

Legal Protection for Children Regarding Child Support Following Their Parents' Divorce: The Effectiveness of Criminal Sanctions in The Compilation of Indonesian Islamic Law

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Abstract

Legal protection of children's rights to maintenance following parental divorce constitutes a fundamental issue demanding serious attention within the Islamic family law system in Indonesia, considering that Law Number 23 of 2002 concerning Child Protection as amended by Law Number 35 of 2014 through Article 26 paragraph (1) explicitly obligates parents to nurture, care for, educate, and protect children including the fulfillment of economic needs, while Article 76B in conjunction with Article 77B regulates the prohibition of child neglect with criminal consequences of maximum five years imprisonment and a fine of one hundred million rupiah. The Compilation of Islamic Law as the substantive guideline for Religious Courts in Article 105 letter (c) and Article 156 letter (d) has stipulated that child maintenance costs shall be borne by the father, however the field reality as examined by Wahyuni indicates that such provisions lack strict sanction mechanisms thereby creating a legal vacuum in the enforcement of child maintenance decisions, whereas Arifin's research reveals that Religious Court Decisions regarding child maintenance often become paper tigers due to the absence of effective coercive power against non-compliant parties. This condition is reinforced by Musawwamah's findings which note that the majority of mothers holding custody rights experience difficulties in executing maintenance decisions due to weak coordination between the civil mechanisms of Religious Courts and criminal instruments within the Child Protection Law. Based on these problems, this research formulates: 1. How is legal protection for children's maintenance rights addressed in Decision Number 1181/Pdt.G/2024/PA.Rks in conjunction with Decision Number 30/Pdt.G/2025/PTA.Bt? 2. How can the effectiveness of criminal sanctions be integrated within the framework of the Compilation of Islamic Law? This research employs qualitative methods with a juridical-normative approach through decision analysis, literature study, and in-depth interviews. The research findings are expected to contribute a formulation for strengthening sanctions within the Compilation of Islamic Law to ensure effective and sustainable protection of children's maintenance rights.



INTRODUCTION

Protect law right child part fundamental principles in system Indonesian law originates from from A mark universal humanity and religious teachings. Constitution country through Article 28B paragraph (2) of the Law The 1945 Constitution of the Republic of Indonesia explicit ensure right every child on continuity live, grow, and develop as well as get protection from violence And discrimination. Guarantee constitutional the Then explained more carry on in various regulation legislation, including Constitution Number 23 of 2002 concerning Protection Child as has changed with Constitution Number 35 of 2014 which regulates in a way comprehensive about rights child And parental obligations (Tumanggor et al., 2019). Islamic law as Wrong One source law material in system law national Also give attention Serious to protection children, as reflected in draft *hifz al- nasl* the discussion contained of five goals main sharia (*maqasid al- shari'ah*). Combination mark contained in Islamic law combined on room scope law national the confirm that protection to child No only realm system law positive, but not quite enough moral responsibility and religious in nature imperative (Nasution & Nasution, 2021).

Divorce as phenomenon social that is not can avoided in life socializing bring consequence significant law to fulfillment rights children, in particular right on living from parents. Compilation Islamic law as guidelines material for Religious Court in finish case Islamic civil law has arrange provision about obligation living child post divorce through Article 105 letter (c) and Article 156 letter (d) stipulates that cost maintenance And living child become not quite enough answered father (Mayasari et al., 2024). Provision the in line with view majority scholars jurisprudence classic that places obligation living child as not quite enough answer absolute father based on his abilities. Wahbah al- Zuhayli in his book *Islamic jurisprudence wa Justice* confirm living child become obligation shaped *la yasqutu bi al- taqadum*, namely No fall Because walking time so that arrears living still become mandatory debt filled by father. Consequence from provision the is that the verdict relationship marriage No remove giving father's living expenses children, obligations give living until a child independent And mature (R. A. Wicaksono & Kusriyah, 2018).

