



CHILD SUPPORT FULFILLMENT POST-DIVORCE: A Study On The Gap Between Islamic Family Law And Indonesian Positive Law In Tanjung Morawa, Deli Serdang

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Abstract

This study examines the reality of fulfilling child support rights after divorce in Tanjung Morawa District, Deli Serdang, to highlight the wide gap between the idealism of Islamic Family Law (IHL) and Indonesian Positive Law and the reality on the ground. Using a combined normative-empirical legal research method, this study examines the implementation of law in society, supported by qualitative methods and a sociolegal approach to provide a holistic view of legal phenomena. The study found that despite a strong legal framework, the level of default (failure to pay) on child support is very significant (75% of cases are problematic). The main problem is no longer at the decision stage, but at the implementation and enforcement stages, hampered by economic factors (income fluctuations in the informal sector), procedural (complex and expensive court execution systems), and socio-psychological (bad faith fathers who use support as a bargaining chip). Mothers (ex-wives) tend to choose non-formal channels and bear a double economic burden. Therefore, this study concludes that although substantial legal protection is in place, the effectiveness and accountability of decisions are still very low, urging the need for reform of execution procedures and the establishment of stricter criminal sanctions to guarantee the future of children.

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A. INTRODUCTION

Divorce in the Great Dictionary of the Indonesian Language (KBBI) comes from the word divorce which means separation or separation between husband and wife (Department of National Education 2008). The term divorce is not a taboo sentence that is rarely heard in the world of marriage. Divorce itself in the context of Islamic law is often termed as talaq or Furqah. Divorce is legal in the eyes of Islamic law, based on paragraph 1 in Q.S Ath-Thalaq and legal in the eyes of Indonesian law as stated in Law No. 1 of 1974 concerning Marriage. Divorce occurs because the husband and wife can no longer maintain the firmness of their household caused by various factors.

Divorce is a social phenomenon that can affect various aspects of life. One of them is the aspect of family life, especially for children. Divorce has a profound impact on children's lives, especially in crucial issues related to post-divorce child support rights (Darmawan and Afrinal 2022). Child support is not only related to material things, but many things; such as care, attention and love for both parents. Divorce cases have become a real phenomenon in the life of modern society that has spread widely throughout the archipelago. It was recorded that divorce cases in Indonesia in 2022 were the highest number for the last 6 years, which was 448,126 cases, then there was a decrease of 52 thousand cases from the previous year (Rahman et al. 2023).

Interestingly, divorce cases that occurred at the Lubuk Pakam religious court, Deli Serdang experienced a significant increase in 2024, recorded 3488 cases. By the end of 2024, the Lubuk Pakam religious court could handle 300-310 divorce cases. And the third largest contributor to divorce cases is Tanjung Morawa sub-district. It was recorded that in the last 3 years, the Lubuk Pakam religious court handled 2100 divorce cases specifically in Tanjung Morawa sub-district. Meanwhile, child support cases listed in each divorce case have been 130 cases in the last three years.

Of course, this is very interesting to discuss, moreover, Tanjung Morawa is one of the sub-districts that is famous for its industrial world and human mobility that is quite dense, so that it affects the state of households and the economy of the community. It is recorded that the population of Tanjung Morawa sub-district is 69,675 Heads of Families (KK) with a population of 231,459 people, consisting

of 116,548 males and 114,911 females. Apart from the significant divorce rate, the selection of Tanjung Morawa sub-district as the place of research was also based on the fact that this area is close to the administrative center of Deli Serdang, namely Lubuk Pakam. Not only that, the Tanjung Morawa area also has semi-urban characteristics, where the people have diverse work backgrounds and varied economies, such as the agriculture, industry, trade and office sectors. These factors are very strategic and very important, because they can produce research that is rich in insights and information, it is very important to test the realization of child support fulfillment with varied cases, and be able to see firsthand the gap between the legal norms that have been established and their realization in the field.

Based on the results of an interview with the clerk of the Lubuk Pakam religious court, the researcher concluded that the realization of child support rights after divorce was running properly. This is marked by the absence of any cases of resubmission or re-lawsuits related to child support rights that have been decided by religious courts. However, interestingly, researchers found different things related to the realization of post-divorce child support rights in the field. This is based on several factors, such as; The reluctance of the relevant parties to report unfulfilled child support rights to the court because they do not want to be complicated, do not want to make a fuss with the ex-husband's family, the ex-husband loses communication, the ex-husband remarries, the limitations of the religious court in supervising the course of child support rights after divorce and so on.

