

LAW ENFORCEMENT MODEL FOR THE EXECUTION OF COURT DECISIONS ON CIVIL SERVANT FATHERS' CHILD SUPPORT OBLIGATIONS AFTER DIVORCE IN THE BENGKULU HIGH RELIGIOUS COURT AREA

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Abstract: Law enforcement of child support obligations of fathers as Civil Servants (PNS) after divorce often encounters obstacles, such as non-compliance in implementing Religious Court rulings. This study focuses on the Bengkulu High Religious Court (Pengadilan Tinggi Agama, PTA), which has implemented an execution system to ensure the financial rights of women and children after divorce. The primary objective of this research is to analyze the factors contributing to non-compliance among fathers with civil servant status, assess the implementation process of court decisions, evaluate the execution model employed by the PTA of Bengkulu, and explore avenues for its improvement. The study is grounded in the theories of the supremacy of law, law enforcement, and legal execution, employing a normative-empirical approach with descriptive methods. Data collection techniques included observation, interviews, and document analysis. The findings reveal that several factors, including economic constraints and limited legal awareness, contribute to the non-compliance of civil servant fathers in fulfilling child support obligations. The execution process is largely similar to the procedures for enforcing monetary payments. The PTA of Bengkulu has innovatively introduced the E-Mosi Caper application to monitor compliance and track the implementation of child support orders. To enhance the effectiveness of this execution model, the study proposes regulatory harmonization, the establishment of a dedicated implementation team, and heightened public awareness campaigns. These measures aim to support the development of a more robust and efficient system for ensuring compliance with child support obligations, ultimately advancing the protection of women's and children's financial rights after divorce.

Keywords: law enforcement model; execution; development processes

Abstrak: Penegakan hukum terhadap kewajiban nafkah anak oleh ayah berstatus Pegawai Negeri Sipil (PNS) pasca perceraian sering kali menghadapi kendala, seperti ketidakpatuhan dalam melaksanakan putusan Pengadilan Agama. Penelitian ini berfokus pada Pengadilan Tinggi Agama (PTA) Bengkulu, yang telah menerapkan sistem eksekusi untuk menjamin hak-hak finansial perempuan dan anak setelah perceraian. Tujuan utama dari penelitian ini adalah menganalisis faktor-faktor yang menyebabkan ketidakpatuhan ayah berstatus PNS, menilai proses pelaksanaan putusan pengadilan, mengevaluasi model eksekusi yang diterapkan oleh PTA Bengkulu, serta mengeksplorasi cara-cara untuk meningkatkan efektivitas sistem tersebut. Penelitian ini didasarkan pada teori supremasi hukum, penegakan hukum, dan eksekusi hukum, dengan pendekatan normatif-empiris menggunakan metode deskriptif. Teknik pengumpulan data meliputi observasi, wawancara, dan analisis dokumen. Hasil penelitian menunjukkan bahwa beberapa faktor, seperti keterbatasan ekonomi dan rendahnya kesadaran hukum, berkontribusi pada ketidakpatuhan ayah PNS dalam memenuhi kewajiban nafkah anak. Proses eksekusi menyerupai pelaksanaan pembayaran uang. PTA Bengkulu memanfaatkan aplikasi E-Mosi Caper untuk memantau kepatuhan dan melacak pelaksanaan perintah nafkah anak. Untuk meningkatkan efektivitas model eksekusi ini, penelitian ini mengusulkan harmonisasi regulasi, pembentukan tim pelaksana khusus, dan kampanye peningkatan kesadaran publik. Langkah-langkah ini bertujuan untuk mendukung pengembangan sistem yang lebih kuat dan efisien dalam menjamin kepatuhan terhadap kewajiban nafkah anak, sehingga pada akhirnya memperkuat perlindungan hak-hak finansial perempuan dan anak setelah perceraian.

Kata kunci: model penegakan hukum; eksekusi; proses pengembangannya

Introduction

The obligation of parents to care for and educate their children persists even after the dissolution of marriage. Divorce, as the termination of the legal relationship between husband and wife, entails significant legal consequences for the family.¹ The Marriage Law and the Compilation of Islamic Law (KHI) do not specify the exact amount of child support to be provided after divorce, specific regulations govern child support obligations for civil servants (PNS).

The regulations concerning child support for civil servants (PNS) are stipulated in Article 8 of Government Regulation No. 10 of 1983, as amended by Government Regulation No. 45 of 1990. These provisions state that salary division is determined as follows: if all children remain with one party, the salary is divided into three equal portions for the civil servant, the ex-wife, and the children.² If custody of the children is divided between the civil servant and the ex-wife, one-third of the salary is allocated among the children. If there are no children, the salary is divided equally between the civil servant and the ex-wife. In cases of divorce involving a second wife, the allocation depends on who assumes custody of the children. Child support payments cease when the child reaches the age of 21 or 25 (if still pursuing education), marries, or becomes financially independent. This salary division applies primarily when the divorce is initiated by the male civil servant, except in cases where the wife files for divorce due to polygamy.³

In the context of divorce cases involving fathers with civil servant (PNS) status under the jurisdiction of the Bengkulu High Religious Court, several rulings regarding child support obligations remain unfulfilled after divorce. This issue is evidenced by the filing of child support lawsuits by ex-wives against their ex-

husbands who refuse to comply with court decisions regarding child support. The reluctance of the fathers to fulfill these obligations is often attributed to the perception that the court-mandated support is burdensome, as their salaries are deemed insufficient to cover the financial responsibilities imposed on them.

