



LEGAL REVIEW OF CHILD PROTECTION IN FULFILLING THEIR RIGHTS AFTER DIVORCE AND ITS IMPLEMENTATION IN MEDAN RELIGIOUS COURT DECISIONS

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Article Info	Abstract
Article History Received : 2024-12-03 Revised: 2024-12-10 Published: 2025-01-15 Keywords: <i>Child protection, post-divorce support, Religious Court</i>	<p>Divorce not only affects the husband and wife, but also has serious consequences for the children born from the marriage. One important aspect that must be considered after a divorce is the fulfillment of children's rights, especially regarding custody, maintenance, and affection from both parents. Although legal regulations in Indonesia, such as Law Number 1 of 1974 concerning Marriage, Law Number 35 of 2014 concerning Child Protection, and the Compilation of Islamic Law have clearly regulated the obligations of parents towards children after a divorce, the implementation of these regulations still faces various obstacles. Many cases show that fathers who are required to provide maintenance often avoid their responsibilities, which has a negative impact on the welfare of children.</p> <p>This study uses an empirical normative legal method with a statutory and comparative law approach to analyze the effectiveness of legal protection for children after divorce, especially in the Medan Religious Court decision. The results of the study indicate that although the court decision has determined the amount of maintenance that must be given, in practice the execution of the decision often encounters obstacles, both due to the low level of father compliance and weak law enforcement mechanisms. Therefore, a more effective policy reformulation is needed, including simplifying execution procedures, strengthening legal sanctions for negligent parents, and a more active role for the state in ensuring the fulfillment of children's rights. With these steps, it is hoped that children's rights after divorce can be protected more optimally, so that the welfare and legal certainty for children remain guaranteed.</p>

I. INTRODUCTION

Marriage is a physical and spiritual bond between a man and a woman with the aim of forming a happy and prosperous family. In the perspective of Islamic law, marriage is a solid contract (*mitsaqan ghalidzan*) which aims to create a household that is *sakinah*, *mawaddah*, and *rahmah*. (Tanjung and Tanjung 2022) However, in reality, not all households can maintain the bond until the end of life. Divorce is often the last choice for couples who face unresolvable household conflicts. Unfortunately, divorce not only affects both parties, but also the children born from the marriage. Children are often the ones most affected by divorce, especially in fulfilling their rights.

In the Indonesian legal system, child protection is one aspect that receives serious attention. Children's rights have been regulated in various regulations, including Law Number 1 of 1974 concerning Marriage, Law Number 35 of 2014 concerning Child Protection, and the Compilation of Islamic Law. (Febrian-Eny,

Maulana-Nelson, and Simamora, nd) The Marriage Law mandates that even in the event of a divorce, both the father and the mother remain responsible for the care and education of the child, in accordance with the child's best interests. Article 41 of the Marriage Law states that as a result of a divorce, the father remains obligated to bear the costs of the child's care and education, while the mother who has custody is obliged to care for and educate the child with full responsibility.

However, in practice, children's rights after divorce are often ignored. There are many cases where fathers who should be responsible for child support actually avoid this obligation. This has a negative impact on children's development, both in terms of economy, education, and psychology. Not a few children experience limitations in meeting their living needs due to parental negligence in supporting them after divorce. This condition shows that even though regulations already exist, the implementation of legal

protection for children's rights after divorce still faces various obstacles.

