

Implementation of Religious Court Judge's Decisions in Children by Husband Post Divorce

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ABSTRACT

Children are a mandate in the hands of their parents and a clean heart is a very valuable gem. The presence of children in a family is a complement to the happiness of a marriage. Among the legal consequences of breaking up a marriage is the issue of children, because after the divorce of both parents, their rights will not be reduced to get all their needs. Formulation of the Problem What are the legal consequences for a father who does not carry out the judge's decision on the obligation to support children after divorce, How is the problem with submitting the decision of the Religious Court judge regarding the obligation to support the child after the divorce and What is the ideal concept of completing the execution of the decision of the Religious Court which is not carried out by the parents? (father) regarding his obligation to support children after divorce. The approach method used in this study is normative, with primary and secondary data approaches. The impact of the father's obligation not to carry out the court's decision Article 16 PP No. 53 of 2010. The obligation to give part of the salary to the ex. Decree of the Head of BKN No: K.26-30/V.99-6/99 Regarding the explanation of the obligation to give part of the salary to ex-wife and children. The problem of delivering the decision of the judge of the religious court regarding the obligation to support children in divorce includes the problem of the execution of the obligation to provide for the father for the maintenance of the child after the divorce. The petitioner for execution does not know what property the respondent owns. The father is unable to carry out the decision regarding the obligation to support the child on the grounds that he does not have property. The ideal concept of settlement includes Efforts in carrying out the execution of child support, guaranteeing husband's property, execution costs charged to the respondent.

ABSTRAK

Anak adalah amanah di tangan orang tuanya dan hati yang bersih adalah permata yang sangat berharga. Kehadiran anak dalam sebuah keluarga merupakan pelengkap kebahagiaan sebuah pernikahan. Diantara akibat hukum putusnya perkawinan adalah masalah anak, karena setelah perceraian kedua orang tua tidak akan berkurang haknya untuk mendapatkan segala kebutuhannya. Rumusan Masalah Apa akibat hukum bagi ayah yang tidak melaksanakan putusan hakim tentang kewajiban mengasuh anak setelah perceraian, Bagaimana masalah pengajuan putusan hakim Pengadilan Agama tentang kewajiban menghidupi anak setelah perceraian dan Bagaimana konsep ideal penyelesaian eksekusi putusan Pengadilan Agama yang tidak dilakukan oleh orang tua? (ayah) tentang kewajibannya menghidupi anak setelah perceraian. Metode pendekatan yang digunakan dalam penelitian ini adalah normatif, dengan pendekatan data primer dan sekunder. Dampak dari kewajiban ayah untuk tidak melaksanakan putusan pengadilan Pasal 16 PP No 53 Tahun 2010. Kewajiban memberikan sebagian gaji kepada mantan. Keputusan Kepala BKN No: K.26-30/V.99-6/99 Tentang Penjelasan Kewajiban Memberikan Sebagian Gaji Kepada Mantan Istri Dan Anak. Masalah penyampaian putusan hakim pengadilan agama tentang kewajiban menghidupi anak dalam perceraian termasuk masalah pelaksanaan kewajiban menafkahi ayah untuk nafkah anak setelah perceraian. Pemohon eksekusi tidak mengetahui harta apa yang dimiliki termohon. Ayah tidak dapat melaksanakan keputusan tentang kewajiban menghidupi anak dengan alasan tidak memiliki harta. Konsep penyelesaian yang ideal meliputi Upaya dalam melaksanakan pelaksanaan nafkah anak, penjaminan harta benda suami, biaya pelaksanaan yang dibebankan kepada termohon.

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I. INTRODUCTION

Marriage or marriage is a common sunnatullah and applies to all His creatures, both to humans, animals, and plants. It is a method chosen by Allah SWT, as a way for His creatures to reproduce, and preserve their life.

In realizing the ideal goal of marriage according to marriage law is to form a happy and eternal family, as confirmed in Article 1 of Law no. 1 of 1974 concerning Marriage which contains the juridical understanding of marriage is "The inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead.

Parents are still obliged to educate and raise their children as well as possible even though both parents have divorced. The presence of children in the family is a complement to the happiness of a marriage, because in essence children are a gift from God given to humans or married couples who must be guarded, cared for and nurtured as well as possible, with the aim that children can develop well and later can be useful for homeland, religion or family. Therefore, parents must be responsible for all the maintenance of all rights attached to the child. The responsibility of parents to their children is an obligation that must be carried out by all parents.

