

## Parental Divorce: How to Ensure Child Support Rights are Protected?

Muh. Akbar Fhad Syahril<sup>1</sup> Hasrianti Hasrianti<sup>2</sup>

<sup>1,2</sup> Faculty of Law, Andi Sapada Institute of Social Sciences and Business

Corresponding Email: [hasrianti@gmail.com](mailto:hasrianti@gmail.com)<sup>2</sup>

### Abstract

This study examines marriage law related to the implementation of child support rights after divorce, as well as legal remedies that can be taken by the child or his mother when the father does not fulfil his obligations by Law Number 1 of 1974 concerning Marriage. The type of research used is normative legal research, which analyzes case studies of decision number 134/Pdt.G/2023/PA. Bitter melon is qualitatively descriptive. The results of the study indicate the fulfilment of children's rights to support due to parental divorce at the Parepare Religious Court, based on a case study of decision number 134/Pdt.G/2023/PA. Pare, has not gone well because the ex-husband did not fulfil his obligations due to economic factors. On the other hand, the mother in this case felt that seeking justice through the courts would take too long and cost too much money, so she chose to finance her child's needs herself.

**Keywords** : Fulfillment, Child Support, Divorce.

**Publish Date** : 14 September 2024

### Introduction

Humans as creatures are always looking for other humans to live together, this was stated by a prominent Greek philosopher named Aristotle. Living together is a common thing for a human and only humans who have abnormalities can live together—isolating oneself from others. Marriage is a bond where two people have many differences consisting of physical aspects, family upbringing patterns, relationships, perspectives, education and so on.<sup>1</sup>

Marriage gives rise to rights and obligations for husband and wife as well as for children born as a result of the marriage. Husband and wife are obliged to fulfil all the needs of their children such as clothing, food, shelter, health and education.<sup>2</sup>

In married life, apart from issues of rights and obligations as husband and wife,

there will be problems regarding property which then become the source of various conflicts in marriage, because property is the material basis of family life. This situation is the main reason every married couple decides to end their marital relationship and prefers to divorce.<sup>3</sup>

Divorce is the termination of a marriage relationship between husband and wife with a judge's decision at the request of one of the parties based on legitimate reasons as stated in statutory regulations.<sup>4</sup>

Divorce is not something that all married couples want. However, sometimes divorce is something that must be done to maintain the honour and dignity of a husband or wife.<sup>5</sup> Therefore, we should be careful and careful consideration is needed in deciding this matter.

<sup>1</sup>Karim, K., & Syahril, M. A. F. (2021). Simplifikasi Pembagian Harta Gono-Gini Akibat Perceraian. Jurnal litigasi amsir, 9(1), 1-12.

<sup>2</sup>Maswandi, M. (2017). Hak Asuh Anak Yang Belum Dewasa Setelah Perceraian. JPPUMA: Jurnal Ilmu Pemerintahan dan Sosial Politik UMA (Journal of Governance and Political Social UMA), 5(1), 21-30.

<sup>3</sup>Karim, K., & Syahril, M. A. F. (2021). Simplifikasi Pembagian Harta Gono-Gini Akibat Perceraian. Jurnal litigasi amsir, 9(1), 1-12.

<sup>4</sup>Karim, K., & Syahril, M. A. F. (2021). Simplifikasi Pembagian Harta Gono-Gini Akibat Perceraian. Jurnal litigasi amsir, 9(1), 1-12.

<sup>5</sup>Jamal, A., & Ikhwan, M. (2021). Kesepakatan Menunda Kehamilan Bagi Pasangan Muda Perspektif Hukum Islam: Upaya Menekan Pernikahan Dini Di Masa Pandemi. Al-Manahij: Jurnal Kajian Hukum Islam, 15(2), 309-324.

To carry out a divorce there must be sufficient reasons, that the husband and wife can no longer live in harmony. The reasons for divorce are regulated in Pasal 39 ayat (2) Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, as follows:<sup>6</sup>

- a. One of the parties has committed adultery or become a drunkard, addict or addict, gambler, etc. which is difficult to cure;
- b. One party has left the other party for 2 consecutive years without the other party's permission and a valid reason or for other reasons beyond his/her control;
- c. One party is sentenced to 5 years in prison or a heavier sentence after the marriage takes place;
- d. One party commits serious cruelty or abuse that endangers the other party;
- e. One party suffers an internal disability or illness resulting in them being unable to carry out their obligations as husband and wife, and
- f. There are continuous disputes and arguments between husband and wife and there is no hope of living in harmony again in the household.

