 9 in conjunction with Article 49 letter a of the PKDRT Law and examines its application in the SoE District Court Decision Number 158/Pid.Sus/2014/PN. Soe. The second part evaluates the legal considerations of the Panel of Judges related to the position of children. The third part maps the juridical obstacles and formulates the application of Article 9 that is more ideal for children as victims.

1. Juridical Construction of Neglect in the Household Scope and Its Application in the Decision of the SoE District Court

a. Elements of Article 9 juncto Article 49 letter a of the PKDRT Law

Article 9 paragraph (1) of the PKDRT Law prohibits everyone from abandoning a person within the scope of his household, even though according to the law that applies to him or because of consent or agreement he is obliged to provide life, care, or maintenance to that person. The violation is threatened by Article 49 letter a with a maximum prison sentence of 3 (three) years or a maximum fine of Rp15,000,000.00 (fifteen million rupiah).[34] Paragraph (2) formulates a different form, namely neglect that results in economic dependence by limiting and/or prohibiting the victim from working properly so that the victim is under the control of the perpetrator, who is threatened with the same penalty through Article 49 letter b. [35] This distinction is important for the case under review: the act charged against the Defendant was to ignore the obligation of maintenance (paragraph (paragraph (1)), not to restrict the victim to work (paragraph (paragraph (2)). The literature on economic violence cited in the introduction is therefore useful as a background, but cannot be directly used as a measure of proof of the elements of Article 49 letter a.

From this formulation, three elements can be identified, namely (1) each person; (2) abandoning people within the scope of their household; and (3) the existence of an obligation according to law or agreement to provide life, care, or maintenance. The third element determines the character of this crime. Criminal liability does not rest on active acts, but on the non-fulfillment of existing obligations, so that this crime is categorized as an omission offense. The consequences of proof are clear: the source of the obligation must be proven first, and then the neglect of the obligation. Without a clear source of obligation, "negligence" is only a moral judgment and has not yet become a criminal element.

The elements of the scope of the household are fulfilled by the husband, wife, and children as per Article 2 paragraph (1) letter a.[36] The source of the obligation "according to the applicable law" in this relationship is Article 34 paragraph (1) of the Marriage Law, which requires the husband to protect his wife and provide

[34] Indonesia, Law on the Elimination of Domestic Violence, Law No. 23 of 2004, Law No. 95 of 2004, TLN No. 4419, https://peraturan.bpk.go.id/Details/40597/uu-no-23-tahun-2004, Article 9 paragraph (1) and Article 49 letter a.

[35] Ibid, Article 9 paragraph (2)

[36] Ibid, Article 2 paragraph (1) letter a.

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all the needs of domestic life according to his ability, and Article 45 of the Marriage Law, which imposes on parents the obligation to maintain and educate children until the child marries or can stand alone, and the obligation remains valid even if the parents' marriage breaks down.[37] The obligation to children is also affirmed in Article 26 paragraph (1) of the Child Protection Law.[38] Two things from this construction are the key to the next analysis. First, the obligation to the child stands alone and does not depend on the marital status of his parents. Second, Article 34 paragraph (1) pairs the obligation of maintenance with the phrase "according to his ability", which opens up room for debate in proof.

b. Legal Facts and Application of Elements in the Decision

SoE District Court Decision Number 158/Pid.Sus/2014/PN. Soe was registered on October 27, 2014 and decided on January 22, 2015.[39] The facts revealed show that the Defendant Eduard Tapatab left his wife and four children since May 2013 without providing maintenance, even though the obligation was attached to the Defendant based on Article 34 of the Marriage Law. The wife had to work alone in the garden, and the second child with the initials MY (13 years old) dropped out of school because he helped his mother water vegetables and worked as a motorcycle taxi driver, with the proceeds used for the needs of his younger siblings.[40] The public prosecutor formulated the act as a violation of Article 49 letter a of the PKDRT Law,[41] and the Panel of Judges sentenced him to 7 (seven) months in prison.[42]