When a divorce occurs, usually the problem is concerning the child, who takes care of him and who bears the cost of his living. The implementation of the fulfillment of children's rights after divorce so far has not been able to carry out the provisions for the protection of children's rights, due to several factors that become obstacles, including limitations economy, parental neglect, low parental education, and low parental morale. UU no. 1 of 1974 concerning Marriage abbreviated (UUP) mentions the rights and obligations between parents and children. 1 of 1974 Article 45 Paragraph (1), namely "both parents are obliged to maintain and educate their children as well as possible". Whereas Paragraph (2) states that "The obligations of parents as referred to in Paragraph (1) are valid until the child marries or can stand alone. Which obligations continue even if the marriage between the two breaks up.

The child must still get his rights as a child as intended by Article 45 Paragraph (1) of the Marriage Law no. 1 of 1974. In Article 1 Paragraph (12) of Law no. 23 of 2002 concerning Child Protection, namely "Children's rights are part of human rights that must be guaranteed, protected, and protected by parents, families, communities, government and the state". And also based on the Circular of the Directorate General of the Religious Courts Number 1669/DJA/HK.00/5/2021 concerning Guarantees for the Fulfillment of the Rights of Women and Children Post-Divorce. The responsibilities of parents who have divorced their children apart from referring to the Marriage Law Number 1 of 1974. As in the decision of the Ternate Religious Court Number 611 /Pdt.G/2021 /PA.TTE, the Panel of Judges of the Ternate Religious Court granted the divorce suit for Munir Radjabessy bin Zakaria Radjabessy (the Petitioner) against Miram Pellu bint Muhammad Pellu (the Respondent) with sentenced Munir Radjabessy bin Zakaria Radjabessy (Petitioner) as the Defendant of the Convention to pay for the maintenance of his children with the Plaintiff of the Convention, each month in the amount of Rp. 2,500,000.00 (two million five hundred thousand rupiah), or the two children in the

amount of Rp. IDR 5,000,000.00 (five million rupiah) until adulthood or 21 (twenty one) years old or married with an increase of 10% (ten percent) per year.

In Decision Number 245/Pdt.G/2021/PA.TTE the Panel of Judges of the Ternate Religious Court granted the divorce suit by Kasman bin Muhammad Kamal (the Petitioner) against Hajija bint Lukman Alias Hajjah bint Sulkhan Limehuwey (the Respondent) by punishing Kasman bin Muhammad Kamal (the Petitioner) as a Defendant of the Convention to provide maintenance costs for 3 (three) children every month in the amount of Rp. 1,000,000 (one million rupiah) until the children are adults and can take care of themselves (adults).

II. RESEARCH METHOD

The method used in this research is normative, namely legal research carried out by examining library materials or secondary data as the basis for research by conducting searches on regulations related to the problems discussed. Types and Sources of Data, namely: Primary Data. According to the Revised Edition of Legal Research by Peter Mahmud Marzuki, primary legal materials are legal materials that are authoritative, meaning they have authority. Primary legal materials consist of legislation, official records or minutes in the making of legislation and judges' decisions.

Secondary Data. Peter Mahmud Marzuki, in his book Legal Research Revised Edition states "secondary legal materials are all publications on law that are not official documents. Publications on law include textbooks, legal dictionaries, legal journals and internet materials related to this research. Data collection techniques in this research are divided into main data collection techniques and supporting data collection techniques consisting of observation; interviews and documentation.

III. Results and Discussion

Legal Consequences for a Father Who Does Not Implement the Judge's Decision, Child Support Obligations After Divorce

Legal Consequences Based on Legislation

Children are the next generation. the good and bad future of the nation depends also on the good and bad conditions of the children at this time. According to Article 42 of Law Number 1 of 1974 concerning Marriage that "legitimate children are children born in or as a result of a legal marriage". Marriage according to Islamic law is a very strong agreement or mitsaqon ghaliza. In a juridical sense according to Article 2 of Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law, marriage is a very strong contract to obey Allah's commands and carrying it out is worship. Furthermore, in Article 3 of the Compilation of Islamic Law, marriage aims to realize a household life that is *sakinah mawaddah wa rohmah*.