Fact real provide strong arguments there is significant inequality between

provisions normative about obligation living child with practice fulfillment post divorce. Various study empirical disclose that decision Religious Court regarding living child often face constraint Serious in stage execution Because non-compliance voluntary the punished party (Probilla et al., 2021). Phenomenon the aggravated with absence mechanism strict sanctions in Compilation Islamic law regarding the party that ignores obligation livelihood, so that decision court often become No meaningful for protection interest child. Condition This cause emptiness law (*legal vacuum*) which has an impact direct on welfare and the future child as the most vulnerable parties in situation parents' divorce. Nothingness Power effective coercion to decision living child make instrument law Islamic family lost function his protection And put child in position that is not profitable in a way economy and psychological (Heriyanto et al., 2022).

Constitution Protection Child indeed has provide instrument criminal offenses that can be used For take action perpetrator neglect children, including neglect obligation living by parents. Article 76B in conjunction with Article 77B of the Law Number 35 of 2014 regulates prohibition neglect child with threat criminal prison maximum five years And fine maximum one hundred million rupiah. Instrument criminal the in a way theoretical can become solution on weakness mechanism execution decision civil Religious Courts which have been This No own Power force effective. Problems that arise is Not yet integration mechanism criminal the to in system law Muslim families, in particular in framework Compilation Islamic law as references main Religious courts. Disharmony between instrument law civil in Compilation Islamic law with instrument criminal in Constitution Protection Child result in protection law to right living child become not optimal and No give effect deterrent for perpetrator neglect livelihood (Hasan & Candra, 2021).

Decision Number 1181/ Pdt.G /2024/ PA.Rks jo 30/ Pdt.G /2025/ PTA.Bt is Wrong One product law Religious Court which contains amar about obligation living child post divorce And relevant For reviewed in context effectiveness protection law children. Research on decision the become important For analyze as far as where The Religious Court has accommodate interest protection child And formulate mechanisms that can ensure fulfillment right living child in a way sustainable (Yulianti & Mangku, 2021). Study This Also intended For

explore possibility integration sanctions criminal in framework Compilation Islamic law as effort strengthening enforcement decision living children who have been This experience obstacle serious in the field. Research with approach qualitative juridical-normative This capable contribute theoretical And practical specifically progress law Muslim families in Indonesia are more responsive to need protection child post parental divorce (Manullang, 2020).

THEORETICAL BASIS

A. Draft Marry In Islamic Law

Wedding perspective Islamic law is institutions sacred No only give rule civil law husband And wife, but rather cause impact law nature permanent to child born from marriage said. Al- Sayyid Sabiq in book *Fiqh al-Sunnah* define marry as the stipulated contract by sharia For allow *istimta* (having fun) between man And Woman as well as to make permissible *istimta* Woman for man with all consequence right And the obligations that accompany it (Sari et al., 2021). Conception the strengthened by Ibn Qudamah's view in *al- Mughni* who emphasized that contract marry give birth to connection lineage between child with both of his parents who are not can disconnected by divorce, so that obligation father's maintenance towards child still valid although bond marriage with Mother has end. Wedding called as *mithaqan ghalizhan* (solid agreement) as stated in the Qur'an Surah al- Nisa ' verse 21, which contains spiritual, social and cultural dimensions law in a way simultaneously. Implications from draft *mithaqan ghalizhan* the is not quite enough answer parents to child No can diverted or deleted solely Because occurrence divorce, but rather attached in a way permanent as consequence from connection blood that is nature (Wahyuningsih, 2016).

B. Theory Certainty Law

Clarity law part functioning system give guarantee that law can implemented in a way consistent And give guidelines clear behavior for society. Gustav Radbruch in his work *Legal philosophy* develop three theory fundamental that is justice (*gerechtigkeits*), expediency (*zweckmassigkeit*), and certainty law (*rechtssicherheit*), where third mark the must attempted in a way balanced in every formation And enforcement law to be achieved objective ideal law (Asyiqin et al., 2024). Lon Luvois Fuller in *The Morality of Law* formulate

eight principle legality that becomes condition certainty law, including must existence regulations that are general, regulations must announced to public, regulations No may valid ebb, flow, regulations must clear And can understood, regulations No permitted each other contrary to regulations No may demand something impossible, rules must nature relatively constant, and must There is suitability between regulation with its implementation (Heriwiyanto et al., 2021). Peter Mahmud Marzuki explain that certainty law in the Indonesian context requires existence rule clear laws And firm about right And obligation subject law, mechanism enforcement effective law, as well as adequate sanctions for offender law so that everyone can predict consequence law from his actions. Context protection living child post divorce need certainty law that guarantees that decision court about obligation living can executed in a way effective, so that absence sanctions firm in Compilation Islamic law regarding neglect living child create uncertainty detrimental laws interest child as the party that should get protection priority (Witasari & Arif, 2019).

