

Legal Protection of Children's Rights to Sufficiency After Divorce Based on Justice

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Abstract. *Legal protection for post-divorce child supports rights needs to be examined because divorce only ends the legal relationship between husband and wife, but does not eliminate the parents' obligation to meet the needs of life, education, health, and child development. This study aims to analyze legal protection, weaknesses in regulations and implementation, and the ideal formulation of post-divorce child support rights protection based on the value of justice. The research method used is normative legal research with a statutory approach, using secondary data through literature studies and documentary studies analyzed qualitatively with a deductive thinking pattern. The results show that post-divorce child support rights are guaranteed in the Marriage Law, the Compilation of Islamic Law, the Child Protection Law, the 1945 Constitution, and the principle of child protection that places the best interests of the child as the primary basis. The father's obligation to finance the maintenance and education of children remains inherent even after the marriage has ended, while the mother still has a role in the care and education of children. This protection has not been optimally implemented because there are still weaknesses in the legal substance, legal structure, and legal culture, especially regarding the amount of support, payment timing, payment method, adjustment to the child's needs, supervision of decisions, and legal consequences for negligent parties. The weakness of legal culture is evident in the persistent view that child support is assistance to the ex-wife, not a child's right that parents must fulfill. The ideal formulation of legal protection for children's right to support after divorce needs to be realized through a clear, measurable, directly enforceable determination of support through a court decision, and reflecting the values of certainty, benefit, and justice for children.*

Keywords: *Children; Legal; Protection; Support.*

1. Introduction

Legal protection is a right inherent in every citizen. This provision is affirmed in Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia,

which states that all citizens have equal standing before the law and government and are obliged to uphold the law and government without exception. This provision is in line with Indonesia's position as a state of law, so that the law plays a primary role in directing the implementation of national and state life. The law provides protection to all citizens, including children.¹

The law holds a position that applies to every individual, group, and class. Its presence serves as an umbrella for all Indonesians, upholding the principle of *equality before the law*, namely the equal standing of all citizens before the law. This principle affirms that everyone has the right to equal protection and treatment under the law.²

Article 1 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage (Marriage Law), marriage is defined as a physical and spiritual bond between a husband and wife, which aims to create a happy household based on the One Almighty God. Basically, every individual who enters into marriage certainly has the hope that the relationship will last a lifetime and become a means of realizing a harmonious family. However, in social reality, many marriages fail midway and end in divorce. The severance of marital ties through divorce carries legal consequences for each, especially related to the arrangement of custody of children born in the marriage.³

Divorce should be considered a final solution after various attempts to preserve a marriage have failed. If all efforts to preserve the integrity of the marriage result in suffering rather than happiness, then divorce becomes a viable option.⁴ While divorce does end the legal relationship between husband and wife, it does not sever the relationship between parents and children.⁵ The emotional bond between children and their parents remains, so children often experience the emotional and psychological consequences of separation. Disputes over custody can disrupt their emotional, mental, and developmental balance, demonstrating that divorce is a complex issue that requires a comprehensive approach, not just a legal one.

¹ Siti Maesaroh, Legal Protection for Children After Parental Divorce, *Al- Wasath Journal*, Vol. 5m No. 2, 2024, pp. 67-78

² Jailani Jailani. The Democratic System in Indonesia Reviewed from the Perspective of Constitutional Law. *Inovatif: Journal of Legal Studies*, Vol. 8, No. 1, 2015.

³ Syarifah Lisa Andriati, Mutiara Sari, and Windha Wulandari. Implementation of Changes to the Marriage Age Limit According to Law No. 16 of 2019 Concerning Amendments to Law No. 1 of 1974 Concerning Marriage. *Binamulia Law*, Vol. 11, No. 1, 2022, pp. 59-68.

⁴ M. Arif Judge and Supreme Court Arifin. Review of Marriage Age Limit Article 1 Paragraph 1 of Law Number 16 of 2019 Amendment to Article 7 Paragraph 1 of Law Number 1 of 1974 Perspective of Jasser Auda's System Theory. *Mizan: Journal of Legal Studies*, Vol. 11, No. 1, 2022, pp. 100-118.

⁵ Marleliana Lahagu, Mhd Taufiqqurahman, and Syawal Amry Siregar. A Legal Analysis of the Legal Consequences for Parents Who Neglect Their Obligations to Their Children After Divorce. *Dictum*, Vol. 3, No. 3, 2025, pp. 76-82.

