



Submitted: 25/07/2022

Reviewed: 30/08/2022

Approved: 17/10/2022

Establishment of a Supervisory Institution as Effort Fulfillment of Children's Rights Due To Divorce

Ummu Salamah¹, Tahir Luth², Rachmi Sulistyarini³, Dhiana Puspitawati⁴

Universitas Brawijaya Malang

Email: oemu.salamah@gmail.com

ABSTRACT

The responsibility of parents towards fulfilling children's rights must still be carried out even though both parents have divorced. In the Constitutional Marriage it is explained that a father is responsible for all the rights to life for his children, but often the father is negligent in fulfilling his obligations even though there has been a judge's decision in court. Basically in court, actually the implementation of a request in fulfilling the child's maintenance rights can be done if the father is negligent, but the implementation is not easy. This study will examine what are the juridical obstacles to fulfilling children's rights as a result of divorce and how to fulfill children's livelihood rights in the future. The purpose of this study is to describe efforts to fulfill children's livelihood rights as a result of divorce. This research is a normative legal research with a literature study approach, a case approach, and a comparison of efforts to fulfill children's rights to a just life. The results of the research in this description are that it is very necessary to have a supervisory institution that will oversee the level of compliance of fathers in fulfilling their children's right to life due to divorce.

Keywords: Board of Trustees, Children's Rights, Divorce, Livelihoods

ABSTRAK

Tanggung jawab orang tua terhadap pemenuhan hak anak tetap harus dilaksanakan meskipun kedua orang tua telah bercerai. Dalam Undang-Undang Perkawinan dijelaskan bahwa seorang ayah bertanggung jawab atas semua hak hidup bagi anak-anaknya, namun seringkali ayah lalai dalam memenuhi kewajibannya meskipun telah ada putusan hakim di pengadilan. Pada dasarnya di dalam pengadilan, sebenarnya pelaksanaan suatu permintaan dalam pemenuhan hak nafkah anak dapat dilakukan jika bapak lalai, tetapi pelaksanaannya tidak mudah. Kajian ini akan mengkaji apa saja hambatan yuridis pemenuhan hak anak akibat perceraian dan bagaimana pemenuhan hak nafkah anak di masa depan. Tujuan penelitian ini adalah untuk mendeskripsikan upaya pemenuhan hak nafkah anak akibat perceraian. Penelitian ini merupakan penelitian hukum normatif dengan pendekatan studi pustaka, pendekatan kasus, dan perbandingan upaya pemenuhan hak anak atas kehidupan yang adil. Hasil penelitian dalam uraian ini adalah sangat diperlukan adanya lembaga pengawas yang akan

mengawasi tingkat kepatuhan ayah dalam memenuhi hak hidup anaknya akibat perceraian.

Kata Kunci: Dewan Pembina , Hak Anak, Mata Pencaharian, Perceraian

Introduction

Fulfillment of children's basic rights is integral and is the implementation of the fulfillment of human rights. In the United Nations Convention on 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 life, the right to grow and develop, the right to protection, and the right to participate. In the Islamic perspective, children's rights are gifts from God that must be guaranteed, protected, and fulfilled by parents, families, communities, governments, and the state. (Ansori 2007)

According to Wahbah Al-Zuhaili, children's rights include five things, namely; (1) *nasab* (self-identity); (2) *radha'ah* (breastfeeding); (3) *hadhanah* (Care and maintenance); (4) *territory* (guardianship) and (5) *nafaqah* (support). (Az-Zuhaili 1984)

The responsibility of parents for fulfilling children's rights must still be given even if the parents divorce. The provisions for fulfilling children's rights as a result of divorce enacted in Article 41 of Law Number 1 of 1974 concerning Marriage as a result of divorce are:

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

However, many fathers are still negligent in paying allowance child consequence divorce and not heed decision the court that his own strength law fixed. Temporary if done application execution is enough hard to get implemented. The complexity of the formal application procedure for execution allowance child and the number of execution costs, compared to the total value of the allowance The number of children determined by the panel of judges per month 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 it out in an orderly manner, for the sake of the survival of the children who are victims of their parent's 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. In the end, it was his ex-wife (the child's mother) who had to work hard and work hard to earn a living to meet the needs of his child, while the father felt free from responsibility for the survival of his children, moreover most of the child's father was complacent with life with his wife. new in his new household.

