

Implementation of Child Support Payments After Divorce in East Kutai Regency, East Borneo

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Abstract

The purpose of this research is to understand and analyze the implementation of child support payments post-divorce in Kutai Timur Regency, East Kalimantan Province. The research method used is a field study with a normative-empirical approach. Primary data sources were gathered through interviews with the Chief of the Religious Court in Sangatta, judges, child support claimants, and other relevant parties. The results of this research indicate that child support payments after the dissolution of marriage in the jurisdiction of the Religious Court in Sangatta are still not functioning properly. This is due to the economic incapacity of the fathers and negligence on the part of fathers in providing post-divorce child support.

Keywords: child support payment, child support, divorce

INTRODUCTION

The dissolution of a marriage is a common occurrence because the fundamental meaning of a marriage contract is an alliance, or it can also be said that marriage is essentially a contract (Kuzari, 2015). Therefore, in this context, a marriage can either endure or be terminated. One of the reasons for the dissolution of a marriage is through divorce. In unavoidable circumstances, divorce is permitted for justified reasons based on both religious and civil legal provisions.

Similarly, in Islamic law, the dissolution of a marriage occurs when a husband pronounces "talak" (divorce) to his wife. As quoted by Ghazaly, Ibn Qayyim stated that "talak" is the right of a married person because it is the right to divorce their spouse (Ghazaly, 2003). In carrying out "talak," a husband does not require witnesses to exercise this right. Moreover, there is no record of Prophet Muhammad and his companions requiring witnesses for someone pronouncing "talak."

Regarding children as one of the consequences of divorce, it involves the custody of the child, whether it falls to the mother, father, or shared custody (Harahap, 1989). In essence, a child cannot protect themselves from various actions that may cause mental, physical, and social harm in various aspects of their life, given their vulnerability. Children need protection to prevent them from experiencing harm, both mentally, physically, and socially (Gultom, 2012).

Blackstone (2016) acknowledges three obligations of parents to their children: maintenance, protection, and education. In modern terms, children have the right to receive these from their parents. The League of Nations adopted the Geneva Declaration on the Rights of the Child (1924), which asserts the child's right to receive treatment for normal development, the right of a hungry child to be fed, the right of a sick child to receive healthcare, the right of a disadvantaged child to receive guidance, the right of an orphaned child to have a place to live, and the right of every child to be protected from exploitation. In addition to these rights, someone who has divorced is also obliged to provide financial support, known as "nafaqa," to their child.

"Nafaqa" to a child is also known as the money owed by a husband to his wife to meet her needs and household expenses (Webb, 2000). The English Halsbury Law defines "nafaqa" as weekly or monthly payments that may be ordered by a divorce or annulment decree to be made for the maintenance and support of a wife during the cohabitation and the maintenance of the children are similar provisions for their benefit. Osborne J. W in (Aziz, Abdullah, Ibrahim, & Raof, 2021) defines maintenance as providing for someone who is obligated to support them financially.

As found in the research by Ulfa (2020), divorces outside of the court are not valid because they cause more harm than benefit. The impact of divorces outside of the court is detrimental to children, who do not receive their rightful entitlements. These children become victims due to the failure to provide them with financial support, education, health care, inheritance rights, and the neglect of other parental responsibilities as caregivers. Similarly, Ahdie, (2011) states in his research that the legal protection for children under the jurisdiction of the Religious Courts should be more executive and binding, in addition to criminal sanctions for violators.

Likewise, in the study by Tektona (2013), it is recognized that the post-divorce fulfillment of children's rights has legal strength because children need a home, care, affection, and protection. This means that custody decisions must be sought through the court by the appointed parties. Furthermore, Tektona focuses on the custody of underage children and has a different perspective from earlier research regarding the impact of divorce on children's rights. Based on these considerations, this research examines the implementation of child support payments after divorce in the Kutai Timur Regency of East Kalimantan Province.

RESEARCH METHODS

This research is a qualitative study conducted to examine the implementation of child support payments after divorce in East Kutai Regency, East Kalimantan Province. Research that investigates legal matters or regulations is also referred to as legal research (Muhaimin, 2020). Legal research, or legal studies, is specifically used in legal research (Susanto, 2007). In this research, a normative-empirical approach is used because the objective is to assess the implementation of legal decisions related to child support payments after divorce in East Kutai Regency.