C. Theory Protection Law

Protection law is principle related government in matter This country make an effort give guarantee right for every its citizens through instrument effective law And can enforced (Pradana et al., 2021). Philipus M. Hadjon in his dissertation entitled *Protection Law For the People of Indonesia* put forward that protection law is protection to dignity And dignity as well as confession to rights basic human possession by subject law based on provision law from arbitrariness, which can differentiated become protection law preventive And protection law repressive. Satjipto Rahardjo in Knowledge Law confirm that protection law aim For give protection to right basic human beings who are harmed by others, where protection the given to society so that it can enjoy all rights granted by law in a way effective And sustainable (Witasari & Arif, 2019). Perspective Islamic law as put forward by Jasser Auda in *Maqasid al- Shariah as Philosophy of Islamic Law* put protection to descendants (*hifz al- nasl*) as Wrong One of five goals main Sharia (*al- daruriyyat al- khams*) which must be guaranteed fulfillment through instrument adequate laws, including protection towards religion, soul, reason, heredity, and property. Ahmad Rofiq conclude that protection law to child on living post divorce need integration between mechanism law civil And criminal law to provide effect deterrent for the party

that ignores his obligations as well as ensure fulfillment rights child optimally and sustainable (Mahfud, 2020).

Maqasid al- shariah is theory about goals sharia that becomes runway philosophical in formation And implementation Islamic law. Jasser Auda explain that *maqasid al- shariah* is meanings And desired goals by sharia in determination the laws For welfare human. Theory This give framework comprehensive analysis For evaluate suitability something provision law with objective sharia (Taufika et al., 2025).

Al- Shaṭibi in *Al- Muwafaqat* classify *maqasid al- shariah* become three levels based on the urgency, namely *al- daruriyat* (primary needs), *al- hajiyyat* (needs secondary), and *al- tahsiniyat* (needs tertiary). Level *al- daruriyyat* covers five things the main thing that must be protected, including protection of religion (*hifz al-din*), soul (*hifz al- nafs*), reason (*hifz al- aql*), descendants (*hifz al- nasl*), and treasure (*hifz al-mal*).

Protection to descendants (*hifz al- nasl*) in context *maqasid al- shariah* covers protection to children to be guaranteed continuity life And grow the flower. Auda confirm that protection child is manifestation from objective sharia that must be guaranteed through instrument effective law And own Power forced. Neglect living child by father is violation to principle *hifz al- nasl* which must handled in a way Serious (Fauzi & Battour, 2024).

Perspective *maqasid al- shariah* give legitimacy for effort strengthening protection law to right living child through integration sanctions criminal. Purpose the benefit that becomes orientation sharia want existence effective mechanisms For ensure fulfillment rights son of Ahmad Rofiq conclude that update law Muslim families must oriented on protection welfare child as the most vulnerable parties in situation divorce (Musaad et al., 2024).

METHOD STUDY

Use method study This qualitative with method juridical normative focus analysis deep material primary law and secondary use study protection law child on living post parental divorce (Tarmidzi et al., 2024). Peter Mahmud Marzuki explain that find rule law in study normal called study normative, principles law, doctrine law the goal is get answer issue law currently faced through approach regulation or legislation, approach case, and approach

conceptual (G. A. Wicaksono, 2024). Material primary law in study This covering Decision Number 1181/ Pdt.G /2024/ PA.Rks jo 30/ Pdt.G /2025/ PTA.Bt, Constitution Number 35 of 2014 concerning Protection Children, as well as Compilation Islamic law, whereas material law secondary covering books, journals scientific, and literature appropriate academic with theme research (Ahmad & Zamri, 2024). ohnny Ibrahim emphasized that analysis material law in study normative done in a way prescriptive with give argumentation on results research that has been done based on logic systematic law. Soerjono Soekanto and Sri Mamudji add that studies literature in study law normative functioning as instrument main For collect secondary data consisting from material primary, secondary, and legal laws tertiary use support analysis to problem the law under study (Faisol et al., 2023).

