

Moral Dilemma of Legal Protection for Children Victims of Parental Neglect from The Perspective of Substantive Justice

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Abstract

Child neglect by biological parents is one form of violation of children's rights that still frequently occurs in society and raises both legal problems and moral dilemmas, particularly when children must seek legal protection against their own parents. This study aims to analyze the legal regulation of child neglect by biological parents under Indonesian positive law and to examine the moral dilemma in legal protection for neglected children from the perspective of substantive justice. This research applies legal protection theory, children's rights theory, and parental responsibility theory as the theoretical framework. The method used is normative legal research with statutory and case approaches. The results show that the legal regulation concerning child neglect has been clearly stipulated in the Child Protection Law and the Law on the Elimination of Domestic Violence; however, in practice, legal protection for neglected children has not been fully effective due to cultural and psychological barriers that discourage children from taking legal action against their parents. This study concludes that legal protection for neglected children should be directed toward a substantive justice approach that places the best interests of the child as the primary consideration. Therefore, it is recommended that the government and law enforcement agencies strengthen child protection mechanisms that are more responsive and child-friendly.

INTRODUCTION

Child neglect constitutes one of the most serious violations of children's rights because it reflects a failure to fulfill the fundamental needs that should be guaranteed by parents, families, and the state. Child neglect is not limited to the failure to provide physical necessities such as food, clothing, and adequate shelter, but also includes the neglect of emotional needs, education, and the psychological development of the child. Such conditions may lead to long-term consequences, including mental developmental disorders, low educational attainment, and difficulties in adapting to the social environment.¹ In essence, child neglect can be categorized as a form of passive violence that is often not immediately visible, yet its impact can be as severe as that of physical abuse. From the perspective of Indonesian law, child neglect is a prohibited act that may result in criminal sanctions. Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 on Child Protection emphasizes that every child has the right to protection from all forms of violence and neglect. This provision demonstrates that children are recognized as legal subjects whose rights must be protected by the state. Furthermore, Law Number 23 of 2004 concerning the Elimination of Domestic Violence stipulates that neglect of family members, including children, constitutes a form of domestic violence that may be subject to criminal penalties. Therefore, child neglect is not merely viewed as a failure of parents to fulfill their obligations but rather as an unlawful act with legal consequences.

Parents are fundamentally the primary and foremost parties responsible for providing protection, care, and fulfillment of children's needs. In the context of child development, parental roles are crucial in shaping a child's character, self-confidence, and social abilities through the provision of affection, attention, and proper guidance.² Consequently, the law places parents as the main parties responsible for nurturing, caring for, educating, and protecting children, as stipulated in Article 26 of the Child Protection Law. However, in practice, not all parents are able to fulfill these obligations properly. Some parents commit acts of neglect, whether physically, emotionally, or financially, despite the fact that such obligations have been explicitly regulated in statutory provisions. Child neglect is not always associated solely with economic limitations. It may also arise from family disharmony, divorce, a lack of parental understanding of children's needs, or an indifferent attitude toward parental responsibilities. In many cases, neglect occurs when parents provide only material support without sufficient

¹ Hurlock, Elizabeth B. *Psikologi Perkembangan*. Jakarta: Erlangga, 2002.

² Santrock, John W. *Child Development*. New York: McGraw-Hill, 2011.

emotional care and attention, or conversely, when they fail to fulfill the child's basic needs altogether. This situation indicates that child neglect is a complex issue that involves not only economic factors but also social and cultural dimensions.

Although legal instruments clearly regulate the protection of children from neglect, social and cultural barriers still exist in practice. Within society, there remains a widespread perception that children do not have the legal basis to bring claims against their own parents. This view is influenced by patriarchal cultural values and traditional doctrines that place parents in a position of authority that must be respected and should not be challenged.³ As a result, child neglect is often considered an internal family matter that should not be resolved through legal channels, even though such acts clearly violate children's rights. This condition creates a moral dilemma for children who are victims of neglect. On one hand, social norms and cultural values teach that children must respect their parents, and therefore taking legal action against parents is often perceived as an act of disobedience or defiance of social norms. On the other hand, the law guarantees that children are legal subjects who have the right to protection when parents fail to fulfill their responsibilities.⁴ This dilemma causes many child victims of neglect to hesitate in claiming their rights, even when they suffer significant harm.

