

The Problem of Fulfilling Children's Rights After Divorce: A Study of the Causative Factors and Their Legal Implications

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ABSTRAK

Divorce does not remove the obligations of parents in fulfilling the rights of children, but in practice the fulfillment of these rights is still often neglected. Children often do not get the right to maintenance, upbringing, education, health, and affection due to various factors, such as economic limitations, low legal awareness, prolonged conflicts between parents, weak implementation of court decisions, and lack of optimal supervision of the implementation of parental obligations. This study aims to analyze the factors that cause the non-fulfillment of children's rights after divorce and their legal implications in the perspective of Islamic law and positive law in Indonesia. This research is a normative legal research with legislative, conceptual, and case approaches. Legal materials are obtained from laws and regulations, court decisions, books, and scientific articles. The results of the study show that the main factors causing the non-fulfillment of children's rights include economic factors, low compliance with court decisions, conflicts between parents, weak child support execution mechanisms, and lack of state supervision. This condition has an impact on the protection of children's rights and the application of the principle of the best interests for children. Therefore, it is necessary to strengthen regulations, the effectiveness of the implementation of court decisions, and synergy between the state, judicial institutions, and the community to ensure the fulfillment of children's rights after divorce.

Introduction

The family is the first and main institution in ensuring the fulfillment of children's basic rights, both the right to live, grow and develop, obtain education, health, protection, and affection. (Law Number 35 of 2014, Article 1 and 4) In the Indonesian legal system, parents' obligations to children do not end with the breakdown of the marriage. (Law Number 1 of 1974, Article 41) Divorce only ends the legal relationship between husband and wife, while the legal relationship between parents and children remains attached until the child grows up or is able to stand on his own. (Presidential Instruction No. 1 of 1991, Article 105 and 156) This principle is affirmed in Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, Compilation of Islamic Law (KHI), and Law Number 35 of 2014 concerning Child Protection (Syarifuddin, 2014).

Normatively, Indonesian law has comprehensively regulated the obligations of parents after divorce. Fathers are still obliged to provide support, education costs, health costs, and children's living needs, while mothers obtain the right to care for children who have not been *mumayyiz* while still paying attention to the best interests of the child. (Law Number 1 of 1974, Article 41; Presidential Instruction No. 1 of 1991, Article 105 and 156) However, these normative provisions have not been fully implemented in practice. Many court decisions that stipulate child support obligations are not complied with by the father, so that the child loses his economic rights. (Manan, 2017) In addition, prolonged conflicts between ex-spouses often make the child an object of dispute so that the child's right to receive affection from both parents is neglected (Arto, 2018).

From the perspective of Islamic law, child maintenance (*hadhanah*) is an obligation that does not fall due to divorce. The purpose of sharia (*maqashid sharia*) places the protection of posterity (*hifz al-nasl*) as one of the main goals that must be realized. Therefore, any action that results in the neglect of children's rights is contrary to the principle of benefit that is the basis of Islamic law (al-Zuhaili, 2007; Auda, 2008). However, various studies show that the fulfillment of children's rights after divorce still faces many obstacles. These problems are not only caused by economic factors, but also weak legal compliance, lack of effectiveness in the implementation of court decisions, low public legal awareness, and not optimal supervision systems for the implementation of parental obligations. (Law Number 35 of 2014, Article 26) This condition shows that there is a gap between legal norms (*das sollen*) and social practices (*das sein*) so that a more comprehensive study of the causative factors and legal implications is needed (Syarifuddin, 2014).

The phenomenon that develops in practice shows that the increase in the divorce rate in Indonesia is directly proportional to the increase in the problem of fulfilling children's rights. Not a few religious court decisions require fathers to pay child support, but these decisions are not implemented voluntarily. (Maretna et al., 2026) As a result, mothers as the caregivers must bear all the child's economic needs themselves. On the other hand, the legal mechanism to force the

implementation of child support obligations is still not running effectively. In contrast to the execution of material objects, the implementation of judgments regarding child support is often hampered by the absence of a continuous supervision mechanism. (Antareng, 2018) This condition causes the court decision to be only declaratory without providing a real guarantee of the fulfillment of children's rights.

