

## LEGAL PROTECTION AGAINST POST-DIVORCE CHILD SUPPORT OBLIGATIONS IN TERNATE CITY

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### Abstract

Article 38 of Law Number 1 of 1974 concerning Marriage and Article 113 of the Compilation of Islamic Law states that divorce is one form of dissolution of marriage other than death and court decisions. Divorce is the severance of the marital bond between a man and a woman as husband and wife, which is carried out before a court hearing, namely the District Court for non-Muslims and the Religious Court for Muslims. This paper aims to analyze: (1) The legal protection for child support obligations after divorce in Ternate City and (2) The efforts that the government can make to reduce the obligation of unpaid alimony after divorce in Ternate City. This research is normative legal research, where the concept of normative legal research. The approaches used in this research are the statute approach and the conceptual approach. The statute approach examines laws and regulations related to the legal issue at hand. This conceptual approach is also used when relevant laws and regulations do not yet or do not address the issue at hand. Children's rights after divorce, both under the Marriage Law and the Compilation of Islamic Law (KHI), include the right to continue receiving care, education, and support from both parents. The father is responsible for the cost of childcare and education after divorce, a term known as "maintenance" in the KHI. This represents a parent's responsibility to fulfill their obligations to uphold children's rights, as stipulated in Law Number 23 of 2002 concerning Child Protection.

**Keywords:** *child support, divorce, Islamic law, legal protection, Ternate.*

### INTRODUCTION

The true purpose of marriage is to form a household that is peaceful, loving and compassionate, as stated in Article 3 of the Compilation of Islamic Law (Nurrahmaza, 2024). However, in reality, the journey of married life is not always happy, harmonious, and various obstacles and challenges are certainly encountered when problems in the household are so heavy and difficult to overcome that the goals of marriage are impossible to achieve and divorce is the last alternative that can be taken. Article 38 of Law Number 1 of 1974 concerning Marriage and Article 113 of the Compilation of Islamic Law states that divorce is one form of dissolution of marriage other than death and court decisions (Zamzami, 2021). Divorce is the severance of the marital bond between a man and a woman as husband and wife, which is carried out before a court hearing, namely the District Court for non-Muslims and the Religious Court for Muslims (Achmad, 1990).

Divorce should not negatively impact children. In this context, efforts to protect and guarantee legal certainty for children's rights after divorce are an absolute necessity (*condicio sine qua non*) (Fauzan & Siagian, 2016). Children are required to receive legal protection due to their fundamental existence within the family, society, nation, and state. Children are the successors of the family line, the pride of the family, and, more broadly, the next generation who will realize the ideals of the nation and state. Therefore, the fulfillment and legal protection of the rights of children born from every marriage, especially guaranteeing the fulfillment of the right to support for children affected by divorce, is essential so that children can grow and develop normally and naturally until adulthood or are able to stand on their own. However, when in the process of divorce and the wife submits a request for support to the father of her children, often received a negative response with various reasons regarding the income earned each month, and considering the child as a joint responsibility in providing support, so that the support provided is not balanced with the needs of food, clothing, and education costs of a child. Indifference to a child's development will pose negative risks for the child, both in his social life, education, and even in a child's play environment (Rosidi, 2024).

The low resolution rate of child support cases filed and determined in divorce decisions, and the ineffectiveness of their implementation, has drawn both pro and cons debate from various groups (Fanani, 2020). Regardless of these pros and cons, the author believes a more comprehensive study is needed on legal protection for children's rights after divorce so that children, as the weak and vulnerable parties, receive legal protection that is just, certain, and beneficial (Rofiq, 2024). Article 41 of Law Number 1 of 1974 concerning Marriage states that the consequences of a marriage breaking up due to divorce are: (a) Both the mother and the father remain obliged to care for and educate their children, solely based on the interests of the children; (b) If there is a dispute regarding control of the children, the court will make its decision; (c) The father is responsible for all costs of care and education required by the child; (d) If the father is in fact unable to fulfill these obligations, the court may determine that the mother shall bear these costs; and (e) The court may require the ex-husband to provide living expenses and/or determine certain obligations for the ex-wife (Pratama & Anindya, 2020).

