



The Role of High Religious Courts in The Bengkulu Area in Safeguarding Children's Interests Regarding Post-Divorce Living Expenses and Civil Rights

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Abstract

This research aims to examine the legal process carried out by the Bengkulu Religious High Court in ensuring the living expenses of children after their parents' divorce. This study is qualitative research with a normative legal approach. Primary data comes from laws, court decisions related to children's rights post-divorce, and children's civil rights, while secondary data is obtained from books, online media, and journals with the same relevance. In exercising its authority, the Bengkulu Religious High Court prioritizes the principle of justice by maintaining the interests of the child, as well as the principles of balance and proportionality. However, there are several challenges such as the lack of public understanding of children's rights and obstacles in the implementation of Religious High Court decisions regarding the enforcement of children's civil rights. More intensive efforts are needed to provide the public with an understanding of children's rights and to improve the quality of enforcement of Religious High Court decisions to ensure optimal protection of the child's interests following their parents' divorce.

Keywords: Divorce, Children's Civil Rights, Justice, Religious High Court.

Asbtrak

Penelitian ini bertujuan untuk mengkaji proses hukum yang dilakukan oleh Pengadilan Tinggi Agama Bengkulu dalam menjamin biaya hidup anak setelah perceraian kedua orang tuanya. Penelitian ini merupakan penelitian kualitatif dengan pendekatan hukum normatif. Data primer dari undang-undang, putusan pengadilan terkait hak anak pasca perceraian dan hak keperdataan anak, sedangkan data sekunder diperoleh dari buku-buku, media online, dan jurnal-jurnal yang memiliki relevansi sama. Dalam menjalankan kewenangannya. Hasil penelitian ini adalah Pengadilan Tinggi Agama Bengkulu mengutamakan prinsip keadilan dengan tetap memelihara kepentingan anak, serta asas keseimbangan dan proporsionalitas. Namun, terdapat beberapa tantangan seperti minimnya pemahaman masyarakat akan hak-hak anak serta kendala dalam pelaksanaan putusan Pengadilan Tinggi Agama terkait penegakan hak keperdataan anak. Diperlukan upaya yang lebih intensif dalam memberikan pemahaman kepada masyarakat akan hak-hak anak serta peningkatan kualitas penegakan putusan Pengadilan Tinggi Agama untuk memastikan perlindungan yang optimal terhadap kepentingan anak dalam setelah perceraian kedua orang tua mereka.

Kata Kunci: Perceraian, Hak Keperdataan Anak, Konsep Keadilan, Pengadilan Tinggi Agama.



Introduction

According to Law Number 1 of 1974 concerning marriage which has been amended by Law Number 16 of 2019 (referred to as the marriage law), Article 1 states that marriage is a birth and inner relationship between a man and a woman as husband and wife, with the intention of forming a happy and lasting family based on the principle of the One and Only Godhead. Meanwhile, Article 2 of the Compilation of Islamic Law (KHI) describes marriage in Islamic law as a marriage that is a very strong bond or *mitsaqan ghalidzan*, where the purpose is to obey Allah's commandments and make it worship. This marriage aims to achieve a harmonious, loving, and affectionate family life.¹

From these two definitions, it can be concluded that the purpose of marriage is actually to achieve lasting happiness in married life based on affection from inside and outside the married couple. However, not all marriages go smoothly, and in certain situations, there is a need to end the marriage if continuing it will cause harm to both parties. Therefore, in the teachings of Islam, divorce is taught as a last resort after other efforts to maintain the integrity of the household.²

According to the KHI, there are three reasons why marriage can end, namely (1) death, where marriage ends by God's will when one spouse dies. (2) Divorce, where the marriage ends due to the will of one of the spouses, be it the husband (divorce talaq) or the wife (divorce lawsuit), who then file it through the Religious Court. (3) Based on a court decision, a marriage may end at the will of a judge as a third party after seeing certain reasons on the husband and/or wife that indicate that the marital relationship cannot continue. This type of marriage end is called *fasakh*.³

The family or household of a divorced husband and wife certainly not only leaves legal consequences related to joint property, iddah bread, and *mut'ah* costs, but also related to children from the results of marriage, because divorce is not the purpose of marriage and households that have been fostered by husband and wife, so that not a few divorced married families already have children, and of course children are victims of divorce that cannot be denied.⁴

According to Oyo Sunaryo Mukhlas, Islam pays great attention to the safety, protection, and maintenance of young children. The Quran and al-hadith command and advocate to protect children, especially young ones. The presence of children in the family is as a jewel of the heart, a cooler of the soul, even a glue for both parents.⁵ Therefore, when both parents' divorce and have children who have not been *mumayyiz*, both must uphold the obligations and responsibilities in maintaining their children to be independent.⁶

¹ Esti Kurniati, "PROTECTION OF CHILDREN'S RIGHTS AFTER PARENTAL DIVORCE," *Authentica*, 2018, <https://doi.org/10.20884/1.atc.2018.1.1.7>.

