

Volume: 4
Number: 2
Page: 526 - 533

Article History:

Received: 2022-12-28
Revised: 2023-01-23
Accepted: 2023-03-16



ESTABLISHMENT OF SUPERVISORY INSTITUTIONS AS AN EFFORT TO FULFILL CHILD SUPPORT RIGHTS DUE TO DIVORCE
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Abstract:

The responsibility of parents to fulfill children's rights must still be carried out even if the parents are divorced. Law Number 1 of 1974 concerning Marriage explains that the father is responsible for all rights to provide for the child. However, often the father is negligent in fulfilling his obligations even though there has been a judge's decision in court. In the realm of the Court, a request for execution can be made in fulfillment of child support costs if the father/ex-husband is negligent, but this execution takes work. The purpose of this study is to analyze the urgency of establishing a supervisory institution as an effort to fulfill child support costs due to divorce. This research method is normative law with statutory approaches, conceptual approaches, and comparisons originating from legal materials, which are processed and analyzed with the study's results.

Keywords: Children's rights, Board of Trustees, child support, Divorce, Policy

Cite this as: SALAMAH, U., LUTH, T., SULISTYARINI, R., & PUSPITAWATI, D. (2023). "Establishment of Supervisory Institutions as an Effort to Fulfill Child Support Rights Due to Divorce". *International Journal of Environmental, Sustainability, and Social Sciences*, 4 (2), 526 – 533.

INTRODUCTION

Fulfillment of the fundamental rights of children is an integral part and is the implementation of the fulfillment of human rights. In the United Nations Convention on the Rights of the Child, which was declared on November 20, 1989, children's rights are grouped into 4 categories, namely: the right to live, the right to grow and develop, the right to receive protection, and the right to participate. From an Islamic perspective, children's human rights are a gift from God that must be guaranteed, protected, and fulfilled by parents, family, society, government, and the State (Ansari, 2007).

Wahbah Al-Zuhaili (1984) argued that children's rights include five things, namely; (1) nasab (personal identity); (2) radha'ah (breastfeeding); (3) hadhanah (Parenting and maintenance); (4) wilayah (trusteeship), and (5) nafaqah (cost support). Parental responsibility for fulfilling children's rights will still have to be given even if the parents are divorced. Regulations for the fulfillment of children's rights as a result of divorce are enacted in Article 41 letter (b) of Law Number 1 of 1974 concerning marriage, which reads, "as a result of the breakup of a marriage due to divorce, the father is responsible for all the maintenance and education costs needed for the child; if the father is, in fact, unable to fulfill this obligation, the court may determine that the mother must share the costs.

However, many fathers are still negligent in paying child support due to divorce and do not heed court decisions that have permanent legal force. Meanwhile, if an execution request is made, it is pretty challenging to be implemented. The complexity of the formal procedure for executing requests for child support and the high costs of execution, compared to the total value of child support determined by the panel of judges per month, is very disproportionate.

Therefore, there are many decisions containing child support that cannot be enforced, and are worthless, because they do not bind the defendant (father) to implement them in an orderly manner for the sake of the survival of children who are victims of their parent's divorce. Many of

the defendants (fathers) are still aware of their responsibility to provide a living for their children every month, but not at the amount stipulated in the verdict handed down by the Religious Courts. In the end, it is his ex-wife (the child's mother) who has to work hard and earn a living to meet her child's needs, while the father feels free from responsibility for the survival of his children. Moreover, most of the child's father is preoccupied with life with their wife in their new household.

In response to this, it is necessary to reform the law so that children do not become victims of neglect by their divorced parents. Experts put forward various ideas to fulfill children's rights, including implementing the *dwangsom* institution (Basir, 2015) and guaranteeing the father's assets (Choiri, 2015).

In many developed countries such as the United States, Britain, Australia, and New Zealand, matters of family support, especially child support, which are referred to "child support", have undergone many changes by providing full support to the interests of the child as stipulated in The United Nations Convention on the Rights of the Child (UNCRC) in 1989 (Roslina et al., 2017).

