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The Attempt to Fulfill Restitution for Victims of Domestic Abandonment Crimes

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Abstract

Imprisonment basically can not accommodate the economic losses suffered by the victims of domestic abandonment. Legal protection for victims should also focus on restoring the economic losses incurred during the abandonment. Therefore, this article focus on efforts to fulfil restitution to victims of domestic abandonment as the manifestation of the fulfilment of victim's right. Statute approach and case approach are used in this normative legal research, thus the data is collected using library research. This article focuses on the description of legal protection and efforts to fulfil restitution which are studied in detail based on positive law in Indonesia. The problems were analysed using Gustav Radburch's legal theory on the principle of priority in three legal objectives. The research results indicate that the crime of domestic abandonment is a complaint crime. So that only victims of domestic abandonment can make complaints to investigators. Legal protection for victims can be realised by restitution fulfilment as the rights of them by submitted the restitution request. The restitution request must be submitted before or after a court verdict. It is expected that the fulfilment of restitution will accommodate the economic losses suffered by victims during abandonment.

Keywords: Restitution; Legal Protection; Domestic Abandonment.

1. INTRODUCTION

A household is a family relationship established through a legal marriage agreement. One of the purposes of the marriage as mentioned in The Law Number 1 of 1974 about Marriage is to become a happy and intact household. It is the dream of all families because it is not rare in a family life violence occurs, which is certainly not justified. There are four types of violence in a household refer to The Law Number 23 of 2004 about Elimination of Domestic Violence (hereinafter referred to as The PKDRT Law) and one of them is the domestic abandonment. The PKDRT Law has clearly stated that one type of prohibition of domestic violence is domestic abandonment.¹ Although it is often said that the existence of domestic abandonment cases often considered not to be part of violence.

In Indonesia, the domestic abandonment cases always occur every year. SIMFONI PPA reported that in 2021 there were 2,290 (two thousand two hundred and ninety) cases of abandonment; in 2022 there were 2,243 (two thousand two hundred and forty three) cases of abandonment; and in 2023 there were 1,836 (one thousand eight hundred and thirty six) cases of abandonment.² Referring to the data, it can be seen that for the last three years, the cases of abandonment have decreased. However, until these days, the

¹ Laiqah Nur Ahadiyah and Rosalia Dika Agustanti, "Konsep Perlindungan Hukum Korban Pemaksaan Kehamilan Dalam Rumah Tangga," in *5TH NATIONAL CONFERENCE on Law Studies 2023*, 2023, 610–32.

² Kementerian Pemberdayaan Perempuan dan Perlindungan Anak, "Sistem Informasi Online Perlindungan Perempuan dan Anak (SIMFONI PPA)," 2024, <https://kekerasan.kempppa.go.id/ringkasan>.

existence of abandonment cases has always been a crucial issue in Indonesia.³ A perpetrator of domestic abandonment is someone who does not fulfill his or her obligation to provide for his or her household and causes the victim to be abandoned.⁴ Based on the court verdict, until these days, men is always became the perpetrator in the case of domestic abandonment. But it should be remembered that cases of domestic abandonment are genderless.⁵ It can be said that in this case, husbands, wives, and children have the same potential to become victims of domestic abandonment.⁶

There are several previous studies on the issue of domestic abandonment, such as research conducted by Fitriani, who analyzed The Court Verdict Number: 20/Pid.Sus/2019/PN.Lrt and found that the application of imprisonment for three months was considered inappropriate because the judge overlooks the provisions of Article 4 letter d of The PKDRT Law.⁷ Then there is also research conducted by Ulfi Ana Khaira, Ferdy Saputra, and T. Saifullah, further examining the weaknesses and advantages of sanctions against perpetrators based on Article 49 of The PKDRT Law and concluding that the imposition of criminal penalties is considered to have more advantages than imprisonment.⁸ The last research was conducted by Nuruzzaman Al-Hakimi and it was concluded that the imprisonment imposed was so low that it was difficult to make the defendant feel deterrent for the criminal acts they had committed. Judges need to give more attention to the restoration of victims' rights through the application of restitution.⁹

It can be seen that the three studies above have examined the weaknesses of the application of imprisonment for perpetrators of domestic abandonment and there are studies that recommend applying restitution to the perpetrators. However, these studies have not specifically examined restitution, so this article focuses on describing attempts to fulfill restitution for victims as an effort to restore economic losses due to abandonment. Victims are entitled to obtain and apply for restitution as stated in the provisions of Article 19 of Government Regulation No. 7/2018 concerning the

³ Mohammad Mohammad, Adriana Pakendek, dan Zainurrafiqi Zainurrafiqi, "Kekerasan dalam Rumah Tangga dalam Perspektif Hukum dan Hak Asasi Manusia di Desa Tlanakan Kecamatan Tlanakan Kabupaten Pamekasan," *Jurnal Abdi Masyarakat Indonesia* 3, no. 2 (2023): 689–96, <https://doi.org/10.54082/jamsi.721>.