² Muhammad Husni Abdullah Pakarti. 2024. "Perlindungan Hak Anak Dalam Perceraian Menurut Hukum Keluarga Islam". *Mawaddah: Journal of Islamic Family Law* 1 (1):1-20. <https://doi.org/10.52496/mjhki.v1i1.1>.

³ Anita Marwing, "PROTECTION OF WOMEN'S RIGHTS AFTER DIVORCE (STUDY OF PALOPO RELIGIOUS COURT RULING)," *Palita: Journal of Social-Religion Research*, 2018, <https://doi.org/10.24256/pal.v1i1.60>; Alfin, Hidayat and Muh. Baehaqi, "Civil Rights of Children and Wives Not Given After Divorce in Kundisari Kedu Temanggung Village," *Syariati: Journal of Qur'an and Law Studies*, 2020, <https://doi.org/10.32699/syariati.v6i02.1563>.

⁴ Beni Ahmad Saebani, *Fiqh Munakahat jilid 1*, (Pustaka Setia, Bandung, 2018) 120-121.

⁵ Oyo Sunaryo Mukhlas, *Social Institution of Islamic Law*, (Refika Aditama, Bandung, 2015) 142

⁶ Amina Lemrini El Quahabi, "The Moudawana: Modernist Islam and Womens Rights in the Code of Personal Status," *Muslim Women and the Challenge of Islamic Extremism*, 2005; Liv Tønnessen and Anne Sofie Roald, "Discrimination in the Name of Religious Freedom: The Rights of Women and Non-Muslims after the Comprehensive Peace Agreement in Sudan," *CMI - Chr. Michelsen Institute*, 2007.

Divorce creates a husband and wife legal relationship between a man and a woman, which gives rise to the rights and obligations of each and together in the family, including the legal relationship of child care from the results of marriage.⁷ There are three rights and obligations arising as a result of marriage, namely: first, rights and obligations between husband and wife; *second*, the rights and obligations of the husband and wife towards their children; and *third*, legal relations in relation to third parties.⁸

One of the most important things is about the care of children who are referred to as divorce victims, especially if the child is not yet *mumayyiz* or is still a minor, or a child who has not reached puberty and has not reached the age of 12 years.⁹ The duties of parents towards children are not the result of parental power over children, but are the basis of parental power which should reflect an awareness of their obligation to act in the interests of their children and maintain a balance between their rights and obligations for the welfare of their children.¹⁰

Child custody is one of two things that can arise from divorce. The definition of child custody is not clearly defined in Law Number 1 of 1974 concerning marriage and in the Compilation of Islamic Law. The definition of child custody or child power of attorney is explained in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, namely in Chapter I General Provisions, Article 1 paragraph (11) which reads: "Custody Power is the power of parents to nurture, educate, maintain, foster, protect, and develop children in accordance with the religion they profess and in accordance with their abilities, his talents, as well as his interests".

A child should be taken care of by both parents, even if both parents are divorced (*joint custody*). Nevertheless, in practice, joint custody is difficult for divorced parents.¹¹ Joint custody requires both parents to be competent in parenting. The distance where one parent lives far from school and the child's friends can also cause problems, not to mention the problem of time division between the two parents in parenting, and the most important thing is that joint custody requires communication, cooperation, and coordination between the two divorced parents, especially if both parties have remarried to their new partners.¹² Such conditions are certainly difficult to meet by both divorced parents.¹³ Because with divorce, it has actually proven that both partners are difficult to build a commitment together. If forced,

⁷ Subanrio Subanrio, "THE RESPONSIBILITY OF DIVORCED PARENTS TOWARDS THEIR BIOLOGICAL CHILDREN IN REVIEW OF ISLAMIC LAW IN BENGKULU CITY," *Kutei Scientific Journal*, 2022, <https://doi.org/10.33369/jkutei.v20i2.20488>; P Rusmanto, R., & Purwadi, "Civil Rights of Children After Divorce of Both Parents (Case Study at the Klaten Religious Court)," *Journal of Legal Surgery*, 2019.

⁸ Rachmadi Usman, *Aspects of Individual and Family Law in Indonesia*, (Sinar Grafika, Jakarta, 2006) 337.

⁹ Erysa Indira Ihzafitri et al., "Implementation of Ex-Officio Authority of Judges in Divorce Talaq Cases in Kediri Regency Religious Court," *Journal of Legal Anthology*, 2022, <https://doi.org/10.21154/antologihukum.v2i2.1329>.

¹⁰ Soetojo Prawirohamidjojo and Marthalena Pohan, *Law of Persons and Family*, (Airlangga University Press, Surabaya) 44.

¹¹ et al., "The Right of Child Preservation for Mualaf: Legal Conflict In Malaysia," *Canon: Malaysian Law Journal*, 2021, [https://doi.org/10.37052/kanun.33\(1\)no3](https://doi.org/10.37052/kanun.33(1)no3).