Indonesian marriage law does not specify the mechanism for fulfilling this obligation and the amount of child support that fathers must pay. In line with the concept in the above legal regulations, jurists ... also stipulates that child support is the father's responsibility. Indeed, the text Regarding the obligation to pay child support, it is not explicitly mentioned in the Qur'an or Sunnah (manşûş). However, the status and types of child support are often found, but a more detailed explanation of the procedures for fulfilling and the amount of child support that must be paid by the father until the child is an adult or able to stand alone has not been found, except for an understanding of the word *ma'rûf* and *ihsân* which is adapted to local customs. Based on this reality, it is not surprising to find disparities in court decisions regarding the procedures for fulfilling and the amount of child support, and various analyses or considerations of judges in Determining the amount of child support. Some believe that the determination of child support in judges' decisions is still done subjectively using simple, inaccurate methods. Most considerations regarding determining child support fail to take into account the child's actual needs, such as daily needs, which consist of primary, secondary, and tertiary needs, etc.

The development of thinking in determining the amount of child support charged to fathers has experienced a shift towards emphasizing the accuracy of the amount of support charged to fathers in relation to the father's financial ability and the child's real needs. Determining the appropriate amount of child support charged to fathers must take into account at least two factors: the child's real needs and the father's financial ability (Bangsawan & Budiono, 2021). Current practice tends to show a reality of a simplification in calculating the child support burden on a father. The considerations that contain the basis for determining the amount of child support use the terminology of appropriate and fair which is very subjective and therefore needs to be supported by supporting data or considerations that lead to its objectivity. Determining the appropriateness and fairness of the value of a child support burden should not only rely on the judge's sense of justice and appropriateness alone, but also be based on and supported by quantitative, non-factual, accurate and measurable data that fully describe the profile or actual situation of the child's real needs in relation to the father's financial ability (Cholifah & Kusumo, 2011).

In relation to legal protection in the development of children's daily lives, it is necessary to pay attention to the aspect of providing legal protection, in this case maintenance, to children after their parents' divorce, so it is deemed necessary to conduct a comprehensive study of the causes of the very minimal decisions regarding child maintenance so that the impact on legal protection for children can be avoided. Based on the description above, the interesting issue to be raised in this research is "Legal Protection for Child Support Obligations After Divorce in Ternate City " with the problem formulation: (1) How is the legal protection for child support obligations after divorce in Ternate City? (2) What efforts can the government make to reduce the obligation of unpaid alimony after divorce in Ternate City?

## LITERATURE REVIEW

### Theoretical Basis for Child Support

According to the Big Indonesian Dictionary (KBBI) a child is the second generation, in the consideration of Law No. 23 of 2002 concerning Child Protection, that a child is a mandate and gift from God Almighty, which is inherent in him as a whole human being (Subaidi, 2014), in Law No. 1 of 1974 concerning Marriage, article 42 states that a legitimate child is a child born as a result of a legal marriage. The definition of a child according to civil law is seen from the civil aspect so that the child becomes a legal subject, namely having the status of a minor (Djamil, 2013). Then, according to Article 330 of the Civil Code (KUHP), those who are not yet adults are those who have not reached the full age of 21 years and have not previously married. The definition of children in this article with the term "minor" is that they are under the protection of their parents and guardianship, this is also the same as Law No. 1 of 1974 concerning marriage, the definition of children has the same meaning, namely not yet adults and have not reached the age limit determined by civil law. A father is legally obligated to provide for his children to meet their needs, including personal care, education, and other unforeseen expenses (Bahri, 2024). This obligation to

provide for their children continues until the child reaches puberty, even after the marriage has ended. A father is legally obligated to provide for his children to meet their needs, including personal care, education, and other unforeseen expenses. This obligation to provide for their children continues until the child reaches puberty, even after the marriage has ended (Mubarak, 2019). The provision of maintenance is generally given to people who are dependents of the provider, Law No. 1 of 1974 concerning Marriage, Article 45 states that parents are obliged to care for and educate their children as best as possible and the party who is responsible for all costs of maintaining and educating the child is the father (Dahlan, 1997). Positive law also regulates the husband's obligation to provide maintenance, namely in the Marriage Law number 1 of 1974 and also in the Compilation of Laws Islam. Law Number 35 of 2014 concerning Child Protection, Law Number 4 of 1979 concerning Child Welfare, and Law Number 1 of 1974 which regulates the father's obligation to provide maintenance to his children even when a divorce has occurred (Suryani, 2020).

