

## **The Attempt to Fulfill Restitution for Victims of Domestic Abandonment Crimes**

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### **Abstract**

This article aims to analyze the legal protection for victims of domestic abandonment through restitution fulfillment. It is because imprisonment in the case of domestic abandonment basically cannot accommodate the economic losses suffered by the victims. Legal protection for victims should also focus on restoring the economic losses incurred during the abandonment. Therefore, the urgency of this article is the attempt to fulfill restitution for victims as the manifestation of the victim's right. This article is normative legal research. The novelty of this article is about the attempt to fulfill restitution, which is studied based on positive law in Indonesia and the problems were analyzed using Gustav Radburch's legal theory on the principle of priority in three legal objectives. The research results indicate that one of the challenges of restitution fulfillment in the current legal system is when the victims are not submitting the restitution request before or even after a court verdict. Hence, the judges in their verdict cannot accommodate this restitution for the victims and they cannot receive their rights of restitution. Because of that it is expected that the attempt of restitution fulfillment will accommodate the economic losses suffered by victims during abandonment.

**Keywords:** Domestic Abandonment; Legal Protection; Restitution.

### **1. INTRODUCTION**

A happy and intact household is the purpose of all family life that established through a legal marriage agreement. However, it is not rare in family life that violence occurs. In Indonesia, there are four types of violence in a household. The Law Number 23 of 2004 is about the Elimination of Domestic Violence (hereinafter referred to as the PKDRT Law) and one of them is domestic abandonment.<sup>1</sup> A perpetrator of domestic abandonment is someone who does not fulfill his obligation to provide for his household and causes the victims to be abandoned.<sup>2</sup> Based on the court verdict, until these days, men are always became the perpetrator. But it should be remembered that domestic abandonment cases are genderless.<sup>3</sup> Therefore, husbands, wives, and children have the same potential to become victims.<sup>4</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> Halyna P. Zharovska et al., "Means of individual counteraction to domestic violence against pregnant women," *Academic Journal of Interdisciplinary Studies* 10, no. 4 (2021): 16–31, <https://doi.org/10.36941/AJIS-2021-0095>.

Often, these victims are wives with young children who do not have jobs and are dependent on the perpetrator financially. This abandonment has a huge impact on the victim's life while being abandoned. The victim is forced to fulfill their daily needs and bear the economic losses caused by the perpetrator. Not only that, the victims also potentially have to live an inadequate life because they do not have a job when they are abandoned. This is certainly bad for the future of Indonesia's generation. Children who should focus on studying are forced to help their mothers make a living to fulfill their daily needs. Hence, these are main reason why domestic abandonment cases is crucial and warrant urgent attention also legal intervention.

Currently, the PKDRT Law regulates the threat of imprisonment or fines for the perpetrator of domestic abandonment. This regulation actually does not pay attention to the economic losses suffered by victims during abandonment. Imprisonment and fines cannot accommodate the economic losses. Thus, the settlement of domestic abandonment cases must use other regulations that can accommodate the economic losses. Indonesia currently has a policy regarding the provision of restitution to victims of criminal acts who suffer economic losses. Victims are entitled to obtain and apply for restitution as stated in the provisions of Article 19 of Government Regulation No. 7/2018 on the Provision of Compensation, Restitution, and Assistance to Witnesses and Victims (hereinafter referred to as PP No. 7/2018). This policy can be used as an appropriate solution to the problem of economic aspects in domestic abandonment cases in Indonesia.

When compared to the California Penal Code, the PKDRT Law which regulates domestic violence in Indonesia is still relatively incomplete because it has not comprehensively regulated the crime of domestic abandonment.<sup>5</sup> The California Penal Code has very detailed regulations regarding this abandonment, which include regulations regarding the criminal act itself; law enforcement; and legal protection for victims, especially after a verdict. Through this comprehensive regulation, legal protection for victims can be realized by referring to the California Penal Code which regulates the economic rights that victims of domestic abandonment are entitled to receive. Therefore, it can be said that the California Penal Code reflects law enforcement and legal protection based on justice.