⁴ Maurice Rogers et al., "Analisis Yuridis Terhadap Tindak Pidana Penelantaran Orang Dalam Lingkup Rumah Tangga (Studi Putusan Nomor: 2062/Pid.Sus/2018/PN-MDN)," *Jurnal Ilmiah Simantek* 4, no. 2 (2020): 211–18.

⁵ Khrisna Hadiwinata et al., "Penyuluhan dan Pendampingan Pencegahan Kekerasan dalam Rumah Tangga Bagi Ibu-Ibu PKK Kelurahan Ketawanggede Kota Malang," *Jurnal Pengabdian Mandiri* 2, no. 9 (2023): 1837–42.

⁶ M.Z Alfaruqy and E.S Indrawati, "Kata maaf, apakah berarti damai? Relasi pasangan suami-istri di pusran kekerasan dalam rumah tangga," *Jurnal Insight Fakultas Psikologi Universitas Muhammadiyah Jember* 18, no. 1 (2022): 16–30, <https://doi.org/10.32528/ins.v.>

⁷ Fitriani Fitriani, "Penjatuhan Pidana Penjara Bagi Penelantaran Rumah Tangga," *Jurnal Yudisial* 14, no. 3 (2022): 395, <https://doi.org/10.29123/jy.v14i3.448>.

⁸ Ulfi Ana Khaira, Ferdy Saputra, and T Saifullah, "Penelantaran Rumah Tangga Oleh Suami Sebagai Bentuk Kekerasan Dalam Rumah Tangga Ditinjau Dari UU Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga," *Jurnal Ilmiah Mahasiswa Fakultas Hukum Universitas Malikussaleh* 5, no. 1 (2022): 59–67, <https://doi.org/10.29103/jimfh.v5i1.6569>.

⁹ Nuruzzaman Al Hakimi, "Putusan Hakim yang Ideal dalam Tindak Pidana Penelantaran Rumah Tangga (Studi Putusan Nomor: 943/Pid.B/2015/PN.PLG dan Putusan Nomor: 252/Pid.Sus/PN.KAG)," *Lex LATA Jurnal Ilmiah Ilmu Hukum*, no. 252 (2022): 292–304, <https://doi.org/http://dx.doi.org/10.28946/lexl.v4i3.1755>.

¹² Provision of Compensation, Restitution, and Assistance to Witnesses and Victims (hereinafter referred to as PP No. 7/2018).¹⁰ Based on this, it is necessary to make an attempt to fulfill economic damages to victims. Referring to the previous background, this article analyzes the legal protection for victims of domestic abandonment and the attempt to fulfill restitution for victims of domestic abandonment. It is hoped that through this restitution fulfillment effort, it can accommodate the economic losses suffered by victims.

⁵⁰ 2. METHOD

This article is a normative legal research uses a statutory approach and a case approach, such as reviewing various regulations related to this discussion and analyzing cases that refer to court verdicts that contains final legal force (*inkracht*).¹¹ This article describes the problem by processing secondary data which includes The PKDRT Law, The PP No. 7/2018, and other regulations as primary legal materials which are the main sources of this article; reviewing books, journals, and scientific articles as secondary legal materials that are credible so that it can become references in this article; and the Indonesian Dictionary (KBBI) which is used as tertiary legal material in this article. The data is obtained through library research and analyzed using descriptive writing techniques.

3. RESULTS AND DISCUSSION

⁴⁶ 3.1 The Legal Protection for Victims of Domestic Abandonment

Legal protection for victims in cases of domestic abandonment is one of the main priorities to do although the data indicates that abandonment cases have the lowest number of cases compared to other types of domestic violence cases. Law enforcement officials, together with the community, should be able to understand the definition of the crime of domestic abandonment as referred to in The PKDRT Law. However, so far, The PKDRT Law only includes a few provisions regarding domestic abandonment. So in this article, it is essential to elaborate further on the criminal act of domestic abandonment.

¹⁰ Referring to the provisions of Article 9 of The PKDRT Law,¹² abandonment is an act that causes a person to be abandoned by not providing life, maintenance, and/or care to the victim.¹³ A person can also be said to be a perpetrator of domestic abandonment when the perpetrator leaves and/or ignores the victim without providing sustenance to the victim, who should be under his or her responsibility

¹⁰ Putri Tamara Amardhotillah and Beniharmoni Harefa, "Pemberian Restitusi Sebagai Pelaksanaan Diversi Pada Perkara Pidana Anak," *Jurnal Ius Constituendum* 8, no. 1 (2023): 34, <https://doi.org/10.26623/jic.v8i1.6238>.

¹¹ Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum: Normatif dan Empiris* (Depok: Prenadamedia Group, 2018).

¹² Pemerintah Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga," 2004.

