

Implementation of Fulfillment of Children's Rights Post-Divorce in the Jombang Religious Courts

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Abstract

The issue of fulfilling children's rights after divorce has become an important study of researchers in the field of Islamic law over the past five years. The issues of fulfilling children's rights after divorce have become a serious problem, where children's rights are often overlooked, especially with regard to basic rights. In this study, there are 2 (two) problem formulations that are the focus of this research. First, the implementation of the fulfillment of children's rights after divorce based on decision No. 3118/Pdt.G/2021/PA.Jbg, Second, the efforts that must be taken by the mother if the decision on children's rights after divorce is not fulfilled by the ex-husband (father). research and discussion that has been analyzed. In this case, it does not fully reach the target, the mother is fully trying alone to fulfill the rights of the child where the ex-husband (father) should have played a role but did not maximally carry it out as stated in the decision. Then the legal consequences for the ex-husband who does not carry out his obligations in fulfilling child maintenance, the mother can submit a child maintenance lawsuit to the Chairman of the Religious Court for further execution. Because the law itself does not regulate the existence of legal sanctions against decisions that have been condemned when not implemented. So that it becomes an obstacle for the mother not to submit a request for execution for several reasons: the former husband (father) remarried, the mother is able to finance child maintenance independently and lack of knowledge about the law.

Abstrak

Isu pemenuhan hak anak pasca perceraian menjadi kajian penting para peneliti bidang hukum Islam selama lima tahun terakhir. Persoalan-persoalan pemenuhan hak anak pasca perceraian menjadi problem yang serius, di mana hak-hak anak seringkali dikesampingkan terutama berkaitan hak-hak pokok kurang. Dalam penelitian ini terdapat 2 (dua) rumusan masalah yang menjadi fokus dalam penelitian ini. *Pertama* implementasi pemenuhan hak anak pasca perceraian berdasarkan putusan No. 3118/Pdt.G/2021/PA.Jbg, *Kedua* upaya yang harus ditempuh oleh ibu apabila putusan hak anak pasca perceraian tidak dipenuhi oleh mantan suami (ayah). penelitian dan pembahasan yang telah dianalisis. Dalam hal ini tidak mencapai sasaran secara utuh, pihak ibu secara penuh berupaya seorang diri untuk memenuhi hak-hak bagi anak di mana seharusnya mantan suami (ayah) turut andil berperan namun tidak secara maksimal menjalankannya sebagaimana amar putusan. Kemudian akibat hukum bagi mantan suami yang tidak melaksanakan kewajibannya dalam pemenuhan nafkah anak maka ibu dapat mengajukan permohonan gugatan nafkah anak pada Ketua Pengadilan Agama untuk selanjutnya dieksekusi. Karena undang-undang sendiri tidak mengatur adanya sanksi hukum terhadap putusan yang telah bersifat *condematoir* ketika tidak dilaksanakan. Sehingga menjadi kendala bagi pihak ibu untuk tidak mengajukannya permohonan eksekusi karena alasan beberapa hal: pihak mantan suami (ayah) menikah lagi, pihak ibu sanggup membiayai nafkah anak secara mandiri dan minimnya pengetahuan tentang hukum.

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1. INTRODUCTION

The issue of fulfilling children's rights after divorce has become an important study for legal experts, especially in the field of Islamic law, over the last five years. This issue focuses on the implementation of fulfilling children's rights after divorce based on the decision of

the Religious Court judge. In practice, the implementation of fulfilling children's rights after divorce does not go well, and is often not implemented by parents or ex-husbands (fathers).

From the results of research conducted by Puguh Zainuri, there were various factors in which the decision was not implemented, including the parents remarrying, the female parents (reconviction plaintiffs) being able to provide a living, the lack of awareness of the male parents' responsibilities towards their children and psychological factors. The implications of not fulfilling children's rights result in children becoming less self-confident, reduced in their achievements, feeling lazy, less able to socialize with the environment and especially with their parents, becoming easier to argue or fight.

