

LEGAL FORMULATION OF POST-DIVORCE MAINTENANCE: NEGLECT OF WOMEN AND CHILDREN FROM THE PERSPECTIVE OF CRIMINAL LAW AND HABERMAS' THEORY OF SOCIAL INTEGRATION

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ABSTRACT

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Neglect of child support after divorce is a form of rights violation with serious social and legal consequences. Although regulated by civil and religious law, the reality shows weak implementation and minimal sanctions for violators. This article aims to analyze this issue through a juridical-sociological approach by examining the perspective of criminal law and Jurgen Habermas's theory of social integration. The results of the study indicate that neglect of child support can fulfill the criminal elements of child neglect as stipulated in Law No. 35 of 2014 concerning Child Protection. Meanwhile, neglect of an ex-wife can be examined through the economic violence approach in the Domestic Violence Law. Within Habermas's theoretical framework, this weak legal implementation reflects the failure of the legal system to build social legitimacy and rational communication between legal subjects. Therefore, legal reconstruction is needed that integrates normative, criminal, and communicative approaches. Recommendations include reform of child support regulations, strengthening post-divorce mediation, community-based legal education, and digitizing reporting and monitoring systems. Thus, the law can function as a fair, transformative, and responsive instrument of protection for women and children after divorce.



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Introduction (First subtitle; bold in first capital letters)

Fulfilling the right to maintenance for women and children after divorce is a complex and multidimensional legal issue. Although the former husband's obligation to provide maintenance for his wife and children is regulated in Law Number 16 of 2019, an amendment to Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI), its implementation is still far from ideal. Many former husbands fail to fulfill their obligations, resulting in social inequality, economic vulnerability, and significant psychological stress for women and children. Empirical studies show that the right to maintenance after divorce is often only recognized by law, but not effectively realized. (Putra et al. 2025).

In Indonesia, securing child support after divorce is a major challenge in the family law system. Normatively, both the Marriage Law and the Compilation of Islamic Law mandate that a former husband must provide child support to his ex-wife and children. However, in practice, law enforcement and compliance with court decisions are often weak. (Hariyadi, Darmawati, and Akhmad Haries 2023) This indicates a gap between written regulations and reality on the ground.

Efforts to enforce court decisions regarding post-divorce support also face significant obstacles. Although the decisions contain orders for support obligations, many ex-husbands ignore or delay their implementation due to the lack of a robust enforcement mechanism. Furthermore, criminal aspects also arise: neglect of child support can be considered a criminal offense under Law No. 35 of 2014 concerning Child Protection, while neglect of an ex-wife can be viewed through the framework of economic violence in Law No. 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT). However, the use of criminal instruments in the realm of support remains very limited in practice. (Nasution, Triana, and Muchtar 2024).

Furthermore, from a socio-theoretical perspective, post-divorce maintenance obligations have a social integration dimension, namely how the fulfillment or neglect of maintenance affects social cohesion, communication between family members, and the legitimacy of social institutions. When maintenance obligations are neglected, not only are legal rights neglected, but also dysfunctional communication between former spouses, child alienation, and a weakening of the social structure's capacity to respond to family changes. Conversely, fulfilling maintenance obligations can be part of the integrative process of a new family that maintains social relations..

In this regard, Jürgen Habermas's theoretical framework of social integration provides a perspective on how communicative interactions and social-punitive norms play a role in maintaining or weakening social systems. Habermas emphasizes the importance of legitimate communicative actions and social norms as prerequisites for social integration. In the context of post-divorce alimony, the fulfillment of alimony is not merely the implementation of legal obligations, but also a manifestation of communicative actions between former partners, and even between generations. Social norms and the process of dialogue between family members also determine whether the obligation of alimony will be effective as an integration mechanism or instead become a point of conflict.

Therefore, this study takes two main analytical angles: the criminal law aspect and the social integration aspect (Habermas), to then design a legal formulation of post-divorce support that is more responsive to the issue of women and children's neglect. Thus, it is hoped that legal policy will not only enforce formal rights, but also rebuild social capacity through more effective communicative mechanisms and legal structures, so that not only rights are upheld but also social relations are restored and post-divorce families can continue to function as stable social entities.