The application of the elements can be mapped sequentially. The element of "everyone" is fulfilled by the Defendant as a legal subject who is capable of being responsible. The element of "household scope" is fulfilled because the victim is the Defendant's wife and biological children; the witness MY himself explained that the Defendant is his biological father as well as his mother's husband, who is legally married in the church.[43] The element of legal obligation comes from Article 34 of the Marriage Law, while the element of "abandonment" is proven through the non-provision of alimony since May 2013. A critical note needs to be given to the statement that marriage is valid according to religion. Article 2 of the Marriage Law requires that marriage be valid according to religion as well as recorded, and unrecorded marital status has become the subject of study in relation to the protection of the PKDRT Law.[44] In this case, the issue does not

[37] Indonesia, Law on Marriage, Law No. 1 of 1974, Law No. 1 of 1974, Article 34 paragraph (1) and Article 45 paragraph (1)–(2), published in the Database of BPK JDIH Regulations, https://peraturan.bpk.go.id.

[38] Indonesia, Law on Amendments to Law No. 23 of 2002 concerning Child Protection, Law No. 35 of 2014, Law No. 297 of 2014, Article 26 paragraph (1), https://peraturan.bpk.go.id/Details/38723/uu-no-35-tahun-2014.

[39] SoE District Court, Decision Number 158/Pid.Sus/2014/PN. Soe, Directory of Decisions of the Supreme Court of the Republic of Indonesia, https://putusan3.mahkamahagung.go.id (accessed October 16, 2026).

[40] Ibid, pp. 3-4.

[41] Ibid, excerpt of indictment [p. 3]

[42] Ibid, pp. 22-23.

[43] Ibid, testimony of Witness MY [p. 14]

[44] Law No. 1 of 1974, Article 2 paragraphs (1) and (2); see also Peter Jeremiah Setiawan et al., "Juridical Implications of Unregistered Marriage Against Legal Protection in the Domestic Violence Law," Media Iuris 6, no.

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shake the element of obligation, because the obligation to the biological child remains inherent through Article 26 paragraph (1) of the Child Protection Law. In cases with weaker facts, the source of the obligation to the wife can be debated.

The most interesting aspect of the construction of the consideration is the way the panel treats the divorce case. The defendant himself is the plaintiff in the civil case No. 24/Pdt.G/2014/PN. Soe against his wife, who in the criminal case has the status of a victim. According to the available consideration excerpts, because the civil case is just waiting for the verdict, the defendant and the victim are still seen as one household.[45] The Verdict Directory records the civil verdict dated February 9, 2015, which is after the criminal verdict, and contains the register Number 46/Pdt/2015/PT Kpg which seems to be a continuation of the case at the appellate level.[46]

This reasoning can be justified as long as it concerns the wife. Divorce can only be carried out in front of a court session, so as long as the divorce has not been decided and has permanent legal force, the obligation of Article 34 of the Marriage Law remains attached to the Defendant. However, the[47] reach of this reasoning is limited. It stops at the status of the husband-wife relationship and does not touch on the fact that the obligation to the child is independent and continues after the divorce (Article 45 paragraph (2)). In other words, civil cases are used to determine whether the wife is still a victim, not to ensure that the rights of the child are fulfilled. Formally, the application of elements in this decision is not problematic. This explains why this decision was referred to by the Prosecutor's Office as an example of the criminalization of neglect of people within the scope of the household.[48] The problem is not in the fulfillment of the element, but in the measure used: the element is proven from the point of view of support for the wife and child as a whole. The following section tests the extent to which the measure is sufficient for the child.

2. Legal Considerations of the Panel of Judges and the Position of Children as Victims

a. Children in Facts, Charges, and Evidence

In this verdict, the child is present in three positions. First, as part of the "person within the scope of the household" who is referred to as the wife. Second, as a fact: dropping out of school and working as a motorcycle taxi driver is

3 (2023): 457– 478, https://doi.org/10.20473/mi.v6i3.43219.

[45] SoE District Court Decision No. 158/Pid.Sus/2014/PN. Soe, consideration of case No. 24/Pdt.G/2014/PN. Soe

[46] Directory of Supreme Court Decisions of the Republic of Indonesia, search results with case number 24/Pdt.G/2014/PN. Soe and 46/Pdt/2015/PT Kpg, https://putusan3.mahkamahagung.go.id (accessed October 16, 2026).

[47] Law No. 1 of 1974, Article 39 paragraph (1) and Article 45 paragraph (2).