¹³ Siti Mutmainnah et al., "Bentuk Penelantaran Rumah Tangga sebagai Kekerasan dalam Rumah Tangga dalam Perspektif Yuridis dan Viktimologi," *Jurnal Hukum dan Administrasi Publik* 1, no. 2 (2023): 71–84, <https://doi.org/https://doi.org/10.61813/jhap.v1i2.52>.

and economically dependent on the perpetrator. Thus, referring to the provisions of Article 9 of The PKDRT Law, it is hereby emphasized that the indicator of neglect described in this paper is any person who causes a person's life to be abandoned because of their actions by not providing care, such as caring with affection;¹⁴ maintenance, such as guarding from danger;¹⁵ sustenance, such as money or revenue that can be used to fulfill basic needs;¹⁶ and not fulfilling the basic needs of people who are under their responsibility, such as food, clothing, and so on.¹⁷ If this happens, it can be said that they have basically committed a criminal act in the form of domestic abandonment.

According to Law No. 1 of 1974 about Marriage, it can be said that the husband is the one who is responsible for providing protection and all the needs of his household life based on his ability.¹⁸ Referring to this, it can be said that if the husband does not fulfill this responsibility, he has already become the perpetrator of the crime of domestic abandonment. However, in line with the description in the introduction above, it should be recalled that basically, the victim of domestic abandonment is not only experienced by a wife because The PKDRT Law categorizes perpetrators of domestic abandonment based on their actions and not based on gender. So with this, a husband basically also has the potential to become a victim of domestic abandonment because basically everyone has the potential to become a victim.

Domestic abandonment crimes are categorized as a complaint offense. Therefore, the perpetrator can only be prosecuted if the victim has made a complaint about the crimes to the authorized party. Article 1 item 25 of the Indonesian Code of Criminal Procedure (KUHAP) defines a complaint as a notice containing a request from the victim of a criminal offense to the investigator and/or investigator to take action against a person who causes harm to the victim who, according to the law, commits a complaint criminal offense.¹⁹ The victim can make a complaint to the investigator regarding the criminal offense he or she has experienced. Then the perpetrator will be processed, starting from the investigation level until the execution of the court verdicts.²⁰ The weakness of this complaint crime is that the case cannot be handled by law enforcement officials if the victim does not make a complaint. Therefore, the complaint from the victim is an important thing in the complaint crime.

¹⁴ Badan Pengembangan dan Pembinaan Bahasa Kemdikbud Ristek Republik Indonesia, "Kamus Besar Bahasa Indonesia (KBBI) VI Daring," 2023, <https://kbbi.kemdikbud.go.id>.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ Pemerintah Republik Indonesia, "Undang-Undang Nomor 13 Tahun 2011 Tentang Penanganan Fakir Miskin," 2011.

¹⁸ Pemerintah Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan," 1974.

¹⁹ Pemerintah Republik Indonesia, "Kitab Undang-Undang Hukum Acara Pidana (KUHAP) No. 8 Tahun 1981," 1981.

²⁰ Bambang Waluyo, *Viktimologi: Perlindungan Korban dan Saksi* (Jakarta: Sinar Grafika, 2022).

Usually, at the beginning of the case handling process, the investigator will try to get the parties to reconcile. In cases of domestic abandonment, this reconciliation may be possible, considering that victims in cases of domestic abandonment are more likely to suffer economic losses than physical, psychological, or sexual suffering. Although there is always the possibility that cases of domestic abandonment are also accompanied by physical, psychic, or sexual violence. However, peace efforts are difficult to realize if the victim also experiences other types of domestic violence. So it is appropriate that in cases of physical, psychological, and/or sexual domestic violence, there is no need to force peace efforts to be carried out because, in many cases, the perpetrator continues to repeat their actions.²¹ It can be said that there is no guarantee that the perpetrator of domestic violence in the form of physical, psychological, and/or sexual violence will change and not repeat the criminal act.

After describing in more detail the crime of domestic abandonment, then enter the topic that focuses on discussing the legal protection of victims. Law enforcers must pay attention to aspects of legal protection that must be achieved as an effort to fulfill the rights of victims in order to realize law enforcement based on justice, benefit, and legal certainty in Indonesia. Legal certainty for victims is realized through efforts to fulfill legal protection. This protection is provided through the protection of human rights.²² The purpose of realizing legal protection is to ensure the fulfillment of the rights of every community in accordance with positive law.²³

Until these days, there has been no specific written regulation regarding the time limit when the victim can be said to have been abandoned by the perpetrator. Whereas the time limit can be used as one of the indicators that the crime of domestic abandonment has occurred. However, referring to court verdict number 233/Pid.Sus/2018/PN.Kpg, the Defendant Chors Einjels Yohanis (Chors) was proven since April 2017 until the complaint of the defendant's actions on July 22, 2017 to have abandoned and neglected the victim, and therefore the perpetrator has caused someone to be neglected within the scope of his household. In this verdict, the victim was abandoned for approximately 3 months. Similar to verdict No. 53/Pid.Sus/2019/PN.Kpg, the victim was also abandoned for approximately 3 months because, based on the facts in the court, the defendant Marthin Charles Djibrael Billy (Charles) in fact from around September-November 2017 has been proven to have neglected and failed to provide alimony to the witness victim and his child by leaving them without any information and irresponsible to his family

²¹ Asmin Patros and Cindy Anggelia, "Polemik Desakan Pengesahan RUU PKS: Suatu Tinjauan Sistem Hukum Nasional dan Perspektif Hak Asasi Manusia," *Jurnal Komunikasi Hukum* 7, no. 2 (2021): 387–402, <https://doi.org/https://doi.org/10.23887/jkh.v7i2.37993>.