Based on the research result of Alfeus Jebabun and his colleagues with the title "*Initial Assessment Problem of Court Decision Enforcement System in Indonesia*" that the execution of civil case decisions in Indonesia is found to be hampered, because; (Jebabun et al. 2018)

First, there is no mechanism capable of ensuring the payment of the child's and/or wife's income by the defendant; In practice, the punishment for the payment of child support and/or wife's support is difficult to implement because it relies heavily on the good faith of the husband as the defendant for execution. Especially if the respondent later reasoned that he had lost his job.

Second, there is no mechanism that binds a third party (the institution where the respondent works) to ensure the execution of the payment of a living by the respondent who is absent. In several divorce cases, it was found that the District Court and the Religious Courts had attempted to ensure the payment of the child's support by providing a copy of the divorce decision and an application to the leadership and/or treasurer of the agency where the ex-husband worked to deduct the salary of the ex-husband automatically per month in order to pay the child's living expenses. . Many courts also advise ex-wives to file a similar application by attaching a copy of the divorce decision to the agency where the ex-husband works. However, in general, this approach cannot ensure that the execution respondent pays for the child's support in accordance with the divorce decision. This is because almost all agencies refuse on the

grounds that the decision only binds divorced husband and wife, not the agency, and the agency where the ex-husband works is not listed as a party being punished for doing something in the verdict.

The various idea in effort fulfillment right children presented by experts of them through application institution *dwangsom* and father's Collateral of Property. According to Cik Basir in order to optimize the implementation of the decision on child support so that can be realized to be implemented, it is necessary to force efforts through psychological pressure *on* the defendant so that he voluntarily fulfills his achievements. The forced effort referred to is the application of the *dwangsom* institution.(Basir 2013) *Dwangsom* is an additional punishment that is attached to the main sentence if the main sentence decided is not fulfilled by the defendant as it should be. (Manan 2005)

Meanwhile, the guarantee of the father's property according to Chairi in one of his articles stated that in order to provide protection for the rights of the child as a result of divorce, in the decision on the child's livelihood rights there must be legal considerations to guarantee the father's property, both existing or future as collateral for failure to pay a living the child.(Choiri 2015)

As a comparative study, Malaysia and Australia have also experienced the same thing in the issue of children's post-divorce rights, where not all post-divorce parents fulfill the judge's demands to provide a living for their children. So in 1988, the Australian government issued a new law that allows registration and collection of child support obligations, and in 1989 a rule was issued that regulates the methodological formula for assessing the obligations of parents to children.(Agung 2019)

In Malaysia in overcoming the problem of children's livelihood rights due to For divorce, an institution called the Family Support Section (BSK) was formed.Mahkamah Agung Republik Indonesia. This institution was formed in 2007 at the insistence of civil society for a more proactive and effective institution to be implemented against individuals who disobey the court's orders.

Based on the background behind the on so study this will study more carry-on formation institution supervisors for child victims of divorce. Del Boca and Daniela in

his paper entitled “*Mothers, Fathers, and Children after Divorce: The Role of Institutions*” emphasizes that the existence of a supervisory agency could give intervention to reduce the negative impact of divorce on the well-being child good that in the form of cost maintenance children and rights foster for the child. (Del Boca 2002)

Study this is study law normative that is research that examines laws and regulations in a coherent legal system. In study law, normative could serve to give argument juridical When it happens emptiness, ambiguity and conflict norm. The data collection technique was carried out by means of a literature study on ingredients law, ok primary law, secondary nor the later tertiary ingredients law this analyzed by qualitatively by using test stones derived from theory law about justice and benefit in find idea new to give protection to child consequence divorce.