[48] The Prosecutor's Office of the Republic of Indonesia, Hello JPN, answers to questions about sanctions for parents who let their children drop out of school, November 24, 2025, https://halojpn.kejaksaan.go.id/publik/d/permohonan/2025-LSYH.

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contained in the description of the Defendant's actions.[49] Third, as a witness: MY was examined without being oathed. This examination without oath is in line with the Criminal Code in force at the time of examination, which exempts children under the age of fifteen from the obligation to take an oath, but with the consequence that his statement can only be used as an instruction.[50] This position contains a paradox of proof. Children are the most direct source of information about the impact of neglect because they are the ones who bear the loss of schooling, but the evidentiary value of their statements is the weakest, so the element of impact must be supported by other evidence.

The Assembly's legal considerations, as reflected on pages 17–20 of the decision, place the wife and children as a single "person within the scope of the household" without any special consideration of the impact of neglect on the child's right to education.[51] The fact of dropping out of school that has been contained in the description of the act is not processed into a separate consideration, both about the consequences of the act and about the restoration of the child's rights. This approach is formalistic: what is examined is whether or not there is a waiver of alimony obligations, not who bears the consequences and how those consequences are restored.

Such assessments need to be weighed fairly. First, the judge is bound by the indictment: the deliberations of the assembly are based on the indictment and everything that is proven at the hearing.[52] Based on the available citations, the Defendant's actions were formulated as a violation of Article 49 letter a of the PKDRT Law and there was no alternative charge based on the Child Protection Law.[53] With such an indictment, the frame of the case is domestic neglect, not child neglect, so that some of the weaknesses in the child's perspective in the actual consideration are upstream of the indictment. Second, the verdict was handed down in January 2015, before the issuance of the mechanism for implementing restitution for the victim's child (see 2.3). Criticism therefore needs to be directed at the law enforcement structure as a whole, not just at the assembly.

b. Consequences of Choosing Articles on Child Protection

The choice of article determines how much space is available for child protection. Table 1 compares the formulation of neglect in the PKDRT Law with the provisions of child neglect in the Child Protection Law.[54]

[49] SoE District Court Decision No. 158/Pid.Sus/2014/PN. Soe, pp. 17-20.

[50] Indonesia, Law on Criminal Procedure Law, Law No. 8 of 1981, LN No. 76 of 1981, TLN No. 3209, Article 171 letter a and its Explanation.

[51] SoE District Court Decision No. 158/Pid.Sus/2014/PN. Soe, pp. 17–20.

[52] Law No. 8 of 1981, Article 182 paragraph (4).

[53] SoE District Court Decision No. 158/Pid.Sus/2014/PN. Soe, excerpt of the indictment and public prosecutor's demands [p. ...].

[54] Law No. 23 of 2004, Article 9 paragraph (1), Article 10, Article 49 letter a, and Article 50; Law No. 35 of 2014, Article 1 number 6, Article 59, Article 71D, Article 76B, and Article 77B.

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Table 1. Comparison of the Formulation of Neglect in the PKDRT Law and the Child Protection Law.

Aspects	PKDRT Law (Article 9 juncto Article 49 letter a)	Child Protection Law (Article 76B in conjunction with Article 77B)
Protected resources	Persons within the scope of the household (husband, wife, children, and other persons as per Article 2)	Child, i.e. someone who is not yet 18 years old
Summary of deeds	Abandoning people within the scope of the household even though according to the law or agreement it is obligatory to provide life, care, or maintenance	Placing, allowing, involving, or instructing children to be involved in situations of mistreatment and neglect
Criminal threats	Imprisonment for a maximum of 3 years or a maximum fine of IDR 15,000,000.00	Imprisonment for a maximum of 5 years and/or a maximum fine of IDR 100,000,000.00
Additional penalties and redressals	Additional penalties under Article 50 (restriction of movement or rights of perpetrators, counseling); victims' rights Article 10	Special protection (Article 59); restitution of Article 71D for the category of victim's child mentioned in paragraph (1)
Definition of neglect	Not defined in the torso	"Abandoned Child" is defined in Article 1 number 6

