

Effectiveness of the Implementation of the Marriage Law on Child Protection After a Divorce Decision

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Abstract. *The objectives of this research are: to understand and analyze how child protection is implemented after a divorce, how the rights and obligations of parents toward their child are fulfilled after the divorce, and what solutions can be proposed. The research approach used in this study is a normative juridical approach, which is a process of discovering legal norms, legal principles, and legal doctrines to address the legal issues at hand. Law Number 16 of 2019 aims to protect children after divorce, but its implementation still faces various obstacles. The main challenges include a lack of socialization and public understanding of children's rights, limited access to legal services, as well as complex and slow legal bureaucracy. Although regulations regarding custody, alimony, and child care are clearly stated, their practice remains suboptimal. Therefore, improvements in education, training for relevant parties, simplification of procedures, and expansion of legal access are needed to ensure maximum child protection. The government and law enforcement must enhance public awareness and understanding of children's rights after divorce and the implementation of Law No. 16 of 2019 through media, seminars, and training. Legal services must be easily accessible and of high quality for families going through divorce. Law enforcers, courts, and social workers need intensive training to provide accurate information. Parents are also expected to actively seek information, maintain communication, and prioritize the psychological well-being and interests of the child during and after the divorce process.*

Keywords: *Children; Divorce; Legal Protection.*

1. Introduction

In every country based on law, those who violate legal norms are required to be held accountable for their actions. Legal norms are made to be obeyed, and violations will be subject to sanctions. In Indonesia, it is firmly stated that this country is a country based on law, not solely based on power. Thus, Indonesia is a country based on law where every citizen's behavior must be guided by existing legal norms. The law functions to regulate

relations between individuals and between individuals and the state, so that everything runs in an orderly manner. Therefore, the purpose of law is to achieve peace by realizing legal certainty and justice in society. Legal certainty requires the formulation of clear and firm rules in statutory regulations.¹ Every citizen who is in the jurisdiction of Indonesia receives equal legal treatment, regardless of race, skin color, or economic and social background. Every violation and unlawful act will be faced with applicable law. With Thus, every citizen has the right to receive legal protection and defense from the government.

As a consequence, the government must ensure a safe and orderly atmosphere in society. If a citizen feels unsafe, he or she has the right to seek legal protection from the authorities or the government. In enforcing and ensuring security and public order, sanctions are required, which can only be enforced if there is a law that regulates it. The law functions to regulate relations between individuals and between individuals and the state, so that everything runs orderly. The purpose of the law is to achieve peace by realizing legal certainty and justice in society, without distinguishing background, social status, position, or skin color. In this modern era, where the economic needs of society are increasing, especially related to the fulfillment of needs and employment, there is vulnerability in the field of public security. The frequent occurrence of crime is one of the impacts of this condition. Crime, as a social phenomenon, is faced by society both in rural and urban areas. The intensity of crime is increasing every day, with increasingly sophisticated and varied modus operandi, including theft with violence that hurts the victim to sadistic murder.²

Humans have a desire to have generations or descendants and live in pairs. In this case, of course the right thing to do is to get married. Marriage is the only way to form a family, because marriage is absolutely necessary and is a requirement for the formation of a family.⁶ Marriage that begins with a sense of love and affection between husband and wife is expected to be harmonious, lasting, and eternal based on the Almighty God. This is in line with the purpose of marriage as regulated in the Law of the Republic of Indonesia Number 16 of 2019 which is an amendment to Law Number 1 of 1974 concerning Marriage. In this law, marriage is defined as a physical and spiritual bond between a man and a woman as husband and wife, with the aim of forming a happy and eternal family based on the Almighty God. Abdurrahman Al-Jaziri defines marriage as a sacred agreement between a man and a woman to form a happy family. This definition emphasizes that marriage is an agreement that involves free agreement between both parties. As an agreement, marriage is based on the principle of mutual consent, so it should not contain any element of coercion in any form.³

Divorce can be defined as a legal event that causes the termination of the marriage bond between husband and wife. Divorce occurs based on certain legal reasons, through a predetermined legal process, and has legal consequences that must be officially stated in court. The termination of this marriage ends the legal status of husband and wife, so that both of them no longer have obligations in household life. However, divorce does not

¹ Gunarto, Law Enforcement Agenda and Its Relevance for National Development, Journal of Legal Reform Volume I No.1 January-April 2014, page 3

² Wirjono Prodjodikoro, Certain Criminal Acts in Indonesia, Jakarta: PT. Refika Aditama, 2002, p. 15

³ Article 1 of the Republic of Indonesia Law Number 1 of 1974 concerning Marriage

immediately eliminate the relationship or socio-religious ties between former husband and wife, especially if they have had children in the marriage.⁴

In Article 45 Paragraph 1 and Paragraph 2 of Law Number 16 of 2003

2019 concerning Amendments to Law Number 1 of 1974 affirms that both parents have an obligation to care for and educate their children as well as possible. This obligation remains in effect until the child is married or is able to stand on his own, even if the marriage between the two parents has ended.⁵