As for previous research, Deni Rosadi et al, regarding children's rights after divorce based on an Islamic legal perspective (case study of the Singapore religious court), Aziz Sholeh et al, assistance with the rights of women and children after divorce, Moch Ichwan Kurniawan et al, obstacles to implementing sema No. . 2 of 2019 regarding women's rights after a divorce, Reny Istiqomah et al, regarding the fulfillment of women's rights after a divorce. The law does regulate the maintenance of children which is the obligation of both parents even though the marriage has broken up due to divorce, but regarding the rules regarding the existence of legal consequences by providing sanctions when the child's rights needs are not met by the ex-husband (father), the law -The law itself does not regulate.

Islam pays special attention to children's rights so that children have a sense of self-confidence, self-esteem and nobility. However, the issue of fulfilling children's rights after divorce is still a serious problem, often children's rights are often sidelined, especially rights relating to basic needs that are not taken care of, namely maintenance, education, housing and facilities other support.

A divorce occurred gives rise to legal consequences, such as marriage which gives rise to rights and marriage, post-divorce consequences such as the rights of children are obligations that remain valid and must be fulfilled. These post-divorce rights and obligations are uninterrupted and must be fulfilled by parents, especially in terms of alimony for the maintenance and care of children. Because even though the marriage bond is severed, every child still has the right to receive his rights over his parents and parents are still obliged to continue to provide for the child's needs.

In the regulations of Law Number 23 of 2002 concerning Child Protection, it is explained that the fulfillment of children's rights is part of human rights (human rights) which must be guaranteed, protected and fulfilled by parents, families, society, government and the State. By law, the obligation to fulfill children's rights for parents who have divorced is not interrupted. The rules regarding custody include that maintenance, care and upbringing are completely handed over to the ex-wife (mother), while in terms of costs or living, and this is a task that is handed over to the ex-husband (father). So it is very clear in this case that the position of children after divorce is legally guaranteed, protected and fulfilled.

Based on the research results of the decision in case no. 3118/Pdt.G/2021/PA.Jbg. The implementation of the judge's decision did not achieve the target in its entirety, the mother made full efforts alone to fulfill the rights of the child where in terms of maintenance, the ex-husband (father) should have been obliged to fulfill them. Obligation to fulfill children's rights in maintenance is the responsibility of the ex-husband (father). However, there are still many children's rights after the divorce decision, when the parties return to their respective homes. An ex-husband (father), in particular, who in this case has the obligation to continue providing support for the child, does not realize this properly as stated in the judge's decision.

The law itself does not regulate legal sanctions for decisions that are condemnatory when they are not implemented and when there is no application for execution for 14 days after it

is determined by the Council of Judges, then the parties to the case are deemed to be willing to carry out the decision.

The urgency of children's rights that must be fulfilled even after divorce is the main topic in this research. Looking at the figures on divorce cases in Indonesia historically shows fluctuating data. Data available at the Jombang Religious Court shows that during 2021 the Jombang Religious Court has received 3,116 cases. It is recorded that this is a very large figure in divorce cases. So for researchers it is important to know how the Religious Courts handle decisions regarding children's rights which are included in divorce cases. Because it is through the divorce case that the child support lawsuit is filed.

As a legal remedy for the mother because her ex-husband (father) has not carried out his obligations in fulfilling child support, the mother can submit a request for a lawsuit for child support to the Chair of the Religious Court for subsequent execution. However, there are obstacles for the mother not to submit a request for execution due to several factors: the ex-husband (father) remarried, the mother is able to pay for the child's support independently and the lack of knowledge about the law.

From this case, it is known that the ex-husband (father) works in shipping, meaning he has a steady salary income so that the judge's consideration in deciding to provide child support is considered not to be objectionable for a father. So the writer needs to pay attention to developments after the law suit reconvention granted by the judge, whether the decision is carried out by the parents (father) or ex-husband until the child grows up according to the judge's decision.

This is especially necessary in how the law responds to the issue of fulfilling children's rights after divorce, the function of the Religious Courts as an institution for resolving family problems must be realized. As in the decision (No. 3118/Pdt.G/2021/PA.Jbg), the Jombang Religious Court examines and adjudicates talak divorce cases which punish a father or ex-husband for fulfilling his responsibilities towards the child's rights.