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 overlooked the provisions

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<sup>5</sup> Muchamad Iksan et al., "Fulfilling the Restitution Rights of Crime Victims: The Legal Practice in Indonesia," *Academic Journal of Interdisciplinary Studies* 12, no. 4 (2023): 152–60, <https://doi.org/10.36941/ajis-2023-0101>.

of Article 4 letter d of the PKDRT Law.<sup>6</sup> However, this research only shows the weakness of imprisonment and has not examined the new solution nor the alternative solution for abandonment cases. Therefore, another regulation is needed that can be used as a solution to the settlement of domestic abandonment cases, for example with the application of restitution as promoted in this article. Thus, to fill the gaps in previous research, this article presents a further discussion on restitution as an appropriate legal solution to accommodate victims' economic losses.

Then there is also research conducted by Khaira, further examining the weaknesses and advantages of imprisonment and penalties against perpetrators based on Article 49 of the PKDRT Law and concluding that the imposition of fines is considered to have more advantages than imprisonment.<sup>7</sup> But, it should be remembered that the next problem is the victims of the crimes cannot receive the fines because it is not their right. The fines will be paid to the state and not to the victims. Therefore, fines still cannot fulfill the victim's rights economically. Thus, to fill the gaps in the previous article, this article examines further discussion on the importance of the application of restitution. This restitution policy is present as a form of legal protection for victims of domestic abandonment.

The last research was conducted by 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.<sup>8</sup> It can be seen that this research has examined the weaknesses of imprisonment for perpetrators of domestic abandonment and recommends applying restitution to the perpetrators. Therefore, this article is presented as a complement or further research to examine this restitution policy in more detail.

Thus, the state of the art of this article is the detailed attempts to fulfill restitution for victims as an effort to restore economic losses due to abandonment and the problem was analyzed using Gustav Radburch's legal theory. Although currently there are legal regulations that have regulated restitution to victims, there are still challenges in its implementation. Therefore, an effort is needed to fulfill the restitution as a manifestation of legal protection for victims of domestic abandonment. Based on this, it is necessary to make an attempt to fulfill economic

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<sup>6</sup> Fitriani Fitriani, "Penjatuhan Pidana Penjara Bagi Penelantaran Rumah Tangga," *Jurnal Yudisial* 14, no. 3 (2022): 395, <https://doi.org/10.29123/jy.v14i3.448>.

<sup>7</sup> 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>.

<sup>8</sup> 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>.

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 this restitution fulfillment effort can accommodate the economic losses suffered by victims of domestic abandonment crimes.

## 2. METHOD

This article is a normative legal research that 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 contain final legal force (hereinafter referred to as *inkracht*).<sup>9</sup> 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

### 3.1 The Legal Protection for Victims of Domestic Abandonment

#### 3.1.1 The Domestic Abandonment Crimes in Indonesia

Referring to the provisions of Article 9 of the PKDRT Law,<sup>10</sup> abandonment is an act that causes a person to be abandoned by not providing life, maintenance, and/or care to the victim.<sup>11</sup> It is hereby emphasized that the indicator of abandonment described in this article 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;<sup>12</sup> maintenance, such as guarding from danger;<sup>13</sup> sustenance, such as money or revenue that can be used to fulfill basic needs;<sup>14</sup> and not fulfilling the basic needs of people who are under their responsibility, such as food, clothing, and so on.<sup>15</sup> If this

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<sup>9</sup> Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum: Normatif dan Empiris* (Depok: Prenadamedia Group, 2018).

<sup>10</sup> Pemerintah Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 23 Tahun 2004 Tentang Penghapusan Kekerasan Dalam Rumah Tangga," 2004.

<sup>11</sup> 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>.

<sup>12</sup> Badan Pengembangan dan Pembinaan Bahasa Kemdikbud Ristek Republik Indonesia, "Kamus Besar Bahasa Indonesia (KBBI) VI Daring," 2023, <https://kbbi.kemdikbud.go.id>.

<sup>13</sup> Badan Pengembangan dan Pembinaan Bahasa Kemdikbud Ristek Republik Indonesia, "Kamus Besar Bahasa Indonesia (KBBI) VI Daring," 2023, <https://kbbi.kemdikbud.go.id>.

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

<sup>15</sup> Pemerintah Republik Indonesia, "Undang-Undang Nomor 13 Tahun 2011 Tentang Penanganan Fakir Miskin," 2011.

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.<sup>16</sup> However, 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.