2. Research Methods

The approach method in this research is to use a normative legal approach, namely a process to find a legal rule, legal principles, or legal doctrines in order to answer the legal issues faced.⁶ In this type of legal research, law is conceptualized as what is written in statutory regulations or law is conceptualized as a rule or norm which is a benchmark for human behavior that is considered appropriate.⁷

3. Results and Discussion

3.1. Protection To Child Post Divorce Decree

Divorce is a legal event that has a major impact, not only on the separated couple, but also on the children born in the marriage. Law Number 16 of 2019, which is an amendment to Law Number 1 of 1974 concerning Marriage, is present as a form of legal reform that aims to strengthen legal protection for children. One important aspect of this law is the affirmation of parental responsibility for children after divorce.

However, the implementation of these provisions often faces obstacles in the field, both in terms of law enforcement, public awareness, and weak supervision. Therefore, this study aims to examine the extent to which Law Number 16 of 2019 is effective in providing protection for children after their parents' divorce.⁸

Social changes and the development of modern society have given rise to new complexities in the family institution, including the increasing divorce rate. Divorce, which is actually the last resort, often has negative impacts, especially for children born from the marriage. Children are the most vulnerable to psychological, emotional, social, and economic losses. The government responded to this through Law Number 16 of 2019 as an amendment to Law Number 1 of 1974 concerning Marriage, which strengthens protection for children, including

⁴ CST Kansil, Introduction to Indonesian Law and Legal System, Jakarta: Balai Pustaka, 1979, p. 228

⁵ <https://iainsasbabel.ac.id/dilema-anak-korban-perceraian>, Accessed on February 28, 2025 at 10.00 WIB

⁶ Peter Mahmud Marzuki, 2010, Legal Research, Jakarta: Kencana Prenada, p. 35

⁷ Amiruddin and H. Zainal Asikin, 2006, Introduction to Legal Research Methods, Jakarta: PT. Raja Grafindo Persada, p. 118

⁸ Abu Huraerah, Violence Against Children, Bandung: Nuansa Cendikia, 2018;

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through provisions on custody rights and maintenance obligations. However, in practice, many divorce decisions are not accompanied by concrete supervision of the implementation of children's rights.⁹

The author found several legal provisions regulated in Law Number 16 of 2019, including the following:

1. Setting the minimum age for marriage at 19 years, for both men and women, aims to reduce the number of early marriages and their negative impacts on children.
2. Requires the court to consider the best interests of the child in every divorce decision.
3. Regulates matters of child custody, parental support obligations, and moral responsibility for child development.

In addition to Law Number 16 of 2019 concerning marriage, the author in his research found a number of other related regulations, including:¹⁰

1. Law no. 35 of 2014 concerning Child Protection
2. Supreme Court Regulation (PERMA) which regulates child-friendly court procedures.

In the author's research, the objectives of Child Protection After Divorce include:

1. Child protection aims to ensure that children's rights are met (sustenance, education, affection).
2. Prevent children from becoming victims of parental conflict.
3. Provide psychological and social stability to children.
4. Maintaining the continuity of the child's future.

The author found challenges or positive achievements in the implementation of post-divorce child protection, including:¹¹

1. Court decisions generally include provisions regarding child custody and child support obligations.
2. Judges in divorce cases have begun to consider the psychological needs of children, not

⁹ Satrio, Juswito, Family Law Regarding the Position of Children in Law, Bandung: PT. CitraAditya Bakti, 2005;

¹⁰ Sholeh Soeaidy and Zulkhair, Legal Basis for Child Protection, Jakarta: CV. 200;

¹¹ Supriatna, Muslim women's jurisprudence, Legal studies on women based on 4 schools of thought, Labil Mz. Victoria Inti Cipta;

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just their physical needs.

Meanwhile, negative challenges in the implementation of post-divorce child protection include:

1. Enforcement of child support rights is still weak. There are many cases where parents who do not have custody do not fulfill their obligations.
2. Post-decision supervision is almost non-existent. The state does not establish a long-term monitoring mechanism for children after divorce.
3. There is still discrimination: in some cases, mothers who are economically disadvantaged lose custody of their children because they are considered "not capable" even though they are emotionally better off.
4. The inequality of access to legal aid for underprivileged communities makes the rights of children from poor families more vulnerable to being ignored.
5. Community culture (patriarchal, stigma against divorce) hinders effective child protection.

Divorce does have a significant impact, not only on the couple involved, but also on their children. Children caught in the conflict of divorce often experience profound psychological and emotional impacts. Therefore, the protection of children's rights after a divorce decision is very important in the family law system in Indonesia.