2. RESEARCH METHOD

This type of research is normative-empirical legal research (applied law research). According to Seorjono Soekanto, the approach is to look at aspects of normative law as a benchmark, supported by elements of empirical data combined with two stages: First, reviewing the normative law that applies, in this case regarding the provisions governing children's rights, and second, Examining events after the decision was made. To achieve this legal goal, it is in the form of implementing the fulfillment of children's rights after divorce.

The approach used is a qualitative (field) approach. Research using a qualitative approach is a research procedure that uses descriptive data in the form of people's written or spoken words and observable behavior. So that researchers are directly present in the field to obtain authentic and accurate data and then data on copies of decisions and interviews with judges and litigants will be analyzed in depth.

This primary data source was collected at the Jombang Religious Court and the data was carried out by interviewing a mother who was in her care for the child, and was involved in the decision of the case with the judge and officials at the Jombang Religious Court. To find out whether the implementation of the judge's decision is being fulfilled in living post-divorce children based on decision 3118/Pdt.G/2021/PA.Jbg whether it was effective or not, the researcher was present directly to meet the relevant parties, in this case the judge of the Jombang Religious Court and the mother who has the right to care for the child.

The secondary data sources are data to complement the primary data sources, where this data is taken from the second source, namely: Copies of Decisions, Marriage Law Number 1 of 1974, Compilation of Islamic Law (KHI), Child Welfare Law, Child Protection Law,

relevant articles and journals which explain the obligations of parents in educating children and regulating children's rights after divorce.

3. RESEARCH RESULTS AND DISCUSSION

3.1. Implementation of Fulfillment of Children's Rights Post-Divorce Based on Decision No. 3118/Pdt.G/2021/PA.Jbg

Bond marriage is the perfection of worship for a Muslim whose aim is to form a family with eternal happiness. Therefore, husband and wife must prepare everything carefully because the problems in domestic life are complex. So when there is a conflict in the household, not many ties between husband and wife must end in divorce. However, this is essentially a person's obligation old after divorce, parents must still carry out their responsibilities to their children even before divorce.

Divorce does not necessarily mean that responsibilities are abdicated, instead it demands that parents ensure that their children's interests must still be safeguarded and protected. But it cannot be denied that when two parents have to divorce, the separation occurs result of children's rights are neglected by one of the parties, so that children's rights are not fulfilled optimally. The impact of this phenomenon ultimately resulted in the mother being quite disadvantaged, because there was injury in the application of the law, namely the ex-husband (father) who reneged by neglecting his obligations to fulfill the living needs of caring for the child.

Case decision no. 3118/Pdt.G/2021/PA.Jbg from the research results it can be seen that the fulfillment of children's rights after divorce is not implemented well. From an interview with the mother, Erna Anjar Wati, regarding how the relationship is between ex-husband (father) with children since the divorce decision, Erna's mother expressed the following: "After the divorce, my communication with Devi's father has been off, the last time we saw him was more than a year ago, he suddenly came to visit Devi's house, yes, just at that time. , only once. And I heard information that he had already remarried."

Furthermore, regarding providing support for children after divorce, whether the ex-husband (father) provided it as stated in the judge's decision, Erna's mother's statement was as follows: "Yes, last year I visited Devi and then I gave money for this Devi, at that time she was still work in shipping. So when he visited Devi, he gave it to me, but that's all, and if he didn't visit Devi, I never asked for it. "So if you ask about whether it's in accordance with the court's decision, yes, no, because apart from that, you never give it to your child on a regular basis." From the mother's statement, she said that her husband had only provided support for the child once since the divorce decision. It can be said that some parts of children's rights have been fulfilled but others have not, because they are only temporary and not complete or not fulfilled at all.