This renewal effort was later followed by other countries such as Australia, the United Kingdom, and New Zealand. This change has had a very good impact not only on the implementation of court decisions but these countries have also transferred all child maintenance matters from the handling of courts to an institutional or agency-based system that plays a role in determining aspects of the value of living for children, the amount of child financing and implementation of living needed for children (Roslina et al., 2017).

In Malaysia, to overcome the problem of child support rights due to divorce, an institution was formed called the Family Support Division (BSK) was formed in 2007. Del Boca and Daniela, in their paper entitled "Mothers, Fathers, and Children after Divorce: The Role of Institutions," emphasized that the existence of supervisory agencies can provide interventions to reduce the negative impact of divorce on children's welfare, both in the form of child maintenance costs and also child custody (Del Boca, 2002). Based on this description, the researcher conducted a study entitled "Establishment of Supervisory Institutions as An Effort to Fulfill Child Support Rights Due to Divorce"

METHODS

This research is normative legal research that examines laws and regulations in a coherent legal system. The study of normative law can provide juridical arguments when there is a void in norms. Data collection techniques were carried out by studying the literature on legal materials, both primary legal materials, secondary legal materials, and tertiary legal materials, then analyzed qualitatively using benchmarks derived from the legal theory of justice and expediency in finding new ideas to protect children as a result of divorce his parents. As legal research and in accordance with the unique character of legal science as well as the substance of the problems and legal issues that will be studied in this study, the approaches used are statutory, conceptual, and comparative approaches (Marzuki, 2009).

RESULT AND DISCUSSION

Arrangements for fulfilling child support due to divorce. The fulfillment of children's fundamental rights is an integral part and implementation of the fulfillment of human rights. Arrangements for fulfilling children's rights as a result of divorce are regulated in Article 41 letter (b) of the Marriage Law Number 16 of 2019 junction Number 1 of 1974, which reads, "as a result of the breakup of a marriage due to divorce, the father is responsible for all maintenance and education expenses incurred." children's needs; if it turns out that the father is unable to fulfill the obligation, the court can determine that the mother must bear the costs.

According to Soemiyati (2007), if there is a divorce due to marriage, the mother or grandmother has the right to take care of the child from that marriage and so on. However, financing the child's maintenance, including the cost of his education, is the father's responsibility. A similar opinion was expressed by Hilman Hadikusuma (2007), the father is responsible for all the maintenance and education costs needed by the child after the breakup of the marriage due to divorce. Suppose it turns out that the father cannot carry out his obligations to pay for the child's maintenance and education. In that case, the court can determine that the mother is also responsible for paying for the child's maintenance and education.

The father bears the costs of raising children (until they reach adulthood or stand alone, work/earn income, or children get married). The father's obligation to finance remains the responsibility even though the child's maintenance is not his. The father still has to pay for the child's living (Ernaningsih & Samawati, 2008).

Taking into account the explanations of several divorce law experts as described above, it can be understood that Article 41 letter (b) of Law Number 1 of 1974 is a normative form of the state's efforts to protect the rights of children after their partner's divorce. Parents, based on the function of the rule of law, which recognizes and protect human rights.

Sudarsono (1991) explained more in-depth that children have the right to receive care and education from both parents. The mother and the father of the child are obliged to care for and educate the children/children they acquired during the marriage. Divorce that occurs will not change the relationship status of the child and his parents. Parents are still obliged to care for and educate their children until the child is married or can stand alone. The right to be cared for refers more to meeting physical needs. Children have the right to be cared for by their physical members by both parents.

The Compilation of Islamic Law emphasizes the importance of protecting children who are victims of divorce to obtain care and maintenance rights as stipulated in Article 105 that in the event of a divorce: Caring for children who are not yet mumayyiz or who are not yet 12 years old is the mother's right; Mumayyiz child maintenance is left to the child to choose between his father or mother as the holder of his maintenance rights; and his father bears maintenance costs.

The obligation of parents towards their children is strengthened by the provisions of Law Number 23 of 2002, as amended by Law Number 35 of 2014 concerning Child Protection. Article 26, paragraph (1) states that parents are obliged and responsible for caring for, nurturing, educating, and protecting children.