¹² Hidayat and Isyaq Maulidan, "The Law of Child Hadhanah Due to Divorce."

¹³ Raymond J. Taylor, "Treating Your Divorced Ex-Spouse with C.A.R.E.: A Model for Post-Divorce Communication," *Journal of Divorce and Remarriage*, 2005, https://doi.org/10.1300/J087v43n03_09; *Protecting Children From Harmful Practices in Plural Legal Systems*, *Protecting Children From Harmful Practices in Plural Legal Systems*, 2016, <https://doi.org/10.18356/82478d33-en>.

it will cause uncertainty and instability in the implementation of child custody, in addition to causing conflicts between the two parents.¹⁴

In addition, based on data collected by Republika from KPAI, throughout the period 2011-2016 there were 4,294 complaints of cases of children victims of family care and alternative care. When viewed from the entire complaint category, this number was ranked second after the category of child case reports facing the law (ABH) which reached 7,698 cases. KPAI Commissioner Rita Pranawati said, according to KPAI data, children of divorce victims are prone to experiencing five forms of violence. "Children of divorce victims are prone to custody struggles, violations of access to parents, neglect of the right to be provided for, missing children, and victims of family abduction. The cases of divorce victims that we experience include these five categories," Rita told Republika, Wednesday (5/10).¹⁵

According to him, the complaint data was collected from various sources, such as direct reports, online reports, data collection from KPAI partner institutions, and media monitoring. Rita claims that the majority of child complaints due to divorce are preceded by parents who marry at an early age. Young parents who divorce, according to him, there are still many who do not realize that conflict can make children feel intimidated-tie. In the long run, there is an impact of psychological trauma that the child may suffer. Rita said that conflict due to divorce can reduce the quality of the younger generation in the long run. Therefore, it suggests that divorced parents want to realize the importance of maintaining joint parenting.¹⁶

Based on this background, this article examines the protection of women's and children's rights after divorce and their civil rights. Other than that, this study analyses how the Religious Courts in Bengkulu apply Islamic law and Indonesian positive law in resolving cases related to children's living expenses and civil rights after divorce. This analysis makes an important contribution to understanding how the law is applied in specific contexts.

Method

The research method used is qualitative research with the type of normative legal research with a statutory and conceptual approach. Data sources in this study consist of two, namely primary data and secondary data. Primary data are obtained from laws, court decisions related to post-divorce children's rights and children's civil rights, while secondary data are obtained from books, online media, and journals that have the same relevance. The data analysis step carried out by researchers by collecting data, grouping based on research criteria and relevance. Then from the results of the data analysis, compile and describe descriptively in the results and discussion of research comprehensively and systematically to answer and solve problems in research. Finally, draw research conclusions stringing together research answers thoroughly.

¹⁴ Na-Rae Kim, "Responsibility of Supervisors for Illegal Activities of Minors by Non-Custodial Parent: Focused on the Supreme Court Decision 2020Da240021 Delivered on April 14, 2022," *Institute for Legal Studies Chonnam National University*, 2022, <https://doi.org/10.38133/cnulawreview.2022.42.3.343>; Siobhan Lyons, "From the Elephant Man to Barbie Girl: Dissecting the Freak from the Margins to the Mainstream," *M/C Journal*, 2020, <https://doi.org/10.5204/mcj.1687>; Nuriel Amiriyyah, "Nafkah Madliyah Anak Pasca Perceraian: Studi Putusan Mahkamah Agung Republik Indonesia Nomor 608/K/AG/2003," *JURISDICTIE*, 2017, <https://doi.org/10.18860/j.v6i1.4085>.

¹⁵ <https://perpustakaan.mahkamahagung.go.id/read/detailKliping/9986649/perceraian>, accessed on 25/3/2024.

¹⁶ <https://perpustakaan.mahkamahagung.go.id/read/detailKliping/9986649/perceraian>, accessed on 25/3/2024.

Mechanism of the Religious Court in determining post-divorce child rights

Starting from the various decisions of religious courts located in the area of the Bengkulu High Religious Court and the results of observations and searches from various sources and data that implement the contents of decisions regarding divorce cases with the determination of children's living expenses to be independent to their biological fathers as ex-husbands (defendants). It is necessary to analyze in advance the variety of court decisions so that the understanding of their implementation will be more consistent with the concept of judgment in legal science.

One of the interesting cases contained in Decision Number 16/Rev. G/2021/PTA. Bn. which stated that the Bengkulu Religious Court, which examined, tried and decided civil cases in the first instance in the trial of the Panel of Judges, had handed down the decision of the Child Custody case filed by Elya, S.P bint Drs. H.M Naim Ibrahim as Plaintiff against Khairi Nasih, S.T, M.Si bin H. M. Nuri, as Defendant.

