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Ratio Legis Establishment of Execution and Supervisory Institutions Fulfillment of Child Rights in Family Law Due to Divorce

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ABSTRACT

Children are often neglected in fulfilling their rights in the family, especially if their parents die or divorce. In the Marriage Law and the Child Protection Act, arrangements have been made to fulfill children's rights if the child is abandoned by their parents or abandoned or if the parents are divorced through a court decision. However, parents, especially fathers or those who act as guardians for children, are often negligent and irresponsible in fulfilling their obligations even though there is a judge's decision in court. The purpose of this study is to examine the legal ratio for the establishment of an execution institution and supervisor for the fulfillment of children's rights in family law. The research method used is the normative legal research method. The excitement in this study is the establishment of an execution and supervisory institution in fulfilling children's rights. This institution is very necessary to provide protection, welfare, and justice for the fulfillment of children's rights in family law, especially protection for children due to divorce

INTRODUCTION

Children are a very valuable human resource for the future of the nation. The progress of a nation in the future lies in today's children, therefore the existence of children must be protected and properly prepared so that they grow into quality young generations.

Protection of children is mainly carried out within the family sphere. The family is the smallest group in society and is the birthplace of a child, parents have the responsibility to be able to protect the child, care for him and educate him until the child is an adult. However, the problem is that parents often neglect and even abandon their children, which results in the child's survival into adulthood.

Divorce is one of the things that causes children to neglect their rights, even though it has been regulated in Indonesian family law as stated in Law Number 1 of 1974 Article 41 concerning Marriage as amended by Law Number 16 of 2019 stipulates that the consequences of a divorce due to divorce are:

a. Both mother and father are still obliged to care for and educate their children, solely based on the interests of the child.

b. The father is responsible for all costs of raising and educating the child; if the father is unable to fulfill the obligation, the court may determine that the mother must bear the costs.

Fathers who have the main obligation to

provide maintenance rights often ignore it even though there has been a judge's decision in court. Based on the results of academic research that the authors searched through literature reviews, it was found that there were many decisions containing the right to life of children that could not be enforced because these decisions did not bind the accused (father) to carry them out in an orderly manner, even though many of the defendants (fathers) were still aware of their responsibilities. he replied. his responsibility is to provide maintenance to the child every month, but not as much as is determined in the decision handed down by the court.

According to Amran Suadi, in general the implementation of divorce decisions accompanied by the husband's burden to pay a living is manifested in two ways, namely voluntary implementation and implementation of decisions with an execution mechanism by the Court. The emphasis on decision implementation is voluntary implementation. However, in reality, the prevalence of voluntary implementation does not show a significant number. The data collected shows that of the 88.43% of divorce decisions accompanied by the husband's burden in the Religious Courts, only about 20% can be realized voluntarily by husbands against wives and 80% cannot be realized. This can be seen in the graph of the Realization of the Decision on the Imposition of Husband's Obligations:

Grafik Realisasi Putusan Pembebanan Kewajiban Suami

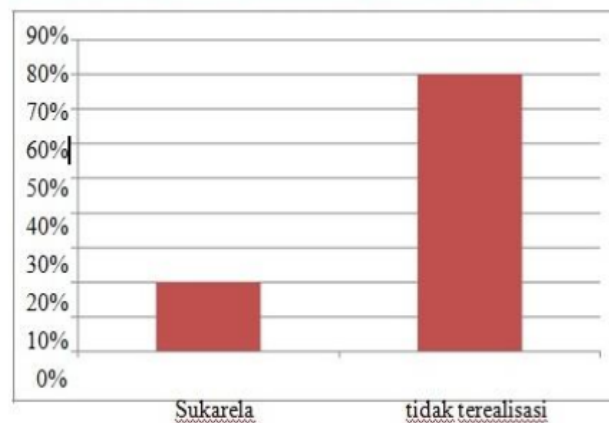


Figure 1. Realization of the Decision to Burden Her Husband

The small amount of implementation of decisions accompanied by coercion against husbands in cases of divorce and divorce in Indonesia is based on indicators of the large number of complaints from seekers of justice (especially wives and children) who do not get their rights after the divorce pledge is pronounced. Although there is no valid quantitative data on this matter, this assumption can only be seen from the many reports to the

Religious Courts regarding the negligence of ex-husbands in carrying out their obligations to pay for iddah, mut'ah and madhiyah maintenance as well as for post-divorce child care.