One of the steps to protect children's rights in divorce cases is through Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. This law provides stricter provisions regarding the protection of children's rights, especially in terms of care, custody, and distribution of support rights.¹²

Specifically, in the context of divorce, the fulfillment of children's rights is very visible in the following matters:

1. **Determination of Child Custody Rights:** In a divorce decision, the role of the court is very important in determining which party will receive custody of the child, taking into account the child's best interests. Factors such as the child's age, psychological condition, and emotional closeness to the parents are the main considerations.
2. **Child Support:** The article that regulates the obligation of parents to provide child support remains in effect after divorce. Both parents must continue to meet the physical, educational, and health needs of the child even though they no longer live together.

¹² Variation of the Position of the Rights and Objects of Thalaq for Apostates Between the Decision of the Padang Religious Court Judge and the Guidelines for the Implementation of Duties and Administration of Religious Courts journal Vol. 6 No. 4 Edition 1 July 2024;

3. Visitation and Parental Relations: Protection of children's rights also includes the right to maintain relations with both parents, even if they are divorced. Arrangements for visitation or the right to meet with the non-custodial parent are also important in maintaining the emotional well-being of the child.

Family law in Indonesia has established various provisions related to the protection of children's rights, especially through Law Number 1 of 1974 concerning Marriage which was later revised by Law Number 16 of 2019. In addition, Law Number 35 of 2014 concerning Child Protection also provides a more detailed legal basis for children's rights. Although these legal instruments are available, the implementation of child rights protection in divorce situations still faces a number of challenges, both from social and cultural aspects, as well as from the legal institution itself.

According to the provisions of Article 47 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974, a child is defined as any individual who is under 18 (eighteen) years of age. Meanwhile, in Article 98 of the Compilation of Islamic Law, a child is any individual who has not reached the age of 21 (twenty-one) years, on the condition that they do not have physical or mental disabilities and have never been married. Based on these two provisions, there is a difference in determining the age limit of a child. Therefore, it is also important to refer to Article 1 number 1 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which states that a child is someone who is under 18 (eighteen) years of age, including children who are still in the womb.¹³

Fulfillment of a Number of Children's Rights Due to Divorce According to the Marriage Law and the Compilation of Islamic Law, Fulfillment of Children's Rights Based on the Marriage Law, In Article 41 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974, it is regulated that:

1. Both mother and father remain obligated to care for and educate their children, solely for the benefit of the child. If there is a dispute regarding child custody rights, the court will make a decision.
2. The father is fully responsible for the costs of education and maintenance of the child. However, if in practice the father does not
3. able to fulfill these obligations, the court may determine that the mother also bears responsibility for these costs.
4. In addition, the court may require the ex-husband to provide maintenance and/or impose certain other obligations on the ex-wife.

From these provisions, it can be understood that Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 explicitly regulates the protection of children's rights,

¹³ Circular Letter No. 7 of 2012 concerning the Legal Formulation of the Results of the Plenary Meeting of the Supreme Court as a guideline for the courts;

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both when the parents' marriage relationship is still intact and after a divorce. It is important to understand together that this Marriage Law applies not only to Muslims, but also to non-Muslim communities in Indonesia.

Fulfillment of a number of children's rights as regulated in Law Number 1 of 1974 and the Compilation of Islamic Law includes the fulfillment of daily living needs, education costs, and children's health after a divorce. This is expressly regulated in Article 41 letter (a) and

(b) Law Number 1 of 1974. The impacts of a marriage breaking up due to divorce include:

1. Both mother and father remain obligated to care for and educate the child in the best interests of the child. If there is a dispute regarding custody rights, the court will decide.
2. The father is fully responsible for all costs required for the child's needs. If in practice the father is unable to fulfill this obligation, the court may determine that the mother also bears part of the costs.

Furthermore, in Article 45 of the Chapter on Rights and Obligations between Parents and Children in the same Law, the following provisions are regulated:

1. Both parents are obliged to care for and educate their children as best as possible.
2. The obligations of parents as referred to in paragraph (1) remain in effect until the child is married or able to support himself, and these obligations continue even if the marriage between the two parents has ended.

Meanwhile, regarding children's rights according to the Compilation of Islamic Law, it is expressly stated that husband and wife bear the obligation to care for and maintain their children, including their physical, spiritual, intellectual, and religious growth. This provision is further regulated in Article 105 of the Compilation of Islamic Law, which states that in the event of a divorce:¹⁴

1. The care of children who are not mumayyiz (not yet 12 years old) is the right of the mother.
2. The care of children who have mumayyiz is left to the child to choose whether he wants to be raised by his father or mother.
3. Childcare costs are the responsibility of the father.

In addition, the mother's right to hadhanah (maintenance) can be lost if the mother dies. In this case, the mother's position will be replaced sequentially by:

¹⁴ Maldin Gultom, Legal Protection for Children in the Juvenile Criminal Justice System in Indonesia, Bandung: PT Refika Aditama, 2014;

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1. Women from the mother's line upwards;
2. Father;
3. Females from the father's line upwards;
4. The child's biological sister;
5. Female blood relatives from the mother's side;
6. A female blood relative from the father's side.