Constitutionally, Article 28B paragraph (2) of the 1945 Constitution of the Republic of Indonesia affirms that every child has the right to survival, growth, and development, and is entitled to protection from violence and discrimination. This protection is further reinforced by the Convention on the Rights of the Child, which was ratified by Indonesia through Presidential Decree Number 36 of 1990. These provisions indicate that child protection is a state obligation that cannot be neglected, including ensuring access to justice for children who are victims of neglect. Nevertheless, legal protection for children who are victims of neglect in practice still tends to focus primarily on the formal application of legal norms. An approach that places excessive emphasis on legalistic aspects often fails to provide effective protection for children as victims. In several cases, neglected children still encounter difficulties in obtaining justice due to psychological, social, and cultural barriers that influence their willingness and courage to report their own parents. This condition demonstrates that formal legal protection alone is insufficient to fully address the actual needs of child protection.

These issues highlight the importance of a substantive justice approach in legal protection for children who are victims of neglect. Substantive justice emphasizes that

³ Megawangi, Ratna. *Membiarkan Berbeda?.* Bandung: Mizan, 1999.

⁴ Rahardjo, Satjipto. *Ilmu Hukum.* Bandung: Citra Aditya Bakti, 2000.

the law should not only focus on the formal application of rules but must also ensure real protection for vulnerable parties, including children as a vulnerable group. From this perspective, the law must be capable of balancing respect for parents as a moral value within society with the protection of children's rights as legal subjects. Based on these problems, this study aims to analyze the moral dilemma in legal protection for children who are victims of neglect by their biological parents and to examine how the law can realize substantive justice for children as victims. This research is expected to contribute to the development of studies on child protection by emphasizing the importance of a substantive justice approach that not only focuses on the formal application of legal norms but also prioritizes real protection for the best interests of the child.

METHODS

This study employs a normative legal research method that focuses on examining legal norms governing the legal protection of children as victims of neglect by their biological parents. Normative legal research is conducted by reviewing statutory regulations, legal doctrines, and scientific literature related to child protection and parental obligations within the framework of Indonesian positive law.⁵ In this research, several approaches are applied, namely the statutory approach, conceptual approach, and case approach.

The statutory approach is used to analyze various legal provisions related to the protection of children from neglect, particularly Law Number 35 of 2014 concerning Child Protection and Law Number 23 of 2004 concerning the Elimination of Domestic Violence,⁶ in order to determine the extent to which these legal instruments provide protection for children who are victims of neglect. The conceptual approach is employed to examine legal concepts related to the protection of children's rights, the status of children as legal subjects, parental obligations, and the concept of substantive justice within the legal protection system. Meanwhile, the case approach is carried out through the examination of several cases of child neglect that have occurred in Indonesia in order to understand how legal provisions are implemented in judicial practice.

The legal materials used in this study consist of primary, secondary, and tertiary legal sources. Primary legal materials include statutory regulations related to child protection. Secondary legal materials consist of books, scientific journals, and previous research

⁵ Soekanto, Soerjono, dan Sri Mamudji. *Penelitian Hukum Normatif*. Jakarta: RajaGrafindo Persada, 2001.

⁶ Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Kencana, 2017.

findings relevant to the research topic. Meanwhile, tertiary legal materials include legal dictionaries and encyclopedias that help clarify the legal terminology used in the study.⁷

The technique for collecting legal materials is conducted through library research, by collecting, reviewing, and classifying various legal sources relevant to the object of the research. Furthermore, all collected legal materials are analyzed using a qualitative juridical analysis method by interpreting, describing, and correlating statutory provisions, legal theories, and phenomena occurring in practice. This analytical process aims to produce conclusions that are systematic, logical, and scientifically accountable.

RESULTS AND DISCUSSION

1. Legal Regulations on Child Abandonment by Biological Parents in Indonesian Positive Law

a. Regulation of Child Neglect in the Child Protection Law

Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 on Child Protection constitutes the primary legal instrument regulating the protection of children from various forms of violence, including neglect. This law places children as legal subjects who possess the right to protection and the fulfillment of their basic needs in order to ensure their survival and optimal development. Therefore, child neglect is not merely viewed as a failure of parents to fulfill their responsibilities, but also as a violation of children's rights as guaranteed by law.