Another phenomenon is the emergence of the practice of *parental alienation*, where one parent obstructs the child's relationship with the other parent due to post-divorce conflicts. (Syamsi & Barlinti, 2022) This situation has an impact on the disruption of the child's psychological development and is contrary to the principle of the *best interests of the child* (Tarmizi et al., 2023) Divorce data in Indonesia shows a relatively high trend in recent years. Data published by the Central Statistics Agency (BPS) and the Supreme Court of the Republic of Indonesia shows that every year hundreds of thousands of divorce cases are decided by religious courts. This condition has a direct impact on the increase in the number of children living in families after divorce (Siregar et al., 2022). Various empirical studies also show that most mothers who obtain custody have difficulty obtaining child support as stipulated in court decisions. Research in various regions reveals that many fathers do not carry out their maintenance obligations regularly due to job loss, remarriage, low legal awareness, or conflicts with former partners. (Islami & Sahara, 2019) In addition, research on the implementation of child support decisions shows that the execution mechanism for these decisions is still rarely carried out so that legal protection for children has not run optimally (Santini & Tasia, 2025)

These findings indicate that the main problem lies not in the absence of regulations, but in the weak implementation, supervision, and enforcement of parental obligations after divorce. Studies on children's rights after divorce have been conducted by various researchers. Most research focuses on three main themes. First, a normative analysis of hadhanah rights and child support obligations based on Islamic law and the Compilation of Islamic Law. Second, the implementation of religious court decisions regarding child support in various regions. Third, the protection of children's rights based on the Child Protection Law (Rasjid & Achmad, 2025). However, these studies generally only examine one specific aspect, such as maintenance obligations, the right to hadhanah, or the implementation of court decisions. There has not been much research that integrates the analysis of the factors that cause the non-fulfillment of children's rights after divorce with their legal implications in the perspective of Islamic law and positive law in Indonesia comprehensively. In addition, studies linking social, economic, cultural, and institutional factors as the main causes of weak protection of children's rights are still relatively limited (Dewi et al., 2025).

This research offers novelty in several aspects. First, the study not only discusses children's rights after divorce from a normative aspect, but also

comprehensively analyzes the factors that cause children's rights not to be fulfilled which include economic factors, legal compliance, family conflicts, the effectiveness of the implementation of court decisions, and institutional aspects. Second, the research integrates the perspectives of Islamic law, positive Indonesian law, and child protection principles in one analytical framework so as to produce a more complete study on the protection of children's rights after divorce (Dewi et al., 2025). Third, the study offers recommendations for strengthening the legal protection system through increasing the effectiveness of the implementation of court decisions, strengthening the mechanism for monitoring child support obligations, and optimizing the role of the state in ensuring the best interests of children (Nasuha et al., 2026). Thus, this research is not only descriptive, but also makes a conceptual and practical contribution to the development of Islamic family law in Indonesia

Methodology

This research is a normative *legal research* that aims to examine the problems of fulfilling children's rights after divorce based on legal norms, legal principles, doctrines, and court decisions. Normative legal research was chosen because the focus of the research is directed at the analysis of legal arrangements regarding children's rights after divorce, the factors that cause the non-fulfillment of children's rights, and their legal implications in the perspective of Islamic law and positive Indonesian law (Marzuki, 2021). The approach used includes three approaches. First, *approach*, namely by reviewing various laws and regulations that regulate the protection of children's rights after divorce, including Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, Compilation of Islamic Law, and provisions other related issues. Second, the *conceptual approach*, namely by examining the concept of *hadhanah*, child support, *the best interests of the child*, child protection, and *sharia maqashid* as a theoretical basis in analyzing the fulfillment of children's rights after divorce. Third, **the** case approach, *namely through an analysis of court decisions related to child support, custody (hadhanah), and the implementation of parental obligations after divorce.* (Ibrahim, 2019)