Some examples of divorce cases that occurred in Tanjung Morawa sub-district are divorce cases that befell the family of Mrs. P, who has two daughters who were very rarely sent money by her ex-husband for living expenses and children's education costs. The same thing also happened in the family of Mrs. L, who has one son who is still in high school. So these two housewives work somewhere to earn their own income in order to pay for their children's school and meet the cost of living with their children. Another case occurred to Y's mother who sued for divorce from her husband. It is the same with the case of N's mother who sued for divorce from her husband. These two housewives sued for divorce from their husbands due to internal factors. Until now, the children of each of these

housewives do not get the right to alimony from their fathers. So, these two housewives are forced to work hard to meet the needs of their children.

Divorce is often chosen as the last resort to save oneself from domestic violence. Divorce does not only have an impact on husbands and wives, but will also affect children and the environment. So that rights related to children are very important, one of which is the issue of child support rights. Although the issue of child support rights has been clearly regulated and has a strong legal umbrella, as stated in positive law (Law No. 1 of 1974) and in Islamic law which emphasizes the importance of child support obligations as part of parental responsibility. However, in reality, there is still a phenomenon of child support rights that has not been properly realized, especially after divorce (Darmawan and Afrinal 2022). There are many factors that hinder the fulfillment of this child support right, such as; economy, communication and legal awareness.

So that research on the realization of the fulfillment of post-divorce child support rights in Tanjung Morawa District is very important and very strategic to be carried out. Considering that Tanjung Morawa is one of the areas that is inseparable from the problem of divorce and the fulfillment of child support rights. Not only that, the issue of post-divorce child support rights is also very urgent to be discussed for the sake of the future sustainability of the nation and state which lies on the shoulders of the young generation of Indonesia. Thus, this paper comes by providing a clearer picture of the adequacy of the implementation of post-divorce child support rights to post-divorce religious court decisions and revealing the factors that hinder the realization of post-divorce child support in Tanjung Morawa sub-district. The results of this research can also be used as a consideration for relevant government institutions to formulate policies related to post-divorce child welfare.

B. METHODS

The type of research used in this study is normative-empirical (combined) legal research. Normative-empirical legal research is legal research that examines the realization or implementation of a law in a legal event that occurs in society (Kristiawanto 2024). Thus, this study uses a qualitative method. So that the data produced from this study is in the form of analytical descriptive. Suyanto, Legal

Research Methods Introduction to Normative, Empirical and Combined Research (Gresik: Unigres Press, 2022): 179. This method is used in order to explore and understand more deeply legal events in society related to post-divorce child support. The data produced in this study was obtained through interview, observation and documentation techniques (Sigh, 2012).

The researcher chose this type of normative-empirical research not because of chance, but because this research focuses on 2 aspects; namely normative and empirical aspects. The normative aspect of this study is in the form of an analysis of the legal basis related to the fulfillment of child support based on Islamic Family Law (Al-Qur'an, Hadith, Fiqh, KHI) and Indonesian Positive Law (Law No. 1 of 1974 and the Child Protection Law). In addition, researchers also use a case study method, which is to dig up information about a certain phenomenon in a certain community in a certain period (Nasarudin et al. 2024). The researcher focuses on specific locations that allow researchers to explore detailed information related to the realization of post-divorce child support fulfillment.

The approach used in this study is sociolegal approach. This approach provides a more holistic view of legal events or phenomena that occur in society. Jonaedi Efendi and Prasetijo Rijadi, Normative and Empirical Law Research Methods (Jakarta: Kencana, 2022): 153. This approach uses the social sciences and law to examine positive law. So that by using this approach, the researcher is able to examine and analyze the realization of post-divorce child support rights based on the perspective of Islamic family law and positive law in a broader and deeper way. Researchers can also explore factors that hinder the implementation of post-divorce child support rights.

This research will begin in January 2024 until this research is completed. This research focuses on Tanjung Morawa sub-district, Deli Serdang Regency. This area was chosen because of its very strategic location. Apart from the high number of divorce cases that occur in this sub-district, Tanjung Morawa is also an area that is very close to the administrative center of Deli Serdang, namely Lubuk Pakam. So that it allows researchers to get the desired data and information. The selection of Tanjung Morawa sub-district as a research area is not due to chance, but because of the characteristics and complexity of the economy related to the problem of

realization of child support after divorce, so that it can produce research findings with empirical weight and high policy relevance.