The table below provides data that the implementation of the decision accompanied by the imposition of obligations on the husband/father was not carried out:

Table 1. Actual Implementation of Decisions that were not Carried Out by the Father

Researcher Name	Title/Decision Study	Findings
Anggita Meirina Lubis, La Ode Angga, Muchtar Anshary Hamid Labetubun	Implementation of Child Allowance in Divorce (Case Study of Ambon Religious Court Decision Number 312/Pdt.G/2018/Pa Ambon	Her ex-husband hasn't provide maintenance to children since the decision until now in the amount of 2,000,000 The cause of not doing a living is the breakdown of communication and the ex-husband remarrying. ¹
13	Study of Compilation of Islamic Law and Child Protection Law on the Livelihoods of Children Due to Divorce in Munggung Village, Pulung District, Ponorogo Regency. Review of Court Decision No. 006/Pdt.G/2015/PA.Po 0061/pdt.G/2015/PA.Po, 0647/Pdt.G/2013/PA.Po	The practice of earning a living for children as a result of divorce in Munggung Village, Pulung District, Ponorogo Regency has not been fulfilled, thus demanding that mothers as single parents try hard to meet the needs of their children. Factors that children's rights to livelihood are not fulfilled are lack of communication, lack of public awareness in law enforcement, and a legal culture of society that is indifferent to the law.. ²
Hidayat al-Anam	Implementation of Provision of Post-Divorce Children's Right to Life in 2014-2015 (Case Study in the Legal Area of the Ambarawa Religious Court). Review of Court Decisions Number; 927/Pdt.G/2014/PA.Amb,	In the 6 cases of decisions examined in their implementation, the father/former husband did not provide maintenance for the child as ordered by the judge. Factors of non-fulfillment of child maintenance costs as a result of divorce: 1. Economic Factors, 2. Mother factors can support their children

	659/Pdt.G/2014/PA.Amb, 243/Pdt.G/2014/PA.Amb, 007/pdt.G/2015/PA.Amb, 796/pdt.G/2015/PA.Amb, 1056/pdt.G/2015/PA.Amb,	3. Communication factor ³
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This causes his ex-wife (the child's mother) to work hard and even do work that is prohibited by religion and law, such as being a prostitute - to meet the needs of her child, while her father feels free from responsibility to survive. their children, let alone most of the fathers of those children are preoccupied with life with their new wives in their new households.

A father's negligence in fulfilling his child's maintenance rights can be requested for execution by his ex-wife -the child's mother- but the request for execution in this case is not easy because the cost of execution is too expensive compared to the value of the child's maintenance obligations that must be fulfilled and must be carried out every month until the child it's mature. Various efforts and thoughts in realizing the fulfillment of children's maintenance rights as a result of divorce were put A father's negligence in fulfilling his child's maintenance rights can be requested for execution by his ex-wife -the child's mother- but the request for execution in this case is not easy because the cost of execution is too expensive compared to the value of the child's maintenance obligations that must be fulfilled and must be carried out every month until the child it's mature. Various efforts and thoughts in realizing the fulfillment of children's maintenance rights as a result of divorce were put forward by experts, including through the application of the dwangsom institution , guaranteeing the father's assets and the application of criminal sanctions for negligent fathers.

As a comparative study, Malaysia and Australia also experience the same thing in terms of child maintenance rights after divorce where not all post-divorce parents comply with the judge's demands to provide maintenance for their children. So in 1988, the Australian government passed new laws permitting the registration and collection of child maintenance obligations and in 1989 issued

regulations setting out the formulation of a methodology for assessing parental obligations to children.

In Malaysia, to address the problem of child support rights as a result of divorce, an institution called the Family Support Division (BSK) was formed. This agency was formed in 2007 at the urging of civil society for a more proactive and effective agency dealing with individuals who do not comply with court orders.

Based on the background mentioned above, this research will examine more deeply regarding the Ratio Legis forming an execution institution and overseeing the fulfillment of children's rights in family law due to divorce.