Source: processed from Law No. 23 of 2004 and Law No. 35 of 2014

This comparison shows two things. First, the criminal threat of Article 49 letter a is alternative and lower, which is a maximum of 3 years or a fine of Rp15,000,000.00, while Article 76B juncto Article 77B allows a maximum prison sentence of 5 years and/or a fine of Rp100,000,000.00. The 7-month sentence imposed in this case is less than one-fifth of the maximum threat of Article 49 letter a (36 months). This figure is not intended to assess the crime as too light in the abstract, because the judge is authorized to weigh the concrete circumstances, but it shows that when the loss of a child in the form of school

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dropout becomes a fact, the sentencing framework chosen does not reflect the severity of the consequences. Second, the Child Protection Law has a definition of an abandoned child and a special protection device that the PKDRT Law does not have. The Prosecutor's Office itself, in its public answer regarding parents who let their children drop out of school, mapped the problem in Article 76B juncto Article 77B of the Child Protection Law.[55]

The choice between the two provisions is not entirely free. The Criminal Code in force at the time of the decision of the Criminal Code provides that the acts included in several criminal rules are subject to only one, namely the most severe criminal threat, while the special criminal rules override the general rule.[56] Whether the neglect of maintenance of the wife and children is one act or several acts is debatable. Section 3.2 therefore proposes an alternative, not cumulative, charge as the safest middle ground.

c. Criminalization That Does Not Reach Child Rehabilitation

As long as the amar referred to on pages 22–23 is only a prison sentence of 7 months.[57] There is no additional penalty as provided for in Article 50 of the PKDRT Law, namely restrictions on the movement or certain rights of the perpetrator and the determination of the perpetrator to participate in the counseling program,[58] nor does there appear to be a mechanism that ensures that child support is fulfilled after the verdict. Here there is a paradox of the criminalization of neglect: sanctions that remove the perpetrator from his job and income actually reduce his ability to fulfill the obligations he has violated. The PKDRT Law itself aims, among other things, to maintain the integrity of a harmonious and prosperous household.[59] Short-term imprisonment without rehabilitation conditions is difficult to relate to that goal. A viable alternative has been available since 2015: conditional sentences can be imposed against a maximum prison sentence of one year, and judges can set special conditions in the form of compensation for criminal acts within a certain time.[60]

The 7-month penalty in this case is within this limit. The low enforcement of additional criminal counseling in the practice of handling domestic violence is also noted in the latest study.[61] In terms of recovery, the child's right to restitution has also not been reached. The Child Protection Law provides the right to restitution to child victims in a category called Article 71D paragraph (1), namely letters b, d, f, h, i, and j of Article 59 paragraph (2): children who are in conflict with the law, children who are economically and/or sexually exploited,

[55] Prosecutor's Office of the Republic of Indonesia, Hello JPN, answer November 24, 2025.
[56] Criminal Code (Wetboek van Strafrecht), Article 63 paragraphs (1) and (2), as applicable at the time the case was decided (hereinafter the old Criminal Code).
[57] SoE District Court Decision No. 158/Pid.Sus/2014/PN. Soe, pp. 22–23.
[58] Law No. 23 of 2004, Article 50.
[59] Ibid., Article 4 letter d.
[60] The old Criminal Code, Article 14a paragraph (1) and Article 14c paragraph (1).
[61] Sukendar, "Between Law and Reality: The Implementation Gaps of Indonesia's Domestic Violence Law," Indonesian State Law Review 9, no. 1 (2026): 1–33, https://doi.org/10.15294/islrev.v9i1.35169.

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victims of pornography, victims of kidnapping and trafficking, victims of physical and/or psychological violence, and victims of sexual crimes.[62] The category of child victims of mistreatment and neglect is contained in Article 59 paragraph (2) as a separate category, but does not include the letters referred to in Article 71D paragraph (1). The implementing provision, Government Regulation Number 43 of 2017, was only issued about two years and nine months after this decision was decided,[63] and a study by the Center for Review, Data Processing and Information of the Secretary General of the House of Representatives of the Republic of Indonesia assessed that the PP did not contain a mechanism if the perpetrator refused or did not pay restitution.[64] The path of merging a lawsuit for damages in criminal cases is available in the Criminal Code,[65] but it does not appear that this route is considered in this decision. In conclusion, the child in this case is seen in the facts but not heard in the consideration and amar. The panel meets the procedural law demands, but the punishment remains oriented to the perpetrator and the husband-wife relationship, not to the recovery of the child.