Directorate Data the General of the Religious Courts showed that from around 450,000 cases divorce every year, if assumed every partner own two child, then around 900,000 children affected divorce every year, ironically only 1% of cases divorce accompanied by demands living children and only 2% contain right foster care, so that need living child often not submitted or no accommodated in a way adequate in verdict.⁶

Protecting children's rights is crucial, as children need to be protected from various actions, whether by others or by their own family members, either directly or indirectly. As citizens who will play a vital role in the future, children must be provided with a sense of security and comfort by their parents. However, in reality, many cases of violence against children perpetrated by parents remain.⁷

Child protection involves five main pillars: parents, family, community, government, local government, and the state. These five pillars are interconnected in implementing child protection. Simply put, child protection aims to ensure that every child's rights are fulfilled without harm. This protection complements other rights by guaranteeing that children get what they need to survive, thrive, and grow well.

2. Research Methods

Method study in thesis This use study law normative. Research This use approach legislation. The data used in the form of secondary data through material primary, secondary and tertiary laws, such as the 1945 Constitution, Law Marriage, Law Child Protection, Compilation of Islamic Law, books, journals, results research, dictionary laws and documents supporter others. Collection material law done through studies literature and studies documentary, whereas data analysis using method qualitative with pattern think deductive through interpretation grammatical, systematic, historical, and conceptual for find weakness arrangement and implementation protection right living child, then interesting conclusion as answer on problem study based justice.

3. Results and Discussion

3.1. Legal Protection Against Right Post Child Support Divorce

Divorce is the termination of a marriage, both according to religious and state law. In Islam, divorce is not a simple matter like marriage, as there are several stages and requirements that must be followed if a divorce is to be truly granted. Divorce

⁶ Socialization of Supervision Results Fulfillment Right Childcare for Single, Conflicting and Divorced Parents, <https://badilag.mahkamahagung.go.id/seputar-peradilan-agama/sosialisasi-hasil-pengawasan-pemenuhan-hak-pengasuhan-anak-pada-orang-tua-tunggal-berkonflik-dan-bercerai> accessed on April 10, 2026

⁷ Elviana Sagala. Children's Rights from the Perspective of Law and Human Rights. *Scientific Journal of Advocacy*, Vol. 6, No. 1, 2018, pp. 16-23.

marks the legal end of a marriage and must be declared in court in accordance with applicable laws and regulations.

According to Law Number 1 of 1974 concerning Marriage, if a marriage ends in divorce, there are legal consequences for the children, the former husband or wife, and joint property. The legal consequences for children are that after a divorce, both the father and mother remain obligated to care for and educate their children solely for the benefit of the children.⁸ If a dispute arises regarding child custody, the court has the authority to make a decision. In principle, the father is responsible for all costs of care and education for the child. If the father is unable to fulfill these obligations, the court may determine that the mother also bears the costs of care and education for the child.⁹

Divorce, regardless of the reasons behind it, is a difficult situation for children. They no longer experience the full and simultaneous love of both parents, which is crucial for their mental development. Often, the breakdown of a marriage leads to neglect of parenting. Therefore, in Islamic teachings, divorce should be avoided whenever possible and is even considered one of the most hated acts of law. For children born of such a marriage, parental divorce can shake their lives and negatively impact their growth and development. In many cases, children suffer the most from parental divorce.¹⁰

Right child in a way national guaranteed in the 1945 Constitution, in particular Article 28B paragraph (2) which states: " Every child entitled on continuity live, grow flowers, and entitled on protection from violence and discrimination." The regulation about right children are also expanded in Constitution Number 23 of 2002 concerning Child Protection as has changed final with Government Regulation in Lieu of Law Number 1 of 2016. The Birth of Constitution Child Protection does not can released from Indonesia's commitment to Convention Children's Rights. Law Child Protection is form harmonization law national to Convention Children's Rights that have been ratified by Indonesia through Presidential Decree Number 36 of 1990.

Although divorce can become road go out best for both parents, circumstances in general No thus for children. Impact biggest divorce often felt by children after both parents separated. Children are the most disadvantaged party consequence parents ' divorce, so his rights must get protection in a way serious. Rights child after parental divorce has guaranteed and protected by Indonesian law, even

⁸Adnan Iksan and Khairunnisa, Child Protection After Parental Divorce, *Fundamentals: Journal Scientific Law*, Vol. 9, No. 1, 2020, pp. 1–16.

⁹ Dahwadin et al., The Essence of Divorce Based on Provisions of Islamic Law in Indonesia, *Yudisia: Journal Islamic Legal Thought and Law*, Vol. 11, No. 1, 2020, pp. 87–104.