Method

A juridical-normative approach to primary legal sources reveals fundamental structural weaknesses in post-divorce maintenance arrangements in Indonesia. Law Number 1 of 1974 concerning Marriage has actually laid a strong philosophical foundation regarding the reciprocal obligations between husband and wife, even after the marriage breaks up. Article 41 letters (b) and (c) explicitly state that the father is responsible for the costs of maintaining and educating the child, while the ex-husband is also obliged to provide maintenance to his ex-wife during the iddah period. However, the main weakness lies in the declarative nature of the regulations without effective coercive instruments. Upon further investigation of the Compilation of Islamic Law (KHI), it was found that Articles 149 to 157 of the KHI actually provide more comprehensive technical details, such as the obligation to provide adequate mut'ah (wajib), iddah maintenance, maskan (housing), kiswah (clothing), and the burden of hadhanah (child maintenance). Unfortunately, the KHI's binding power, which is only equivalent to a Presidential Instruction, makes it have weaker legal authority than a law. Consequently, in judicial practice, judges often only make recommendations without being able to strictly enforce these obligations. As a result, a normative gap exists between what women and children should receive after divorce and the reality of implementation, which falls far short of expectations.

A review of secondary legal sources in the form of expert doctrines and scientific journals shows that solutions to the problem of post-divorce maintenance require an integrative harmonization of civil and criminal law approaches. From a criminal law perspective, Law Number 23 of 2004 concerning the Elimination of Domestic Violence (PKDRT) opens up a great opportunity to ensnare ex-husbands who neglect to pay maintenance through the construction of the crime of household neglect. Article 9 paragraph (1) of the PKDRT Law expressly prohibits anyone from neglecting someone within their household, while the explanation of the article broadens the meaning of neglect not only to the economic aspect but also to the revocation of the right to

a decent life. Criminal law experts such as Andi Hamzah and Muladi have long criticized that post-divorce maintenance neglect should be categorized as a form of ongoing economic violence. However, interpretative debates still arise regarding whether the status of ex-husbands is still included in the "scope of the household" as referred to in Article 2 of the PKDRT Law which limitatively defines the scope of the household to include husband, wife, and children, as well as people who have family ties. This gap in interpretation is what often causes law enforcement officials to hesitate to apply the Domestic Violence Law to cases of neglect of support after divorce, so that women are forced to take the long and tiring civil route with minimal certainty of success.

Based on the findings of legal principles, principles, and norms from various primary and secondary sources, the formulation of comprehensive post-divorce maintenance regulations must be directed towards the creation of substantive justice that does not stop at the court decision, but extends to the implementation phase. The principle of certainty of justice (*rechtszekerheid*), which has been dominant in divorce law in Indonesia, needs to be balanced with the principle of benefit of justice (*doelmatigheid*), which is more in favor of protecting vulnerable groups. The proposed legal reconstruction covers at least three fundamental aspects. First, the need to strengthen the judge's authority *ex officio* to impose maintenance on the ex-husband even if not sued, as actually introduced in Article 41 letter (c) of the Marriage Law, but it needs to be formulated more firmly with clear parameters to avoid multiple interpretations. Second, a more effective enforcement guarantee mechanism is needed, such as a direct wage garnishment system through cooperation with the Ministry of Manpower and financial institutions, or the imposition of a mortgage on the ex-husband's assets as collateral for child maintenance payments until adulthood. Third, a reconceptualization of the crime of neglect of maintenance within the criminal law framework is needed by explicitly formulating in the revised Criminal Code or the Domestic Violence Law that the obligation to provide maintenance after a court-ordered divorce is part of the legal responsibility whose neglect is punishable by law. With a comprehensive formulation that integrates preventive (guarantee), curative (civil execution), and repressive (criminal sanctions) aspects, legal protection for women and children after divorce will no longer be merely normative discourse, but can be realized concretely in the practice of national and state life.

