

Legal Responsibility of Prisoner Fathers for Child Support Rights After Divorce

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Abstract. *This study aims to analyze the form of legal protection for the fulfillment of child support rights after divorce, especially if the father is a convict. The research method used is normative juridical with a statutory approach, through literature study techniques and qualitative descriptive analysis. Primary and secondary legal materials, such as laws, court decisions, and scientific literature are analyzed to understand the normative obligations and implementation challenges in the implementation of child support by fathers who are serving their sentences. The novelty in this study lies in the focus of its study on legal loopholes and the implementation of child support in limited situations due to the father's legal status as a convict. So far, legal studies have discussed more about the obligation to provide support in general, but have not reviewed in depth how it is implemented when the father is not physically or economically free. Based on the results of the study, it can be concluded that the father's obligation to provide support remains valid even though he is a convict. Positive Indonesian law, both in the Marriage Law, the Compilation of Islamic Law, and the Child Protection Law, does not provide exceptions to this obligation. If the income during the prison term is insufficient, then the lack of support is considered a debt that must be paid after the father has economic capacity again. In certain circumstances, the responsibility for providing support can be temporarily transferred to the father's family without removing the father's primary obligations. Therefore, the state through its judicial institutions has an important role in ensuring the fulfillment of children's support rights, even in conditions where the father is not legally free.*

Keywords: *Children; Convicts; Divorce; Obligations; Support.*

1. Introduction

Legally, divorce means the end of a marriage that separates the relationship between husband and wife (Syaifudin, 2012: 15). The term Divorce in Article 38 of the Marriage

Law states that "A marriage can end due to death, divorce, or through a court decision." This event is certainly not only related to divorced husbands and wives, but also has legal consequences for children born to the couple concerned (Matahati & Markoni, 2023: 1310).

The causes of divorce are regulated in Article 41 of the Marriage Law No. 1 of 1974, which states: "a. Both the mother and the father remain obliged to maintain and educate their children, solely based on the interests of the child; if there is a dispute regarding control of the children, the Court shall make its decision; b. The father is responsible for all costs of maintenance and education required by the child; if in reality the father cannot fulfill these obligations, the Court may determine that the mother shall bear these costs; c. The Court may require the ex-husband to provide living expenses and/or determine an obligation for the ex-wife." This article proves that divorce is not only a termination of the relationship between husband and wife, but also leaves responsibilities that must be fulfilled for the benefit of the child. In this context, children's rights are a very important issue, because children are vulnerable to becoming victims of their parents' divorce (Aulana et al., 2024: 7)

Children are a mandate and gift from God who naturally have dignity and honor as human beings. On that basis, children have the right to receive full protection, especially regarding the protection of their basic rights (Junaidi, 2021: 2). According to Government Regulation (PP) Article 1 No. 59 of 2019, "children's rights are part of human rights that must be guaranteed, protected, and fulfilled by parents, families, communities, the state, the government, and local governments." Child care includes their rights, such as to sustenance, health, clothing, education, and shelter, as well as the right to receive affection, attention, and protection from parents (Mazid et al., 2023).

In the context of protecting children's rights after divorce, the right to maintenance is a fundamental and very important element to be fulfilled because it concerns the survival and welfare of children. Maintenance is all expenses of a person in fulfilling the basic needs of individuals who are under his/her responsibility to fulfill basic needs (Syarifah, 2024: 25). By paying attention to the substance of the applicable law, for example Article 41 of the Marriage Law, it can be seen that the father is the individual who is given the responsibility to fulfill the maintenance for the child. In line with this, the compilation of Islamic Law also provides similar provisions through Article 105 Letter C, namely "In the event of a divorce, the maintenance costs are borne by the father". Therefore, it can be said that the father's obligation to fulfill the child's maintenance after divorce is a binding legal provision as a form of protection of children's rights (Safitri & Ahmad, 2024: 36). In fact, if a father neglects his responsibility to fulfill the child's maintenance rights, he can be charged with Article 49 letter a of Law No. 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT), which can be punished with a maximum sentence of three years or a maximum fine of IDR 15 million.

In practice, the fulfillment of children's rights to support after divorce is often faced with various challenges. An example of a fairly complex challenge is when the parent who is responsible for providing support is a convict. When someone becomes a convict, they have limitations in their activities, including in terms of earning a living (Reswandi et al., 2025: 4). However, even though they are in this situation, the parents' obligation to fulfill their children's rights will not be immediately erased. Article 45 paragraph (2) of Law No. 1 of 1974 concerning Marriage states that the parents' obligations remain in effect until the child is married or is able to be independent and remain in effect even though the parents are divorced. Thus, the existence of the status of a convict does not immediately eliminate this legal responsibility, so legal efforts and policies are needed that can guarantee the fulfillment of children's rights to support in this situation.