METHODS

In this study, the authors used normative legal research with the focus of this research on the study of the legal ratio of the establishment of an execution institution and supervision of the fulfillment of children's rights as a result of divorce. The approaches used in this research are the case approach, the statutory approach, and the conceptual approach. The case approach as the research background begins with a court decision that has permanent legal force regarding the fulfillment of children's rights as a result of divorce which is often ignored by the father and then examined from the point of view of existing legal regulations in regulating their fulfillment. children's rights as well as a conceptual approach originating from the perspectives of views developed in the science of law.

The results of the research were then analyzed qualitatively by interpreting, describing, describing, and compiling the collected data, both primary and secondary data, in a logical systematic manner according to the problems that had been formulated.

RESULTS AND DISCUSSION

A. Children's Rights in Family Law

Child is someone who is not yet 18 (eighteen) years old, including children who are in the womb. Children are a very important position as a result of marriage, therefore several rights and obligations must be obtained by a child as a legal subject. Children have the same rights and obligations as adults which are regulated by statutory provisions in carrying out legal actions. Parents or guardians are obliged to be able to meet the basic needs of their children.

Indonesia's attention to children's rights has gone long before the existence of the UN Declaration on the Rights of the Child. This can be proven by the issuance of Law Number 4 of 1979 concerning Child Welfare. The law (Chapter II, article 2) confirms the existence of 4 groups of children's rights, namely: first, children have the right to welfare, care, care and guidance based on affection both within the family and in special care to grow and develop. usually; secondly, children have the right to receive services to develop their abilities and social life, in accordance with the culture and personality of the nation, to become good and useful citizens; third, the child has the right to care and protection, both during the womb and after birth; Fourth, children have the right to environmental protection that can harm or hinder their normal growth and development.

The post-amendment UUD 1945 included children's rights as human rights as stated in Article 28 B paragraph (2) "every child has the right to survival, growth and development and is entitled to protection from violence and discrimination. The Rights of the Child which was declared on November 20, 1989, children's rights are grouped into 4 (four) categories, namely: the right to live, the right to grow and develop, the right to receive protection, and the right to participate. responsible for all the maintenance of all the rights attached to the child. Parents are obliged to protect their children so that they do not become victims of the actions of anyone (individuals or groups, private organizations or the government) either directly or indirectly. Children need to receive protection so that they do not experience losses, both mental, physical and social, considering that the situation and condition of children cannot protect themselves from various actions that cause mental, physical and social harm to others. Children have the right to services to

develop their abilities and social life and are entitled to protection against the environment that can harm or hinder their growth in a reasonable manner..

Among the children's rights mentioned above that must be fulfilled are living rights such as clothing, food, education and health. This obligation applies both during the marriage of the parents and after the marriage is broken up (divorced) as stated in the marriage. Law Number 1 of 1974 concerning Marriage Article 45 (1) "Both parents are obliged to look after and educate their children as well as possible. (2) The parents' obligations as referred to in paragraph (1) of this article apply until the child marries or is able to stand on his own, whose obligations still exist even if the marriage between his parents is broken.

As a result of the breakup of the parental relationship in marriage the obligation of the child is emphasized in Article 41 paragraph (1) Both the mother and the father are obliged to care for and educate their children, solely based on the interests of the child if there is a dispute over child control, the court shall render the decision (2) The father is responsible for all costs of maintenance and education needed by children; if it turns out that the father is unable to fulfill the obligation, the court may determine that the mother must bear the costs.

The article explains that as a result of the breakup of a marriage, there are two things that become the obligations of parents towards their children which do not break up until the child is an adult, namely the right to maintenance and the right to maintenance costs. Both of these rights are rights to the survival of a child that must be fulfilled by parents as a form of fulfilling children's human rights as human beings which must be recognized and protected by law. The right to survival is the most basic human right, without this right the protection of other human rights is meaningless. Therefore, these human rights are non-negotiable (non-derogable rights) in the sense that their implementation cannot be postponed, revoked, reduced, or distorted even though their parents are divorced.