The responsibility for providing for children after divorce remains the responsibility of the father, but the statement above provides an answer that in essence, in terms of maintaining child support by the ex-husband (father) is not fulfilled optimally. In terms of caring for children, the mother must play the role alone after the marriage is broken up, even though the child's maintenance is on the part of the ex-husband (father). Her role is not only as a mother to the child, but can also be said to be a father, so when it comes to fulfilling the child's rights, it's like oh my child can't be difficult, can't cry, whatever my child needs I have to give it and thank God there's nothing missing even though I am a single parent. And from his own work, thank God, if it is to meet school needs such as uniforms, books and so on, the important thing is that he can still go to school, his dream is to be able to send his children to school and in the future he will be sent to a boarding school so that their religious education can be better. Then when

it comes to other needs, like eating or for example snacks, thank God my mother always helps here too.

As stated by the respondent above, it was found that there were several factors that were obstacles which resulted in the decision to fulfill children's rights after divorce not being implemented properly. The father's obligation to provide for his children is absolute, but in this case the father misused it, triggering a law in society which is said to be ineffective.

In the decision with case register no. 3118/Pdt.G/2021/Pa.Jbg regarding the fulfillment of child support and child support costs, the Council of Judges has made juridical legal considerations. In this case, the judge considers when sentencing an ex-husband (father) to provide child support based on income, even though a father's permanent income does not rule out the possibility that the child's maintenance rights after the divorce will be given in full. This means that even though the male parent has an income and remains in his job, this does not necessarily affect whether the Religious Court's decision is effective or not.

Furthermore, how does the Jombang Religious Court know whether the parties are implementing it in accordance with the judge's decision so that the decision can be said to be effective. Regarding the decision in case no. 3118/Pdt.G/2021/PA.Jbg the decision is in court, in this case the hadhanah fee is determined as a decision that must be implemented by the father. This means 14 days after the decision was read and the parties were present, then after that no legal action was filed, none of this, neither the plaintiff nor the defendant were present. This means that the legal force is that after 14 days the decision is read, no one files an appeal, so this decision has permanent legal force. Once it has permanent legal force, this ruling can only be implemented, after that the court is deemed to have implemented the rule. When the decision has permanent legal force then the parties must carry out this decision, if the winning party who has the right does not apply for execution then it is considered that they are willing to carry out the decision.

That as a solution if the party is given responsibility for providing for the child, it means that the decision is not implemented according to the ruling in the decision. So at least this child won't be completely free when his father is not responsible. So when the divorce vow was made, as in the Religious Court, the judge ordered that the father be asked to pay the child's first 1 (one) month's allowance. As an implementation, in the case of reconvention, the first month is asked to pay for the child's support through his wife but his wife is asked to pay for the child, not for him. The next problem, according to the procedural law, is that the request for execution should be waited for. However, the first month, meaning requested by the court, the Petitioner was ordered to pay one month for his child at the time of the vow, immediately before the divorce vow. So that at least this child can get it for 1 month, because if you wait for the execution request it could be too late.

In terms of how the Religious Courts realize justice, one of them is: And several efforts like this have been made, at least if the father is a bit slow in the sense of not wanting to provide support for his child, at least there is 1 (one) month for the child. Because he needs a divorce certificate, if there is no pledge then there is no decision, this is one of the Court's efforts to ensure that after the divorce the parents are negligent, the child's rights are still guaranteed, protected and fulfilled.

In examining a divorce case where there is a claim for child maintenance reconciliation, the intention is for a father to ensure that his child's rights after the divorce are still fulfilled and carried out by the parents. So in giving a decision the judge is very careful. Because the judge's consideration is not only material when giving a

decision to grant, he must look at his formal, absolute and absolute authority. Relatively Religious courts. So far, divorce cases are often dealt with because many mothers, for example, when the divorce case is divorced, they don't know what to do, so the judge formulates a lawsuit for iddah, mut'ah or child support with the intention that in divorce cases the divorce is filed by the husband so it's good. The mother or child still has the right to obtain their rights from their ex-husband or father over their child.