Results and Discussion

The Reality of Fulfilling the Right to Support for Former Wives and Children After Divorce in Indonesia

In practice, even though religious courts determine post-divorce maintenance, many ex-husbands not carrying out these obligations voluntarily. Data from the Religious Courts in 2023 not only provides statistics but also opens the door to examining the social realities and legal challenges faced by women after divorce. The following provides a more in-depth analysis based on this data.

Table 1. Religious Court Data in 2023

No	Category	Amount/Percentage	Information
1	Total Divorce Cases Entered & Discontinued	463,654 cases	Total divorce cases in 2023
2	Divorce Lawsuit (Sued by Wife)	76%	Of the total cases, 76% or around 352,377 cases were filed by wives
3	Divorce (Filed by Husband)	24% (Remainder)	Of the total cases, 24% or around 111,277 cases were filed by husbands.
4	Wife's Support Lawsuit	1%	Of the total cases, only around 4,637 cases contained this lawsuit.
5	Joint Property Lawsuit (Gono-gini)	< 1%	Less than 4,637 cases filed for property division lawsuits
6	Child Custody Lawsuit (Hadhanah)	< 2%	Less than 9,273 cases filed for child custody lawsuits

7	Child Lawsuit	Support	1%	Of the total cases, only around 4,637 cases contained this lawsuit
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Data from Religious Courts throughout Indonesia in 2023 recorded that there were 463,654 divorce cases submitted and decided, 76% of these cases were contested divorces filed by wives while the remainder were divorce cases filed by husbands as petitioners. Of the number of existing cases, it was recorded that only 1% of cases involved claims for wife support, less than 1 percent involved joint assets and less than 2 percent filed for hadhanah and only 1 percent filed for child support rights. (Australia Indonesia Partnership for Justice 2 (AIPJ 2) 2019) This shows that the rights of the ex-wife and children after the divorce decision has become legally binding have not been properly fulfilled, so that the existing decision can be likened to nothing more than a piece of paper without any meaning and no solution.

The author identified that there are several factors that cause the non-optimal fulfillment of the rights to maintenance for ex-wives and children after divorce, including the following:

1. The complexity of the execution request. Ex-wife often have to file application for execution to the religious court so that maintenance can be collected by force. However, the execution process is time-consuming, expensive, and not always successful.
2. There are no firm and effective sanctions. There are none. firm and effective sanctions For ex-husbands who do not pay maintenance except through an execution mechanism. Unlike legal systems in other countries, Indonesia does not yet have a system of salary deductions, fines or detention for those in arrears of maintenance in a structured manner.
3. The economic condition of the ex-husband. Many reasons for not providing maintenance are because economic reasons, unemployment, or irregular income. The court sets a general amount of maintenance, but it doesn't always take into account the husband's actual economic capacity.
4. Lack of legal awareness. Many women are unaware of their rights after divorce. In some cases, ex-wives not demanding a living due to ignorance or social pressure.

These are some of the factors that contribute to the suboptimal implementation of the right to support for ex-wives and children after divorce in Indonesia. The implications are as follows: children are the main victims from the failure to fulfill livelihood needs where children do not receive adequate education, health care, or basic needs. In addition, single economic burden befalls the mother, which can then lead to household poverty after divorce. This also has implications for potential for prolonged conflict between former husband and wife due to unresolved issues of economic rights and obligations.

The substantive realm of law demands fundamental changes at the statutory level, not just implementing regulations. Revisions to the Marriage Law must be formulated in imperative legal language that is not open to multiple interpretations. Proposed formulations include:

First, the addition of Article 41A, which explicitly regulates the mechanism for guaranteeing the payment of alimony. The article could be formulated as follows:

- (1) To guarantee the implementation of the maintenance obligation as referred to in Article 41 letters (b) and (c), the court may impose a guarantee for the payment of maintenance in the form of:
 - a. Direct deduction of husband's salary or income through employer or income paying institution;
 - b. Encumbrance of mortgage rights on movable or immovable assets belonging to the husband;
 - c. Depositing a certain amount of money or assets in court as collateral.
- (2) The salary deduction as intended in paragraph (1) letter a is carried out based on a court decision which is final and binding, and the employer is obliged to carry it out no later than 14 (fourteen) days after receiving a copy of the decision.
- (3) Employers who do not carry out the obligation to deduct wages as referred to in paragraph (2) shall be subject to a maximum imprisonment of 1 (one) year or a maximum fine of IDR 100,000,000.00 (one hundred million rupiah).