In addition, children's rights that must be fulfilled after divorce are not only limited to aspects of living and education, but also include psychological, social, and emotional rights. Children have the right to receive affection from both parents, even though they have divorced. However, in many cases, divorce often causes the relationship between children and one of the parents to become strained. Conflicts between parents that lead to divorce often worsen this situation, where one party, either the father or the mother, limits the child's access to the other parent. This not only violates the child's rights, but also has a negative impact on their psychological development. (Tanjung and Tanjung 2022)

In Islamic law, the father's obligation to provide for his children after divorce is very clear as stated in the Qur'an, Surah Al-Baqarah verse 233: "And the father is responsible for their maintenance and clothing in a manner that is appropriate. No one is burdened with more than he can bear. Let not a mother suffer because of her child, nor let a father (suffer) because of his child." This verse emphasizes that even though a marriage ends in divorce, a father's responsibility towards his child remains. However, in practice, there are still many cases where fathers neglect their obligations, causing the mother to bear the entire burden of raising the child alone. (Saputra and Chalim 2018)

Religious Courts as the authorized institution in handling divorce cases have an important role in ensuring that children's rights are protected after divorce. The court can decide on child custody, the amount of maintenance that must be provided by the father, and the child's right to continue to receive love from both parents. However, court decisions are often not implemented optimally. Fathers who are ordered to provide maintenance often ignore the decision, so mothers have to find other ways to meet their children's needs. In some cases, mothers are forced to file an application for execution of the decision to the court, but this process is often slow and ineffective due to the limitations of the law enforcement mechanism.

This phenomenon shows that legal protection for children in fulfilling their rights after divorce still faces various challenges. One of the main challenges is the low level of compliance of parties required to provide maintenance. In addition, the lack of an effective mechanism in enforcing court decisions related to children's

rights is also an obstacle that needs attention. Therefore, it is necessary to conduct an in-depth study of the implementation of legal protection for children after divorce, especially in the decisions of the Medan Religious Court, as an effort to find a more effective solution in ensuring that children's rights are still fulfilled.

In addition, it is important to see how effective the law is in protecting children after divorce from an empirical perspective. This includes how religious courts in Medan implement existing regulations in their decisions, as well as the extent to which these decisions are effective in practice. Thus, this study not only aims to analyze the applicable legal provisions, but also to evaluate their implementation in social reality.

In this context, research on the legal review of child protection in fulfilling their rights after divorce and its implementation in the Medan Religious Court's decision is very relevant. With this research, it is hoped that various recommendations can be found that can be used to improve the child protection system after divorce, both in terms of regulation and implementation in the field. With a comprehensive approach, this research is also expected to contribute to the development of more effective legal policies in ensuring that children's rights are still fulfilled even though their parents have divorced.

II. RESEARCH METHODS

This study uses an empirical normative legal method with a statutory and comparative legal approach to analyze child protection in fulfilling their rights after divorce. The data sources used consist of primary, secondary, and tertiary legal materials. Primary data is obtained from fiqh books, laws and regulations such as the Marriage Law, the Child Protection Law, and the Compilation of Islamic Law, as well as decisions of the Religious Courts. Meanwhile, secondary data comes from literature, legal journals, and the results of interviews and related research, which support the legal analysis of the application of court decisions regarding child support after divorce. (Tj, Siregar, and Rambe 2022)

Data collection was conducted using the documentation method through a review of relevant literature and electronic sources. The data obtained were analyzed qualitatively using the analytical descriptive method, which aims to understand how the legal concept of child support is applied in court decisions. The results of this

analysis are expected to provide recommendations regarding more effective forms of legal protection for children after divorce and overcome obstacles in the implementation of the execution of child support decisions in the Religious Court.

III. RESULTS AND DISCUSSION

A. Legal Regulation of Children's Rights After Divorce from a Legal Perspective in Indonesia

Post-divorce child care or *hadhanah* is a parent's obligation that continues even though the marriage has broken up. In Islam, child care includes physical, mental and spiritual aspects, aimed at ensuring that children can grow optimally. The Marriage Law and the Compilation of Islamic Law do not explicitly define *hadhanah*, but emphasize that both parents are responsible for the child's care and education. Child custody rights are generally given to the mother until the child reaches *mumayyiz* age, while the responsibility for maintenance is in the hands of the father, unless the father is unable, then the mother can share in the burden based on a court decision. Islamic law and Indonesian positive law emphasize that fulfilling children's rights, including living, education and protection, is an obligation inherent in parents and must not be ignored.