According to the child protection law article 1 paragraph 1 of Law no. 23 of 2002 concerning Child Protection, someone who can be said to be a child is someone who is not yet 18 years old, still a child in the womb. According to this law, a child has the right to be protected, guarantee and protect all his rights so that he can live, grow and develop optimally, as well as receive protection from discrimination and violence (Law No. 23 of 2002 on Child Protection, 2002). Article 41 of Law Number 1 of 1974 concerning Marriage stipulates that upon the dissolution of a marriage, the husband remains obligated to provide support to his children. The obligation to pay support for his children includes daily needs and educational needs. This is also emphasized by Article 105 letter c of the Compilation of Islamic Law, which states that all child support is the responsibility of the father, and is further clarified in Article 156 letter d, which states that "all costs of hadhanah and child support are the responsibility of the father according to his ability, at least until the child reaches adulthood, namely the age of 21."

### **Theoretical Basis for Post-Divorce Maintenance**

Divorce, which occurs in society, is a feared threat because its impact is not only on the husband and wife but also extends to the children and families of both parties. Although religion forbids it and its impact is not good in the family or social environment, in marital practice it always occurs. Divorce seems unavoidable. This can be seen in media reports and the increasing number of divorce cases being resolved by the courts (Kamello & Andriati, 2011). In Islamic law, there is no excuse for a father not to provide for his children, even if he is unemployed, has no permanent job, or is poor. This does not excuse a father from providing for his children as long as the father remains in good physical and mental health. The obligation to provide for children extends beyond the time of marriage, but it remains obligatory even after a divorce (Erwin & Fathoni, 2022). Even after a divorce, there should be no reduction in the provision of child support according to their needs (Alauddin, 2019).

Support is so important in Islamic law that it is not only a gift from a husband to his wife, but also an obligation for a father as a custodian of his children (Rahmawati, 2019). Support is a husband's obligation to his wife, and a parent's obligation to their children. Therefore, Islamic jurisprudence scholars state that children are entitled to receive support from their father only if the father is capable of providing for them. or at least able to earn a living, but if the father has a serious illness such as paralysis or other illness that results in him being unable to earn a living, then he is not obligated to provide for his children. According to Abu Zahrah, children's rights are closely related to marriage, children's rights arise when the child is born, these rights take the form of a number of obligations from a father and some other burden obligations are borne by both the father and mother. Even according to the Hambali school, nothing can prevent the provision of maintenance to children even if there are religious differences between the father and the child.

The children who are entitled to receive maintenance from their father are:

1. Children who are still small, in this case the child cannot earn his own living because he is still under age, however according to the Hambali School the father is still obliged to provide for his child if the child is poor even though he has no physical or mental disabilities.
2. Daughter until she gets married
3. Children who are still seeking knowledge even though they are adults, because their pursuit of knowledge should not be disturbed just because they are looking for sustenance.

### **METHOD**

This research is normative legal research, where the concept of normative legal research or library research is research that examines document studies, namely using various secondary data such as laws and regulations, court decisions, legal theories, and can be in the form of opinions from legal scholars (Budiono *et al.*, 2023).

The approaches used in this research are the statute approach and the conceptual approach. The statute approach examines laws and regulations related to the legal issue at hand. This conceptual approach is also used

when relevant laws and regulations do not yet or do not address the issue at hand. To build a strong legal argument, we must not only rely on statutory provisions but also utilize a conceptual approach, namely the views of scholars and legal doctrines contained in books (treatises) and court decisions. Therefore, both the statutory and conceptual approaches are used to address legal issues and build a strong legal argument in this study (Nasution, 2008).