C. RESULTS AND DISCUSSION

Form and Amount of Post-Divorce Child Support

Based on the results of the study, the researcher found that the determination of child support after divorce that occurred in Tanjung Morawa sub-district was generally carried out through two events; namely through court decisions and out-of-court agreements (mediation/non-litigation). The determination of the amount of child support rights after divorce that occurred in Tanjung Morawa sub-district through a court decision has been 130 cases in the last 3 years. In these 130 cases, the determination of child support rights is explicitly contained in the decision of the Lubuk Pakam religious court. For example, the decision No. xxxx/Pdt.G/2025/PA. Lpk (first verdict). In this decision, the ex-husband is obliged to provide child support of Rp. 8,000,000 per month until the child is an adult or independent. This amount of alimony is given to all children (3 children), all of whom are under 12 years old. This amount of alimony does not include education and health costs.

Another example is in the decision No. xxxx/Pdt.G/2025/PA. Lpk (second verdict). In this ruling, the ex-husband is obliged to provide child support of Rp. 3,500,000 per month until the child is an adult (age 21 years) or independent, and has an increase of 10% every year. Although the amount of child support has been determined in the verdict, in reality the ex-husband did not comply with this verdict. The ex-husband only paid this alimony for 3 months and after that only gave an allowance whose nominal amount was very far from the verdict. This is in accordance with the submission of the ex-wife (Mrs. P) who said that "the full alimony of 3,500,000 thousand is only given for 3 months. After that, he never again provided full support. At most, only occasionally give pocket money. That's not much. Around 100,000 thousand to at most 200,000.

The determination of the amount of post-divorce child support in Tanjung Morawa sub-district through an agreement (non-litigation) or a peace agreement that occurs outside the court actually has a greater chance of default or failure. But in practice in the field, researchers still find cases like this. This is because the

plaintiff did not include a child support claim, nor the judge did not use *ex officio* authority. Although the obligation to implement *an ex officio* child support determination system has been mandatory since 2018, the researcher found a court decision that did not include child support in its decision. So, to get the rights of her child, the ex-wife made a peace agreement with the ex-husband.

For example, what happened in the case of Mrs. N, whose child support was agreed by both parties (ex-wife and husband) orally; which was Rp. 1,000,000 per month. In the first and second months, the fulfillment of child support went smoothly. However, in the following month, the child's maintenance became stagnant. This can be seen from the words of Mrs. N (ex-wife) "*who has never fulfilled her children's maintenance rights. I'm tired of begging and begging for more, reminding myself that I have to bear the needs of these children myself, I'm already lazy to make a fuss and get drunk.*" Another example occurred in the case of Mrs. Y, whose child support was agreed by both parties (ex-wife and husband) orally; namely Rp. 3,000,000 per month. However, in reality, the fulfillment of child support does not run smoothly. The ex-husband only paid child support in full for a few months, counting only 4 months in a row. After that, the ex-husband rarely gave money to his children. This can be seen from the words of Mrs. Y (ex-wife), "*in the beginning the alimony was fulfilled. But after 4 months, he never gave money again. Occasionally give money to children. That's a million at most. And it's very rare.*".

Realization of Post-Divorce Child Support Fulfillment

Conditions of Fulfillment, From the explanation above, it can be understood that of the 4 divorce cases involving child support rights in Tanjung Morawa sub-district, there is only 1 case where the alimony is completely fulfilled, and there are 2 cases where the child support is not paid according to the agreement or decision, and there is 1 case where the child support is not fulfilled at all. To more easily understand the percentage of fulfillment of child support after divorce in Tanjung Morawa sub-district, the following researcher presents a table:

Figure. 1. The conditions for the fulfillment of child support after divorce in the Tanjung Morawa sub-district

Implementation Pattern	Case Percentage	Description of Realization
Fulfilled	25%	Paid as per the amount
Uncertain	50%	Paid not on time and not according to the decision or agreement
Not fully fulfilled	25%	Not paid at all

Source: The results of the researcher's 2025 observation

Based on the results of an interview with the chief clerk of the Lubuk Pakam religious court, no divorce cases related to child support rights were found that were not met. This can be clearly seen from the statement of the chief clerk of the Lubuk Pakam religious court, Mr. who said "*so far, there has never been an application for execution related to child support rights. There were no reports of child support not being fulfilled by the ex-husband or the defendant. However, the reality on the ground is not necessarily like this. There may still be cases of unfulfilled alimony, but they are not reported back to the religious court.*" The reality in the field, researchers found cases of child support that were not fulfilled in accordance with the Lubuk Pakam religious court decision or according to the needs of the child. like the case that happened to Mrs. P. This happened because Mrs. P, did not want to go back and forth to the religious court, spent money again and also took up quite a lot of time, energy and thought. Mrs. P chose not to report back to court and tried to provide for her own children. This is also due to poor communication with her ex-husband. In line with what Mrs. P said, at the time of the interview "*it was not that she did not want to report back to the court, but she was too tired with the complicated procedure, time-consuming, money, energy and mind. Finally, I have tried to take care of the children's needs.*"