Legal protection for children after divorce is also regulated in the Child Protection Act and the Convention on the Rights of the Child, which emphasizes the principle of the best interests of the child. However, in practice, there are still many cases where children's rights are neglected due to parental negligence in fulfilling their obligations.(Ariska and Latif 2022)The Marriage Law provides a legal mechanism to demand the fulfillment of children's rights through court decisions, including efforts to execute if the father is negligent in providing maintenance. Although there are clear regulations, the main challenges in implementation are the weak execution of court decisions, the lack of awareness of parents regarding their responsibilities, and the psychological impact experienced by children due to divorce. Therefore, strengthening the law and supervision of the implementation of child protection after divorce is very important to ensure that children continue to receive their rights optimally.

B. Legal Protection for Children Who Are Not Provided with a Support Post-Divorce Legal Perspective in Indonesia

Legal protection for children aims to guarantee the rights of children to live, grow, and develop in accordance with human dignity and receive protection from violence and discrimination. Parental divorce has a significant impact on children, both morally and materially. Morally, children lose the integrity of their family and the affection of both parents. Materially, children still have the right to receive sustenance to support their lives.(Ariska and Latif 2022)

Legal protection for children is regulated in the 1945 Constitution, Law Number 35 of 2014 concerning Child Protection, and various other regulations governing children's rights after divorce. The law serves to protect children from arbitrary actions and ensure that the best interests of children remain a priority in every policy and legal decision.

Legal protection for children in Indonesia is based on several main regulations, including:

1. Law Number 35 of 2014 concerning Child Protection, which emphasizes that children have the right to care, protection from discrimination, and fulfillment of their life needs.
2. Law Number 1 of 1974 concerning Marriage, which in Article 41 regulates the obligations of parents after divorce to remain responsible for their children.
3. Law Number 4 of 1979 concerning Child Welfare, which emphasizes that parents are the first party responsible for the welfare of children.
4. The Convention on the Rights of the Child (CRC), which affirms the principle of the best interests of the child in any legal decisions involving them.

Legal protection for children covers various aspects, including:

1. Protection of children's human rights, such as the right to life, education and welfare.
2. Child protection in the judicial process, including when there is a dispute over custody after divorce.
3. Protection of children from exploitation, such as slavery, child trafficking, and domestic violence.
4. Protection of children from neglect, which can impact their physical and mental well-being.

In practice, the court has the authority to ensure that children continue to receive their rights, both in the form of maintenance and alimony from divorced parents.(Nawafitrid et al. 2024)c

Parents' responsibility towards their children does not end even after a divorce. Based on Article 41 of Law Number 1 of 1974, both parents are still required to care for and educate their children by prioritizing their best interests.

In the Compilation of Islamic Law (KHI) Article 149 Letter d, it is explained that the father is obliged to provide maintenance to the child until the age of 21. Child custody is regulated in Article 105 of the KHI, where children who are not yet mumayyiz (under 12 years old) are in the care of the mother, while the maintenance costs remain the responsibility of the father.

Law Number 23 of 2002 concerning Child Protection also states that parents are obliged to care for, maintain, educate and protect children so that they continue to receive their rights even if a divorce occurs.

1. Obligation of Father's Support in the Perspective of Islamic Law

In Islam, child support remains the responsibility of the father even after a divorce. Surah Al-Baqarah (2:233) emphasizes that the father is responsible for the child's support in a proper manner.

The Hanafi School believes that if a father does not provide maintenance, the judge is obliged to force him to pay. Meanwhile, the Syafi'i and Hambali Schools state that previous child support is forfeited unless there is a decision from the judge that requires it.

2. Father's Obligation to Provide Support from a Positive Legal Perspective

In Indonesian law, Article 149 Letter d of the KHI states that fathers are required to provide child maintenance costs until the age of 21. In addition, Article 45 of Law Number 1 of 1974 emphasizes that this obligation remains in effect even if the parents are divorced.