In addition to the reasons for divorce, the provisions of divorce are also regulated in Pasal 38 sampai dengan Pasal 41 Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, and Pasal 113 up to Pasal 128 Kompilasi Hukum Islam. Of course, divorce has its impact, in addition to the end of the marriage of a husband and wife, divorce also has an impact on many things such as the parents' family, especially the children from the marriage.<sup>7</sup>

Regarding the birth of a child which is a legal act that occurs as a result of a husband and wife relationship, child care is the obligation of the husband and wife as long as the marriage is ongoing or has ended (divorce). Regarding the obligations of

husband and wife in terms of maintaining and educating their children, they must do their best, and apply until the child is married or can stand on their own. Children have certain rights, namely, rights that are the material needs of children, such as clothing, food, and shelter, as well as the immaterial rights of children, such as the right to worship, the right to receive attention, and affection as well as the right to interact socially. In the right to support, there is also the right to support children, where the fulfilment of the right to support also includes the need for housing, clothing, food, medical expenses, and education costs.<sup>8</sup>

Etymologically, sustenance comes from the Arabic word "*al-nafaqah*" which means "to spend". Maintenance also means spending, meaning something given by a husband to his wife, a father to his child, or relatives from his possessions as necessities for them. Living means spending on necessities required by people who need them.<sup>9</sup>

The provisions regarding child maintenance due to divorce are explained in Pasal 41 Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, that the legal consequences for children if a divorce occurs, then both the mother and father remain fully obliged to choose the direction and educate their children, for the benefit of the child and if there is a dispute regarding control of the child, the court will make its decision.<sup>10</sup>

After a divorce, all rights of children born from a legal marriage should still be fulfilled as before the divorce. This is regulated in the provisions of Pasal 45

<sup>6</sup> *Vide* Pasal 39 ayat (2) Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan

<sup>7</sup> *Vide* Pasal 39 sampai dengan Pasal 41 dan Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, dan Pasal 113 sampai dengan Pasal 128 Kompilasi Hukum Islam

<sup>8</sup>Irma Garwan, S. H., MH, A. K., SH, M., & Muhammad Gary Gagarin Akbar, S. H. (2018). Tingkat perceraian dan pengaruh faktor ekonomi di kabupaten karawang. *Jurnal Ilmiah Hukum DEJURE: Kajian Ilmiah Hukum*, 3(1), 79-93.

<sup>9</sup>Devy, S., & Muliadi, D. (2019). Pertimbangan Hakim dalam Menetapkan Nafkah Anak Pasca Perceraian (Studi Putusan Hakim Nomor 0233/Pdt. G/2017/MS-MBO). *El-Usrah: Jurnal Hukum Keluarga*, 2(1), 123-138.

<sup>10</sup>*Vide* Pasal 41 Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan

Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, which:<sup>11</sup>

1. Both parents are obliged to care for and educate their children as best they can.
2. The obligations of both parents referred to in paragraph (1) of this article apply until the child is married or can stand on his own. These obligations continue to apply even if the marriage between the two people is terminated.

The article above explains that even though the child's parents are divorced, the obligation as parents to provide their rights to their children is not terminated.<sup>12</sup>

According to Pasal 330 Kitab Undang-Undang Hukum Perdata, it states that:<sup>13</sup>

"A person is considered an adult if he/she is 21 years old or has been married"

Meanwhile, according to Article 98 of the Compilation of Islamic Marriage Law regarding Child Maintenance, adults are explained as follows:<sup>14</sup>

"The age limit for a child who can stand alone or is an adult is 21 years, as long as the child is not physically or mentally disabled or has never been married."

If seen from several laws and regulations above, then the child should still fulfil all his rights as a legitimate child of the marriage even though both parents have divorced. After the dissolution of the husband and wife's marriage, the child's custody becomes the right of the mother and father of the child who must support the child until he is married or can support himself.<sup>15</sup>

However, what happens in the community due to the divorce of their parents is that many children's rights cannot be fulfilled properly. This is usually caused by the economic situation of the child's father who is unable to fulfil the rights that his child should receive, some fathers do not want to provide for their children because their ex-wives can provide for their children, and some fathers deliberately do not want to provide for their children. In addition, other things hinder the fulfilment of the child's rights, namely if the father already has a new family, making it difficult to share the living expenses.<sup>16</sup>

Therefore, based on the problems that occur in society, the author wishes to study and research more deeply about how to fulfil the right to child support due to divorce. Thus, the author raises the title "Fulfillment of the Right to Child Support Due to Divorce (Case Study: Putusan Pengadilan Agama Parepare Nomor: 134/Pdt.G/2023/Pa.Pare)".