In the ruling, the panel of judges determined the custody (*hadhanah*) of the three children of the Plaintiff. Reconvension and Reconvension Defendants named Naffis Nawwat Nasih bin Khairi Nasih age 15 years, Khodao Rezeki Nasih bin Khairi Nasih age 12 years, and Shinji Heliau Nasih bin Khairi Nasih age 9 years are under the custody of the Reconvension Plaintiff (Eliya S.P bint Drs. H.M Naim Ibrahim) both litigants and have divorced with the existence of a divorce certificate of child custody rights assigned to the mother, although not all children are minors. Also, punishing the Reconvension Defendant to pay the Reconvension Plaintiff in the form of income for the three children of the Reconvension Plaintiff and the Reconvension Defendant named Naffis Nawwat Nasih bin Khairi Nasih age 15 years, Khodao Rezeki Nasih bin Khairi Nasih age 12 years, and Shinji Heliau Nasih bin Khairi Nasih age 9 years in the amount of Rp.1,500,000,- (one million five hundred thousand rupiah) every month until the three children are adults and independent or 21 years old will increase every The year is 15% of the amount of the charge. The decision regarding custody is a decision from the appellate legal remedies made by the plaintiff as stated in the decision of the Bengkulu Religious Court Number 315 / Pdt.G / 2021 / PA. Bn, two of her children have reached the age of over 12 years, while those under the age of 12 years or not yet *mumayyiz* (9 years) also have custody assigned to their mothers.

The panel of judges considered that in essence the argument of the appeal memory of the Respondent/Appellant was an objection to the evidence presented by the Applicant/Appellant, in the trial the evidence was never shown to the Respondent/Appellant so that the Respondent/Comparator doubted the veracity of the evidence and felt that the evidence was fabricated by the Applicant/Appellant. That what the Panel of Judges of the first instance considered in the case a quo was correct and correct, so that the consideration was taken over by the Panel of Judges of the appellate level as its own consideration with the addition of the consideration that based on the consideration of the Panel of Judges of the first instance, it was not wrong to apply the law to its decision in the case a quo. Therefore, the verdict must be upheld.

This understanding is motivated by views on the principles of legal certainty, legal justice, and legal benefits for the community, especially parties to disputes in religious courts. With the violation of the material content of the judgment does not necessarily have legal certainty and justice so that the law becomes useless, because the decision of the religious court is already legally enforceable but already has legal certainty, because the decision is handed down based on the judge's consideration based on the applicable laws and regulations, therefore, every result of consideration should provide a sense of fairness and benefit.

According to Soeparmono, the meaning of the verdict is the statement of the judge as a state official who carries out the duties of judicial power authorized to do so which is pronounced at the court and aims to resolve a case. While Sudikno Mertokusumo, the judge's decision is a statement by the judge as an authorized official, pronounced in court and aims to end or resolve a case or dispute between the parties.¹⁷

Court decisions when viewed from the content of the lawsuit or case, then the judge's decision is divided into:¹⁸

1. The judgment does not accept, which is a decision stating that the judge does not accept the plaintiff's claim or the applicant's application or in other words the plaintiff's claim or applicant's application is not accepted because the lawsuit or application does not meet the legal requirements either formally or materially. In the event of an exception justified by the judge, the judge always renders a ruling that the plaintiff's claim cannot be accepted or does not accept the plaintiff's claim. Even if there is no exception, the judge because of his position can decide that the plaintiff's lawsuit is not accepted if it turns out that it does not meet the legal requirements, or there are things that are used as reasons for execution. The judgment does not accept that it can be handed down after the answer stage, except in the case of *verstek* whose claim turns out to be unreasonable and or against the right so that it can be handed down before the answer stage. The judgment does not accept has not assessed the subject matter (arguments of the lawsuit) but only assesses the terms of the lawsuit. If the conditions of the lawsuit are not met, then the main claim (lawsuit proposition) cannot be examined. This judgment shall prevail as a final judgment. Against this decision, the defendant can appeal or file a new case, as well as the defendant.
2. The judgment rejects the plaintiff's claim, which is the final judgment handed down after going through all stages of examination where it turns out that the arguments of the lawsuit are not proven. In examining the subject matter of the lawsuit (lawsuit proposition), the judge must first check whether the conditions of the lawsuit have been met, so that the subject matter of the lawsuit can be examined and tried.
3. The judgment granted the plaintiff's claim in part and denied or did not accept the rest. This verdict is the final verdict. In this case, some of the lawsuit propositions are proven and some are not proven or qualified so that:¹⁹
 - a. the proven proposition of the claim is granted;
 - b. unproven arguments of the claim are rejected;
 - c. Unqualified lawsuits are not accepted.
4. The judgment granted the plaintiff's claim in its entirety. This judgment is handed down if the conditions of the lawsuit have been fulfilled and all the arguments of the defendant in favor of the *petitum* are proven. To grant a *petitum* must be supported by the proposition of the lawsuit. One *petitum* may be supported by several lawsuits. If among the lawsuit there is already one lawsuit proposition that can be proven, it is sufficient to be proven, although perhaps the other lawsuit propositions are not proven. In principle, every *petitum* must be supported by a lawsuit.