Research Method

The research method used is normative legal research with a case and statutory approach, especially articles relating to the protection of the fulfillment of children's rights in family law, especially for children due to their parents' divorce, court decisions, agreements, and legal doctrine. Legal materials originating from primary, secondary and tertiary legal sources are then analyzed by the author to obtain a conclusion that there is a need for an institution to monitor children's rights as a result of their parents' divorce.

Result and Discussion

Obstacles Juridical Fulfillment Right Child's Livelihood As a result Divorce

The word *nafkah* comes from the Arabic *al-Infaq* which means costs, expenses, allowances. Allowances are given by a husband to his wife for food, clothing, housing, and others. In terms of fiqh, *nafkah* means a gift given by someone to the person or party who is entitled to receive it. The main *alimony* given is aimed at meeting the basic needs of life; namely food, clothing, and shelter. The factors that cause a *alimony* are marriage, blood relations (family), and the thought of something that requires

alimony. (Dewan redaksi 1997). According to Wahbah Zuhaili, *Nafkah* is an expenditure that is usually used by a person for people who are his dependents in meeting the needs of life, both in the form of clothing, food, and boards and others with something good. (Az-Zuhaili 1984)

Fulfillment of children's basic rights is an integral part and implementation of the fulfillment of human rights. In the Islamic perspective, children's rights are gifts from God that must be guaranteed, protected, and fulfilled by parents, families, communities, governments, and the state.(Ansori 2007) According to Wahbah Al-Zuhaili, rights include five things, namely; (1) *nasab* (self-identity); (2) *radha'ah* (breastfeeding); (3) *hadhanah* (Care and maintenance); (4) *territory* (guardianship) and (5) *nafaqah* (support).(Az-Zuhaili 1984)

The regulation on the fulfillment of children's rights due to divorce is clearly enshrined in Article 41 letter (b) of the Marriage Law Number 16 of 2019 in conjunction with Number 1 of 1974 which reads " due to the dissolution of the marriage due to divorce, the father is responsible for all the maintenance and education costs needed for the child; if the father is, in fact, unable to fulfill these obligations, the court can determine that the mother will share the costs.

According to Soemiyati, if there is a divorce in which offspring have been obtained in the marriage, then the mother or grandmother has the right to take care of the children resulting from the marriage. However, regarding the financing for the child's livelihood, including the cost of education, it is the responsibility of the father. (Soemiyati 2007)

The same opinion was expressed by Hilman Hadikusuma (Hadikusuma 2007) you are responsible for all the maintenance and education costs needed by the child after the marriage is broken up due to divorce. If the father is in fact unable to carry out his obligations to pay for the maintenance and education of the child, the court may determine that the mother is responsible for paying for the care and education of the child.

Wahyu Ernaningsih and Putu Samawati, describe their opinions regarding the legal consequences of divorce on "child support" in more detail as follows;

- a. The obligation to "finance" the child is not lost due to the dissolution of the marriage due to divorce
- b. The cost of raising the child is borne by the father (until he grows up or is independent, works/earns income or the child gets married). The obligation to finance remains the responsibility of the father even though the care of the child is not to him. This means that the father still has the obligation to finance the livelihood of the child even though the right to care for the child rests with the mother, grandfather, grandmother, aunt, and so on.
- c. If the father is unable to provide maintenance (support) costs, then the court can determine that the mother will share the child's living expenses.
- d. If the father is unable to carry out the court's decision to pay for the maintenance of the child, then an (ex) wife can apply for execution to the head of the Religious Court or the District Court where the divorce process is carried out. (Ernaningsih and Samawati 2008)

Taking into account the explanations of several divorce law experts as described above, it can be understood that Article 41 letter (b) of Law No. 1 of 1974 is a normative form of the state's efforts to protect children's rights after divorce from their parents, based on the function of the state of law that recognizes and protects human rights.