### **3.1.2 The Current Legal System of Domestic Abandonment Crimes in Indonesia**

Domestic abandonment crimes are categorized as complaint offenses. 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.<sup>17</sup> The victims can make a complaint to the investigator regarding the criminal offense they have experienced. Then the perpetrator will be processed, starting from the investigation level until the execution of the court verdicts.<sup>18</sup> 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. This is supported by data reported by the National Commission Against Violence against Women indicates that economic violence cases, which in Indonesia it is identified as domestic abandonment cases, have the lowest number of cases compared to the other types of domestic violence cases.

Based on Table 1, it can be explained that the data shows a drastic decrease and increase in the number of domestic abandonment cases, which reached a double decrease in 2020 and 2022 and a double increase in the number of cases in 2021, shows that law enforcement and legal protection against cases of domestic abandonment have not consistently decreased. This shows great potential for the number of cases in 2023 to experience a significant increase compared to 2022. For this reason, it is hoped that law enforcers can improve their performance through good law enforcement and legal protection. This aims to realize a consistent decline in the number of cases of domestic abandonment because this consistent decreased

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<sup>16</sup> Pemerintah Republik Indonesia, "Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan," 1974.

<sup>17</sup> Pemerintah Republik Indonesia, "Kitab Undang-Undang Hukum Acara Pidana (KUHAP) No. 8 Tahun 1981," 1981.

<sup>18</sup> Bambang Waluyo, *Viktimologi: Perlindungan Korban dan Saksi* (Jakarta: Sinar Grafika, 2022).

can be an indicator that the settlement of domestic abandonment cases has been running well in Indonesia.

**Table 1.** Cases of Violence against Women Based on Forms of Violence Data on Complaints to National Commission Against Violence in Indonesia, 2019-2022.

<b>Types of Domestic Violence Cases</b>	<b>2019<sup>19</sup></b>	<b>2020<sup>20</sup></b>	<b>2021<sup>21</sup></b>	<b>2022<sup>22</sup></b>
Physical	4.783	2.025	4.814	783
Psychological	2.056	1.792	4.754	2.083
Sexual	2.807	1.938	4.660	2.228
Economic	1.459	680	1.887	714

*Source: Annual Record of National Commission Against Violence, 2020-2023 (Edited).*

The potential reason is that many victims do not make complaints about the crime of domestic abandonment. Therefore, the data released by the National Commission Against Violence against Women can only show the number of cases that have been reported. Although the data in 2022 shown that domestic abandonment cases have decreased significantly compared to 2021, the facts in society have significant potential to have a higher number of cases of domestic abandonment than the number of cases reported in the Annual Record of the National Commission Against Violence against Women 2020-2023. Of course, this

<sup>19</sup> Komisi Nasional Anti Kekerasan terhadap Perempuan (Komnas Perempuan), *CATAHU 2020: Catatan Tahunan Kekerasan Terhadap Perempuan Tahun 2019. Kekerasan Meningkat: Kebijakan penghapusan Kekerasan Seksual Untuk Mmembangun Ruang Aman Bagi Perempuan Dan Anak Perempuan*, Komnas Perempuan, 2020, <https://komnasperempuan.go.id/catatan-tahunan-detail/catahu-2020-kekerasan-terhadap-perempuan-meningkat-kebijakan-penghapusan-kekerasan-seksual-menciptakan-ruang-aman-bagi-perempuan-dan-anak-perempuan-n-catatan-kekerasan-terhadap-perempuan-tahun-2019>.

<sup>20</sup> Komisi Nasional Anti Kekerasan terhadap Perempuan (Komnas Perempuan), *CATAHU 2021: Catatan Tahunan Kekerasan Terhadap Perempuan Tahun 2020. Perempuan Dalam Himpitan Pandemi: Lonjakan Kekerasan Siber, Perkawinan Anak, dan Keterbatasan Penanganan di Tengah Covid-19*, Catatan Tahunan Kekerasan Terhadap Perempuan Tahun 2020, Komnas Perempuan, vol. 1, 2021, <https://komnasperempuan.go.id/catatan-tahunan-detail/catahu-2021-perempuan-dalam-himpitan-pandemi-lonjakan-kekerasan-seksual-kekerasan-siber-perkawinan-anak-dan-keterbatasan-penanganan-di-tengah-covid-19>.