### **Research methods**

The type of research used in this study is normative research. Normative research is research conducted by studying legal principles, legal systematics, legal synchronization and legal comparison.<sup>17</sup>

### **Analysis and Discussion**

#### **Analysis of Marriage Law Regarding the Implementation of Fulfillment of Child Support Rights After Divorce**

The Parepare City Religious Court Class IB has the duty and authority to examine, decide, and resolve cases between Muslims in the fields of marriage, inheritance, wills, gifts, endowments, zakat, infaq, shadaqah, and sharia economics as regulated in Pasal 49 Undang-Undang Nomor 3 Tahun 2006 tentang Perubahan atas Undang-Undang

<sup>11</sup> *Vide* Pasal 45 Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan

<sup>12</sup>Yakseb, A., & Sidiki, N. (2023). Implementasi Pemberian Nafkah Bagi Anak Pasca Perceraian Di Desa Falabisahaya (Perspektif Hukum Islam). *Al-Mizan: Jurnal Kajian Hukum dan Ekonomi*, 17-31.

<sup>13</sup> *Vide* Pasal 330 Kitab Undang-Undang Hukum Perdata

<sup>14</sup> *Vide* Pasal 98 kompilasi Hukum Islam

<sup>15</sup> Karimatul Ummah, S. H. (2020). Pemenuhan Nafkah Anak Pasca Perceraian Orang Tua Di Kabupaten Klaten.

<sup>16</sup> Karimatul Ummah, S. H. (2020). Pemenuhan Nafkah Anak Pasca Perceraian Orang Tua Di Kabupaten Klaten

<sup>17</sup>Juliardi, B., Runtunuwu, Y. B., Musthofa, M. H., TL, A. D., Asriyani, A., Hazmi, R. M., ... & Samara, M. R. (2023). *METODE PENELITIAN HUKUM*. CV. Gita Lentera.

Nomor 7 Tahun 1989 tentang Peradilan Agama.<sup>18</sup>

Based on the results of the first level report at the Parepare City Religious Court for a period of 3 (three) years, namely from 2021 to 2023, the number of divorce cases received by the Parepare City Religious Court is as follows:

**Divorce Cases at the Religious Court of Parepare City**

Year 2021		Year 2022		Year 2023	
Register	Separated	Register	Separated	Register	Separated
422 cases	430 cases	489 cases	483 cases	316 cases	323 cases

The above data is taken from the official website of the Directory of Decisions of the Supreme Court of the Republic of Indonesia at the Parepare City Religious Court Class I B. By looking at the data above, according to the results of an interview with Mrs. Sitti Zulaiha Digdayanti Hasmar as a judge at the Parepare City Religious Court:

"During a period of 3 (three) years, namely from 2021 to 2023, divorce cases at the Parepare City Religious Court mostly occurred due to economic factors, infidelity, disputes and quarrels that occurred continuously, resulting in divorce."

According to the results of an interview with Mrs Sitti Zulaiha Digdayanti Hasmar as a judge at the Parepare City Religious Court:

"In Parepare City, there has never been a lawsuit regarding the right to support, even in Sulawesi there have only been a few cases, except in Java, cases like this are very frequent and the one suing is the mother or the family of the person holding the custody rights, however, the father is obliged to provide for his child even though they have divorced and the child's right to support is not included in the decision."

<sup>18</sup> *Vide* Pasal 49 Undang-Undang Nomor 3 Tahun 2006 tentang Perubahan atas Undang-Undang Nomor 7 Tahun 1989 tentang Peradilan Agama

The large number of divorces in Parepare City is caused by economic factors, infidelity, disputes and quarrels that occur continuously which result in divorce. In addition, in the Religious Court of Parepare City, there has never been a lawsuit regarding the right to support except in Java, however, a father is obliged to fulfil his responsibility to provide support to his child even though he has divorced and the child's right to support is not stated in the decision.<sup>19</sup>

A pair of men and women in marriage certainly have a goal that they want to achieve together, namely to form a happy and eternal family. The purpose of marriage is contained in Pasal 1 Undang-Undang Nomor 1 Tahun 1974 tentang perkawinan which explains that:<sup>20</sup>

"Marriage is a physical and spiritual bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the belief in the Almighty Godhead."