The data sources for this research include primary data collected through in-depth interviews with the Chief of the Sangatta Religious Court, judges, child support claimants, and other relevant parties at the Sangatta Religious Court. Additionally, other data sources include the outcomes of Case Number 1/Pdt.Eks/2020/PA.Sgta and Case Number 1/Pdt.Eks/2022/PA.Sgta. Secondary data can be obtained from all legal publications that are not official documents (Marzuki, 2016).

The data collected in the field based on the research topic are then analyzed using an Interactive method with various steps. The steps in this interactive analysis are as described by Milles, Huberman, and Saldana, including data condensation, data presentation, drawing conclusions, and verifying the findings under investigation. The data condensation method is used to select data that meets the research needs, which is then simplified, summarized, focused, and data transformation is carried out (Miles, Huberman, & Saldana, 2014).

RESULT AND DISCUSSION

Allah SWT entrusts children to parents as a trust that must be nurtured and educated with full responsibility, attention, and love. Education is the primary duty of both parents and significantly influences a child's development into adulthood. The duty of education includes providing both life skills and spiritual education (religion), which should commence as early as possible (Zuhaili, 2011).

Therefore, the responsibility of meeting the needs (support) and educating children is largely borne by parents. Whether accepted or not, fulfilled wholeheartedly or not, providing support is a divine decree ordained by the Almighty to fathers and mothers. They cannot evade this responsibility as it is a mandate from Allah SWT imposed upon them (Sipahutar, Kamello, Runtung, & Barus, 2016). As the care of children in Islam is guaranteed in the Quranic verses, the hadiths of the Prophet Muhammad (SAW), and is reinforced by Sharia. Allah SWT commands a man who is a father of children to provide for his wife and children, ensuring their food, drink, and clothing according to what is accepted (for the husband is the sustenance of the wife, and their clothing must be in a reasonable manner). In another verse, Allah SWT commands husbands and ex-husbands to provide for their wives during the 'iddah period and their children, as well as provide suitable housing.

In the Hadith of Hindun, she complained to Prophet Muhammad (SAW) that her husband, Abu Sufyan, was stingy and not providing for her and their children. The Prophet SAW granted Hindun permission to take (in a *ma'rūf* manner) from her husband's wealth to support their standard of living. This is based on hadiths recorded in the books *Sahih al-Bukhari* and *Muslim*, where the Prophet Muhammad (SAW) said, "Take what is sufficient for you and your children in a good way" ('AbdAllāh, 1987; Al-Naisābūrī, 2012). Additionally, in his farewell sermon, Jabir reported that in the Prophet's message during his last pilgrimage, he spoke at length about women, some of which states: "If they (your wives) obey your rights, then they have the right to be fed and clothed in a manner that is acceptable (*ma'rūf*)" (Al-Naisābūrī, 2012). Thus, Sharia provides guidance to determine that the maintenance of a wife and children should be based on what is sufficient (*kifāyah*) and good (*ma'ruf*).

According to the data obtained from the decisions of the Religious Court in Sangatta, it

is known that there are still many fathers who do not fulfill their obligation to provide for their children in accordance with the court's decision, as stated by Dn (39 years) and Ri (34 years), who never received support to meet the needs of their children after their divorce from the Religious Court in Sangatta. Both filed lawsuits with Case Numbers 1/Pdt.Eks/2020/PA.Sgta and 1/Pdt.Eks/2022/PA.Sgta.

The failure to provide for children after divorce is a form of social deviation. Divorce only severs the legal relationship between husband and wife; the rights and responsibilities of parents towards their children remain intact, just as they were before the divorce. When a father fails to fulfill his responsibility, the family institution does not function properly. The malfunction of the family institution will undoubtedly affect the social order because the family is the smallest unit of society.

The importance of child support cannot be underestimated. It is a manifestation of parents' responsibility towards their children, even after the end of their marriage. Through child support, children can maintain stable and consistent access to essential facilities such as food, clothing, suitable housing, adequate education, and healthcare.

The father's obligation to provide for his children is regulated in the Marriage Law, which is further reinforced by the Compilation of Islamic Law. According to the Marriage Law in Article 45, paragraphs (1) and (2), every parent is obligated to care for and educate their child to the best of their ability. Furthermore, this parental obligation extends until the child gets married or becomes self-sufficient. This obligation persists even if the marriage between the parents ends. Likewise, according to the Compilation of Islamic Law, Article 156, letter a, in the case of divorce, one of the legal consequences for a father is that every bride price and child support becomes the father's responsibility according to his capability, at least until the child reaches adulthood and can fend for themselves (at 21 years old) (Wijayanti, 2010).