The Child Protection Law emphasizes that every child has the right to live, grow, and develop, as well as to receive protection from violence and discrimination. In order to guarantee the fulfillment of these rights, Article 26 of the Child Protection Law stipulates that parents have the obligation and responsibility to nurture, care for, educate, and protect their children, as well as to support the child's development in accordance with their abilities, talents, and interests. If these obligations are not properly fulfilled, parents may be considered to have violated their legal responsibilities toward the child.

The Child Protection Law also explicitly prohibits child neglect through Article 76B, which states that every person is prohibited from placing or allowing a child to remain in a situation of neglect. As a consequence of this prohibition, Article 77B stipulates criminal sanctions in the form of imprisonment for a maximum of five years and/or a fine of up to IDR 100,000,000 for perpetrators of child neglect. These provisions indicate that the state provides repressive legal protection for children who are victims of neglect through the application of criminal law.

⁷ Soekanto, Soerjono. *Pengantar Penelitian Hukum*. Jakarta: UI Press, 2006.

The implementation of these provisions can be observed in a case of child neglect that occurred in Jakarta in 2019, where a mother was legally prosecuted for neglecting her two children, resulting in malnutrition and the lack of proper access to education. The case was prosecuted under Article 76B in conjunction with Article 77B of the Child Protection Law, as the parent was considered to have deliberately allowed the children to remain in a condition of neglect. In addition, financial neglect frequently occurs in practice, for example when parents fail to provide financial support to their children despite having a legal obligation to do so. Such circumstances indicate that the obligation to provide financial support is an integral part of parental legal responsibility, and its violation may be categorized as a form of child neglect.

b. Regulations on Child Neglect in the Law on the Elimination of Domestic Violence

In addition to being regulated in the Child Protection Law, child neglect is also addressed in Law Number 23 of 2004 concerning the Elimination of Domestic Violence. This law considers neglect as one form of domestic violence that can cause suffering to victims, including children as family members who are in a vulnerable position. From the perspective of the Domestic Violence Law, domestic violence is not limited to physical violence but also includes psychological violence, sexual violence, and neglect within the household. Therefore, child neglect is viewed as a form of non-physical violence that can disrupt the welfare and development of the child.

The provision regarding neglect within the household is stipulated in Article 9 paragraph (1) of the Domestic Violence Law, which states that every person is prohibited from neglecting individuals within their household when, according to the law, they are obligated to provide livelihood, care, or maintenance. In the relationship between parents and children, this provision indicates that parents have a legal obligation to fulfill the basic needs of their children, such as food, clothing, shelter, education, and health care. If these obligations are intentionally ignored, parents may be considered to have committed neglect, which falls under the category of domestic violence.

Criminal sanctions against perpetrators of neglect are regulated in Article 49 of the Domestic Violence Law, which stipulates a maximum penalty of three years' imprisonment or a fine of up to IDR 15,000,000. This provision demonstrates that child neglect is not merely a private family matter but rather an unlawful act that can be prosecuted under criminal law.

The implementation of these provisions can be seen in a case that occurred in Surabaya in 2021, where a father was legally prosecuted for failing to provide financial support for his children after a divorce, which was categorized as neglect within the household. In addition, neglect may also occur in the form of ignoring a child's basic

needs, such as failing to provide adequate food, shelter, or health care. These cases demonstrate that child neglect under the Domestic Violence Law encompasses both financial neglect and the failure to fulfill the child's fundamental needs.

c. Weaknesses in Legal Protection for Child Victims of Neglect in Practice

Although Indonesian positive law has provided relatively clear regulations regarding the protection of children from neglect through the Child Protection Law and the Law on the Elimination of Domestic Violence, in practice the legal protection afforded to children who are victims of neglect has not yet been fully effective. Various social and psychological factors often become obstacles to law enforcement, resulting in many cases of child neglect not reaching the legal process. This condition indicates that legal protection for child victims of neglect still tends to be formal in nature and has not fully provided real protection for children as victims. One of the main weaknesses in the legal protection of child victims of neglect is the prevailing public perception that child neglect is a family matter that should preferably be resolved internally. This view causes many cases of child neglect not to be reported to law enforcement authorities even when children experience severe and concerning conditions. Child neglect is frequently regarded as a private issue that should not be brought into the legal domain, leading communities to be reluctant to report neglect occurring in their surroundings. As a result, many children remain in neglected conditions without receiving adequate legal protection.