²² Satjipto Raharjo in M. Sidik, "Perlindungan Hukum Bagi Guru Yang Melakukan Kekerasan Terhadap Siswa," *Jurnal As-Said* 1, no. 1 (2021): 67–74.

²³ Laurensius Arliman S et al., "Bantuan Hukum Bagi Masyarakat Miskin Untuk Mewujudkan Keadilan," *JCH (Jurnal Cendekia Hukum)* 7, no. 2 (2022): 329, <https://doi.org/10.33760/jch.v7i2.556>.

needs, so such actions are considered to have abandoned a person who according to the law is part of his responsibilities as a husband in his household life.

In accordance with Article 1, Section 3 of The PKDRT Law, a victim is defined as an individual who undergoes acts of violence or encounters threats of violence within the confines of the household. Furthermore, Article 1 point 3 of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Witness and Victim Protection (Law on Witness and Victim Protection) stipulates that, "A victim is defined as an individual who suffers physical, mental, and/or economic harm due to the commission of a criminal offense."²⁴ This regulation describes in more detail that anyone can also be a victim if they have been proven to have financially damage due to the result of a criminal offense. Victims of domestic abandonment are more likely to potentially suffer economic losses because the perpetrator is negligent in fulfilling his obligations, especially in terms of providing livelihood. In some cases, perpetrators often leave and ignore victims who should be under their responsibility.

This is the main reason why the victim has to bear economic losses while being abandoned and neglected by the perpetrator. In cases of abandonment, the victim actually does not experience physical suffering in the form of direct physical injury because it is clear that cases of domestic neglect are different from cases of physical violence. However, without realizing it, the actions of the perpetrator of domestic abandonment also have the potential to cause physical and psychological suffering to the victim indirectly, for example because of the many burdens on the victim's mind while being neglected by the perpetrator. This has the potential to disrupt the physical and psychological health of the victim while being abandoned and neglected by the perpetrator.

Legal protection of victims must be a priority for law enforcers. Article 1, Section 4 of the PKDRT Law stipulates that "Protection encompasses all endeavors aimed at instilling a sense of security in victims, undertaken by family members, advocates, social institutions, law enforcement, prosecutors, courts, or other relevant parties, either on a temporary basis or pursuant to judicial rulings."²⁵ With this, law enforcement officials should strive to realize legal protection for victims. Protection is interpreted as an effort to provide a sense of security and victims feel protected. This can be provided through the fulfillment of victims' rights.

The fulfillment of legal protection can be realized through protection from the family members, prosecutors, courts, and other parties. In addition, victim getting

²⁴ Pemerintah Republik Indonesia, "Undang-Undang Nomor 31 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 13 Tahun 2006 Tentang Perlindungan Saksi dan Korban," 2014.

²⁵ Rosalia Dika Agustanti, Rianda Dirkareshza, and Taupiqurrahman Taupiqurrahman, "Peningkatan Pemahaman Dan Kewaspadaan Terkait Fenomena Kekerasan Seksual Terhadap Perempuan," *JMM (Jurnal Masyarakat Mandiri)* 6, no. 4 (2022): 2684–99, <https://doi.org/10.31764/jmm.v6i4.8999>.

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temporary protection or based on a protection determination from the court for protection from various parties, for example from the police, prosecutors, courts and other parties. Then the victim also has the right to obtain health services for their medical needs. Handling victim confidentiality is also one of the rights that should be obtained by victims. In addition, current positive legal institutions have also guaranteed the right of victims at every level of the examination process to receive assistance. Last but not least is the right to receive spiritual guidance services.

The details of these rights should be a priority for law enforcers in order to fulfill legal protection for victims. Particularly in cases of domestic abandonment, protection should also be realized through efforts to recover losses in terms of the economy suffered by victims during their time of abandonment. This is because victims of domestic abandonment basically suffer economic losses caused by the perpetrator's negligence in fulfilling his obligations, especially in terms of providing a livelihood.²⁶ The fulfillment of this restitution or damages is one of the tangible ways that law enforcement officials pay attention to the needs and interests of victims of abandonment in accordance with the consequences experienced.