Islamic law establishes that a father is obligated to provide for his children. The amount of support given can be adjusted according to the father's ability, so if a father intentionally neglects his obligation to provide support when he is capable, such an act is considered unjust and forbidden. In Islamic legal norms, actions contrary to the law or prohibited by Islamic law can result in punishment and suffering, as Wahbah al-Zuhaili's opinion explains that acting against the law is an act that should be abandoned and can lead to condemnation and punishment in this world and the hereafter, and punishment (sanctions) for the offender in this world (Azizi, 2020).

The legal issue that arises in providing child support after divorce is the gap between expectations (ideals) and reality (facts), between normative values (standards) and field implementation (empirical), between "sollen" (theory) and "sein" (what is expected in practice in the field). Islamic law and positive law explicitly regulate the obligation to provide for children properly, and this obligation does not disappear even in the case of divorce. Research data shows a gap between expectations (ideals) and the reality in the field. The reality is that most children affected by divorce do not receive their rightful support.

This is evidenced by research data that there are still children of divorced parents whose right to receive support from their father is not fulfilled. Some other children receive support but not regularly, and the amount provided is not appropriate, often falling below the judge's stipulated amount in the judgment. The cost of supporting children after divorce is crucial to ensuring a child's well-being into adulthood. Therefore, a father should understand this without any burden or pressure, as all of this can be the logical consequence of marital and familial relationships.

The failure to pay child support after divorce in the Sangatta Regency, as indicated by research findings, is due to economic factors on the part of the father. Besides economic factors, there is also neglect and dereliction of responsibility as a father. This is the primary issue concerning the non-payment of child support, as stated by Dn and Ri in their child support

claim at the Sangatta Religious Court.

Regulations regarding child support after divorce are also within the scope of Islamic family law and fall under civil family law. Islamic family law does not have strong enforcement powers like criminal law. The lack of clear sanctions is one of the reasons for the low compliance of fathers in fulfilling their obligation to provide post-divorce child support. However, Indonesia has its own legal framework and regulations for child protection. These laws specifically state that neglecting the duty to provide child support is categorized as child abandonment.

Article 49, paragraph 1 of the Marriage Law states that a person can face sanctions such as the revocation of custody of their child if they neglect their obligations or mistreat their child. Therefore, those who neglect their responsibility to care for their child are subject to the revocation of custody. Similar sanctions are also outlined in Law No. 4 of 1979 concerning Child Welfare, which states that the revocation of parental rights over a toddler is often given if parents are proven to have failed in their responsibilities, resulting in the hindrance of the child's growth and development. Article 10, paragraph (1) of this law stipulates that in case of the revocation of guardianship, an individual or a legal entity is appointed as the child's guardian in place of the parent.

The failure to provide child support after divorce can be categorized as child abandonment. Law No. 23 of 2002 on Child Protection, as mentioned in Article 13, letter c, defines child abandonment as intentionally neglecting the duty to nurture, maintain, and raise a child as required. This law places the responsibility and obligation on parents to raise, care for, educate, and protect their children, providing them with appropriate education to enable them to grow and develop according to their interests and talents and instilling moral values and ethics. Since parents often interact, meet, and are close to their children, they can directly guide their physical and psychological development (Law No. 35 of 2014).

The threat of criminal sanctions for child neglect is regulated in Article 77(b) of Law Number 35 of 2014, which prescribes a maximum prison sentence of 5 (five) years and/or a fine of up to Rp. 100,000,000.00 (one hundred million Indonesian Rupiah) (Azizi, 2020). These criminal sanctions can be imposed on fathers who fail to fulfill their obligations regarding child support after divorce because child support is a crucial factor in providing and safeguarding the rights of children. Similarly, Articles 4 to 18 of Law Number 39 of 2009 concerning Human Rights regulate the rights of children. These regulations are also reflected in Article 16 of Government Regulation Number 45 of 1990 regarding Marriage and Divorce Permits for Civil Servants.

Various legislative regulations have been clearly defined for fathers who fail to meet their child support obligations. However, field research results show that these sanctions have not been applied to fathers who do not fulfill their child support obligations after divorce. Consequently, it can be said that the regulations related to child support and protection have not been effectively implemented, despite the legal threat. As Muchsin explains, if civil proceedings cannot resolve the issue of child support following a divorce, then the criminal legal route can be taken based on relevant child protection legislation (Muchsin, 2010).