Obstacles and Inhibiting Factors, Generally, the phenomenon of unfulfilled child support after divorce is based on several reasons, such as; economic factors, law enforcement issues, social factors and psychological factors. The obstacles and obstacles to the realization of post-divorce child support in Tanjung Morawa sub-district are not only a single issue, but also a combination of several dimensions. In this research, researchers found several obstacles and factors inhibiting the

realization of the fulfillment of post-divorce child support in Tanjung Morawa sub-district, as follows:

Economic Factors, Economic factors are a more common factor, more often found in the constraints of fulfilling child support after divorce. In this study, researchers found that economic factors are the most frequent factors that cause unfulfilled child support after divorce. As happened to N.'s mother's family in the interview, N's mother said that what hindered the process of fulfilling her child's alimony after divorce was because of her ex-husband's economy. After the divorce, her husband did not have a permanent job. This economic factor is also the reason why Mrs. N divorced her husband. In the final years of their marriage, her husband often played online gambling, until he became addicted and destroyed his family's economy. This is in line with the words of Mrs. N, *"as far as I am concerned, now she no longer has a permanent job. Since playing online gambling, his addiction, enthusiasm and responsibility for making a living have also decreased very much. Let alone providing a living, giving pocket money to children who cannot afford it"*.

The assumption that the ex-wife is able to provide for her children, The next factor that hinders the realization of the fulfillment of child support after divorce in Tanjung Morawa sub-district is the ex-husband who thinks that his ex-wife is able to provide for his children. Of course, this assumption arises not because there is no reason. Usually, this assumption arises because of the ex-husband's lack of responsibility for his children after divorce. If the ex-husband has a high sense of responsibility, of course he will understand and understand that child support after divorce is his responsibility, even though the ex-wife has sufficient income of his own.

This happened in the case of Mrs. Y. Mrs. Y is a housewife, but she also has a home sewing business whose turnover is also quite decent. So, her ex-husband thinks that Mrs. Y is able to support and meet the needs of her children. As Mrs. Y said in an interview with the researcher, *"in the beginning the alimony was fulfilled. But after 4 months, he never gave money again. Occasionally give money to children. That's a million at most. And very rarely. He considered that I was able to meet the living expenses of the children because I had a sewing business at home."*

The Difficulty of Communication between Ex-Wife and Ex-Husband, Ex-husbands often avoid ex-wives, so the realization of alimony is not fulfilled properly. This is

due to the ex-husband's lack of awareness of his obligation to fulfill his child maintenance rights after divorce. Ex-wives often try to contact their ex-husbands to collect their responsibility for child support, but ex-husbands restrict communication or even block communication altogether. So that the ex-wife also feels bored, and tired of continuing to fight for her child's maintenance rights after divorce.

As happened to Mrs. N.'s family in an interview with the researcher, Mrs. N said, *"her children's maintenance rights have never been fulfilled. I'm tired of begging and begging for more, reminding myself that I have to bear the needs of these children myself, I'm already lazy and noisy. If the children miss their father, they are not their father but never adopted. Lately, the WA has never been active, maybe my number has been blocked!"*

Ex-Husband Remarries, After divorce, not a few ex-husbands choose to remarry. Fostering and building a household with his new partner. The ex-husband is preoccupied with his new household affairs, so he often neglects his obligations to his destroyed household. As happened to Mrs. Y's family, she said *"the reason I divorced my ex-husband was because he was polygamous and was more inclined to a second wife. Even after the divorce, he still leaned towards his second wife and his new family. So that the children's livelihood is not really paid attention to and is not fulfilled optimally."*

Efforts made by mothers for their children's maintenance rights

Based on a case study in Tanjung Morawa sub-district, the efforts made by the mother (ex-wife) as the holder of custody of her child to fight for the realization of child support after divorce are as follows:

Direct communication and personal negotiation, From the 4 divorce cases sampled in this study, it was found that the four ex-wives from each case made the same efforts to strive to fulfill their children's maintenance rights. They try to contact their ex-husbands directly, either by phone, text message, or via whatssApp to remind or reprimand them about outstanding maintenance obligations. This method is only effective in the short term or in cases where the level of conflict is still low and the obligatory maintenance is still in good faith. In the case of default based on bad faith or high conflict, this communication can actually trigger a new argument. As Mrs. Y said, *"I'm tired of begging and begging for more, reminding me that the last time I have to bear the needs of these children myself, I'm already lazy to make a fuss and get bored."*

Involving the Family, The mother (ex-wife) asks for help from third parties, especially the parents or extended family of the ex-husband, to pressure and remind them of their maintenance obligations. Family involvement has proven to be more effective than personal communication, especially if the ex-husband's family has a strong influence and upholds religious/social norms. However, this effectiveness depends heavily on the family's willingness to intervene.