One potential remedy for the wife is to present the court's decision to the treasurer at her ex-husband's workplace, requesting salary deductions to enforce compliance.⁴ However, this approach frequently encounters obstacles, including reluctance or refusal from treasurers to process such deductions for various reasons. Consequently, children's rights to financial support remain unfulfilled, underscoring the need for robust legal mechanisms to ensure the enforcement of court decisions and the protection of children's rights.

The appropriate legal action that can be undertaken is to submit a request for execution. Unfortunately, the process of submitting a request for execution is highly exhausting and often leads to new issues, particularly concerning the lengthy execution process and the associated costs. These execution costs are frequently higher than the value of the child support being enforced. As a result, ex-wives often choose not to pursue execution requests for child support obligations assigned to their ex-husbands.⁵

Based on the explanation above, it is particularly compelling to investigate the reasons why fathers with civil servant (PNS) status fail to fulfill their child support obligations after divorce, the process of executing court rulings regarding these obligations, and the model of execution applied to enforce court decisions on the child support obligations of civil servant fathers after divorce within the Religious Courts under the jurisdiction of the Bengkulu High Religious Court (PTA). The findings of this research are expected to contribute to the development of more effective execution models and improved

¹ Sri Turatmiyah Muhammad Syaifuddin Annalisa Yahanan, *Hukum Perceraian*, Sinar Grafika (Jakarta: Sinar Grafika, 2013), 17

² Ardhy Budi Satria, "Hak Nafkah Anak Pasca Perceraian Berdasarkan Peraturan Pemerintah Nomor 45 Tahun 1990 Tentang Perkawinan Dan Perceraian Pegawai Negeri Sipil Dan Kompilasi Hukum Islam" (Fakultas Hukum Universitas Pasundan, 2019). See: Syahrul Anwar, Aden Rosadi, and Fauzan Fauzan, "Retracing The Position of Sharia Science in The Formulation of Laws and Regulations," *Madania: Jurnal Kajian Keislaman* 24, no. 2 (2020): 171.

³ See Article 8 of Government Regulation No. 10 of 1983 as amended by Government Regulation No. 45 of 1990

⁴ Ahmad Fauzan, "Jaminan Pelaksanaan Eksekusi Putusan Anak," *Syakhshiyah Jurnal Hukum Keluarga Islam* 4, no. 1 (2024): 108–132.

⁵ Joni and Rifqi Qowiyul Iman, "Eksekusi Putusan Kewajiban Ayah Atas Nafkah Anak Pasca Perceraian, (Dasar Hukum Dan Problematikanya)," *Direktorat Jenderal Badan Peradilan Agama Mahkamah Agung (Badilag MA)*, 2021, <https://badilag.mahkamahagung.go.id>, accessed on February 02, 2023.

enforcement mechanisms to ensure the fulfillment of children's rights after divorce.

Method

This study was conducted at the Religious Courts within the jurisdiction of the Bengkulu High Religious Court (PTA). It employs a normative-empirical method to analyze the enforcement of child support obligations by fathers who are civil servants (PNS) after divorce. The normative approach examines legal provisions related to the child support obligations of civil servant (PNS) fathers after divorce, such as those outlined in the Marriage Law and the Compilation of Islamic Law. The empirical approach captures the practical implementation of legal enforcement through observation, interviews, and case documentation. The analysis is conducted descriptively to illustrate the process of decision enforcement, identify challenges, and evaluate the execution models applied. The results are expected to provide solutions for more effective legal enforcement in Indonesia.

Results and Discussion

Factors Contributing to the Non-Compliance of Civil Servant Fathers in Fulfilling Child Support Obligations After Divorce

According to some mothers, their ex-husbands often appear indifferent to their children's needs, resulting in the neglect of their children's fundamental rights. This neglect forces mothers to struggle to secure funds for their children's education and even for daily sustenance, often resorting to borrowing money from others.⁶ The provision of child support is a fundamental human right that must be fulfilled by those in the child's immediate environment, particularly the father, who bears the primary responsibility. Therefore, when a child does not receive their rightful support, they are entitled to demand this right from their father.⁷

⁶ Sulistyowati Irianto, *Perempuan Di Persidangan: Pemantauan Peradilan Berperspektif Perempuan* (Yayasan Obor Indonesia, 2006).

⁷ Siti Fitrotun, "Perlindungan Anak Dalam UU Nomor 35 Tahun 2014 Dalam Perspektif Fikih Hadhanah," *Istidal: Jurnal Studi Hukum Islam* 9, no. 1 (2022): 83–97. Fauzan Fauzan, "Progressive Law Paradigm in Islamic Family Law Renewal in Indonesia," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 7, no. 2 (2020): 187.