Second, regulations regarding criminal sanctions for those in arrears with alimony who are able but fail to pay. This formulation is crucial for bridging civil and criminal law. Article 41B can be formulated as follows:

- (1) Any person who intentionally does not fulfill the obligation to provide maintenance as decided

by the court, even though the person concerned is financially capable, shall be punished with a maximum prison sentence of 3 (three) years or a maximum fine of IDR 200,000,000.00 (two hundred million rupiah).

- (2) The criminal act as referred to in paragraph (1) is a complaint offense which can only be submitted by the ex-wife or guardian of the child who is entitled to receive maintenance.
- (3) Financial capability as referred to in paragraph (1) is proven by ownership of assets, fixed income, or other legitimate sources of income based on a court examination.

Given that the KHI only has the status of a Presidential Instruction and has weak legal force, a more appropriate formulation would be to integrate its norms into legislation or encourage the issuance of a Supreme Court Regulation (PERMA) that would be binding on all religious courts. The formulation of the KHI needs to be strengthened, particularly in the following aspects:

Article 149 of the Compilation of Islamic Law (KHI) needs to include a paragraph regulating the indexation of living expenses, given the constant fluctuating value of money. The formula is as follows:

- (1) The amount of maintenance determined by the court can be adjusted periodically every 2 (two) years based on the inflation rate or increase in the cost of living determined by the Central Statistics Agency.
- (2) The adjustment of the amount of maintenance as referred to in paragraph (1) is carried out automatically without the need to file a new lawsuit, by the court issuing an adjustment decision based on a simple request from the entitled party.

To broaden the scope of the crime of domestic neglect, the definition of the scope of a post-divorce household needs to be reformulated. Article 2 of the Domestic Violence Law could be revised by adding the following explanation:

"What is meant by 'household scope' in this law also includes the ex-husband or ex-wife as long as they still have legal obligations arising from the marriage, including but not limited to post-divorce maintenance obligations based on a court decision that has permanent legal force."

The three areas of legal formulation mentioned above cannot operate in isolation; they must be designed as a unified, mutually reinforcing system. This synergy requires regulation at the highest level of legislation, namely through the Family Law Omnibus Law, which integrates all aspects of post-divorce support protection. This Omnibus Law will address:

1. Book One: General Provisions - contains the definition, principles, and objectives of livelihood protection.
2. Book Two: Rights and Obligations of Maintenance - regulates in detail the types, amounts, and mechanisms for determining maintenance.
3. Book Three: Guarantees and Sanctions - regulates the mechanisms for salary deductions, asset charges, and criminal sanctions.
4. Book Four: Institutions and Procedures - regulates execution units, inter-agency cooperation, and electronic procedures.
5. Book Five: Education and Community Participation - sets out the curriculum, public campaigns, and paralegal empowerment.
6. Book Six: Transitional and Closing Provisions - regulates the transition and implementation period.

With this comprehensive and integrated legal formulation, the reconstruction of the fulfillment of post-divorce maintenance rights is no longer merely academic discourse, but rather has a strong normative foundation, adequate institutional framework, and the support of a conducive legal culture. Ultimately, this legal formulation is expected to provide effective protection for women and children after divorce, in accordance with the constitutional mandate and the values of justice derived from Pancasila and religion.

Criminal Law Enforcement Against Neglect of Support After Divorce

Neglecting financial support after a divorce is a violation of a father's legal and moral obligations to his ex-wife and children. Although the court has determined the amount of mandatory financial support, its implementation is often inconsistent. This situation demonstrates the weak enforcement of criminal law against perpetrators of financial neglect, as the legal system emphasizes civil rather than criminal aspects.

As a result, many women and children lose their financial rights, even though they have legal standing. (Fitriani Fajri Isnaeni 2021).