One of the divorce cases that can be a concrete example to illustrate the real challenges of fulfilling child support by a father who is a convict is the divorce case between Ammar Zoni and Irish Bella. This divorce was decided by the Depok Religious Court on February 1, 2024 through decision number 3153/Pdt.G/2023/PA.Dpk. At the time the divorce was decided, Ammar Zoni was a suspect in a drug case and was languishing in a detention center (Rutan). However, even so, the panel of judges still granted Irish Bella's lawsuit which had to be fulfilled by Ammar Zoni regarding child support of IDR 10 million per month, in addition to health and education costs, which increase by 10% each year to offset inflation. The judge's decision is not only in line with existing laws, but also reflects the judge's bias in protecting children's rights, especially in ensuring that children's basic needs are met and cannot be ignored even though there are challenges in the parents' conditions.

The issue related to the fulfillment of children's rights to support after their parents' divorce, especially if one of the parents is a convict, is very interesting to study further. This is important to discuss because the father's status as a convict creates complexity in fulfilling children's support, considering that this status affects the ability and mechanism in fulfilling support. Although legal provisions in Indonesia have clearly regulated the father's obligation to continue to provide support after divorce, including in limited conditions such as being a convict, in reality, obstacles often arise in its implementation. The lack of legal studies that specifically discuss how legal protection for children's support rights is implemented when the father is a convict shows a gap between legal norms and their implementation in the field. Thus, this study aims to analyze the form of legal protection in Indonesia regarding the fulfillment of children's support rights after parental divorce and to examine the responsibility of fathers who are convicts towards the fulfillment of children's support rights after divorce, both in terms of law and its implementation.

2. Research Methods

This study aims to analyze the form of legal protection in Indonesia regarding the fulfillment of child support rights after parental divorce and to examine the responsibility of fathers who are convicts towards the fulfillment of child support after divorce, both from normative and implementative aspects. To achieve this goal, this study has used a normative legal method with a legislative approach that focuses on the analysis of positive legal norms, without questioning the gap between *das sein* and *das sollen*, because normatively the law has clearly regulated these obligations. The data in this study were obtained through library research by reviewing various primary and secondary legal materials, such as laws, books, scientific journals, legal literature, and relevant court decisions. All data were then analyzed qualitatively using descriptive-analytical methods in order to gain an in-depth understanding of the mechanism of legal protection for child support rights, especially in situations where the father as the provider is serving a criminal sentence.

3. Results and Discussion

3.1. The Legal Protection of Child Support Rights After Parental Divorce in Indonesia

Parents play a major role in protecting their children's rights, because parents are required to educate and care for their children as well as possible for the best interests of their children. Because children who are under 18 years of age or are not yet married are still the responsibility or under the authority of their parents (Harvin & Priandhini, 2021: 2467). In addition, children's rights are very important to protect because children are the next generation for the sustainability of the nation and state (Sarianti, 2018: 106). The Marriage Law emphasizes that "the obligation of parents to care for and educate children applies until the child is an adult or can stand alone and this obligation will not be lost even though the marriage between the two parents has ended due to divorce" (Dunggio et al., 2023: 4714). Several parties who are required to protect children's rights are parents, family, society, and the government and state. The role of the government and state is also highly prioritized because they act as the authority holders to draft and change laws, as well as enforce laws relating to children's rights (Susilowati & Farid, 2003: 46).

Table 1.Regulations Regarding Child Support

No	Regulation/Legal Source	Contents of the Provisions Regarding Livelihood
1.	Article 41 of Law No. 1 of 1974 (Marriage Law)	The father is responsible for the costs of maintaining and educating the child after the divorce.
2.	Article 105 Letter C Compilation of Islamic Law	Child maintenance costs become the responsibility of the father after divorce.

3.	Article 45 Paragraph (2) Law no. 1 of 1974 (Marriage Law)	Parental obligations apply until the child is married or can live independently.
4.	Article 156 Letter F Compilation of Islamic Law	The amount of maintenance is determined based on the father's ability.
5.	SEMA No. 3 of 2018	(In deciding the amount of child support) the judge takes into account the father's economic capabilities and the child's basic needs.
6.	SEMA No. 3 of 2015	(In the case of a decision on child support after divorce) There is an increase in child support of 10-20% per year outside of education and health costs.

As seen from the table above, the obligation to provide child support after a divorce legally remains the responsibility of the father, as regulated in Article 41 of Law No. 1 of 1974 and Article 105 letter c of the Compilation of Islamic Law. This obligation remains in effect even though the child's custody is with the mother, and continues until the child is married or able to live independently according to Article 45 paragraph (2) of the Marriage Law. This shows that the father must consistently be present to provide for his child and this obligation will not end just because the parents' relationship ends, but will continue until the child is married or able to live independently. Meanwhile, the provisions regarding the amount of child support are not regulated in detail in general regulations, except for certain professions such as civil servants, members of the National Police, and the National Military, which have their own provisions regarding the calculation of post-divorce support. In practice, the court must determine the amount of child support by considering the father's economic ability and the child's needs as stated in Article 156 letter f of the KHI and the Supreme Court Circular Letter No. 3 of 2018. In fact, through SEMA No. 3 of 2015, the Panel of Judges is advised to determine a verdict in the form of an increase in child support of 10–20% per year outside of education and health costs, in order to ensure the continuity of meeting the child's needs fairly and proportionally.