¹⁷ Soeparmono, *Civil Procedural Law and Jurisprudence*, (Mandar Maju, Bandung, 2005) 146 and Mardani, *Civil Procedure Law of Religious Courts and Sharia Courts*, (Sinar Grafika, Jakarta, 2009) 110

¹⁸ M. Yahya Harahap, *Civil Procedural Law Theory and Practice* (Sinar Grafika, Jakarta, 1996), 883

¹⁹ Riduan Syahrani, *Basic material book of Civil Procedural Law*, (Citra Aditya Bakti, Bandung, 2000) 120

In the judgment has two kinds of powers, the power that catches on the decision is as follows:²⁰

1. Binding force: To be able to exercise a right by force requires a court decision or authentic deed establishing that right. A court decision is intended to resolve a problem or dispute and assign its rights or disputes to the court or judge for examination or trial, so this means that the parties concerned will submit and obey the decision imposed. The verdict that has been handed down must be respected by both parties. Therefore, the parties must not act contrary to the decision. Thus, the judge's decision will have binding force on both parties. The binding of the parties to the judgment will give rise to several theories on which to base the binding force of the judgment. The theory is: (1) Theory of material law. According to this theory, the binding force of a judgment called "*geza van gewijsde*" has a material legal nature, because it makes changes to civil powers and obligations in terms of establishing, abolishing or changing. According to this theory, the ruling can give rise to or negate legal relations. So, the verdict is a material source. It is called the teaching of material law because it gives material legal effects on decisions. Given that the award is only binding on the parties and not binding on third parties. This teaching does not authorize the defense of one's rights against third parties. As for now, this teaching has long been abandoned; (2) Procedural law theory. According to this theory judgment is not a source of material law, but a source of judicial authority. Who in a judgment is recognized as the owner, then he by means of proceedings against his opponent can act as the owner. If the law requires a ruling for a new state of law, then the decision has material legal meaning. The result of the decision is procedural law, that is, the creation or abolition of the authority and obligation of the process. If understood again this teaching is very narrow, because a decision is not merely a source of judicial authority, because it leads to a definite determination of the legal relationship that is the subject matter of the dispute; (3) Theory of the law of evidence. According to this theory, the verdict is evidence of what is stipulated in it, so it has binding force, therefore according to this theory the opposing proof of the content of a judgment that has obtained definite legal force is not allowed. This theory includes ancient theories that have few adherents; (4) The binding of the parties to the judgment; (5) The binding of the parties to the award may have a positive meaning and may also have a negative meaning. The meaning of Positive rather than the binding force of an award is that what has been decided between the parties acts as positively true. What has been decided by the judge must be considered correct (*res judicata pro veritate hebetur*), so that proof of the opponent is not possible. The binding of these parties is based on law. The negative meaning of the binding force of a decision is that judges cannot decide cases that have been decided previously between the same parties and on the same subject matter. The repetition of the act would have no legal effect (*nebis in idem*) (ps. 134 Rv). Except under article 134 Rv this binding force in a negative sense is also based on the principle of "*litis finiri oportet*", which forms the basis of the provision on the grace period for filing a legal remedy: what at some time has been settled by the judge may not be submitted again to the judge. In our procedural law judgments have the force to bind both positive and negative meanings; (6) Definite force of law. A judgment acquires definite or permanent legal force (*kracht van gewijsde*) if it does not There are more regular legal remedies available. Including ordinary remedies are resistance, appeal and cassation. By obtaining

²⁰ Sudikno Mertokusumo, *Indonesian Civil Procedure Law*, (Yogyakarta: Liberty, 1993), 177.

definite legal force, the decision can no longer be changed, even by a higher court, except by special legal remedies, namely civil requests and resistance by third parties.²¹

2. Executory Power. A decision is intended to resolve a problem or dispute and establish its rights or laws. This does not mean merely establishing the right or punishment, but also its realization or exercise (*executory*) by force. The binding force alone of a court decision is not enough. Therefore, the decision must firmly establish its right or law to be implemented, then the judge's decision has executory power, that is, the power to carry out what is forcibly determined by the instruments of the state. Evidence that court decisions have executory power can be seen from the words "for Justice based on the One and Only God", which indicates that there is executory power for court decisions in Indonesia. Ismail Saleh in Suryono explained that the court is the last bastion of law enforcement and justice efforts so that anyone is obliged to uphold and respect the fortress. Therefore, whatever the reason, all parties should be able to respect and obey judicial decisions that have permanent legal force (*inkracht van gewijsde*), it can even be said that refusing to obey court decisions is included as content of *of court* (actions / attitudes that degrade the dignity of the judiciary).²²

Obeying and enforcing judicial decisions is part of law enforcement. As the opinion of Soerjono Soekanto that law enforcement through the courts is influenced by several things, namely:²³

1. Its own legal factors;
2. Law enforcement factors, namely those who form or enforce the law;
3. Factors of facilities or facilities that support law enforcement;
4. Community factors, namely the environment in which the law applies or is applied;
5. Cultural factors, namely as the result of work, creation and taste based on human charities in the association of life.