The issue of fulfilling child support obligations by fathers must still be resolved through a family-oriented approach. Effective communication among fathers, mothers, and the family is crucial in resolving these cases. The family's role, particularly that of the father, in increasing awareness of post-divorce obligations can include providing advice and religious knowledge. Fathers must recognize that fulfilling child support is not only about material needs but also about meeting immaterial needs such as love, attention, and education, which are vital in shaping a child's character.

Islamic law and positive law stipulate that even after the marriage bond between a husband and wife has been dissolved, they still have an obligation to care for and provide

education to the children born within the marriage. Although court decisions may assign the primary responsibility for child custody (*hadhanah*) to the mother and father, it does not mean that the other party (the mother) is exempt from the responsibility of support (Law No. 35 of 2014). The legal basis for *hadhanah* is found in Surah at-Tahrim, verse 6. While this verse refers to men (fathers) in its text, its essence conveys that both the father and mother are responsible for their child. Ideally, both the father and mother can create a family based on religious law and nurtured by a healthy relationship.

The duration of providing *hadhanah* support to children is not specifically regulated in the Quran and hadith. Therefore, scholars have made *ijtihad* (independent juristic reasoning) to determine the duration of providing support to children. According to the Hanafi school of thought, male children are entitled to *hadhanah* support until they can support themselves and meet their own needs, while female children are entitled to *hadhanah* support until they reach adulthood or have their first menstruation. *Tamyiz* (maturity) and self-sufficiency are the basis for providing support during this period.

The forms of child support in positive law are specified in the Marriage Law (Law No. 1 of 1974), which states in Article 34(2) that a husband must support his spouse (wife) and provide for the family's livelihood according to his ability. In the Compilation of Islamic Law (KHI), Article 80(4) outlines the forms of child support that must be provided by the father, including clothing, housing, medical expenses, and education (Tim Redaksi, 2012).

As stated in Article 34(1) of the Marriage Law No. 1 of 1974, both the wife's and the child's support are the responsibility of the husband or father of the child. Article 34(3) further states that "if a husband or wife neglects their respective duties, they can file a lawsuit in court." Articles 45(1) and 45(2) declare that the child's parents are obligated to care for and provide good education to their child. This obligation continues until the child reaches adulthood, gets married, or becomes self-sufficient, even if the child's parents have divorced.

After divorce, the rights of the child are regulated in Article 41 of the Marriage Law of 1974. In case of divorce between the parents, the husband or father remains obligated to provide child support. Article 105(c) of the Compilation of Islamic Law (KHI) also reinforces that the cost of child maintenance is borne by the father. However, Article 41(b) of the Marriage Law has explained that if the father cannot actually meet the child's rights, the court may decide that the mother should contribute to these costs. Moreover, Article 149(d) of the KHI specifies that after a divorce, a former husband is obligated to provide maintenance or support (*hadhanah*) for his child who is still not yet an adult, i.e., not yet twenty-one years old. After divorce, a child's rights include maintenance, nursing, care, education, and financing (KHI Article 105(b) and (c)).

Article 45(1) states that parents have the duty to care for and provide good education to their child. The purpose of Article 45(1) is valid until the child reaches adulthood, gets married, or becomes self-sufficient, and it still applies even if the parents have divorced. The obligation of the father to provide child support is enshrined in normative Indonesian law through the Marriage Law No. 1 of 1974, further strengthened by the Compilation of Islamic Law (KHI). This is especially reinforced by the Child Protection Law No. 23 of 2002, along with Law No. 35 of 2014 and Law No. 4 of 1979 concerning child welfare. Law No. 1 of 1974 obliges fathers to provide child support, even if both parents have divorced. According to Article 3 of Law No. 23 of 2002, combined with Law No. 35 of 2014 concerning Child Protection, child protection aims to ensure the fulfillment of children's rights, enabling them to live, grow, develop, and participate optimally in accordance with human dignity and to be protected from violence and discrimination, thus contributing to the creation of high-quality, virtuous, and prosperous Indonesian children.