<sup>21</sup> Komisi Nasional Anti Kekerasan terhadap Perempuan (Komnas Perempuan), *CATAHU 2022: Catatan Tahunan Kekerasan Terhadap Perempuan Tahun 2021. Bayang-Bayang Stagnansi: Daya Pencegahan dan Penanganan Berbanding Peningkatan Jumlah, Ragam dan Kompleksitas Kekerasan Berbasis Gender Terhadap Perempuan*, Komnas Perempuan, 2022, <https://komnasperempuan.go.id/catatan-tahunan-detail/catahu-2022-bayang-bayang-stagnansi-daya-pencegahan-dan-penanganan-berbanding-peningkatan-jumlah-ragam-dan-kompleksitas-kekerasan-berbasis-gender-terhadap-perempuan>.

<sup>22</sup> Komisi Nasional Anti Kekerasan terhadap Perempuan (Komnas Perempuan), *CATAHU 2023: Catatan Tahunan Kekerasan Terhadap Perempuan Tahun 2022. Kekerasan terhadap Perempuan di Ranah Publik dan Negara: Minimnya Perlindungan dan Pemulihan*, Komnas Perempuan, 2023, <https://komnasperempuan.go.id/catatan-tahunan-detail/catahu2023-kekerasan-terhadap-perempuan-di-arah-publik-dan-negara-minimnya-perlindungan-dan-pemulihan>.

is a challenge for law enforcement officials in realizing law enforcement and legal protection, especially in cases of domestic abandonment because complaints from victims are very important and also very much needed so that law enforcement officials can follow up on these cases in accordance with applicable laws and regulations.

The PKDRT Law is one of the main sources of law used by law enforcement officials in handling cases of domestic abandonment. The PKDRT Law has regulated the threats of imprisonment and fines that can be imposed on perpetrators of domestic abandonment. But unfortunately, 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. 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 the defendant Marthin Charles Djibrael Billy (Charles) in fact from around September-November 2017 has been proven to have been neglected by leaving them without any information and irresponsible to his family needs. Therefore, it can be said that the time limit for a person who as a victim of domestic abandonment crime if they have been abandoned for approximately 3 months.

When compared to the California Penal Code, the legal framework in this regulation has basically accommodated law enforcement efforts up to legal protection efforts that can be provided to victims of domestic abandonment as stated in Section 270a (abandonment of spouse)<sup>23</sup> to Section 270h (Execution on order for support payments; earnings assignment order)<sup>24</sup> of the California Penal Code. Penalties for perpetrators of domestic abandonment in the California Penal Code include imprisonment and fines. But of course that's not all. As an effort to protect the victim's economic rights, there are also regulations regarding the benefits that the victim is entitled to. In addition, there are also special regulations if the perpetrator not only abandons his partner but also neglects the child. The perpetrator is therefore obliged to provide support to child. Thus, the California Penal Code has been able to realize legal protection for victims of domestic abandonment, especially in the economic aspect.

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<sup>23</sup> California Legislative Information, "California Penal Code Section 270a" (1976), [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=270a.&lawCode=PEN](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=270a.&lawCode=PEN).

<sup>24</sup> California Legislative Information, "California Penal Code Section 270h" (1992), [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=270h.&lawCode=PEN](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=270h.&lawCode=PEN).

### **3.1.3 The Legal Protection for Victims of Domestic Abandonment Crimes**

Although Indonesia currently has regulations governing the crime of domestic abandonment, the next problem is that these regulations still have shortcomings because it does not focus on regulating legal protection efforts for victims of domestic abandonment. This deficiency is certainly one of the obstacles to the realization of legal protection for victims. This causes the victim to be very disadvantaged because they potentially do not fully receive the rights they should get. So there is still a legal gap in the settlement of cases of domestic neglect, characterized by the imposition of a relatively very low prison sentence, which is only a few months and has the potential not to have a deterrent effect on the perpetrators of domestic abandonment. Then it is also characterized by victims of domestic abandonment who do not get the right to receive economic compensation in the form of restitution as a manifestation of legal protection to victims.

Legal protection of victims must be a priority for law enforcers. 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.<sup>25</sup> The purpose of realizing legal protection is to ensure the fulfillment of the rights of every community in accordance with positive law.<sup>26</sup> 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."<sup>27</sup> 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 family members, prosecutors, courts, and other parties. In addition, the victim gets 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

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<sup>25</sup> Satjipto Raharjo in M. Sidik, "Perlindungan Hukum Bagi Guru Yang Melakukan Kekerasan Terhadap Siswa," *Jurnal As-Said* 1, no. 1 (2021): 67–74.

<sup>26</sup> 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>.