The legal materials used consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, Law Number 35 of 2014 concerning Child Protection, Compilation of Islamic Law, Supreme Court rulings, Religious Court rulings, as well as international legal instruments such as *the Convention on the Rights of the Child* (CRC). Secondary legal materials consist of law

books, national and international journal articles, research results, dissertations, theses, and expert opinions related to Islamic family law, child protection, and Islamic civil law. The tertiary legal materials include legal dictionaries, legal encyclopedias, and other reference sources that support research.

The technique of collecting legal materials is carried out through library *research*, which is by inventorying, identifying, and reviewing various laws and regulations, court decisions, books, scientific articles, and legal documents relevant to the object of research. All legal materials are then classified based on the theme of the discussion to facilitate the analysis process. The analysis of legal materials is carried out qualitatively using the descriptive-analytical analysis method. The analysis begins by identifying the legal norms that govern the fulfillment of children's rights after divorce, then comparing them with empirical facts found in various previous studies and court decisions. Furthermore, legal interpretation is carried out through grammatical, systematic, and teleological approaches to obtain a comprehensive understanding of the factors that cause the non-fulfillment of children's rights and their legal implications. The results of the analysis are then compiled in a deductive manner, namely departing from general legal provisions to discussions on specific issues related to the fulfillment of children's rights after divorce, so that conclusions and recommendations are obtained that can contribute to the development of Islamic family law and the protection of children's rights in Indonesia. (Soekanto & Mamudji, 2018)

Results and Discussion

The Concept of Post-Divorce Children's Rights

Divorce is a legal event that ends the marital relationship between a husband and wife, but does not remove the legal relationship between parents and children. Therefore, the breakdown of marriage does not result in the loss of parents' obligations to fulfill the rights of children. In the Indonesian legal system, the protection of the rights of the child after divorce is based on the principle that *the best interests of the child* must be the main consideration in every decision concerning the life of the child. This principle is regulated in Law Number 35 of 2014 concerning Child Protection, Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, and the Compilation of Islamic Law (Harahap, 2019).

The rights of children after divorce include the right to upbringing (*hadhanah*), maintenance, maintenance, education, health, protection, affection, and the right to maintain a relationship with both parents (Antareng, 2018). In the perspective of Islamic law, these rights are part of the parents' responsibilities that cannot be erased by divorce. The father still bears the obligation to provide for his or her ability to provide for the child, while the mother in principle obtains the right to care for the child who has not been *mumayyiz* while still paying attention

to the welfare of the child (Syarifuddin, 2020). Thus, divorce should not be a reason to ignore the basic rights of children because children are parties who must obtain optimal legal protection. In practice, the fulfillment of children's rights after divorce still faces various problems. The most common form found is the non-fulfillment of alimony rights. Many fathers do not carry out their obligations to provide living expenses, education, health, and daily necessities as stipulated in the court decision. As a result, the entire economic burden of the family is borne by the mother as the party who obtains custody (Siregar et al., 2022). In addition to economic rights, parenting rights are also often not fulfilled optimally. Conflicts between ex-husbands and wives cause children to become objects of custody or even used as tools to hurt other parties. This condition results in children losing the opportunity to get balanced attention and affection from their parents (Syamsi & Barlinti, 2022).