If a father neglects to provide maintenance, the mother can file a lawsuit to the court to demand the fulfillment of child maintenance. The amount of maintenance is determined by the judge by considering the father's financial ability.

3. Legal Sanctions for Fathers Who Do Not Provide Maintenance from an Islamic Law Perspective

According to the Hanafi School, if a father is in a position to provide for his child but refuses to provide for him, then the judge is obliged to force him to pay. In Islamic law, negligence in providing for a child can be categorized as an act of injustice and can be subject to legal sanctions according to the court's decision.

Indonesian positive law has set sanctions for fathers who neglect to provide support to their children after divorce:

1. Article 77B of Law Number 35 of 2014 concerning Child Protection, which states that violations of the obligation to provide support can be punished with a maximum imprisonment of 5 years and/or a maximum fine of IDR 100,000,000.
2. Article 49 of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, which stipulates that parents who neglect their children can be punished with a maximum imprisonment of 3 years or a maximum fine of IDR 15,000,000.
3. Article 76B of Law Number 35 of 2014, which prohibits anyone from neglecting a child and can be subject to criminal sanctions in accordance with applicable legal provisions.

In civil law, a father who is negligent in providing child support can be sued to court to replace the costs of the support not provided and to lose custody of his child.

The problem	Islamic Law	Positive Law
Father's obligation to provide maintenance after divorce	The child's support is the father's responsibility, the mother is not obliged. If the father is incapacitated, the next of kin can take over.	The father is obliged to provide for the family, but if he is unable to do so, the mother can help.
Legal sanctions for fathers who do not provide for their children	If the father is able but does not provide maintenance, the judge can force him to pay. Past child support can become a debt.	Civil sanctions (lawsuits) and criminal sanctions (a maximum of 5 years in prison or a fine of up to IDR 100 million) may be imposed.

Both in the perspective of Islamic law and positive Indonesian law, the obligation to provide support remains attached to the father even though a divorce has occurred. However, positive law provides criminal sanctions for negligent fathers, while Islamic law emphasizes the moral aspect and family responsibility.

Legal protection efforts for children who are not provided for after divorce must continue to be improved through strict law enforcement and parents' awareness of their obligations towards their children.

C. Implementation of Fulfillment of Children's Rights After Divorce in Judge's Decisions at the Medan Religious Court

The implementation of the Religious Court's decision regarding the father's obligation to provide for children after divorce is based on Islamic law and positive law. In Islam, a father is obliged to provide for his child, even if he is poor, as long as he is still able to work. If not, this obligation is transferred to the closest relatives. In positive law, Article 149 letter d of the KHI and Article 41 of the Marriage Law emphasize that a father is obliged to provide for the maintenance of a child until the age of 21.(John 2021)

The Religious Court's decision regulates child support according to the father's financial ability, taking into account other dependents. Article 45 of the Marriage Law states that this obligation remains in effect even if the parents are divorced. However, many fathers ignore this obligation, so mothers often file lawsuits to ensure the fulfillment of children's rights. If the father is negligent, he can be subject to sanctions according to Article 77B of the Child Protection Law with a criminal penalty of up to 5 years or a maximum fine of IDR 100 million.

In the implementation of the Religious Court's decision, there are often problems in its implementation, including the execution of child support which is not running effectively. The Religious Court has a real execution mechanism and execution of payment of a sum of money through auction, as regulated in Article 200 HIR and Article 215 R.Bg. However, in practice, the execution of child support is often hampered by cost factors, complicated mechanisms, and legal uncertainty.

Many mothers do not apply for execution due to high costs, complicated procedures, and difficulties in proving ex-husband's assets to be used as collateral for execution. In addition, the execution mechanism does not guarantee regular child support payments, so mothers must apply for execution repeatedly. This creates legal uncertainty and psychological burdens for mothers and children.