Sudarsono provides a more in-depth explanation in his book "National Marriage Law", that children have the right to receive care and education from both parents. Both the mother and the father of the child are obligated to maintain and educate the children/children they acquire during the marriage. Divorce that occurs, will not change the relationship status of children and their parents. Parents are still obliged to maintain and educate their children until the child marries or can stand alone. The right to be cared for refers more to the fulfillment of physical needs, children have the right to be able to take care of their physical members from their parents. (Sudarsono 1991)

The Compilation of Islamic Law emphasizes the importance of protecting children who are victims of divorce in order to obtain the rights of maintenance and maintenance as regulated in Article 105 that in the event of a divorce:

- a. It is the right of the mother to take care of a child who is not *mumayyiz* or not yet 12 years old;
- b. The maintenance of a child who has *mumayyiz* is left to the child to choose between his father or mother as the holder of the right of care;
- c. maintenance costs are borne by his father.

Parental Responsibilities to the child are strengthened by the provisions of Constitution Number 23 of 2002 as already stated amended by Law No. 35 of 2014 concerning Child Protection in Article 26 paragraph (1) is stated that parent obliged and responsible for, nurturing, educating and protecting the child.

If the father neglects his obligation to provide for his child, it is called neglect, then he can be criminally prosecuted as stated in CHAPTER XIA Prohibition P origin 76 B "Everyone is prohibited from placing, letting, involving, ordering involving children in situations of abuse and neglect". And Article 77B explains that "Everyone who violates" provisions as referred to in Article 76B, shall be punished with imprisonment for a maximum of 5 (five) years and/or a fine of a maximum IDR 100,000,000.00 (one hundred million ruphias)."

the Act on shows that a person's responsibility The father to his son cannot fall even though the two of them have divorced, or remarried. Then it can also be understood that when the child is still not *baligh*, then the maintenance of the child is the right of the mother, but the costs are borne by the father. (Ali 2006). Thus, even though the child is not yet *baligh* and its maintenance is under the authority of the mother, everything related to costs is entirely the responsibility of the father.

Article 9 paragraph (1) of Law Number 23 of 2004 concerning Elimination Domestic Violence which affirms that: "Everyone It is forbidden to abandon people within the scope of their household, even though according to the law applicable to him, or by consent or agreement he is obliged to provide life, care or maintenance to that person."

Thus, if this article is related to Article 41 letter (b) of Law Number 1 of 1974 concerning Marriage, therefore father who is not responsible for the cost of maintenance and education (*nafkah*) that their child needs, it can be categorized as having committed acts of neglect against their children, as stipulated in Article 9 paragraph (1) of Law Number 23 of 2004 Regarding the Elimination of Domestic Violence. It is further stated in Article 49 letters a and b of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, that criminal threat for the father's negligence towards the maintenance obligation post-divorce children or is called neglect as referred to in Article 9 paragraph (1) and paragraph (2) of the Law is a maximum imprisonment of 3 (three) years or a maximum fine of IDR 15,000,000 (fifteen million rupiahs). This thus shows there is a correlation that if it is proven that there has been an act of negligence on post-divorce maintenance obligations for children are considered neglect, so they can be prosecuted civilly, can also be prosecuted criminally.

If you look at the description above, it can be concluded that in fact the State as a state of the law has tried to be able to provide protection for children and provide legal certainty for children to get their rights as human beings, fulfill their welfare after the divorce of their parents, however, in reality, there are still many children who have not received their rights as regulated in the legislation even though the judge's decision in divorce cases or in *hadhanah* cases states that the father is obliged to provide the right to support his child.

Based on the author's study of several kinds of literature that conducted research on children's livelihood rights after divorce from various regions, parents tended to ignore the provision of a living even though it was stated in the judge's decision in divorce cases. This is reinforced by the number of complaints to Komnas Perempuan and KPAI which received complaints from the public regarding the non-implementation of the judge's decision on granting children's livelihood rights after divorce.

The problems of non-fulfillment of post-divorce rights can be classified into two things, namely: *First*, the lawsuit for the child's livelihood rights is not filed

simultaneously with the divorce suit so that the judge cannot map the fulfillment of the child's livelihood who is a victim of divorce. *Secondly*, in the divorce suit, the stipulation of child custody and maintenance rights is requested, but the parents – the father – tend to ignore the judge's decision.