So it can be interpreted that through the State Legislation, it is hoped that every marriage must be based on the aim of building a lasting household and does not allow for divorce.<sup>21</sup>

However, in married life, of course, things do not always run smoothly or well, because a marriage is the union of two human beings who have different backgrounds, characteristics and habits which can cause disputes, and this is considered normal in married life.<sup>22</sup> However, there are quite a few Indonesian people, especially in Parepare City, whose

<sup>19</sup>Ab, M. (2022). *Tuduhan Perselingkuhan Sebagai Dasar Alasan Perceraian di Pengadilan Agama Parepare (Analisis Putusan Nomor: 67/Pdt. G/2020/PA. Pare)* (Doctoral dissertation, IAIN PAREPARE).

<sup>20</sup> *Vide* Pasal 1 Undang-Undang Nomor 1 Tahun 1974 tentang perkawinan

<sup>21</sup>Yana, L., & Trigiyatno, A. (2022). Pemenuhan Hak Nafkah Anak Pasca Perceraian. *Al-Hukkam: Journal of Islamic Family Law*, 2(2), 113-124.

<sup>22</sup>Yana, L., & Trigiyatno, A. (2022). Pemenuhan Hak Nafkah Anak Pasca Perceraian. *Al-Hukkam: Journal of Islamic Family Law*, 2(2), 113-124.



marriages cannot be maintained, because of a problem that causes the marriage to end in divorce.

The life of a family after a divorce is indeed not easy and will have an impact on a child if the marriage has been blessed with a child. Children are the first to feel the effects of divorce. The process of child growth and development is often not optimally observed by both parents. Conditions like this can indirectly affect the mental and psychological condition of the child which has an impact on his survival. In addition, the indirect impact is felt regarding the fulfilment of children's rights, including the issue of livelihood. When the child is not yet an adult or is not yet able to support himself, his parents are obliged to provide for the child.<sup>23</sup> Talking about children, it is never free from age limits so they are called children, in Undang-Undang Nomor 35 Tahun 2014 and the Convention on the Rights of the Child, children are those who are under 18 years old, while in Undang Nomor 1 Tahun 1974, children are those who are not yet 19 years old for boys and 18 years old for girls. Children are a mandate from Allah SWT. In children, dignity and honour are inherent in being a whole human being.

Therefore, to find out how the implementation of child support fulfilment after parental divorce at the Parepare City Religious Court Case Study Nomor 134/Pdt.G/2023/Pa.Pare. The author conducted a study to obtain data by visiting Mrs Sitti Zulaiha Digdayanti Hasmar a judge at the Parepare City Religious Court who decided case Nomor 134/Pdt.G/2023/Pa.Pare.<sup>24</sup>

In the decision of this case, the Plaintiff in his application letter dated March 10, 2023, has filed a divorce suit registered at the Parepare Religious Court Clerk's Office with Nomor 134/Pdt.G/2023/Pa.Pare, stating the

following matters: The Plaintiff and Defendant were married on Monday, November 12, 2018, with Marriage Certificate Extract Nomor 0353/019/XI/2018. After getting married, Plaintiff and Defendant lived together and built a household at Plaintiff's parents' residence in Kampung Baru Village, for 10 months and finally lived together at Defendant's parents' house for approximately 2 years. From the marriage, the plaintiff and defendant have been blessed with one child named Abidzar bin Basri S, born on February 8, 2019. The household of Plaintiff and Defendant was initially in a harmonious state, but since mid-November 2019 there have been disputes and quarrels caused by Defendant who always drinks alcohol until he is very drunk and when advised Defendant beats Plaintiff until he is bruised and says rude things to the Plaintiff (unlucky woman), besides that the Defendant also does not provide proper maintenance to the child because he does not have a permanent job.

The peak of the dispute and quarrel between Plaintiff and Defendant's household occurred in mid-October 2020 because Plaintiff could no longer stand Defendant who did not want to change his nature of neglecting his responsibilities as a husband and was constantly drunk and difficult to stop so there was a quarrel and the Defendant was angry and shouted at the Plaintiff, since that incident the Plaintiff left the Defendant's parents' residence. Since Plaintiff and Defendant separated, efforts to reconcile the family were unsuccessful, so Plaintiff felt unable to maintain her household with Defendant any longer and chose the path of divorce.

Continuous disputes and quarrels are one of the legal grounds for divorce contained in Pasal 39 ayat (2) Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan. When disputes and quarrels occur continuously in a marriage, then in such circumstances the marriage is considered to have broken down.