The types and sources of data used as analysis materials consist of:

1. Secondary data, namely data obtained from documents relating to the problem being researched.
2. Tertiary data, namely data obtained from the compilation of primary and secondary data.

The legal material collection techniques used by researchers are as follows:

1. Literature Study, namely a method of collecting legal materials by Conducting a library search, namely collecting and reviewing laws and regulations, law books, opinions of legal scholars, as well as previous research results related to the research problem being studied, in the form of journals, articles, legal basis for obligations originating from agreements whose actions are contrary to the law, and other materials that support this research.
2. Documentary Study, which is a method of collecting material by examining documents that support the above title related to the Analysis of Legal Justice regarding Child Support Obligations After Divorce in Ternate City.

The analysis of legal materials in this study will utilize deductive logic analysis methods combined with qualitative normative analysis methods (Soemitro, 1988). Deductive logic analysis methods draw conclusions from a general problem to the specific problem being studied (Wardiono, 2019). Qualitative normative analysis methods, on the other hand, involve logically organizing discussions and explanations of research findings regarding norms, rules, and legal theoretical foundations relevant to the subject matter.

## **RESULTS AND DISCUSSION**

### **Legal protection for child support obligations after divorce**

The results of the study show that marriage according to Article 1 of Law Number 1 of 1974 concerning marriage, is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal household family based on the One Almighty God. From this understanding, it can be seen that the purpose of marriage is eternal happiness. However, household life does not always run smoothly (Jiwanti & Soponyono, 2022), there are certain circumstances that require the dissolution of the marriage, because if the marriage is continued it is feared that it will bring harm to the child. Three reasons for the dissolution of marriage are regulated in the Compilation of Islamic Law, namely (1) Death, (2) Divorce, the dissolution of marriage due to the husband's wish for divorce or the wife's wish for divorce filed with the Religious Court, (3) Based on a Court Decision, the dissolution of marriage at the will of the judge as a third party after seeing and considering the existence of something that indicates that the marriage relationship cannot be continued or is usually called fasakh.

Post-Divorce Children's Rights in Indonesian Law. As citizens, children have rights that must be protected. These rights are regulated in Law Number 23 of 2022 concerning Child Protection. The enactment of Law No. 23 of 2022 is a consequence of Indonesia's status as a nation based on the rule of law and the ratification of the Convention on the Rights of the Child. Law No. 23 of 2022 regulates several children's rights, including: The right to life as regulated in Article 4 of Law No. 23 of 2022 which guarantees the right of children to live, the right to religion, to think and express themselves as regulated in Article 6 of Law No. 23 of 2022. This article provides protection for children to be able to express themselves, the freedom to channel their creativity, provide children with choices regarding the religion they embrace and receive protection to worship according to their religion, the right to health and welfare, Law No. 23 of 2022 guarantees the health of children for their growth and development and in Article 12 states that children have the right to rehabilitation, social assistance and care, the right to education and teaching, where children have the right to receive teaching to be able to increase their knowledge, channel their abilities and to be able to be morally and socially responsible (Budiono et al., 2023).

Protection rights, children have the right to be protected from various forms of discrimination, neglect, exploitation, cruelty, violence and other mistreatment, custody rights, children have the right to receive effective care and be free from pressure or arbitrary treatment under care either by their parents or by other parties, the right to justice, children have the freedom to be treated humanely and receive assistance in order to obtain justice in their lives. Meanwhile, in order to enforce legal protection of children's rights, especially in the household sphere, the government has established Law Number 23 of 2004 concerning the Prevention of Domestic Violence, including by establishing criminal sanctions for parties who are legally responsible for children's rights, but do not carry out their obligations so that they can be categorized as having committed acts of violence against children. So with the increasing demands for protection of children's rights from the state, government, local government and society as stated in Child Protection Law Number 23 of 2002 concerning Child Protection.