It is interesting to look at The Court Verdict Numbers: 233/Pid.Sus/2018/PN.Kpg; 53/Pid.Sus/2019/PN.Kpg; and 138/Pid.Sus/2019/PN.Mam. It can be found in these three verdicts that there is always a verdict in which the defendant is sentenced to imprisonment for four months because he has violated the prohibition of domestic abandonment, which is part of domestic violence. Based on the judge's verdict, there is a problem that occurs, which is about the imprisonment imposed to the perpetrator. It can be seen that the imprisonment cannot cover the economic loss suffered by the victims. This is because imprisonment basically cannot accommodate the economic losses suffered by the victim while being abandoned by the perpetrator. Law enforcement against the perpetrator should also focus on overcoming economic losses due to the criminal act as an attempt to fulfill legal protection for domestic abandonment victims.

According to The Court Verdict Numbers: 233/Pid.Sus/2018/PN.Kpg; 53/Pid.Sus/2019/PN.Kpg; and 138/Pid.Sus/2019/PN.Mam, judges only pay attention to how law enforcement acts against perpetrators and less attention to how to fulfill legal protection for victims. In fact, law enforcement is an effort to fulfill victims' rights, which should go along with legal protection for victims.²⁷ It can be seen that the focus of the judges in the three court verdicts was only to try and impose verdicts without paying attention to the rights of victims. This is reflected in

26 Maryati Maryati and Usman Usman, "Pertanggung Jawaban Pidana dan Kaitannya dengan Pertanggungjawaban Perdata Pelaku Penelantaran Rumah Tangga," *Wajah Hukum* 4, no. 1 (2020): 67–72, <https://doi.org/10.33087/wjh.v4i1.118>.²⁰

27 Rosalia Dika Agustanti, "Penegakan Hukum Pelaku Perbuatan Cabul Dalam Putusan Bebas Terhadap Perempuan," *Jurnal Yuridis* 7, no. 1 (2020): 27–46, <https://doi.org/http://dx.doi.org/10.35586/jyur.v7i1.1843>.

the absence of a decree regarding restitution and the absence of a decree regarding victim recovery, such as recovery for the trauma of the crime, which has the potential to disturb the victim in the future.²⁸ Thus, the three verdicts do not reflect the fulfillment of good legal protection for victims.

3.2 The Attempt to Fulfill Restitution for Victims of Domestic Abandonment

Current legal institutions have regulated restitution, especially in terms of economic losses, which can be imposed on the perpetrator of a crime on the condition that the victim has submitted a request in advance as stated in the Law on Witness and Victim Protection, namely in Article 7A, which is known as restitution. Restitution is compensation provided by the perpetrator or a third party to the victim or their family as stated in the provisions of Article 1 point 5 of PP No. 7/2018.²⁹ The victim, his or her family, or a proxy (hereinafter referred to as the victim party) may submit an application to obtain restitution.

Furthermore, the right to obtain restitution is regulated in the provisions of Article 19 paragraph (1) of PP No. 7/2018, namely in the type of compensation for financial or income loss; compensation for damages endured due to harm resulting from a criminal offense; and/or reimbursement of medical and/or psychological treatment expenses. In cases of domestic abandonment, victims are entitled to restitution in the form of damages for loss of wealth or income and compensation for suffering caused by the criminal act of domestic abandonment. In cases of domestic abandonment, the fulfillment of the right to restitution in the form of compensation can be a solution to overcome the loss of wealth or income of the victim during the abandonment that caused victims to suffer, as stipulated in Article 19 paragraph (1) of PP No. 7/2018.

The government, through Law Number 1 Year 2023 on the Criminal Code (hereinafter referred to as The KUHP), has at least regulated the payment of compensation to victims, even though The PKDRT Law does not include the right to restitution. This KUHP can be used as an additional legal basis for the implementation of the fulfillment of the right of restitution, as stated in the provisions of Article 66 paragraph (1) of The KUHP.³⁰ With this provision, the fulfillment of restitution rights for victims of domestic abandonment crimes is very likely to be implemented in the future. Given that this law comes into force on

²⁸ Damara Wibowo, "Perlindungan Hukum Terhadap Korban Kekerasan Dalam Rumah Tangga Menurut Hak Asasi Manusia Selama Proses Penyidikan," *Jurnal Usm Law Review* 4, no. 2 (2021): 818, <https://doi.org/10.26623/julr.v4i2.4187>.

²⁹ Pemerintah Republik Indonesia, "Peraturan Pemerintah Republik Indonesia Nomor 7 Tahun 2018 Tentang Pemberian Kompensasi, Restitusi, dan Bantuan Kepada Saksi dan Korban," 2018.

³⁰ Pemerintah Republik Indonesia, "Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana," 2023.

January 2, 2026,³¹ but at least at this time, judges can refer to the provisions of PP No. 7/2018.