Protection related to child support after divorce is very important to pay attention to. Fulfillment of child support must be optimally guaranteed, because failure to fulfill support can reduce one of the child's rights that should be received. Lack of rights to support that are given can have a negative impact on the child's physical and psychological development, thus potentially violating children's rights according to applicable laws (Azmi et al., 2023: 9). The position of children in divorce cases can be said to be victims whose positions are very vulnerable regarding the fulfillment of their rights. Even so, in Indonesia itself there are already various regulations to protect children so that their rights are fulfilled, such as Article 4 of Law No. 23 of 2002 concerning Child Protection which explains that "Every child has the right to live, grow, develop, and participate fairly in accordance with human dignity and dignity, and receive protection from

violence and discrimination", then as a form of parental responsibility for fulfilling these rights, Article 9 of Law No. 4 of 1979 concerning Child Welfare which states that "Parents are the first to be responsible for realizing the welfare of children both spiritually, physically and socially". In this context, the obligation of parents (especially fathers) to provide for their children is a form of fulfillment of children's rights that are guaranteed by law. By fulfilling children's rights, including the right to support, it will support them to grow optimally, both physically and mentally. If there is a condition where a father neglects his child and does not provide support for his child which results in the child not being able to obtain his rights and suffering moral and material losses, then this can be considered a form of neglect of the child (Wijayanti & Listyarini, 2023: 439)

Child neglect is considered a form of domestic violence (DV) based on Law No. 23 of 2004 concerning Domestic Violence. In this regard, Article 76B of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection also emphasizes that "Everyone is prohibited from placing, allowing, involving, ordering the involvement of children in situations of mistreatment and neglect". Therefore, in relation to the father's negligence in his responsibility for child support, he can be prosecuted with a maximum criminal penalty of 5 years and a fine of Rp100,000,000.00 in Article 77 letter b of Law No. 35 of 2014 concerning Child Protection, or a maximum imprisonment of 3 years or a maximum fine of Rp15,000,000.00 as in Article 49 of Law No. 23 of 2004 concerning Domestic Violence.

In addition to criminal sanctions, a father who neglects his responsibilities can also be subject to civil sanctions, in this case he can be sued in court (stated in Article 34 paragraph 3 of the Marriage Law No. 1 of 1974) to replace the cost of child support that is not given to the child from birth to adulthood (approximately 21 years). In particular, for civil servants who are reluctant to comply with the provisions on salary distribution in the event of a divorce, they can be subject to one of the severe disciplinary penalties in accordance with PP No. 30 of 1980 concerning Civil Servant Disciplinary Regulations.

However, even though regulations have been set regarding the protection of children's rights so that they can obtain their rights optimally up to legal sanctions, in reality it is still very concerning when observing the complaint data submitted to the KPAI in January-November 2024 which shows that child victims of the fulfillment of the right to support are the 2nd highest case, namely 149 cases in the data (Jannah, 2024). This condition shows that there are still many children who have not received their full right to support, so they need more attention from various parties, especially mothers as guardians of children. For this reason, in dealing with this problem, an example of an effort that can be made is to file a lawsuit in court. As an effort to demand justice in terms of child support, a mother can sue her ex-husband for her child's hadanah costs by filing a new lawsuit regarding her child's support in the form of an execution action. The court will process the child support lawsuit against the ex-husband, this process must go through a trial and summon the respondent to be given a warning. If unsuccessful, the court

will execute the assets owned by the ex-husband under the order and determination of the Panel of Judges on behalf of the Chief Justice (Puspytasari & Firman, 2021: 3612).

3.2. The Legal Responsibility of a Convicted Father for Fulfillment of Child Support Rights After Divorce

By considering the provisions of positive law in Indonesia, it can be said that the father's responsibility for the maintenance of his child is a legal obligation that cannot be eliminated by any condition or status. However, problems arise when the father of the child has the status of a convict and is in detention. The status of a convict has consequences for a person's capacity to carry out economic, social, and family functions, including in carrying out legal obligations as a parent (Syaputra, 2023). The existence of this condition creates a gap between norms and practices which ultimately creates an implementation gap in guaranteeing children's rights to maintenance from their parents. Even so, the existence of a convict status does not terminate or suspend this obligation because the responsibility of parents to children is an imperative law and applies continuously.