Based on legal facts, it is explained that parents, both father and mother, are still obliged to provide maintenance for their children, even though they are divorced. This maintenance is carried out for the benefit of best for the child. Maintenance costs are in principle the responsibility of the father, but under certain conditions, the court may impose this obligation on the mother as well.

The legal approach in handling divorce cases often emphasizes more on resolving conflicts between husband and wife, so that children's rights are often neglected. In fact, the principle of child protection stated in the Convention on the Rights of the Child which has been ratified by Indonesia through Presidential Decree Number 36 of 1990 emphasizes that every decision concerning children must prioritize the best interests of the child.

The legal framework in Indonesia provides a solid foundation for the protection of children's rights, particularly through Law Number 1 of 1974 concerning Marriage, which was amended by Law Number 16 of 2019, and Law Number 35 of 2014 concerning Child Protection. These regulations establish important principles, such as the "best interests of the child", as the main guideline in determining custody and fulfilling children's needs after divorce. However, its implementation in the field still faces various obstacles.

The Child Protection Law clearly regulates the obligations of parents to care for, educate, and provide for their children, even after the marriage ends. This provision aims to ensure that children continue to receive care and education.

appropriate even though the family is broken up. In addition, the Convention on the Rights of the Child ratified by Indonesia also emphasizes the state's obligation to protect children from all forms of discrimination that may arise due to the marital status of their parents.

In the context of Islamic law, the concept of hadhanah prioritizes the interests of children, especially for children who are not yet mumayyiz. However, judges' interpretations of this principle often vary, resulting in non-uniformity in court decisions.

Therefore, it is necessary to strengthen a more comprehensive legal framework to protect children's rights in the divorce process. This step can be done through revision of existing

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regulations and strengthening institutions involved in the family law system, to ensure that children's rights are protected comprehensively, including their emotional aspects during the divorce process.

Divorce has a direct impact on the fulfillment of children's basic rights, including the right to care, support, education, and affection from both parents. Children are often victims of parental conflict, both in emotional and social aspects. Research shows that children involved in divorce conflict are more vulnerable to psychological disorders, such as anxiety, depression, and feelings of abandonment.

One of the rights that is often neglected is the right to custody. Children who live with one parent often lose adequate access to the other parent. In some cases, prolonged conflict between parents causes the party holding custody to prohibit the child from meeting with the non-custodial party. This situation contrary to the principle of the best interests of the child and can be detrimental to their emotional development.

In addition, the fulfillment of the right to support is often neglected. Many parties fail to fulfill their obligations to provide support to children after divorce. In practice, supervision of the implementation of support obligations is still weak, so that children become victims of negligence and non-compliance.

Children's rights to obtain proper education are also vulnerable to threat in divorce situations. Many children experience a decline in the quality of education due to the worsening economic conditions of the family after divorce. When one parent does not fulfill the obligation of support, the financial burden falls entirely on the parent, which impacts their ability to meet the child's educational needs.¹⁵

From a social perspective, children whose parents are divorced often face stigma from their surroundings. This affects their ability to interact, both at school and in the wider community. These children often feel excluded, which negatively impacts their self-confidence and social relationships.

Divorce conflicts often involve emotional manipulation of children. Some parents use children as a tool to attack or fight their spouse. This violates the rights of children and can cause long-term psychological trauma.

For this reason, a more integrated approach is needed in addressing the impact of divorce on children, including strengthening the role of counselors, psychologists, and child protection institutions in every stage of the family law process.

Legal protection for children after a divorce decision is a responsibility that must be borne by the state, parents, and society. Although there is an adequate legal framework, its implementation still faces obstacles, such as weak supervision of court decisions,

¹⁵ The Compilation Team of the Center for Language Development and Fostering, Big Indonesian Dictionary, Second Edition, Jakarta: Balai Pustaka, 1997;

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inconsistency in granting custody and maintenance rights, and lack of attention to the child's psychological condition.

Divorce decisions should not only regulate the legal status of the couple, but also ensure that the rights of the child are fulfilled, such as the right to care, education, support, and a continuing relationship with both parents. Unfortunately, in practice, the principle of the child's best interests is often not a primary consideration.

To strengthen legal protection for children after divorce, it is necessary to increase the effectiveness of regulations, strengthen the role of related institutions such as courts and child protection institutions, and implement monitoring and sanction mechanisms for parties who do not comply with court decisions. Public education about the importance of protecting children's rights is also an important aspect that should not be ignored. With a comprehensive and fair legal approach, it is hoped that children will continue to receive maximum protection and can grow and develop optimally even though their parents are separated.