In Islamic Law, continuous disputes and quarrels are regulated in Pasal 114 huruf

<sup>23</sup>Karimatul Ummah, S. H. (2020). Pemenuhan Nafkah Anak Pasca Perceraian Orang Tua Di Kabupaten Klaten.

<sup>24</sup> *Vide* Putusan Pengadilan Agama Parepare Nomor: 134/Pdt.G/2023/Pa.Pare

(f) Kompilasi Hukum Islam, which explains that a divorce can occur due to continuous disputes or quarrels between husband and wife.<sup>25</sup> This gives rise to a feeling and thought that there is no longer any hope for them to live in harmony in building a household.

Based on the description above, the Plaintiff's divorce application has fulfilled the elements as regulated in Pasal 39 ayat (2) Undang-Undang No 1 Tahun 1974 Tentang Perkawinan and Pasal 116 huruf (f) kompilasi Hukum Islam. Therefore, Plaintiff's application to impose a divorce of one basin shura on Defendant against Plaintiff. And impose court costs on the Plaintiff.

From the analysis of decision Nomor 134/Pdt.G/2023/Pa.Pare, the economy is one of the factors causing divorce. This has an impact on the implementation in terms of fulfilling the right to child support after parental divorce, in real-life society, the fulfilment of the right to child support has not been carried out properly and there are still many people who have divorced who are unable to fulfil their child's right to support. The right to child support must still be fulfilled even though it is not.

Providing a living and fulfilling all the needs of a child's life is one of the obligations of parents to care for their children. Where when this is ignored, then parents can be said to not carry out their obligations in fulfilling their children's rights following the provisions of Pasal 41 Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan. Because in the Article it is stated that:

- a. Both the mother and the father remain obliged to care for and educate their children, solely based on the interests of the child. If there is a dispute regarding control of the children, the Court will make a decision;
- b. The father is responsible for all costs of maintenance and education required by the child; if the father is

unable to fulfil these obligations, the Court may determine that the mother must share these costs;

- c. The court may require the ex-husband to provide living expenses and/or determine certain obligations for the ex-wife.

In fact, regarding the implementation of the obligation to provide a living for the family, the conditions must be met. One of the conditions is that the person who is given the obligation to provide maintenance is an economically capable person, except for the obligation to provide maintenance for children or parents, who only need to fulfil the requirement of being able to work, and do not have to be financially or financially capable.<sup>26</sup> Therefore, a father who can work is obliged to fulfil his responsibility to provide for his children.

The actions of an ex-husband or a father who does not carry out his responsibilities to provide for his child properly are actions that do not comply with the provisions of Pasal 105 Kompilasi Hukum Islam. This article regulates the rights that children should receive after a divorce.<sup>27</sup>

Other provisions in the Compilation of Islamic Law regarding the right to child support are not only regulated in Pasal 105 but are also regulated in Pasal 156 which states that after a divorce, the father continues to bear the costs of maintaining and supporting the child until the child is 21 years old.

Based on the research results above, the level of a father or ex-husband who cannot fulfil his obligations to fulfil his child's right to support, starting from the ex-husband who does not have a job and does not have a fixed income, and the ex-husband also assumes that the child custody rights are owned by his ex-wife, so he no

<sup>25</sup> *Idem* Pasal 114 huruf (f) Kompilasi Hukum Islam

<sup>26</sup>Karimatul Ummah, S. H. (2020). Pemenuhan Nafkah Anak Pasca Perceraian Orang Tua Di Kabupaten Klaten.

<sup>27</sup>Karimatul Ummah, S. H. (2020). Pemenuhan Nafkah Anak Pasca Perceraian Orang Tua Di Kabupaten Klaten.

longer needs to bear the costs of fulfilling his child's right to support.

### **Legal Actions That Can Be Taken By Children or Mothers Against Fathers Who Do Not Fulfil Their Obligations Based on Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan**

Most of the causes of divorce are due to economic factors, which result in the family's economy not being able to be met properly. This can result in children's rights not being fulfilled.<sup>28</sup> The actions of an irresponsible ex-husband in providing maintenance rights to his child after the divorce violate Pasal 41 Undang-Undang Nomor 1974 tentang Perkawinan. The provisions in this Article require the ex-husband to be responsible for all costs of maintaining the child and all the needs required by the child until the child is 21 years old or can support himself/herself.<sup>29</sup> Because fulfilling a child's needs is the responsibility of a father, its implementation is coercive. This may not be done if the ex-husband is truly unable to provide a living and cover the costs of maintaining his children.