<sup>27</sup> Rosalia Dika Agustanti, Rianda Dirkareshza, and Taupiqqurrahman Taupiqqurrahman, "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>.



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.<sup>28</sup> 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.<sup>29</sup> 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 4 months because the perpetrators in these three cases have violated the prohibition of domestic abandonment, which is part of domestic violence. These 4 months' sentence is very low, potentially not providing a deterrent effect to the perpetrators. As a result, the perpetrators have the potential to re-offend. This is certainly not in line with the purpose of the imposition of punishment which is actually to provide a deterrent effect to the perpetrators. Not only that, another consequence of the imposition of the above decision is that it causes further problems to emerge which is about the imprisonment imposed on the perpetrators 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

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<sup>28</sup> Adi Kusyandi, "Limits on the Value of Restitution for Victims of Crime A Form of Restorative Justice System," in *Proceedings of the 3rd International Conference on Law, Governance, and Social Justice (ICoLGaS 2023)*, *Advances in Social Science, Education and Humanities Research* 805 (Atlantis Press SARL, 2023), 376–86, [https://doi.org/10.2991/978-2-38476-164-7\\_35](https://doi.org/10.2991/978-2-38476-164-7_35).

<sup>29</sup> 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>.

victims' rights, which should go along with legal protection for victims.<sup>30</sup> 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 the absence of a decree regarding restitution and the absence of a decree regarding victim recovery, such as recovery from the trauma of the crime, which has the potential to disturb the victim in the future.<sup>31</sup>

Thus, the three verdicts do not reflect the fulfillment of good legal protection for victims. The verdicts imply that the rights of victims were not considered in the resolution of this case, referring to the fact that the lives of victims who still do not receive economic compensation in the form of restitution. The decision does not show the positive impact that can be obtained by victims for their survival. So that an improvement is needed in the future in the form of a court decision in which it can emphasize the issue of legal protection for victims and reflect the fulfillment of legal protection to victims so that it does not only focus on law enforcement against the perpetrator.

## **3.2 The Attempt to Fulfill Restitution for Victims of Domestic Abandonment**

### **3.2.1 The Legal Basis of Restitution in Indonesia**

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.<sup>32</sup> 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.<sup>33</sup> The victims or their families 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. Fulfillment of restitution in the form of compensation can be a solution to overcome the economic loss during the abandonment, as stipulated in Article 19 paragraph (1) of PP No. 7/2018. The government, through Law Number 1 Year 2023 on the Criminal Code, has at least regulated the payment of compensation to victims, even though the PKDRT Law

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<sup>30</sup> 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/jjur.v7i1.1843>.

<sup>31</sup> 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>.

<sup>32</sup> Pemerintah Republik Indonesia, "Undang-Undang Nomor 31 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 13 Tahun 2006 Tentang Perlindungan Saksi dan Korban," 2014.

<sup>33</sup> Pemerintah Republik Indonesia, "Peraturan Pemerintah Republik Indonesia Nomor 7 Tahun 2018 Tentang Pemberian Kompensasi, Restitusi, dan Bantuan Kepada Saksi dan Korban," 2018.

does not include the right to restitution. This Criminal Code 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 Criminal Code.<sup>34</sup> With this provision, the fulfillment of restitution rights for victims of domestic abandonment crimes is very likely to be implemented in the future. However, this law will be applied on January 2, 2026.<sup>35</sup> Therefore, at this time, at least judges can refer to the provisions of PP No. 7/2018.

If compared to the restitution regulations in the California Penal Code, it can be seen the articles that further regulate restitution comprehensively. Just like in Indonesia, restitution is used as an effort to return economic losses suffered by victims of criminal acts. The difference is that the California Penal Code classifies more types of economic losses suffered by victims, nearly around 12 types of losses as regulated in Section 1202.4 (Restitution)<sup>36</sup> while Indonesia currently only classifies these losses in 3 types of losses as stated in Article 19 of PP No. 7/2018. In addition, the California Penal Code also regulates the inability of the perpetrator to pay restitution, which still does not eliminate the restitution obligation that must be paid by the perpetrator. With this, regulations regarding restitution in Indonesia must be improved and developed more broadly, especially regarding the aspect of the perpetrator's inability to pay restitution because Indonesia currently does not regulate this.

### **3.2.2 Case Analysis Using Gustav Radbruch's Theory**

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.