Expenditures for raising children within the limits of the ability and finances of the parents. If parents do not have the ability, the state must be able to take over to be able to assist parents and those responsible for children with material benefits or assistance programs based on state policy.

This right is formulated in Article 27, paragraph 3: States parties, under national circumstances and within their means, will take appropriate measures to assist parents and those responsible for children to exercise this right and, if necessary, provide material assistance and support programs, especially those related to nutrition, clothing, and housing.

Indonesia ratified the Convention on the Rights of the Child through Presidential Decree Number 36 of 1990 dated 25 August 1990. With this ratification, Indonesia has voluntarily bound itself to the provisions contained in the Convention on the Rights of the Child which are declared effective. on October 5, 1990. With the ratification of the Convention on the Rights of the Child then binds participating countries to guarantee children's rights (enforcement of children's rights), and give birth or establish children's rights (children's rights) as part of the legislation invitation. national law that binds the territory and people of Indonesia.

As a state party, the Indonesian government has 2 (two) legal consequences, namely first, recognizing the existence of children's rights and the state's obligation to implement and guarantee the implementation of children's rights.

B. Ratio legis Formation of Implementing and Monitoring Institutions for Fulfillment of Children's Rights in Family Law

The birth of the Marriage Law Number 1 of 1974 is a government effort that must be obeyed. to guarantee human rights in achieving happiness in an institution called family. In the case of divorce, for example, the Marriage Law provides clearer details about the procedure. This is for the happiness of every party, be it ex-husband, ex-wife, or children. The obligation for divorced parents, in this case the father, to remain responsible for fulfilling the right to provide for his child as referred to in Article 41 paragraphs 1 and 2 must be carried out, but often the father is negligent in carrying it out. obligations even though there has been a legally binding decision.

In this regard, many children whose rights are ultimately not fulfilled so that mothers have to struggle to provide for their children besides having to care for them even though the father is already able to support his child. Therefore, further arrangements are needed in terms of the implementation of the judge's decision where it is necessary to have an institution that oversees the decision.

Based on the results of the research study, it is necessary to have regulations that can oversee the implementation of court decisions regarding child maintenance rights. If you look at the models that have been implemented in various countries regarding the supervision of the fulfillment of children's rights as a result of the divorce of their parents, it is also deemed necessary that the State of Indonesia can make a regulation that can complement the legal order based on a judge's decision that the right to provide for children as a result of divorce is borne by the father with The legal considerations for the decision are Article 41 Law Number 1 of 1974 concerning Marriage that as a result of divorce, the father's obligation to provide for his child until he reaches maturity is manifested in other procedures that can provide legal certainty and legal guarantees that the father will be responsible for fulfilling his rights. his son's rights.

The results of the author's study of the practice carried out by Malaysia and Australia in forming supervisory bodies against judges' decisions related to fulfilling children's livelihood rights are far more effective and fulfill a sense of justice because there is a role for the state to participate in supervising. Monthly payment of living expenses for children. If in practice the father who is deemed capable does not carry it out, the institution can immediately execute or confiscate his father's assets. However, if the father is deemed incapacitated because he does not have a job and the mother also does not have adequate income, then he can be categorized as a poor group whose rights can be guaranteed directly by the state and supervised by the state.

In other cases, if the mother has sufficient capacity and has a decent job to support her child and based on a court decision as referred to in Article 41 letter b, it can be transferred to the mother. This must also be based on a mutual agreement so that the mother does not bear the burden alone because the mother is already responsible for her custody.

The hard work done by a mother to meet the economic needs of the family often affects the child's psychology. As a single parent, mothers must concentrate between work and free time to educate children. and in the end neglected children which have an impact on the character of children in the future. For teenagers, divorce is a family breakdown that will destroy their lives. At least the divorce caused anxiety about his life in the present and the

future. Children whose parents are divorced suffer greatly and suffer even more than their parents. Del Boca in his paper entitled "Mothers, Fathers, and Children after Divorce: The Role of Institutions" emphasizes that the existence of a supervisory institution can provide interventions to reduce the negative impact of divorce on children's welfare in the form of child care costs and also child custody.