To fulfil the rights of children after divorce, the ex-wife or the holder of child custody or the child himself if he is legally competent, should be able to make an effort so that the father can carry out his responsibilities. However, the reality in society is that there are still many holders of child custody who do not know about these efforts. As happened in Decision Nomor 134/Pdt.G/2023/Pa.Pare, where the Plaintiff assumed that when the divorce vow was read, the husband and wife relationship had officially ended.<sup>30</sup>

According to Mrs Sitti Zulaiha Digdayanti Hasmar a judge at the Parepare City Religious Court, she said:

---

<sup>28</sup>Karimatul Ummah, S. H. (2020). Pemenuhan Nafkah Anak Pasca Perceraian Orang Tua Di Kabupaten Klaten.

<sup>29</sup>Yana, L., & Trigiyatno, A. (2022). Pemenuhan Hak Nafkah Anak Pasca Perceraian. *Al-Hukkam: Journal of Islamic Family Law*, 2(2), 113-124.

<sup>30</sup> *Idem* Putusan Nomor 134/Pdt.G/2023/Pa.Pare

"When the ex-husband does not fulfil his obligations in fulfilling the child's right to support voluntarily, then the child, if he is legally competent or the mother if the child is not yet legally competent, can take steps to force the ex-husband to carry out his obligations by suing her husband regarding the child's right to support at the Parepare Religious Court, but even though there is no lawsuit regarding the child's right to support as happened in Decision Nomor 134/Pdt.G/2023/Pa.Pare, a father is still obliged to be responsible for the child's right to support."

The state truly protects the rights of its citizens as stated in the Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, especially regarding children's rights as stated in Pasal 28 B ayat (2), which means that all matters that constitute children's rights must be fulfilled, especially by their parents.<sup>31</sup>

According to Mrs. Sitti Zulaiha Digdayanti Hasmar a judge at the Parepare City Religious Court who handled the divorce with Decision Nomor 134/Pdt.G/2023/Pa.Pare, she said that:

"However, these efforts are not yet fully known and carried out by those who have these interests. Because Plaintiff believes that after the divorce Plaintiff does not want to have a relationship with her ex-husband, even though this effort is a mandatory right and must be obtained. And the Plaintiff believes that he is still able to provide for his child's livelihood."

From the results of the interview above, the Plaintiff will try by herself in any way to be able to fulfil her child's living expenses, and the Plaintiff also does not want to depend on the fulfilment of these rights to her ex-husband even though it is her husband's responsibility as a father. In

---

<sup>31</sup>Hakim, L. (2016). Pemerataan akses pendidikan bagi rakyat sesuai dengan amanat Undang-Undang Nomor 20 Tahun 2003 tentang Sistem Pendidikan Nasional. *EduTech: Jurnal Ilmu Pendidikan Dan Ilmu Sosial*, 2(1).

addition to feeling capable of fulfilling her child's living expenses, there are also quite a few people who think that seeking justice through the Court is a long process and requires money, so it will be a waste of time, and they use the time they have to earn their living so they can fulfil all their living expenses and those of their children.

Parental support is a very important thing for a child because it will directly or indirectly affect the fulfilment of other children's rights, such as getting an education, health costs, and costs for maintaining the child's growth and development. The protection of a child is regulated in Pasal 14 Undang-Undang Nomor 35 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2004 tentang Perlindungan Anak Child Protection. The law regulates the rights obtained by a child. One of them is that every child has the right to receive living expenses from his parents. So when these things are not fulfilled properly, then the parents of the child have violated the provisions in the Legislation.<sup>32</sup>

Therefore, Mrs Sitti Zulaiha Digdayanti Hasmar a judge at the Parepare City Religious Court, said:

" There are several efforts that can be taken by children to demand the fulfilment of their rights that are not fulfilled by their parents, including the following:

1. A child can report his parents to the family, to help them resolve existing problems in a family way;
2. A child can go to a religious leader who is trusted and known to help him resolve problems as a mediator between the child and parents with the aim that both parents can comply with the explanation of the religious leader;

3. If both of these methods cannot resolve the problem properly, then the child through his/her legal representative can apply to the Parepare City Religious Court so that the judge can force the child's two parents to carry out their obligations so that the child's rights can be fulfilled."