In addition, children who are victims of neglect themselves rarely report their parents to law enforcement authorities. This situation arises because children are still under the care and authority of their parents and remain dependent on them for their daily needs. Children often feel that they have no alternative but to continue living with their parents even when experiencing neglect. Consequently, child victims of neglect tend to remain passive and lack the courage to seek legal protection. Cultural barriers also constitute an important factor affecting legal protection for child victims of neglect. In Indonesian society, the relationship between children and parents is strongly influenced by cultural values that emphasize the obligation of children to respect their parents. These social norms often place parents in a position that appears beyond challenge by their children. As a result, when children report their parents, such actions are frequently perceived as acts of disobedience or defiance. Such cultural perspectives indirectly hinder efforts to provide legal protection for child victims of neglect, as children feel bound by social norms requiring them to remain obedient to their parents.

In addition to cultural barriers, psychological obstacles also affect children who experience neglect. Children who are neglected often face internal emotional conflicts

because they must confront parents who should be the source of protection and affection. Feelings of fear, anxiety, and emotional dependence on parents frequently discourage children from reporting acts of neglect. These psychological conditions may limit the willingness and courage of children to pursue justice through legal channels. The weaknesses in legal protection for child victims of neglect can also be observed through various cases occurring within society. In several instances, children have been found living in neglected conditions without reports being submitted to law enforcement authorities because surrounding communities considered such situations to be private family matters. As a result, these children continue to live in inadequate conditions without receiving intervention from the state. This situation demonstrates that the existence of statutory regulations alone does not automatically guarantee effective legal protection for children who are victims of neglect. Moreover, there are cases in which children who suffer neglect do not dare to report their parents despite experiencing harmful treatment. Children often fear losing their place of residence or facing anger and retaliation from their parents if they report the neglect. This condition illustrates that psychological barriers and children's dependence on their parents significantly contribute to the low rate of reporting child neglect cases.

The legal regulation of child neglect by biological parents in Indonesian positive law, as stipulated in the Child Protection Law and the Law on the Elimination of Domestic Violence, reflects the state's efforts to provide legal protection for children as a vulnerable group. However, the effectiveness of such protection needs to be examined through theoretical approaches in order to determine the extent to which the law has provided optimal protection for child victims of neglect. From the perspective of legal protection theory, the regulation of child neglect in Indonesian positive law essentially reflects both preventive and repressive forms of legal protection. According to Philipus M. Hadjon, preventive legal protection aims to prevent legal violations through the establishment of legal norms, while repressive legal protection aims to resolve violations through law enforcement mechanisms.⁸ In the context of child neglect, preventive protection can be seen in the regulation of parental obligations under Article 26 of the Child Protection Law and the prohibition of neglect under Article 76B. Meanwhile, repressive legal protection is reflected in the criminal sanctions stipulated in Article 77B of the Child Protection Law and Article 49 of the Law on the Elimination of Domestic Violence.

Nevertheless, the weaknesses in legal protection for child victims of neglect indicate that the protection provided still places greater emphasis on formal aspects rather than

⁸ Hadjon, Philipus M. *Perlindungan Hukum bagi Rakyat di Indonesia*. Surabaya: Bina Ilmu, 1987.

substantive aspects. The existence of statutory regulations does not necessarily guarantee that children who experience neglect will obtain real protection. This is evident from the large number of neglect cases that remain unreported or are not processed legally due to social and psychological barriers. Such conditions indicate that legal protection for child victims of neglect has not fully achieved the objectives of legal protection as described in legal protection theory.

From the perspective of Children's Rights Theory, child neglect constitutes a violation of children's rights as legal subjects. This theory places children as individuals whose rights must be respected, protected, and fulfilled by the state, society, and family.⁹ According to John Eekelaar's classification of children's rights, child neglect represents a violation of both provision rights and protection rights. Provision rights include the child's right to basic needs such as food, education, and health care, while protection rights include the right to protection from harmful treatment, including neglect.¹⁰ Various cases of child neglect demonstrate that children's rights are often not fulfilled despite being legally guaranteed. Children who do not receive financial support following their parents' divorce experience violations of their rights to maintenance and welfare, while children who are denied access to education suffer violations of their right to education. Similarly, children living in neglected conditions without proper care experience violations of their right to life and optimal development. These conditions illustrate that normative recognition of children's rights has not always been followed by their practical fulfillment.