¹⁰Yazid Nashrullah and Endah Hartati, Influence The principle of Best Interest of Child in Determination Right Child Care in Cases Divorce According to Civil Law Analysis to Decisions Court, *Lex Patrimonium*, Vol. 2, No. 2, 2023

though in implementation Still found a number of emptiness law. In general, the standard life family, especially children, can experience quite a decline big after occurrence divorce.

Article 45 of the Law Marriage arrange that both parents must maintain and educate children they with the best until child the marry or capable stand yourself. Obligation This still valid although marriage between both parents has separated. Article 41 of the Law Marriage also confirms that the father is responsible answer on all over cost maintenance and education required child if happen divorce. If dad doesn't capable fulfil obligation said, then court can determine that the mother participate carry cost maintenance and education child.

Article 105 of the Compilation of Islamic Law regulates that if happen divorce, costs maintenance child becomes not quite enough replied father. Article 149 of the Compilation of Islamic Law also determines that if marriage separated Because divorce, then used husband must give cost hadhanah for his children who are not yet reach age 21 years. Furthermore, Article 156 of the Compilation of Islamic Law regulates that one of consequence break up marriage Because divorce is all over cost hadhanah and sustenance child become not quite enough answer father accordingly with his abilities, at least until child the mature and capable look after himself alone, namely at the age of 21 years.¹¹

3.2. Weaknesses Legal Protection Against Post- Child Rights Divorce

Law in essence is guidelines life society that contains rules, prohibitions, commands, rights and obligations. Existence law give direction for man in act so that life together walk orderly, safe and orderly. Laws work too as tool regulator connection between citizens, between citizens with government, as well as between state institutions in operate authority. Position law becomes important Because every interest man need clear boundaries so as not to cause collision in life social.¹²

Theory system Lawrence M. Friedman's law explains that working law determined by three elements main, namely structure law, material law and culture law. Structure law related with institutions and apparatus enforcer law, such as police, prosecutors, courts and institutions implementer other.¹³ Material law related with regulation legislation, principles laws and norms that become base action law. Culture law related with attitude, way view, and awareness public to law. Third element the each other related in determine success enforcement law, because good rules need capable institutions run it as well as communities that

¹¹Abdul Rahman Ghozali, *Fiqh Munakahat*, Kencana, Jakarta, 2008, pp. 175–176.

¹² Sudikno Mertokusumo, *Understanding the Law: A Introduction*, Liberty, Yogyakarta, 2007, pp. 40–41.

¹³Lawrence M. Friedman, *The Legal System: A Social Science Perspective*, Russell Sage Foundation, New York, 1975, p. 14–16.

have awareness for honor Law. The weaknesses in legal protection of children's rights after divorce, when analyzed through Lawrence M. Friedman's legal system theory, are seen in three main elements: legal structure, legal substance, and legal culture.

a. Weakness Legal Substance

Rule law in Indonesia has placing parents as responsible party answer to child. Article 41 of the Law Marriage confirm that father responsible answer on cost maintenance and education child after divorce. Article 26 of the Law Child Protection also emphasized parental obligations for nurturing, nurturing, educating, and protecting second child provision the become base important that divorce No delete parental obligations to child.¹⁴

Amount living should notice need child, age child, level education, conditions health, standards need live, and ability father's economy. The formulation is too general can make amar decision only mention obligation give living without details easy amount implemented. Decisions that are not load nominal amount clear can make things difficult Mother or child when want to request implementation obligation the.

Living child is ongoing needs continuously and repeatedly every month. Rules law need give directions about timetable payment, means payment, proof payments, as well as the receiving party payment for interest child. Payment through account caregiver child can help proof Because every transaction recorded. Terms like This give certainty for father as the paying party and the shareholder child as the receiving party right.

Need children also experience change along increase age. Substance existing laws Not yet give guidelines details about adjustment living child in a way periodically. As a result, the number of the maintenance set at the time divorce can become not enough adequate when child enter level more education high. Settings about increase living necessary for the rights child still fulfilled in accordance development his needs. As a results law on father's negligence in fulfil living children also need strengthening. Rules law has give room for party Mother or child for submit application implementation verdict, warning, and confiscation. Mechanism the Still need step addition from the injured party.