3. Juridical Constraints and Ideal Construction of the Application of Article 9 for Children as Victims

a. Juridical Constraints in Law Enforcement

1) The formulation of norms that do not explain themselves. The PKDRT Law does not define "abandonment", does not define the measure of "life, care, or maintenance", and views neglect as equivalent to economic violence without adequate explanation, thus opening up double interpretations in law enforcement.[66] Recent studies confirm that despite its explicit recognition in Article 9 economic violence is still poorly enforced due to limited legal awareness, socio-cultural norms that view household financial affairs as a private domain, and the difficulty of proving economic dependence and control. [67] This ambiguity contrasts with the Child Protection Law which defines abandoned children as children whose needs are not met in a reasonable way, both physically, mentally, spiritually, and socially.36 The formulation of the Child Protection Law provides a

[62] Law No. 35 of 2014, Article 59 paragraph (2) and Article 71D paragraph (1)

[63] Indonesia, Government Regulation on the Implementation of Restitution for Children Who Are Victims of Criminal Acts, Government Regulation No. 43 of 2017, LN No. 219 of 2017, signed October 16, 2017, https://setkab.go.id/ppditeken-kini-anak-korban-tindak-pidana-berhak-peroleh-restitusi/.

[64] Center for Review, Data Processing and Information of the Secretariat General of the House of Representatives of the Republic of Indonesia, Brief Info IX, no. 21/I/P3DI/November 2017, https://berkas.dpr.go.id/pusaka/files/info_singkat/Info%20Singkat-IX-21-I-P3DINovember-2017-215.pdf.

[65] Law No. 8 of 1981, Article 98 paragraph (1).

[66] Rahel Octora dan Fauzan M., "Financial Exploitation by Spouse, a Crime in Private Space: An Overview based on Indonesian Legal System," dalam Proceedings of the 1st International Conference on Emerging Issues in Humanity Studies and Social Sciences (ICE-HUMS) (SCITEPRESS, 2021), 322–328, https://doi.org/10.5220/0010751500003112.

[67] Tria Putri Kismala et al., "Why Economic Domestic Violence Remains Underenforced in Indonesian Criminal Law?," UIR Law Review 10, no. 1 (2026), https://journal.uir.ac.id/index.php/uirlawreview/article/view/25734.

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benchmark for demonstrable impact, while the PKDRT Law only points to obligations without a benchmark for their fulfillment.

2) Proof of omission and limited evidence. Neglect does not leave a wound that can be divided, even though the practice of handling domestic violence is considered to be too reliant on visum et repertum as the main evidence.[68] Evidence must be built from other evidence, and the Criminal Procedure Code requires at least two valid pieces of evidence plus the judge's conviction.[69] In cases where the victims are wives and small children, the available witnesses are generally family members, and the testimony of children under fifteen years old are only of clue value. Supporting evidence in the form of documents, such as school statements about school dropouts, evidence of the absence of alimony, and information about the defendant's work and income to answer the phrase "according to his ability", because it becomes decisive. The absence of evidence of the perpetrator's economic ability can be a defense gap in alimony offenses.
3) The perception of complaint offenses and the placement of neglect as a private matter. Textually, complaint offenses in the PKDRT Law are limited to physical violence, psychological violence, and sexual violence between husband and wife as per Article 51, Article 52, and Article 53. Article 49 is not included in it, so neglect is an ordinary offense that can be processed without a complaint from the victim.[70] However, some literature and practice still treat it as a complaint offense. Giawa's study of Decision Number 179/Pid.Sus/2021/PN.Tbt noted that the perception of the PKDRT Law as a complaint offense is still one of the reasons why the police are not actively handling neglect,[71] and the mainstream legal media has also referred to neglect as a complaint offense. [72] This perception is met with the finding that patriarchal and religious norms continue to normalize domestic violence as a private matter.[73] For children, the consequences are serious: if the process depends on the mother's courage to report, the child's interests are tied to the decisions of the adults who are economically dependent.
4) The threat of minor criminal charges and the absence of a binding recovery instrument. Sukendar's study concluded that the PKDRT Law regulates sanctions that are light, not in line with the Criminal Procedure Code and the Sexual Violence Crime Law, and weak in the implementation of