The existence of this supervisory institution can be used as a coercive institution for you to carry out court decisions. Zakaria and Nurhadi in their research on *"Children's Income from the Dual Perspective of the Legal System in Indonesia"* stated that:

"In Indonesia, when a divorce occurs, there is no coercive institution that forces the husband to obtain child custody that has been decided by the court. Even though it is clear that not paying money will impoverish children and limit children from developing themselves. Because it could be, the mother as the holder of child custody has financial limitations to be able to finance the life and education of her children. As a result, court decisions for child custody benefits are often felt to be lacking in toothache, leaving only decisions on paper.."

A part from being a coercive institution for fathers in fulfilling their obligations, it can also become a supervisory institution for parents, both fathers and mothers, in caring for their children so that good parenting is achieved for their children and can also be a supervisor for their children. survival of children due to divorce so that if unwanted things happen early on and can already be known so that action can be taken by the state immediately.

According to Nurul Huda, one of the justices at the Supreme Court of the Republic of Indonesia, what is needed is an execution institution that is independent and has the authority to execute court decisions free of charge. According to him, until now there has not been a lawsuit against the right to life that can be executed because the execution costs are quite large and not in accordance with the demands for the right to life that must be paid every month. This is different from the implementation of a lawsuit for inheritance or joint assets which can only be done once and the costs incurred are relatively smaller than the object of the dispute.

Nurul Nuda's emphasis in this case is on the execution institution which is regulated by the state, while the supervision aspect can be a second

function. Based on this opinion, according to the researcher, it is very necessary to have these two components, namely the existence of an executing agency authorized to carry out court decisions and a supervisory institution authorized to oversee implementation and further regulate. the position of this institution in fulfilling children's rights from various aspects. These two institutions can be merged into one, namely the Implementing and Monitoring Agency for the Fulfillment of Children's Rights.

The establishment of an Implementing and Monitoring Agency for the Fulfillment of Children's Rights is a legal breakthrough in the development of Indonesian law to address the issue of fulfilling children's rights. The purpose of this institution is to be able to protect children fairly by supervising and implementing court decisions if their parents are negligent in carrying out these decisions, besides that they can also supervise the management of children's assets originating from their child's inheritance. deceased parents and other functions if necessary. included in the scope of protection and supervision of children's civil rights.

Therefore, according to the researcher, as an effort to realize justice for children by ensuring that the rights of children due to the divorce of their parents are not lost in their survival, legal arrangements are made to fulfill children's rights as a result of divorce, it is necessary to arrange an institution to supervise the fulfillment of rights. a child whose function is to oversee the implementation of court decisions. Regulatory bodies can be established through government regulations.

The basis for the regulation of the establishment of an implementing agency and supervision of children's rights can be reviewed based on philosophical, sociological and juridical foundations, namely:

First, the Foundation of Philosophy. The foundation is a consideration or reason that illustrates that the laws and regulations that are formed take into account the view of life, awareness, and legal ideals which include the mystical atmosphere and philosophy of the Indonesian nation originating from Pancasila and the Preamble of the 1945 Constitution of the Republic of Indonesia. The principles of the precepts in Pancasila are the main foundation that binds State Administrators in formulating policies

that have the dimensions of God, Humanity, Unity, Democracy, and Justice.

These five precepts become the spirit of every policy drawn up by State Administrators to realize the ideals of a united, sovereign, just and prosperous Indonesia. Where these ideals will only be achieved if State Organizers guarantee the welfare of every citizen, including guaranteeing and protecting children's rights as appropriate human rights.

Fair and civilized humanity is the basis of the protection of human rights, namely humanizing humans in a civilized manner without reducing their rights in the slightest, including the rights of children which must be fulfilled. The noble value contained in this second precept is to recognize and treat human beings according to their dignity as creatures of God Almighty. Families, communities and the state must be responsible for fulfilling children's rights in their survival because children are one of the important elements of the nation that will continue the existence of the Indonesian nation so that children get guaranteed justice and civility in their lives. all aspects of national and state life.

That social justice for all Indonesian people in the fifth precept is a reinforcing basis in fulfilling children's rights which emphasizes how the basis for child growth and development is guaranteed by the state so that children can develop positively in their family and social environment.