Furthermore, from the perspective of the theory of parental obligations, child neglect represents a failure of parents to fulfill their legal responsibilities toward their children. Parents fundamentally have the primary obligation to nurture, care for, educate, and protect their children, as emphasized in Article 26 of the Child Protection Law. These obligations are not merely moral responsibilities but also legal duties that bind parents toward their children. The theory of parental obligations emphasizes that the relationship between parents and children is a relationship of responsibility that cannot be neglected, as parents are the primary parties responsible for ensuring the welfare of their children. Child neglect reflects a violation of these responsibilities, whether in the form of failure to provide financial support, failure to provide education, or failure to provide protection

⁹ Freeman, Michael. *The Rights and Wrongs of Children*. London: Frances Pinter, 1983.

¹⁰ Eekelaar, John. "The Interests of the Child and the Child's Wishes." *International Journal of Law and the Family*, 1994.

and affection. Therefore, child neglect is not only a violation of children's rights but also a violation of parents' legal obligations.

Based on this analysis, it can be understood that the legal regulation of child neglect in Indonesian positive law has normatively provided a relatively clear basis for the protection of children as victims. However, in practice, legal protection for child victims of neglect still faces various obstacles that prevent the full realization of children's rights. Therefore, efforts are needed to strengthen legal protection that not only focuses on the existence of legal norms but also emphasizes the real fulfillment of children's rights and the enhancement of parental responsibility in fulfilling their obligations. Based on the description of the legal regulation of child neglect in Indonesian positive law and its analysis through legal protection theory, children's rights theory, and parental obligation theory, the author argues that legal protection for child victims of neglect in Indonesia normatively already has a relatively adequate legal basis. Both the Child Protection Law and the Law on the Elimination of Domestic Violence clearly regulate parental obligations, the prohibition of neglect, and criminal sanctions for perpetrators of child neglect. Therefore, from a normative standpoint, there is no legal vacuum regarding the regulation of child neglect by biological parents.

However, the main problem in protecting child victims of neglect does not lie in the lack of legal norms but rather in the weak implementation of legal protection in practice. The existence of laws prohibiting neglect has not fully provided effective protection for children as victims. This can be seen from the continued prevalence of child neglect cases that remain unreported or unprocessed legally because they are perceived as internal family matters. Such conditions indicate that legal protection for child victims of neglect remains largely normative and formal rather than substantively oriented toward real protection. The author argues that one of the fundamental weaknesses in legal protection for child victims of neglect lies in the persistent legal paradigm that views the family as a private sphere that should not be excessively interfered with by the state. This paradigm often causes law enforcement authorities to adopt a passive stance and wait for reports before taking legal action, even though children as victims of neglect frequently lack the ability to report their own parents. Consequently, many children remain in neglected conditions despite legal guarantees protecting their rights.

Furthermore, the author argues that legal protection for child victims of neglect remains overly focused on imposing criminal sanctions on perpetrators without being balanced by adequate protection mechanisms for children as victims. In many cases, legal proceedings against parents who neglect their children do not automatically ensure that the children receive proper care and protection after the legal process concludes. This

condition indicates that the current legal protection approach tends to prioritize punishment of perpetrators rather than the recovery and welfare of the child victims. From the perspective of Children's Rights Theory, the author believes that legal protection for child victims of neglect should place greater emphasis on fulfilling children's rights as the primary priority. Children should not merely be regarded as objects of legal protection but must be recognized as legal subjects who have the right to a dignified life. Therefore, the state should not only act as a law enforcer against perpetrators of neglect but also as a responsible actor ensuring that children's rights are genuinely fulfilled.

The author also argues that the approach to legal protection for child victims of neglect should be directed toward the implementation of substantive justice. Legal protection that merely focuses on the formal application of legal norms is insufficient to ensure the welfare of children as victims. Substantive justice requires that the law provide tangible protection by ensuring that children are no longer left in conditions of neglect after legal proceedings have taken place. Thus, the success of legal protection for child victims of neglect should not only be measured by the imposition of sanctions on perpetrators but also by the fulfillment of children's rights as victims. Furthermore, the author argues that the state must assume a more active role in protecting children who are victims of neglect through protection mechanisms that are more responsive and child-friendly. The state should not merely wait for reports from victims or the community but should develop protection systems that allow for early detection of cases of child neglect. Such an approach is necessary considering that children who experience neglect often occupy a vulnerable position and lack the ability to advocate for their own rights. Therefore, the author concludes that legal protection for child victims of neglect in Indonesia still requires strengthening through a substantive justice approach that places the best interests of the child as the primary objective. Legal protection for children who are victims of neglect should not only focus on enforcing legal norms but must also ensure the real fulfillment of children's rights and enhance the responsibility of the state in protecting children as a vulnerable group.