Based on interviews with respondents, several factors contribute to civil servant fathers failing to fulfill their child support obligations after divorce:

a. Economic Factors

Many ex-husbands belong to the lower-middle economic class and are unable to meet the full amount stipulated in court decisions. This financial burden is exacerbated for those who have remarried, increasing their responsibilities toward a new wife and family. In such cases, non-compliance is often due to financial incapacity rather than outright refusal.

b. Lack of Awareness of Responsibility

Some fathers demonstrate a lack of understanding or awareness regarding their role as providers, both during marriage and after divorce. This often manifests as indifference or irresponsibility in meeting their obligations until the child reaches adulthood or as mandated by law.

c. Misunderstanding of Parental Obligations

Misunderstandings about parental responsibilities also play a role. Fathers may perceive that children living with the mother are solely her responsibility, particularly if they reside with the mother's extended family. Fathers may feel ashamed or hesitant to visit the mother's household, especially if the mother has remarried, further complicating access and support.

d. Distrust of the Ex-Wife

In certain cases, fathers mistrust their ex-wives, who hold custodial rights over the children (*hadhanah*), believing that the financial support provided may be misused for personal expenses or to support a new family rather than being allocated to the children needs. This distrust often leads to reluctance in fulfilling child support obligations.⁸

Divorced fathers often leave a negative impression by neglecting their children, particularly when they remarry, resulting in the children from the first marriage being overlooked. The absence of strict sanctions for such neglect exacerbates the issue, making enforcement of child support obligations challenging. Even when legal remedies exist, they

⁸ Results of interviews with mothers who have been divorced at the Bengkulu Religious Court

often require significant time and financial resources, further discouraging ex-wives from pursuing claims.

In accordance with Government Regulation No. 10 of 1983 in conjunction with Government Regulation No. 45 of 1990, a husband who is a civil servant is obligated to provide financial support for his children following a divorce. These regulations aim to ensure that children receive adequate financial support for their maintenance, education, and well-being. The court determines the amount of support based on factors such as the father's income, the child's needs, and other relevant considerations.⁹

Children are the primary victims of their parents' divorce, and their rights must be protected. Children, as individuals in a developmental stage, require special care and attention from their parents. It is inappropriate for children to bear adult responsibilities prematurely, and parents must ensure their rights are fulfilled.¹⁰

Recognizing the importance of children within families and society, the state has established legal frameworks to safeguard children's rights. These include Law No. 1 of 1974 on Marriage, Law No. 4 of 1979 on Child Welfare, the Convention on the Rights of the Child (ratified by Presidential Decree No. 36 of 1990), Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law, Law No. 39 of 1999 on Human Rights, and Law No. 23 of 2002 on Child Protection.¹¹

Parents' responsibility for the welfare of their children includes the obligation to nurture and educate them in such a way that they grow and develop into intelligent, healthy individuals who are devoted to their parents, possess noble character, and are pious to God Almighty. Childcare also entails the responsibility of parents to supervise, provide appropriate services, and meet the child's needs. This obligation to care for and support the child remains in effect until the child is capable of self-reliance.¹²

⁹ Satria, "Hak Nafkah Anak Pasca Perceraian Berdasarkan Peraturan Pemerintah Nomor 45 Tahun 1990 Tentang Perkawinan Dan Perceraian Pegawai Negeri Sipil Dan Kompilasi Hukum Islam."

¹⁰ M Supraptiningsih, "Role Model Pendampingan Anak Yang Berhadapan Dengan Hukum Di Madura (Studi Komparatif Hukum Islam Dan Hukum Positif)." (2022).

¹¹ Ch. Mufidah, *Psikologi Keluarga Islam Berwawasan Gender*, UIN Maliki Press (Malang: UIN-Maliki Press, 2014), 340-341.

¹² Barzah Latupono, "Pertanggungjawaban Hukum Ayah Terhadap Anak Setelah Terjadinya Perceraian," *Sasi* 26, no. 2 (2020): 242-250.

The Religious Court is one of the judicial bodies in Indonesia, with the primary duty of receiving, examining, adjudicating, and resolving cases brought before it. In cases involving claims for child support, the mother typically acts as the claimant against the father (ex-husband) if he fails to fulfill his obligation to provide for the living expenses of the child under her custody.

Process of Executing Court Decisions on Fathers' Child Support Obligations After Divorce

The execution of court decisions regarding child support obligations is a complex process requiring multiple steps and legal actions. Implementing a court verdict that mandates a father to provide child support is often challenging, particularly when the father, as the defendant, is unwilling to comply voluntarily.

Another issue, as stated by A. Choiri, is the complexity of the execution application procedure for laypeople, coupled with the high cost of execution, which is disproportionate to the monthly child support amount determined by the court. As a result, many court rulings on child support remain unenforceable and ineffective, as they fail to compel the defendant (father) to comply consistently. This situation undermines the well-being and survival of children who become victims of their parents' divorce.