The Religious Courts is one of the judicial institutions under the Supreme Court of the Republic of Indonesia. which has the authority to receive, examine, adjudicate, and resolve certain cases that have been regulated in the law, including marriage cases, inheritance cases, will cases, grant cases, waqf cases, zakat cases, infaq cases, sadaqah cases, and sharia economic matters. In the case of marriage cases related to divorce, the Religious Courts can determine and charge the child's support to the ex-husband (father of the child) whether it is requested or not requested by a wife during the trial process.

The determination and imposition of a child's maintenance which is usually stated by a Religious Court Judge is related to who will bear the child's living and how much must be given to the child every month. The decision to impose a child's maintenance on a child basically must be directed to a father. As for the amount of support that a father must give to a child, it is adjusted to the father's ability based on the evidence which then becomes a legal fact that shows the economic ability of a

father at the time of trial examination. Although the Religious Court Judge has handed down a decision related to child support which is addressed to a father or ex-husband, in practice there are still conditions where a father or ex-husband is not responsible or does not obey a decision that has been handed down by the judge.

Obligation to give part of salary to ex-wife and children of Civil Servant based on Decree of Head of State Civil Service Agency Number: K.26-30/V.99-6/99 dated October 11, 2016 Regarding Explanation regarding obligation to give part of salary to ex-wife and children of Civil Servants . Based on these provisions, we can convey the following:

- a) In solving employment problems, especially the distribution of salaries to ex-wife of civil servants post-divorce, it is expected that each Personnel Guidance Officer of each agency shall be guided by the provisions of the legislation as referred to in paragraph (1);
- b) The Civil Service Supervisor is obliged to instruct the treasurer and/or manager of the salary payment system used to deduct part of the salary that is the right of the ex-wife and/or children of the civil servant;
- c) Imposing one of the most severe disciplinary penalties for civil servants who refuse to give part of their salary to their ex-wife and/or children of civil servants;
- d) Disciplinary punishment does not invalidate the obligation of civil servants to provide part of the salary which is the right of the ex-wife and/or children of civil servants;

PP No. 10 of 1983 Jo PP No. 45 of 1999 concerning Marriage and Divorce Permits for Civil Servants Article 8, namely: 1). If the divorce occurs at the will of a male Civil Servant, then he is obliged to give up part of his salary for the livelihood of his ex-wife and children. 2). The distribution of salary as referred to in paragraph (1) is one third for the male Civil Servant concerned, one third for his ex-wife, and one third for his children or children. 3). If there are no children from the marriage, then the part of the salary that must be submitted by the Civil Servant to his ex-wife is half of his salary. 4). Salary distribution to ex-wife is not given if the reason for divorce is because the wife commits adultery, and or commits cruelty or severe abuse both physically and mentally against her husband, and/or the wife becomes a drunkard, condensed, gambler who is difficult to cure, and/or the wife has left her husband for two years. know, successively without the husband's permission and without a valid reason or for other reasons beyond his control. 5). If the divorce occurs at the will of the wife, then she is entitled to a share of the income of her ex-husband. 6). The provisions as referred to in paragraph (5) do not apply, if the wife asks for a divorce because of being married, and/or adulterous and/or the husband commits cruelty or serious abuse both physically and mentally against the wife, and/or the husband becomes a drunkard, condensed, gambler who is difficult to cure, and/or the husband has left his wife for two consecutive years without the wife's permission and without a valid reason or for other reasons beyond his control. 7). If the ex-wife of the Civil Servant in question remarries, her right to the salary of her ex-husband will be nullified as of the time she remarries. 8). If the ex-wife of the civil servant concerned remarries, then her right to a share of her ex-husband's salary is nullified when she remarries.

Legal Consequences According to Islamic Law

A husband has an obligation to provide for his wife and children in an acceptable manner in accordance with religious provisions, according to ability, and not excessive and not lacking in Q.S Al-Baqarah (2): 233

"And mothers should breastfeed their children for two whole years, for those who breastfeed completely. And it is the duty of the father to provide for their maintenance and clothing in a proper manner. One is not burdened more than one can bear."

The difference of opinion among the priests of the madhhab is as follows:

1. Hanafi School

The child's livelihood in the Hanafi school is not a debt for the father, whether it is determined by the judge or not. It is different from the wife's income which can turn into debt to her husband if it has been determined by the judge or voluntarily.