[68] Sukendar, "Between Law and Reality."
[69] Law No. 8 of 1981, Article 183 and Article 184 paragraph (1).
[70] Law No. 23 of 2004, Article 51, Article 52, and Article 53.
[71] Derman Giawa, "Juridical Analysis of Criminal Acts in Domestic Neglect (Study of Decision Number 179/Pid.Sus/2021/PN.Tbt)" (Thesis, Muslim Nusantara Al-Washliyah University, 2024), https://repository.umnaw.ac.id/jspui/bitstream/123456789/4962/7/235114072_File7.doc.
[72] Hukumonline, "Chase Your Livelihood to the Court," https://www.hukumonline.com/berita/a/kejarlahnafkah-sampai-ke-pengadilan-hol17429.
[73] Sukendar, "Between Law and Reality."

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counseling. For child neglect, the weakness is exacerbated by the restitution gap in Article 71D paragraph (1) and by Government Regulation Number 43 of 2017 which does not contain a solution if restitution is not paid, as described in section 2.c.

5) Fragmentation of the criminal law process and transition period. This case runs parallel to the criminal and civil routes, while social recovery has no meeting point with both. The PKDRT Law gives victims the right to services and assistance,[74] but there is no mechanism that links criminal judgments to the fulfillment of child support or access to social protection programs. The problem has only arisen since January 2, 2026, when the National Criminal Code (Law Number 1 of 2023), Law Number 1 of 2026 concerning Criminal Adjustment, and the 2025 Criminal Procedure Code came into force.[75] Based on the regulatory status of the BPK JDIH, the provisions of the Child Protection Law that are declared invalid by the National Criminal Code are Article 81 paragraph (1) and Article 82, while Article 76B and Article 77B are not listed in it, and the PKDRT Law is still in effect.[76] The impact of criminal adjustments to these provisions still requires a separate study. The cases that are being studied are decided based on the old Criminal Code and the Criminal Code.

b. Ideal Construction of the Application of Article 9 for Child Protection

Based on the mapping above, the application of Article 9 that is more ideal for children as victims can be formulated in four interrelated steps.

First, the indictment that places the child as a victim in itself. The public prosecutor needs to identify from the investigation whether the child has experienced real consequences, such as dropping out of school or working to support the family. If there is, the indictment should be prepared alternately between Article 49 letter a of the PKDRT Law and Article 76B in conjunction with Article 77B of the Child Protection Law.[77] An alternative form was chosen because double punishment for one act is limited by the provisions of the competition, and alternative indictments allow the panel to test which framework best matches the facts without locking the case to a lesser threat from the start.

Second, the judge's consideration has the perspective of the best interests of the child. The best interests of the child are the main consideration in any

[74] Law No. 23 of 2004, Article 10 and Article 43; see also Indonesia, Government Regulation on the Implementation and Cooperation of Recovery of Victims of Domestic Violence, Government Regulation No. 4 of 2006.

[75] Supreme Court of the Republic of Indonesia, "Reading the Decision of the Narcotics Cassation in Early 2026," Marinews, https://marinews.mahkamahagung.go.id/artikel/membaca-putusan-kasasi-narkotika-di-awal-tahun-2026- 0YO; Indonesia, Law on the Criminal Code, Law No. 1 of 2023, Article 624, https://peraturan.bpk.go.id/Details/234935/uu-no-1-tahun.

[76] BPK JDIH Regulation Database, "Regulatory Status" of Law No. 35 of 2014, https://peraturan.bpk.go.id/Details/38723/uu-no-35-tahun-2014, and Law No. 23 of 2004, https://peraturan.bpk.go.id/Details/40597/uu-no-23-tahun-2004 (accessed October 16, 2026).

[77] Law No. 35 of 2014, Article 76B and Article 77B.