The law has confess that child entitled get maintenance from his parents. Confession the need equipped with detailed formulation about amount livelihood, time payment, method payment, adjustment needs, evidence payment, and consequences law on negligence. Substance more laws firm will give certainty for

¹⁴ Miss Djubaedah, *Recording Marriage and Marriage No Noted According to Written Law in Indonesia and Islamic Law*, Sinar Grafika, Jakarta, 2010, p. 95

children, making it easier for judges to formulate a decision, and help party caregiver in fight for right child after divorce

b. Weakness Legal Structure

Protection law to right child post divorce need role active institutions Because child being in a position of being very dependent on parents. Parents ' divorce bring change big for life children, so that decision court about living child should become guarantees that can be executed in a way regular. Obligation the living that has been set in decision need supervision so that rights child still fulfilled after his parents' marriage separated.¹⁵

How ever moment This Not yet There is institution that ensures payment living child done in a way routine after decision divorce powerful law remain. Court of course set obligation living in amar verdict, but supervision payment every month is still very limited. Mother as caregiver child often become the party that must monitor Alone did father carry out obligation said. Children as holder right is at in condition wait good faith either father or struggle Mother For collect rights that have been determined by the court.

Court own authority for give warning to a negligent and capable father proceed to action foreclosure in accordance procedure law. Authority the new walk when Mother or children who have speak law submit application. Condition This make implementation right child nature reactive, because institution justice move after There is report or application.

After the divorce broken off, relationship between court with the parties in general finished, except there is application continued. Obligations living child ongoing every month, while court No own device monitoring to payment the absence of notes connected payments with institution justice make father's negligence is difficult quick known. Rights child can delay in long time before Mother submit step law continued.

c. Weakness Legal Culture

Living child often viewed as help voluntary to ex-wife, even though living the is right child. Point of view like This make payment living depends on will personals father. Obligations that have been set in decision court should understood as order mandatory law executed in a way regular. Father has not quite enough answer for finance need life, education, health and maintenance child until child capable stand Alone.

On the side others, many Mother choose fulfil need child in a way independent Because reluctant relate return with ex-husband 's attitude the often born from

¹⁵S. Solihandracem, Implementation Giving Child Support Based on Decision Divorce in Padang City Court, *Unes Journal of Swara Justice*, Vol. 7, no. 1, 2023, p. 321–334

desire guard calm self and child after divorce. Choice the can make father's obligation is not walk as should be. Children remain entitled accept living from father, even though Mother own ability economy for fulfil need children 's rights child No changed become not quite enough answer Mother solely Because divorce has happened.

3.3. Ideal Formulation of Legal Protection Against Right Post Child Support Divorce Based on Justice Values

The more developed a country becomes, the greater the attention it should pay to creating conditions conducive to children's growth and development. This attention is part of child protection efforts. The protection provided by the state to children encompasses various areas of life, including economic, social, cultural, political, defense and security, and legal.¹⁶

One form of state protection for children is legal protection. Legal protection is known in English as *legal protection*, while in Dutch it is called *rechtsbescherming*. According to Harjono, legal protection is protection provided using legal means or protection provided by law. This protection is intended to safeguard certain interests by enshrining those interests in legal rights.¹⁷ Thus, legal protection can be understood as protection provided based on legal provisions and regulations. Legal protection for children means legal efforts to guarantee and protect the various freedoms and fundamental rights of children, including various interests related to children's welfare.¹⁸

The provisions of Law Number 1 of 1974 concerning Marriage indicate that a father's responsibility towards a child is not extinguished even if the marriage between the father and mother has ended due to divorce, even if one party has remarried. Furthermore, it is understood that as long as the child is not yet an adult or is not yet able to earn a living for himself, child care generally falls to the mother, while all costs related to the child's care and support remain the father's responsibility.¹⁹

Based on the provisions of this article, it is clear that the father is the party who should bear all the costs of the child's living expenses. In this case, the mother's role is more closely related to the function of parenting, namely educating the child, providing attention, affection, and guiding the child towards good things. If the mother also contributes to the child's living expenses, this is essentially a form of assistance to the ex-husband, because the primary obligation to earn and provide a living remains with the father. Both parents remain obliged to care for

¹⁶Rika Saraswati, *Child Protection Law in Indonesia*, Citra Aditya Bakti, Bandung, 2015, p. 23.

¹⁷ Harjono, *Constitution as House Nation*, Secretariat General and Clerkship Court Constitution, Jakarta, 2008, p. 357

¹⁸ Satjipto Rahardjo, *Legal Science*, Citra Aditya Bakti, Bandung, 2014, p. 53.

¹⁹Abdulkadir Muhammad, *Indonesian Civil Law*, Citra Aditya Bakti, Bandung, 2017, p. 111

and educate their children to the best of their ability. This obligation applies until the child is able to stand on his own, and remains attached to both parents even if their marriage has ended due to divorce. If the ex-husband does not carry out the court's decision properly and voluntarily, then the child himself, if he is legally competent, or the mother, if the child is not yet legally competent, can take legal action to force the ex-husband to carry out the contents of the decision.