2. Moral Dilemma of Legal Protection for Child Victims of Neglect from the Perspective of Substantive Justice

a. The Moral Dilemma of Child Victims of Neglect in Suing Their Parents

In Indonesian society, children are generally taught to respect and obey their parents as a highly valued moral obligation. This value is rooted in religious teachings and social norms that place parents as figures who must be respected and obeyed. Consequently, actions taken by children to report their parents are often perceived as behavior that

contradicts prevailing moral norms within society. Such perceptions frequently lead to children who attempt to claim their rights being labeled as disobedient or disrespectful toward their parents. This social stigma creates pressure for children who are victims of neglect, causing them to remain silent even when they experience harmful treatment. Moreover, the influence of patriarchal culture, which places parents in a dominant position of authority within the family, further strengthens parental power. As a result, children often feel that they lack the ability to challenge their parents' actions, including in situations where they experience neglect.

This moral dilemma creates an internal conflict for children who are victims of neglect. On the one hand, children have the legal right to obtain protection; on the other hand, they feel bound by the moral obligation to respect their parents. Such conflicts often generate feelings of fear and guilt, leading children to delay or avoid seeking legal protection. This moral dilemma can be observed in several cases within society. In one case, a child reported their parents due to neglect, but the action triggered negative reactions from the surrounding community, which perceived the child as being disrespectful toward their parents. In another case, a child was expelled from home by their parents but did not dare to report the incident out of fear of losing family ties or their place of residence. These cases demonstrate that moral and psychological pressures can significantly hinder children from asserting their rights as legal subjects.

b. Conflict Between Moral and Legal Norms

From the perspective of legal norms, children are recognized as legal subjects who possess rights guaranteed by statutory regulations. Law Number 35 of 2014 concerning Child Protection affirms that every child has the right to receive protection from all forms of violence and neglect. This provision demonstrates that the state provides legal guarantees for children to obtain protection when their rights are violated, including when such violations are committed by their own biological parents. Furthermore, Law Number 23 of 2004 concerning the Elimination of Domestic Violence also provides a legal basis for law enforcement against parents who commit acts of neglect within the household. Therefore, Indonesian positive law clearly grants legitimacy for children to obtain legal protection from acts of neglect. However, these legal norms often encounter moral norms that develop within society. Moral norms place parents as figures who must be respected and obeyed by children under all circumstances. Respect for parents is regarded as a non-negotiable moral obligation, and therefore actions taken by children to bring claims against their parents are frequently perceived as behavior that contradicts prevailing moral standards. Such moral norms often make it difficult for children who

are victims of neglect to utilize the available legal protection because they fear being perceived as disrespectful toward their parents.

The conflict between legal norms and moral norms can be observed in various cases within society. In several cases of child neglect, children who experienced neglect were unwilling to report their parents to law enforcement authorities despite suffering harmful conditions. Children often feel afraid of the reactions of their parents as well as social pressure from their surroundings if they report such neglect. This condition illustrates that moral norms can act as barriers to the implementation of legal norms in the protection of children who are victims of neglect. Moreover, there are cases in which families attempt to conceal incidents of child neglect in order to prevent them from being processed legally. In some situations, family members or relatives encourage settlement through internal family discussions on the grounds of maintaining the family's reputation. As a result, cases of child neglect are not reported to law enforcement authorities even when children are in conditions requiring protection. This situation indicates that moral norms emphasizing family harmony are often used as justification to avoid legal proceedings.