The Court accepts, in accordance with its authority, the Court accepts claims, whether direct claims or through reconvention claims related to the fulfillment of children's rights. So the Court is open, when there is a special direct claim, whether it is a claim for children's rights, children's gifts including maintenance, itself.can, meaning without having to sue for divorce claiming accumulation with divorce or reconvention with divorce.

Since the decision was determined by the panel of judges, the decision has permanent legal force. When the decision has permanent legal force, the parties must implement this decision. However, looking at developments since the decision was made by the Council of Judges for approximately 2 (two) years, the ex-husband (father) has only once granted the child rights related to maintenance. So that in it can be said that some parts of the implementation of the fulfillment of children's rights after the divorce decision have been fulfilled, but others have not, because they are only temporary and not complete or not fulfilled at all.

Pay attention to the judge's decision which has permanent legal force, where the judge's basis for making the decision is based on the provisions in the applicable statutory regulations and Islamic law. So, when the order is not carried out or carried out, it can be said that the ex-husband's (father's) behavior is a form of disobedience.

Examination of a divorce case in which there is a lawsuit for child maintenance reconciliation is intended for a father to carry out his obligations in fulfilling his child's rights after the divorce. So, in giving a decision the judge is very careful. Because the judge's consideration is not only material when giving a decision in favor, he must look at his formal authority. The court's absolute and relative considerations are also considered by the judge. So the judge's consideration when sentencing an ex-husband (father) to provide child support based on income, even though the father's permanent income does not rule out the possibility that the child's support rights after the divorce will be given in full. This means that even though the male parent has an income and remains in his job, this does not necessarily affect whether the Religious Court's decision is effective or not.

In the perspective of legal effectiveness, according to Seorjono Seokanto, there are several factors that make the application of the law not reach a degree of effectiveness. The effectiveness and ideality of law application in Seorjono Seokanto's effectiveness theory is constrained by factors which are benchmarks for effectiveness itself, including law, law enforcement, facilities, society and culture.

The role of the ex-husband (father) is an important subordinate in fulfilling child support. The realization is that post-divorce the children's rights are not fulfilled, in this case the ex-husband and father are analogous to (society) being called legal actors who do not fulfill their obligations towards children and the law (law). Society is a factor that has quite a large influence on the effectiveness of a law. A term that has often been heard, where there is a society, there is a law, if in society there is no compliance and awareness of the law, then there is no effectiveness.

However, there is no law in its provisions that clearly provides rules and regulations to regulate the presence of legal witnesses for fathers if they are reluctant to meet the costs of the hadhanah needs for children whose cases are post-divorce. Supposedly,

when a warning is punitive and obligatory, it means giving confirmation to the party with compelling values, so that the punishment will not be trivialized and considered trivial.

Even though the existence of law enforcers (judges) is allowed to perform *ijtihad* on its own when the legal rules do not yet exist or are not clear, as in the Islamic review, the judge's *ijtihad*, in this case, can provide a witness for the husband who is neglecting his obligation to provide for the child after divorce. Furthermore, in terms of (facilities) and (culture), the Religious Courts are quite applicable in realizing the applicable legislation so that the fulfillment of children's rights after divorce reaches effectiveness and implementation.

The implementation in the Religious Courts regarding the fulfillment of children's rights after divorce is in accordance with their authority, that the Religious Courts in ensuring that children's rights after divorce are protected and fulfilled is by giving orders to the ex-husband (father) before the divorce vow to provide maintenance costs. in the first month. The judge's order here is a condemnatory sentence so that if the husband is reluctant to pay child support, the divorce certificate cannot be issued by the Religious Court.

As a form of the Religious Court's efforts to protect children's rights so that they do not miss out in the future to anticipate when the ex-husband (father) is negligent in his obligations. Regarding the condemnation, the Religious Court as a forum for Muslims seeks to realize Islamic norms and values in accordance with the provisions of the Shari'a so that at least the rights of children after divorce remain guaranteed. And the decision based on case no. 3118/Pdt.G/2021/PA.Jbg has permanent legal force as described previously so it can be executed as another legal measure to obtain the right to care for the child, which in this case is on the mother's side.