Many defendants (fathers) remain aware of their responsibility to provide monthly child support but fail to comply with the amount stipulated in the court's decision. Consequently, the burden often falls on the child's mother (the ex-wife), who must work hard to meet the child's needs. Meanwhile, many fathers neglect their responsibilities toward their children's welfare, becoming preoccupied with their new families and lives with their new spouses.¹³

Legal action can be taken if a father "refuses or neglects" to comply with a court decision that has obtained permanent legal force (*incracht*) by filing an execution request. Court decisions carry binding authority and have executorial power, enabling enforcement through state apparatus if the obligated

¹³ H.A.Choiri, *Penjaminan Harta Ayah Terhadap Kelalaian Pembayaran Nafkah Anak Pasca Perceraian (Perlindungan Hukum Terhadap Anak Korban Perceraian Bagian 2)* (WIB, 2015), <https://badilag.mahkamahagung.go.id>, accessed on June 19, 2023..

party fails to fulfill their obligations voluntarily. If the obligated party deliberately neglects or refuses to execute the court's decision, an execution request can be filed to enforce the ruling forcibly. The petitioner must submit the execution request to the relevant Religious Court to initiate this process.

In principle, the mechanism for executing the payment of a sum of money involves the following steps:

1. **Filing an execution request:** Submission of a formal application for execution to the relevant court.
2. **Payment of execution fees:** The applicant is required to pay the necessary execution fees.
3. **Warning (*aanmaning*):** A formal notice or warning is issued to the obligated party to comply with the court's decision.
4. **Issuance of an execution seizure order:** If a prior security seizure has not been imposed, the court will issue an order for execution seizure.
5. **Issuance of an execution order:** The court provides a directive to proceed with the execution.¹⁴

For the execution of financial payments, the enforcement of action depends on the response of the Respondent of Execution (*Termohon Eksekusi*) following the court chairman's warning (*aanmaning*). Three possible outcomes may arise:

1. **Voluntary compliance by the Respondent of Execution:** If the Respondent fulfills the court's decision by paying the amount specified in the judgment voluntarily, without any coercion from the court, the case is considered resolved. No further issues arise as the request of the Petitioner of Execution (*Pemohon Eksekusi*) has been satisfied.
2. **Refusal despite having the funds:** If the Respondent refuses to comply with the decision despite having the funds specified in the judgment, real execution (*eksekusi riil*) is

carried out. In this scenario, the execution officer forcibly seizes the funds from the Respondent and hands them over to the Petitioner.

3. **Refusal due to lack of funds but possession of assets:** If the Respondent refuses to comply because they lack the funds but possess movable or immovable assets, further steps are taken to address the situation through asset seizure or liquidation.¹⁵

According to Lawrence Friedman's theory of the legal system, the success or failure of the child support execution process depends on three components of the legal system:

1. **Legal Structure:** Religious courts, as authorized institutions, are established nationwide to facilitate the enforcement of judicial decisions.
2. **Legal Substance:** Normative rules exist to ensure the enforceability of decisions, but these rules have limitations in providing effective legal certainty.
3. **Legal Culture:** A significant issue arises from the reluctance of ex-wives to initiate execution requests due to perceived financial and procedural burdens, despite legal mechanisms being in place.

Regarding the implementation of the execution of women's and children's rights, there are no significant issues concerning the legal structure. This is attributed to the presence of religious courts, which are state-authorized institutions established in nearly all districts and cities. Similarly, from the perspective of legal substance, normatively written regulations have been enacted to enforce decisions through execution mechanisms. However, these regulations have not fully addressed the underlying issues nor ensured adequate legal certainty. From the perspective of legal culture, a critical challenge is the reluctance of most women or ex-wives to file for execution. Despite the existence of mechanisms clearly outlined in laws and regulations, this reluctance is driven by various factors, highlighting a significant gap in the practical implementation of these provisions.

The Religious Court has established a policy allowing child support payments to be arranged

¹⁴ Amran Suadi, *Jaminan Perlindungan Hak-Hak Perempuan Dan Anak Berbasis Interkoneksi Sistem (Sebuah Pemikiran Metabolisme Biological Justice)*, Orasi Ilmiah UIN Sunan Ampel (Surabaya: UIN Sunan Ampel Surabaya, 2022). Ronni Rahmani, *Eksekusi Jaminan Fidusia Dalam Penyelesaian Sengketa Ekonomi Syariah*, Pengadilan Agama Purworejo (Jakarta: Prenada Media Group, 2021), <https://pa-purworejo.go.id/publikasi/artikel-peradilan/374-eksekusi-jaminan-fidusia-dalam-penyelesaian-sengketa-ekonomi-syariah>. See. H Amran Suadi and M Hum, *Eksekusi Jaminan Dalam Penyelesaian Sengketa Ekonomi Syariah* (Prenada Media, 2020).