In the first aspect, the Supreme Court issued a Circular Letter of the Supreme Court (SEMA) Number 4 of 2016 concerning the Enforcement of the Formula for the Results of the 2016 Supreme Court Chamber Plenary Meeting as a Guide to the Implementation of Duties for the Court. In Point 5 it is explained that "Religious Court Judges because of their position (*ex officio*) can determine a child's maintenance to his father if the child is actually in the care of his mother as stipulated in Article 156 letter (f) Compilation of Islamic Law. (Choiri 2017)

Ex officio meant is because the position of a judge can decide case outside petition as an effort to give protection law and justice for women and children (Arto 2017). This means that in the event that the judge grants the divorce filed by her parents, being As a result of the marriage, the judge found the facts there are children who have not adult, the judge is allowed to dig more facts about father's occupation or ability as well as taking into account the needs of the child's defined living expenses or maintenance became his father's responsibility, then the judge sentenced the father to pay a living for the child to the mother who takes care of the child the. Thus, in terms of fulfilling the child's livelihood rights as a due to the divorce, the judge is justified in violating the " *Ultra Petitem Partium* " as referred to in Article 178 paragraph (3) HIR/article 189 paragraph (3) RBg. Choiri, "SEMA 4/2016 Hadiah Besar Ketua Kamar Agama Bagi Perlindungan Hukum Terhadap Anak Korban Perceraian di Indonesia."

The second problem is that in a divorce lawsuit, the stipulation of custody and child support rights is requested, but the parents – the father – tend to ignore the judge's decision. Based on results study Stjin Van Huis from Vollen Hoven Institute University of Leiden Netherlands at the Religious Courts of Cianjur, West Java in 2010, concerning *Execution Decision Religious Courts in Indonesia*, there is a problem are you serious to access girl on acquisition right living child post-divorce, even though a

woman has fought to win the case in Court, however evidently decision court no can be enforced. (Huis 2015)

In the research report on the *Initial Assessment of Problems in the Execution of Civil Case Decisions in Indonesia*, it was found that the obstacles to execution in family cases as stated by the author at the beginning of this paper are because; *First*, there is no mechanism capable of ensuring the payment of the child's and/or wife's income by the defendant; and *Second*, there is no mechanism that binds a third party (the institution where the respondent works) to ensure the execution of the payment of a living by the respondent who is absent.(Jebabun et al. 2018)

There are several ideas put forward by practitioners in the Religious Courts environment, namely the application of the *dwangsom* institution and the guarantee of the father's property. *Dwangsom* is an additional punishment attached to the main sentence if the main sentence decided is not fulfilled by the defendant as it should be (Manan 2005). According to Cik Basir *Dwangsom*, it is very necessary as a forced effort through psychological pressure *on* the defendant to voluntarily fulfill his achievements so that the child support decision can be implemented (Basir 2013).

Meanwhile, according to Chairi, the concept of guaranteeing the father's property in order to provide protection for the rights of the child as a result of divorce, in the decision on the child's livelihood rights, there must be legal considerations to guarantee the father's assets, both existing and future as collateral for the failure to pay the child's living expenses. (Choiri 2015) The idea that Chairi put forward was based on his experience as a judge at the South Jakarta Religious Court in 2006 until the end of 2008, after a long time the case was decided, some of the parties stated that it was very effective when the judge's decision included "all the property of the Defendant, whether existing or not. that will exist as security for the failure to pay child support"

If you look at the description above, there is a legal vacuum in the implementation of the fulfillment of children's livelihood rights as a result of the divorce of their parents, therefore there need to be arrangements both formally and

materially so that the judge's decision which has permanent legal force (*inkracht van gewijsde*) can be implemented.

Establishment of Supervisory Agency To Decision About Right Child's Livelihood

In an effort to provide protection for children and also to realize children's welfare, children who experience conflict as a result of the divorce of their parents must be monitored to ensure that the continuity of their lives is guaranteed as mandated by the 1945 Constitution.