2. Shafi'i School

Syafi'iyah scholars are of the opinion that a living for the child does not necessarily become a debt for the father, unless it is determined by a judge or gets permission to borrow. Because father is not at home or deliberately does not want to provide a living.

3. Fuqaha

According to the fuqaha', the child's livelihood dies with the passing of time without being taken and without debt because it is obligatory on the father to meet the needs of the child.

The Problem of Submission of Decisions by Religious Court Judges About Child Support Obligations After Divorce

1. The Problem of Executing Father's Obligations for Child's Support After Divorce

The execution of a verdict that punishes a father to pay/bear a living for his child is in fact not as easy as turning the palm of the hand, on the one hand it is quite difficult to be executed by the Religious Courts, especially if the father as the respondent for execution is reluctant to carry out the decision voluntarily. Another problem, as stated by A. Choiri, is the complexity of the formal procedure for requesting executions for ordinary people, the large execution costs, compared to the total amount of child support determined by the panel of judges per month, which is very unbalanced. Therefore, there are very many decisions that contain child support that cannot be enforced, have no value, because they do not bind the defendant (father) to carry out them in an orderly manner, for the sake of the survival of the children who are victims of their parents' divorce. Many of the defendants (fathers) are still aware of their responsibility to provide for their children every month, but not at the amount that has been determined in the verdict handed down by the Religious Court.

2. The Execution Applicant does not know what property the Respondent has.

Another possible obstacle to making the execution executable (non-executable) is that the execution applicant is not able to show the property of the execution respondent to be placed there. This problem is often considered as an obstacle in execution, namely the wife as the applicant for the child's maintenance is unable to carry out the object to be executed in her application. This is normal, because the applicant for execution as an ex-wife may have long been separated from the request for execution as an ex.

3. The father stated that he was unable to carry out the decision regarding the child's maintenance obligations on the grounds of not having assets.

In the process of processing the execution Respondent came and agreed to make a payment of a sum of money and was given 8 days, but in fact after 8 days had passed the Executing Respondent did not carry out the warning or warning based on the report from the Execution Applicant. And after the execution was carried out, in fact the assets of the executed (in this case the ex-husband) did not exist. If this happens, whether the Application for execution from the Applicant must be declared unenforceable or non-executable. Then if it has been declared non-executable, what other legal remedies can be pursued by his ex-wife in order to fight for the rights of her child. Executions that cannot be executed (non-executable) have legal and factual reasons, among which the assets of the executed do not exist. In this case, if there is no actual execution of the executed assets in the execution of the payment of a sum of money, of course the execution cannot be carried out. Likewise in real executions, if the goods to be executed are no longer available, either because they are destroyed or legally transferred on the basis of legal rights, it is impossible for real executions to be carried out.

4. Preventing absenteeism from ex-husbands from carrying out a living decision through guaranteeing their property.

Legal protection of the rights of children who are victims of divorce, so that there are no acts of neglect of children by their fathers who are responsible for supporting their living (vide Article 9 paragraph (1) of Law Number 23 of 2004 concerning PKDRT), then the judge's actions applying the provisions of Article 1131 of the Civil Code regarding negligence in paying child support after divorce is not against the law, it must even be seen as the application of law into concrete cases (*rechtstoepassing*, law-applying). In this context, the judge tries to construct a case and apply the legal norms that can be applied to the case.

The Ideal Concept of Completing the Execution of Religious Court Decisions That Are Not Implemented by Parents Regarding Child Support Obligations After Divorce.

1. Efforts in the Execution of Child Support

Regarding the lawsuit against the obligation to provide maintenance, there are two ways that the plaintiff can take, namely:

a. Filed in the Letter of Law together with the Main Lawsuit

The plaintiff immediately included the application for determination of maintenance, child care costs, and marital confiscation in the lawsuit together with the main lawsuit. In terms of litigation, this method is the most efficient. It didn't waste much time, because when the plaintiff filed a lawsuit, it also included the main lawsuit for the determination of livelihood, child care and maintenance of marital property.