Suppose a father neglects his obligation to provide for his child, which called neglect. In that case, he can be prosecuted criminally, as confirmed in chapter XIA Prohibition Article 76 B "Everyone is prohibited from placing, allowing, involving, ordering to involve children in a state of abuse and neglect". Furthermore, Article 77B explains that "Everyone who violates the provisions referred to in Article 76B shall be punished with imprisonment for a maximum of 5 (five) years and/or a fine of up to Rp. 100,000,000.00 (one hundred million rupiahs)."

The provisions in the substance of the law above show that a father's responsibility towards his child cannot be dropped even if the two of them divorce or remarry. Then it can also be understood that if the child is not yet an adult, then child care is the mother's right, but the costs are borne by the father (Ali, 2006). Thus, even though the child is immature and his care is under the mother's authority, everything related to costs is entirely the father's responsibility.

Article 9 paragraph (1) Law Number 23 of 2004 concerning the Elimination of Domestic Violence states that: "Every person is prohibited from abandoning people within the scope of his household, even if according to the law that applies to him, or because of an agreement or engagement he is obliged to provide life, care for, or care for that person".

Thus if this article is related to Article 41 letter (b) of Law Number 1 of 1974 Concerning Marriage, then a father who is not responsible for the maintenance and education (support) costs needed by his child can be categorized as having committed an unlawful act. Neglect of their children, as stipulated in the provisions of Article 9 paragraph (1) of Law Number 23 of 2004 concerning the Elimination of Domestic Violence. It is further stated in Article 49 letters a and b of Law Number 23 of 2004 concerning the Elimination of Domestic Violence that criminal threats for the father's negligence of the obligation to provide for children after a divorce or referred to as neglect as referred to in Article 9 paragraph (1) and paragraph (2) of this Law is punishable by imprisonment for a maximum of 3 (three) years or a fine of up to Rp. 15,000,000. - (fifteen million rupiah). It shows a correlation that if it is proven that there has been an act of negligence regarding post-divorce maintenance obligations for children who are considered neglected, then they can be prosecuted civilly, and they can also be prosecuted criminally.

The provisions in the substance of the law above show that a father's responsibility towards his child cannot be released even if the two of them divorce or remarry. Then it can also be understood that when children are immature, parenting is their motivation.

Problems in fulfilling children's livelihood rights due to divorce. The problem of non-fulfillment of living rights after divorce can be classified into two things: First, lawsuits for child maintenance rights are not filed simultaneously with divorce lawsuits, so judges cannot map out the fulfillment of living rights for children who are victims of divorce. Secondly, in a divorce suit, the determination of custody and child maintenance rights is requested, but the parents - the father - tend to ignore the judge's decision.

In the first aspect, the Supreme Court issued a Circular Letter of the Supreme Court (Sema) Number 4 of 2016 concerning the Enforcement of the Formulation of the Results of the 2016 Supreme Court Plenary Chamber Meeting as a Guideline for the Implementation of Duties for the Court, At Point 5 it is explained that "Religious Courts can ex officio determine the child's maintenance to his father if the child is in the care of his mother as stated in Article 156 letter (f) Compilation of Islamic Law" (Choiri, 2017).

Ex officio means that because of his position, the judge can decide cases outside the petite as an effort to provide legal protection and justice for women and children (Arto, 2017). It means that in the case of a judge granting a divorce proposed by the parents. At the same time, as a result of the marriage, the judge finds that there are immature children. The judge is justified in digging into other facts about the father's work or ability and considering the child's living expenses or maintenance, which is determined to be the father's responsibility. The judge sentenced the father to pay the child's maintenance to the mother, who looked after the child. Thus, in terms of fulfilling the child's maintenance rights as a result of divorce, the judge is justified in violating the "Ultra Petitum Partium" doctrine as referred to in Article 178 paragraph (3) HIR/ Article 189 paragraph (3) RBg (Choiri, 2017).

The second problem is that in a divorce suit, the stipulation of custody and child maintenance rights is requested, but the parents - the father - need to pay more attention to the judge's decision. Based on the research results of Stijn Van Huis from the Vollen Hoven Institute University of Leiden in the Netherlands at the Cianjur Religious Court, West Java, in 2010, regarding the Execution of Decisions from the Religious Courts in Indonesia, there is a serious problem with women's access to the acquisition of child support rights after divorce, even though a woman has struggled to win his case in court. However, it turned out that the court's decision could not be upheld (Huis, 2015).