The discussion regarding the responsibilities of parents after divorce is also mentioned in Article 149 letter d of the Compilation of Islamic Law, which states that "When a marriage

is dissolved due to divorce, the former husband is obligated to provide financial support (hadhanah) for his children who have not yet reached the age of 21." The definition of hadhanah, according to Article 1 letter g of the Compilation of Islamic Law, is "Childcare, which involves raising, nurturing, and educating children until they reach adulthood or can stand on their own." Other aspects related to children, including the parents' obligations to their children, are also addressed in Law No. 23 of 2002 Concerning Child Protection. Article 4 states that "Every child has the right to live, grow, develop, and participate appropriately according to human dignity and value, as well as to be protected from violence and discrimination. The responsibility of parents is also mentioned in Article 9 of Law No. 4 of 1979 Concerning Child Welfare, which states that "Parents are primarily responsible for the well-being of children, both spiritually, physically, and socially."

In the Compilation of Islamic Law, Article 105 Letter c states that "In the case of divorce, the cost of maintenance is borne by the father." Based on this, the father is required to provide child support to his children every month, and for the benefit of the child, both parents are obliged to provide the best care. Article 105 of the Compilation of Islamic Law states that the maintenance of children who are not mature or under the age of 12 is the mother's right, while the maintenance of adult children is left to the child to choose between the father or mother as the custodian, and the cost of maintenance is borne by the father, as stated by Maswandi (2017).

Discussing child protection related to the law in Indonesia can also be seen in Law No. 35 of 2014 concerning Child Protection, which was previously Law No. 23 of 2002. Child protection encompasses all activities aimed at ensuring and safeguarding a child's rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and value, and be protected from violence and discrimination. Specifically, child abandonment is addressed in Article 76A of the Child Protection Law, which states that "No one is allowed to treat a child in a discriminatory manner that results in harm, both material and moral, hindering their social function." Article 76B also states that "No one is allowed to place, leave, involve, or instruct the involvement of a child in situations of wrongdoing and abandonment."

In this context, the plaintiff can file a lawsuit or counterclaim to request child support from the husband after a divorce. In addition to filing a lawsuit or counterclaim for support, the plaintiff also has the right to request an attachment order against the husband's property. This is made possible based on Circular Letter of the Supreme Court of the Republic of Indonesia (SEMA) No. 5 of 2021.

SEMA No. 5 of 2021 provides guidance to the courts to enforce an attachment order against the property of the Plaintiff/Defendant (in this case, the husband) as security for the child support claim filed together with the child support lawsuit or counterclaim in a detailed manner in the statement of claims and petitem. Therefore, with the attachment order, the wife obtains security for the child support demanded and determined by the Panel of Judges, and this attachment order can also extend to the husband's property to ensure the child's support is fully met.

Looking at Circular Letter of the Supreme Court No. 5 of 2021 above, it provides guidance related to fulfilling the best interests of the child and the implementation of Supreme Court Regulation No. 3 of 2017 on Guidelines for Adjudicating Cases Involving Women Facing Legal Issues. The primary focus of this circular is related to the burden of child support in the context of divorce or situations where parents are separated.

With reference to Circular Letter of the Supreme Court No. 5 of 2021, every wife can file a request for an attachment order against her husband's property as security for child support, filed in a detailed manner in the statement of claims and petitem of the child support lawsuit. This is the appropriate step to take if the husband fails to fulfill his obligation as a father to provide child support after divorce. However, the researcher believes that there is a

need for a legal provision that can serve as a strong constitutional basis in dealing with child support payment cases after divorce.

In concluding this discussion, it is important to remember that child support is not just a legal obligation but also a moral responsibility. Children are the most vulnerable individuals in the process of divorce, and therefore, ensuring that they continue to receive proper attention, love, and support is a shared duty of parents, regardless of their relationship status. Cooperation, empathy, and a willingness to work together are key to ensuring that children can grow and develop well, be happy, and remain healthy. When conflicts are unavoidable, taking the right legal steps with the help of family lawyers or legal experts is a wise way to resolve disputes and ensure the best protection for children. Hopefully, every child can remain the top priority in the divorce process and continue to feel loved and valued by both of their parents.

CONCLUSION

Based on the research conducted regarding the implementation of child support payments after divorce in East Kutai Regency, East Kalimantan Province, it can be concluded that child support payments by former husbands in the jurisdiction of the Sangatta Religious Court are still not functioning properly. This can be seen from two cases of child support payment execution requests due to divorce filed in the Sangatta Religious Court. In both cases, the lawsuit judgments did not progress to the execution stage, as indicated by Judgments Number 1/Pdt.Eks/2020/PA.Sgta and Number 1/Pdt.Eks/2022/PA.Sgta. The non-payment of child support is attributed to the negligence of the fathers and their economic inability.

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