By understanding the meaning of the decision and the binding force of a court decision, it can be concluded that the Religious Court Decision in the Bengkulu Area already has legal certainty, so that its implementation can be implemented by the parties, especially those who receive decisions related to the imposition of children's living expenses until their lives are independent.²⁴ Thus, violations of the material of the religious court decision do not change the certainty of law and justice, while the father of the biological child or ex-husband of his wife is declared to have violated the law and can be complained by parties who feel victimized.²⁵ If the victim does not complain about violating the religious court decision, then

²¹ Sudikno Mertokusumo, *Indonesian Civil Procedure Law*, 178

²² Suryono Sutarno, *Criminal Procedure Law*, (Diponegoro University, Semarang, 2004) 74

²³ Suryono Sutarno, *Code of Criminal Procedure*, 75

²⁴ Hajar Azari and Azam Oladighadikolai, "Children's Participation to Custody Institution: Comparative Study," *Human Rights*, 2021, <https://doi.org/10.22096/HR.2021.522277.1281>; Dejan Mickovik and Arta Selmani-Bakui, "Parental Responsibility after Divorce: Evolution of the Concept and Some Comparative Analysis in the Context of Adoption of the New Civil Code of the Republic of North Macedonia," *International Journal of Law, Policy and the Family*, 2021, <https://doi.org/10.1093/lawfam/ebab018>; Eleanor E Maccoby et al., "Postdivorce Roles of Mothers and Fathers in the Lives of Their Children. Special Section: Families in Transition," *Journal of Family Psychology*, 1993.

²⁵ Muhammad Husni Abdulah Pakarti, Diana Farid, Sofyan Mei Utama, Otong Syuhada, and Hendriana. "Asas Hukum Kewarisan Islam Sebagai Parameter Dalam Menyelesaikan Masalah Waris." *Al-Ahwal Al-Syakhsiyyah: Journal of Family Law and Islamic Justice* 4, no. 2 (2023): 102-116. <https://doi.org/10.15575/as.v4i2.25998>.

there is no other *legal standing* because the case of violation of the religious court decision is a complaint offense.

Effectiveness of Religious Courts in implementing decisions on children's rights

In the legal concept, there are two implementations of decisions, namely carrying out the material content of the decision and implementing the decision. The term execution of the judgment is also called execution comes from the Dutch word *executie* or *executie* which means to execute, execute, execute or execute. While the word *executie* in Indonesian referred to as "execution". This word has been popular and accepted by legal experts in Indonesia. The definition of execution is the same as the definition of executing a judgment (*ten uitvoer legging van vonnissen*), which is to forcibly execute a court decision with the help of public power, if the losing party (executed or the defendant) does not want to carry it out voluntarily. In other words, execution (execution of a judgment) is an act carried out forcibly against the losing party in a case in court.²⁶

According to Mochammad Dja'is, execution means that the defeated party does not want to obey the verdict voluntarily so that the verdict must be forced on him with the help of legal force.²⁷ Thus, execution is an act of coercion by the court against the losing party and unwilling to carry out the verdict voluntarily.²⁸ Execution is the execution of an irreversible judgment, and must be obeyed voluntarily by the disputing party. Thus, the meaning of the word execution implies that the losing party must inevitably obey the judgment voluntarily, so that the judgment must be forced upon him with the help of general force.²⁹

According to Djazuli Bachar execution is the execution of a court decision, the purpose of which is none other than to make a decision effective into a feat done by force. Or efforts in the form of forced actions to realize the judgment to the entitled to receive from the party burdened with the obligation which is execution.³⁰

With this understanding, based on the definition of the term execution according to the subject, execution or execution of the judgment already means that the defeated party does not want to obey the judgment voluntarily, so that the judgment must be forced on him with the help of "general power". By "general force:" this is meant the police, if necessary, the military (armed forces). From the definition of execution above, it can be concluded that there are several elements as stated by Mochammad Dja'is, namely:

1. Execution by force;
2. The object of execution is the judge's decision;
3. The defeated party does not want to voluntarily fulfill its obligations;
4. With the help of general power.

With this understanding, violations of the Religious Court Decision regarding the provisions set by the court on the father of his biological child who has divorced his wife can be done in four ways, namely as follows:

²⁶ M. Yahya Harahap, *Code of Civil Procedure...*, 5

²⁷ Mochammad Dja'is, *Basic Thoughts of Execution Law*, (Faculty of Law, Diponegoro University, Semarang, 2000) 12

²⁸ Retnowulan Sutantio and Iskandar Oeripkartawinata, *Civil Procedure Law in Theory and Practice*, (Bandung: CV. Mandar Maju, 2005), 130.