Seeking Alternative Sources of Income, When the ex-husband's child support is not met, inevitably the ex-wife bears her own economic burden to meet the needs of her children. Like Mrs. Y, she is a housewife who is also self-employed. Have a home sewing business. Mrs. P, a housewife, but she also works as a cook (kitchen mother) at one of the Islamic boarding schools in Tanjung Morawa to meet the needs of her children. Mrs. N, a housewife who also opened a tutoring service at her home. All the efforts made by this ex-wife are a form of their efforts to meet the needs of their children without having to bother asking and expecting responsibility from their ex-husband.

Of the four cases sampled in this study, the researcher did not find any efforts by the ex-wife (mother) to realize her child support through formal efforts or legal channels. This is because the process is complicated, long, time-consuming, energy, mind and also money. As stated by P's mother, "*it's not that I don't want to report back to the court, but I'm too tired of the complicated procedure, which takes time, money, energy and thought. Finally, I have tried to meet the needs of the children myself.*" This formal effort is not a top option, due to the ex-wife's lack of awareness of the law and the lack of information about the relevant legal procedures. Not only that, this formal effort is also not in demand because the results are not necessarily a solution according to the wishes of the ex-wife.

Analysis of Fulfillment of Child Support After Divorce Reviewed From Islamic Family Law

The fulfillment of post-divorce child support in the Religious Court (PA) is sourced and imbued with the values of Islamic Family Law (IPR), which includes theological and juridical principles. This analysis compares the ideal norms of IPR with the realization in the field based on the findings in Tanjung Morawa District, highlighting the deviations that occur in the context of compliance and law

enforcement. The following is an analysis of the fulfillment of post-divorce child support in Tanjung Morawa sub-district in Islamic family law:

The Principle of Child Support as an Absolute Obligation (Dayn) in IPR, In IPR, the obligation to support children is the absolute responsibility of the father, regardless of the status *Düsseldorf* (custody) of the child. This obligation is based on the Qur'an (Q.S. Al-Talaq: 6) and is strengthened in the Compilation of Islamic Law (KHI) Article 156 letter (f) which states that all childcare and maintenance costs are the responsibility of the father. Furthermore, unpaid alimony (overdue) by the father is categorized as debt (*dayn*) who did not die due to divorce, death, or bankruptcy (Darmawan and Afrinal 2022).

The findings in Tanjung Morawa show a weakening of the *dayn principle*. Execution demands by mothers (ex-wives) are often stopped, so the arrears of alimony are left hanging. When the execution process fails, the alimony debt is factually devalued. The father (obligated to alimony) in bad faith does not feel burdened by the debt, and the mother is forced to take over the financial burden. Although judges have ex officio authority (SEMA No. 3 of 2018) to determine alimony in order to guarantee children's rights, the failure to enforce it in the execution phase shows that legal protection stops in the decision phase, not in the implementation phase, contrary to the spirit of IPR protection.

Derivation from the Principle of Mashlahah (Benefit) of Children, The highest purpose of determining alimony in IPR is to achieve benefits (*mashlahah*) children, which includes ensuring the child's basic needs such as education, health, and maintenance. The reality of default (failure) in the field directly violates the principle *Mashlahah* Ini (Ma'arif 2019). For example, children become victims of conflicts. Social-psychological inhibiting factors show that alimony is often used as a bargaining tool or revenge by fathers against ex-wives. The father withholds his livelihood to pressure the mother, so that the child becomes a double victim; victims of divorce and victims of economic neglect. This action is morally and ethically reprehensible in Islam because it sacrifices the fundamental rights of children for the emotional satisfaction of adults.

Thus, Mother bears a double burden. When the father fails to provide for the child, the mother must work hard to cover the needs of the child. This situation shifts the burden of *mashlahah* from the father (who is obligatory) to the mother

(who has the right to maintain), creating economic and psychological injustice that violates the purpose of IPR.