Based on The Court Verdict Numbers: 233/Pid.Sus/2018/PN.Kpg; 53/Pid.Sus/2019/PN.Kpg; and 138/Pid.Sus/2019/PN.Mam, the Panel of Judges has stated that the defendant was legally and convincingly proven guilty of committing the crime of "abandonment within the scope of the household" and sentenced the defendant to four months imprisonment. Ironically, the resolution of this domestic abandonment issue has not attempted to fulfill the economic compensation that should have been given to the victim. Economic compensation has not been fulfilled because it has not been included in the court's ruling or in the stipulation as evidence of efforts to fulfill restitution. In fact, the fulfillment of this economic compensation should be the main solution to overcoming the economic losses faced by victims.

Law enforcement as an integral part of the settlement of criminal cases is at least based on the principles and objectives of the law.³² The purpose of law enforcement is to achieve justice, legal certainty, and legal benefits.³³ The three objectives in their application still have a dilemma regarding the main priority among the three objectives. Gustav Radbruch's theory of the principle of priority of legal objectives suggests that the aspect of justice is the main priority that must be achieved in solving a legal problem. Then, between the aspects of legal certainty and the aspect of expediency, the aspect of expediency becomes a priority over the aspect of legal certainty.³⁴ So that the priority principle, according to Gustav Radbruch, is the first aspect of legal justice, then expediency, and finally legal certainty.

Looking back at the verdicts in the three verdicts, it can be seen that the Panel of Judges has given the perpetrators a sentence that is considered to have a deterrent effect. However, the Panel of Judges in their verdicts still does not appear to be seeking legal protection for victims. Furthermore, if examined using Gustav Radbruch's theory, it can be said that the aspect of legal justice has basically not been achieved. In the cases in the three verdicts above, the victims were both abandoned and neglected by the perpetrators, which caused the victims to have to support their own lives. Whereas it should be the perpetrator who is responsible for providing for everyone, which is his responsibility. With the imposition of imprisonment for four months, it has not been able to solve the problem of

³¹ Rizky P. P. Karo Karo, "Interpretasi Hakim Dan Rasa Keadilan Masyarakat Kajian Putusan Nomor 812 K / Pid / 2023," *Jurnal Yudisial* 16, no. 3 (2023): 310–24, <https://doi.org/10.29123/jy/v16i3.652>.

³² Bambang Waluyo, *Penyelesaian Perkara Pidana: Penerapan Keadilan Restoratif dan Transformatif* (Jakarta: Sinar Grafika, 2020).

³³ Cahya Palsari, "Kajian Pengantar Ilmu Hukum: Tujuan dan Fungsi Ilmu Hukum Sebagai Dasar Fundamental dalam Penjatuhan Putusan Pengadilan," *e-Journal Komunitas Yustisia Universitas Pendidikan Ganesha* 4, no. 3 (2021): 940–50, <https://doi.org/https://doi.org/10.23887/jatayu.v4i3.43191>.

³⁴ Alfonsus Nahak, "Problematika Eksekusi Putusan Pengadilan Tata Usaha Negara dalam Perspektif Hukum Gustav Radbruch," *Jurnal Pendidikan Sosial dan Humaniora* 2, no. 3 (2023): 11659–74, <https://publishequ.com/index.php/pediaqu/article/view/386>.

domestic neglect because it has not prioritized the interests of the victim in the form of the right to obtain compensation for the fulfillment of basic needs while being abandoned by the perpetrator.

Furthermore, on the aspect of expediency, ironically, it is not uncommon for the resolution of legal problems to be considered complete and to have provided benefits if the perpetrator has been given criminal sanctions.³⁵ In fact, the court's ruling only focuses on law enforcement efforts against the perpetrators of neglect. This can be seen through the court's ruling, which only imposes imprisonment, and there is no ruling that reflects efforts to implement legal protection, so it can be said that it has not provided benefits from the victim's side. This is why the aspect of benefit in the three verdicts above has not been fulfilled because, from the victim's point of view, it has not provided benefits that focus on providing economic compensation to victims.

It should be noted that there is a possibility that if the victim actually does not want the perpetrator to be imprisoned, it could be that victims only want to ask for their rights for the economic losses suffered during the abandonment by the perpetrator. However, because The PKDRT Law only regulates the threat of imprisonment or fines for the perpetrator of abandonment, it has the potential to cause victims to only know that the perpetrator can be punished with one of the criminal sanctions. Whereas basically the perpetrator can also be charged with additional penalties such as restitution payments so that the victim can also receive restitution provided that the victim has submitted a restitution application to the relevant institution so that the victim can receive restitution.³⁶ Therefore, this verdict has not fulfilled the aspect of expediency, and an active role is needed from law enforcement officials to bridge victims with relevant institutions so that restitution can be implemented in cases of domestic abandonment.