In several countries, such as Malaysia, Australia, America, separate institutions have been set up for child victims of divorce to monitor whether their parents can guarantee the survival of the child and the fulfillment of the child's basic rights. This is done so that children can be guaranteed their survival and parents are also responsible for their obligations to continue to pay for their children.

Based on research conducted by Resti Hedi Juwanti with the title *Child Support after Divorce on the Decision of the Indonesian Religious Courts and the Malaysian Sharia Court in Fiqh and Human Rights Perspectives* in 2018, the provisions regarding children's rights after divorce in terms of hadhanah and living for Muslims in the alliance area Kuala Lumpur The Islamic Family Law that applies is the Islamic Family Law Deed (Wilayah-Wilayah Per Fellowship) 1984. This deed has made special provisions regarding the child's support rights which are listed in seksyen 60 to 80 (Juwanti 2018).

The deed shows that the power of the Court or the judge through a court decision has an important role in ensuring legal certainty as to who can be responsible for the provision of such a living up to the consideration of the level of maintenance that must be provided. Provisions regarding the child's right to support through a court decision or a very detailed Court Proxy are regulated by the State through the deed. If the person who has been appointed by the Court denies the provision of a living, he can be sued in arrears for the court's living as a debt that must be paid from his inheritance. (seksyen 69). (Juwanti 2018)

The two countries mentioned above also have child support agencies, namely *Baitul Mal* in Malaysia and *CSA (Child Support Agency)* in Australia. The existence of this institution can be responsible for ensuring the fulfillment of children's livelihoods as part of efforts to provide protection and justice for children's survival. Meanwhile, in Indonesia, people who feel they do not receive protection and justice can only complain to social institutions that handle children and women's problems such as the Indonesian Child Protection Commission (KPAI) and the Women's National Commission or others. Even today in Indonesia, a community with the name *Single Moms Indonesia* has been formed which consists of single mothers and finances the needs of their own children without any accountability from their father as someone who is obliged to provide for their children.

When compared with the rules for child support in Indonesia, both those contained in the Marriage Law Number 1 of 1974 or in the Compilation of Islamic Law with arrangements for providing a living in the two countries, according to the author, the existing law is still unable to accommodate and is still far behind in terms of Addressing the issue of child support, this means that there has been a legal vacuum (*rechstavacuum*) where the regulation of the fulfillment of the child's livelihood should be regulated in more detail to be able to provide legal certainty and guarantees to children that must be obtained as a result of the divorce of their parents. These detailed arrangements to complement existing regulations can be regulated by government regulations.

This legal vacuum results in the loss of access to justice for children in obtaining their human rights. As stated in the explanation of the Child Protection Law that the State upholds human rights, including children's rights which are marked by guarantees for the protection and fulfillment of children 's rights in the 1945 Constitution of the Republic of Indonesia and several provisions. laws and regulations, both national and international. This guarantee is strengthened through the ratification of international conventions on the Rights of the Child, namely the ratification of the Convention on the Rights of the Child through Presidential Decree No. 36/1990 on Ratification of the *Convention On The Rights Of The Child*.

In the Qur'an, the concept of justice has various meanings, one of which is the word '*adl*' which means 'attention to individual rights and to give that right to each owner'. This understanding is defined by 'putting something in its place' or 'giving other parties their rights through the closest way'. The opposite is 'tyranny', ie this violation is mentioned in the QS. Al-An'am [6]: 152, " and when you say you should act justly even though he is a relative [your]". The notion of '*adl*' like this gives birth to social justice. (Shihab 1996)

Quraish Shihab asserts that humans who intend to imitate Allah's righteous nature - after believing in Allah's justice - are required to uphold justice even to their families, parents, and themselves, even to themselves, namely by putting their desires and anger as prisoners who must be taken into custody. following the dictates of reason and religion, not making him the master who directs reason and religious demands. Because if so, he actually does not apply '*adl*', namely placing something in its natural place.(Sahabuddin et al. 2007)

Based on the cases that the author has researched, the neglect of children's rights due to divorce due to the inability of parents, in this case, is the most important in the case of the father. In the marriage law, if the father is unable, then the mother can fulfill the rights of the child, however sometimes the mother also has economic difficulties to be able to meet the needs of her children, based on many cases finally a mother is willing to sell herself to meet the needs of her children. . Sociologically, most women are the most responsible party in raising their children, she will be willing to do anything to be able to finance the needs of their children's lives.