The conflict between legal norms and moral norms demonstrates that legal protection for children who are victims of neglect does not depend solely on the existence of statutory regulations but is also influenced by the social values that develop within society. Legal norms aim to provide objective protection for children's rights, whereas moral norms often emphasize the obligation of children to continue respecting their parents even when they experience neglect. Therefore, a legal protection approach is required that is capable of balancing respect for parents as a moral value with the protection of children's rights as legal subjects. This normative conflict further indicates that legal protection for children who are victims of neglect requires an approach that is not solely oriented toward the formal application of law but also takes into account the social and cultural conditions of society. Such an approach is essential to ensure that legal protection for children can be implemented effectively without disregarding the moral values that exist within the community.

c. Legal Protection for Children from a Substantive Justice Perspective

Substantive justice is a concept of justice that emphasizes that the law must provide real protection for vulnerable and disadvantaged parties. Unlike formal justice, which focuses primarily on the procedural application of legal rules, substantive justice requires that the law deliver protection that corresponds to the actual needs of victims. In the context of child neglect, this approach demands that the law not only punish the

perpetrators but also ensure the fulfillment of the child's basic needs and guarantee that the child is able to live a decent and dignified life.

The substantive justice approach is particularly important because children constitute a vulnerable group that has a high level of dependence on adults and often lacks the capacity to advocate for their own rights. Therefore, the state is not only obligated to establish statutory regulations but must also ensure that legal protection can genuinely be experienced by children as victims. Such protection should prioritize the best interests of the child through the provision of tangible safeguards, such as temporary shelters, social assistance and counseling, as well as guaranteed access to education and health services.

The need for a substantive justice approach can be observed in various cases of child neglect that continue to occur despite the existence of legal frameworks. In several instances, children have been found living in conditions of malnutrition and lacking access to proper education without prompt intervention from authorities or the community to provide protection. These circumstances demonstrate that the mere existence of legal regulations does not necessarily guarantee effective protection when it is not accompanied by active involvement from the state.

Therefore, legal protection for children who are victims of neglect should not rely solely on legal proceedings. It also requires the active involvement of the state in preventing and addressing child neglect so that children do not remain in harmful conditions while waiting for legal protection to take effect.

d. Legal Protection for Child Victims of Neglect Based on Substantive Justice

Ideal legal protection for children who are victims of neglect must be oriented toward the best interest of the child. This principle emphasizes that every policy and legal action related to children should prioritize the protection and welfare of the child as the primary objective. In the context of child neglect, ideal legal protection is not limited to the imposition of criminal sanctions against parents who neglect their children, but must also ensure that the child receives proper care, education, health services, and a safe environment to grow and develop. Protection based on the best interest of the child represents the application of substantive justice, which places the child as the party that must be prioritized in every legal process.

A substantive justice approach also requires the state to play an active role in providing protection for children who are victims of neglect. The state is not only obligated to establish statutory regulations but must also ensure that legal protection mechanisms are accessible and effective for children. The presence of the state can be manifested through various policies, such as the establishment of child protection

institutions, child-friendly complaint services, legal and social assistance, and the provision of temporary shelters for neglected children. Without active state involvement, children who are victims of neglect often lack the ability to obtain legal protection independently.

The moral dilemma in legal protection for children who are victims of neglect is not only reflected in the conflict between legal norms and moral norms but also arises in various concrete situations that place the interests of the child, parents, and the state in opposing positions. In practice, this moral dilemma can be observed in several forms that illustrate the complexity of protecting neglected children from the perspective of substantive justice.

First, there is a conflict between the criminal punishment of parents and the psychological interests of the child. Child neglect is often committed by biological parents who are supposed to serve as the primary caregivers. The state has an obligation to prosecute perpetrators of neglect through criminal law mechanisms as a form of protection for the child. Criminal sanctions against parents can provide legal certainty and demonstrate that neglect is an unacceptable act. However, on the other hand, the imprisonment of parents may create psychological consequences for the child, such as the loss of a caregiving figure, feelings of guilt, and emotional trauma due to family separation. This condition indicates that legal protection through punishment does not always produce the best outcome for the child. From the perspective of substantive justice, justice is not measured solely by the imposition of sanctions on perpetrators but also by the extent to which legal actions provide tangible benefits for the well-being of the child as the victim.

Second, there is a conflict between legal certainty and social justice. Not all cases of child neglect occur because parents intentionally ignore their responsibilities. In many cases, neglect arises from structural poverty, economic incapacity, or low levels of education that prevent parents from adequately meeting their children's basic needs. If the law is applied strictly in a formalistic manner, parents in such conditions may still be punished because they are considered to have committed neglect. However, from the perspective of substantive justice, this situation indicates that child neglect is not always solely the result of individual wrongdoing but is also related to the failure of the state to ensure social welfare. Therefore, punishing parents without considering social and economic factors may create injustice, because the state also bears responsibility for ensuring that children's basic needs are fulfilled through social welfare policies.