In the aspect of legal certainty, it can be seen that the three verdicts basically reflect the fulfillment of the element of legal certainty. The Panel of Judges has tried the perpetrator in accordance with current Indonesian positive legal institutions, namely through the provisions of Article 49 letter a *Juncto* Article 9 paragraph (1) of The PKDRT Law. Of course, The PKDRT Law provides legal protection in cases of domestic abandonment because it is an inseparable part of the four types of violence regulated in The PKDRT Law.³⁷ Based on this, it can be concluded that

³⁵ Shafira Fatahaya and Rosalia Dika Agustanti, "Legalitas Aborsi Yang Dilakukan Oleh Anak Akibat Perkosaan Inses," *Jurnal USM Law Review* 4, no. 2 (2021): 504–24, <https://doi.org/http://dx.doi.org/10.26623/julr.v4i2.4041>.

³⁶ Budi A. Safari and Fauzan Hakim, "Hak Restitusi Sebagai Perlindungan Terhadap Korban Tindak Pidana Pada Lembaga Perlindungan Saksi Dan Korban," *Jurnal Ilmu Hukum Prima* 6, no. 1 (2023): 120–29, <https://doi.org/https://doi.org/10.34012/jihp.v6i1.3227>.

³⁷ Adelia Hidayatul Rahmi and Suryaningsi Suryaningsi, "Pelaku Pelanggaran Hak Asasi Manusia pada Kasus Kekerasan Dalam Rumah Tangga di Kota Samarinda," *Nomos : Jurnal Penelitian Ilmu Hukum* 1, no. 3 (2022): 82–92, <https://doi.org/10.56393/nomos.v1i5.581>.

the three court verdicts have reflected the aspects of legal certainty fulfilled in cases of domestic abandonment in Indonesia.

It can be seen that one of the main reasons why restitution has not been given to victims is because there is no application for restitution. So that the judge in his ruling cannot include the provision of restitution for victims of abandonment. Considering that the judge cannot impose a verdict beyond what is requested or demanded in the indictment or criminal charges.³⁸ Attempts to fulfill restitution can only be carried out if the Witness and Victim Protection Agency, known as LPSK, has first received an application for restitution from the victim. Thus, the active role of investigators as law enforcement officials is needed in order to help seek the fulfillment of the victim's restitution rights by bridging the victim with LPSK.

One of the court verdicts that has applied restitution payments in cases of criminal acts of violence within the scope of the household, namely Court Verdict Number 15/Pid.Sus/2023/PN.Bna regarding a criminal case of sexual violence and physical violence within the scope of the household committed by the Defendant Irwinsyah Bin Syawal. In their verdict, the Panel of Judges sentenced the defendant to imprisonment for 8 years and a fine of Rp30,000,000 (thirty million rupiahs) with the provision that if the fine is not paid, it will be replaced by imprisonment for 6 months. In addition, the Panel of Judges also charged the defendant to pay restitution to the victim witness Aprillia Trisna Wardiyanti in the amount of Rp17,939,524 (seventeen million nine hundred thirty nine thousand five hundred twenty four rupiah), provided that if the restitution is not paid within the period stipulated by law, it will be replaced by imprisonment for 6 months.

The victim witness, Aprillia Trisna Wardiyanti, through the LPSK, has submitted a request for restitution as stated in Restitution Report Number R-429/4.1.PPP/LPSK/02/2023, dated February 20, 2023. The application for restitution was accompanied by letter evidence attached to the Public Prosecutor's indictment. In the Appendix to LPSK Letter Number: R-429/4.1.PPP/LPSK/02/2023, it is known that the calculation of the loss of the victim witness Aprillia Trisna Wardiyanti in the amount of Rp. 17,939,524, - (seventeen million nine hundred thirty nine thousand five hundred twenty four rupiah). It includes several components, such as compensation for loss of wealth, for medical treatment costs, and also for all the damages because of the criminal act. Based on the facts of the trial, the description of the suffering and losses suffered by the victim, the evidence of the restitution request letter, and paying attention to the relevant legal provisions, the Panel of Judges, in its consideration, is of the opinion that the request for restitution submitted by the victim witness has legal grounds to be granted with the amount as the LPSK's reasonable value.

³⁸ Chanifah, Elly Sudarti, and Nys Arfa, "Ultra Petita dalam Tindak Pidana Pemerkosaan," *PAMPAS: Journal of Criminal Law* 4, no. 1 (2023): 35, <https://doi.org/https://doi.org/10.22437/pampas.v4i1.24075>.