The realization of arrangements for the establishment of supervisory institutions for children to guarantee the fulfillment of the right to livelihood for children and other rights due to parental divorce is an effort for children to get access to justice facilitated by the state as an embodiment of the values of social justice and human justice.

Second, the Sociological Basis. This foundation is a consideration or reason that illustrates that regulations are formed to meet community needs in various aspects. The real sociological foundation concerns empirical facts regarding the development of problems and needs of society and the state.

As a result of the divorce of their parents, there are still many children whose rights are neglected, especially in terms of the cost of living from their father, even though there has been a judge's decision that has permanent legal force (executive power). However, the judge's decision is often ignored by the father which will have an impact on the child's development. According to Kartono, juvenile

delinquency or what is known as juvenile delinquency is a symptom of social pathology in adolescents caused by a form of social neglect.. As a result, they develop deviant forms of behavior. One of the causes of juvenile delinquency is family and parent divorce, low quality of parent-child relationships, children living far from their parents and lack of supervision from other authority figures, as well as poverty and violence in the family environment.

Based on these problems, the state must play a role in protecting children, especially in fulfilling children's rights, by establishing a supervisory institution. The function of this supervisory institution in the future can be used not only in supervising the implementation of the judge's decision regarding child maintenance rights that must be paid by the father due to divorce but can also function in other aspects, for example children whose parents have died due to death, supervision in the management of children's assets from his parents' inheritance and supervision in alternative care.

Third, the Juridical Foundation. The basis is a consideration or reason that illustrates that regulations are formed to resolve legal issues or fill legal voids by taking into account existing statutory regulations, which will be amended, or which will be repealed to ensure legal certainty and a sense of justice for the community. . The juridical basis concerns legal issues relating to the substance or material being regulated so that it is necessary to form new laws and regulations.

Juridically, the implementation of child protection must be based on the 1945 Constitution of the Republic of Indonesia and various other applicable laws and regulations. The application of this juridical basis must be integrative, namely the application of laws and regulations in an integrated manner from various related fields of law.

With the constitutional arrangements for children's rights contained in the 1945 Constitution, it can be seen that the legal politics of child protection in the constitutional system of the Republic of Indonesia has gained a very strong position. As a rule of law, the state and government have established various laws and regulations, which are related to the survival of children as human beings, fulfillment of their welfare, as well as legal protection of their rights and sanctions in case of violation of the law. .

The 1945 Constitution of the Unitary State of the Republic of Indonesia Article 28B (paragraph 2) states that every child has the right to survival, growth and development and is entitled to protection from violence and discrimination. And Article 28D guarantees that everyone, including children, men and women have the right to recognition, guarantees, protection, fair legal certainty and equal treatment before the law. This is also stated in the fourth paragraph of the Preamble of the 1945 Constitution which reads "to form an Indonesian State government that protects the entire Indonesian people and all of Indonesia's bloodshed and realizes public welfare, educates the life of the nation, and participates in carrying out a world order based on freedom, eternal peace and justice." social." ". This sentence implies that the State guarantees the rights of everyone and is obliged to protect, promote and fulfill these rights from discriminatory behavior.

CONCLUSION

Based on the description above, it can be concluded that children often become victims of parental conflicts that end in divorce. In marriage law, the consequences of divorce have been regulated, so that the father is still obliged to fulfill his child's maintenance rights, but the father is often negligent even though there has been a judge's decision that has permanent legal force. Therefore, it is necessary to have an implementing and supervisory agency for the fulfillment of children's rights in family law which aims to provide fair protection for children by supervising and implementing court decisions if their parents are negligent in carrying out decisions, besides that they can also oversee the administration of civil rights. other kids.

The basic foundation for the formation of this institution can be seen in three aspects, namely the philosophical foundation and the sociological foundation. First, the philosophical basis comes from the philosophical values of Pancasila in guaranteeing the fulfillment of children's rights to obtain justice facilitated by the state as the embodiment of the values of social justice and human justice. Second, the Sociological Foundation which is based on the point of view of the community's needs in dealing

with social problems to realize child protection, and third, the Juridical Foundation, to address legal issues or fill legal voids in fair child protection. it is necessary to make a regulation relating to the survival of children as human beings in fulfilling their rights.

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