Law Number 16 of 2019 concerning Marriage has brought a positive direction in the protection of children after divorce, but its effectiveness in the field is still limited. Structural (legal, institutional) and cultural (public awareness) barriers need to be addressed. Implementation of the law requires synergy between the courts, society, and state institutions so that child protection can be realized not only in legal texts, but also in the real lives of children who are victims of divorce.

The theory of legal certainty emphasizes the importance of clear, consistent, and predictable rules in practice. In the context of child protection after divorce, legal certainty means that every decision taken by the court regarding parental custody, support, and access must be clear and unambiguous. However, in practice, court decisions often do not provide concrete legal certainty regarding the implementation of children's rights.

Legal certainty in this case is related to clear regulations, consistency in the application of the law, and effective supervision to ensure that court decisions are carried out according to the provisions. Strengthening the supervision mechanism and consistency in the application of the principle of the best interests of the child is very necessary so that children affected by divorce can have their rights protected more optimally.

In the perspective of Law Number 16 of 2019, there are legal implications for parents who are negligent in carrying out the obligation of hadhanah (child care), namely the revocation of the parent's right to control the child. This provision is in line with the Compilation of Islamic Law which regulates that the rights of parents in child care can be revoked and transferred to another party who is considered entitled.

Revocation of parental rights to a child can be done at the request of the other parent, the child's family in a direct line upwards, adult siblings, or an authorized official with a court decision, in the event that the parent is seriously neglectful of his/her obligations or behaves

badly. Even though the right of hadhanah is revoked, the parent is still obliged to provide maintenance costs for the child.

In the theory of legal protection, the state and law enforcement officers have an obligation to ensure that the law not only exists as a written norm, but is also understood and implemented by the community. Lack of socialization and understanding hinders the implementation of legal protection that should be given to children. Without sufficient understanding of children's rights, parents or related parties will not know how to carry out their obligations to protect children. The theory of legal protection emphasizes that effective legal protection requires high legal awareness in the community so that children's rights can be accessed and fulfilled properly. More intensive socialization will reduce this lack of understanding and increase legal awareness, which in turn will strengthen the child protection system.

The theory of legal protection also requires easy and equal access to legal protection, especially for vulnerable groups such as children in the context of divorce. Limited access to legal services, whether due to economic, geographic, or social factors, prevents children from getting the protection they deserve. In the theory of legal protection, the state or government has an obligation to provide equal access to legal protection mechanisms for all citizens, without exception. This means that every parent, regardless of economic background, must be able to access legal services that can help them protect their children's rights after divorce. If this access is limited, then children are at risk of not getting the protection they need, thereby reducing the effectiveness of the legal system in protecting their rights.

In the theory of legal protection, a fast and efficient legal process is essential to provide immediate protection for those in need, including children who are victims of divorce. Complicated bureaucracy and long legal processes can worsen the condition of children who are in a situation full of uncertainty. This violates the principle of legal protection, where the child's right to receive immediate and effective protection must be guaranteed. When the process law is hampered by bureaucracy, children are the most disadvantaged because they have to wait in uncertainty. The theory of legal protection demands that individual rights, in this case children, must be fulfilled immediately without waiting too long, so as not to increase suffering or harm their welfare.

The theory of legal protection emphasizes the importance of effective legal protection, which is not only in the form of written laws, but also real actions that can protect individual rights, including children. Obstacles in the implementation of the law, such as lack of understanding or uncertainty of legal procedures, reduce the effectiveness of the protection guaranteed by Law No. 16/2019. In this theory, legal protection is not only about the existence of laws, but also about how the laws are implemented properly and efficiently, by ensuring that the responsible parties (courts, law enforcement officers, advocates, etc.) carry out their obligations properly. If there is no effective implementation, then the desired legal protection will be in vain.

Legal protection theory also often emphasizes the principle of "the best interests of the child," which states that all legal decisions involving children must prioritize their welfare and protection. Law Number 16 of 2019 recognizes this principle, but its implementation is hampered by a lack of parental understanding or complicated bureaucracy. In legal protection theory, if the legal system not fully paying attention to this principle, then the protection given to children will not be optimal. Therefore, it is very important for all elements in the legal system to understand and apply this principle consistently so that children's rights are fully protected.

The theory of legal protection argues that the state has an obligation to protect the rights of every individual, especially the vulnerable, such as children. Law Number 16 of 2019 is a form of legal guarantee from the state to provide protection to children involved in the divorce process. However, if the state fails to provide adequate resources, training, or facilities for law enforcement officers, then such protection will not be effective.

The theory of legal protection demands an effective mechanism to protect individual rights, including children's rights after divorce. To ensure optimal legal protection for children, there needs to be an increase in legal socialization, wider access to legal services, simplification of the legal process, and increased effectiveness of legal implementation. All existing obstacles, such as lack of legal understanding, limited access, and complicated bureaucracy, must be overcome so that child protection can be realized optimally, in accordance with the principles of legal protection that demand justice, certainty, and child welfare.