The judge's decision in the case of child support in the Religious Court is based on philosophical, legal, and sociological

considerations. However, in practice, many decisions are ineffective in their execution. Divorce decisions by talaq are generally clearer in stating the obligation to provide child support than divorce by lawsuit, where child support is often not stated unless requested in the lawsuit.(Iskandar et al. 2022)perkpere

To ensure fathers' compliance in fulfilling their child support obligations, a more effective execution mechanism and clearer legal certainty are needed. Religious Courts can consider requiring child support payments before the divorce vow as a preventive measure. Another alternative is to strengthen criminal law enforcement for fathers who are negligent in providing for their children, as regulated in Article 77B of the Child Protection Law and Article 9 of the Law on the Elimination of Domestic Violence.

In the long term, there needs to be a regulatory reformulation that ensures legal certainty and the effectiveness of the execution of Religious Court decisions regarding child support. This can include simplifying execution procedures, increasing access for mothers to obtain children's rights, and increasing the role of the state in enforcing compliance with post-divorce child support decisions. With these steps, it is hoped that children's rights can be better protected and legal certainty can be realized more optimally.

IV. CONCLUSIONS AND RECOMMENDATIONS

Based on the legal analysis conducted, it can be concluded that legal protection for children in fulfilling their rights after divorce has been regulated in various regulations, both in Islamic law and positive Indonesian law. Although the law has emphasized that fathers remain responsible for child support even after divorce, in practice there are still many cases where fathers ignore this obligation. This has a negative impact on children's welfare, both in terms of economic, educational, and psychological aspects. Religious Courts have an important role in ensuring that children's rights are fulfilled through their decisions, but the implementation of these decisions often faces various obstacles, including weak execution mechanisms and low levels of compliance of the required parties.

REFERENCE LISTAN

Ariska, Aas Tri, and Udin Latif. 2022. "Legal Analysis of the Implementation of Judges' Ex Officio Rights in Protecting the Rights of

- Women in Conflict with the Law in Divorce Cases at the Sorong Religious Court.” Muadalah: Jurnal Hukum 2 (1): 55–69.
- Febrian-Eny, Dio Ashar Wicaksana-Handika, Rofiatul-Siska Trisia-Arif Maulana-Nelson, and Nikodemus Simamora. nd “Examination of the Mary Jane Case.”
- Iskandar, Fathul Aulia, Abdul Aziz Pamungkas, Fara Ardhika Divayana, and Djoni Gunanto. 2022. “Legal Education for Children and Women Related to Sexual Violence.” In Proceedings of the National Seminar on Community Service LPPM UMJ. Vol. 1.
- Nawafitrid, Videsta, Anindita Widyaningrum, Fredi Hernawan NS, and Ellectrananda Anugerah Ashshidiqui. 2024. “The Rights of Wives and Children After Divorce.” Bevinding Journal 1 (12): 21–31.
- Saputra, Hera, and Munsyarif Abdul Chalim. 2018. “Implementation of the Criminal System Against Perpetrators of Drug Abuse Crimes (Case Study at the Central Java Regional Police).” Journal of Legal Sovereignty 1 (1): 163–70.
- Tanjung, Indra Utama, and Dhiauddin Tanjung. 2022. “Law on Marriage and Interfaith Marriage: Islamic Law and Positive Law.” Journal of Citizenship 6 (4): 6792–6801.
- Tj, Indra Utama, Muhammad Azhali Siregar, and Muhammad Juang Rambe. 2022. “Problems of Authority to Settlement Land Disputes in the Form of Land Ownership Certificates (SHM) (Study at the Medan State Administrative Court).” MIRROR: Research Journal 6 (1): 193–206.
- Yohan, Rekha Aprilliani. 2021. “Legal Counseling Regarding Sexual Violence Against Women and Children During the COVID-19 Pandemic in the Paku Jaya Community Area.” In Proceedings of the National Seminar on Community Service LPPM UMJ. Vol. 1.