Based on the competence and authority of the Religious Courts, it is known that carrying out the contents of the decision is known as voluntary or execution. Paying attention to the judge's decision as mentioned is whether the party being punished is deemed to have been based on voluntary principles in carrying it out. The substance of the principle of obedience in question is a regulation that punishes the ex-husband (father) to support his child after the dissolution of the marriage in the Religious Court with the provisions that have been determined.

This needs to be criticized and stated, because in the voluntary principle there is a contradiction with a rule that is punitive. Supposedly, when a warning is punitive and obligatory, it means giving confirmation to the party with compelling values, so that the punishment will not be trivialized and considered trivial. However, in reality, the decision which contains the sentence "punish" makes it difficult to execute, in fact the difficulty is not only in determining when an ex-husband (father) is deemed not to have voluntarily complied with the contents of the decision, but also regarding the method of execution. Meanwhile, execution can only be carried out if a request is submitted by the mother, because until today there has been no request for execution, this decision is considered to have been carried out.

Because the Religious Courts are based on procedural law, if their legal remedies have been exhausted (after 14 days) since the decision was handed down, if the parties in the case do not file a lawsuit for execution then they are deemed to have acknowledged the judge's decision in the trial. So in this case the ex-husband (father) who was sentenced was deemed to have been willing to carry out the verdict.

Several factors that serve as benchmarks for the discourse on legal effectiveness, which have been explained above, have actually been realized in an applicable manner. It's just that the role of fathers who do not comply with these rules is an obstacle in

bridging implementation to achieve ideal and perfect rules, so it seems to slightly damage the applicable legal arrangements.

3.2. Legal Consequences for Ex-Husbands (Fathers) Who Do Not Fulfill Their Obligations in Fulfilling Children's Rights Post-Divorce

One of consequence post-divorce is about child custody. Regarding child support lawsuits which are included in divorce cases. The court accepted, in accordance with its authority. The court accepts lawsuits, whether direct lawsuits or through reconvention lawsuits related to the fulfillment of children's rights. So the Court is open, when there is a special direct lawsuit, whether it is a lawsuit for children's rights, children's gifts including maintenance, that it is permissible, meaning without having to sue for divorce, suing for cumulating with divorce or reconvention with divorce.

The legal consequences for children are mentioned previously in Article 41 of Law Number 1 of 1974 concerning Marriage. "Whether mother or father continues to care for and educate their children, solely based on the child's interests. However, if both parents are forced to separate (divorce), then for the maintenance of children who are not yet mumayyiz under the age of 12, they are still obliged to provide maintenance costs to their children." This means that the dissolution of the marriage does not result in the costs of maintaining the child in the hands of the mother remaining the responsibility of the ex-husband (father). The obligation to a father to support his child is not broken.

Regarding the maintenance costs for a child aged 4 (four) years in the mother's care, the Majelis Judge in its decision sentenced the ex-husband (father) to provide maintenance for the child in the amount of Rp. 1,000,000 per month for child care and maintenance needs every year until the child is an adult or 21 years old.

After the divorce decision is handed down, it means that the decision has permanent legal force. Fulfillment of children's rights demanded by the Reconvention Plaintiff as a result of divorce must be fulfilled by the Reconvention Defendant, so that it must be carried out as ordered by the judge in the condemnator's decision which has legal force. However, in reality on the ground, the child support rights demanded by the wife in court as a legal consequence for the ex-husband (father) of divorce were apparently neglected and not fulfilled optimally. This is caused by several factors that hinder the implementation of the Jombang Religious Court's decision based on case no. 3118/Pdt.G/2021/PA.Jbg regarding the fulfillment of child support after divorce, as previously explained.

If the Religious Court has obliged the ex-husband to support a child but it turns out the ex-husband (father) does not carry out the decision as determined by the Majelis Hakim. Because the unfulfilled maintenance does not cover the child's maintenance needs in the hands of the mother, this can be said to be a form of non-compliance with the Court's decision. In this decision (already powerful permanent law) so that there are legal consequences for the ex-husband (father) who does not provide support.