¹⁵ Joni Rifqi, *Hukum Acara Perdata Dalam Ranah Kepaniteraan Dan Kejaksaan Di Peradilan Agama* (Malang: Litnus, 2023), 217

prior to the pronouncement of the divorce vow (*ikrar talak*). In cases where the husband fails to fulfill his obligations, the wife has the right to submit a request for execution. However, in practice, it is uncommon for wives to pursue execution requests, as the financial support obtained is often disproportionate to the costs associated with the execution process, particularly given the additional burden of caring for children. Judges are expected not only to consider the applicable laws but also to take into account the societal context in which these issues arise.¹⁶

When a court ruling imposes obligations on one parent to provide support or fulfill the rights of the child, it must be implemented by the parent designated by the court. If a Religious Court decision is not followed by a parent, particularly the father, who is legally obligated to provide child support, legal action can be pursued under Law Number 7 of 1989, as amended by Law Number 50 of 2009 (Second Amendment). However, Article 54 of this law does not outline specific measures for dealing with non-compliance. In such cases, the *Herzien Inlandsch Reglement* (HIR) applies, which regulates procedural law for civil matters.

According to Article 196 of the *Herzien Inlandsch Reglement* (HIR), it is stipulated: "If the losing party refuses or neglects to fulfill the contents of the decision voluntarily, the winning party may submit a request, either verbally or in writing, to the court chairman. As outlined in the first paragraph of Article 195, the chairman is then required to summon and formally warn the losing party, instructing them to comply with the decision within a specified timeframe, which shall not exceed eight days."¹⁷

If the decision is not executed peacefully and voluntarily within the specified timeframe, as stipulated in Article 197 of the *Herzien Inlandsch Reglement* (HIR), the provision states: "If, after the allotted period, the decision remains unfulfilled, the Head of the Court shall order the confiscation of the losing party's assets. The confiscated property must be sufficient to cover the amount stated in the

decision, as well as any additional costs incurred in the execution of the decision."¹⁸

It can be concluded that the execution process of child support decisions in the Religious Court does not yet fully uphold the principle of legal certainty. Gustav Radbruch emphasized that legal certainty represents a guarantee of law that upholds justice. Laws and norms that promote justice must operate as enforceable regulations. Justice and legal certainty are integral and enduring components of the law. Radbruch argued that both justice and legal certainty must be prioritized, with legal certainty maintained to ensure the security and order of a nation, ultimately aiming to achieve the values of justice and societal well-being.¹⁹

Based on the above description and analysis regarding the execution of children's rights after divorce, it is evident that many ex-husbands fail to comply with court decisions concerning these rights. While mechanisms for execution are in place, their implementation often falls short of achieving the intended objectives, despite the existence of normative regulations. Consequently, it can be concluded that legal certainty has not been adequately ensured. As articulated by Gustav Radbruch, a law that guarantees legal certainty in society is one that proves to be effective and functional. Legal certainty exists because the law carries additional responsibilities, such as upholding legal justice, and must continue to serve a practical purpose.

Execution Model of Judicial Decisions on Civil Servant Fathers' Child Support Obligations After Divorce in Religious Courts within the PTA Bengkulu Region

Aligned with Indonesia's commitment to the Sustainable Development Goals, which emphasize gender equality as a core objective of its development agenda, Amran Suadi emphasizes that a comprehensive justice system—encompassing legal structures (institutions and law enforcement), legal substance (statutory regulations), and legal culture (societal attitudes)—must collectively ensure

¹⁶ Interview with Faisal Amri, Chairman of the Tais Religious Court, September 10, 2024

¹⁷ HIR (*Herziene Indonesisch Reglement*) Pasal 196

¹⁸ HIR (*Herziene Indonesisch Reglement*) Pasal 197

¹⁹ Achmad Ali, *Menguak Tabir Hukum (Suatu Tinjauan Filosofis Dan Sosiologis)* (Jakarta: Toko Gunung Agung, 1996), 82-83.

the protection of women's and children's rights.²⁰

One of the government's significant efforts to ensure the protection of children's rights after divorce is the enactment of Law Number 1 of 1974 on Marriage. This legislation, issued by the Indonesian government, regulates marriage for all Indonesian citizens, including provisions related to divorce.

The Supreme Court of the Republic of Indonesia, as the nation's highest judicial authority, has also demonstrated a strong commitment to safeguarding the legal rights of women and children. Takdir Rahmadi, Head of the Development Chamber of the Supreme Court, emphasized that the Supreme Court is dedicated to ensuring the fulfillment of women's and children's rights in the resolution of legal cases. Furthermore, the Supreme Court envisions enhancing access to justice for women and children within the judicial system.²¹

The Supreme Court has demonstrated its commitment to upholding the rights of women and children through the establishment of the Women and Children Working Group, which has developed two significant Supreme Court Regulations (*Perma*):

1. **Supreme Court Regulation Number 3 of 2017:** This regulation provides guidelines for adjudicating cases involving women in conflict with the law. It serves as a reference for Supreme Court justices and judges across four judicial bodies throughout Indonesia.
2. **Supreme Court Regulation Number 5 of 2019:** This regulation offers guidelines for adjudicating applications for marriage dispensation. It is designed to assist judges in handling cases involving requests for marriage permits for children under the age of 19 in both general and religious courts. The regulation emphasizes the importance of considering the best interests of the child, particularly focusing on protecting young girls who are often subjected to early marriage.²²

²⁰ Suadi, *Jaminan Perlindungan Hak-Hak Perempuan Dan Anak Berbasis Interkoneksi Sistem (Sebuah Pemikiran Metabolisme Biological Justice)*.