The aforementioned rights must be fulfilled regardless of the circumstances. Children's rights after divorce are regulated both in the Marriage Law and the Compilation of Islamic Law (KHI). Article 41 of the Marriage Law states that after a divorce, parents remain obligated to care for and educate their children for the benefit of the children. Furthermore, the costs of childcare and education are the responsibility of the father. However, if the father is unable to fulfill these obligations, the mother also has an obligation to cover these costs. The same is also regulated in Article 149 letter d of the Compilation of Islamic Law, which states that the ex-husband is obligated to provide hadhanah maintenance to his children. Hadhanah maintenance refers to the costs of caring for, nurturing, and educating the child until he or she reaches adulthood. Article 105 letter c of the Compilation of Islamic Law also emphasizes that the responsibility for childcare costs after a divorce rests with the father. These obligations that must be fulfilled are the rights that children must receive after a divorce. This is as regulated in Article 4 of Law No. 23 of 2002, which states that children have the right to live, grow, develop, and participate fairly in accordance with human dignity and dignity, and to receive protection from violence and discrimination. These rights are a manifestation of the obligations of both parents, as regulated in Article 1 of Law No. 9 of 1979 concerning Child Welfare, where efforts to ensure the welfare of children are primarily the responsibility of parents.

**Table 1.** Cases from January to December 2023

Number of Cases	Divorce Lawsuit		Talakh Divorce	
	Amount of Child Support	Number of Children Without Support	Amount of Child Support	Number of Children Without Support
605	26	408	34	137

Data source: Ternate Religious Court (2023).

The father's obligations towards children due to divorce due to the breakup of marriage due to divorce, both the mother and the father remain obliged to raise and educate their children solely based on the best interests of the child (Antareng, 2018).

Given these circumstances, children's rights, which are the parents' obligations, must be fulfilled regardless of the circumstances, whether the parents are still married or have divorced. These rights can be fulfilled if the ex-wife files a lawsuit. Based on case data in 2023, there were 605 divorce cases, consisting of divorce lawsuits and divorce by divorce. In divorce lawsuits, 26 children received support, while 408 children received no support. However, in divorce cases, 34 children received support, while 137 children received no support. Based on the data obtained in 2023 with 605 cases, the divorce rate in Ternate City is quite high, which is not balanced by the number of children who must be supported each month. This can be seen from the number of children supported in divorce by divorce 26 children and divorce by lawsuit 34 children, in contrast to the number of children who are not supported as many as 408 in divorce by lawsuit and 137 children in divorce by divorce. This shows that due to the dissolution of marriage due to divorce many children whose rights are not fulfilled both in parental care and in terms of providing support to children. Child support in divorce carried out by both parents, whether divorce by lawsuit or divorce by divorce, the provision of support to children tends to be different, the total tendency of divorce by divorce is lower than that of divorce by lawsuit.

The Supreme Court of the Republic of Indonesia has issued Circular Letter Number 2 of 2019 Concerning the Implementation of the Formulation of the Results of the 2019 Supreme Court Chamber Plenary Meeting as a Guideline for the Implementation of Duties for the Court. The special point is a provision stating that in the framework of implementing Supreme Court Regulation Number 3 of 2017 Concerning Guidelines for Adjudicating Women in Conflict with the Law to provide legal protection for women's rights after divorce, the injunction for payment of husband's obligations to his wife after divorce with the provisions of the injunction is narrated in the *posita* and *petitum* of the lawsuit. This provision is a glimmer of hope for the Plaintiff in a Divorce case where the wife sues for divorce to easily obtain her rights as a wife due to her divorce.

In a marriage, there are always legal consequences established by law, particularly regarding the rights that the ex-husband must fulfill to his ex-wife and children. As a judicial institution, the Religious Court must always play a role in guaranteeing the fulfillment of women's and children's rights after divorce. Supreme Court Regulation No. 3 of 2017 states that in the adjudication process, judges must guarantee women's right to equal access to justice. Hadhanah maintenance, namely the maintenance given to children until the child is an adult and can take care of themselves. Article 80 Paragraph 4 Letter (c) of the KHI states that family maintenance, which includes living expenses and education for children, is borne by the father. Likewise, after a divorce, Article 105 of the KHI states that child maintenance costs are borne by the father. This shows that child maintenance costs both before and after

the divorce remain the responsibility of a husband. The ex-wife also has the right to child maintenance or *hadhanah* for children under 12 years old. And also has the right to the dowry owed by paying off the dowry that is still owed in full, and half if *qobla al dukhul* in accordance with Article 149 letter c of the KHI.