In Law no. 1 of 1974 or the Compilation of Islamic Law can be seen. The religious court in giving the decision is applying religious law nor positive law, so that children are protected and their rights are guaranteed by the state through court decisions. Because this is a post-divorce case, the aim is to force the parents to give them their rights. Children's rights include the need for protection, security, provision of living, food and drink, and education. We can also see this in the Child Protection Law, including in Islamic law.

In order to realize the implementation of fulfilling alimony, which is one of the basic rights for children after divorce, as stated in the judge's decision based on case

registration number No. 3118/Pdt.G/2021/PA.Jbg and this decision has permanent legal force. So there are positive implications for the mother if the ex-husband (father) does not comply with the decision of the panel of judges because the unfulfilled living does not cover the child's maintenance needs in the mother's hands, this can be said to be a form of disobedience to the decision of the Religious Court which has sentenced the ex-husband to support a child but it turns out that the ex-husband (father) did not carry out the decision set by the Council of Judges.

If examined further, the reasons mentioned above essentially originate from the law which does not provide strict regulations regarding non-compliance by the ex-husband (father) in carrying out his obligations to provide for the child after the divorce decision. Both Law no. 1 of 1974, Regulation of Government Number 9 of 1975, Law Number 7 of 1989 of 1989 and the Compilation of Islamic Law do not regulate strict sanctions to force an ex-husband (father) who does not pay child support every month in an orderly manner.

As explained above, the judge's decision is an order that must be implemented. So the decision based on case no. 3118/Pdt.G/2021/PA.Jbg is a product of a Religious Court judge which means condemnatoir (sentencing someone to pay or hand over something to another), while determination is a product that is declaratory in nature (declaring). The condemnatoir decision which is considered by the judge as an embodiment of justice can be used as a legal effort to anticipate the future if the ex-husband (father) does not carry out his obligations in providing for the child after the divorce.

In a decision that has permanent legal force, there are also legal consequences arising from the ex-husband (father) who is proven not to have implemented the judge's decision. There are several steps that can be taken as a legal remedy for the mother to file a lawsuit for execution. The law is binding, this applies to the husband (father), so he must carry it out, but the court cannot enforce it if there is no request for execution. The court can force it if there is a request for execution. The request for execution can be implemented if there is a decision like this (which has permanent legal force). Then there is a ruling that states "punish", so it should be the father who is punished for this (child support costs). He must carry out the ruling.

With the word "punish" the father, if the father, whether intentionally or unintentionally, disobeys the decision, in this case there should be punishment for the person who committed the violation. The word "punish" here means an order, as the meaning of an order means it must and must be carried out. Orders in the realm of Islamic law have a binding definition, *fardlu 'ain*. For example, as a Muslim, performing the five daily prayers is *fardlu 'ain*. If this obligation is abandoned, it means getting sin and if it is carried out, it will get a reward. The existence of this law is a command from Allah SWT. It is not a law created by humans, but in reality, not many people who claim to be Muslim themselves often do not carry it out, instead of abandoning these orders.

A decision whose ruling contains the phrase "punish" means the decision can be executed, but execution can only be carried out if a request is submitted by the mother, because to date there has been no request for execution, this decision is considered to have been implemented. Because the Religious Courts are based on procedural law, if their legal efforts have been exhausted (after 14 days) since the decision was handed down, if the parties in the case do not file a lawsuit for execution then they are deemed to have acknowledged the judge's decision in the trial. So in this case the ex-husband (father) who was sentenced was deemed to have been willing to carry out the verdict. However, it cannot be denied that the phenomenon in the field is not like that. Even

when a child is a victim of divorce but has the right to fulfill his livelihood, the child's rights are neglected by the ex-husband (father).

Based on Mrs. Ulil Uswah's statement that Legal remedies are when they are not yet legally binding, the legal remedies are still appeals or cassation, if the appeal is not satisfied, and the level of cassation is then extraordinary, then judicial review. This case has permanent legal force and until now there has been no application for execution. When there is a request for execution, the husband who has the obligation to provide the child's rights will be called upon to carry it out, just carry it out. Because if the Court had to trace it to the community, of course it couldn't because according to the procedural law, that's not allowed.