²¹ "https://Mahkamahagung.Go.Id/Id/Berita/4604/Ma-Berkomitmen-Memenuhi-Hak-Hak-Perempuan Dan Anak, accessed on June 27, 2023."

²² "https://Mahkamahagung.Go.Id/Id/Berita/4604/Ma-Berkomitmen-Memenuhi-Hak-Hak-Perempuan Dan Anak, accessed on June 27, 2023"

The Bengkulu High Religious Court and the Religious Courts under its jurisdiction play a pivotal role in establishing modern and high-quality religious courts. By fulfilling these responsibilities, religious courts can deliver optimal services to the community and enhance public confidence in the judiciary. This role encourages the products of the Religious Court, whether in the form of decisions, determinations, or peace agreements, to be well-received by the public. To achieve this, they must reflect a sense of justice, consider the living legal values within society, and ensure legal certainty and utility by incorporating juridical, sociological, and philosophical considerations. Furthermore, the rulings must be binding and executory.²³

Court decisions are inherently preceded by an application or lawsuit submitted by parties seeking justice. The procedures and processes for resolving divorce cases may be initiated by either the husband or the wife.²⁴ In practice, despite the government's commitment as an executive institution and the Supreme Court's dedication as a judicial body to ensuring the legal protection of women's and children's rights, including after divorce, numerous cases of neglect persist. Court decisions issued by Religious Courts, which hold permanent legal force, are intended to be obligatorily adhered to and fully implemented by ex-husbands for the benefit of their ex-wives and children.

However, the enforcement of such decisions, particularly those concerning child and spousal support payments, often remains ineffective. Divorce rulings do not necessarily facilitate the allocation of a portion of the ex-husband's income for the ex-wife's living expenses and child support. Consequently, women and children are frequently at risk of falling into poverty and becoming vulnerable to exploitation or criminal acts.²⁵

²³ Tata Sutayuga, "Penyelesaian Sengketa Keluarga Melalui Pengadilan Agama (Makalah)," Jakarta: t. pn (2012).

²⁴ A divorce case submitted by the husband is called a divorce petition, the husband is the applicant and the wife is the respondent. Meanwhile, if the divorce case is filed by the wife, it is called a divorce lawsuit, the wife is the plaintiff and the husband is the defendant.

²⁵ Joni and Iman, "Eksekusi Putusan Kewajiban Ayah Atas Nafkah Anak Pasca Perceraian, (Dasar Hukum Dan Problematikanya)."

Numerous challenges exist in providing legal protection for children following divorce, particularly in cases where the father, a civil servant, fails to comply with Religious Court decisions mandating child support. The Bengkulu High Religious Court has introduced a significant innovation to address these issues by simplifying the execution process, which has traditionally been complex and costly. This breakthrough, known as the E-Mosi Caper application (*Electronic Monitoring of the Execution of Women's and Children's Financing After Divorce*), aims to ensure the fulfillment of children's rights after divorce.

E-Mosi Caper is an electronic system designed to monitor and facilitate the execution of financial obligations for women and children's rights following divorce. Its primary objective is to assist ex-husbands in meeting their legally mandated responsibilities. This application is grounded in provisions established by Religious Court decisions that carry permanent legal force, ensuring effective enforcement of these obligations.

The E-Mosi Caper application represents an innovative solution developed by the Bengkulu High Religious Court to streamline conventional execution processes, which have historically been time-consuming and costly. This perspective is highlighted by the Deputy Chairperson of the Bengkulu High Religious Court:

"There have been numerous public complaints, particularly concerning the non-compliance of civil servant ex-husbands with the obligations mandated by Religious Court decisions. In many cases, there were no consequences for non-compliance, as the majority of ex-wives chose not to pursue enforcement. This reluctance was often due to a lack of knowledge about where to file complaints, as well as a hesitancy to engage with legal processes again, driven by concerns over the financial burden associated with enforcement proceedings. Meanwhile, the ex-wives had to bear the daily living expenses, including the costs of raising their children, on their own."²⁶

²⁶ Interview with Mrs. Siti Zurbaniyah, Deputy Chairperson of PTA Bengkulu, October 8, 2023

In this context, it is increasingly evident that effective law enforcement is crucial to ensuring the protection of children's rights after divorce. Leveraging information technology is essential to optimize efforts in safeguarding these rights, making the process more effective, efficient, and cost-effective. The protection of children's rights following divorce is a primary focus of the Supreme Court. Accordingly, the Supreme Court must take proactive steps and introduce innovative measures to oversee the implementation of Religious Court decisions after divorce. This oversight is necessary due to the persistent complaints from women and children whose rights remain unfulfilled by their husbands, despite the Religious Court's decisions holding permanent legal force. To address this issue, cooperation among relevant agencies is essential to ensure the effective enforcement of these decisions.