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action concerning the child according to the Convention on the Rights of the Child, which was ratified through Presidential Decree No. 36 of 1990 and became a principle in the Child Protection Law. In practice, this means that the panel contains explicit considerations about the consequences of child neglect, makes those consequences part of the assessment of aggravating circumstances, and considers the type of crime that does not eliminate the perpetrator's ability to provide for himself when it is appropriate to the concrete circumstances. Under the National Criminal Code, the crime of supervision and the crime of social work are among the main crimes, so the room for criminalization that maintains the perpetrator's income is increasingly open. This approach does not apply absolutely: if the perpetrator escapes, is not in good faith, or is able but deliberately does not provide support, the prison sentence remains relevant.

Third, integrated child rehabilitation. Judges and public prosecutors need to take advantage of the additional penalty of Article 50 of the PKDRT Law, inform the victim of the right to restitution or compensation, and refer the family to victim recovery services and social protection programs discussed in the introduction. This referral is important because criminalization without a referral to rehabilitation risks transferring the economic burden from the perpetrator to the victim's family, especially in economically vulnerable households.

Fourth, reformulation of norms and synchronization. De lege ferenda, four improvements are worth considering: (i) provide an official definition or explanation of "neglect" and a benchmark of "life, care, or maintenance" by referring to the definition of abandoned children in the Child Protection Law; (ii) affirm in the explanation that Article 49 is an ordinary offense; (iii) include children who are victims of mistreatment and neglect in the list of restitution recipients in Article 71D paragraph (1) and complete Government Regulation Number 43 of 2017 with a mechanism if restitution is not paid; and (iv) examine the alignment of the PKDRT Law and the Child Protection Law with the National Criminal Code and the new Criminal Code, including the position of the child's testimony as both a witness and a victim.

This analysis rests on a single first-instance verdict and is therefore not intended to be generalized as an overview of judicial practice as a whole. An assessment of the judge's consideration is also limited to the content of the published verdict; unwritten considerations, such as an assessment of the Defendant's economic condition at trial, cannot be assessed. Further research can compare some neglect judgments with and without Child Protection Act charges to test whether differences in the framework of indictments result in differences in sentencing and rehabilitation for children.

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D. Conclusions and Recommendations

First, Article 9 juncto Article 49 letter a of the PKDRT Law formulates neglect as an omission offense with three elements: each person, abandoning a person within the scope of the household, and the existence of a legal obligation or agreement to provide life, care, or maintenance. In the SoE District Court Decision Number 158/Pid.Sus/2014/PN. Soe, these elements were formally fulfilled through Article 34 of the Marriage Law and the fact that the Defendant had not provided maintenance since May 2013. The application is valid according to procedural law, but the elements are proven from the point of view of the husband-wife relationship, not from the point of view of the parents' independent obligations to the child.

Second, the Panel of Judges considered that the child was part of the "person within the scope of the household" without assessing the impact of neglect on the right to education. The child appeared as a fact and witness, but not as a victim whose rights were restored. This weakness also stemmed from the indictment that was only based on the PKDRT Law and from the 7-month prison sentence without additional punishment or a recovery mechanism.

Third, the main juridical constraints include the formulation of norms that do not define neglect, the difficulty of proving omissions, the misperception that neglect is a complaint offense, light criminal threats, and restitution loopholes for children who are victims of neglect. Ideal implementation requires indictments that position the child as a separate victim, judges' considerations that are oriented to the best interests of the child, and integrated rehabilitation.

Based on these findings, the author recommends the following. The public prosecutor needs to prepare an alternative indictment between Article 49 letter a of the PKDRT Law and Article 76B juncto Article 77B of the Child Protection Law when the child experiences real consequences, and complement the evidence with documentary evidence. The judge needs to contain explicit considerations about the impact on children, utilize the additional penalties of Article 50 of the PKDRT Law, and consider the form of punishment that does not eliminate the perpetrator's ability to provide for his or her livelihood. Lawmakers need to clarify the definition of neglect in the PKDRT Law, affirm its nature as an ordinary offense, include child victims of neglect in Article 71D paragraph (1) of the Child Protection Law, and complete Government Regulation Number 43 of 2017 with a mechanism if restitution is not paid. Alignment with the National Criminal Code and the new Criminal Code also needs to be reviewed. Follow-up research should compare several neglect decisions so that the findings of this one decision can be tested more broadl.

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