Children's rights to education and health are also often ignored. Economic limitations after divorce cause some children to experience obstacles in continuing education or obtaining adequate health services. Not a few children also experience psychological distress due to prolonged conflicts between their parents. This situation has an impact on the disruption of children's emotional, social, and mental development so that the goal of child protection as mandated in laws and regulations has not been fully achieved. (Rasjid & Achmad, 2025)

Factors Causing Non-Fulfillment of Post-Divorce Children's Rights

Economic factors are the most dominant cause of non-fulfillment of children's rights after divorce. After divorce, the family's economic condition generally decreases due to a reduced source of income or an increase in the burden of expenses. In many cases, fathers lose their jobs, have a steady income, or experience financial difficulties so that they are unable to meet their child support obligations. On the other hand, mothers who obtain custody must bear almost all of the child's life needs so that the quality of fulfilling children's rights decreases (Maretna et al., 2026). Low legal awareness is also a factor that affects the non-fulfillment of children's rights. Some parents think that divorce ends all responsibility for the ex-spouse and their children. In fact, Islamic law and positive Indonesian law affirm that parents' obligations to children continue even after the marriage has ended. Lack of understanding of legal provisions has led to many court decisions regarding child support not being implemented voluntarily (Soekanto, 2019). Conflicts that continue after divorce often make children victims. Disputes over custody, the division of time to meet children, and economic problems cause communication between the two parents to be cut off. Under certain conditions, one of the parties prohibits the child from meeting the other parent or using the child as a tool for revenge. This situation has a negative impact on the child's psychological development and hinders the fulfillment of the child's right to receive affection from both parents.

Another problem lies in the ineffective implementation of court decisions regarding child support. Although the judge has determined the amount of alimony that must be given by the father, its implementation still depends on the awareness of the party concerned. The execution mechanism for child support decisions has not been optimally run so that many judgments do not have adequate coercion. As a result, the rights of children that have been guaranteed through court decisions remain unrealized. New marriage also has the potential to affect the fulfillment of children's rights. When one parent remarries, attention, time, and economic ability often shift to the new family. In some cases, children from previous marriages become less cared for or even lose the economic support to which they are entitled. This condition shows that the formation of a new family is not always followed by the fulfillment of responsibilities for children from a previous marriage (Tarmizi et al., 2023).

The protection of children's rights after divorce is not only the responsibility of parents, but also requires an active role of the state. However, the mechanism for supervising the implementation of parental obligations is still relatively weak. There is no effective system to ensure that court decisions regarding child support are actually implemented. In addition, coordination between judicial institutions, local governments, and child protection institutions is still not optimal so that supervision of the fulfillment of children's rights has not been running optimally (Nasuha et al., 2026). Cultural factors also contribute to the non-fulfillment of children's rights after divorce. In some societies, the view is still developing that the responsibility for children lies entirely with the mother after divorce, while the father is only seen as a breadwinner if he has the ability. This view reduces public awareness that child care is a shared responsibility of both parents. In addition, the social stigma against divorced women often causes mothers to have difficulty obtaining economic and social support in raising children. The legal culture that has not developed well has finally strengthened the low compliance with the obligation to fulfill children's rights after divorce (Friedman, 1975).

Legal Implications of Non-Fulfillment of Children's Rights After Divorce

The non-fulfillment of children's rights after divorce not only has social, economic, and psychological impacts, but also has serious legal implications. Children are legal subjects who have constitutional rights to protection, nurturing, education, health, and welfare. Therefore, any action of parents who neglect their obligations to their children after divorce is a form of violation of the applicable legal provisions, both according to positive Indonesian law and Islamic law. These legal implications can be analyzed based on various legal instruments as follows. Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection emphasizes that every child has the right to live, grow, develop, obtain protection, education, health services, identity, and care from both parents. Article 26 expressly stipulates that parents are obliged to

nurture, maintain, educate, protect, and meet the needs of their children according to their respective abilities.

If after divorce one of the parents does not carry out his obligations, then legally there has been a neglect of the rights of the child guaranteed by law. Such negligence not only harms children materially, but can also hinder their physical, mental, emotional, and social development. From the perspective of child protection, the state has an obligation to ensure the fulfillment of children's rights through effective policies, supervision, and law enforcement. Therefore, child protection is not solely the responsibility of the family, but also the responsibility of the state and society. Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 emphasizes that the consequences of divorce law do not remove parental responsibility for children. Article 41 letter (b) states that the father remains responsible for all the costs of the child's upkeep and education. If the father is unable to fulfill his obligations, the court can determine that the mother also bears the costs according to their respective abilities. Thus, the non-fulfillment of child support obligations after divorce is a form of violation of the provisions of the Marriage Law. Court decisions regarding child support have binding legal force so that they must be implemented by the party burdened with obligations. Ignoring the ruling not only reflects low legal compliance, but also reduces the effectiveness of legal protection for children as the most vulnerable parties in divorce.