In the research report on the Preliminary Assessment of Issues in the Execution of Civil Case Decisions in Indonesia, it was found that obstacles to execution in family cases, as the author stated at the beginning of this article, were because; First, there is no mechanism capable of ensuring the

payment of the child's maintenance and/or wife's maintenance by the defendant; and Second, there is no mechanism binding a third party (the institution where the respondent works) to ensure the execution of the payment of living expenses by the absent respondent (Jebabun et al., 2018).

Policy Regulating the Establishment of Oversight Institutions as an Effort to Fulfill the Living Rights of Children Due to Divorce. If you look at the description above, it can be concluded that the state, as the rule of law, has tried to provide protection for children and provide legal certainty for children to obtain their rights as human beings, fulfillment of their welfare after the divorce of their parents. However, in reality, many children still need to receive their rights as stipulated in the law, even though the judge's decision in a divorce case or a hadhanah case states that the father must provide maintenance rights for his child.

To protect children and also realize children's welfare, children who experience conflict due to their parents' divorce must be monitored to ensure that the survival of these children is guaranteed as mandated by the 1945 Constitution.

In several countries, such as Malaysia, Australia, and America, separate institutions are prepared for children who are victims of divorce to monitor whether their parents can guarantee the child's survival and fulfill the child's fundamental rights. It is done so that children can be guaranteed their survival, and parents are also responsible for their obligation to continue to provide for their children.

Based on research conducted by Resti Hedi Juwanti with the title Post-Divorce Child Support in the Decision of the Indonesian Religious Court and the Malaysian Sharia Court in the Perspective of Jurisprudence and Human Rights in 2018, that the provisions concerning post-divorce children's rights in terms of hadhanah and living for Muslims in the partnership area Kuala Lumpur the applicable Islamic Family Law is the 1984 Islamic Family Act (Federal Territories) Deed. This deed has specific provisions regarding child maintenance rights listed in sections 60 to 80 (Juwanti, 2018).

In the deed, it can be seen that the power of the Court or judge through a court decision has an important role in guaranteeing legal certainty as to who is the person who can be responsible for providing maintenance up to the consideration of the level of income that must be given. Provisions regarding the child's right to support through a court decision or the Court's Proxy are detailed and regulated by the State through the deed. If a person whom the Court has appointed refuses to provide maintenance, then the court can be sued for arrears of living expenses as a debt that must be paid from his inheritance (section 69) (Juwanti, 2018).

The two countries mentioned above also have child support agencies, Baitu Mal in Malaysia and CSA (Child Support Agency) in Australia. The existence of this institution can be responsible for ensuring the fulfillment of children's livelihood as part of efforts to provide protection and justice for the survival of children. Meanwhile, in Indonesia, people who feel they are not getting protection and justice can only complain about their problems to social institutions that handle children's and women's problems, such as the Indonesian Child Protection Commission (KPAI) and the National Commission on Women or others. Even now, in Indonesia, a community has been formed with the name Single Moms Indonesia. It consists of single mothers who finance the needs of their children without any responsibility from the father as someone who is obliged to provide for their children.

Compared with the child maintenance rules in Indonesia, whether contained in the Marriage Law Number 1 of 1974 or in the Islamic Law Compilation with arrangements for providing maintenance in the two countries, according to the author, existing laws still need to accommodate. They are still far behind in addressing the problem of child maintenance, which means that there has been a legal vacuum (rechstavacuum) where the arrangements for fulfilling the child's maintenance should be regulated in more detail to be able to provide legal certainty and guarantees

to children that must be obtained as a result of their parent's divorce. Government regulations can regulate these detailed arrangements to complement existing regulations.

This legal vacuum results in the loss of access to justice for children in obtaining their human rights. As stated in the elucidation of the Child Protection Act, the State upholds human rights, including children's rights which are marked by the guarantee of protection and fulfillment of children's rights in the 1945 Constitution of the Republic of Indonesia and several provisions of laws and regulations. Invitations, both national and international. These guarantees are strengthened through the ratification of international conventions on the Rights of the Child, namely the ratification of the Convention on the Rights of the Child through Presidential Decree Number 36 of 1990 concerning the Convention on the Rights of the Child.