²⁹ R. Subekti, *Code of Civil Procedure*, 130

³⁰ Djazuli Bachir, *Execution of Civil Case Decisions in Legal and Law Enforcement*, (Jakarta: Publisher Akademika Pressindo, 1995) 6

1. Violations of the Religious Court Decision can be reported to the police on suspicion of violence against children;
2. The decision of the Religious Court regarding the cost of children to live independently must be accompanied by a written agreement with permanent legal force so that if the defendant and/or convicted of default can be executed or sued civilly;
3. The Religious Court in the Judgment may add orders to other parties in an effort to assist in forcible efforts to the convicted party (the child's biological father) to implement the Religious Court Decision. The general power assistance in question is to guarantee the execution of the judge's decision under any circumstances on the ground to overcome possible obstacles arising from the executed party. Because execution is essentially the realization of the obligation of the party concerned to fulfill the achievements stated in the judgment. In this legal reconstruction, execution is not only about general civil matters such as confiscation of collateral, debt receivables, and expropriation of the defendant's property due to defeat in Court and has been decided by the Court, but, because it involves the survival of the child and his future and protects the human and civil rights of children, execution can be used as a legal development in relation to efforts to implement legal certainty and justice. So that this idea does not float, it is reaffirmed that the burden of children's living expenses received by the biological father must be equipped with an agreement containing his willingness to carry out the decision accompanied by guarantees in case of violation or breach of promise, thus execution is carried out on the property pledged for the living expenses of his biological children, outside the joint property that is the right of both parties, namely the husband and wife who have divorced. Execution is not only the execution of a judgment that has the force of law fixed to the losing party, who does not want to carry out the contents of the award voluntarily, but in a broad sense execution is also the realization of rights, not just the execution of court decisions. Thus, execution is an implementation of the judge's decision, both decisions that have permanent legal force and those that do not have permanent legal force. Basically, in every judicial practice in general, if a decision has permanent legal force (*inkracht van gewijsde*), then execution can be carried out. So that in the court in general, if the decision has permanent legal force, execution can be carried out on the goods that are collateral, both movable and immovable goods.³¹
4. The fourth way is to determine the property of the biological child contained in the contents of the religious court decision so that after the decision has legal force, the property can still be handed over to the biological child without having to expect the child's living expenses from his biological father if the property determined to be equal in value to the amount of costs that must be borne by his biological father. So, if you do not have the intended property, the panel of judges considers the ability of the child's biological father for the benefit. If the party whose biological father or husband is convicted of the burden of living expenses of the child in the trial does not want to voluntarily surrender the collateral that is the object of the dispute, then the chief justice can carry out the decision by force assisted by local officials. However, to be able to provide court decisions that truly create legal certainty and reflect justice, judges as state apparatuses who carry out justice must really know the actual case and the legal regulations that govern it to be applied, both legal regulations written in laws and

³¹ Sarwono, *Civil Procedural Law Theory and Practice*, (Sinar Grafika, Jakarta, 2011) 316-317

regulations that are not written in customary law. Therefore, in Law Number 4 of 2004 concerning Judicial Power, it is stated: "that judges explore, follow, and understand legal values and a sense of justice that lives in society (Article 28 paragraph (1)". Therefore, the path of deliberation is the best way that must be done by both parties in implementing the decision of the religious court in the best interest of the future of their children.

Indeed, not all court decisions can be executed, because not all court decisions have executory legal force. That is, not to all judgments by itself is attached the power of execution. In relation to execution, only court decisions that have acquired permanent legal force (*in kracht van gewijde*) can be executed. The judge's decision gains permanent legal force if no other legal remedies are still used such as appeals, cassation and so on. Thus in principle, only judgments that have acquired permanent legal force can be executed.

Basically, the verdict that can be executed is:³²

- a. judgments that have acquired permanent legal force;
- b. because in a decision that has the force of law that remains there has been a form of a fixed and definite legal relationship between the litigants;
- c. Because the legal relationship between litigants is fixed and certain, the legal relationship must be obeyed and must be fulfilled by the condemned party.
- d. How to obey and fulfill the legal relationship stipulated in the judgment that has obtained permanent legal force can be done or carried out "voluntarily" by the defendant or if not execute the judgment voluntarily, the legal relationship stipulated in the judgment must be carried out "by force" with the help of the "general force".
- e. In every court decision in every case, both civil and criminal, which is processed by the court aims to get a solution or settlement of the case, ending with a decision, but the decision handed down alone is not enough and cannot resolve the problem, if it is not implemented. Therefore, the judgment must be enforceable or enforceable, a court decision is meaningless if it cannot be enforced, therefore the judge's decision has executory power which is the head of the judgment which reads: "For the sake of justice based on the One and Only Godhead"
- f. The decision of a judge who has legal force must still be implemented, if a case has been decided and has obtained definite legal force. Then the matter will be finished if it has been executed. The execution of the judgment or execution is essentially the realization of the obligation of the party concerned to fulfill the obligation. Since in family law cases there has been no legal reconstruction regarding the execution of "charging for children's living expenses" because the parents have divorced, it is considered necessary to add new articles or new provisions regarding the existence of agreements, guarantees of property, and the availability of defendants to be executed, while the right of execution petition remains with the plaintiff.