In the Compilation of Islamic Law (KHI), the arrangements regarding custody (*hadhanah*) and child support are clearly regulated, especially in Article 105 and Article 156. KHI determines that children who are not *mumayyiz* are in principle in the care of the mother, while the father is still obliged to meet all the costs of the child's maintenance and education according to his ability. These provisions show that custody and maintenance obligations are two different aspects. Although the custody rights are given to the mother, the father's obligation to provide for maintenance is not lost due to divorce. Therefore, if the father neglects this obligation, then the action is contrary to the provisions of the Compilation of Islamic Law and is not in line with the principles of justice and responsibility in the family according to Islamic teachings.

The development of judicial practice shows that the Supreme Court has consistently placed the best interests of children as the main consideration in resolving family disputes. In various decisions, the Supreme Court emphasized that the obligation to provide child support is not removed even if there has been a divorce. A court decision on child support should be seen as a form of legal protection for children and not solely as a dispute settlement between an ex-husband and wife. However, in practice, various obstacles are still found in the implementation of the decision. The execution mechanism for child support decisions has not been effective so that many judgments only have formal legal force without real implementation. This condition results in the rights of children

that have been guaranteed by court decisions that have not been fully protected. Therefore, it is necessary to strengthen the mechanism for the execution of judgments, including the drafting of regulations that allow the implementation of child support decisions more effectively and provide legal certainty for children.

From the perspective of *sharia maqashid*, the fulfillment of children's rights is part of the main goal of Islamic sharia (*maqashid al-shari'ah*) which aims to realize human benefits. The non-fulfillment of children's rights after divorce is contrary to several main objectives of sharia. First, *hifz al-nasl* (protection of offspring). Children are a mandate that must be maintained for their survival, education, and welfare. Neglect of maintenance, education, and upbringing means neglecting the protection of offspring, which is one of the main goals of the Shari'a. Second, *hifz al-nafs* (protection of the soul). The lack of meeting the basic needs of children can threaten their physical and mental health. This condition has the potential to inhibit the optimal growth and development of children so that it is contrary to the purpose of sharia in preserving human life. Third, *hifz al-'aql* (protection of the intellect). Children's right to education is the main instrument in maintaining and developing intellect. The inability of parents to meet the cost of education due to neglect of maintenance obligations can hinder the improvement of the quality of human resources and is contrary to the principle of the protection of reason in Islam.

Fourth, *hifz al-mal* (protection of property). Child support is an economic right that must be fulfilled by parents, especially fathers. Neglect of these obligations results in the loss of children's economic rights and is contrary to the principles of justice and responsibility in the management of property according to sharia. Thus, from the perspective of *sharia maqashid*, the fulfillment of children's rights after divorce is not only a legal obligation, but also a moral and religious obligation. The protection of children is part of efforts to realize benefits (*maslahah*) and prevent damage (*mafsadah*). Therefore, every policy, court decision, or action of parents after divorce must be oriented to the best interests of the child as a manifestation of the goals of Islamic law. Based on the results of an analysis of various factors that cause the non-fulfillment of children's rights after divorce, this study offers an integrative legal protection model by prioritizing synergy between regulations, judicial institutions, the government, and society. This model is oriented to the principle of the best interests of the child and is in line with the values of *maqashid sharia*. The protection of children's rights is not enough only through normative arrangements, but must be supported by effective implementation mechanisms so that children's rights can be truly realized in real life.