RESULTS STUDY AND DISCUSSION

Protection Law Child on Living Post Parental Divorce : Decision 1181/ Pdt.G / 2024/ PA.Rks jo 30/ Pdt.G /2025/ PTA.Bt to Effectiveness Sanctions Criminal in Compilation Indonesian Islamic Law

1. Protection Law To Right Living Child in Decision Number 1181/ Rev.G /2024/ PA.Rks jo 30/ Pdt.G /2025/ PTA.Bt

Decision Number 1181/ Pdt.G /2024/ PA.Rks jo 30/ Pdt.G /2025/ PTA.Bt is product law Religious Court which contains provision about obligation living child post divorce as manifestation from principles Islamic law regarding not quite enough answer parents to child. The panel of judges in consideration the law referring to on provision Article 105 letter (c) and Article 156 letter (d) Compilation Islamic law stipulates that cost maintenance And living child become not quite enough father answered according to his abilities until child the mature or capable stand Alone. Wahbah al- Zuhayli confirm that obligation living child is consequence laws that were born from contract legal marriage And No can deleted by divorce Because connection lineage between father and child nature permanent. Decision the reflect comprehensive understanding to draft *mithaqan ghalizhan* as stated in the Qur'an Surah al- Nisa ' verse 21 which places wedding as agreement sturdy with implications sustainable law although bond husband wife has end through divorce (Yunus et al., 2020).

Perspective theory certainty law Gustav Radbruch's view show Decision

Number 1181/ Pdt.G /2024/ PA.Rks jo 30/ Pdt.G /2025/ PTA.Bt has give certainty law on level substance with set nominal amount of maintenance child in a way specific And period regular payments so that the parties can predict right And his obligations each. bruch to focus on certainty law *legal system* is part from three mark base law together with justice (*gerechtigheit*) And benefits (*zweckmassigkeit*) that must attempted in a way balanced in every formation And enforcement law to be achieved objective ideal law for all over party. Lon Luvois Fuller added that certainty law want existence suitability between regulation with implementation so that law No just become provision normative which is not meaningful in life real public. Problems certainty law in context decision This identified on stage execution Because Compilation Islamic law does not load mechanism strict sanctions And adequate to the party that ignores obligation living as has decided by court (Ahmad et al., 2024).

Theory protection law Philipus M. Hadjon give framework relevant analysis For evaluate quality protection provided by Decision Number 1181/ Pdt.G /2024/ PA.Rks jo 30/ Pdt.G /2025/ PTA.Bt about right living child after disconnection bond parents ' marriage. Hadjon give difference protection law two form main, namely protection law preventive measures aimed at prevent occurrence violation right through formation clear regulations And protection law repressive aims finish dispute or give sanctions after violation happen. Decision The Religious Court can categorized as form protection law preventive measures that determine right living child formally in document the law that has strength law still And binding on the parties. Satjipto Rahardjo confirm that protection law must give protection real to rights subject vulnerable law And No only nature formality mere without give impact concrete for protected party. Weakness protection repressive identified in a way clear on absence mechanism effective coercion in Compilation Islamic law for ensure implementation decision living child in a way sustainable And consistent (Hakim & Azizi, 2023).

Perspective *maqasid al- shariah* as theory objective sharia put Decision Number 1181/ Pdt.G /2024/ PA.Rks jo 30/ Pdt.G /2025/ PTA.Bt as instrument law - oriented on protection descendants (*hifz al- nasl*) as Wrong One of the five primary needs (*al- daruriyyat al- khams*) that must be met guaranteed fulfillment by Islamic law. Jasser Auda explain that *hifz al- nasl* in context contemporary

covers protection to continuity live, grow flowers, education, and welfare children who must guaranteed through instrument effective law And own Power forced. Al- Shaṭibi classify protection to descendants as primary needs that are fulfilled nature must And No can ignored by anybody including parents who have divorce Because concerning sustainability generation people human. Decision The Religious Court has reflect Spirit *maqasid al- shariah* in protect interest best for children, but thus effectiveness achievement objective sharia need strengthening mechanism sanctions that can be give effect deterrent for the party that ignores obligation living to his son (Nakissa, 2023).