Review of Aspects of Yusr and I'sar (Ability and Difficulties) in Determining Alimony, IPR emphasizes that the amount of maintenance must be proportional to the ability to (*Yusr*) father (Q.S. Al-Baqarah: 236), but does not abort the obligation if the father is in distress (*i'sar*) True. The problem lies in the distinction between true *i'sar* and *I'sar* Fabricated (disguised) (Bahri 2015).

Economic factors show that the reason for declining income (*i'sar*) is often used to cover up bad faith refusal to pay (*mala fide*). The PA has difficulty verifying whether the inability to earn a living in the informal sector (Tanjung Morawa) is *an honest i'sar* or just an excuse to avoid execution. The PA decision that does not include a clause for an annual inflation increase or a decision review mechanism (review of the amount of alimony) actually traps the obligatory alimony in an inflexible nominal. This can indirectly encourage true *i'sar* to become a default, because there is no easy and cheap legal path to adjust the nominal alimony to fluctuating economic conditions.

Child Support and Custody Relationship (*Hadhanah*)

Based on IPR, the obligation of maintenance is separate from custody (*hadhanah*). A court decision regarding child custody should not be a condition or a negotiating tool for the fulfillment of alimony. The findings show that there is a dangerous mixing between these two rights on the ground. The father uses the threat of termination of alimony to demand the right of encounter or change custody. This action is an abuse of rights that is contrary to the principles of IPR, turning sacred obligations into secular instruments to win personal conflicts.

Mother holding *Düsseldorf* They are often forced to choose: (a) to fight and lose alimony, or (b) to give in to their father's demands for alimony, which ultimately undermines the tranquility of parenting (*Hadhanah*) (Muzayyanah 2018). Overall, the realization of post-divorce child support in Tanjung Morawa District, even though it is based on IPR, shows a significant deviation from its ideal principles. Failure to enforce debts (*dayn*): Failure to execute and lack of social sanctions make alimony debts judicially worthless, weakening the principle of absolute obligation of the father. Violation of *mashlahah*: The motive of revenge and the use of alimony as a bargaining tool directly sacrifices the benefit of the

child, which is the essence of IPR. Procedural gaps: The weakness of the PA execution procedure in dealing with the objects of maintenance originating from the informal sector creates a procedural justice gap that is contrary to the spirit of child protection in IPR. This analysis concludes that the moral and ethical enforcement of IPR is weaker than formal law enforcement in the field. Child support is not only a matter of money, but a matter of moral integrity of compulsory maintenance in carrying out religious orders after divorce.

Analysis of Post-Divorce Child Support Fulfillment Reviewed from Indonesia's Positive Law

The analysis of the fulfillment of child support rights in the perspective of Indonesian Positive Law focuses on two main aspects: (1) The success of the institutionalization of obligations in the courts and (2) The failure of the effectiveness of the enforcement of judgments (execution) (Rachman 2023). Although the positive legal framework has provided a solid foundation for the determination of alimony, its implementation on the ground, as happened in Tanjung Morawa, shows that there is a serious gap between the ideal norm and the reality of procedural law. Here's the researcher explains in detail:

Institutionalization of maintenance obligations in court decisions, Indonesia's Positive Law expressly places the responsibility for child support on the father after divorce, as stipulated in: Article 41 letter (c) of Law Number 1 of 1974 concerning Marriage: The father is responsible for the cost of child maintenance and education. Article 156 letter (f) of the Compilation of Islamic Law (KHI): All costs of hadhanah and child maintenance are the responsibility of the father.

Findings at the Religious Court (PA) serving the Tanjung Morawa area show compliance with the Supreme Court's (MA) policy to integrate this obligation. This can be seen from the application of the principle of *ex officio* authority which is strengthened by the Supreme Court Circular Letter (SEMA) No. 3 of 2018.

SEMA 3/2018 has encouraged PA judges to actively (*ex officio*) determine child support in the Divorce Lawsuit case, even though the wife (Plaintiff) does not explicitly include it in the lawsuit *petitum*. This implementation is a form of Progressive Law within the scope of Religious Justice which aims to protect

children's rights (Article 2 of Law No. 35 of 2014) and prevent children from becoming victims of negligence in legal procedures (Arief 2017).

Although the PA succeeded in instituting the obligation to determine alimony, criticism arose in the formulation of the decision itself. The nominal amount of alimony that is set is often a fixed amount. This is contrary to the economic reality of compulsory maintenance in Tanjung Morawa, which is mostly engaged in the informal sector with fluctuating incomes. Positive Law (Article 41 of the Marriage Law) requires maintenance "according to one's ability," but static judgments become factually unfair and open a loophole for default when there is a decrease in compulsory maintenance. This is the critical point where Indonesia's Positive Law shows the most significant weaknesses. Decisions that have been inkraakt often cannot be implemented due to procedural obstacles.