Laws and regulations in Indonesia have basically provided a sufficient basis for children's rights after divorce. However, there is still a need to improve the regulations that regulate the mechanism for fulfilling child support, including the provision of stricter sanctions against parents who deliberately ignore their

obligations. The regulation also needs to provide certainty regarding the mechanism for supervision and implementation of court decisions so that children's rights to obtain legal guarantees are more effective. One of the main problems in the protection of children's rights is the weak implementation of decisions regarding child support. Therefore, a more effective execution mechanism is needed, including through salary deductions for parents who have the status of employees, confiscation of assets in the event of deliberate negligence, or payment of alimony through special accounts under court supervision. This step is expected to increase compliance with court decisions while providing legal certainty for children.

The state has a constitutional responsibility to ensure the protection of children's rights. Therefore, better coordination is needed between the Religious Courts, local governments, the Ministry of Women's Empowerment and Child Protection, the Indonesian Child Protection Commission (KPAI), the Social Service, and other related institutions. The synergy between these institutions is important to monitor, mentor, and intervene if children whose rights are not fulfilled after the divorce of their parents. The protection of children's rights is not only related to the fulfillment of economic needs, but also includes the right of children to receive affection and attention from both parents. Therefore, it is necessary to develop the concept of *co-parenting*, which is a pattern of joint parenting that still allows both parents to carry out their roles even though they have divorced. The court also needs to encourage the preparation of a *parenting plan* in every divorce case as a guideline regarding the division of parenting, education, communication, and fulfillment of children's needs after divorce.

Low legal awareness is one of the main causes of the non-fulfillment of children's rights. Therefore, it is necessary to have a continuous legal education program through counseling, marriage guidance, family counseling, and community education regarding parental obligations after divorce. The awareness that divorce does not remove responsibility for children must be part of the legal culture of Indonesian society. This research offers a model for the protection of children's rights based on *sharia maqashid*, especially the principles of *hifz al-nasl* (protection of offspring), *hifz al-nafs* (protection of life), *hifz al-'aql* (protection of reason), and *hifz al-mal* (protection of property). In this model, the fulfillment of children's rights is seen not only as a legal obligation, but also as a religious mandate that must be carried out by both parents. Every policy, court decision, and action of parents must be oriented towards the benefit of the child so that the goal of sharia to realize welfare and justice can be achieved.

Conclusion

Children's rights are fundamental rights that remain inherent even if there is a divorce between their parents. Both Indonesian positive law and Islamic law

affirm that divorce only ends the marital relationship between husband and wife, while the parents' obligations to the child continue until the child grows up or is able to stand on his own. Therefore, the fulfillment of children's rights is a legal responsibility as well as a moral responsibility that cannot be ruled out for any reason. This study shows that the non-fulfillment of children's rights after divorce is influenced by various interrelated factors, namely economic factors, low legal awareness of parents, prolonged conflicts between ex-spouses, weak implementation of court decisions, new marriage of one parent, lack of state supervision, and a community culture that does not fully support the protection of children's rights. The main problem found is not a lack of regulation, but in the weak implementation, supervision, and enforcement of the law on parental obligations after divorce.

From a legal perspective, the neglect of children's rights is contrary to Law Number 35 of 2014 concerning Child Protection, Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, Compilation of Islamic Law, as well as various Supreme Court decisions that affirm that parents' obligations to children are not erased as a result of divorce. In the perspective of *the sharia maqashid*, such neglect is also contrary to the purpose of the sharia, especially the protection of offspring (*hifz al-nasl*), soul (*hifz al-nafs*), intellect (*hifz al-'aql*), and property (*hifz al-mal*). As a scientific contribution, this research offers an integrative model for the protection of children's rights after divorce through strengthening regulations, optimizing the implementation of court decisions, increasing supervision by the state, developing *co-parenting* systems and *parenting plans*, increasing community legal awareness, and applying *sharia* maqashid values in family law policy and practice. The model is expected to be able to realize more effective legal protection and ensure the fulfillment of children's rights in a sustainable manner in accordance with the principle of the best interests of the child.

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