Synthesis analysis to Decision Number 1181/ Pdt.G /2024/ PA.Rks jo 30/ Pdt.G /2025/ PTA.Bt based on fourth the theory used show that decision the has fulfil aspect substance law in a way adequate However Still weak on aspect enforcement And execution. Ahmad Rofiq confirm that update law Muslim families in Indonesia must oriented on strengthening mechanism execution decision living child through integration instrument law civil with instrument law criminal law to provide comprehensive protection. Constitution Number 35 of 2014 concerning Protection Child through Article 76B in conjunction with Article 77B has provide instrument criminal in the form of threat prison maximum five years And fine maximum one hundred million rupiah against perpetrator neglect children who can integrated to in system enforcement decision Religious Courts. Synergy between mechanism civil in Compilation Islamic law with sanctions criminal in Constitution Protection Child required For realize protection effective, certain, and legal in accordance with objective sharia in protect interest best for child as generation successor nation And people (Syah et al., 2025).

2. Effectiveness Sanctions Criminal Integrated In Framework Compilation Islamic Law Strengthens Right Living Child ?

Obligation father give child living post divorce in system Indonesian law is regulated through regulations Where One with others have characteristics typical in enforcement of the law Number 1 of 1974 concerning Marriage through Article 41 letter (b) stipulates that father responsible answer on all cost maintenance And required education children, and if father in fact No can fulfil

obligation the so court can determine that Mother follow carry cost said. Djoko Prakoso and I Ketut Murtika explain that provision the nature imperative However No load mechanism strict sanctions so that enforcement depends fully on good faith Good the burdened party obligation. Absence sanctions in Constitution Marriage cause provision about obligation living child become not enough effective in give adequate protection for interest best child post divorce both parents (Indiantoro et al., 2022).

Compilation Islamic law as codification Islamic law in Indonesia regulates provision living child post divorce in a way more details And comprehensive compared to with Constitution Marriage. Article 105 letter (c) KHI stipulates that cost maintenance covered by father, while Article 156 letter (d) confirms that all cost hadhanah And living child become not quite enough father answered according to his abilities at least until child the mature And can look after self Alone that is 21 years old. Zainuddin Ali explained that provision the is adoption from principles jurisprudence classic four school of thought that places living child as obligation absolute father based on connection lineage. Problems similar Also found in KHI, namely No existence provision about sanctions criminal and mechanism effective coercion towards a neglectful father obligation living so that decision court often No can implemented optimally (Shania Verra Nita, 2020).

Regulation book criminal provide instrument law criminal offenses that can be used For take action perpetrator neglect family including neglect obligation living to child post parental divorce. Article 304 of the Criminal Code regulates that goods Who with on purpose put or let somebody in condition miserable, even though according to applicable law for him He must give life, care, or maintenance to that person, threatened with criminal maximum two years in prison year eight month or criminal fine (Ramadhan, 2020). Wirjono Prodjodikoro explain that provision the is offense punitive commission somebody Because No do obligatory actions to him by applicable law. Relevance Article 304 of the Criminal Code against neglect living child located on the element " let" in condition miserable " and " mandatory give life " which includes obligation living as has arranged in law family (Nasution & Nasution, 2021).

Protection child contained in the Law Number 35 of 2014 provides

instrument more criminal specific, comprehensive For put things in order neglect child compared to with provision in the Criminal Code. Article 76B of the Law the arrange prohibition for everyone to to place, to let, to involve, or order involving child in situation treatment Wrong And neglect, whereas Article 77B stipulates threat criminal prison maximum five years and / or fine maximum one hundred million rupiah for the offendeRini Fitriani in journal Kanun : Journal of Science Law to explain that provision the can implemented towards the father who with on purpose ignore obligation living child Because fulfil the element " let" child in situation neglect " which has an impact on obstruction fulfillment need base child in a way worthy. Threat sanctions more criminal heavy in Constitution Protection Child show seriousness country in give protection to rights child from all form neglect.

Integration sanctions criminal to in framework Compilation Islamic law requires approach harmonization law that combines characteristics law Islamic civil law with instrument criminal in system law Indonesian national. Sudikno Mertokusumo reveal that harmonization law aim For remove conflict And emptiness law between various regulation legislation so that created unity system coherent law And effective in public. Dwidja Priyatno in his writing in the journal Scientific Policy Law confirm that implementation sanctions criminal must notice principle subsidiarity namely criminal made into as means final after means law other No effective reach desired goal. Context neglect living child show that mechanism civil in KHI has proven No effective Because No own Power adequate force so that integration sanctions criminal become need urge (Aminah & Muala, 2023).