In the Qur'an, the concept of justice has various meanings, one of which is the word 'adl which means 'paying attention to individual rights and giving those rights to each owner. This understanding is defined as 'putting something in its place or 'giving the other party its rights through the closest path'. The opponent is 'tyranny', i.e., this violation is mentioned in QS. Al-An'am [6]: 152, "and when you say you should act fairly even though he is [your] relative". Understanding adl like this gives rise to social justice (Shihab, 1996).

Quraish Shihab emphasized that humans who intend to emulate God's righteous nature - after realizing God's justice - are required to uphold justice even towards their families, parents, and themselves, even towards themselves, namely by placing their lust and anger as a prisoner. must follow the dictates of reason and religion, not make masters who direct reason and demand religion. Because if so, he would not apply 'adl, namely placing something in its proper place (Sahabuddin et al., 2007).

Based on the cases the author traced, the neglect of children's rights due to divorce is due to the parents' incompetence. In this case, the most important is the father. In the law on fathers and marriage, the mother can fulfill the child's rights if she cannot afford it. However, sometimes the mother has economic difficulties meeting her children's needs. In many cases, in the end, a mother is willing to sell herself to meet the child's needs. -his son. Sociologically, most women are responsible for caring for their children. They will be willing to do anything to be able to finance their children's needs.

Therefore, the state should also have a role in this matter as stipulated in the Child Protection Act Number 23 of 2002 which was amended into Law 35 of 2014 concerning Child Protection about the obligations and responsibilities of the state and government which are formulated: Article 21: The state and government are obliged and responsible for respecting and guaranteeing the human rights of every child without distinction of ethnicity, religion, race, class, gender, ethnicity, culture, language, the legal status of the child, order of birth of the child and physical and/or mental condition; Article 22: that the State and Government have the obligation and responsibility to provide support for facilities and infrastructure in the implementation of child protection; Article 23: (1) The state and government guarantee the protection, maintenance, and welfare of children by taking into account the rights and obligations of parents, guardians or other people; (2) The State and Government supervise the implementation of child protection.

Based on this law, the state's roles and responsibilities are clear regarding child protection. Therefore, according to the author, forming a supervisory agency and guarantor of children's rights is necessary. This supervisory agency and guarantee for children's rights can have a strategic role in realizing the welfare of children, not only children who are victims of divorce but also children who experience conflict both within their household and due to other factors.

The Supervisory and Guarantee Agency for the Rights of the Child will function as a supervisor who can monitor the level of compliance of the father in carrying out the judge's decision

to fulfill the child's maintenance rights due to divorce. Furthermore, it can also regulate guardianship issues if the child's parents are not in a condition, then based on a court decision, there is a guardian appointed to be able to fulfill maintenance rights and custody rights for divorced people whether they are divorced or divorced, this is done to avoid there is the neglect of children.

Guidelines for guardianship are based on the Marriage Law, a Compilation of Islamic Law, and the Child Protection Act. Suppose in the guardianship. No one is deemed capable of fulfilling the right to provide for the child. In that case, the state and government are responsible for guaranteeing the child's rights as stipulated in Law Number 23 of 2002 in conjunction with Number 35 of 2016 concerning Child Protection.

The existence of this supervisory agency can fill legal settlements in regulating rights and obligations between parents and children due to divorce so that there is legal certainty and can provide legal protection to children based on the principle of the best interests of the child.

CONCLUSION

Based on the description above, it can be interpreted that children often become victims of parental conflicts resulting in divorce. In marriage law, the consequences of divorce have been regulated, so the father is still obliged to fulfill the right to provide for his child. However, the father is often negligent even though a judge's decision has permanent legal force. So, the mother, as a woman, has to consider financing for her children and take care of them.

Therefore, to ensure that the judge's decision can be implemented, it is necessary to have a supervisory institution that aims to oversee the level of the father's compliance in implementing the judge's decision in fulfilling the child's living rights as a result of divorce and can also be helpful as a strategic institution in protecting children's rights. Conclusion

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