Basically, in Indonesian civil law and KHI, there are no explicit regulations regarding child support when the father is in a condition like this. The law only emphasizes that the father is obliged to provide support to the child and there are no exceptions to support based on the legal status of the parents. In the example of a divorce decision case 3153/Pdt.G/2023/PA.Dpk, the panel of judges still granted the lawsuit for child support even though at that time the father was in detention. This implies that the court still recognizes the existence of the father's responsibility for child support even though the father has the status of a convict and considers that this legal responsibility cannot be immediately eliminated just because the father is serving a sentence. This situation illustrates the consistency of the religious justice system in placing the interests of children as the main priority, while also affirming the principle that the legal responsibility of parents does not end even though there is a divorce or criminal status (Ihsanuddin, 2024: 54).

Article 14 Paragraph (1) letter g of Law No. 12 of 1995 concerning Corrections states that "prisoners have the right to receive wages or bonuses for work carried out while serving their sentence." This provision provides space for prisoners to continue to carry out their legal responsibilities for child support. One way that can be done is by participating in work programs or independence development activities organized by correctional institutions (Rahmat, 2023). Through this activity, prisoners have the opportunity to earn income, which although limited, can at least be used to fulfill part of the obligation to provide support for children. This income should be used as a source to fulfill the obligation to provide support so that prisoners can continue to carry out civil responsibilities even in the status of losing their independence.

Although prisoners have the opportunity to earn income through work activities or coaching programs in correctional institutions, this is not necessarily enough to fulfill the maintenance obligations that have been determined through a court decision. This is because when there has

been a decision regarding the amount of maintenance from the court, maintenance is not just a form of giving a sum of money as much as possible, but is a legal obligation with an amount that has been explicitly determined by the court. So if the provision of wages in prison is not comparable to the amount of maintenance required in the verdict, then the remaining maintenance obligations can be said to be a debt that must be fulfilled by the father (Adiningrum & Adityo, 2024: 21).

This is because the obligation to fulfill family support when the husband is a convict is only tentative. So that the obligation which is the husband's responsibility becomes a debt for him because he has the status of a convict who cannot freely earn income outside (Sainul, 2022: 11). This view is in line with the opinion of the majority of scholars who state that "if the husband does not carry out his maintenance obligations within a certain period, due to his inability, then this is a debt for him which must be paid after he has the ability to pay it" (Syarifuddin, 2014: 173). In this context, child support is included in part of this obligation, considering that the child is the party who is legally entitled to receive maintenance and living expenses from his parents. So if the amount of maintenance paid does not comply with the court's decision, then this can be legally demanded to be paid as it should and can be executed.

In addition, in its implementation, if the father who is a convict does not have the financial ability to fulfill the child's maintenance obligations, then the fulfillment of the maintenance can be temporarily transferred to a third party, such as the father's family in order to ensure that the child's rights are still fulfilled during the detention period. This transfer refers to Article 26 paragraph 1 of Law No. 35 of 2014 concerning Child Protection, which states that "if parents for some reason cannot carry out their obligations and responsibilities, then this can be transferred to the Family, which is carried out in accordance with the provisions of laws and regulations" (Athaaya & Sutrisno, 2024: 501). This transfer is temporary and does not eliminate the legal responsibility of the father as the main person responsible for the maintenance obligations. So that all forms of maintenance provided by third parties can be recorded as assistance which in principle can be requested for reimbursement from the father after he has economic capacity again.

4. Conclusion

Fulfillment of child support rights after divorce is a legal obligation that remains attached to parents, especially fathers, even though the marriage has ended. Negligence in fulfilling child support can be categorized as a form of neglect that has implications for criminal and civil sanctions. Even so, in practice there are still many children who do not receive support as they should. In this situation, the mother as the child's guardian has the right to take legal action, including filing a lawsuit in court which can lead to the execution of the ex-husband's assets if there is no good faith in fulfilling this obligation. Meanwhile, the legal obligation to provide support cannot be abolished or suspended, even though the condition of being a prisoner clearly limits economic capacity. Income from coaching activities in correctional institutions can be

used to fulfill part of the support obligation, and if it is insufficient, the remainder is considered a debt that must be paid after the father regains economic capacity. The fulfillment of support can also be temporarily transferred to a third party, but this does not eliminate the legal responsibility that remains attached to the father as the main party obliged to fulfill the child's support rights. As a suggestion, it is necessary to regulate more specific and special regulations regarding the fulfillment of child support by fathers who are convicts in order to create clear legal certainty. In addition, the state also needs to design a special mechanism to ensure that the child's right to support is still fulfilled even though the father is a convict, for example through a social justice-based child protection fund, or strengthening cooperation between judicial institutions and correctional institutions. In addition, increasing legal education for mothers as guardians of children is also important so that they understand the rights and legal steps that can be taken to protect the best interests of children in a sustainable manner.

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