Therefore, the state should also have a role in this matter as regulated in the Child Protection Law Number 23 of 2002 which has been changed to Law 35 of 2014 concerning Child Protection related to obligations and state and government responsibilities as formulated in Articles 21 to 23;

Article 21: The state and government are obliged and responsible for respecting and guaranteeing the human rights of every child without distinction of ethnicity, religion, race, class, sex, ethnicity, culture, language, the legal status of children, child's birth order and physical and/or mental condition.

Article 22: that the State and the Government are obliged and responsible for providing support for facilities and infrastructure in the implementation of child protection.

Article 23: (1) The state and the government guarantee the protection, maintenance, and welfare of children by taking into account the rights and obligations of parents, guardians or other people; (2) The State and the Government supervise the implementation of child protection.

Based on this law, the role and responsibilities of the state in terms of protecting children are clear. Therefore, according to the author, it is necessary to establish a supervisory and guarantee institution for children's rights. This supervisory agency and guarantee of children's rights can have a strategic role in realizing the welfare of children who are not only children who are victims of divorce but also children who experience conflict either in their household or due to other factors.

The Supervisory and Guarantee Agency for the Rights of the Child will have a function as a supervisor who can monitor the level of compliance of the father in carrying out the judge's decision in fulfilling the child's livelihood rights due to divorce. And can also regulate the issue of guardianship if the parents of the child are in a state of incapacity, then based on a court decision there is a guardian appointed to be able to fulfill the rights of maintenance and custody of those whose parents are divorced, either in a state of death or divorce, this is done to prevent neglect of children.

Guidelines in case guardianship are sourced from the law Marriage, Compilation of Islamic Law, and the Law Child Protection. If in guardianship no something is considered able to fulfill right living for a child then the state and government responsible in ensuring rights child as arranged in Constitution Number 23 of 2002 jo Number 35 of 2016 concerning Child Protection.

The existence of a supervisory agency could fill in emptiness law in arranging rights and obligations between parents and children consequence happening divorce so that there is certainty law and can give protection law on children based on the principle interest best for child.

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 the right to provide for his child, but often the father ignores it even though there has been a strong legal decision from the judge. So that his mother as a woman has to think about financing for her children besides having to take care of her children (hadhanah). Several factors lead to the non-fulfillment of child maintenance rights as a result of divorce: First, claims for child maintenance rights are not filed together with the divorce suit so that the judge cannot map out the fulfillment of the child victim of the divorce. Second, in a divorce suit, custody and child care are requested, but the parents - the father - tend to ignore the judge's decision. Efforts to execute the judge's decision which are not often carried out cause problems because there is no mechanism that can guarantee payment of the income of the child and/or wife by the defendant.

Therefore, to ensure that the judge's decision can run, it is necessary to have a supervisory institution that aims to monitor the level of compliance of the father in carrying out the judge's decision in fulfilling the child's right to life as a result of divorce and can be terminated. serve as a strategic institution in providing protection of children's rights.

References

- Agung, Mahkamah. 2019. "Jaminan Pemenuhan Hak Anak Paska Perceraian Sudut Pandang Australia Dan Malaysia." *Direktorat Jenderal Badan Peradilan Agama Mahkamah Agung Republik Indonesia*.
- Ali, Zainuddin. 2006. *Hukum Perdata Islam Di Indonesia*. Jakarta: Sinar Grafika.
- Ansori, Ibnu. 2007. *Perlindungan Anak Menurut Prespektif Islam*. Jakarta: KPAI.