A child must fight for what is his right so that all his rights can be fulfilled properly. A father or someone who is burdened with the responsibility to provide for a child is also obliged to carry out his responsibilities so that the child's rights can be fulfilled and a child can grow and develop properly. So that children do not become the main party who feels the impact of their parents' divorce, because children are vulnerable individuals who must and should be protected by their families.<sup>33</sup>

There is no loophole or room for excuses to avoid parental obligations and responsibilities following the provisions of Pasal 26 ayat (1) Undang-Undang Nomor 23 Tahun 2002 sebagaimana telah diubah dengan Undang-Undang Nomor 35 Tahun 2014 tentang Perlindungan Anak, which states that:

1. That parents are obliged and responsible for;
  - a. Caring for, nurturing, educating and protecting children;
  - b. Develop children according to their abilities, talents and interests; and
  - c. Preventing child marriage.

The substantive provisions of the above Article are the same as the contents of Pasal 41 Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, which explains the consequences of the dissolution of a marriage due to divorce, where the marriage has consequences for a child or descendant of the marriage.<sup>34</sup>

<sup>32</sup>Fahimah, I. (2019). Kewajiban orang tua terhadap anak dalam perspektif islam. Jurnal Hawa: Studi Pengarus Utamaan Gender Dan Anak, 1(1).

<sup>33</sup>Karimatul Ummah, S. H. (2020). Pemenuhan Nafkah Anak Pasca Perceraian Orang Tua Di Kabupaten Klaten.

<sup>34</sup>Andini, N. (2019). Sanksi Hukum Bagi Ayah yang Tidak Melaksanakan Kewajiban Nafkah Terhadap



The provisions in Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan indicate that a father's responsibility to his child cannot be renounced even if the two have officially divorced and remarried.<sup>35</sup> It is understood that when a child has not *reached puberty*, the care of the child is the mother's right, but the costs are the father's responsibility.

If a father neglects his obligation to provide for his child, this is called neglect and can be prosecuted criminally as stated in Chapter XIA Prohibitions Pasal 76B which states that:

"Everyone is prohibited from placing, allowing, involving, ordering children to be involved in situations of mistreatment and neglect."

And Pasal 77B explains that:

"Any person who violates the provisions as referred to in Article 76B shall be punished with imprisonment of a maximum of 5 (five) years and/or a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah)".

This is how detailed the law is in regulating the obligations of parents in fulfilling the right to child support due to divorce.

Pasal 9 ayat (1) Undang-Undang Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga states that:<sup>36</sup>

"Everyone is prohibited from neglecting a person within his household, even though according to the law applicable to him, or because of an agreement or contract, he is obliged to provide life, care or maintenance to that person."

Thus, if this Article is linked to Pasal 41 huruf (b) Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, then a

father who is not responsible for the costs of maintaining and educating (living) his child can be categorized as having committed an act of neglect towards his child as stipulated in Pasal 9 ayat (1) dan (2) Undang-Undang Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga.<sup>37</sup>

Furthermore, in Pasal 49 huruf a dan b Undang-Undang Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga, the criminal threat for acts of negligence by a father towards the obligation to provide child support after a divorce or referred to as neglect as referred to in Pasal 9 ayat (1) dan (2) Undang-Undang Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga is a maximum prison sentence of 3 (three) years or a maximum fine of Rp. 15,000,000,- (fifteen million rupiah). Where this shows that there is a correlation if it has been proven that there has been an act of negligence towards the obligation to provide child support after a divorce, it is considered neglect, then it can be prosecuted civilly, as well as criminally.

By understanding more deeply the various laws and regulations that provide legal guarantees for the fulfilment of children's rights, especially for children who are victims of their parents' divorce as mentioned above, parents can be prosecuted criminally if they neglect their obligations in providing for their children, even though they are divorced, children still have the obligation and priority to obtain their rights.

## Conclusion

The implementation of the fulfilment of the right to child support due to parental divorce at the Parepare City Religious Court, based on the case study of decision Nomor 134/Pdt.G/2023/PA.Pare, has not gone well. This is caused by the ex-husband not fulfilling his obligation to provide child

Anak Pasca Perceraian (Studi Komparatif Perspektif Hukum Islam dan Hukum Positif di Indonesia). Qiyas: Jurnal Hukum Islam dan Peradilan, 4(1).

<sup>35</sup> *Vide* Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan

<sup>36</sup> *Vide* Pasal 9 ayat (1) Undang-Undang Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga

<sup>37</sup> *Video* Pasal 41 huruf (b) Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan jo. Pasal 9 ayat (1) Undang-Undang Nomor 23 tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga tersebut

support, even though a father is obliged to do so. Economic factors and ongoing conflict are also the main causes of divorce, resulting in the ex-husband not being responsible for child support until the age of 21.