The Religious Court has provided an effort for the mother by submitting a complaint to the Court which decided the case as a legal consequence for the ex-husband (father) if the decision is not implemented. However, due to a lack of understanding regarding the law, there are legal remedies for the mother for the ex's non-compliance husband (father) in this case the mother did not submit a request for execution.

Submitting an execution request certainly requires additional costs and quite a long time so it actually creates a burden on the mother and this is what sometimes happens become one of the obstacles for the mother to regain the right to child maintenance is not being submitted. This was known from the mother who said that her husband did not carry out his obligations in fulfilling child support after the decision. For decisions that have permanent legal force, the fulfillment of the child's rights can be demanded by the mother as a result of divorce, which is an obligation for the ex-husband (father) to fulfill. But there are several factors that hinder legal action for mothers. Some of the factors that become obstacles are as follows:

A. Ex-husband remarried

This factor is quite difficult for the mother if she claims the right to support her child in the condition that her ex-husband (father) has remarried another woman. Even though a father's obligations are not simply terminated by marriage, the fact of carrying 2 (two) responsibilities simultaneously, even though financially he is actually capable, is that his moral obligations are deliberately neglected. Even though his obligation to provide for his child does not cease, this also determines a father's sense of responsibility towards his child eroded rather than faded and disappeared.

B. The mother feels capable of providing for her own child

This factor occurs because a child is in custody, especially if you see duplicates in the postita of the decision because there are continuous and unavoidable arguments. So this makes the ex-wife (mother) work harder and no longer expect more from her ex-husband (father).

C. Minimal understanding of the law

In this case, both the mother and Sumai, although legally there are consequences for the ex-husband (father) to be given back the child support costs, the mother is reluctant to take legal action. Lack of understanding of the law is the highest influencing factor. The lack of responsibility of male parents in terms of children's gifts after divorce is the main reason why the implementation of the judge's decision is said to be ineffective.

4. CONCLUSION

Fulfillment implementation children's rights after divorce at the Jombang Religious Court based on the decision with case register No. 3118/Pdt.G/2021/PA.Jbg. In this case, the target was not achieved in its entirety, the mother made full efforts alone to fulfill the

rights of the child in which the ex-husband (father) should have played a role but did not carry it out optimally as stated in the decision. It is said that the judge's decision was not fully effective because the Religious Court assumed that if there was no request for execution submitted by the aggrieved party, it was considered willing to carry it out. Due to the absence of social control from law enforcement, its implementation in society cannot achieve ideal effectiveness. As a suggestion for the problems that occur, there are several suggestions. The Religious Courts should have special law enforcers in terms of supervision as an umbrella for the effectiveness of the law so that children's rights after their parents' divorce can still be fulfilled and guaranteed.

The legal consequences for an ex-husband (father) who does not carry out his obligations in fulfilling child support after divorce can be carried out in stages, namely the wife asks for execution. With the request for execution submitted, the Religious Court will then force the ex-husband (father) to fulfill his obligations in terms of maintenance which is the child's right so that it is fulfilled according to the provisions and stages. However, there are obstacles for the mother so she is reluctant to apply for execution due to several factors such as the father remarrying, the mother being able to pay for the child's support independently, and a lack of knowledge about the law. Due to the lack of a sense of responsibility, the ex-husband (father) neglects his obligations towards the child so that the child's rights are neglected and awareness of the law in society means that the mother, in this case, has to try alone to meet the costs of the child's needs. The mother should continue to try to remind her ex-husband (father) frequently, apart from that, so that the relationship between the ex-husband (father) and the child remains good so that in the future when the child grows up he can still receive the rights of the male parent (father).

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With the completion of this writing, the author is fully aware that in this research there are still many shortcomings and errors that need to be corrected. Therefore, for sake kind and especially for individual writers, we highly expect suggestions and constructive criticism from readers, so that in future this scientific work can be a contribution to the field of Islamic science and provide benefits to all.

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