- Arto, Mukti. 2017. *Penemuan Hukum Islam Demi Mewujudkan Keadilan "Membangun Sistem Peradilan Berbasis Perlindungan Hukum Dan Keadilan."* Yogyakarta: Pustaka Pelajar.
- Az-Zuhaili, Wahbah. 1984. *Fiqh Islam Wa Adillatuhu*. Beirut: Dar al-Fikr.
- Badilag Mahkamah Agung. 2019. "Jaminan Pemenuhan Hak Anak Paska Perceraian Sudut Pandang Australia Dan Malaysia." *Direktorat Jenderal Badan Peradilan Agama Mahkamah Agung Republik Indonesia*.
- Basir, Cik. 2013. "Penerapan Lembaga Dwangsom Di Pengadilan Agama." *Direktorat Jenderal Badan Peradilan Agama Mahkamah Agung Republik Indonesia* 37. Retrieved July 5, 2021 (<https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/penerapan-lembaga-dwangsom-di-pengadilan-agama-oleh-drs-cik-basir-sh-mhi-242>).
- Del Boca, Daniela. 2002. *Mothers, Fathers and Children after Divorce: The Role of Institutions*. 428. Bonn Germany.
- Choiri, A. 2015. "Penjaminan Harta Ayah Terhadap Kelalaian Pembayaran Nafkah Anak Pasca Perceraian (Perlindungan Hukum Terhadap Anak Korban Perceraian Bagian 2)." (September):105–12. Retrieved (<https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/penjaminan-harta-ayah-terhadap-kelalaian-pembayaran-nafkah-anak-pasca-perceraian-oleh-dr-h-a-choiri-sh-mh-28-10>).
- Choiri, A. 2017. "SEMA 4/2016 Hadiah Besar Ketua Kamar Agama Bagi Perlindungan Hukum Terhadap Anak Korban Perceraian Di Indonesia." Retrieved July 8, 2020 (<https://badilag.mahkamahagung.go.id/artikel/publikasi/artikel/sema-4-2016-hadiah-besar-ketua-kamar-agama-bagi-perlindungan-hukum-terhadap-anak-korban-perceraian-di-indonesia-10-1>).
- Dewan redaksi. 1997. "No Title." *Ensiklopedia Islam*.
- Ernaningsih, Wahyu, and Putu Samawati. 2008. *Hukum Perkawinan Indonesia*. Palembang: Rambang Palembang.

- Hadikusuma, Hilman. 2007. *Hukum Perkawinan Indonesia Menurut Perundang-Undangan, Hukum Adat, Dan Hukum Agama*. Bandung: Mandar Maju.
- Huis, Stijn Cornelis van. 2015. "Islamic Courts and Women's Divorce Rights in Indonesia : The Cases of Cianjur and Bulukumba." Universiteit Leiden.
- Jebabun, Alfeus, Fauzul Abrar, Liza Farirah, Tanziel Aziezi, M, M. Faiz Aziz, Nindya Wulandari, Nur Syarifah, and Yunani Abiyoso. 2018. *Initial Assessment Problems of Court Decision Enforcement System in Indonesia*. Jakarta.
- Juwanti, Resti Hedi. 2018. "Nafkah Anak Pasca Perceraian Pada Putusan Peradilan Agama Dan Mahkamah Syariah Malaysia Dalam Prespektif Fikih Dan HAM." Universitas Islam Negeri Syarif Hidayatullah Jakarta.
- Manan, Abdul. 2005. *Penerapan Hukum Acara Perdata Di Lingkungan Peradilan Agama*. Jakarta: Prenada Group.
- Sahabuddin, Yusuf Baihaqi, Irfan Mas'ud, and Salim Cahyono. 2007. *Ensiklopedia Al-Qur'an : Kajian Kosakata*. Lenteera Hati.
- Shihab, Muhammad Quraish. 1996. *Wawasan Al-Quran: Tafsir Maudhu'i Atas Berbagai Persoalan Umat*. II. Bandung: Mizan.
- Soemiyati. 2007. *Hukum Perkawinan Islam Dan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan*,. 7th ed. Yogyakarta: Liberty.
- Sudarsono. 1991. *Hukum Kekeluargaan Nasional*. Jakarta: PT. Rineka Cipta.