In this situation, it is recommended that the child or the mother representing the child apply with the Religious Court to demand fulfilment of the obligation to provide for the maintenance. However, many mothers feel that the legal process is too long and expensive, so they choose to earn their living to meet the needs of themselves and their children. This decision shows the challenges faced by mothers in ensuring the welfare of their children after divorce.

## Reference

- Ab, M. (2022). Tuduhan Perselingkuhan Sebagai Dasar Alasan Perceraian di Pengadilan Agama Parepare (Analisis Putusan Nomor: 67/Pdt. G/2020/PA. Pare) (Doctoral dissertation, IAIN PAREPARE).
- Andini, N. (2019). Sanksi Hukum Bagi Ayah yang Tidak Melaksanakan Kewajiban Nafkah Terhadap Anak Pasca Perceraian (Studi Komparatif Perspektif Hukum Islam dan Hukum Positif di Indonesia). *Qiyas: Jurnal Hukum Islam dan Peradilan*, 4(1).
- Devy, S., & Muliadi, D. (2019). Pertimbangan Hakim dalam Menetapkan Nafkah Anak Pasca Perceraian (Studi Putusan Hakim Nomor 0233/Pdt. G/2017/MS-MBO). *El-Usrah: Jurnal Hukum Keluarga*, 2(1), 123-138.
- Fahimah, I. (2019). Kewajiban orang tua terhadap anak dalam perspektif islam. *Jurnal Hawa: Studi Pengarus Utamaan Gender Dan Anak*, 1(1).
- Hakim, L. (2016). Pemerataan akses pendidikan bagi rakyat sesuai dengan amanat Undang-Undang Nomor 20 Tahun 2003 tentang Sistem Pendidikan Nasional. *EduTech: Jurnal Ilmu Pendidikan Dan Ilmu Sosial*, 2(1).
- Irma Garwan, S. H., MH, A. K., SH, M., & Muhammad Gary Gagarin Akbar, S. H. (2018). Tingkat perceraian dan pengaruh faktor ekonomi di kabupaten karawang. *Jurnal Ilmiah Hukum DE'JURE: Kajian Ilmiah Hukum*, 3(1), 79-93.
- Jamal, A., & Ikhwan, M. (2021). Kesepakatan Menunda Kehamilan Bagi Pasangan Muda Perspektif Hukum Islam: Upaya Menekan Pernikahan Dini Di Masa Pandemi. *Al-Manahij: Jurnal Kajian Hukum Islam*, 15(2), 309-324.
- Juliardi, B., Runtunuwu, Y. B., Musthofa, M. H., TL, A. D., Asriyani, A., Hazmi, R. M., ... & Samara, M. R. (2023). *METODE PENELITIAN HUKUM*. CV. Gita Lentera.
- Karim, K., & Syahril, M. A. F. (2021). Simplifikasi Pembagian Harta Gono-Gini Akibat Perceraian. *Jurnal litigasi amsir*, 9(1), 1-12.
- Karimatul Ummah, S. H. (2020). Pemenuhan Nafkah Anak Pasca Perceraian Orang Tua Di Kabupaten Klaten.
- Maswandi, M. (2017). Hak Asuh Anak Yang Belum Dewasa Setelah Perceraian. *JPPUMA: Jurnal Ilmu Pemerintahan dan Sosial Politik UMA (Journal of Governance and Political Social UMA)*, 5(1), 21-30.
- Yakseb, A., & Sidiki, N. (2023). Implementasi Pemberian Nafkah Bagi Anak Pasca Perceraian Di Desa Falabisahaya (Perspektif Hukum Islam). *Al-Mizan: Jurnal Kajian Hukum dan Ekonomi*, 17-31.
- Yana, L., & Trigiyatno, A. (2022). Pemenuhan Hak Nafkah Anak Pasca Perceraian. *Al-Hukkam: Journal of Islamic Family Law*, 2(2), 113-124.
- Kitab Undang-Undang Hukum Perdata  
Kompilasi Hukum Islam  
Undang-Undang Nomor 1 Tahun 1974 tentang perkawinan  
Undang-Undang Nomor 23 Tahun 2004 tentang Penghapusan Kekerasan Dalam Rumah Tangga  
Undang-Undang Nomor 3 Tahun 2006 tentang Perubahan atas Undang-

Undang Nomor 7 Tahun 1989 tentang  
Peradilan Agama  
Putusan Nomor 134/Pdt.G/2023/Pa.Pare

**Conflict of Interest Statement:**

The author declares that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

Copyright © 2024 Litigasi. All rights reserved.