Incompatibility of civil procedure law (HIR/RBG), The procedure for enforcing judgments in the Religious Court is subject to the Civil Procedure Law (HIR/RBG). The execution process that begins with an Application for Aanmaning (reprimand) and continues to confiscation (*parate executie*) has proven to be ineffective for cases of arrears of alimony. The HIR/RBG procedure is designed for conventional civil disputes (large assets, property rights disputes) that are one-time in nature. Meanwhile, child support is a periodic, small, and personal obligation. The execution effort, which requires great cost, time, and full initiative from the ex-wife, is, factually, a barrier to access to justice for economically weak mothers in Tanjung Morawa.

The majority of mothers choose to surrender to arrears rather than go through the execution route, which shows the failure of Positive Law in providing responsive, cheap, and fast enforcement instruments in accordance with the spirit of PERMA No. 3 of 2017 concerning the protection of women in the face of the law.

Execution object issues and collateral weaknesses, the Positive Law currently does not have a strong guarantee instrument outside of compulsory maintenance who is a Civil Servant (PNS) or a member of the TNI/Polri (who can be subject to automatic salary deduction). For the informal sector workers, they often do not have registered assets and are easily confiscated (fixed assets). This makes a condemnatoir (punishing the payment of money) a non-executable decision

because the PA bailiff cannot find an object to be confiscated. Indonesia's Positive Law has not required judges to link the determination of alimony to innovative guarantee mechanisms that bind third parties (e.g., the company where they work) or require the retention of documents (such as passports or driver's licenses) as a guarantee of compliance, thus opening up loopholes for the obligatory alimony in bad faith (*mala fide*) to avoid liability.

Gap in Children's Legal Protection (Absence of Criminal Sanctions), A critical analysis of Indonesia's Positive Law shows that there is a normative vacuum in sanctions enforcement. The Positive Law has regulated the crime of neglect in Article 49 of Law No. 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT) (Juwanti 2018). However, in interpretation, this article tends to apply to neglect that occurs while the marriage bond is still ongoing. Default in child support after divorce is considered purely a civil dispute (default of judgment). Consequently, Indonesia's Positive Law fails to provide a deterrent effect (deterrence) proportional to the losses experienced by children. Obligated to pay a living who can afford but refuses to pay only faces weak and difficult to execute civil sanctions, without criminal threats.

Although Positive Law has guaranteed child support rights substantially, the absence of specific criminal sanctions for post-divorce economic neglect (default of alimony judgments) creates an anomaly of legal protection, where the child's rights are guaranteed on paper, but are ignored in practice without frightening legal consequences.

Factors That Hinder the Realization of Post-Divorce Child Support

This discussion is a synthesis of field findings regarding the obstacles to the realization of alimony and the applicable legal framework, namely Islamic Family Law and Positive Law. In general, inhibiting factors can be categorized into obstacles at the level of legal substance (economic), legal structure (procedural), and legal culture (socio-psychological).

Analysis of economic constraints (legal substance), Economic constraints are the most common reason for the surface being raised by ex-husbands (obligated to alimony) in Tanjung Morawa. This analysis examines whether the constraint is purely an inability or an avoidance legitimized by the weakness of the system.

a). Conflict of the "Paternal Ability" Principle in Positive Law

Article 41 letter (c) of Law Number 1 of 1974 concerning Marriage and Article 156 letter (f) of the Compilation of Islamic Law (KHI) explicitly state that child support is the responsibility of the father according to his ability (Umbara 2013). Data in Tanjung Morawa shows that the majority of compulsory livelihood is engaged in the informal sector (daily laborers, farmers, traders) with very volatile incomes. Religious Court decisions that are fixed nominal (e.g. Rp800,000/month) fail to anticipate these fluctuations. This failure creates a discrepancy between a flexible legal text (*ius constitutum*) ("according to its ability") and a rigid practice of legal determination (*ius operatum*). As a result, when the economic ability of the obligatory support decreases, they feel that the nominal judgment is unfair, which psychologically legitimizes the default behavior rather than applying for a change of judgment (which is considered complicated).