Based on the court verdict above, restitution payments should also be a solution to the settlement of domestic abandonment cases that focus on restoring the victim's economic losses while being abandoned by the perpetrator. The settlement of domestic abandonment cases is not only focused on providing a deterrent effect to the perpetrator but also needs to pay attention to the economic losses suffered by the victim for their survival during abandonment. So it is hoped that law enforcement and legal protection can be implemented according to the needs of each case. In this case, attempts to fulfill restitution can be made by the victims submitting an application for restitution through LPSK either before or after a court verdict that has obtained permanent legal force (*inkracht*) as stipulated in the provisions of Article 20 paragraph (1) of PP No. 7/2018.³⁹

LPSK will first check the completeness of the files contained in the restitution application and will be examined maximum 7 days after the application is received.⁴⁰ LPSK will conduct a substantive examination if the application file is complete. LPSK has the right to request information from the victim and perpetrator in the process of examining the restitution application. The application is considered withdrawn in the event that the victim is not present within 3 (three) consecutive times. Furthermore, the decision of the LPSK along with its considerations will be determined as the result of the examination of the restitution request as stipulated in Article 26 of PP No. 7/2018. The prosecutor can include restitution upon submission from LPSK in his/her indictment if before the court verdict is *inkracht* the application has been submitted. However, there is no need to worry if the application is not submitted before the court verdict is *inkracht*. This is because there is still an opportunity to submit an application to the court after the court verdict is *inkracht* in order to obtain a determination from the court.

Furthermore, one of the obstacles to the fulfillment of restitution is the inability of the perpetrator to pay compensation to the victim.⁴¹ Until now, PP No. 7/2018 has not regulated substitute punishment in the case that the perpetrator is not capable of paying restitution in accordance with the time period stipulated in the *inkracht* verdict. However, referring to the ruling of Court Verdict Number 15/Pid.Sus/2023/PN.Bna regarding the criminal case of sexual violence and physical violence within the scope of the household above, it is stated that the Panel of Judges charged the defendant to pay restitution to the victim witness and if the restitution is not paid within the period specified by law, it will be replaced by imprisonment. Ironically, this imprisonment is not the main objective of resolving

³⁹ Hery Firmansyah and Lisyah Sun Lisyah, "Pertanggungjawaban Hukum Terhadap Korban Atas Biaya Restitusi yang Tidak Terpenuhi Pada Putusan Pengadilan Negeri Tangerang Nomor 1712 / Pid . Sus / 2021 / Pn . Tng," *Unes Law Review* 6, no. 1 (2023): 3586–96, <https://doi.org/https://doi.org/10.31933/unesrev.v6i1.1159>.

⁴⁰ Lailatus Sururiyah, "Perlindungan Hukum Saksi Dan Korban Oleh Lembaga Perlindungan Saksi Dan Korban (Lpsk)," *Juris Studia: Jurnal Kajian Hukum* 4, no. 3 (2023): 173–80, <https://doi.org/https://doi.org/10.55357/is.v4i3.425>.

⁴¹ Indra Mahawijaya, "Terobosan Hukum (Rule Breaking) Oleh Hakim Dalam Menentukan Pengajuan Permohonan Restitusi Bagi Korban Anak," *Jurnal Hukum dan Kewarganegaraan* 2, no. 6 (2024): 1–16, <https://doi.org/https://doi.org/10.3783/causa.v2i6.2376>.

cases of domestic abandonment.⁴² Therefore, if the defendant is not capable of paying restitution, the Panel of Judges must determine other options as a substitute.

According to the Constitution of the Republic of Indonesia, precisely in the provisions of Article 34 paragraph (1) which stipulates that the state is responsible for the maintenance of the poor. The definition of the poor in the provisions of Article 1 point 1 of Law No. 13 of 2011 concerning the Handling of the Poor, namely every person whose life cannot meet the basic needs both for the life of himself and/or his family because he does not have a job and/or has a job but still does not meet his basic needs.⁴³ If the perpetrator is classified as poor, then it should be the responsibility of the State to make attempts to deal with the poor as a manifestation of the fulfillment of the basic needs of every citizen.

4. CONCLUSION

Domestic abandonment is done by any person who causes a person's life to be abandoned because of his or her actions by not providing care, maintenance, sustenance, and fulfilling the basic needs of the person under his or her responsibility. Legal protection should also be realized through efforts to compensate for economic losses (restitution) due to the perpetrator's negligence in fulfilling his obligations, especially in terms of providing maintenance. An attempt to fulfill restitution can be made by submitting a restitution application through LPSK either before or after an *inkracht* court verdict. Through this article, it is recommended that investigators play a more active role in bridging victims with LPSK to submit restitution applications as an attempt to fulfill victims' restitution rights. Then the Panel of Judges is expected to provide information that the victim can submit a request for restitution after the verdict is *inkracht* so that a determination can be made on the request for restitution. In the event that the defendant is not capable of paying restitution, it should be the responsibility of the State to compensate for the loss. The Panel of Judges can determine other substitute punishments, for example, by imposing social work punishment on the defendant based on the Criminal Code or other policies that can compensate for the economic losses of victims of domestic abandonment crimes. It is expected that these efforts can realize law enforcement and legal protection based on justice, benefit, and legal certainty.

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⁴² Josua Otniel Sondakh Walangitan, "Sanksi Pidana Dalam Pemberantasan Tindak Pidana Kekerasan Rumah Tangga Yang Dilakukan Suami Pada Istri," *Lex Privatum* VIII, no. 1 (2020): 78–85.

⁴³ Pemerintah Republik Indonesia, "Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," 1945.

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