3.2. Rights and Obligations of Parents Towards Children After a Divorce Decision

After divorce, even though the husband and wife relationship has ended legally, the responsibility for the child remains a joint obligation of both parents. In the Indonesian legal system, this principle is emphasized in various laws and regulations, especially Law Number 1 of 1974 concerning Marriage which has been amended by Law Number 16 of 2019, as well as the Compilation of Islamic Law (KHI) for Muslims. The essence of this regulation aims to protect the best interests of the child, which is a priority in every legal decision related to post-divorce.

After a divorce, both parents still have rights and obligations towards the child, especially in the form of custody rights (*hadhanah*) and the right to maintain an emotional and physical relationship with the child. Child custody is a right and obligation inherent in parents to care for, educate, and protect the child physically and psychologically. In judicial practice in Indonesia, children who have not reached the age of 12 (*tamyiz* age) are generally cared for by the mother, based on the maternalistic principle, namely the assumption that the mother is more capable of providing affection and care to early childhood children. However, this provision is not absolute.

In addition to maintenance and education, the responsibility of providing a living is also the main obligation of parents, especially fathers. Normatively, fathers are required to provide a living for their children, which includes daily living expenses, education, health, and other

basic needs that support the welfare and development of children. This provision is expressly regulated in Article 41 letter c of the Marriage Law. However, in practice, if the father experiences economic inability, is absent, or even neglects the child, the mother can take over the role of provider. In this situation, the mother also has the right to file a lawsuit for a living to the court to force the father to fulfill his legal obligations. Thus, the obligations of parents after divorce are not only normative but also strictly regulated to protect the rights and welfare of children as a whole.

The author found several factors that could hinder the implementation of legal provisions in Law Number 16 of 2019 concerning Child Protection after divorce, including:¹⁶

a. Lack of Socialization and Public Understanding

Lack of socialization regarding children's rights after divorce, including the protection provided by Law Number 16 In 2019, many parents and related parties did not fully understand the existing legal provisions. This resulted in a lack of compliance with the rules that had been set. This lack of understanding could lead to ignorance or even non-compliance with existing legal provisions, which in turn could harm children who should receive greater protection. Some factors that exacerbate this problem include:

- 1) Lack of public education: Even though the law has been implemented, many parents do not have sufficient information about how they should carry out their obligations in fulfilling children's rights after divorce, such as the right to housing, maintenance, and custody.
- 2) Lack of training for related parties: Not only parents, but also the courts, advocates, and social workers involved in divorce cases often do not have adequate knowledge regarding the implementation of Law No. 16/2019, so they cannot provide comprehensive explanations to the parties concerned.

b. Limited Access to Legal Services

Many parents are unaware of or unable to access legal services that can help them understand and enforce children's rights after divorce. These limitations can stem from economic factors, distance, or even a lack of adequate facilities in certain areas. In addition, a low level of understanding of the legal procedures involved in divorce and the protection of children's rights can also be a barrier. Many parents find it difficult to find accurate and easy-to-understand information related to children's rights after divorce, such as the right to housing, support, or access to both parents.

¹⁶ Riduan Syahrani, Summary of the Essence of Legal Science, Bandung, Citra Aditya Bakti, 2009;

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c. Bureaucracy and Long Legal Process

Lengthy legal processes and complicated bureaucracy are often significant obstacles for parents trying to obtain custody or protection for their children after divorce. When parents have to go through complicated, time-consuming procedures that require a lot of documents or administrative requirements, this not only adds to the emotional burden, but can also reduce the effectiveness of the protection that should be provided to the child. In many cases, this protracted legal process worsens the psychological condition of the child, because they have to wait in uncertainty about their future, both in terms of residence and relationships with both parents.

d. Mutual Demands Between Parents

When parents are involved in intense disputes after a divorce, they often disagree about what is best for the child. These disagreements can range from custody to decisions about the child's education, health care, or where they live. In situations like this, each parent may be more concerned with their own personal or emotional interests than the other.

focus on what is truly best for the child's welfare. These unresolved conflicts can hinder the implementation of legal provisions designed to prioritize the child's needs and rights, as parents' personal interests often come first.

e. Mismatch between Government Policy and Field Practice

Although Law Number 16 of 2019 provides a strong legal basis for post-divorce child protection, the implementation of policies at the field level sometimes does not fully match the desired objectives. One of the main challenges is the difference in perspective between government institutions involved in the child protection process. For example, between the courts, child protection institutions, and other social institutions there may be discrepancies in the interpretation or implementation of legal provisions, which can cause the policies implemented to be inconsistent with the expectations or actual needs of children.

f. Lack of Trained Human Resources

In some cases, judges, lawyers, and social workers involved in handling divorce and child protection cases may not have received sufficient training on the implementation of the provisions in Law Number 16 of 2019. This can result in limited understanding of the objectives and substance of the law, which in turn affects the effectiveness of the implementation of child protection policies. Without adequate training, the parties involved may ignore or misinterpret existing legal provisions, which risks harming children's rights.