Effectiveness integration sanctions criminal in enforcement right living child need mechanism clear coordination And structured between Religious Court with apparatus enforcer law criminal related. Nur Iftitah Isnantiana explain that obstacle execution decision living children in the Religious Court due to by absence mechanism effective coercion And lack of coordination with institution enforcer law other For follow up neglect verdict. Asni propose that Religious Courts need to build protocol Work The same with police And prosecutor's office For follow up neglect decision living child through mechanism criminal as arranged in Constitution Protection Applicable child Mechanism coordination the can realized through agreement Work The same between

regulatory body procedure reporting, investigation, and prosecution against the father who was proven ignore obligation living child.

Strengthening enforcement right living child through integration sanctions criminal in line with principle *maqasid al- shariah* put it protection descendants as Wrong One objective essential Islamic sharia. Moh. Toriquddin explain that protection to descendants (*hifz al- nasl*) in context contemporary covers protection to all over aspect life child covering continuity life, health, education, and welfare economy that must guaranteed fulfillment. Khoiruddin Nasution say that update law Muslim families in Indonesia must oriented on strengthening mechanism enforcement decision court for the purpose sharia in protect interest child can achieved optimally and sustainable. Integration sanctions criminal as instrument enforcement decision living child is implementation from principle *benefit mursalah* who gave legitimacy for formation law new.

Implementation integration sanctions criminal in the KHI framework requires reformulation provisions governing mechanism execution decision living child with list in a way explicit consequence criminal for the violator. Nita Triana disclose that reform law Muslim families in Indonesia must consider balance between aspect civil law And aspect protection of a nature public so that the decision court own impact real. Ahmad Irwan Hamzani in the Cita Journal Law recommend that Court Great need publish regulations governing mechanism coordination between Religious Court with institutions enforcer law criminal For follow up neglect decision living child in a way systematic (Nugroho & Dewi, 2024). Reformulation the can done through revision Compilation Islamic law or publishing Regulation Court The Great One Who Rules in a way special about procedure enforcement to neglect decision living child with referring to provision criminal in Constitution Protection Child

CONCLUSION

Decision Research Number 1181/ Rev.G /2024/ PA.Rks show that protection law to right living child post parental divorce has accommodated in a way substantial in amar decision Religious Court based on provision Article 105 letter (c) and Article 156 letter (d) Compilation Islamic law stipulates obligation living child as not quite enough answer absolute father. Perspective theory protection law show that decision the has fulfil aspect protection preventive

with set right living child formally in document law in force still, but weak on aspect protection repressive Because absence mechanism effective sanctions in Compilation Islamic law regarding the party that ignores his obligations. Theory certainty law disclose that decision has give certainty on level substance with set nominal amount and period payment living in a way specific, but certainty on level enforcement Not yet fulfilled Because decision the No own Power adequate force. Perspective maqāṣid al- sharī'ah show that decision has reflect Spirit protection descendants (*hifz al- nasl*) as primary needs, but effectiveness achievement objective sharia need strengthening through integration sanctions criminal as arranged in Article 76B in conjunction with Article 77B of the Law Number 35 of 2014 concerning Protection Child.

Suggestion

Based on results study And analysis that has been done, some recommendation can submitted For strengthen protection law to right living child post parental divorce in Indonesia. Court Great need publish Regulation Court The Great One who rules in a way special about mechanism coordination between Religious Court with institutions enforcer law criminal For follow up neglect decision living children who have powerful law still through instrument criminal in Constitution Protection Children. Government And Board People's Representatives need do revision to Compilation Islamic law with add provisions that are explicit list consequence criminal for fathers who neglect obligation give living after the judge's decision has final force as form harmonization with system law protection child national. Religious Courts need to build protocol Work The same with police And the prosecutor's office regulates procedure reporting, investigation, and prosecution to perpetrator neglect living children so that the decision court own impact real for protection interest best children. Further research required For reviewing integration models sanctions effective criminal law And in accordance with characteristics law Islamic families in Indonesia.

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