The idea is as an implementation of legal certainty and justice as well as legal benefits for parties to disputes in court, because in fact the parties who implement the contents of the decision have the same position in the eyes of the law if they obey the law, in terms of good

³² M.Yahya Harahap, *Scope of Civil Problems...*, 5

and the impact it causes for themselves, their families, communities, and the country.³³ The decision of the Religious Court has executory force, therefore the decision is binding and compels the condemned party to carry out the decision.

In the perspective of *maqasid sharia*, the implementation of religious court rulings regarding the cost of living of children charged to their biological fathers is part of efforts to maintain religion, because supporting biological children is an Islamic religious commandment, it is also an effort to maintain the soul because children will be guaranteed life and physical and psychological development, especially in terms of meeting their physical needs, besides that it is also the implementation of the maintenance of offspring, because descendants or biological children are the jewels of the heart and trust from Allah swt.³⁴ which must be maintained, fostered, developed intellectually so that they are able to live independently. All of them will cause benefit in the sense of attracting benefits and avoiding harm or damage (*jalb al-mashalih wa dar'u al-mafasid*).

In this study, it is interesting that the decision of the Bengkulu Religious Court has executory power, but in relation to the religious court's decision on the child's living expenses charged to his biological father after divorcing his wife, the executory power does not have sufficient coercion because the judgment does not include legal sanctions if the defendant or convicted party violates the provisions in the religious court decision so that Violations of court rulings are found in many fields. With these findings, the idea related to the establishment of the term execution of the execution of the judgment means that the defeated party does not want to obey the decision voluntarily, so that the decision must be forced on him with the help of legal elements determined by the religious court in writing in the content of the religious court decision. So that the implementation by force is strengthened by a definite legal basis.

Conclusion

The results showed that the Religious Courts In The Bengkulu Area has an important role in ensuring that the interests of children are maintained after parental divorce. In the context of post-divorce living expenses, the court ensures that parents who do not live with the child make an adequate financial contribution to the child's needs. This is done through the determination of the amount of child support adjusted to the economic ability of parents who are required to pay. In addition, the study also highlights the role of courts in regulating children's civil rights after divorce. The Religious Courts In The Bengkulu Area ensures that children's rights related to civil aspects such as inheritance rights, education, and welfare

³³ Muhammad Ansori and Iffan Sulaiman, "Implementation of Post-Divorce Child Support in Jambi City (Review of Law Number 23 of 2002)," *JOURNAL OF KRIDATAMA SAINS DAN TEKNOLOGI*, 2022, <https://doi.org/10.53863/kst.v4i02.593>; Ihzafitri et al., "Implementation of Ex-Officio Authority of Judges in Divorce Cases in Kediri Regency Religious Court"; Fatimah Zuhrah, "Divorce Under Hand in Indonesia: (Study on the Implementation of Article 39 of Law No.1 of 1974)," *Journal of Gender and Social Inclusion in Muslim Societies*, 2020, <https://doi.org/10.30829/jgsims.v1i1.8814>.

³⁴ Pery Rehendra Sucipta Dheni Setiawan, Marnia Rani, "Legal Certainty for the Execution of Court Decisions on Child Livelihood Rights (Study at Tanjungpinang Religious Court)," *Student Online Journal (SOJ)*, 2020; Anita Marwing, "PROTECTION OF WOMEN'S RIGHTS AFTER DIVORCE (STUDY OF THE PALOPO RELIGIOUS COURT RULING)," *PALITA: Journal of Social - Religion Research*, 2016, <https://doi.org/10.24256/pal.v1i1.16>; Subanrio, "THE RESPONSIBILITY OF DIVORCED PARENTS TOWARDS THEIR BIOLOGICAL CHILDREN IN REVIEW OF ISLAMIC LAW IN BENGKULU CITY"; Muhammad Muadz Dzulikrom et al., "Post-Divorce Child Support in Decision Number 800/Pdt.G/2019/PA. Kab.Mlg," *Ma'mal: Journal of Sharia and Law Laboratory*, 2021, <https://doi.org/10.15642/mal.v2i5.66>.

remain protected in accordance with applicable law. The court also considers the best interests of children as a key principle in every decision taken regarding children's civil rights. Overall, this study confirms that the Religious Courts In The Bengkulu Area has a significant role in safeguarding the interests of children after divorce, both in terms of living costs and civil rights. This underscores the importance of religious justice systems in the context of protecting children's rights in the region.

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