Third, there is a conflict between state protection and family autonomy. State intervention in cases of child neglect often takes the form of legal measures such as social

supervision, restriction of custody rights, or even revocation of parental authority. These measures are essentially intended to protect children from conditions that threaten their safety and well-being. Nevertheless, state intervention in family affairs is sometimes perceived as excessive interference in the private sphere of family life and may create social stigma for both the child and the parents. From the perspective of substantive justice, protection for children must be carried out effectively yet proportionally, ensuring that state intervention is not overly repressive while still safeguarding the safety and welfare of the child.

From these various dilemmas, it can be understood that legal protection for children who are victims of neglect requires a more contextual approach. Substantive justice focuses on outcome-based justice, the protection of vulnerable groups, and approaches that take into account the social and psychological conditions of the child as a victim. In the context of neglected children, substantive justice means prioritizing the best interests of the child, emphasizing the recovery of the child's condition, and avoiding legal approaches that focus solely on formal procedures.

To address these moral dilemmas, a more comprehensive legal protection approach is required. Such an approach can be implemented through the application of restorative justice and diversion, the incorporation of psychological considerations within child-related judicial processes, and social welfare interventions before imposing criminal sanctions on parents. In addition, the active role of judges is essential in applying progressive legal interpretation that prioritizes the best interests of the child so that legal protection for children who are victims of neglect can be realized in a more just and humane manner.

CONCLUSION

Based on the findings of this research, it can be concluded that the legal regulation concerning child neglect by biological parents within Indonesian positive law essentially has a clear and comprehensive legal foundation. This is reflected in various statutory provisions, particularly Law Number 35 of 2014 concerning Child Protection and Law Number 23 of 2004 concerning the Elimination of Domestic Violence, which regulate children's rights to obtain protection from acts of neglect, the obligations of parents to nurture, care for, and protect their children, the prohibition of neglect, as well as the imposition of criminal sanctions against perpetrators of neglect. Therefore, from a normative perspective, it can be stated that there is no legal vacuum in the regulation of protection for children who become victims of neglect by their biological parents. Nevertheless, in practice, such legal protection has not been implemented optimally.

Child neglect is often still perceived as an internal family matter and therefore rarely brought into the legal domain. In addition, low public legal awareness, cultural factors that position family relations as a private sphere, and psychological barriers experienced by child victims contribute to the rarity of reported neglect cases. As a result, the available legal protection tends to remain formal in nature and has not fully provided real and effective protection for children as victims.

Furthermore, from the perspective of substantive justice, legal protection for children who are victims of neglect also faces a complex moral dilemma. This dilemma arises from the tension between legal norms and moral values prevailing in society. On the one hand, legal norms grant legitimacy to children as legal subjects who are entitled to protection from all forms of neglect. On the other hand, prevailing moral norms require children to respect and preserve the reputation of their parents, which often creates an internal conflict for children when they must pursue their rights through legal channels. This dilemma is also reflected in the conflict between the criminal punishment of parents as perpetrators and the psychological interests of children as victims, between the principle of legal certainty and the demands of social justice, as well as between the role of the state in providing legal protection and the principle of family autonomy. Therefore, within the framework of substantive justice, legal protection for child victims of neglect should not merely focus on the formal application of legal norms and the imposition of criminal sanctions against perpetrators. Instead, such protection must ensure tangible safeguards by placing the best interests of the child as the primary priority. This can be realized through the active role of the state in providing responsive, accessible, and child-friendly legal protection mechanisms, thereby enabling legal protection for children who are victims of neglect by their biological parents to be implemented more effectively, humanely, and justly.

Based on the results of this study, it is recommended that legislators and the government strengthen protection mechanisms for child victims of neglect that are more responsive and oriented toward the best interests of the child, particularly through the provision of legal protection services that are accessible, efficient, and child-friendly. Furthermore, law enforcement authorities are expected to be more proactive in handling cases of child neglect without merely waiting for reports from victims, considering that children are often in vulnerable positions and may lack the capacity to assert their rights independently. On the other hand, society and families also need to increase legal awareness that child neglect is not merely a private family matter but rather a legal violation that has serious implications for the future of the child and therefore requires collective attention and responsibility.

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