g. Social and Cultural Norms

Social and cultural norms in society can also be a significant obstacle in the implementation of Law Number 16 of 2019 concerning child custody after divorce. In some societies, there is

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a deep-rooted view that decisions regarding child custody are entirely the right of the parents, and in some cases, child custody tends to be held by one parent based on the traditional roles held by the mother or father. For example, in some societies, the mother is often considered the primary caregiver of the child, while the father is more seen as the breadwinner. This view, although cultural, can influence the way society or even law enforcement officers assess who should hold child custody after divorce.

h. Stigma Against Children and Divorce

Children of divorced families often face social stigma that can affect their quality of life and protection. In many societies, divorce is still considered a private matter that should not receive any outside attention. This stigma can stem from negative views of divorced families, which are often viewed as signs of failure or moral problems. This can create an unsupportive environment for children affected by divorce, as they may be viewed as part of a “broken family” or as less stable than children from intact families.

i. Government Funding and Budget Constraints

The implementation of Law Number 16 of 2019, which aims to provide protection for children after divorce, requires a sufficient budget to ensure that there are appropriate facilities and services. An effective child protection program depends not only on existing policies, but also on the existence of adequate resources to implement these policies in the field. This includes a variety of services, from strengthening the family justice system, providing psychological services, legal assistance, to logistical support for children in need of protection.

j. Policy Changes and Legal Uncertainty

Uncertainty regarding changes or interpretations of policies related to child protection can significantly affect the implementation of Law Number 16 of 2019. When there are changes in policy or ambiguity in the interpretation of legal provisions, this can create confusion among the public and related institutions, including legal officers, child protection institutions, and parties involved in the divorce process. This confusion can slow down or even hinder the implementation of existing policies, so that the goal of providing effective protection for children affected by divorce is not achieved optimally.¹⁷

To strengthen the protection of children's rights after divorce, it is necessary to implement a number of strategies that directly affirm and make parents' obligations effective, as follows:

1. Affirmation of legal obligations in regulations, Regulations need to explicitly state that parental obligations to children—including care, education, support, and affection—remain even after divorce. Revisions to the Marriage Law and Child Protection Law could clarify that divorce does not remove the responsibilities of both parents to the child.

¹⁷ Philipus M. Hadjon, *Legal Protection for the People in Indonesia*, Surabaya: Bina Ilmu, 1987;

2. Strengthening the mechanism for enforcing the obligation to provide support, A more effective monitoring and law enforcement system is needed for the obligation to provide support. For example, a monitoring unit can be formed under the religious court institution or the Child Protection Service to ensure that child support is paid routinely, with strict sanctions for negligent parties.
3. Post-divorce child custody and access agreement, Every divorce decision must be accompanied by detailed written arrangements regarding the division of custody time and child access to both parents. This is to avoid the practice of alienation or unilateral prohibition of child interaction with non-custodial parent.
4. Counseling is mandatory for parents and children, The involvement of psychologists or counselors must be integrated into the divorce process involving children. This counseling aims to help parents understand the importance of maintaining emotional relationships between children and both parties and supporting the child's mental stability.
5. Sanctions for child abuse in parental conflict, The need for strict rules prohibiting the use of children as a tool of conflict between parents, including emotional manipulation or incitement against one party. Violations of this can be categorized as violations of children's rights and are subject to legal sanctions.
6. Legal education for parents, Legal counseling programs regarding the rights and obligations of parents after divorce need to be encouraged, especially for couples who are or have undergone a divorce process. This education can be done through cooperation between religious courts, social services, and child protection agencies.

To improve the protection of children's rights in divorce situations, a strategy is needed that includes strengthening regulations, optimizing implementation, and educating the community. Existing regulations need to be revised and updated so that they can accommodate children's needs in a holistic manner. more comprehensive, including strengthening the affirmation of the principle of the child's best interests in every court decision.

First, the mediation mechanism in the courts needs to be strengthened. The involvement of psychologists or professional counselors in the mediation process can help parents understand the impact of divorce on children and encourage the achievement of agreements that focus on the best interests of the children. In addition, the courts should require the preparation of a joint parenting plan that ensures equal access for both parents.

Second, the monitoring system for the implementation of court decisions must be improved. Courts can cooperate with child protection agencies to ensure the fulfillment of children's rights, including the right to support and interaction with both parents. This monitoring also

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needs to be complemented by the application of strict sanctions against parties who do not comply with court decisions.¹⁸

Third, efforts to increase public awareness of the importance of protecting children's rights in divorce must be intensified. Educational campaigns involving schools, community organizations, and the mass media can help reduce the stigma of divorce and raise awareness of children's needs in such situations.

Fourth, the capacity of related institutions such as religious courts, social services, and the Indonesian Child Protection Commission (KPAI) needs to be improved to be better able to handle divorce cases involving children. Special training for judges, mediators, and counselors is essential so that they have a deep understanding of the principle of the best interests of the child.