b. Application Filed in Court

At the time of the examination of the divorce case, the wife as the plaintiff filed an application for the court to determine the husband's obligation to pay for his wife's living expenses as well as the maintenance and education costs of the children every month, during the marriage examination process. The application for maintenance and child care costs is subject to examination and a decision is made immediately by postponing the examination of the principal case. The decision is stated in the form of an "interrupted" decision. The judge can refuse or grant. Against a decision that grants a request for a living and child care costs as well as for a marital confiscation, an appeal or cassation cannot be filed. It does not matter whether the grant is in the form of a provisional decision or an interim decision. This is because provisional decisions and interim decisions are not final decisions (*eind vonnis*). Both decisions are forms of decisions that precede the final decision. Then, a provisional decision or an interim decision regarding the cost of the marriage and child care can be implemented immediately. If the judge grants that the husband is obliged to pay the wife's maintenance every month, the husband must do this. If he does not want to carry out voluntarily, the court can carry out through execution.

2. Guaranteeing Father's Property After Divorce

In Indonesian civil law, in order to be able to carry out one's obligations and fulfill everyone's rights in terms of creditor-debtor relationships, the concept of collateral law has been provided, as stated in Article 1131 of the Civil Code which states "All movable and immovable property belonging to the debtor, both that already exist or that will exist, serve as collateral for the debtor's individual engagements."

Because considering the execution of providing support for children is not like execution in civil cases in general, where the execution of providing support for children is continuous (continuity), then to be able to guarantee the implementation of voluntary execution of payment of income from a father to his child given through his ex-wife there must be a guarantee given by the father or ex-husband in the form of movable or immovable property, so that if a father or ex-husband does not carry out the decision to pay a living to the child, the child represented by his mother or ex-wife can sell the property of the father or ex-husband as a settlement of obligations borne in accordance with the judge's decision.

3. Execution Fee Charged to Execution Respondent

As the legal principle in civil procedural law, namely the procedure is subject to fees, this is as stated in Article 2 Paragraph (4) of Law no. 48 of 2009 and Article 121 Paragraph (4), 182.183 HIR, and Article 145 Paragraph (4), 192 – 194 RBg. This is certainly a major consideration for ex-wives to apply for execution of the child support that has been borne by their ex-husband. As mentioned above, the consideration of execution costs which are often far greater than the execution value proposed by the execution applicant is of course the main consideration so that the execution applicant does not file for execution. Therefore, regarding this problem, one of the affirmative law that can be carried out in the context of protecting and fulfilling the child's right to a living is to charge execution costs to the Execution Respondent.

IV. CONCLUSION

The legal consequences for a husband who does not carry out the judge's decision on the obligation to support children after divorce are: In Article 16 it is emphasized that a Civil Servant who refuses to implement the provisions on the distribution of salaries in accordance with the provisions of Article 8, is sentenced to one of the severe disciplinary penalties based on Government Regulation No. 30 of 1980 concerning Employee Discipline Regulations. Considering PP No. 30 of 1980 has been revoked and replaced with PP No. 53 of 2010 concerning Civil Servant Discipline, the imposition of one of the severe disciplinary penalties. Based on PP No. 10 of 1983 Jo PP No. 45 of 1999 concerning Marriage and Divorce Permits for Civil Servants Article 8, namely: If the divorce occurs at the will of a male Civil Servant, then he is obligated to give up part of his salary to support his ex-wife and children. The distribution of salary as referred to in paragraph (1) is one third for the male Civil Servant concerned, one third for his ex-wife, and one third for his children or children. Obligation to give part of salary to ex-wife and children of Civil Servant based on Decree of Head of State Civil Service Agency Number: K.26-30/V.99-6/99 dated October 11, 2016 Regarding Explanation regarding obligation to give part of salary to ex-wife and children of Sipi Civil Servants. In the view of the opinion of the Imams of the Madhab regarding the obligation to support children by a father after the court's decision, there were differences of opinion, both Imam Syafii, Imam Hanafi and the Fukaha.

The problems of submitting the decision of the judge of the religious court regarding the obligation to support children for divorce include: the problem of the execution of the obligation to provide for the father for the maintenance of the child after the divorce. The applicant for execution does not know what property the respondent has. The father is not able to carry out the decision regarding the obligation to support the child on the grounds that he does not have assets. Preventing ex-husband's absentee from carrying out child support decisions through property guarantees. The ideal concept of completing the execution of religious court decisions that are not carried out by parents regarding the obligation to support children after divorce are: Efforts in carrying out the execution of children's livelihood. Guaranteeing husband's property after divorce. Execution fee is borne by the respondent of execution.

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