In such circumstances, coercion may occur against the ex-husband to carry out his responsibilities as ordered in the court decision. This is a consequence for the ex-husband who is unwilling to carry out the decision voluntarily. In addition, it can be understood that the state basically provides protection for the rights of its citizens as guaranteed in the 1945 Constitution of the Republic of Indonesia. Specifically, protection of children's rights is emphasized in Article 28B paragraph (2). This means that everything that is a child's right must be fulfilled, especially by his parents.²⁰

However, these legal remedies appear to be largely unknown and unused by the parties involved. Some people believe that after a divorce, they are reluctant to reconnect with their ex-partner, even though this is a right they can pursue. If they are still able to provide for their children, they tend to choose to do so independently and not rely on their ex-partner to fulfill their children's rights, even if such obligations are stipulated in a court decision. Besides feeling capable of fulfilling their children's rights independently, many people believe that seeking justice through the courts is a lengthy and time-consuming process. Therefore, they prefer to use this time to work to earn a living to provide for their children.

In fact, parental support is very important for children, because it directly or indirectly influences the fulfillment of other children's rights. These rights include the right to education, health costs, and maintenance costs that support the child's growth and development. This is in line with the provisions of Article 14 of Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, which regulates children's rights. One of these rights is the child's right to receive living expenses from their parents. Therefore, if this right is not fulfilled properly, then the parents have violated the provisions of applicable laws and regulations.

Therefore, the ideal formulation of legal protection for post-divorce child support rights is through the determination of child support in a measurable manner and can be implemented directly through the divorce decree. This formulation places child support as a legal right of the child that must be clearly determined by the judge, including the amount of support, payment time, payment method, duration of the obligation, increasing needs of the child, and legal consequences if the

²⁰ Retnowulan Sutantio and Iskandar Oeripkartawinata, *Civil Procedure Law in Theory and Practice*, Mandar Maju, Bandung, 2009, p. 130

father fails to fulfill it. This formulation is based on the explanation that has been linked, namely that child support covers the costs of living, education, health, and other needs that support the child's growth and development, and remains the responsibility of the father even though the parents' marriage has ended due to divorce.²¹

The determination of child support in a court decision needs to be formulated in detail to ensure the child's rights are certain. The court decision should include the father's obligation to pay a specific amount of child support each month, paid through the mother's account as the guardian, valid until the child reaches adulthood or is self-sufficient, and subject to adjustment based on increasing educational, health, and living expenses. This formulation provides a clear framework for the child's right to support, allowing the mother or legally competent child to enforce the decision if this obligation is neglected.

This formulation is closely related to Article 41 of Law Number 1 of 1974 concerning Marriage, which states that fathers are responsible for the costs of maintaining and educating their children after divorce. This obligation is also in line with Article 26 paragraph (1) of the Child Protection Law, which requires parents to care for, maintain, educate, and protect their children.

The value of justice in this formulation lies in ensuring that children receive their rights fairly after divorce. Children are directly affected by their parents' divorce. The right to child support must be recognized as a primary right that must be fulfilled. Determining a measurable level of support ensures that children continue to enjoy a decent standard of living, even after their parents have separated.²²

Judges must carefully assess the child's needs and the father's financial capabilities. Setting the maintenance amount too low can reduce the child's protection, while exceeding the father's means can complicate the implementation of the decision. A fair formulation is one that guarantees the child's needs are met according to his standard of living while still taking into account the father's capabilities as the party burdened with legal obligations.

4. Conclusion

Protection law to right living child post divorce confirm that divorce only cut off connection husband wife, not delete parental obligations to child. Father remains must fulfil cost life, education, health, place stay, and needs child until mature or independent, whereas Mother still play a role in care and education. Protection the has arranged in various provision law, but implementation Still weak Because

²¹RA Pakaya, Legal Obstacles in Settlement Dispute Post Child Support Decision Religious Court, *Al-Zayn: Journal Knowledge Social and Legal*, Vol. 3, No. 1, 2026, pp. 1–15

²² Nurhidayat Nurhidayat, Differences Judge's Decision Regarding Determination Magnitude Post Child Support Divorce, *Journal of Islamic Family Law*, Vol. 5, No. 2, 2024, pp. 101–119

Not yet There is arrangement details about quantity, time, method payment, adjustment needs, supervision decision, and consequence law for negligent party. Formulation ideally, livelihood child must place as right law clear, measurable, and able children implemented, and reflects certainty, usefulness, and justice.

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