Law enforcement is at least based on the principles and objectives of the law.<sup>37</sup> The purpose is to achieve justice, legal certainty, and legal benefits.<sup>38</sup> The three

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<sup>34</sup> Pemerintah Republik Indonesia, "Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana," 2023.

<sup>35</sup> 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>.

<sup>36</sup> California Legislative Information, "California Penal Code Section 1202.4" (2021).

<sup>37</sup> Bambang Waluyo, *Penyelesaian Perkara Pidana: Penerapan Keadilan Restoratif dan Transformatif* (Jakarta: Sinar Grafika, 2020).

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, the second priority is the aspect of providing benefits to the community. This aspect is more important to achieve than the aspect of legal certainty.<sup>39</sup> Therefore, the priority principle according to Gustav Radbruch's theory is legal justice, then providing benefits to the community, and lastly legal certainty.

The aspect of justice can be seen through court decisions that prioritize justice for perpetrators and victims of domestic abandonment crimes. The justice aspect is achieved if law enforcement and legal protection have done hand in hand and not only focus on one of them. Then the second priority is the aspect of providing benefits to the community and it can be seen through court decisions that have a positive impact on the survival of the parties after the verdict. With this, the aspect of providing benefits can override the aspect of legal certainty if the verdict is considered to provide greater benefits to the parties and the community even though the verdict does not have a legal certainty. However, it should be noted that it does not mean that the legal certainty aspect is not important. It is just that the legal certainty aspect can be overridden in certain situations.

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. The imposition of imprisonment for four months has not been able to solve the problem of 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 providing benefits to the community, ironically, it is not uncommon for the resolution of legal problems to be considered complete and

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<sup>38</sup> 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>.

<sup>39</sup> 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://publisherqu.com/index.php/pediaqu/article/view/386>.

to have provided benefits if the perpetrator has been given criminal sanctions.<sup>40</sup> In fact, the court's ruling only focuses on law enforcement efforts against the perpetrators of abandonment. 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 to victims. So it concluded that these verdicts have not provided legal benefits for the victim's side. This is why the aspect of benefit in the three verdicts above has not been fulfilled because it has not provided benefits that focus on providing economic compensation to victims. In fact, the return of economic losses is part of the recovery of the victim's condition to return to the state before the crime.<sup>41</sup>

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.<sup>42</sup> Based on this, it can be concluded that the three court verdicts have reflected the aspects of legal certainty fulfilled in cases of domestic abandonment in Indonesia.

These three verdicts have implications for the lives of victims who have been economically neglected by the perpetrators. Moreover, in the three cases above, each victim was left with their young children. This situation is certainly a very heavy burden on the victim's psychology. It is not uncommon for this psychological burden to interfere with the victim's mental and physical health. The victim has the potential to suffer as a result of the verdicts that do not pay attention to legal protection, especially in the economic aspect. Especially if the victim is jobless, so this decision can make the victim live with full suffering due to economic limitations after being abandoned. Children as the golden generation have the potential to drop out of school due to these economic limitations. Not only that, this also has an impact on the health of the victims because they are unable to fulfill their daily needs properly.

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<sup>40</sup> 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>.

<sup>41</sup> 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>.

<sup>42</sup> 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>.

It is hoped that law enforcement in Indonesia in the future can be in line with the theory stated by Gustav Radburch which emphasizes aspects of justice as the top priority in handling legal cases, especially in cases of domestic abandonment. If in the decision the judge has included restitution payments to the victim, it can be said that the verdict has prioritized the aspect of justice in his decision. With this, the judges not only enforce the law against the perpetrator, but also provide legal protection to the victim. This is in line with the theory put forward by Gustav Radburch that the aspect of justice occupies the first position in handling a case. Then this also has an impact on the aspect of legal expediency where in this case the victim gets his right to restitution and of course, this restitution will be beneficial for the survival of the victims in the future. The fulfillment of this restitution, it shows that the aspect of legal protection in cases of domestic abandonment has been fulfilled or realized because law enforcers have actually provided protection to victims through decisions regarding restitution payments.

### **3.2.3 The Attempt to Fulfill Restitution for Victims of Domestic Abandonment**

One of the practical challenges faced in implementing restitution is that there is no restitution application request. So that the judges in the verdict 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.<sup>43</sup> Attempts to fulfill restitution can only be carried out if the Witness and Victim Protection Agency, known as LPSK, has received an application for restitution from the victim. It cannot be denied that these days, there are still many victims who do not know that they have the right to restitution to obtain compensation for criminal acts.<sup>44</sup> Their ignorance is also the main potential reason why victims do not apply for restitution requests. So, the implementation of restitution cannot be fully implemented effectively in Indonesia.