Child Support as Debt (Dayn) in the Perspective of IPR, In IPR, child support is the absolute right of the child and has the status of a debt (*dayn*) that must be repaid by the father. This obligation does not fall even if the father falls into poverty, unless the father is in an extreme condition of *i'sar* (bankruptcy). Ex-husbands who remarry tend to prioritize new dependents (wives and stepsons) over alimony debts to old children. This action shows a lack of theological and juridical understanding of the principle of debt. The first child's maintenance obligation must take precedence over the maintenance obligation to the new family. This priority conflict is a form of transfer of responsibility based on the factor of physical proximity, and is a violation of the principle of *mashlahah* (welfare) of the child which is the main goal of Islamic family law.

Analysis of Legal and Procedural Constraints (Legal Structure), this obstacle highlights the weakness of the execution system that fails to translate the decisions of the Religious Court into reality on the ground.

Ineffectiveness of Conventional Execution Procedures, Even though the judgment has permanent legal force, the realization of the fulfillment of alimony must go through the Execution Application (*Aanmaning*) procedure regulated in the HIR/RBG. Data in Tanjung Morawa shows a very low number of mothers applying for execution, despite alimony arrears. The main factors are: high cost, long time, and uncertainty of results. Existing civil enforcement procedures (designed for large

asset disputes) have proven to be ineffective and gender-inresponsive for small and ongoing nominal alimony arrears. This hurts the spirit of Supreme Court Regulation (PERMA) Number 3 of 2017 concerning Guidelines for Adjudicating Women's Cases Facing the Law, which requires sensitive and easy-to-implement decisions. In other words, the court succeeds in ruling (the verdict already exists), but fails to guarantee substantive justice (the verdict cannot be enforced).

Weaknesses of Decision Formulation and Execution Object, Religious Court decisions in the study area often do not include a mechanism for automatic salary deduction from agencies or third parties. Compulsory maintenance workers who work in the informal sector also do not have registered assets that are easy to confiscate. Although the Supreme Court Circular Letter (SEMA) Number 3 of 2018 has strengthened the authority of judges to terminate alimony *ex officio*, Judges are still lacking in the courage or innovative in formulating condemnation (punishment) decisions that bind the specific object of execution. Without the guarantee of an object of execution, the PA's verdict risks becoming a "paper tiger" having authority but no real coercive force. Asset avoidance (selling, transferring) is an easy legal loophole

D. CONCLUSION

The regulation of post-divorce child support rights in Indonesian jurisprudence shows the synchronization of principles between Islamic Family Law (IPR) and Positive Law. Islamic Family Law (IPR): Based on Article 156 letter (f) of the Compilation of Islamic Law (KHI), child maintenance and maintenance costs (hadhanah) are the absolute responsibility of the father according to his ability, at least until the adult child (age 21 years old or independent). This obligation is a debt (dayn) that is not lost due to divorce, and is a manifestation of the principle of *mashlahah* (benefit) of the child. Positive Law: Article 41 letter (c) of Law No. 1 of 1974 concerning Marriage affirms that the father is responsible for all costs of child maintenance and education. The authority of Religious Court judges to determine child support *ex officio* (by office) in lawsuit divorce cases has been strengthened through SEMA No. 3 of 2018, making it an operational standard to ensure the protection of children's rights. Normatively, these two legal systems

have provided a strong and adequate legal basis for the determination of child support rights.

The realization of the fulfillment of child support rights in the study area shows a fragmentary pattern and tends to be inconsistent, with a high rate of default that is detrimental to children. The majority of cases studied, as many as 75% of the cases of decisions that were followed up showed arrears or non-smooth payments. There are two main patterns of default, namely; sporadic defaults (late or incomplete payments) and total defaults (stop paying after a few months). Successful and routine realization only occurs in cases where the obligatory alimony has a formal job (civil servant/SOE employee) with a clear salary cut, or in cases where the level of post-divorce conflict is very low. The mother (ex-wife) as the holder of the right to receive alimony tends to limit her efforts to non-formal channels (direct negotiations, involving the family). Formal efforts through the Execution Application in the Religious Court are very minimal because they are hampered by procedural and cost factors, so that the court decision becomes weak in terms of enforcement.

The factors that hinder the fulfillment of child support after divorce are as follows; a) economic constraints, fluctuations in income in the informal sector and changes in economic conditions after the verdict are the main causes of defaults based on incapacity. b) legal and procedural constraints (weaknesses in enforcement): Complex, expensive, and slow execution procedures (HIR/RBG), as well as the absence of easily executable assets (especially for informal workers), make PA decisions "paper tigers." c) social-psychological constraints; the use of alimony as a bargaining or revenge tool, which is contrary to moral principles and IPR, as well as weak social sanctions from the community.

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