Fifth, developing data-based policies is an equally important strategic step. The government needs to conduct regular research to study the impact of divorce on children and evaluate the effectiveness of policies that have been implemented. The results of this research can be the basis for formulating policies that are more adaptive and responsive to children's needs.

In the context of Law Number 16 of 2019 concerning Child Protection after divorce, the theory of legal certainty plays a very important role. Legal certainty refers to the existence of clear, predictable, and consistently applied rules, thus providing a sense of security and justice for the community. The existence of legal certainty in the protection of children's rights after divorce will ensure that children obtain the rights guaranteed by law fairly and equally.

Lack of understanding of Law Number 16 of 2019 creates legal uncertainty among the public. If the public, including parents and related parties, do not understand their rights and obligations then, they cannot comply with or enforce the law properly. The theory of legal certainty requires that laws must be interpreted and understood by all parties in a clear and accessible manner. Without adequate socialization, legal certainty will be compromised because there is no confidence that the law will be applied effectively and fairly.

To achieve legal certainty in protecting children after divorce, it is important to:

1. Increasing public and parental understanding of children's rights and parental obligations after divorce through extensive outreach.
2. Provide training for law enforcement officers and related parties so that they can enforce the law consistently and efficiently.
3. Simplifying legal procedures to make them faster and more accessible to all parties, thereby reducing uncertainty for parents and children in undergoing the legal process.

¹⁸ Prakoso Djoko, *Justiciable Position in the Criminal Procedure Code*, Ghalia Indonesia, Jakarta: 1986;

4. Ensuring that every decision taken in a divorce case takes into account the best interests of the child, through a transparent and predictable process.

increasing access to legal services, and strengthening legal understanding in the community.

3.3. Solutions to the Rights and Obligations of Parents to Children After Divorce and Obstacles to the Implementation of the Law

Improving Socialization and Legal Education to the Community and Related Parties
Strengthening the Socialization Program The government together with related institutions need to strengthen and intensify the socialization program of Law No. 16 of 2019 as a whole. The approach used must be adjusted so that it is easily understood by various levels of society, including vulnerable groups and remote areas.¹⁹

Regular training for related professionals is held periodically for judges, lawyers, social workers, and other law enforcement officers. The goal is for them to have a comprehensive and consistent understanding in implementing child protection after divorce according to the provisions of the Law.

The use of mass media and digital platforms must be utilized optimally as a means of legal education. Information on the rights and obligations of parents towards children after divorce can be disseminated more widely and effectively, reaching people from various regions and social circles.²⁰

Expanding access to legal services for parents and children is an important step to ensure that children's rights are fulfilled without economic or geographical barriers. One effort that can be made is to provide free legal aid services or subsidized specifically for low-income families, so that they can still access justice without being burdened by costs. In addition, the establishment of integrated legal service posts in remote areas is very necessary to reach people who have difficulty obtaining legal services. No less important, the development of an online legal consultation system must also be carried out so that parents and children can obtain information and legal assistance quickly and practically. In order to strengthen child protection, empowerment of non-governmental organizations and community organizations is very necessary to provide effective assistance and advocacy at the grassroots level. Synergy between the government and various parties is the key to success in expanding access to legal services for post-divorce families.²¹

4. Conclusion

Law Number 16 of 2019 aims to provide protection for children after their parents' divorce. However, the effectiveness of its implementation still faces challenges, especially in the

¹⁹ Kurnia Muhajarah, Legal Consequences of Divorce for Children and Wives, Vol. 12 Number 3 2017;

²⁰ Manan, Abdul, Various Problems of Islamic Civil Law in Indonesia, Jakarta: Kencana, 2006;

²¹ Moh Idris Rmulyo, Islamic Marriage Law: An Analysis of Law No. 1 of 1974 and the Compilation of Islamic Law, Jakarta: PT Bumu Aksara, 2004;

aspect of law enforcement which has not been fully implemented optimally. Although there are clear regulations regarding child custody, maintenance, and support, practices in the field show that many cases have not received attention or resolution in accordance with the law. Therefore, it is necessary to increase awareness, socialize the community, and improve legal mechanisms so that the objectives of this law can be achieved optimally in providing protection for children after their parents' divorce. After divorce, the responsibility of parents towards their children remains legally and morally attached, with child custody being the main part regulated in Law Number 16 of 2019 and other related regulations. Child custody, visitation rights, as well as maintenance, education, and support obligations must be carried out by both parents together for the best interests of the child. Although the legal provisions are clear, the implementation of parental rights and obligations after divorce still faces various obstacles. Factors such as lack of socialization and public understanding, limited access to legal services, complicated bureaucracy, conflict between parents, inconsistency between government policies and field practices, lack of trained human resources, and social and cultural norms that still strongly influence the effectiveness of child protection.

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