The main problem in enforcing criminal law against neglect of child support lies in the absence of criminal norms that explicitly regulate violations of child support obligations after divorce. Existing provisions only address child neglect in general, without distinguishing between the context of a divorced household. This creates confusion in the legal process, as law enforcement officials often have difficulty determining the appropriate criminal basis for charging the perpetrator. As a result, cases of neglect of child support are more often resolved through civil lawsuits than through criminal proceedings. (Hasyim et al. 2025).

In practice, many court decisions are not followed by firm enforcement against those who neglect their livelihood. This weak law enforcement is caused by minimal coordination between religious courts and criminal law enforcement officials. As a result, decisions regarding the obligation to provide for alimony often have no deterrent effect and even lead to public distrust of legal institutions. This situation demonstrates the gap between ideal legal norms and the reality of their implementation on the ground.

Difficulties in proving the truth are also a significant factor in the weak enforcement of criminal law against neglect of livelihood. Intentional and negligent elements are often difficult to prove, as not all denials of livelihood are due to the perpetrator's malicious intent. Some are caused by economic factors, unemployment, or complex domestic conflicts. Furthermore, victims often lack understanding of reporting procedures and lack adequate legal representation, making them reluctant to take their cases to the criminal court. As a result, many cases stall at the mediation stage or remain unresolved. (Rasidi et al. 2024).

To strengthen criminal law enforcement, synergy between the civil and criminal legal systems is needed, particularly in the context of coordination between religious courts, the police, and the prosecutor's office. The determination of child support should have clear legal consequences if not implemented, including potential criminal sanctions for the perpetrator. Furthermore, regulations are needed that clarify the relationship between civil decisions regarding child support and the crime of neglect. This approach is expected to have a deterrent effect and guarantee the economic rights of women and children after divorce. (Prasetyo et al. 2024).

Overall, criminal law enforcement against neglect of livelihood still faces structural and cultural challenges. A more progressive legal reconstruction is needed so that the obligation to provide livelihood can be treated as a legal responsibility that carries criminal dimensions if neglected. In addition to regulatory reform, there is a need to increase legal awareness among the public and empower women's and children's protection institutions. An integrated approach between legal, social, and moral aspects is expected to strengthen the effectiveness of the law and provide justice for those who are harmed. (Fitriani Fajri Isnaeni 2021).

It is understandable that criminal law enforcement against post-divorce neglect of support requires a more integrative approach that encompasses legal, social, and moral aspects. Existing regulations have not been able to guarantee effective protection for women and children due to weak enforcement of criminal sanctions and minimal coordination between legal institutions. Legal reform is needed to define post-divorce neglect as a criminal offense with clear consequences, along with increased public legal awareness and support for victims. Thus, criminal law will not only be a repressive tool, but also a means to uphold justice and safeguard family well-being after divorce.

Integration of Criminal Law in Efforts to Fulfill the Support of Wives and Children After Divorce

Providing support for a wife and children after divorce often faces practical obstacles that include not only civil aspects but also potential criminal sanctions. International studies show that in some countries, such as the United States, enforcement mechanisms for support obligations, such as the withdrawal of child support and administrative sanctions, indicate that criminal enforcement can be a last resort if civil mechanisms fail. (Dalby 2021). Within the framework of social integration, fulfilling a living is not merely a financial transaction but also a manifestation of family responsibility that serves to strengthen social connectedness between former partners and children.

Criminal law in the context of post-divorce support can be seen as an instrument that reinforces the obligation to provide support, with a reinforcing effect and a deterrent effect on those who violate it. For

example, although international regulations do not always explicitly include criminal sanctions for violations of support, research shows that effective law enforcement requires a coordination mechanism between civil and criminal institutions to ensure accountability for this obligation. Referring to Habermas, this mechanism must operate in a communicative space: the parties (former spouses, state institutions, and society) participate in a normative dialogue that makes the obligation to provide support part of legitimate social integration.(Dalby 2021).