**Efforts are being made by the government to reduce the obligation of unpaid maintenance after divorce in Ternate City.**

Maintenance is an obligation that a husband must fulfill and provide for his wife and children. Article 41, letter c, of Law No. 1 of 1974 concerning Marriage states (Law No. 1 of 1974 on Marriage, 1974):

1. The court may require the ex-husband to provide living expenses and/or determine certain obligations for the ex-wife.
2. Article 149 of the Compilation of Islamic Law states (Alauddin, 2019): "If a marriage ends due to divorce, the ex-husband is obliged to: a. provide a reasonable *mut'ah* to his ex-wife, either in the form of money or goods, unless the ex-wife is *qobla al dukhul*; b. provide maintenance, food and *kiswah* to the ex-wife during the *iddah*, unless the ex-wife has been given a divorce or *nusyus* and is not pregnant; c. pay off the remaining dowry in full, and half if *qobla al dukhul*; d. provide *hadhanan* costs for his children who have not reached the age of 21 years.

Based on data from the Ternate Religious Court, data on divorce cases, both by lawsuit and by divorce by *talaq*, from January to August 2024 can be explained in the table below:

**Table 2.** Cases from January to August 2024

Number of Cases	Divorce Lawsuit		Talak Divorce	
	Amount of Child Support	Number of Children Without Support	Amount of Child Support	Number of Children Without Support
393	25	262	20	86

Data source: Ternate Religious Court (2024)

In 2024, from January to August 14, 2024, the number of divorces was 393 cases, consisting of divorce lawsuits with 25 children being given support and 262 children not being provided support, while divorces by divorce were 20 children being given support and 86 children not being provided support. Data from the last two years, namely 2023 with a significantly high number of cases with a divorce rate of 605 and 2024 with 393 cases, namely from January to August. From the case data recorded at the Ternate Religious Court from 2023 to 2024, the number of divorces is seen to decrease. Data on the number of children given support in divorce lawsuits, in 2023 there were 26 and from 2024 to August was 25, from this number it does not appear that the children given support will decrease, this is because the difference in child data from 2023 to August 2024 the coverage of children given support only decreased by 1 child. So it has not been identified whether the data has decreased or increased until December 2024. In contrast to the number of children who are not given support after the divorce in Divorce Lawsuit, namely in 2023 as many as 408 and 262 children until August 2024 the number of children who are not given support decreased by a difference of 146 children. This can be seen that in divorce by divorce, children who are given support in 2023 are 34, and the number of children without support is 137 children and in divorce by divorce in 2024 as many as 20 and the number of children without support is 86 from both data seen to decrease between 2023 and August 2024. The data above shows that the data on children who are given support and the number of children who are not given support from the two years has decreased. Based on Article 26 paragraph (1) of Law No. 35 of 2014 as parents of children, ex-husbands or ex-wives are also obliged and responsible for a. caring for, maintaining, educating and protecting children. b. developing children according to their abilities, talents and interests. c. preventing marriage at a young age and providing character education and instilling moral values in children. Basically, every child has the right to be cared for by their own parents, unless there are valid reasons and/or legal regulations showing that the separation is in the best interests of the child and is the final consideration.

**CONCLUSION**

Children's rights after divorce, both under the Marriage Law and the Compilation of Islamic Law (KHI), include the right to continue receiving care, education, and support from both parents. The father is responsible for the cost of childcare and education after divorce, a term known as "maintenance" in the KHI. This represents a parent's responsibility to fulfill their obligations to uphold children's rights, as stipulated in Law Number 23 of 2002 concerning Child Protection.

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