Another challenge is the lack of an active role from law enforcement to bridge victims with Witness and Victim Protection Agency. As said before, many victims do not know about the restitution for the economic losses they have suffered during abandonment. This shortcoming should be an evaluation for law enforcement to play a more active role in assisting victims. This is because the right to obtain restitution has been guaranteed by law. So the regulation should be utilized effectively in assisting victims who experience economic losses, especially in the crime of domestic neglect. With the active role of law enforcement, it can be

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<sup>43</sup> 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>.

<sup>44</sup> Bambang Tri Bawono, "Restitution Rights As a Construction of Justice Referring To the Law on Protection of Witnesses and Victims," *International Journal of Law Reconstruction* 5, no. 1 (2021): 25, <https://doi.org/10.26532/ijlr.v5i1.15321>.

ascertained that this regulation regarding restitution is one of the manifestations of effective legal protection and is certainly beneficial for victims in real cases of domestic abandonment. 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 the Witness and Victim Protection Agency.

One of the court verdicts that has applied for 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 Defendant Irwinsyah Bin Syawal. The victim witness, through the Witness and Victim Protection Agency, 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 was included several components, such as compensation for loss of wealth, for medical treatment costs, and also for all the damages because of the criminal act that attached to the Public Prosecutor's indictment. In the verdict, the 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 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.

Based on the court verdict above, the settlement of domestic abandonment cases should also apply restitution and not only focus on providing a deterrent effect to the perpetrator but also need to pay attention to the economic losses. 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 Witness and Victim Protection Agency 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.<sup>45</sup> Witness and Victim Protection Agency will check the completeness of the files contained in the restitution application and will be examined a maximum of 7 days after the application is received.<sup>46</sup> Witness and

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<sup>45</sup> 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>.

<sup>46</sup> Lailatus Sururiyah, "Perlindungan Hukum Saksi Dan Korban Oleh Lembaga Perlindungan Saksi Dan Korban (LPSK)," *Iuris Studia: Jurnal Kajian Hukum* 4, no. 3 (2023): 173–80, <https://doi.org/https://doi.org/10.55357/is.v4i3.425>.

Victim Protection Agency will conduct a substantive examination if the application file is complete.

Witness and Victim Protection Agency 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 Witness and Victim Protection Agency 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 Witness and Victim Protection Agency 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.

#### **3.2.4 The Impact of Restitution for Victims of Domestic Abandonment**

Through efforts to fulfill this restitution, of course, it will have implications for the victim's life after the verdict. Restitution can provide welfare to victims, especially in the economic aspect. If examined further, the fulfillment of restitution realized in the three cases discussed in this article, can provide benefits for mothers and their children who are abandoned. With the fulfillment of restitution, the victims can at least fulfill their basic needs. However, restitution cannot be used as the only source of income because it only compensates for losses and means that it will not be given forever. Therefore, victims who do not have a permanent job must find a job that can be used as a permanent income. It is hoped that with economic assistance through restitution, children will no longer be obliged to help their mothers to earn a living and leave compulsory education. These children can at least focus on learning in order to uphold a smart and educated generation as the foundation of the next golden generation of the Indonesian nation.

The fulfillment of restitution also has an impact on the psychological condition of the victim. Victims who were previously pressured and heavily burdened by economic needs, at least with this restitution can provide better psychological conditions. Victims are not completely pressured to think about the economy while getting restitution from the perpetrator. Victims do not have to be forced to live an inadequate life because they do not have a steady income. With this, the victim still has time to find a decent job to fulfill her economy in the future. In addition, victims who do not have an income are potentially pressured to borrow funds or owe money to other people in order to fulfill their basic daily needs when they are abandoned. Thus, the injection of funds through the fulfillment of restitution is very helpful in providing a decent life expectancy for victims after being arbitrarily abandoned by the perpetrator.



#### 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 the Witness and Victim Protection Agency 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 Witness and Victim Protection Agency 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 suffered by victims of domestic abandonment crimes. It is expected that these efforts can realize law enforcement and legal protection based on legal justice, and provide legal benefits to the community, and legal certainty.

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