The Governor of Bengkulu Province issued a regional regulation mandating the enforcement of Religious Court decisions, in response to a letter from the Chairman of the Bengkulu High Religious Court (Number W7.A/1979/HM.01.1/8/2021, dated August 23, 2021). The letter emphasized the need for cooperation to strengthen the implementation of Religious Court decisions regarding the financial obligations of state civil apparatus (SCA) towards their wives and children in Bengkulu Province.

On November 1, 2021, the Governor issued Circular Letter Number 800/1697/BKD/2021, which provides technical guidelines for marriage and divorce permits for civil servants within the regional government of Bengkulu Province. The Circular Letter requires divorced SCAs to report their divorce by submitting a copy of the Religious Court decision and the divorce certificate within one month of the divorce date to the Governor and the Head of their respective Regional Apparatus. Additionally, the Salary Treasurer is authorized to refer to the Religious Court decision when distributing salaries for civil servants who have filed for divorce, provided it aligns with Government Regulation Number 10 of 1983 concerning Marriage and Divorce Permits for Civil Servants.

Despite the existence of regulations that strictly govern divorce and after divorce procedures, including sanctions for non-compliance, instances of neglect regarding these laws and regulations persist. Children's rights after divorce are often not fulfilled

by fathers, including those holding the status of State Civil Apparatus (SCA). This neglect extends to non-compliance with Religious Court decisions, rendering such rulings ineffective and devoid of executory power.

To address public complaints stemming from non-enforcement of financial obligations to children after divorce—particularly in cases involving civil servants—the Bengkulu High Religious Court introduced the E-Mosi Caper application (*Electronic Monitoring of the Execution of Women and Children's Financing After Divorce*). This innovation represents a significant step forward in ensuring compliance and upholding the rights of women and children.

The E-Mosi Caper application, which interconnects multiple institutions, offers significant advantages in ensuring that children's rights after divorce are upheld. This sentiment is reflected in the statements of the Chairman of the Bengkulu High Religious Court, who highlighted the application's key benefits:

1. Ensuring the implementation of Religious Court decisions related to financing the rights of women and children after divorce.
2. Facilitating the monitoring of the execution of Religious Court decisions after divorce.
3. Establishing an integrated cross-agency system for improved coordination.
4. Enabling updates to population data to enhance accuracy and efficiency.

The E-Mosi Caper application serves as a technological model for legal protection of children after divorce. It has been successfully developed by the Bengkulu High Religious Court (PTA Bengkulu) through exceptional collaboration and support from various stakeholders, including the leadership of the Bengkulu High Religious Court, the Governor of Bengkulu and his administration, Bank Bengkulu, and the leadership and officials of the Supreme Court of the Republic of Indonesia.

Through effective collaboration, commitment from all stakeholders, and clear judicial decisions, the resolution of alimony cases is expected to achieve an optimal level of justice, provide robust legal protection, and ensure the long-term enforcement of court decisions. Even so, the E-Mosi Caper application requires further refinement to enhance

its effectiveness as a model for protecting the rights of women and children after divorce through the use of information technology. Nonetheless, its existence marks a significant initial step toward a more reliable legal framework that ensures the enforcement of court decisions, offering greater accountability and assurance for all parties involved.

Conclusion

The failure of civil servant (PNS) fathers to fulfill their child support obligations after divorce in Religious Courts under the PTA Bengkulu jurisdiction is caused by several factors. These include financial difficulties, a lack of responsibility as family heads, limited understanding of their legal obligations, and distrust toward their ex-wives as child caregivers. This failure results in the neglect of children's rights, making them victims of divorce. For civil servants, such neglect is not only a breach of legal duties but also a violation of the principles of a rule-of-law state. The government has a responsibility to ensure that children's rights, including financial support from their biological fathers, are protected and fulfilled.

The execution process of court rulings regarding child support obligations after divorce is similar to the enforcement of monetary payments. The process begins with an execution request and payment of fees, followed by a warning (*aanmaning*) to comply with the ruling. If compliance is not achieved, execution seizure is carried out to ensure payment. There are three possible outcomes: the father complies voluntarily, refuses to comply, or is unable to pay but owns assets. In the latter case, assets are confiscated. This execution process is crucial for upholding justice, protecting children's rights, and ensuring that child support obligations are fulfilled in accordance with the law.

The execution model for court rulings on child support obligations by civil servant (PNS) fathers after divorce in the PTA Bengkulu jurisdiction utilizes the E-Mosi Caper application. This application monitors and evaluates the implementation of court decisions. The process includes the submission of an execution request by the mother through the application, data verification, direct monitoring of the PNS salary, financial data reconciliation,

and reporting to relevant authorities. While the application requires further refinement, it represents a positive step toward enhancing legal protection for children and improving the efficiency of child support enforcement.