Habermas's theory of social integration separates the system from everyday life.-lifeworld, where law functions as a mediator that incorporates communication norms into more formal structures.(Deflem 2008)In the context of post-divorce maintenance, criminal law addressing neglect of maintenance should not merely impose sanctions but should also allow for the participation of ex-wives and children as legitimate subjects in public discourse, for example through mediation, legal assistance, and access to the courts. Thus, criminal law becomes an integrative tool that connects family social norms and the formal legal system.

The integration of criminal law into the fulfillment of livelihood also demands that these legal norms obtain social legitimacy through open public communication, a principle emphasized by Habermas in his theory of communicative action.(Al'anam and Salman 2024)When former partners, law enforcement agencies, and the community engage in rational dialogue about child support obligations, the criminal law will be more readily accepted and effective. Conversely, if sanctions mechanisms are implemented without dialogue or shared understanding, there is a risk that the law will be perceived as a repressive tool rather than a means to strengthen social relations after divorce.

In the global context, legal enforcement mechanisms for post-divorce support obligations demonstrate that the use of criminal sanctions is often a last resort after civil mechanisms are ineffective. Several studies over the past five years have confirmed that the threat of imprisonment for violators of support obligations can indeed increase compliance in the short term, but the long-term effects are complex. On the one hand, such sanctions serve as a deterrent, affirming moral and legal responsibility towards children and ex-partners. However, on the other hand, an overly repressive approach can reduce the economic capacity of the sanctioned party, creating new burdens for the family and potentially reducing children's well-being. Therefore, the effectiveness of criminal sanctions must be viewed within a broader social framework, not simply as a means of coercion, but as part of a policy that balances justice, responsibility, and social welfare.(Zatz and Stoll 2020).

From the perspective of Habermas's theory of communicative action, the legitimacy of criminal law in the context of post-divorce support depends not only on the strength of the sanctions, but also on the extent to which the law is generated and implemented through rational and participatory communication. The law should function as a mediator between the "system" representing the formal structure of the state and law and the "daily life" (lifeworld) that reflects the values, morality, and social interactions of the family. Therefore, criminal law enforcement for neglect of support should be accompanied by mediation mechanisms, legal assistance, and dialogue spaces that allow former partners and children to become active subjects in resolving the problem. Such an approach not only strengthens the social legitimacy of the law but also strengthens post-divorce social integration, where the law is understood as a means of restoring moral and social responsibility, rather than as a repressive tool of the state.

Thus, the integration of criminal law in efforts to fulfill the rights of wives and children after divorce needs to be understood not merely as a coercive instrument, but as part of an effort to build a communicative and just legal order, as defined by Habermas's integration theory. This approach emphasizes the importance of harmony between the formal legal system and the social and moral values prevailing in society, including the protection of vulnerable groups such as women and children. Through a communicative approach, criminal law can act as a catalyst to ensure the effective and ethical implementation of court decisions, while also restoring public trust in the justice system in resolving family conflicts in a civilized and humane manner.

Conclusion

The integration of criminal law in fulfilling the rights of wives and children after divorce is a strategic step to ensure substantive justice for vulnerable parties. From the perspective of Jürgen Habermas's integration theory, law is understood not only as a coercive normative system but also as a medium of social communication that must be rooted in rationality, morality, and mutual understanding among citizens. Therefore, the application of criminal law to violations of maintenance obligations, for example, must be seen as a form of protection of basic rights rooted in the values of justice and social solidarity. With this integrative approach, criminal law does not stand alone but works alongside social norms and civil law to create a just, responsive, and humane legal order, particularly in protecting the rights of women and children after divorce.

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Author Contributions Statement

Serimin Pinem conceptualized the study, conducted the research, analyzed the data, and drafted the manuscript. Ilylyana Che Rosli contributed to the research design, provided academic supervision, reviewed and edited the manuscript. Both authors have read and approved the final version of the manuscript.

AI Usage Statement

The authors declare that artificial intelligence (AI) tools were used solely for language editing and grammar improvement. All ideas, analyses, interpretations, and conclusions presented in this manuscript are the original work of the authors.

Conflict of Interest

The authors declare that there is no conflict with regard to the publication of this article.

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