References

- Ali, Achmad. *Menguak Tabir Hukum (Suatu Tinjauan Filosofis Dan Sosiologis)*. Jakarta: Toko Gunung Agung, 1996.
- Anwar, Syahrul, Aden Rosadi, and Fauzan Fauzan. "Retracing The Position of Sharia Science in The Formulation of Laws and Regulations." *Madania: Jurnal Kajian Keislaman* 24, no. 2 (2020): 171.
- Fauzan, Ahmad. "Jaminan Pelaksanaan Eksekusi Putusan Anak." *Syakhshiyah Jurnal Hukum Keluarga Islam* 4, no. 1 (2024): 108–132.
- Fauzan, Fauzan. "Progressive Law Paradigm in Islamic Family Law Renewal in Indonesia." *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 7, no. 2 (2020): 187.
- Fitrotun, Siti. "Perlindungan Anak Dalam UU Nomor 35 Tahun 2014 Dalam Perspektif Fikih Hadhanah." *Istidal: Jurnal Studi Hukum Islam* 9, no. 1 (2022): 83–97.
- H.A.Choiri. *Penjaminan Harta Ayah Terhadap Kelalaian Pembayaran Nafkah Anak Pasca Perceraian (Perlindungan Hukum Terhadap Anak Korban Perceraian Bagian 2)*. WIB, 2015. <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/penjaminan-harta-ayah-terhadap-kelalaian-pembayaran-nafkah-anak-pasca-perceraian-oleh-dr-h-a-choiri-sh-mh-28-10>.
- Irianto, Sulistyowati. *Perempuan Di Persidangan: Pemantauan Peradilan Berperspektif Perempuan*. Yayasan Obor Indonesia, 2006.
- Joni, and Rifqi Qowiyul Iman. "Eksekusi Putusan Kewajiban Ayah Atas Nafkah Anak Pasca Perceraian, (Dasar Hukum Dan Problematikanya)." *Direktorat Jenderal Badan Peradilan Agama Mahkamah Agung (Badilag MA)*, 2021. <https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/eksekusi-putusan-kewajiban-ayah-atas-nafkah-anak-pasca-perceraian-oleh-joni-s-h-i-m-h-i-1-rifqi-qowiyul-iman-lc-m-si-9-11%0Ahttps://drive.google.com/file/d/199QmO7RJkG44lkYuhmOo3pOVqW8yYyaU/vie>.
- Latupono, Barzah. "Pertanggungjawaban Hukum Ayah Terhadap Anak Setelah Terjadinya Perceraian." *Sasi* 26, no. 2 (2020): 242–250.
- Mufidah, Ch. *Psikologi Keluarga Islam Berwawasan Gender*. UIN Maliki Press. Malang: UIN-Maliki Press, 2014.
- Muhammad Syaifuddin Annalisa Yahanan, Sri Turatmiyah. *Hukum Perceraian*. Sinar Grafika. Jakarta: Sinar Grafika, 2013. https://books.google.co.id/books?hl=id&lr=&id=Y3GCEAAQBAJ&oi=fnd&pg=PP1&dq=perceraian&ots=705P4htW8H&sig=KGsF1q7ceBoNOn2GWBQhYiZJdM&redir_esc=y#v=onepage&q=perceraian&f=false.
- Rahmani, Ronni. *Eksekusi Jaminan Fidusan Dalam Penyelesaian Sengketa Ekonomi Syariah*. Pengadilan Agama Purworejo. Jakarta: Prenada Media Group, 2021. <https://pa-purworejo.go.id/publikasi/artikel-peradilan/374-eksekusi-jaminan-fidusia-dalam-penyelesaian-sengketa-ekonomi-syariah>.
- Rifqi, Joni. *Hukum Acara Perdata Dalam Ranah Kepaniteraan Dan Kejurusitaan Di Peradilan Agama*. Malang: Litnus, n.d.
- Satria, Ardhy Budi. "Hak Nafkah Anak Pasca Perceraian Berdasarkan Peraturan Pemerintah Nomor 45 Tahun 1990 Tentang Perkawinan Dan Perceraian Pegawai Negeri Sipil Dan Kompilasi Hukum Islam." *Fakultas Hukum Universitas Pasundan*, 2019.
- Suadi, Amran. *Jaminan Perlindungan Hak-Hak Perempuan Dan Anak Berbasis Interkoneksi Sistem (Sebuah Pemikiran Metabolisme Biological Justice)*. Orasi Ilmiah UIN Sunan Ampel. Surabaya: UIN Sunan Ampel Surabaya, 2022.
- Suadi, H Amran, and M Hum. *Eksekusi Jaminan Dalam Penyelesaian Sengketa Ekonomi Syariah*. Prenada Media, 2020.
- Supraptiningsih, M. "Role Model Pendampingan Anak Yang Berhadapan Dengan Hukum Di Madura (Studi Komparatif Hukum Islam Dan Hukum Positif)." (2022).
- Sutayuga, Tata. "Penyelesaian Sengketa Keluarga Melalui Pengadilan Agama (Makalah)." *Jakarta: t. pn* (2012).
- "<https://Mahkamahagung.Go.Id/Id/Berita/4604/Ma-Berkomitmen-Memenuhi-Hak-Hak-PerempuanDanAnak,DiaksesPadaTanggal>," n.d.